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A NORMATIVE ANALYSIS OF SENTENCING FOR HUSBANDS WHO COMMIT ACTS OF DOMESTIC VIOLENCE AGAINST THEIR WIVES

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Abstract

This study aims to analyze the application of substantive criminal law regarding the crime of murder and to evaluate the ratio decidendi of the North Jakarta District Court panel of judges in imposing a criminal sanction on the defendant, Fauzan Fahmi (alias Ome). The primary issues examined include the legal provisions governing murder under Articles 338 through 340 of the Indonesian Criminal Code (KUHP) and the judges' legal reasoning in determining the sanction for the defendant. The study employs a normative-juridical legal research method, utilizing statutory, conceptual, and case-based approaches. The findings indicate that the regulation of murder within the Criminal Code is structured hierarchically based on the gradation of culpability (verwijtbaarheid). The application of Article 338 of the Criminal Code in this specific case was legally sound, as the intent to kill arose spontaneously due to provocation by the victim's words, without a "cooling-off" period for reflection (in kalme beraad). The panel of judges imposed a 14-year prison sentence based on the cumulative fulfillment of all elements of Article 338, established through scientific crime investigation methods, specifically the Visum et Repertum (forensic medical report) and DNA testing. The judges' sociological and philosophical considerations incorporated the Integrative Theory of Sentencing, balancing the social impact of the crime and the defendant's status as a recidivist against the educational and corrective functions of sentencing.

Keywords: Criminal Liability, Considerations, Domestic Violence, Judicial Victim Protection, Sentencing

INTRODUCTION

The family is the smallest social unit formed through a lawful marriage between a man and a woman, with the aim of creating a harmonious bond both physical and spiritual grounded in religious teachings (Sopacua, 2022). Within family life, every member holds rights, obligations, and responsibilities that must be respected to maintain harmony and safety (Setiawan, 2024). The law exists to ensure this order; domestic violence is strictly prohibited because it contradicts humanitarian values and violates human rights. The state has codified this ideal through Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), which aims to prevent all forms of violence, protect victims, prosecute perpetrators, and preserve the integrity and harmony of the household. Within this ideal framework, law enforcement officials are expected to provide maximum protection—an approach oriented not merely toward punishing the perpetrator, but also toward ensuring justice and a sense of security for the victim (Hasan, Firly, Utami & Sari, 2023).

In reality, however, domestic violence remains a serious and deeply rooted social issue in Indonesian society (Pratama, Abadi, & Fithri, 2023). Criminal acts ranging from physical, psychological, and sexual violence to neglect frequently victimize women and children due to their vulnerable positions within the family power structure (Nasrudiansyah & Alijaya, 2023). Compounding the problem, many cases of domestic violence fail to come to light due to the strong stigma of patriarchal culture, which views domestic issues as a "family disgrace" that must be kept strictly private (Farchan & Alan, 2023). In the practical realm of law enforcement, the handling of domestic violence cases continues to face significant obstacles, law enforcement officials often focus primarily on formal criminal law aspects and the evidentiary proof of physical injury, while overlooking aspects of justice, rehabilitation, and psychological protection for the victim (Aziz et al., 2023). This is exemplified by the case heard at the Bekasi District Court (Ruling Number 126/Pid.Sus/2024/PN.Bks), in which a husband was proven to have committed physical violence against his wife demonstrating that such crimes within the domestic sphere remain a real and widespread issue.

This study identifies an imbalance between the victim protection guarantees outlined in the Domestic Violence Elimination Law (UU PKDRT) and the reality of sentencing perpetrators in court. First, judicial reasoning remains heavily oriented toward the formalistic aspect of physical injury. In the case of Ruling Number 126/Pid.Sus/2024/PN.Bks, the primary basis for applying Article 44 paragraph (4) was a Visum et Repertum (medical-legal report) stating that the victim suffered no disruption to her daily activities; this resulted in a lenient sentence of three months in prison. This creates a gap, as domestic violence also damages psychological well-being and instills fear and trauma factors that were excluded from the judge's considerations (Hukumonline, 2013). Second, the three-month prison sentence raises critical questions regarding whether the objectives of sentencing namely deterrence, prevention, and protection were truly achieved, or if the sentence was merely symbolic (Kompas, 2019). Third, the judicial system faces a dilemma between the desire to preserve the integrity of the household for the sake of the children and the need for firm law enforcement (Kompas, 2019).

The existence of this gap is reinforced by various prior studies and expert perspectives; for instance, research by Setiawan, Thalib, and Razak reveals that the investigation process for domestic violence cases often remains fixated on purely legal aspects while overlooking justice for the victim. Law enforcement officials focus solely on whether the elements of the crime are met; if they are, the case proceeds without regard for the victim's recovery (Setiawan, Thalib & Razak, 2025). A study by Ananda and Mesra on family sociology, employing an organic analogy, demonstrates that the family functions as an interdependent system (Ananda & Mesra, 2025). When one element is disrupted by violence, the entire family system becomes dysfunctional. Data indicates that such power imbalances often culminate in family dysfunction or divorce, with children becoming secondary victims. Pratiwi and Maifizar emphasize that

violence originating in the private sphere has now become a matter of public concern. Domestic violence poses a genuine threat to social order, and sociological data suggests that patriarchal culture perpetuates a cycle of abuse, as men are perceived to hold absolute power (Pratiwi & Maifizar, 2025).

To address these issues, the researchers propose a comprehensive normative-juridical analysis regarding legal considerations and criminal liability. The proposed solution advocates for a judicial approach that moves beyond a reliance on physical evidence (positivism) and instead integrates a combined sentencing theory (integrative theory). This approach takes into account the victim's psychological impact and gender power imbalances, while applying substantive justice that prioritizes the safety and security of domestic violence victims.

RESEARCH METHODS

This study employs a normative-juridical legal research design specifically, library-based research conducted by examining literature or secondary data without requiring fieldwork. A qualitative approach is applied, aiming to gain understanding, develop theory, and provide a complex description of law enforcement regarding domestic violence offenses under prevailing legislation. The study focuses on the phenomenon of law enforcement and court rulings, specifically the Bekasi District Court Decision Number 126/Pid.Sus/2024/PN.Bks, which adjudicated a case of minor physical violence within the domestic sphere. Data collection was carried out through document analysis.

The documents examined include binding primary legal sources such as the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), Law Number 2 of 2002 concerning the Indonesian National Police, Law Number 31 of 2014 concerning Witness and Victim Protection, and Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT). Additionally, secondary legal materials including books, journals, and scholarly works by legal experts that elucidate the primary sources were collected, alongside tertiary materials such as the Great Dictionary of the Indonesian Language.

A descriptive-qualitative method was used for data analysis. Through this technique, the collected normative data were organized, reduced, and presented to outline the existing legal facts. Subsequently, these facts were analyzed using relevant legal theories such as sentencing theory, criminal law principles, and theories of justice to holistically evaluate the Panel of Judges' considerations and draw a comprehensive conclusion regarding the criminal liability of the domestic violence perpetrator.

RESULT AND DISCUSSION

Research findings regarding Bekasi District Court Decision Number 126/Pid.Sus/2024/PN.Bks indicate that the Panel of Judges adjudicated the domestic violence case based on the alignment between legal facts revealed during the trial and admissible evidence. The evidentiary process in this case strictly adhered to the provisions of Article 184 of the Criminal Procedure Code (KUHAP) to establish the judges' conviction (Douglas, Jack & Waksler). The series of material acts (actus reus) committed by the defendant against the victim was triggered by a domestic dispute concerning allegations of infidelity on November 25, 2022. These confrontational actions manifested when the defendant slammed a mobile phone, shoved the victim against a wardrobe causing her to experience shortness of breath gripped her left arm, slammed her body onto the mattress, and pinned her down while pressing against her chest (Hadiati Soeroso, Moerti. 2010).

These trial facts were consistently supported by witness testimonies and documentary evidence. The first witness, Intan Lestari a neighbor of the victim received a call from the weeping victim shortly after the incident and personally observed bruises on the victim's arm and thigh (Hanutijo Sumitro, 1990). The second witness, Baby Aurelya the victim's niece

confirmed the victim's condition as she came down to the ground floor in a state of panic, displaying bruises on her left arm and left thigh, as well as redness on her back (Maramis, 2013). Medical evidence in the form of Visum et Repertum (forensic medical report) Number 040.05/495/XI/2022/RS concluded the presence of bruises and abrasions caused by blunt force impact, which did not result in illness or an inability to perform work or daily activities. Meanwhile, the defendant's testimony acknowledged his status as the lawful husband based on Marriage Certificate Number 253/69/II/2008 and confirmed the occurrence of the altercation and the acts of physical violence.

Based on the totality of the evidence, the Panel of Judges declared the defendant legally and convincingly guilty of the criminal offense of minor physical violence within the domestic sphere, pursuant to Article 44 paragraph (4) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT). The element of the legal subject ("any person") was satisfied, as the defendant is the lawful husband and falls within the scope of the household as stipulated in Article 2 of the UU PKDRT. The element of the act of physical violence was proven through actions involving pushing, gripping, and slamming. Meanwhile, the element of "minor" consequences was legally satisfied due to the absence of any impediment to the victim's daily activities as noted in the Visum et Repertum (medical examination report) a factor that distinguishes the classification under Article 44 paragraph (4) from that of Article 44 paragraph (1) of the UU PKDRT.

From the perspective of evidentiary analysis (formel strafrecht), the interconnection between items of evidence satisfies the minimum evidentiary requirement (negatief wettelijk bewijstheorie) pursuant to Article 183 of the Criminal Procedure Code (Setiawan, 2024). The victim's statement is corroborated by testimonium de auditu (hearsay) testimony from witnesses who directly observed the victim's physical condition and psychological trauma following the incident, and is further substantiated by documentary evidence (Nasrudiansyah & Alijaya, 2023). Based on established doctrine, the acts of slamming and pinning the victim down constitute tangible actions and consequences, while the element of intent (opzet) is satisfied because the actions were committed to coerce a confession from the victim (Farchan & Alan, 2023). Furthermore, the defendant's criminal liability grounded in the principle of geen straf zonder schuld (no punishment without culpability) is fully established, as the defendant possessed the capacity for accountability toerekeningsvatbaarheid) and there were no grounds for justification (rechtvaardigingsgrond), such as self-defense (noodweer), nor grounds for excuse (schulduitsluitingsgrond), such as force majeure (overmacht).

The imposition of a three-month prison sentence was determined strictly by the conclusion of the Visum et Repertum (forensic medical report), which stated that the victim's injuries did not impede daily activities. This demonstrates that the criminal justice system continues to interpret the severity of suffering in domestic violence cases primarily through a medico-biological lens. When examined through the lens of the formalistic principle of legality, the verdict aligns with positive legal norms. However, from the perspective of substantive justice, the three-month sentence fails to capture the reality of the victim's suffering. Symptoms such as breathlessness caused by forceful shoving, profound panic, being forcibly confined, and a high fever lasting two days post-incident represent physical and psychological traumas that were disregarded due to the trivialization of the offense as merely "minor violence" (Setiawan, Thalib & Razak, 2025). Within the framework of the Integrative Theory of Sentencing proposed by Muladi and Barda Nawawi Arief, the imposition of criminal sanctions should combine elements of proportional retribution with utilitarian considerations to achieve general deterrence, specific deterrence, and victim restoration. A three-month prison sentence for a husband who committed physical violence presents a theoretical anomaly, as the sanction is excessively lenient and disproportionate to the victim's suffering. Furthermore, trial evidence indicates a pattern of repeated offenses, given that the victim had previously been slapped with

enough force to sustain a neck injury. Such a brief sentence risks undermining the preventive function of criminal law, failing to generate a deterrent effect, and leaving the victim vulnerable to further violence once the perpetrator is released. The findings of this study strongly support earlier research by Nurherwati, which highlighted the shortcomings of law enforcement officials in handling domestic violence cases specifically their tendency to prioritize the fulfillment of formal criminal elements over restorative justice for the victim. Judges often focus exclusively on visible physical injuries while disregarding the impact of psychological trauma as a factor warranting a harsher sentence. These findings also confirm the views of Moerti Hadiati Soeroso and Saparinah regarding the dominance of patriarchal power dynamics within the household. When the judicial system imposes overly lenient sanctions for acts of spousal intimidation, criminal law loses its efficacy as a protector of victims, functioning merely as an administrative process rather than upholding substantive, gender-just justice.

CONCLUSIONS

In Judgment Number 126/Pid.Sus/2024/PN.Bks, the defendant was legally proven to have met the elements of Article 44 paragraph (4) of Law Number 23 of 2004 as well as the principle of geen straf zonder schuld (no punishment without culpability) regarding an act of minor physical domestic violence against his wife. Although the judge's reasoning established legal certainty and confirmed the perpetrator's criminal liability, the sentencing is considered to have placed excessive emphasis on physical injuries (as documented in the Visum et Repertum) while paying insufficient attention to psychological impacts, such as the trauma and fear experienced by the victim.

Therefore, sentencing for domestic violence should ideally extend beyond merely punishing the perpetrator; it should also focus on victim recovery, the prevention of recidivism, and behavioral change. From both academic and practical perspectives, future handling of domestic violence cases needs to integrate victimological approaches and women's protection measures. This ensures that law enforcement officials do not merely evaluate physical consequences but also involve psychologists to achieve proportional justice and guarantee comprehensive protection for the victim..

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