



LEGAL ANALYSIS OF THE CRIMINAL ACTS OF DOMESTIC VIOLENCE: DECISION NO. 101.Pid.Sus/2023/PN

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ABSTRACT

The main problem in this thesis is about the crime of domestic violence with the object of analysis in the case of Decision No. 101/Pid.Sus/2023/PN.Kbr. And to find out the judge's legal considerations in imposing criminal sanctions on perpetrators of criminal acts of domestic violence committed by husbands against wives in decision no. 101/Pid.Sus/2023/PN.Kbr. The research used to answer the two things above is literature research on decisions and the author took data obtained from court decisions in the form of interviews with one of the judges at the Koto Baru District Court. The aim of this thesis is to find out about criminal acts of domestic violence both under Islamic criminal law and under Law Number 23 of 2004, then to find out the application of legal considerations made by the judge in imposing a sentence on the defendant. The results of this research indicate that the application of material criminal law to criminal acts in the judge's decision in case no. No. 101/Pid.Sus/2023/PN.Kbr. In accordance with the legislation in this case regulated in law number 23 of 2004 concerning the elimination of domestic violence in handing down criminal sentences the judge has given considerations in accordance with the facts and those revealed in court both in terms of material criminal and formal criminal considerations.

Keywords: Criminal act; houseold; violence

INTRODUCTION

A household is the smallest social unit consisting of one or more people who live together and share food or accommodations. A household can consist of a single family or a group of unrelated people, thus forming a relationship called a family.

Domestic violence is any act against a person, especially women, that results in physical, sexual, or psychological misery or suffering, and/or neglect of the household, including threats to commit acts, coercion, and unlawful deprivation of liberty within the household ¹. This violence often occurs between people who are closely related, such as husbands and wives, prospective husbands and wives, family members, or domestic workers. Violence against women, especially domestic violence, is a major problem related to women's human rights. Based on data from the Central Statistics Agency of West Sumatra Province, the number of cases of violence against women from 2020-2022.

Year	Case
2020	188
2021	205
2022	228

Table 1.1 Number of Domestic Violence Cases in West Sumatra 2020-2022

Based on the table above, the number of cases of violence against women has increased significantly from year to year. Domestic violence is regulated in accordance with Law No. 1 of 1974 which has basically embodied the principles contained in Pancasila and the 1945 Constitution. In the Marriage Law according to Law No. 1 of 1974, it is stated that there is a principle of a close physical and spiritual bond between husband and wife, so that marriage not only has The role in the physical (physical) element but also the spiritual (spiritual) element of the need for a happy family is closely related to offspring which is the goal of marriage and the care and education of children are the rights and obligations of parents .

Many parties experienced Domestic Violence, so the Government finally issued Domestic Violence Law No. 23 of 2004. In the Domestic Violence Law, Article 1 paragraph 1 concerning General Provisions also explains the meaning of Domestic Violence, namely:

"any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering and/or neglect of the household, including threats to commit acts, coercion or unlawful deprivation of liberty within the household." The implementation of the Domestic Violence Law encourages and requires the Government to make changes in handling cases of Domestic Violence. As stated in the Domestic Violence Law, Article 11 concerning the obligations of the government and society: "The government is responsible for efforts to prevent domestic violence."

Judging from the substance of the Domestic Violence Law, it certainly represents hope for all families in Indonesia. However, in reality, there are still families unable to maintain family harmony through either litigation or non-litigation, often ending in court decisions, ultimately resulting in divorce. One example of this is Decision No. 101/Pid.Sus/2023/PN Kbr concerning domestic violence. In this case, the violence occurred due to the influence of online gambling. A husband brutally abused his wife because she was denied money to gamble online.

This case demonstrates the significant influence of online gambling on a person's mindset, leading him to become blinded to the point of abusing his own wife. In decision No. 101/Pid.Sus/2023/PN Kbr, the judge imposed a six-month prison sentence. Therefore, it is important to examine this decision to determine whether it aligns with Law No. 23 of 2004 concerning the Elimination of Domestic Violence or not.

The uses of this research include theoretical and practical uses, namely:

- a. Theoretical Usefulness: This research is expected to contribute to and expand knowledge in the field of Criminal Law, particularly regarding domestic violence, and serve as input for interested parties. The results of this study can also serve as a reference for students to increase their insight and knowledge, and can be used as a reference for further research.
- b. Practical Uses, including:
 - a. A means to improve the competence, insight and skills of researchers in the field of legal science, particularly those related to legal protection for women who are victims of domestic violence committed by husbands against their wives.
 - b. As reading material, a source of information, additional insight and knowledge for researchers, students, criminal researchers, and the surrounding community regarding legal protection for women who are victims of domestic violence committed by husbands against their wives.
 - c. As input for educational institutions, law enforcement officers, and especially women who are victims of violence.

METHOD

method used in this study is an empirical or qualitative legal research method to gain a better understanding of the Legal Review of Domestic Violence Crimes (Case Study of Decision No. 101/Pid.Sus/2023/PN). The research specification used is qualitative descriptive legal research, which is a study that describes clearly, in detail, and systematically the object to be studied based on the results of interviews, observations, and reviewing existing data. The informants in this study were judges at the Koto Baru Class II District Court.

Secondary data in this study were obtained from materials in the form of notes, documents, reports, and other sources related to the problem being studied. To obtain precise and accurate data, the research was conducted using field study and literature study techniques. To analyze the data obtained in this study, descriptive qualitative data analysis was used. The location of this research focused on the Koto Baru District Court, Solok Regency. This case occurred within the jurisdiction of the Koto Baru District Court, Solok Regency. Furthermore, based on the central statistics, cases of domestic violence continue to increase every year in Solok Regency.

RESULTS AND DISCUSSION

In accordance with the results carried out by the researcher, the researcher obtained data regarding the Application of Material Criminal Law to Domestic Violence Cases in Decision No. 101/Pid.Sus/2023/PN Kbr.

A. Application of Material Criminal Law to Domestic Violence Cases in Criminal Decision No. 101/Pid.Sus/2023/PN Kbr.

1. Case Position

The beginning of this case was: On Sunday, December 25, 2023 at around 23:00 WIB or at least at a certain time in December 2023 or in 2023 at Jorong Gobah Nagari Batu Banyak, Lembang Jaya District, Solok Regency or at least at a place that is still included in the jurisdiction of the Koto Baru District Court which has the authority to examine and try this case, which has committed acts of physical violence within the scope of the household as referred to in article 5a against the victim witness with the initials RP (Defendant's Wife) which caused the victim witness to suffer injuries carried out by the defendant in the following ways

That at the time and place as mentioned above, it started when the victim witness asked for payment of the defendant's social gathering money who was the victim witness's husband at home, when the victim witness asked the defendant for the money and the defendant replied that the money was no longer there because the money had been used up for online gambling. Hearing that answer, the victim witness became angry and pinched the defendant's leg, then the defendant became emotional and immediately hit the victim witness with the defendant's right hand while the defendant was still lying on his back on the bed and the victim witness was sitting at the end of the defendant's feet.

Kicking the victim witness, the defendant immediately sat down and clenched his fists as high as the defendant's ears and immediately threw the defendant's right hand to the victim witness's thigh 1 (One) time and the defendant kicked the victim witness's chest with his left foot 1 (One) time. After that, the victim witness ran out of the house while breastfeeding the victim witness's child and while having difficulty breathing due to the victim witness's chest being kicked by the defendant.²

2. Public Prosecutor's Indictment

The contents of the public prosecutor's indictment regarding the crime of physical violence in the household committed by the defendant IP, nickname I, which was read out at the trial before the Koto Baru District Court Judge, essentially stated the following:

First :

That the defendant with the initials IP call I On Sunday, December 25, 2023 at around 23:00 WIB or at least at a certain time in December 2023 or in 2023 at Jorong Gobah Nagari Batu Banyak, Lembang Jaya District, Solok Regency or at least at a place that is still included in the jurisdiction of the Koto Baru District Court which has the authority to examine and try this case, who has committed an act of physical violence within the scope of the household as referred to in article 5a against the victim witness with the initials RP (Defendant's Wife) which caused the victim witness to suffer injuries carried out by the defendant in the following ways

Kicking the victim witness, the defendant immediately sat down and clenched his fists as high as the defendant's ears and immediately threw the defendant's right hand to the victim witness's thigh 1 (One) time and the defendant kicked the victim witness's chest with his left foot 1 (One) time. After that, the victim witness ran out of the house while breastfeeding the victim witness's child and while having difficulty breathing due to the victim witness's chest being kicked by the defendant.

That due to physical violence committed by the defendant, the victim witness RP nicknamed R felt pain in the right thigh and right chest of witness RP nicknamed R, based on the Visum Et Repertum letter Number: 63 / VER-RS / XII / 2022 dated December 27, 2023 signed by Dr. Randy Fitrullah M, with the examination opinion:

Wounds were found on the victim; On his right thigh eight centimeters above the knee, there was a blue-green bruise measuring five centimeters by three centimeters.

Examination Conclusion:

A 22-year-old woman was examined, and the examination revealed a blue-green bruise on her right thigh which did not cause any illness or hinder her from carrying out her work or livelihood.

The actions of the Defendant IP, nickname I, are regulated and subject to criminal penalties in Article 44 paragraph (1) of the Republic of Indonesia Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Second :

That he is the defendant IP summons I On Sunday, December 25, 2023 at around 23:00 WIB or at least at a certain time in December 2023 or in 2023 at Jorong Gobah Nagari Batu Banyak, Lembang Jaya District, Solok Regency or at least at a place that is still included in the jurisdiction of the Koto Baru District Court which has the authority to examine and try this case, who has committed an act of physical violence within the scope of the household as referred to in article 5a against the victim witness with the initials RP (Defendant's Wife) which caused the victim witness to suffer injuries carried out by the defendant in the following ways :

Kicking the victim witness, the defendant immediately sat down and clenched his fists as high as the defendant's ears and immediately threw the defendant's right hand to the victim witness's thigh 1 (One) time and the defendant kicked the victim witness's chest with his left foot 1 (One) time. After that, the victim witness ran out of the house while breastfeeding the victim witness's child and while having difficulty breathing due to the victim witness's chest being kicked by the defendant.

That due to physical violence committed by the defendant, the victim witness RP nicknamed R felt pain in the right thigh and right chest of witness RP nicknamed R, based on

the Visum Et Repertum letter Number: 63 / VER-RS / XII / 2022 dated December 27, 2023 signed by Dr. Randy Fitrullah M, with the examination opinion:

Wounds were found on the victim; On his right thigh eight centimeters above the knee, there was a blue-green bruise measuring five centimeters by three centimeters.

Examination Conclusion:

A 22-year-old woman was examined, and the examination revealed a blue-green bruise on her right thigh which did not cause any illness or hinder her from carrying out her work or livelihood.

The actions of the Defendant IP, summons I, as regulated and threatened with criminal penalties in Article 351 Paragraph (1) of the Criminal Code (KUHP).

3. Public Prosecutor's Demands

The public prosecutor, after reading the case files and letters, heard the statements of the witnesses and the defendant, who in essence demanded that the Panel of Judges at the Koto Baru District Court, which examined and tried this case, read as follows:

1. Declaring that the defendant IP, summons I, has been legally and convincingly proven guilty of committing the crime of domestic violence as charged in the First Alternative Charge in violation of Article 44 Paragraph (1) of the Republic of Indonesia Law Number 23 of 2004 concerning the Elimination of Domestic Violence;
2. Sentencing the defendant IP, summons I, to a prison sentence of 2 (two) years minus the time the defendant has been in temporary detention and with the order that the defendant remain in detention;
3. Stating the evidence in the form of:
 - 1 (one) piece of white and pink nightgown with ball and bear motif
 - 1 (one) pair of white and pink pajama pants with a ball and bear motif

4. Verdict

The ruling in this case is as follows:

JUDGING

1. The trial of defendant IP, summons I, has been legally and convincingly proven guilty of committing the crime of " **Physical Violence in the Household** ", as referred to in the first alternative indictment of the Public Prosecutor;
2. Sentencing the defendant to 6 (six) months imprisonment.
3. Determine that the period of arrest and detention that has been served by the Defendant is deducted in full from the sentence imposed;
4. Determine that the Defendant remains in detention
5. Determine the evidence in the form of:
 - 1 (one) piece of white and pink nightgown with ball and bear motif
 - 1 (one) pair of white and pink pajama pants with a ball and bear motif

Returned to Witness RP

6. Charge the Defendant with paying court costs in the amount of IDR 2,500.00 (two thousand five hundred Rupiah);

Based on the Decision of Case No.101/Pid.Sus/2023/PN Kbr, the Judge handed down a criminal verdict to the Defendant that he was proven to have committed acts of domestic violence in the form of physical violence, as regulated in Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. And accompanied by a Visum Et Repertum letter Number / 63 VERS-RS / XII / 2022 dated December 27, 2023 signed by Dr. Randy Fitrullah M.

In the researcher's opinion, the application of the law in this case was appropriate and correct. This is because the criminal provisions applied to domestic violence in decision No.

101/Pid.Sus/2023/PN.Kbr refer to Law Number 23 of 2004 concerning the Elimination of Domestic Violence. In this case, the perpetrator and victim are husband and wife, thus categorizing it as domestic violence.

In this study, the author uses the theory of punishment. The theory of criminal law known as the theory of punishment is directly related to the understanding of subjective criminal law. This theory is based on the explanation and seeks the right of the state to impose and implement that right. According to Stahl's theory, the principle of retribution is in accordance with the will of God Almighty. The principle of eternal justice has required that punishment be imposed on everyone who has committed a crime, that the state is a real arrangement from God on earth, because the commission of a crime has polluted its basic principles. To uphold its authority, the state must take action against such acts, namely by eliminating the criminal or making the criminal feel suffering, where suffering itself is not the goal but only a way to make the criminal feel the consequences of his actions.³

This is in accordance with the Judge's statement based on the results of an interview with Muhammad Retza Billiansyah, SH (Interview, July 1, 2024). He stated that: "The application of the provisions in this case is consistent with Law Number 23 of 2004 concerning the Elimination of Domestic Violence, as the Public Prosecutor's indictment clearly states that both the victim and the defendant are still married. This is what is meant by the scope of a household."

Furthermore, the Judge's statement based on the results of the interview with Melina Safitri, SH (Interview, July 1, 2024) stated that:

"The perpetrator committed an act against the victim which resulted in the victim falling ill or being seriously injured or logically the perpetrator's act must also have caused pain to the victim, so that the perpetrator can be threatened with 2 (two) crimes at once, namely the crime of Article 44 paragraph 2 and the crime of Article 44 paragraph 1 of the Law on the Elimination of Domestic Violence."

The researcher's view regarding the interview with Muhammad Retza Biliansyah and Melina Safitri, SH in the case is that the Defendant is legally guilty of committing domestic violence as evidenced by the Defendant and Victim's relationship still being bound by marriage as evidenced by the marriage certificate. The Defendant also committed acts of violence against the victim by kicking the Victim, causing pain to the victim as evidenced by the Visum Et Repertum letter Number / 63 VERS-RS / XII / 2022 Dated December 27, 2023 signed by Dr. Randy Fitrullah M.

The elements contained in Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence are as follows:

1. Each person
2. Committing Acts of Physical Violence
3. Within the Household Scope

Below, the researcher will outline each element, one by one, which was also a consideration for the judge in sentencing the defendant, based on the facts revealed during the trial. These are as follows:

1. Each person

That what is meant by every person is a legal subject who is capable, able to carry out legal actions or actions so that these actions can be accounted for, which can be carried out by every person, both Indonesian citizens and foreign citizens.

That the Defendant IP, summons I, since the investigation process, prosecution and up to the examination in the trial has been able to follow the stages of examination in the trial and has been able to follow the stages of examination and answer the questions put to him well, so that the actions he has committed can be accounted for before the law.

2. Committing Acts of Physical Violence

That the Defendant IP, nickname I, carried out the beatings and kicks carried out by the Defendant on Sunday, December 25, 2023, at around 23:00 WIB, in Jorong Gobah Nagari Batu Banyak, Lembang Jaya District, Solok Regency. This is supported by the existence of evidence in the form of a Visum Et Repertum Letter Number: VERS-RS / XII / 2023.

3. Within the Household Scope

That as explained in Article 2 paragraph (1) of Law No. 23 of 2004 concerning In this Household Elimination, the scope of the household is as follows:

- a. Husband, Wife and Children
- b. People who have a family relationship with the person referred to in letter a due to blood, marriage, guardianship and guardianship, who live in the household
- c. People who work to help with the household and live in the household.

Based on the facts revealed in court, the victim witness RP is the Defendant's wife, who lives in the same house as the Defendant. This clearly demonstrates that the victim witness is part of the household as defined by the provisions of the Law.

The application of the law to the crime of domestic violence in decision No. 101/Pid.Sus/2023/PN.Kb, is in accordance with the crime committed by the Defendant due to his actions.

The defendant did not cause any illness or other obstacles to carrying out his job, livelihood, or daily activities. The elements also meet the definition of a crime.

B. Judge's Considerations in Handing Down Decision No. 101/Pid.Sus/2023/Pn.Kbr.

A judge's decision or court ruling is a crucial and necessary aspect of resolving a criminal case. A judge's decision is useful for the defendant to obtain legal certainty regarding his or her status. In making a decision, the judge must have a legal balance. The essence of legal consideration is proving the elements of a crime, whether the defendant's actions have been fulfilled and are in accordance with the criminal offense presented by the public prosecutor.

This chapter explains that the judge's considerations in issuing a verdict are based on the facts revealed during the trial. The judge's considerations are in Decision No. 101/Pid.Sus/2023/Pn.Kbr.

1. Judge's Consideration

Considering, that the Defendant based on the Public Prosecutor's Indictment Letter Number PDM-13/L.3.15/Eku.2/05/2023 dated July 11 2023 where the Defendant has been accused of committing domestic violence as regulated and threatened with criminal penalties in Article 44 paragraph (1) of Law No. 23 of 2004 concerning the Elimination of Domestic Violence as follows:

First : That he is the defendant IP summons I On Sunday, December 25, 2023 at around 23:00 WIB or at least at a certain time in December 2023 or in 2023 located in Jorong Gobah Nagari Batu Banyak, Lembang Jaya District, Solok Regency or at least in a place that is still included in the jurisdiction of the Koto Baru District Court which has the authority to examine and try this case, who has committed an act of physical violence within the scope of the household as referred to in article 5a against the victim witness with the initials RP (Defendant's Wife) which caused the victim witness to suffer injuries carried out by the defendant in the following ways : Kicking the victim witness the defendant immediately sat down and clenched

his fists as high as the defendant's ears and immediately threw the defendant's right hand to the victim witness's thigh 1 (One) time and the defendant kicked the victim witness's chest with his left foot 1 (One) time. After that, the victim-witness ran out of the house while breastfeeding the victim-witness' child and while having difficulty breathing due to the victim-witness' chest being kicked by the defendant.

That due to physical violence committed by the defendant, the victim witness RP nicknamed R felt pain in the right thigh and right chest of witness RP nicknamed R, based on the Visum Et Repertum letter Number: 63 / VER-RS / XII / 2022 dated December 27, 2023 signed by Dr. Randy Fitrullah M, with the examination opinion:

Wounds were found on the victim; On his right thigh eight centimeters above the knee, there was a blue-green bruise measuring five centimeters by three centimeters.

Examination Conclusion:

A 22-year-old woman was examined, and the examination revealed a blue-green bruise on her right thigh which did not cause any illness or hinder her from carrying out her work or livelihood.

The actions of the Defendant IP, nickname I, are regulated and subject to criminal penalties in Article 44 paragraph (1) of the Republic of Indonesia Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Second: That he is the defendant IP summons I On Sunday, December 25, 2023 at around 23:00 WIB or at least at a certain time in December 2023 or in 2023 at Jorong Gobah Nagari Batu Banyak, Lembang Jaya District, Solok Regency or at least at a place that is still included in the jurisdiction of the Koto Baru District Court which has the authority to examine and try this case, who has committed an act of physical violence within the scope of the household as referred to in article 5a against the victim witness with the initials RP (Defendant's Wife) which caused the victim witness to suffer injuries carried out by the defendant in the following ways

Kicking the victim witness, the defendant immediately sat down and clenched his fists as high as the defendant's ears and immediately threw the defendant's right hand to the victim witness's thigh 1 (One) time and the defendant kicked the victim witness's chest with his left foot 1 (One) time. After that, the victim witness ran out of the house while breastfeeding the victim witness's child and while having difficulty breathing due to the victim witness's chest being kicked by the defendant.

That due to physical violence committed by the defendant, the victim witness RP nicknamed R felt pain in the right thigh and right chest of witness RP nicknamed R, based on the Visum Et Repertum letter Number: 63 / VER-RS / XII / 2022 dated December 27, 2023 signed by Dr. Randy Fitrullah M, with the examination opinion:

The victim was found with the following injuries: On the right thigh, eight centimeters above the knee, there was a blue-green bruise measuring five centimeters by three centimeters.

Examination Conclusion:

A 22-year-old woman was examined, and the examination revealed a blue-green bruise on her right thigh which did not cause any illness or hinder her from carrying out her work or livelihood.

The actions of the Defendant IP, summons I, as regulated and threatened with criminal penalties in Article 351 Paragraph (1) of the Criminal Code (KUHP).

Considering, that the Defendant IP, summons I, has been brought to trial with the following charges:

following:

First: Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence

Second: Article 351 paragraph (1) of the Criminal Code

Considering, that the defendant was accompanied by legal counsel during the trial.

Considering, that after the indictment was read by the Public Prosecutor, upon the Judge's statement, the Defendant stated that he understood the indictment.

From the Judge's considerations above, the Defendant's actions have fulfilled the elements contained in Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Therefore, the Defendant must be legally and convincingly proven guilty of committing domestic violence. And equipped with a Visum Et Repertum Letter Number 63/VER-RS/XI/2023 dated December 27, 2023 and the relationship between the victim and the defendant is still valid as a husband and wife.

The panel of judges sentenced the defendant to a criminal sentence that he was proven to have committed the crime of physical violence in the household against his wife by taking into account Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence in the Household of the Criminal Procedure Code (KUHP).

CONCLUSION

Based on the results of the research and discussion conducted in the previous chapter, the following conclusions can be drawn:

1. That the application of criminal law to the crime of domestic violence in case No. 101 / Pid.Sus / 2023 / PN.Kbr is in accordance with the provisions of the law in Article 44 paragraph (1) of Law Number 23 of 2004 concerning the elimination of Domestic Violence which regulates the criminal provisions for domestic violence. The fulfillment of the elements in Article 44 paragraph (1) which are the judge's consideration in imposing criminal sanctions on the Defendant in accordance with the facts revealed in the trial in case No. 101 / Pid.Sus / 2023 / PN.Kbr of the crime of violence committed in the household in this case the husband against his wife. Therefore, the Defendant is obliged to be responsible for his actions in accordance with the decision handed down by the Panel of Judges to serve a prison sentence of 6 (six) months and pay court costs of Rp. 2,500.00 (two thousand five hundred rupiah).
2. In handing down the verdict in case No. 101/Pid.Sus/2023/PN.Kbr, the Panel of Judges considered numerous factors, including the demands of the Prosecutor and the Public Prosecutor, the trial facts, such as evidence and testimony, the fulfillment of the elements according to the articles charged, and the aggravating and mitigating factors.

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