

Proving the Crime of Domestic Psychological Violence

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Abstract

This research aims to determine the process of proving crimes of psychological violence in domestic violence cases and the factors inhibiting the process of proving crimes of psychological violence in cases of domestic violence. Based on the analysis of data and events, the author concludes that the process of proving psychological violence in cases of domestic violence must use Visum Et Repertum which has the power of proof/valid legal evidence in criminal cases in accordance with the theory of psychological evidence. The type of Visum et Repertum used is Psychiatric Visum et Repertum. From several conclusions examined, it is clear that the judge always bases his conclusions on the Visum Et Repertum submitted in the peace agreement. The inhibiting factors for proving psychological violence in domestic violence cases are made using the legal system theory put forward by Lawrence Friedman and as a result there are still differences in the understanding of law enforcement officials regarding the application of domestic violence laws. (the content of the law) gives rise to differences in perception. Apart from that, it took quite a long time from the incident to the Visum Et Repertum examination, so the autopsy results did not support the trial process (legal structure).

Abstrak

Penelitian ini bertujuan untuk mengetahui proses pembuktian kejahatan kekerasan psikis dalam kasus KDRT dan faktor penghambat proses pembuktian kejahatan kekerasan psikologis dalam kasus KDRT. Berdasarkan analisis data dan peristiwa, penulis menyimpulkan bahwa proses pembuktian kekerasan psikis dalam kasus kekerasan dalam rumah tangga harus menggunakan Visum Et Repertum yang mempunyai kekuatan pembuktian/alat bukti hukum yang sah dalam perkara pidana sesuai dengan teori pembuktian psikis. Jenis Visum et Repertum yang digunakan adalah Visum et Repertum Psikiatrik. Dari beberapa putusan yang diteliti, terlihat jelas bahwa hakim selalu mendasarkan putusannya pada Visum Et Repertum yang disampaikan dalam persidangan. Faktor penghambat pembuktian kekerasan psikis dalam kasus KDRT dibuat dengan menggunakan teori sistem hukum yang dikemukakan oleh Lawrence Friedman dan akibatnya masih terdapat perbedaan pemahaman aparat penegak hukum mengenai penerapan undang-undang KDRT. (isi hukum) menimbulkan perbedaan persepsi. Selain itu, sejak kejadian hingga pemeriksaan Visum Et Repertum cukup lama, sehingga hasil otopsi kurang mendukung proses persidangan (struktur hukum).

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1. INTRODUCTION

Completeness and harmony in a happy, safe, secure and peaceful household is the dream of every family member. The integrity and harmony of the household really depends on each person in the house, including the level of quality of behavior and self-control of each family member. Family unity and harmony can be damaged if quality control and self-control cannot be achieved, which can ultimately lead to domestic violence, insecurity or injustice for family members. To

prevent, protect victims and take action against perpetrators of domestic violence, the State and society are obliged to prevent, protect and take action against perpetrators in accordance with the Pancasila philosophy and the 1945 Constitution of the Republic of Indonesia.

By normative, based on the provisions of Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it is determined that:

Every person is prohibited from committing domestic violence against people within their household, by:

- a. Physical abuse;
- b. Psychological violence;
- c. Sexual violence; or
- d. Neglect household.

Physical violence is the most common form of domestic violence perpetrated against victims. In terms of evidence and law enforcement, this form of violence is also quite simple because it can be proven with evidence in the form of autopsy results. *There by* Likewise, sexual abuse or domestic neglect is similar to physical violence.

However, this is not the same as other forms of violence in the form of psychological harassment. Psychological violence is verbal torture (such as: insults, rude remarks, rudeness) which reduces self-confidence, increases feelings of fear, loss of ability to act and feelings of helplessness. This psychological violence, if it occurs frequently, can cause the victim to become increasingly dependent on the attacker, even though the attacker has caused them suffering. On the other hand, psychological violence can also arouse feelings of revenge in the victim's heart.

The specificity of domestic violence (KDRT) compared to violence against women is due to the existence of power relations between the victim and the aggressor. The burden faced by women who are victims of domestic violence is very heavy because power relationships always contain an element of trust and to a certain extent also contain an element of dependency. Apart from the feeling of intentionality on the part of the owner of the power, the victim also feels afraid, reluctant and embarrassed if he reports it to the authorities.

In many cases of domestic violence, the victims are not identified or reported, and the perpetrators often hide from the law. And even if they receive a sentence, it is very disproportionate to what the perpetrator did or did, or in other words, it is relatively light compared to a life sentence. Even though we are aware that the victims of this violence are our mothers, brothers, sisters and the closest people in our lives. And families experiencing domestic violence may assume that the perpetrators are mostly men.

In general, they realize that they have made a mistake by hurting their wife and family, and feelings of regret and guilt are usually shown after they make a mistake. However, this will usually repeat itself as does the spiral cycle of violence. On the other hand, the longer the victim will feel immune, also at the same time, usually the perpetrator of violence has a past that is very closely related to violence.

Elimination of domestic violence is a guarantee provided by the State to prevent domestic violence, take action against perpetrators of domestic violence and protect victims of violence in the domestic sphere. Protection is all efforts aimed at providing a sense of security carried out by the family, advocates, social institutions, police, prosecutor's office, court or other parties, either temporarily or based on a court order.

In relation to psychological violence, evidence occupies a central point in resolving the case. The purpose of proof is to find and locate material truth and not to find other people's mistakes. This proof is carried out for the benefit of the judge who must decide the case. ⁴ In this case what must be proven is a concrete incident, with this proof, the judge, even though he did not see the actual incident with his own eyes, can describe in his mind what actually happened, so that gain confidence about it.

Proving psychological violence in the household is not as easy as proving physical violence, it is different from proving physical violence which is clearly visible to the naked eye, for example victims of beatings or rape can be proven with witness statements and post mortem et repertum.

Meanwhile, the psychological is the soul, spiritual and mental and spiritual pain which can only be felt by the victim, because what is injured or sick is not the person's body or physical body, but the mind, soul or spirit.

This is the biggest obstacle for the Gorontalo District Prosecutor's Office in carrying out investigations and prosecutions regarding the process of handling domestic violence crimes. In Gorontalo City, there were 5 (five) recorded domestic violence crimes that occurred in the period between 2020-2022. Of all the domestic violence crimes that occurred, 1 (one) of them was a form of psychological violence.

2. RESEARCH METHOD

The methodology used in this article has several components, namely types study, research location, type and source of data, data collection techniques, population and sample analysis techniques for data. Empirical research is a legal research method that utilizes empirical evidence from human behavior, both verbal behavior obtained from interviews and real behavior realized through direct observation. Empirical research also observes the results of human behavior in the form of physical remains and archives.

3. RESEARCH RESULTS AND DISCUSSION

1. Process of Proving Crime of Psychological Violence in Domestic Violence Cases

Psychological domestic violence is regulated in Article 5b, with further information in Article 7 of the Domestic Violence Law which contains elements of acts that cause fear, loss of self-confidence, loss of ability to act, a feeling of helplessness and/or severe psychological suffering in a person. The weakness of psychological domestic violence does not have a clear benchmark, because psychological harm does not leave wounds that can be seen with the naked eye like physical domestic violence. In the provisions of this article, it only describes the consequences of the action without providing an explanation of the causes and outlining exactly what actions can be categorized as psychological domestic violence, the proof is also very difficult, Disclosure of Facts.

Efforts to reveal the facts in cases of domestic psychological violence often experience difficulties. This was stated by various groups, including NGOs, the Prosecutor's Office and the police who were tasked with collecting evidence. Mr. Budi from (P2TP2A) Gorontalo City stated that:

The majority of women who are victims of domestic violence tend to choose not to process their cases through criminal law. The reason is that they are worried that legal bureaucracy will waste time, energy and money. This is indeed the case with the procedural law that applies in the field which is still an obstacle for victims of domestic violence. One example is the procedural law regarding evidence. In Law No. 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), one witness accompanied by one other piece of evidence is sufficient. However, often law enforcement officers are of the opinion that one witness and one other form of evidence are still insufficient. Apart from that, victims also always have difficulty when asked to prove the existence of psychological violence.

Meanwhile, the problem of evidence is indeed an obstacle in handling domestic violence cases. to prove physical violence there must be a post mortem. It often happens that post mortem results only show the most recent violence committed. "What looks bruised, even though he was beaten three months in a row," he added. Therefore, the case file should clearly and completely state when and what kind of violence was experienced. "Not just from post-mortem evidence. He also added that most of the violence that occurs to victims of domestic violence is psychological violence. The problem is that proving psychological violence is not easy. The only way to prove it is a statement from a psychologist. Therefore, it is necessary to recommend that the psychologist's statement is also included in the case file.

The disclosure of the facts of a case is largely determined by the extent to which the evidence and items of evidence can be connected to one another, so that a common thread can

be drawn. There are many things that can weaken the evidence, one of which is that the existing evidence cannot be accepted in court (not admissible at court). There are many things that cause evidence to not be accepted as evidence in court, the process of extracting or retrieving evidence is unprofessional, there is no match between the case and the evidence presented, or other things that are the investigator's fault, uncooperative the suspect in giving testimony.

A similar thing was stated by Mr. Budi from (P2TP2A) Gorontalo City, who stated that post-traumatic stress disorder can be differentiated from other mental disorders that also arise after severe trauma, such as severe depression in the form of reliving the traumatic event as if it were a shaking event. is happening again because of an idea or stimulus from the surrounding environment. Recurrent experiencing of the trauma is evidenced by the presence of recurring and prominent memories about the event, or recurring dreams, or the sudden appearance of behavior and feelings, as if the event were reappearing.

This is then followed by a dulling of responses to the outside world, starting some time after the trauma, namely reduced interest in life activities, feelings of isolation from other people, and feelings of constriction. Added to this are high alertness or being easily startled, sleep disturbances, feelings of guilt for escaping the danger of death, impaired memory and concentration, avoidance of activities that evoke traumatic memories, and increased symptoms when faced with situations that resemble the event. This then makes it difficult to obtain information about the domestic violence incidents they experienced.

Visum et repertum

Proving psychological violence in the household is not as easy as proving physical violence, which is different from proving physical violence which is clearly visible to the naked eye, for example victims of beatings or rape can be proven with testimony from witnesses and experts. Meanwhile, the psychological is the soul, spiritual and mental and spiritual pain which can only be felt by the victim, because what is injured or sick is not the person's body or physical body, but the mind, soul or spirit. Victims of psychological violence also experience trauma, it is difficult to talk and tell the true situation because they are shadowed by shame and fear because the household is very personal for each family. The perception that family problems are a disgrace that must be kept tightly closed from other people who are not part of a family's household.

Difficulty in carrying out evidence should not be an excuse for law enforcement officials in carrying out law enforcement processes, especially if someone is sentenced to a crime while the evidence has not been carried out. Law No.4 of 2004 concerning Judicial Power Article 6 paragraph (2) which states:

"No one can be sentenced to a crime unless the court, by means of evidence valid according to law, is satisfied that a person who is deemed to be responsible is guilty of the act for which he is charged."

With the provisions of the law above, in the process of resolving criminal cases of psychological violence, law enforcers are obliged to try to collect evidence and facts regarding the criminal cases being handled as completely as possible. However, in an effort to obtain the evidence needed for the purposes of examining a criminal case, law enforcers are often faced with certain problems or matters that cannot be resolved by themselves because the problem is beyond their ability or expertise.

One effort that can be taken is to use information in the form of a visum et repertum letter issued by an official who legally has the authority to make or issue the visum et repertum letter. So that the National Police investigating officers, in their duties as investigators, rely on their duties based on the post mortem et repertum to ensure that the victim has truly been a victim of domestic violence. This information is valid evidence to state the truth that the perpetrator has indeed legally committed violence as a result of which the victim experienced psychological violence.

2. Factors Inhibiting the Process of Proving Crimes of Psychological Violence in Domestic Violence Cases

Legal Substance (legal substance)

Theoretically, according to Lawrence M. Friedman, the elements of the legal system consist of legal structure, legal substance and legal culture. In efforts to eliminate domestic violence, these three factors must support each other in order to achieve the goal of eliminating domestic violence.

The definition of Domestic Violence or KDRT, as stated in Article 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) is any act against someone, especially women, which results in physical, sexual, psychological and physical misery or suffering. /or domestic neglect, including threats to commit unlawful acts, coercion or deprivation of liberty within the household. The PKDRT Law was born through a long struggle for approximately seven years carried out by women's movement activists from various elements.

In relation to the regulation of psychological violence, the Domestic Violence Law has adopted it into the regulation of Article 5 where it is stated that one form of domestic violence is psychological violence. Psychological violence is an act that results in fear, loss of self-confidence, loss of ability to act, a feeling of helplessness, and/or severe psychological suffering in a person. Likewise with the evidentiary aspect for Psychological Violence, where the PKDRT Law has explicitly stated post-mortem evidence.

The most significant problem is that not all reported cases will be processed further. In this case, the victim is often blamed as the party who withdrew the report. Negative views towards the victim who filed a criminal complaint or divorced her husband, the victim's economic dependence on the perpetrator, the family's good name, and other external aspects allegedly influenced the victim in withdrawing the report.

3. Legal Structure Factors (legal structure)

Furthermore, the legal factors that also influence the proof of psychological violence in domestic violence cases are the legal structure, including differences in perception between law enforcers regarding the limits of domestic violence. Kunti Tridewayanti, Chair of the Association of Teachers and Legal Enthusiasts with a Gender Perspective, believes that the difference in the authorities' understanding of the limits of domestic violence lies in the choice of whether to apply the PKDRT Law or the Criminal Code and Criminal Procedure Code. In terms of evidence, the PKDRT Law is easier than the KUHAP. How could it not be, the principle of *ullus testis nullus testis* (one witness is not a witness) has been violated by this law, however, from an experience perspective, the police and prosecutors certainly have better control over the rules of the Criminal Code and Criminal Procedure Code.

Apart from differences in understanding, the process of handling domestic violence crimes that have entered the trial stage is often stopped because the victim withdraws the complaint. This condition often hampers the law enforcement process, even though victims still suffer from psychological violence. The influence of encouragement from family and relatives or the perpetrator who urges the victim to stop the case, often results in regret because the victim experiences a similar incident again.

For cases that are resolved criminally, many obstacles are faced. Here the police suggested just making peace. If the report is to be processed, it must be done three times. This results in weak evidence, because the gap between the abuse and the reporting has been long. So post mortem et repertum is not supported as evidence. Apart from that, domestic violence is considered a personal problem and not resolved by the authorities. Apart from that, there is another obstacle, namely the difficulty of presenting witnesses, because law enforcement officers always insist that victims present witnesses who actually saw the beating or other acts of abuse. In this case, it will certainly be difficult to present witnesses because abuse usually occurs in a closed room such as a bedroom. Even if anyone knew, they would be afraid to testify.

The author believes that this condition is the condition that most hinders the verification process. However, it cannot be blamed because in accordance with the mandate of the Domestic Violence Law, the government is obliged to make efforts to restore victims of domestic violence as outlined in Government Regulation Number 4 of 2006 concerning the Implementation and Cooperation for the Recovery of Victims of Domestic Violence. Article 1 Number 1 PP No. 4 of 2006 states that victim recovery is all efforts to strengthen victims of domestic violence so that they are more empowered, both physically and psychologically.

In order to anticipate this incident, law enforcement officials must be more careful when handling psychological violence in domestic violence cases. Before carrying out rehabilitation for the victim, the authorities must first carry out an examination in the form of a *visum et repertum* and/or *post mortem et repertum psychiatricum* or make a medical certificate. So that in the evidentiary process, a *post-mortem* can provide information about the victim's actual mental or mental condition at the time of the psychological violence. This is to anticipate that the law enforcement process will take a long time, so that if it is prepared too late then the results of the *post mortem* will be less supportive of the legal process because when examined the victim has recovered mentally/psychiatrically.

Legal Culture (Legal culture)

Last, but not least, efforts to eliminate Domestic Violence continue to increase, but not much of it is processed in criminal justice. Based on the data the author obtained, many cases were reported at the police level, but many were resolved because the reporter withdrew his report and it was resolved peacefully. This is due to the weak condition of women as wives who are very dependent on their husbands, this is a feeling of fear and control from the husband, after returning to peace the wife still experiences this fear.

The cultural understanding factor that still places women as weak is still widely adhered to by women in Indonesia. Patriarchal legal culture is firmly established, this can be seen from the provisions in the 1974 Marriage Law which clearly differentiate the roles and positions between husband and wife. Article 31 paragraph (3) "The husband is the head of the family and the wife is the housewife."

Article 34 paragraphs (1) and (2) stipulate: "The husband is obliged to protect his wife and provide all the necessities of household life according to his ability" and "The wife is obliged to manage household affairs as well as possible." It is clear that this law places wives economically very dependent on their husbands. So it is not surprising that the law that is being introduced is one that does not provide justice to women. In this case, culture places women and men in an unequal power relationship, and the law legitimizes it. So, one day the marriage law must be improved.

Therefore, the author hopes that the Law on the Elimination of Domestic Violence (PKDRT) can make victims aware that domestic violence must be reported to protect the victim. Of course, massive socialization must continue to be carried out to change society's cultural paradigm regarding awareness of gender equality.

4. CONCLUSION

The process of proving psychological violence in cases of domestic violence must use *Visum Et Repertum* which has valid evidentiary power/legal evidence in criminal cases. The type of *Visum et Repertum* used is *Psychiatric Visum et Repertum*. This is evident from several decisions studied, that the judge always makes decisions based on the *Visum Et Repertum* submitted to the trial. The research findings show that the inhibiting factors for proving psychological violence in cases of domestic violence are caused by: First, there are still differences in understanding among law enforcement officials regarding the application of the law on domestic violence, so there are also differences in perceptions regarding the evidence; Second, there was a long period of time between the incident and the *Visum Et Repertum* examination, so that the results of the *post-mortem* were less supportive of the legal process.

In various cases handled by the prosecutor's office related to domestic violence, what was proven at trial was only physical violence, while psychological violence was not proven. On this basis, it is recommended that police investigators and prosecutors as public prosecutors must prepare a *Visum et Repertum* in the form of a *Psychiatric Visum et Repertum* when providing evidence at trial.

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