

JURISDICAL ANALYSIS OF THE CRIMINAL ACTS OF DOMESTIC NEGLECT, LAW NUMBER 23 OF 2004 CONCERNING THE ELIMINATION OF DOMESTIC VIOLENCE (Study of Decision Number 179/Pid.Sus/2021/PN.Tbt)

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ABSTRACT

Article 2 paragraph (1) of Law No. 23 of 2004 on the Elimination of Domestic Violence states that a household is the simplest part of social life that is created because of a marriage relationship that includes a husband, wife, and children. Household neglect according to Law Number 23 of 2004 concerning the Elimination of Domestic Violence according to Article 9 Paragraph (1) "Everyone is prohibited from neglecting people within the scope of their household, even though according to the law that applies to them or because of an agreement or agreement they are obliged to provide life, care, or maintenance to that person.". Based on the position of the case and decision number 179/Pid.Sus/2021/Pn.Tbt there are legal regulations regarding perpetrators of criminal acts of neglect in the household who have been tried by the Panel of Judges, namely Article 49 letter a of Law No. 23 of 2004 concerning the Elimination of Domestic Violence and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations.

1. Introduction

The family is one of the smallest institutions in society and an ideal social institution for developing each person's strengths and abilities. However, the family is often a place where suffering and misery arise. Article 2 paragraph (1) of Law No. 23 of 2004 concerning the Elimination of Domestic Violence states that the household is the simplest part of social life, created by the marital relationship, which includes a husband, wife, and children.

A household is an economic entity that uses, consumes, or consumes goods and services to meet its needs. Every household has different habits and behaviors. Furthermore, the household serves as a place of refuge, pouring out happiness in forming a harmonious family, providing a sense of security, peace, and security. However, many households experience domestic violence; this is nothing new to Indonesian society.

Legislation only places the burden of providing for the husband's livelihood.

However, the Marriage Law does not impose sanctions on husbands who fail to fulfill the obligations outlined above. However, the Marriage Law allows a wife to file for divorce on the grounds that her husband fails to provide maintenance and fulfill his obligations.

Violence, according to Mansour Fakhri, is an attack or invasion of a person's physical or mental or psychological integrity. Article 1, paragraph 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence defines domestic violence as any act against a person, especially a woman, that results in physical, sexual, or psychological misery or suffering, and neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household.

The Tebing Tinggi District Court decision number 179/Pid.Sus/2021/PN Tbt exemplifies a case of domestic neglect, as demonstrated by Heri Sanjaya, alias Heri, who neglected another person within the household, despite the law requiring Heri Sanjaya, alias Heri, to provide both physical and spiritual support, as stipulated in the Marriage Law.

In this case, the Tebing Tinggi District Court issued the following verdict: "Declares the defendant Heri Sanjaya, alias Heri, mentioned above, legally and convincingly proven guilty of committing the crime of "domestic neglect" as stated in the single indictment;" and sentences the defendant to four months' imprisonment."

Domestic neglect is certainly not a new phenomenon in society, especially since cases of domestic neglect are frequently heard in the community and on social media. However, the punishments imposed on perpetrators of domestic neglect often do not align with the values of justice. One such case is the case of Heri Sanjaya, the perpetrator of neglecting his wife and child in Tebing Tinggi. He was sentenced to four months' imprisonment, a sentence lighter than the prosecutor's demand, even though his actions caused physical and psychological suffering to his wife and child.

2. Research Method

This research is a normative legal research, where law is conceptualized as what is written in regulations (law on the books), or law is conceptualized as rules or norms that serve as benchmarks for human behavior that are considered appropriate. This normative legal research is based on primary and secondary legal materials, namely research that refers to the norms contained in laws and regulations. This type of research was used because the researcher wanted to examine everything related to the Judge's considerations regarding the crime of domestic neglect in Decision Number 179/Pid.Sus/2021/Pn.Tbt.

The research specification used in this study is descriptive analytical research, namely describing applicable laws and regulations in relation to legal theories and the practice of implementing positive law related to the formulated problem. The approach used in this research is a statute approach.

Data analysis is the process of processing data into information so that its characteristics can be understood and used to solve problems, particularly those related to research. This research employed a qualitative analysis method, which involved examining laws and regulations and library materials, then writing descriptively.

3. Results And Discussion

Domestic neglect is clearly and firmly regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, or PDKRT. The enactment of the PKDRT Law marks a historic milestone in efforts to protect victims of domestic violence, including domestic neglect, particularly women and children, as vulnerable groups.

Law Number 23 of 2004 concerning the Elimination of Domestic Violence represents a paradigm shift in how domestic violence is viewed. Domestic violence is no longer viewed solely as a private individual matter, but also as a social problem and a criminal act. Its handling must be carried out carefully, as it involves family members as both perpetrators and victims. Therefore, the Law on the Elimination of Domestic Violence needs to be implemented to provide protection and a sense of security to the community and to raise awareness of the importance of law enforcement in protecting women's rights.

Domestic neglect, in this context, usually occurs when a wife is denied financial support by her husband during her marriage. Article 34 Paragraph (1) of Law Number 1 of 1974 concerning Marriage states: "A husband is obliged to protect his wife and provide all the necessities of life in the household according to his ability."

In relation to the above, based on the case and decision number 179/Pid.Sus/2021/Pn.Tbt, there are legal provisions for perpetrators of criminal acts of neglect in the household that have been tried by the Panel of Judges, namely Article 49 letter a of Law Number 23 of 2004 concerning the Elimination of Domestic Violence and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations.

In the above case, the defendant, Heri Sanjaya alias Heri, was charged with Article 49 letter a of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Because the public prosecutor's indictment was a single indictment, the Panel of Judges found the legal facts to be relatively straightforward. Furthermore,

throughout the trial and up to the verdict, the Panel of Judges ultimately found the defendant, Heri Sanjaya, alias Heri, proven legally and convincingly guilty of committing the crime of "domestic neglect," as stated in the single indictment.

According to the author, the aforementioned legal provisions are inextricably linked to the perception that Law No. 23 of 2004 concerning the Elimination of Domestic Violence constitutes a complaint-based offense, which remains a reason for the police's inaction in handling domestic neglect cases. Law No. 23 of 2004 regulates the prevention, protection, and recovery of victims of domestic violence and specifically defines acts of domestic violence as a crime of abuse, distinct from those stipulated in the Criminal Code. Furthermore, this law emphasizes the obligation of law enforcement officers, health workers, social workers, volunteer companions, and spiritual mentors to protect victims and respond sensitively to the family's interests, ultimately leading to family integrity and harmony. Juridically, the Panel of Judges considered that the act was legally and convincingly proven guilty of committing the crime of "Neglect in the household" as in the single indictment of the Public Prosecutor, as regulated in Article 49 letter a of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. The Public Prosecutor in this case demanded that the panel of judges sentence the Defendant to 6 (six) months in prison with the order that the defendant remain in detention. Furthermore, the Panel of Judges sentenced the Defendant to 4 (four) months in prison because it was legally and convincingly proven guilty of committing the crime of "Neglect in the household".

Philosophically, the Panel of Judges considered that the imposition of a four-month sentence on the perpetrator of domestic neglect was not intended solely as retribution for the defendant's actions, but rather as a form of guidance to help him become a better person after completing his sentence. However, in the author's opinion, this sentence is too lenient, and given the prosecutor's demands, the honorable Panel of Judges should have imposed a heavier sentence than the prosecutor's to prevent further domestic neglect in the future.

Sociologically, in its deliberations, the judge only mentioned several aggravating factors, specifically, the author noted that "the defendant's actions harmed the victim, his wife." The judge should also have considered and clarified that "the defendant's actions caused suffering to the victims, his wife and children." The author considers this to be an aggravating circumstance for the defendant. This is clearly evident from the victim's statement, which stated that the consequences of this neglect were that the victim, as a wife, had to act as the family breadwinner, supporting her child, replacing the father's role from 2016 to 2020. The verdict clearly states that the defendant's lack of remorse for his actions is an aggravating circumstance. The judge should have sentenced this case to a higher sentence than

the prosecutor's demand, providing a meaningful lesson for the defendant in the future, that marriage carries significant responsibility.

According to the author, the honorable panel of judges failed to consider all the facts and events in this negligence trial. They felt there was nothing that could exonerate or mitigate the defendant. The sentence imposed on the defendant was deemed unfair or disproportionate to the defendant's guilt. Consequently, charging the defendant with a crime would have further stressed the victim. A four-month prison sentence may not be beneficial to the victim because the prison sentence is static and the defendant is not eligible for parole. Therefore, a prison sentence will further impoverish the victim's family, as there will be no one to provide for them, and the victim will have to assume the role of husband and child-rearing partner.

4. Conclusion

Based on the case's circumstances and decision number 179/Pid.Sus/2021/Pn.Tbt, the legal provisions for perpetrators of domestic neglect, which have been tried by the Panel of Judges, are Article 49(a) of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, Law No. 8 of 1981 concerning Criminal Procedure, and other relevant laws and regulations.

The application of Article 49(a) of Law No. 23 of 2004 concerning the Elimination of Domestic Violence in a case of domestic neglect committed by the defendant against the victim, which constitutes a complaint offense, in this case, the judge applied the elements of Article 49(a) of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, namely the element of every person and the element of committing physical violence within the household. Therefore, having fulfilled all these elements and proven guilty of domestic neglect, the judge sentenced the defendant to four months in prison.

The judge's considerations in sentencing the perpetrator of domestic theft in case number 179/Pid.Sus/2021/Pn.Tbt included both legal and non-legal considerations.

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