

Criminal Responsibility Analysis of Perpetrators of Assault Resulting in the Loss of Other Lives based on Justice (Case Study of Decision Number 988/Pid.B/2017/PN Smg)

Aditya Krisdamara¹⁾ & Andri Winjaya Laksana²⁾

¹⁾ Faculty of Law, Sultan Agung Islamic University, Indonesia, E-mail: AdityaKrisdamara.std@unissula.ac.id

²⁾ Faculty of Law, Sultan Agung Islamic University, Indonesia, E-mail: andriwinjaya@gmail.com

Abstract. *The phenomenon of the crime of abuse is not new when it comes to physical and psychological violence and can be found anywhere. The purpose of writing this research is to determine the criminal liability for perpetrators of the crime of abuse that results in the loss of another person's life, to determine the weaknesses of criminal liability for perpetrators of the crime of abuse that results in the loss of another person's life, and to determine the criminal liability for perpetrators of the crime of abuse that results in the loss of another person's life based on justice. The research approach used in this research is through a normative legal approach using secondary data obtained through literature studies, then data analysis is carried out using qualitative descriptive analysis. Based on the results of the study, the criminal liability for abuse that results in the loss of another person's life is regulated in Article 351 Paragraph (3), Article 353 Paragraph (3), Article 354 Paragraph (2), Article 355 of the Criminal Code. There are weaknesses in the criminal liability of perpetrators of criminal acts of abuse resulting in death which can be seen from the legal substance, legal structure, and legal culture. Criminal liability for perpetrators of criminal acts of abuse resulting in the death of another person based on decision number 988/Pid/B/2017/PN Smg the judge has sentenced based on Article 351 Paragraph (3) of the Criminal Code with a prison sentence of 1 year and 4 months. The sanctions imposed by the judge on the defendant were inappropriate because the judge was not careful in reading the results of the victim's Visum et Perum. The sanctions imposed by the judge do not reflect a sense of justice.*

Keywords: Criminal; Death; Liabilities; Persecution.

1. Introduction

The Republic of Indonesia is a country based on law that upholds the law which is manifested in regulations in the form of laws and is systematically arranged in certain codifications or compilations.¹Based on Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia), which states: "The State of Indonesia is a State of Law."

The creation of a harmonious atmosphere in community life is also closely related to the laws and regulations that regulate it, namely criminal law. Crime is a term that includes the basic understanding of criminal law that can be done anytime and anywhere. Crime can cause unrest or disturbance to order in society. An example of a crime that often occurs in community life is violence. Violence is a behavior solely carried out by someone against another person with the aim of hurting or injuring them psychologically or physically.

The development of the current era has not only brought a major influence on the State of Indonesia but also has an impact on the development of society, behavior, and cultural shifts in society. This problem has caused an increasing crime rate and the rampant occurrence of violations and criminal acts that occur both in the midst of society and in the family environment. One of the crimes that often occurs in the community is the crime of abuse.²

The crime of abuse is one form of legal violation that often occurs in society. Cases of abuse often have serious impacts, both physically and psychologically for the victim. In handling cases of abuse, the criminal justice system is often the main choice to resolve the case.³

Abuse often has an impact on the victim, such as trauma, fear, threats, sometimes there are victims of abuse who experience mental disorders and mental health, even death. Looking at the phenomenon of abuse, it seems that it does not just happen, but is thought to be related to various factors such as the influence of socializing and crime, robbery, social jealousy, economic pressure and inequality, disharmony.

The crime of abuse referred to in Article 351 paragraph (1) of the Criminal Code is called ordinary abuse, but can also be called simple abuse or a form of ordinary regulation, and Article 351 of the Criminal Code essentially means all forms of abuse. In particular, the abuse is not severe and not light. The crime of torture is

¹R. Abdoel Djamali, 1993, *Introduction to Indonesian Law (Revised Edition)*, PT. Raja Grafindo Persada, p. 69.

²Marlina, 2009, *Juvenile Criminal Justice in Indonesia*, Refika Aditama, Bandung, p. 1

³Aryani, Witasari and Muhammad Sholikul Arif, "Implementation of Diversion to Realize Restorative Justice in the Juvenile Criminal Justice System", *UNISSULA Faculty of Law Journal* Number 2 Edition, December 2019, p. 178-179.

regulated in addition to Article 351 of the Criminal Code, Article 352 (light abuse), Article 353 (mandatory abuse), and Article 354 of the Criminal Code. Criminal Code (Serious Torture), Criminal Code Article 355 (Serious Abuse that has been previously determined).

The case of abuse in the Decision Case Number: 988/Pid.B/2017/PN Smg was carried out by the Defendant AAS on October 17, 2017. The defendant and his friends were at the liquid cafe to find entertainment where they had previously booked a place on the VVIP 2 sofa, at the same time in the place next to the defendant and his friends sat precisely on the VVIP 3 sofa, the victim MY sat. Then the victim MY and his friend witness CK danced on the sofa. Witness HY who felt disturbed reprimanded the victim to get down. However, the victim did not accept it and pushed and pointed at HY. The victim continued to push witness HY and the defendant AAS felt unacceptable, took the iceland drink bottle and hit the victim's head 3 (three) times until the 3rd blow the bottle broke and slipped out of the defendant's hand. The victim fell down and was unconscious and his head was bleeding. Then the victim was taken to Dr. Hospital. KARIADI Semarang by his friends, and after being treated for 1 (one) day later on the Actions carried out by AAS included abuse, Where AAS had the intention to "seriously injure", meaning "seriously injure" MY and as a result of the abuse MY died. Wednesday at 00.30 WIB on October 18, 2017 was declared dead.

2. Research Methods

The approach method used by the author in compiling the journal uses the normative legal method. The research specification used in this study is the descriptive analysis type. In this study, the author emphasizes library research and primary materials in the form of applicable laws and secondary materials in the form of expert opinions, law books, journals and magazines.

The data collection technique used in this study uses literature study, by collecting data from the results of reviewing library materials and secondary data including primary legal materials, secondary legal materials and tertiary legal materials. The data analysis technique in this study is carried out with qualitative data analysis, namely data collection using laws, theories and legal principles.

3. Results and Discussion

3.1. Criminal Responsibility for Perpetrators of Criminal Acts of Assault Resulting in the Loss of Life of Another Person

The concept of criminal responsibility has an important meaning in the field of criminal law, because in matters concerning guilt, responsibility, and punishment, which are things that must be in accordance with the moral, religious, and legal context. These three parts show a relationship and are

based on a shared context, which includes a collection of collectively adopted behavioral norms, which lead to the emergence of the concepts of guilt, responsibility, and punishment. This exemplifies the emergence of a conceptual framework rooted in a normative system.⁴Criminal liability refers to the process of determining the guilt of a person who is a suspect or defendant in connection with a crime committed. Criminal guilt is essentially a determinant in the legal system to determine whether a person should be acquitted or punished.⁵

The concept of responsibility plays an important role in determining the outcome of a criminal case, as it relates to the decision whether a person should be acquitted or punished.⁶In particular, when assessing a person's criminal responsibility, certain criteria must be met to establish their capacity to be responsible. These elements are as follows:

1. There are errors (intentional and negligent)
2. Having the Ability to be Responsible
3. No Justification or Excuse

Criminal acts against the body in the Criminal Code are called assault. The establishment of regulations on crimes against the human body is intended to protect the legal interests of the body from acts in the form of attacks on the body or parts of the body that cause pain or injury, even because such injuries to the body can cause death.⁷

According to the author, abuse must be deliberate, namely the intention to injure or cause pain as a goal. Thus, to say that someone has committed abuse against another person, the person must have an opzet or an intention to:⁸

1. Inflicting pain on others;
2. Causing injury to another person's body or;
3. Harmful to the health of others.

⁴Amir Ilyas, 2014, Principles of Criminal Law, Rangkang Education, p. 72

⁵Roeslan Saleh, 1998, Thoughts on Criminal Responsibility, Jakarta, Ghalia Indonesia, p. 256

⁶Susetiyo, W. Zainul Ichwan, M. Iftitah, and Dievar, Legal Certainty of the Job Creation Law in the Health Sector Following the Constitutional Court Decision Number 91/PUU-XVIII/2020, Jurnal Supremacy, Vol 12 No 2, 2022, p. 31

⁷Ismu Gunadi, Jonaedi Efendi, 2014, Quick and Easy Understanding of Criminal Law, Jakarta, PT. Fajar Interratama Mandiri, First Printing, p. 96.

⁸PAF Lamintang, Theo Lamintang, 2010, Special Offenses Against Life, Body, and Health, Jakarta, Sinar Grafika, Second Ed., First Printing, p. 132.

Criminal liability for perpetrators of criminal acts of abuse resulting in death is found in several types of abuse, namely:

1. Ordinary or principal assault (Article 351 of the Criminal Code)

Criminal liability for perpetrators of criminal acts of assault resulting in death is discussed in ordinary assault or the main article 351 paragraph 3, namely "assault resulting in death and is punishable by imprisonment for a maximum of seven years".

The elements of ordinary persecution are:⁹

- a) There is intent
- b) There is an act
- c) There are consequences of actions (which are intended), namely
 - Pain in the body
 - Wounds on the body
- d) The consequence is the only goal

2. Premeditated assault (Article 353 of the Criminal Code)

Criminal liability for perpetrators of assault that causes death discussed in planned assault Article 353 paragraph 3, namely "if the assault causes death, it is punished with a maximum prison sentence of nine years". The element of planned assault is planned in advance.

3. Serious Assault (Article 354 of the Criminal Code)

Criminal liability for assault resulting in death discussed in serious assault article 354 paragraph 2 is if the act (serious assault) results in death, then the guilty person is subject to a maximum prison sentence of ten years. The criminal provisions on serious assault formulated in article 354 paragraph 2 of the Criminal Code have the following elements:¹⁰

- a) Subjective Element: intentionally;
- b) Objective Element: causes or causes, or serious injury to the body, or another person, or which results in, or death

⁹Ismu Gunadi, Jonaedi Efendi, Op.Cit. p. 97

¹⁰PAF Lamintang, Theo Lamintang, Op.Cit, p. 100

4. Meanwhile, death in the case of serious premeditated assault (355 of the Criminal Code) is not included in assault if the death is not the aim, because if it is the aim then it is called premeditated murder.

3.2. Weaknesses of Criminal Responsibility for Perpetrators of Criminal Acts of Assault Resulting in the Loss of Life of Another Person

Abuse is a common phenomenon in society. The occurrence of criminal acts of abuse often results in serious consequences, namely loss of life. Therefore, a punishment is needed that effectively guarantees justice for the victim, and his family and the perpetrator.

However, in fact, there are still many weaknesses in the implementation of criminal liability for perpetrators of criminal acts of assault that result in the loss of another person's life, namely:

a) Legal Substance

Unclear and indefinite regulations will open up opportunities for law enforcers to interpret them according to their own way of thinking, which can open up loopholes for misinterpretation that disrupt the implementation of fair law. Moreover, if the legal rules do not yet exist, then law enforcers will look for other legal bases that they think are more appropriate to apply in that incident.

The Criminal Code does not explain the definition of persecution. Persecution is regulated in Article 351 of the Criminal Code-355 of the Criminal Code. The law does not provide provisions on what is meant by "persecution" (mishandeling). Persecution is defined based on jurisprudence. The ambiguity of the rules regarding the elements of the definition of persecution can open up opportunities for misinterpretation that disrupts the implementation of fair law.

b) Legal Structure

Law enforcers are role models in society, who should have certain abilities in accordance with the aspirations of society. They must be able to communicate and gain understanding from the target group, in addition to being able to carry out or carry out roles that are acceptable to them. One of the keys to success in law enforcement is the mentality or personality of the law enforcers themselves.

The weakness in the accountability of criminal acts of assault resulting in death is the difficulty of knowing the extent of the perpetrator's intention in committing the criminal act of assault. The imposition of the criminal act of assault article carried out by the Public Prosecutor is determined based on the perpetrator's intention. The Public Prosecutor must be

careful in formulating the criminal act of assault committed by the perpetrator.

Then in the new Criminal Code, the definition of abuse is also not explained. This is left to the judge's assessment to provide an interpretation of the case at hand in accordance with the development of social and cultural values. This is a challenge for judges in making decisions on criminal acts of abuse. Judges must have extensive knowledge in order to implement decisions that reflect justice.

c) Legal Culture

Legal Culture or legal culture basically includes the values that underlie applicable laws, and these values are abstract conceptions of what is considered good, worthy of being obeyed and what is considered to be avoided. These cultural values can be described in the rules and views in attitudes and actions as a series of final values to create social renewal.

The rampant acts of abuse that we see from various sources are a sign that this is inseparable from the behavior of society that is less controlled, either due to low levels of education and the influence of a less than good social environment. Disputes, either personally or in groups, can be a factor that can invite acts of violence that lead to abuse.

3.3. Criminal Responsibility for Perpetrators of Criminal Acts of Abuse Resulting in the Loss of Life of Another Person Based on Justice

In decision number: 988/Pid/B/2017/PN. Smg the Panel of Judges considered that the defendant had committed the crime of assault resulting in death as stated in Article 351 Paragraph (3) of the Criminal Code consisting of the following elements:

1) Each person

Each person is the defendant Angga Aulia Sofyan alias Gepeng Bin Irianto in the investigation examination, no elements of justification or forgiveness were found, so that his actions can be legally accounted for as a person who committed or participated in committing the act.

2) Who Intentionally Commits Abuse

The definition of deliberate is that there is an intention and will of the perpetrator to commit a crime that is done consciously and the consequences are indeed desired by the perpetrator. That the defendant hit the victim using an Iceland drink bottle until the victim fell down and lay on his back. The victim was unconscious and his head was bleeding.

3) What Causes Death

That based on the conclusion of the Visum Et Repertum Letter number: 148/B-67/RF-L/XI/2017 dated October 18, 2017 by the examining doctor dr. Sigid Kirana Lintang Bima, SP.KF issued by the Forensic Medicine and Corpse Embalming Department of the Cenderawasih Installation of dr. Kariadi General Hospital Semarang which stated that there were blunt force injuries in the form of bruises on the left eyelid and skull fractures; sharp force injuries in the form of open wounds on the head, blood seepage was found in the brain and throat, signs of suffocation were found, the cause of the victim's death was blunt force trauma to the head which caused compression of the respiratory center, resulting in the victim suffocating.

By fulfilling the elements of Article 351 Paragraph (3) of the Criminal Code above, the judge then looks at whether there are things that can release the defendant from criminal responsibility, whether it is a justification or a reason for forgiveness and if seen in this case then the defendant is free from both of these reasons and can be held responsible for his actions, because the defendant is mentally healthy and is not under pressure or pressure to carry out the act (assault).

Based on these considerations, the Panel of Judges determined that the defendant was subject to criminal sanctions under Article 351 Paragraph (3) of the Criminal Code by sentencing the defendant to 1 (one) year and 4 (four) months in prison.

In the author's opinion, the Article formulated in the indictment by the Public Prosecutor is not quite right. Seeing the tool used by the defendant to commit the act of abuse and based on the chronology of the incident, the defendant deliberately hit the victim's head three times until it broke, then the public prosecutor should have known that the defendant had the intention or intent to cause the victim to suffer serious injuries. According to the author, it would be more appropriate if the public prosecutor used Article 354 Paragraph (2) of the Criminal Code, namely serious abuse resulting in death with a maximum prison sentence of 10 (ten) years.

Then seen from the way the judge determines the sanctions imposed on the defendant, namely imprisonment for 1 (one) year and 4 (four) months, does not provide a sense of justice. Article 351 Paragraph (3) has a maximum sentence of 7 (seven) years. According to the author, the judge was not careful in reading the results of the victim's Visum Et Perum, because it was clear that the victim suffered serious injuries that caused death. The carelessness of a judge in deciding a case can provide a sense of injustice for

the victim and family, with the existence of injustice in the law will make the public not trust law enforcement officers.

4. Conclusion

The act of abuse committed by a person, whether intentionally or unintentionally, must first be ascertained to determine the penalty that will be imposed on the person. The Criminal Code explains that taking someone's life is classified as a crime, so what must be done first is to determine whether it was intentional or not. Abuse that causes death is regulated in Article 351 Paragraph (3), Article 353 Paragraph (3), Article 354 Paragraph (2), Article 355 of the Criminal Code. The weaknesses in criminal responsibility of perpetrators of criminal acts of assault resulting in the loss of another person's life can be seen in terms of legal substance, legal structure and legal culture. Criminal liability for the perpetrator of the crime of assault that caused the death of another person based on decision number: 988/Pid/B/2017/PN Smg the judge has sentenced based on the primary charge of the public prosecutor, namely Article 351 Paragraph (3) of the Criminal Code. The sanction imposed by the judge on the defendant was inappropriate because the judge was not careful in reading the results of the victim's Visum et Perum.

5. References

Book

- Amir Ilyas, 2014, Principles of Criminal Law, Jakarta, Rangkang Educational
- Ismu Gunadi and Jonaedi Efendi, 2014, Criminal Law, Jakarta, Kencana
- Marlina, 2009, Juvenile Criminal Justice in Indonesia, Refika Aditama, Bandung.
- Moeljatno, 2010, Principles of Criminal Law, Jakarta, Rineka Cipta.
- PAF Lamintang, Theo Lamintang, 2010, Special Offenses Against Life, Body, and Health, Jakarta, Sinar Grafika.
- R. Abdoel Djamali, 1993, Introduction to Indonesian Law (Revised Edition), PT. Raja Grafindo Persada, Depok
- Roeslan Saleh, 1998, Thoughts on Criminal Responsibility, Jakarta, Ghalia Indonesia
- R. Soesilo, 1995, Criminal Code and its Complete Commentaries Article by Article, Politeia, Bogor.
- Yahya Harahap, 2010, Discussion of Problems and Application of Criminal Procedure Code, Jakarta, Sinar Grafika

Journal

Aryani, Witasari and Muhammad Sholikul Arif, "Implementation of Diversion to Realize Restorative Justice in the Juvenile Criminal Justice System", UNISSULA Faculty of Law Journal Number 2 Edition, December 2019.

Gunsu Rapita Bambang, Implementation of Criminal Responsibility for Students as Perpetrators of Assault Resulting in Death, Pakuan Law Review, Vol 7 Number 2, 2021.

Hartono and Junisda, Mega Junisda, Accountability of Perpetrators of Criminal Acts of Assault Resulting in Death in Appeal Decisions, Judex Factie, Vol 9 No 2, August 2023.

Susetiyo, W. Zainul Ichwan, M. Iftitah, and Dievar, Legal Certainty of the Job Creation Law in the Health Sector Following the Constitutional Court Decision Number 91/PUU-XVIII/2020, Jurnal Supremasi, Vol 12 Number 2, 2022.