

"Effectiveness of Punishment for Perpetrators of Domestic Violence against Children: Study of Decision Number 18/Pid.Sus/2017/PN Bek"

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Abstract

This research discusses the long-term impact of domestic violence (DV) on children, both physically, psychologically, and socially. The purpose of the research is to examine the punishment of perpetrators of domestic violence, analyze the legal process, and evaluate the judge's consideration in Decision Number 18/Pid.Sus/2017/PN Bek. By using a case study-based normative juridical method and regulatory analysis, this study found that criminalization includes physical, psychological, sexual violence, and neglect, with penalties tailored to the level of offense. In the verdict, the defendant was only sentenced to eight months' imprisonment from an initial sentence of one year, with consideration of factors that were more mitigating for the perpetrator than the impact experienced by the victim. The leniency of the sentence was attributed to the defendant's lack of a criminal record, even though the victim suffered severe physical and mental harm. Therefore, this research emphasizes the need for stricter legal policies and the application of more severe criminal sanctions to strengthen child protection in domestic violence cases.

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1. INTRODUCTION

All citizens are entitled to equal rights in the eyes of the law and are obliged to comply with applicable regulations. The role of the family determines a child's growth and development in physical, mental, social and otherworldly aspects. The quality of children as the next generation is the main factor in ensuring the prosperity and sustainability of a country. Children are a reflection of the nation's character and have a strategic role in determining the direction and level of the country's progress, so that the state is obliged to guarantee children's rights in accordance with relevant laws and regulations. Children are a reflection of the nation's character and have a strategic role in determining the direction and level of progress of the country, so that the state is obliged to guarantee that every child has the right to obtain their rights in accordance with existing legal regulations.[1]

Children's lives are significantly influenced by the various forms of violence they experience, both in terms of the type of violence, the perpetrator who commits it, the place where it occurs, and the motives behind the act, all of which have varying characteristics. Therefore, it is important to recognize children as legal subjects who have rights and best interests that must be protected, by ensuring that they receive special treatment and adequate access to all the needs necessary to support their optimal growth and development. The current rules and regulations regulate the rights of children from birth because they are

the next generation of the nation.[2] These rights include children's rights to obtain holistic physical, mental and social development as well as the rights guaranteed by law to be free from all forms of discrimination and violence in order to ensure their growth and development as individuals of value to the family, society and state. Children's rights must be safeguarded and protected by ensuring they are free from all forms of threats, pressure or danger, either directly or through intermediaries, including but not limited to family or other third parties.

The aim of legal protection is to ensure children's freedom and basic rights and safeguard their welfare in accordance with applicable legal provisions. As a sovereign country, Indonesia guarantees this protection based on the 1945 Constitution.[3] The rule of law is a basic principle in a nation that requires every society to comply with applicable regulations. Based on Article 1 paragraph (2) of Law Number 23 of 2004, this regulation aims to eliminate domestic violence, protect victims, and create harmonious and prosperous families. Children are vulnerable subjects in cases of violence due to their helplessness, so they are often the main targets of acts of violence. Children's lives can be significantly affected by the various forms of violence they experience, both in terms of the type of violence, the perpetrator, the location of the incident, and the motives behind the act. In some circumstances, disciplinary action taken by parents against children can take the form of physical violence, such as beatings using a belt, broom, or other object, which has the potential to violate the child's rights and applicable legal provisions.

In Law Number 35 of 2014 concerning Child Protection, children's rights must be protected by the government. Domestic violence not only impacts the primary victim but also influence other family members, especially children, with consequences in the form of trauma, fear and loss of sense of security. Domestic violence not only impacts the primary victim, but also... influence other family members, especially children, with impacts in the form of trauma, pain, fear and loss of sense of security.[7] Physical violence causes suffering and pain for victims, which in many cases results in permanent injury and disability. Domestic violence victims do not only experience psychological pressure influence quality of life, but also face violations of human rights, such as freedom from coercion and torture, which are contrary to human values. To overcome this, the government issued Law no. 23 of 2004 concerning PKDRT to prevent violence, protect victims, take action against perpetrators, and maintain family harmony as regulated in Article 3.

Even though Law no. 23 of 2004 concerning PKDRT aims to prevent domestic violence, its implementation has not been fully effective in society.[8] Children are subjects that must be protected because they act as successors of the nation and the main factor in national development. The state and society are responsible for ensuring the fulfillment of children's rights in accordance with their best interests.[9] Cases of violence against children, especially in the family environment, are still widespread. Children who witness or experience domestic violence have the potential to face negative impacts, in the near future and in the future, so effective legal protection efforts are needed to prevent and overcome this. Based on Decision Number 18/Pid.sus/2017/PN Bek, the defendant was sentenced to one year in prison for acts of violence against the victim. This crime occurred when the victim refused the defendant's request to use his cellphone, which then caused the defendant to attack the victim using a muffler, resulting in the victim suffering serious injuries to his back and head.

The defendant's actions were declared a violation of Article 80 of the 2014 Child Protection Law. Apart from imprisonment, the court also ordered that evidence in the form of exhaust be confiscated and destroyed. In accordance with the provisions of Law no. 35

of 2014 and Law no. 23 of 2002 regulates the protection of children's rights in Indonesia, all forms of violence against children must be prevented and acted upon in accordance with applicable law.[10] Stopping domestic violence, especially against children, requires strict regulations. The long-term impact of violence on children varies depending on the type, with physical violence having the potential to cause health, psychological and social problems. Apart from that, parents' economic pressure often becomes a trigger that worsens the child's condition in the family environment.[11] Therefore, a system is needed that places parents as the main educators to prevent perpetrators of violence from being at risk of becoming victims of crime. Children's rights and the responsibilities of parents, families, communities and the government have been regulated in applicable laws and regulations.

2. RESEARCH METHOD

This study uses a normative legal approach, with a literature study approach, which includes analysis of relevant statutory regulations, books, papers and articles. The data collected is arranged systematically to obtain a comprehensive understanding. The method used combines a regulatory approach (*statute approach*) and case studies (*case approach*), with a focus on ongoing legal issues as well as court decisions that have permanent legal force. This study examines Decision Number 18/Pid.Sus/2017/PN Bek regarding cases of child abuse that caused serious injuries. In addition, a literature review was used to examine the results of previous research regarding the legal issues used in this research.

3. RESEARCH RESULTS AND DISCUSSION

3.1 Classification of criminal sanctions for perpetrators (DRT) in accordance with the provisions of Law no. 23 of 2004 PKDRT.

In the Indonesian legal system, punishment is a sanction imposed on law violators or criminals as a form of legal responsibility. The concept of punishment is rooted in legal principles that establish binding rules and regulations. The theory of retribution, pioneered by Immanuel Kant with *let justice be done, let the sky rush in* (justice must be upheld even though the world is destroyed), emphasizing that legal sanctions must be given based on moral and ethical principles. From a legal perspective, justice is a manifestation of freedom, while crime is seen as a threat to law and justice. The law functions to protect the interests of society and must be accompanied by strict sanctions for violators so that it has effective binding force. Law enforcement must be carried out consistently, not only in implementing applicable regulations, but also in formulating legislation that is fair and applies to all levels of society. Legal issues regarding (Domestic Violence) received the government's attention, which was followed up with the enactment of Law Number 23 of 2004 concerning (Law on the Elimination of Domestic Violence).[12] Law Number 23 of 2004 concerning PKDRT was drafted taking into account various important aspects:

1. Everyone has the right to guarantees and protection from all forms of violence as which has been regulated but is not limited to Pancasila and the Constitution.
2. This violence violates human rights, damages dignity, and includes discriminatory acts that must be prevented and eliminated.
3. The state has a legal obligation to provide effective protection for victims, especially women and children, through comprehensive policies, firm law enforcement, and community participation in prevention and treatment in accordance with the principles of justice and human rights.

4. Cases of violence experienced by many women and children are still high, while legal protection in the Indonesian justice system is not yet fully effective in handling it.

The results of the analysis show that before the enactment of Law Number 23 of 2004, the handling of family violence cases in Indonesia was still not effective in the legal system. The Criminal Code has weaknesses in accommodating law enforcement for acts of domestic violence, so special regulations are needed. It is hoped that Law no. 23 of 2004 can reduce or eliminate these problems and create justice in the household. However, its implementation still faces obstacles, especially in imposing sanctions which tend to be light and do not have a deterrent effect on perpetrators.[13] Based on Article 5 of Law Number 23 of 2004, the scope of Domestic Violence (KDRT) includes acts of physical violence, psychological violence, sexual violence, and acts of neglect in the household. Physical violence is an act that results in harm or injury, psychological violence causes mental suffering, sexual violence involves forcing a relationship without consent, and neglect is the neglect of a family member's basic needs. All these actions violate individual rights and welfare and must be prevented and prosecuted in accordance with applicable legal provisions. Based on Article 6 of the PKDRT Law, physical violence is defined as an act that results in pain, health problems or serious injury.

Based on Law No. 23 of 2004 (Domestic Violence) Covers acts that cause physical, intimate or psychological suffering to the family, especially women and children. This law aims to protect victims by preventing various forms of violence, including neglect, threats, coercion and deprivation of liberty in the household. Article 2 of the PKDRT Law extends the scope of legal protection to husbands, wives, children, and individuals who have family relationships or live in the same house, including domestic workers. This regulation also determines the types of domestic violence in accordance with applicable legal provisions. Physical violence refers to actions that result in injury, pain, or even death. According to Article 6 in conjunction with Article 5 letter a of the PKDRT Law, physical violence in the household includes actions such as pulling hair, hitting, injuring with a weapon, and hitting the victim's head. be subject to criminal sanctions in accordance with applicable legal requirements.

1. Maximum confinement 5 years/fine up to 15 million.
2. If resulting in serious injury Seriously, maximum prison 10 years/ fine up to 30 million.
3. When it results in death, the sanction imposed is up to 15 years imprisonment or a fine of up to 45 million.
4. If it is carried out in a husband-and-wife relationship without causing illness or disrupting activities, the maximum penalty is 4 months in prison or a fine of 5 million.

Psychological violence, as regulated in Article 7 in conjunction with Article 5 letter b of the PKDRT Law, is an act that causes loss of self-confidence, helplessness or trauma, including insults, threats and intimidation. The perpetrator is subject to criminal sanctions in accordance with legal provisions.

1. The maximum prison sentence is 3 years or a maximum fine of 9 million.
2. If violence occurs between husband and wife without causing health or activity problems, the punishment imposed can be imprisonment of up to 4 months or a maximum fine of 3 million.

Sexual violence refers to acts of coercion in sexual activity, including sexual intercourse carried out without consent. This provision is regulated in Article 8 jo. Article 5 letter c of the PKDRT Law. Depending on applicable law committing domestic sexual violence may face criminal penalties:

1. If you force a family member to have sexual relations with another party, prison term is 4 to 15 years or a fine of 12 million to 300 million.
2. If it causes permanent injury, mental disorders, miscarriage, or reproductive organ dysfunction, prison 5 to 20 years or a fine of 25 million to 500 million.

Neglect in the household is the act of neglecting family members who are entitled to receive living, care or support as regulated in Article 9 paragraph (1) of the PKDRT Law. Included in this category are restrictions or prohibition victims to work, thereby creating economic dependency. This regulation is intended to provide legal protection to victims of acts of violence and determine criminal sanctions for perpetrators in accordance with the requirements of applicable statutory regulations in accordance with applicable law. Domestic violence is an act that causes physical, sexual or psychological impacts on family members, including neglect, threats, coercion or restrictions on freedom that are contrary to the law. Domestic violence is often not revealed due to cultural pressure, religion, or limited understanding of the law. The state and society are responsible for protecting victims and taking action against perpetrators to ensure security and justice.

In the legal system, there is no uniform definition of children, both in legal regulations and the views of experts. Each regulation sets different criteria for defining a child, which causes variations in its application. To ensure effective legal protection for children, institutional support and a comprehensive legal framework are needed. Provisions regarding the definition of a child are regulated in various regulations as follows:

1. According to Article 1 paragraph (1) of Law Number 35 of 2014, a child is described as someone under 18 years of age, including those still in the womb.
2. Meanwhile, Article 1 paragraph (2) of Law Number 4 of 1979 states that a person is categorized as a child if they are under 21 years old and are not married.
3. Article 330 of the Civil Code also sets the age limit for children under 21 years old provided they are not married, and their maturity status remains valid even if the marriage is annulled.
4. In the context of criminal law, as regulated in Article 1 paragraph (3) of Law Number 11 of 2012, children are individuals aged 12 to 18 years who are involved in the legal process for alleged criminal acts.

Based on Law Number 35 of 2014 which amends Law Number 23 of 2002, children are individuals under 18 years of age, including those who are still in the womb. Violence against children includes acts that cause physical, mental, sexual suffering, neglect, as well as threats or illegal coercion. Perpetrators of violence can be subject to criminal sanctions in accordance with Article 80 paragraph (1), with a maximum threat of 3 years and 6 months in prison or a fine of up to 72 million, which can increase to 5 years in prison or a fine of 100 million if they cause serious injury. Protection regulations aim to ensure children's rights to life, development and freedom from violence and discrimination. The state is responsible for ensuring this protection as regulated in the UUPA and the Juvenile Criminal Justice System, in order to uphold justice and prevent violations of children's rights.

3. 2 Judge's Considerations in Decision Number 18/Pid.Sus/2017/PN Bek.

The punishment for the judge's decision in this case must be guided by Law

Number 23 of 2014 concerning Child Protection, Article 80 paragraph (1), which regulates that perpetrators of violence against children can be sentenced to imprisonment for up to 3 years and 6 months and/or a maximum fine of 72,000,000.00. This provision emphasizes that violence against children is a serious crime with strict sanctions. Child protection is a priority in the legal system. However, the judge's decision to impose a prison sentence of 10 months can be considered as not reflecting a sense of justice for the following reasons:

Inconsistency of the Decision with the Principles of Justice for Victims.	<p>The panel of judges stated that the 10 months sentence fulfilled a sense of justice, but the decision did not take into account the serious impact experienced by the victim, both physically and psychologically. The victim, a 15-year-old boy, suffered a laceration to his forehead that required three stitches as well as trauma due to violence, which has the potential to have long-term impacts. Based on Article 80 paragraph (1) UUPA, the maximum penalty is 3 years and 6 months. A sentence of 10 months does not fully reflect the severity of the violation of children's rights and has the potential to be considered too light, this is contrary to the child protection principles set out in law.</p>
Lack of Emphasis on Child Protection Interests.	<p>Article 80 paragraph (1) jo. Article 76C of the Child Protection Law prohibits all forms of violence against children in order to provide optimal protection from physical and psychological threats. In this case, the defendant used an exhaust iron, an object that has the potential to cause serious injury, thereby posing a high risk to the victim's safety. The decision imposing a sentence of 10 months does not reflect adequate respect for the principles of child protection and prevention of violence regulated in Article 80 paragraph (1). Punishments that are too light can give rise to the opinion that violence against children is not a serious offense that requires strict sanctions.</p>
Excessive Emphasis on Mitigating Factors	<p>The panel of judges gave disproportionate weight to mitigating factors, such as the defendant's remorse, reconciliation with the victim, and a promise not to repeat the crime. However, these considerations must not override the principle of child protection and the deterrent effect for perpetrators of violence. Regret and reconciliation do not erase the legal consequences and impacts experienced by the victim. In addition, the defendant's criminal history shows that he has not learned any lessons</p>

	from previous sentences, so this should be an aggravating factor, not a mitigating factor.
Lack of Preventive and Restorative Efforts	The Panel of Judges' decision does not explicitly reflect preventive efforts to prevent similar cases in the future. It is considered that a 10 months prison sentence does not have a significant deterrent effect on the defendant or the community. In addition, there is no consideration of comprehensive restorative measures, such as psychological rehabilitation for victims or development programs for defendants.
Implications for Child Protection Law Enforcement	This decision has the potential to weaken legal protection for children and create a precedent that is not in line with Article 80 paragraph (1) of the Child Protection Law. Light sanctions for perpetrators of violence against children can give rise to the perception that the law does not provide effective protection, thereby reducing the deterrent effect and risking increasing the potential for violence against children.

- Consideration of Increasing Sentences: Courts need to consider criminal severity approaching the maximum threat as stated in Article 80 paragraph (1) of the Child Protection Law, in order to reflect the serious impact of violence on children and strengthen the deterrent effect.
- Attention to Victim Impact: The Panel of Judges must emphasize consideration of the physical and psychological impact experienced by the victim, including the potential for long-term trauma, in determining the decision.
- Restorative Approach: Apart from punishment, rehabilitation programs for victims and perpetrators can be implemented to prevent repetition of criminal acts and restore the victim's psychological condition as a whole.
- Increased Legal Awareness: The decision in this case can be an instrument to increase public understanding regarding the urgency of child protection, through firm and fair decisions. By paying attention to the principles of justice for victims and the mandate for child protection regulated in Law Number 35 of 2014, it is hoped that the judge's decisions in the future will be more optimal in ensuring child protection.

4. CONCLUSION

The decisions in the cases discussed in this research show that sentences against perpetrators still tend to be light and do not reflect the principles of justice for victims. The panel of judges considered mitigating factors for the perpetrator more than the serious impact experienced by the victim, both physically and psychologically. The punishment imposed does not reach the maximum limit as regulated in Article 80 paragraph (1) of the UUPA, so it does not provide an optimal deterrent effect. Stricter policies are needed in enforcing the law in domestic violence cases, especially those involving children as victims.

An approach that focuses on protecting children's rights, restoring victims and rehabilitating perpetrators must be better integrated into the criminal justice system. Apart from that, increasing public awareness of the importance of child protection is also an important factor in preventing similar cases in the future. In this way, the legal system can be more optimal in providing justice for victims and strengthening child protection as the main mandate in the applicable law.

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