

Penalty on Perpetrators of Domestic Violence Crimes Cause the Victim to Die (Study Decision Number: 276/Pid.Sus/2021/PN. Spt)

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Abstract. *The aim of the research is to examine and analyze sanctions for perpetrators of domestic violence crimes that cause victims to die. The approach method using a sociological juridical approach emphasizes research that aims to obtain legal knowledge empirically by going directly into the object. The results of the research show that the application of criminal sanctions to perpetrators of criminal acts of domestic violence which caused the victim to die is based on the facts revealed in the trial, including the statements of witnesses, the defendant's statement, letters, evidence and the defendant's statements, which are interconnected and consistent with each other. The defendant was sentenced to prison for 3 (three) years.*

Keywords: Domestic; Sanctions; Victims; Violence.

1. Introduction

The household is the smallest group in the life of society, nation and state which plays a very big role and influence on the social development and personality development of each family member. The family is a separate organization and requires the head of the household as an important figure to lead the rest of the family. Family members consisting of father, mother and children are one unit and have very good relationships.¹This good relationship is characterized by harmony in the reciprocal relationships between all members or individuals in

¹ Suwarno, Sri Endah Wahyuningsih. Urgency of Suspect Determining in the Investigation Process on Human Rights Perspective. *Law Development Journal* / Volume 2 No 2, June (2020). P. 241. URL: <http://jurnal.unissula.ac.id/index.php/ldj/article/view/11700/4559> Accessed 02 August 2023

the family. A family is called harmonious if all family members feel happy and harmonious, which is indicated by the absence of conflict, tension, disappointment and satisfaction with the situation (physical, mental, emotional and social) of the entire family.²

The provisions of Article 1 of Law Number 1 of 1974 concerning Marriage are "The spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God." It can be said that the purpose of marriage itself is to form a happy home physically and mentally. Meanwhile, humans are special creatures who are blessed by God with various virtues. One of the advantages of humans or differences with other creatures is that humans are given the mind to think and have a curious nature (man is a curious animal). Through the thought process, humans will always try to know what they don't know in this universe.³

A good household requires the cooperation of both husband and wife to create wholeness and harmony. This really depends on each person in the household, especially the level of quality of behavior and self-control of each person in the household. To create a harmonious family, husband and wife have obligations in addition to rights in maintaining a happy, safe, peaceful and peaceful household, which is the dream of everyone in the household and family.⁴ However, the goal of marriage in a household is not always achieved, one of the reasons is that one party commits domestic violence (KDRT) against the other party. Domestic violence (KDRT) can be classified as a criminal act called the Crime of Domestic Violence.⁵

The existence of acts of domestic violence is nothing new, but up to now it has often been kept secret or covered up by the parties concerned, whether by the family or by the victim themselves. Acts of domestic violence generally involve the perpetrator and victim among family members in the household. Common forms of violence include physical violence and verbal violence (threats of violence).⁶ Domestic Violence (KDRT) not only violates legal principles, human rights and social norms, but also violates the principles and values taught by

²Arif Gosita, 2003, Problems of Crime Victims, Collection of Essays, Presindo Academy, Jakarta, p.8

³Saefullah Wiradipradja, 2015, Practical Prosecution of Research Methods and Writing Scientific Legal Works, Keni Media, Bandung, p.3

⁴Emei Dwinanarhati Setiamandani, Agung Suprojo, Juridical Review of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Reform: Scientific Journal of Social and Political Sciences, Volume 8, Number 1 of 2018, p.37

⁵Rodliyah and Salim HS, 2017, Special Criminal Law (Elements and Criminal Sanctions), Rajawali Pers, Depok, p.239

⁶Telly P. Siwi Zaidan, Anticipating Domestic Violence, Paper, Jakarta, p.3

religion. Every religious belief does not condone violence committed by anyone in the household, in any form or for any reason.⁷

According to Arif Gosita, what is meant by domestic violence (KDRT) is an unlawful act carried out intentionally by someone against another person, whether for the benefit of themselves or someone else, causing physical, psychological and social suffering.⁸ Violence that occurs within the household contains something special, this specificity lies in the relationship between the perpetrator and the victim, namely family relationships or work relationships (between the employer and the household assistant).⁹ Meanwhile, domestic violence is often called a hidden crime, because both the perpetrator and the victim try to keep the incident a secret from society. Sometimes it is called domestic violence because violence occurs in the domestic realm.¹⁰

Another cause of domestic violence is poverty where men feel they have no power in the family. Conflict at work also triggers stress which makes men feel they have to be able to control their women at home. Other men commit violence under the influence of drugs or alcohol, even though the substance of the drug itself is not the cause of the violence.¹¹ In accordance with Article 1 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it states that:

Domestic violence is any act against someone, especially women, which results in physical, sexual, psychological misery or suffering, and/or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household.

Article 1 paragraph (3) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence explains that a victim is a person who experiences violence and/or threats within the household. The household scope includes:

1. Husband, wife and children

⁷Faqihuddin Abdul Kodir and Umm Azizah Mukarnawati, 2013, References for Religious Court Judges on Domestic Violence, National Commission on Violence Against Women, Jakarta, p.38

⁸Guse Prayudi, 2011, Various Aspects of Domestic Violence Crimes, MerkidPress, Jakarta, p.1

⁹Moerti Hadiati Soeroso, 2012, Domestic Violence (KDRT) in a Juridical-Victimological Perspective, Sinar Graphics, Jakarta, p.13

¹⁰ Arif Septria Hendra Saputra, Gunarto and Lathifah Hanim. Implementation of Restorative Justice as an Alternative for Resolving Crimes of Persecution at the Lasem Police Criminal Investigation Unit. Journal of Legal Sovereignty Vol. 1. No. March 1 (2018). P. 157. URL :<http://jurnal.unissula.ac.id/index.php/RH/article/view/2629/1978> Accessed 02 August 2023.

¹¹Mery Ramadani, Fitri Yuliani, Domestic Violence (KDRT) as a Global Public Health Issue, Andalas Public Health Journal, Volume 9, Number 5, 2015, p.83.

2. People who have family relationships with husband, wife and children due to blood, marriage, breastfeeding, parenting and guardianship relations who live in the household

3. People who work help the household and live in the household.

Explanation of the description above can be concluded that the crime of domestic violence is a criminal act committed by the perpetrator which results in physical, sexual, psychological misery or suffering and/or domestic neglect including threats to commit acts, coercion or deprivation of freedom against the law. law in the household sphere. Meanwhile, criminal acts that often occur are not only outside the scope of community life, but also occur in domestic life.¹² This research aims to know the sanctions for perpetrators of crimes involving domestic violence that cause the victim to die.

2. Research Methods

The approach method using a sociological juridical approach emphasizes research that aims to obtain legal knowledge empirically by going directly into the object. To find out the application of criminal sanctions for criminal acts of domestic violence which cause the victim to die, various legal regulations relating to the problems (legal issues) discussed are carried out.¹³ The specifications used are descriptive analytical in nature, providing a systematic, logical explanation, analyzing them in order to review applicable literature, legislation, legal norms and analyzing them to draw conclusions.¹⁴ The data sources used for secondary data consist of primary legal materials in the form of legislation related to the legal research carried out.

Data collection method with the main activity being literature study, reviewing, reviewing and processing literature, statutory regulations, judge's decisions and articles or writings related to the problem to be researched. The data analysis method was carried out qualitatively using a data analysis method by grouping and selecting data obtained from literature studies.

3. Results and Discussion

The criminal law currently in effect in Indonesia is that criminal law has been codified, that is, most of its rules and regulations have been compiled in a law

¹²Badriyah Khaleed, 2015, *Legal Settlement for Domestic Violence: Elimination of Domestic Violence and Recovery Efforts*, Madpress Digital, Yogyakarta, p.1

¹³Johny Ibrahim, 2007, *Normative legal theory, methods and research*, Bayumedia Publishing, Malang, p.30

¹⁴ Amirudin and Zainal Asikin, 2004, *Introduction to Legal Research Methods*, Raja Grafindo Persada, Jakarta, p.118

book (wetboek) called the Criminal Code, according to a certain system.¹⁵The criminal regulations that exist outside of wetboek are all subject to the system used in the Criminal Code, this is stated in Article 103 of the Criminal Code. The term criminal law is often used as a translation of the words Straf in Dutch. To mention the types of sanctions in criminal law, the use of the term punishment tends to be followed by practitioners and the lay public so that the terms death penalty and imprisonment are often heard.

Legal protection for victims of family violence, especially physical violence committed by husbands against wives, is very necessary and is a human rights demand as intended in Article 1 of Law no. 39 of 1999 concerning Human Rights states:

That Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are protected by the state. Law and government and every person for the sake of honor and protection of human dignity.

This law emphasizes that it is not permissible for anyone to commit violence against other people, especially husbands who are prohibited from committing violence against their wives, because it is against human rights as well as laws and regulations regarding marriage, besides that the State is obliged to provide protection to victims of the violence they experience. Legal protection for victims of family violence, especially physical violence committed by husbands against wives, can take the form of civil liability as well as criminal liability with the application of penal and non-penal sanctions, so that law enforcement and legal protection do not only look at the juridical aspect but also also justice for victims of violence, especially wives. In this connection, legal protection is defined as activities to guarantee and protect legal subjects and their rights so that they can live, grow, develop and participate optimally in accordance with their dignity as legal subjects and receive protection from violence.¹⁶

After the enactment of Law no. 23 of 2004 very clearly regulates legal protection for victims of violence in the family, especially wives as victims of husband's violence, where legal protection itself is the right of victims of violence which must be provided by the family, police, prosecutors, courts, social institutions. This right is clearly stated in Article 10 of Law Number 23 of 2004 which states: Victims have the right to:

¹⁵ Ahmad Ghifar Al Ahfaqsyi and Siti Rodhiyah Dwi Istinah. Manifestation Of Criminal Sanctions In The Judicial Process On Criminal Actor Of Negligence (Culpa). *Law Development Journal Volume 2 No 2, June (2020)*.P. 107 – 114.
URL:<http://jurnal.unissula.ac.id/index.php/ldj/article/view/11445> Accessed 02 August 2023.

¹⁶ Sentosa Sembiring, 2003, Elimination of Domestic Violence, Nuansa Aulia, Bandung, p.134

Protection from the family, police, prosecutor's office, court, advocates, social institutions or other parties, either temporarily or based on the implementation of a protection order from the court. Legal protection is the entire series of activities and processes provided by law to protect children as victims of parental violence in the family. Victims are parties who suffer or are harmed by their parents, namely people who experience violence or threats of violence in the family.

In efforts to prevent, protect victims and take action against perpetrators of domestic violence, the state and society are obliged to carry out prevention, protection and action against perpetrators in accordance with the Pancasila philosophy and the 1945 Constitution of the Republic of Indonesia. The state is of the view that all forms of violence, especially domestic violence, is a violation of human rights and a crime against human dignity as well as a form of discrimination. As violence or crime increases, it is hoped that the law will become a shield in eradicating or overcoming all forms of violence or crime that occur in society.¹⁷

According to Satjipto Raharjo, legal protection provides protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights provided by law. Law can also be used to create protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for communities that are weak and not yet strong socially, economically and politically to obtain social justice.¹⁸The reality of life is that domestic violence still occurs, it can be seen that various cases of domestic violence causing victims to die occur in the jurisdiction of the Sampit District Court which has received a permanent decision with Decision Number: 276/Pid.Sus/2021/PN Spt.

Based on the facts revealed in the trial, including the statements of witnesses, the defendant's statement, letters, evidence and the defendant's statement, which are interconnected and consistent with each other, based on article 188 paragraphs (1) and (2) of the Criminal Procedure Code, one piece of evidence is obtained. which shows that it is true that Friday, June 4 2021, at approximately 11.30 WIB, is located in the Palm Oil Plantation Area, Block B14, PT. Mulia Agro Permai Barat, Penyang Village, Telawang District, East Kotawaringin Regency, Central Kalimantan Province, there has been a criminal act of physical violence in the domestic sphere which resulted in the death of the victim" as alleged in the First Alternative indictment of the Public Prosecutor and defendant D Alias DA, the perpetrator. So that in applying criminal sanctions against perpetrators of criminal acts of domestic violence which caused the victim to die, the panel of

¹⁷Rena Yulia, 2010, Legal Protection for Crime Victims, Graha, Yogyakarta, pp. 3-4.

¹⁸Satjipto Rahardjo, 2000, Legal Science, Citra Aditya Bakti, Bandung, p.53

judges at the Sampit District Court in their trial was concerned with proving the elements of the criminal act charged, and because the Indictment was prepared alternatively, in accordance with the law of Evidence.

During the trial, the defendant's fulfillment of the elements of Article 44 Paragraph (3) of Republic of Indonesia Law Number 23 of 2004 concerning the Elimination of Domestic Violence was legally and convincingly proven. The main element of a criminal act must be that there is a certain consequence of the perpetrator's actions in the form of harm to the interests of other people, indicating that there must be a causal relationship (*causaal verband*) between the perpetrator's actions and the loss of certain interests.¹⁹So, among legal scholars there is always an in-depth discussion about cause and effect (causality) in general, in the legal field in particular, including the field of civil law in terms of unlawful acts (*onrechmatige daad*).²⁰To determine whether there is a legal subject error in the above case, several elements must be met, including:

- a. The ability to be responsible for the maker
- b. The inner relationship between the maker and his actions in the form of intention (*dolus*) or negligence (*culpa*).
- c. There is no reason to erase mistakes or no reason to forgive.²¹

Simons said that a criminal act is an act or deed that is punishable by law, is contrary to the law and is carried out in unity by someone who is capable of taking responsibility. Moeljatno said that crime is an action that is prohibited by a prohibitive legal regulation which is accompanied by threats (sanctions) in the form of certain penalties, for anyone who violates the prohibition. Moeljatno has the following criminal elements:

- 1) The act must be a human act.
- 2) This act must be prohibited and punishable by law.

¹⁹ Dwi Anas Rudiyanoro, Sri Kusriyah. Mechanism for Handling of Criminal Action Prohibiting the Use of Land Without Permission. *Law Development Journal Volume 2 Issue 4, December (2020)*. P. 519 URL : <http://jurnal.unissula.ac.id/index.php/ldj/article/view/13632/5184> Accessed 02 August 2023.

²⁰Wirjono Projodikoro, 2003, Principles of Criminal Law in Indonesia, Refika Aditama, Bandung, p.61

²¹Widya Hari Sutanto and Umar Ma'ruf, The Role of State Attorney Prosecutors to Restore State Financial Losses in Criminal Actions of Corruption to Make Justice, *Law Development Journal Volume 3 Issue 1, March, 2021*. Url : <http://jurnal.unissula.ac.id/index.php/ldj/article/view/11445> Daikases 02 August 2023.

3) The act is contrary to law (against the law).

4) It must be done by someone who can be held accountable. This action must be attributed to the maker.²²

Kanter and Sianturi state that a criminal act is an action at a certain place, time and circumstances, prohibited (or required) and punishable by law, is unlawful, and is wrongly committed by someone (who is capable of responsibility). Meanwhile, according to Loebby Loqman, there are three possibilities in formulating a criminal act: First, the criminal act is formulated in terms of its name and elements. Second, criminal acts whose elements are only formulated. Third, the criminal act of just mentioning the name without mentioning the elements.

It can also be said that criminal acts are acts that are prohibited by legal regulations and are punishable by crime. Just remember that the prohibition is directed at an action (i.e. a condition or event caused by a person's behavior), while the criminal threat is directed at the person who causes the incident.²³ There is a close relationship between prohibitions and criminal threats, because there is also a close relationship between the incident and the person who caused the incident. One cannot be separated from the other. An event cannot be prohibited if the person causing it is not a person, and a person cannot be punished by a crime if it is not because of the event that caused it.²⁴

The explanation above is that defendant D alias DA has been legally and convincingly proven to have committed the crime of "committing physical violence within the household which resulted in the death of the victim". Taking into account that during the examination at trial no excuse or justification was revealed, the defendant must be considered as a person capable of responsibility, and his actions must be seen as unlawful and the defendant must be prosecuted according to his guilt. The Panel of Judges at the Sampit District Court who examined and tried this case stated that Defendant D Alias DA had been legally and convincingly proven guilty of committing the crime of "committing physical violence in the domestic sphere which resulted in the death of the victim" as charged in the first indictment of the Public Prosecutor. Sentenced the Defendant to prison for 3 (three) years.

²²Efendi Erdianto, 2011, Indonesian Criminal Law, PT. Refika Aditama, Bandung, p.97

²³ Agus Widodo, Arpangi. Criminal Threats against the Abuse of Bonded Zone Facilities. *Law Development Journal Volume 2 Issue 4, December (2020)*, P. 465. URL:<http://jurnal.unissula.ac.id/index.php/ldj/article/view/13628/5170> Accessed 02 August 2023.

²⁴ Harjanto Mukti Eko Utomo, Umar Ma'ruf. The Criminal Law Enforcement Policy in Online Prostitution Treatment. *Law Development Journal Volume 2 No 2, June (2020)*, (115 - 120). URL:<http://jurnal.unissula.ac.id/index.php/ldj/article/view/11438/4494> Accessed 02 August 2023.

The decision taken by the court was correct, coupled with the mitigating elements taken into consideration by the judge, namely, the defendant frankly admitted his actions, thereby making the trial easier. The criminal punishment decided by the panel of judges is not only a form of deterrent effect on the perpetrator but aims to foster and educate the perpetrator so that he realizes and regrets his actions and does not repeat them in the future.

4. Conclusion

Legal Regulation of the Crime of Domestic Violence According to Law no. 23 of 2004 concerning the Elimination of Domestic Violence, since 22 September 2004, has been specifically regulated. These special regulations are contained in Law No. 23 of 2004 concerning the Elimination of Domestic Violence. With the promulgation of Law No. 23 of 2004, legally, criminal provisions as regulated in the Criminal Code can be set aside. This is based on the principle of "lex specialis derogat lex generalis". In this case, it was proven that the Sampit District Court, in adjudicating cases of domestic violence, had used Law No. 23 of 2004, as the legal basis in its decision, and the application of criminal sanctions against perpetrators of domestic violence in the perspective of Law No. 23 of 2004. 2004 concerning the Elimination of Domestic Violence, and the application of sanctions based on Court Decision no. 276/Pid.Sus/2021/PN Spt; The panel of judges at the Sampit District Court who tried the case imposed a sanction in the form of a prison sentence of 3 years, which was in accordance with the facts at trial where one of the children of the victim and the defendant had forgiven the defendant's actions and asked the panel of judges to sentence the defendant as lightly as possible.

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