

Analysis of Conditional Criminal Decision in Domestic Violence Crime Case



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ABSTRACT: Domestic violence is a problem that often occurs in Indonesia. One law that regulates domestic violence is "Law Number 23, the Year 2004 on the Elimination of Domestic Violence (PKDRT Law). Based on Article 44 paragraph (1) of the PKDRT Law, a person who commits physical violence against another person will be subject to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 15,000,000.00 (fifteen million rupiahs); however, in verdict Number 90/Pid B/2016/PN Bir, the defendant was sentenced to a conditional criminal sentence in the form of imprisonment for one year and a fine of Rp. 2,000 but with a probationary period so that, at that time, the defendant was not imprisoned. This study aims to determine whether the conditional criminal sentence in decision number 90/Pid B/2016/PN Bir can provide justice for victims. This research uses normative research methods by analyzing the judge's decision associated with one of the objectives of the law, namely justice. It concludes that the conditional criminal decision in the case of domestic violence (verdict number 90/Pid B/2016/PN Bir) has not been able to realize legal justice for the victim. Because the convict has made a mistake, he should get an appropriate punishment as stipulated in the PKDRT Law. It will not realize justice for the victim since, in conditional punishment, the panel of judges did not set special conditions to guarantee the victim's recovery. In the end, the perpetrators of domestic violence do not get sanctions following their actions, and the victims also do not get justice for all the losses experienced as a result of domestic violence.

KEYWORDS: conditional punishment, domestic violence, justice

I. INTRODUCTION

God creates humans to live in pairs. It can be done through marriage and forming a happy family. The Indonesian Constitution, namely the 1945 Constitution, especially in Article 28B paragraph (1), guarantees the Indonesian people to form a family and legal marriage. Everyone undoubtedly wants a happy household relationship, mutual love, and respect for each other, but the truth is that not all household relationships can run smoothly. It is not uncommon for conflicts and disputes to occur which are detrimental to the parties. Article 1 point 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, or after this referred to as the PKDRT Law, stipulates that "Domestic violence is any act against a person, especially women, which results in (i) physical, (ii) sexual, (iii) psychological, and (iv) domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household."

Domestic violence is more hidden and potentially more psychologically harmful than stranger violence because of the nature of the relationship between the perpetrator and the victim. (Howard, 2012). Domestic violence characterizes controlling and coercive behavior. Controlling behavior is designed to make people feel inadequate and/or dependent by controlling their daily actions, isolating them from the support of others, and depriving them of their means of independence, resistance, and escape. In addition, the perpetrator often exploits the victim's resources for himself. Coercive behavior is an act or pattern of threats, assault, intimidation, humiliation, or other abuse used to frighten, punish or hurt the victim. (Peter Grant, 2019).

There is a theory relating to the occurrence of domestic violence causes, namely control theory. It explains that when humans have less harmonious relationships or do not follow the expectations of other parties, they tend to commit violence due to a lack of control within themselves. Another theory that causes domestic violence is the biological theory which explains that humans also have an aggressive nature that sometimes causes conflict with others. The last theory is the frustration-aggression theory. This theory explains that everyone stressed or frustrated will vent their feelings through violent actions against others. (Alimi & Nurwati, 2021).

Based on the data from the National Commission on Anti-Violence against Women (Women's Commission), domestic violence in Indonesia has kept increasing through the years. In 2016 the annual notes from the Women's Commission show that there were

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11,207 cases in the domestic/private sphere, 6,725 cases were in the form of violence against wives, 2,734 cases were acts of violence that occurred in dating, and 930 cases were acts of violence against women. (Abdurrachman, 2017).

Everyone has the right to live in security and peace and be free from all forms of violence, whether physical violence, psychological violence, sexual violence, or domestic neglect. Therefore, along with the times, law enforcement against criminal acts of domestic violence is getting more attention. One of the parties with an important role in law enforcement is the judge. The verdict given by the judge should be based on moral values and decency so that, in the end, the verdict can benefit the community. (I Gusti Ketut Adnya Wibawa, Ketut Abdiasa, 2019).

The judge must consider the facts of the case, the facts at trial, and their relation to the applicable laws and regulations. An essential element before the judge makes a decision is that the decision must be motivated by a good judge's consideration so that the judge's decision can provide justice, legal certainty, and expediency. (Dea Kusuma Wardani, 2015). Article 44, paragraph (1) of the "PKDRT Law" stipulates that people who commit physical violence against others will be subject to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 15,000,000.00 (fifteen million rupiahs), however in the verdict of the Bireuen District Court Judge Number 90/Pid B/2016/PN Bir., the defendant in the case of physical domestic violence was sentenced to a conditional criminal sentence in the form of imprisonment for one year and a fine of Rp. 2,000 (two thousand rupiahs) but with a probationary period of one year so that the defendant may be accessible at that time.

It considers in the conditional punishment decision that the conditional punishment will provide an opportunity for the convicted person to improve himself/herself in living together in the community. The punishment allows the convict to carry out daily habits with the values that exist in the community. It can prevent the emergence of negative views of the community if the convict carries out a criminal sentence of deprivation of liberty. (Nugraha, 2017). The verdict imposed by the judge should be able to realize justice for the parties and the conditional criminal decision in the crime of domestic violence. Conditional criminal decisions must realize justice, especially for domestic violence victims, so they can provide protection for victims and a deterrent effect for the perpetrators so that the perpetrators do not repeat their actions. The conditional criminal decision allows the convict to live with the community. However, it does not mean that the conditional criminal decision overrides the justice the victim must obtain from the verdict imposed by the judge.

II. RESEARCH PROBLEMS

Based on the above background, the problem formulation in writing this article is: Can a conditional criminal decision in a domestic violence crime case realize justice for the victim? (Study of decision number 90/Pid B/2016/PN Bir)

III. RESEARCH METHOD

This research uses as normative legal research. Normative research is legal research conducted on the rule of law, legal principles, or doctrine to answer the legal problems at hand. (Marzuki, 2015). This research uses secondary data consisting of primary and secondary legal materials. According to Peter Mahmud Marzuki (Marzuki, 2015), primary legal material is binding. The primary legal materials used in this research and writing are the 1945 Constitution, PKDRT Law, the Criminal Code, and Judge Decision Number 90/Pid B/2016/PN Bir. According to Soerdjono Soekanto and Sri Mamudji (Soerdjono Soekanto, 2015), secondary legal materials are legal material that complements and strengthens primary legal material. Secondary legal materials used in this research and writing include books and journals.

The approach used in this research is a statutory approach and a conceptual approach. According to Peter Mahmud Marzuki (Marzuki, 2015), the statutory approach analyzes laws and regulations related to legal issues. This statutory approach is related to studying laws and regulations and then looking for inconsistencies with other legal sources, namely, judicial decisions. The concept approach means starting by searching and finding legal concepts or theories as well as readings and other literature that can support the writing of this article.

The method of data collection used in this research is library research. Library research (Sunggono, 2016) is the study process using references or library materials, such as books, which have relevance to the topic of discussion. The data analysis technique used in this research is qualitative by analyzing words, documents, or written sources. (Rijali, 2018). The inference used in this research is deductive. The deductive inference is a process of concluding that starts from a general statement to get a conclusion on a specific case (Kristiyani, 2014). In this case, deductive inference starts from a general statement to obtain a specific statement.

IV. RESULT AND DISCUSSION

1. Regulation on the Crime of Domestic Violence under the PKDRT Law

Domestic violence is one of the crimes in the family that solves the problem closely. Domestic violence consists of any act resulting in verbal, physical, sexual, emotional, and economic abuse. Domestic violence can range from controlling behavior, calling names, humiliating, insulting, and physical to sexual violence. It precipitates the causation of domestic violence through multiple, interdependent causes such as economic disruption, stress due to physical confinement, possible unemployment, and

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limited social support (Vora et al., 2020). Employment and sources of income for women act as a buffer against violence as their income supports good families financially. Women's unemployment removes this buffer and makes them vulnerable to violence at the hands of their partners (Usta et al., 2012). Low education levels can also indicate poor communication skills, which are associated with a history of domestic violence among men (Kyriacou et al., 2018). The elimination of domestic violence is a guarantee provided by the state to overcome domestic violence cases because of Indonesia's increasing number of cases. The establishment of the "PKDRT Law" aims to overcome the problem of violence in the household sphere. (Setyaningrum & Arifin, 2019).

Article 5 of the "PKDRT Law" regulates four types of domestic violence, namely physical, psychological, sexual, and domestic neglect. Based on the judge's consideration in the Decision of the Bireuen District Court Number 90/Pid B/2016/PN Bir, the convicted person was proven to have committed the crime of domestic violence with physical violence. It violated Article 44 paragraph (1) Jo Article 5 letter an of the "PKDRT Law. During the trial, the judge found that the act of the convict fulfilled all elements of the criminal offense stipulated in Article 44 paragraph (1) Jo Article 5 letter an of the PKDRT Law. These elements are the elements of every person, the element of intentionally committing physical violence against persons, the element within the household sphere, and the element of causing pain to people.

Article 44 of the "PKDRT Law" regulates criminal sanctions applied when a person is proven to have committed a crime of domestic violence in the form of physical violence. If a person commits physical violence in the household, the provision punishes the defendant with a maximum imprisonment of 5 (five) years or a maximum fine of Rp 15,000,000.00 (fifteen million rupiahs). Suppose physical violence committed results in the victim suffering severe illness or injury. In that case, the law punishes the defendant with a maximum imprisonment of 10 (ten) years or a maximum fine of Rp 30,000,000.00 (thirty million rupiahs). Suppose the act of domestic violence results in the victim's death. In that case, it rules the defendant with a maximum imprisonment of 15 (fifteen) years or a maximum fine of Rp 45,000,000.00 (forty-five million rupiahs).

2. The Imposition of Conditional Criminal Sentences in the Judges' Decision "Bireuen District Court Number 90/Pid B/2016/PN Bir"

The institution of conditional punishment arises based on the understanding that the law does not put all criminals or convicts in prison. The officer shall not put specific actions in prison, such as first-time offenses. It aims to prevent harmful influences in prison, so it is necessary to allow the convicted person to improve themselves outside prison. (Muladi, 2016). Conditional punishment is a punishment in which the convict does not need to serve the punishment except if, during the probation period, the convict has violated general conditions or special conditions determined by the court. (Muladi, 2016). One of the judge's decisions that imposed a conditional sentence was in "Decision of the Bireuen District Court Number 90/Pid B/2016/PN Bir." The judge's considerations used in the imposition of conditional punishment are:

- a. The Panel of Judges believes that the purpose of punishment is not always to take revenge for the criminal acts committed by the defendant. However, the decision must provide a deterrent effect by paying attention to the principle of proportional justice and fulfilling the objectives of punishment which are corrective, preventive, and educative.
- b. The Panel of Judges has also considered aggravating and mitigating circumstances as set out in the judge's reasoning. The aggravating circumstances were that the defendant's actions caused the victim to suffer pain. The mitigating circumstances include the defendant (i) politely during the trial, (ii) regretting his actions and promised not to repeat his actions, (iii) having reconciled with the victim, (iv) having family dependants, and (v) never serving a previous sentence.

In trying a case, the judge takes several steps: accepting, examining, and adjudicating criminal cases based on honesty, freedom, and impartiality. The judge must examine every evidence, analyze it, and decide a case based on law and justice. Considering these matters, the judge's decision must be helpful, fair, and realize legal certainty. The Panel of Judges in imposing a conditional sentence must base on the legal provisions stipulated in Article 14 of the Criminal Code. In this case, the defendant was sentenced to imprisonment for 1 (one) year and charged court costs of Rp.2.000 (Two thousand rupiah). The convicted person shall not need to carry out the sentence unless, in the future, when the probation period, the defendant commits a punishable act.

The verdict imposed by the judge aims to provide learning for the convicted person but not necessarily in a correctional institution so that it does not influence the convicted person to commit a greater crime. The court and the prosecutor's office still consider the conditional punishment imposed because the supervisory, observing judge and the prosecutor's office are obliged to supervise and provide guidance to the convict. Through imposing the conditional criminal decision, the convict does not need to serve a sentence as stipulated in Article 44 paragraph (1) of the PKDRT Law. In the conditional criminal decision, the judge shall also determine the general and special conditions that must be obeyed and implemented by the convict. Based on the analysis, the conditional criminal decision describes that the judge only stipulates a general condition, namely that the convicted person may not commit criminal acts during the probation period. However, the judge does not stipulate an exceptional condition to restore the situation or provide compensation for the victim. It raises the question of whether the conditional criminal decision that only includes general conditions without special conditions can achieve justice for victims.

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3. Analysis of Conditional Criminal Verdict in Domestic Violence Case in a Review of Justice Theory

One of the legal objectives of law enforcement is achieving justice (Supriyono, 2016). Justice is treating a person by what is his right. People must be recognized and treated following their dignity as human beings with the same degree, rights, and obligations. (Nasution, 2014).

According to Aristotle's opinion in a journal written by Muhammad Taufik entitled "John Rawls' Philosophy of Justice Theory," justice consists of five forms, namely:

a. Commutative Justice

This justice is treating a person regardless of his or her merits.

b. Distributive Justice

This justice is a treatment of a person following the services he or she has made.

c. Natural justice

This justice gives something according to what others have given.

d. Conventional Justice

This justice is like someone who has obeyed the required laws and regulations.

e. Justice according to Repair Theory.

Repair theory defines justice as someone trying to restore another tainted person's good name.

Justice can also show balance, equality, and non-discrimination, giving rights to those entitled and delegating forms based on level and feasibility. (Taufik, 2013). According to Aristotle in a book by H. Rhiti entitled "Philosophy of Law," justice also consists of general and particular moral virtues. General virtue means that justice considers legal obedience to written and unwritten laws. Special moral virtues relate to human attitudes in a particular field that determine the relationship between the parties, and there is a balance in it. Aristotle viewed justice as numerical and proportional equality, which explains it as follows:

a. Numerical Similarity

Humans are equalized in a unit because all people are equal before the law, so there is no special treatment for certain parties.

b. Proportional equality

Justice gives to each person what is rightfully his or her due. (Rhiti, 2011).

According to Aristotle, as quoted by Subhan Amin, verdicts based on justice, like the case, and those based on human nature with verdicts based on particular views based on specific communities must be differentiated. (Amin, 2019). Article 3, letter a of the "PKDRT Law" also stipulates that "the elimination of domestic violence is carried out based on the principles of justice and gender equality" so that all decisions made by judges in domestic violence criminal cases should reflect justice.

When viewed using natural justice, the conditional sentence imposed by the judge in the case of domestic violence crime has not provided justice, especially for the victim. Natural justice considers something fair that gives something that others have given. It means that the convict who committed a crime in the form of domestic violence against the victim must receive an appropriate punishment as stipulated in Article 44 paragraph (1) PKDRT Law. The fact, the sentence was not applied because the sentence was conditional. Even the judge imposed a conditional sentence that did not include special conditions to restore the situation or compensate the victim. According to the authors, justice for victims is increasingly challenging to achieve.

Based on justice as numerical similarity, the conditional criminal decision can not realize justice for victims because it requires no special treatment for the defendant. So, domestic violence convicts must be subject to imprisonment as stipulated in the PKDRT Law. If sentencing a conditional criminal decision without special conditions, it will not show justice for victims who have felt the consequences of domestic violence.

Justice based on proportional equality has also not realized justice for victims because proportional equality requires giving everyone their right. Victims of domestic violence have the right to obtain legal protection from domestic violence cases. However, suppose the convicted person is sentenced to a conditional criminal sentence and not to imprisonment; it is possible to make the convicted person may not get a deterrent effect and may re-commit domestic violence against the victim. In this condition, achieving the victim's right to obtain legal protection becomes challenging. The conditional criminal decision in the Bireuen District Court Number 90/Pid B/2016/PN Bir does not realize legal justice for the victim. The argument is that the convicted person has made a mistake, so he should get an appropriate sentence as stipulated in the PKDRT Law.

The criminal justice system in Indonesia until now is still *offender oriented*, which prioritizes retaliation rather than recovery, so it has not realized justice for victims as the most disadvantaged party, both physically and psychologically. In addition, in imposing the conditional sentence, the judge only stipulates general conditions, while special conditions are not stipulated. Based on the judge's consideration, the panel of judges thought that the general condition, namely the imposition of probation, was sufficient to provide justice for the victim. In contrast, it requires special conditions such as compensation to provide justice for the victim to recover physically and psychologically. The conditional criminal sentence given by the judge cannot guarantee that in the

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future, domestic violence crimes like this will not happen again because the sanctions are very light and not commensurate with the losses and trauma caused.

V. CONCLUSION

Based on the conducted research, it concludes that the conditional criminal decision in the case of domestic violence (verdict number 90/Pid B/2016/PN Bir) has not been able to realize legal justice for the victim. Because the convict has made a mistake, he should get an appropriate punishment as stipulated in the PKDRT Law. It will not realize justice for the victim since, in conditional punishment, the panel of judges did not set special conditions to guarantee the victim's recovery. In the end, the perpetrators of domestic violence do not get sanctions following their actions, and the victims also do not get justice for all the losses experienced as a result of domestic violence.

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