



JURIDICAL REVIEW OF INVESTIGATION PROCESS AND OBSTACLES IN THE POLICE FORCE FOR THE SETTLEMENT OF CRIMINAL ACTS OF DOMESTIC VIOLENCE

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Abstract: Criminal acts of domestic violence (KDRT) have recently sprung up and there has been a special law that regulates it. The law that regulates domestic violence is the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, known as UUPK. The purpose of this study is to find out and explain the process of investigating and resolving cases of domestic violence at the police, based on observations at the Demak Resort Police, and to find out the obstacles faced by the police in resolving cases of crimes of domestic violence based on observations. at the Demak Resort Police. The research method used is normative juridical research. The results of research on domestic violence at the Demak Police Station show the following: The forms of domestic violence crimes that are reported to the Police in general are domestic violence which are classified as "*Physical Violence*" and "*Neglect Violence*". namely Economic Factors, Jealousy or infidelity Factors, and Alcohol Factors.

Keywords: Juridical Review, Investigation, Domestic Violence.

INTRODUCTION

Social life nowadays, every member of society begins to feel turmoil and anxiety in their daily lives caused by the emergence of unlawful acts committed by individuals or groups of people. These actions apart from violating and deviating from the law also create a feeling of insecurity, full of anxiety, full of turmoil and disrupt the order that is coveted by the community. Individuals or groups of people who violate these are said to have committed a crime (Abdurrachman, 1980).

The most competent government apparatus in terms of handling a crime is the Police. In dealing with a crime, the police use the principle of crime prevention. The main duties of the Indonesian National Police (Polri) are explicitly regulated in Law Number 2 of 2002 concerning the Indonesian National Police, article 14. Referring to Article 14 paragraph (1) of Law Number 2 of 2002 concerning the Indonesian National Police, one of the main tasks of the Indonesian National Police Republic of Indonesia (Polri) is: Carry out investigations and investigations into all criminal acts in accordance with the criminal procedure law and other laws and regulations.

One of the criminal acts which is a symptom that cannot be separated from human life, namely the crime of Domestic Violence (KDRT). Domestic violence is a form of deviant behavior (Bemmelen, 1985).

Criminal acts of domestic violence have recently sprung up and there has been a special law that regulates them. The law that regulates domestic violence is the Law of the Republic of Indonesia Number 23 of 2004

concerning the Elimination of Domestic Violence, known as UUPK.

Cases of Domestic Violence (KDRT) are increasing from year to year. The National Commission on Violence Against Women of the Republic of Indonesia noted that violence against women continues to increase from year to year. In 2012, there were 14,020 women who were victims of violence. This increased by about 100% from the previous year, which was 7,787 people in 2011.

Acts of domestic violence according to Article 5 of Law No. 23 of 2004 consist of various forms, including:

- 1) Physical violence, is an act that results in pain, falling ill, or serious injury.
- 2) Psychological Violence, is an act that results in fear, loss of self-confidence, loss of ability to act, insecurity, and/or severe psychological suffering to a person.
- 3) Sexual violence, including:
 - a. Coercion of sexual relations committed against people who live within the scope of the household.
 - b. Forcing sexual relations against someone within the scope of the household for commercial purposes or certain purposes.
- 4) Household abandonment.

MAIN PROBLEM

Based on the background of the problems that have been raised, the research problem can be formulated as follows:

1. What is the process of investigation and settlement of crimes of domestic violence in the Police force?

2. What are the obstacles faced by the police in investigating and resolving cases of domestic violence?

METHOD OF RESEARCH

This type of research is normative juridical research. Normative juridical research looks at the law in terms of its legal principles with the type of research on legal principles. Secondary data is collected through library documentation, namely collecting data through literature surveys or literature studies and legal documents related to the problem. Primary data is carried out through direct observation and interviews, namely holding questions and answering verbally with respondents about matters relating to the problem. The data obtained from the research, both primary and secondary data, were analyzed using legal qualitative descriptive methods, namely, data obtained in the field and in the library were arranged systematically after being selected based on problems and seen for conformity with applicable provisions, then used to make an explanation description or Mechanisms, processes, and obstacles to investigations in the police for the settlement of crimes of domestic violence.

RESEARCH RESULT AND DISCUSSION

1. Process Of Investigation And Settlement Of Crimes Of Domestic Violence In The Police Force

Based on data on reports of domestic violence, the perpetrators of domestic violence in general (100%) are husbands or heads of families. In Law Number 23 of 2004

concerning the Elimination of Domestic Violence (UUPKDRT), there are 4 forms of domestic violence, namely:

- a. Physical abuse
- b. Psychological violence
- c. Violence of neglect, and
- d. Sexual violence.

According to information from several investigators, the forms of domestic violence crimes that are reported to the Police, in general, are domestic violence that is classified as:

- a. "physical violence" for example abuse, the husband abuses his wife because almost every day the husband is scolded/argued constantly and the husband is unable to restrain himself so he beats his wife. Factors that cause bickering or nagging include economic problems, jealousy, or infidelity.
- b. "abandonment violence" for example a husband leaving his wife and children for months and not providing a living. Factors causing neglect include economic problems, jealousy, or infidelity.

If domestic violence occurs, the victim can report it to the police for legal proceedings. It only needs to be explained that in the context of domestic violence, the complainant is not only a victim (complaint offense category), but the family or anyone who has seen and/or knows of domestic violence in a family (Karyadi, 1989).

Based on observations and interviews with the LPPA (Women and Children Protection Agency) in

Demak, in general, the factors that cause criminal acts can be grouped into 3 types, namely:

- a. Economic factors such as a weak economy due to unemployment, termination of employment, insufficient family income, the frustration of being scolded constantly for not having enough income, and so on.
- b. Jealousy or infidelity factors, such as jealousy because one partner is making out with another, a partner is having an affair, has another wife, and so on.
- c. The Liquor Factor. Liquor is actually not the cause of domestic violence, but alcohol often triggers domestic violence, because when a husband/wife drinks alcohol, the wife/husband/and/or children can become victims of violence.

Furthermore, in the opinion of LPPA Demak, the economy as a factor causing domestic violence is related to family income. This income is also closely related to work. The work of the father of the family greatly determines the economic life of the family. Of course, the income is greater than the needs in the household or noteworthy financial management.

Great need with small income triggers domestic violence. When the needs of family members cannot be accommodated, then violence will begin to stretch/become a weapon (*ultimum remedium*) to dampen the demands of family members.

Jealousy always adorns family life. Jealousy has become a heavy burden when the relationship between husband and wife begins to loosen. Especially if there are PIL (Another Ideal Man) and WIL (Another Ideal Woman) that start to shift the love between husband and wife.

Even though jealousy actually happened, it could have happened because of a lack of "communication" between husband and wife. Jealousy can be overcome if husband and wife always communicate well and openly at work or in social relations whether there are intimate friends, and not significant others (Saparinah, 1976).

In light to this, The process of investigating criminal acts of domestic violence is in principle the same as investigating other criminal cases. In the investigation, the police referred to the Criminal Procedure Code. The investigation process based on the Criminal Procedure Code has been stated in Chapter II in advance, namely in principle the investigation process consists of 9 activities namely: (1) First action at the scene (TKP), (2) Arrest, (3) Detention, (4) Search and Confiscation, (5) Examination of Witnesses, (6) Examination of Experts, (7) Examination of Suspects, (8) *Visum Et Repertum*, and (9) Reconstruction.

The police conduct investigations into domestic violence cases based on reports of criminal acts of domestic violence, mainly from victims of the crime of domestic violence. In practice, cases of domestic violence are often revoked by the complainant,

because in the course of the investigation, the two married couples who were involved in the crime of domestic violence realized and forgave each other. That is why the observational data on domestic violence crimes reported to the Demak Police, shows that domestic violence cases can generally be resolved by mediation (Oemar, 1983).

Based on observations and results of interviews with investigators who conducted investigations into crimes of domestic violence, not all of the 9 activities in the investigation process above were carried out. Some of the main and commonly carried out investigative activities consist of:

- (1) Examination of Victims (reporters) of criminal acts of domestic violence, witnesses, and those who are reported as accused of criminal acts of domestic violence,
- (2) Arrest if necessary, or summons of the reported,
- (3) Detention if necessary,
- (4) Medical examination of the victim and/or Visum Et Repertum
- (5) Examination of suspects,
- (6) Reconstruction, and
- (7) Filing of the results of the investigation to be delegated to the Public Prosecutor's Office.

The examination is an activity to obtain information. clarity and identity of the suspect and/or witness and/or evidence as well as the elements of the crime of domestic violence that has

occurred, so that the position or role of a person or evidence in the crime of domestic violence becomes clear and set forth in the Minutes of Examination, and the authorities conducting an examination is an investigator or assistant investigator.

The inspection methods used include:

- a. Interviews.
- b. Interrogation.
- c. Confrontation.
- d. Reconstruction.

Before the start of the examination, the investigator must notify the right of the suspect to obtain legal assistance or in certain cases, as referred to in Article 56 of the Criminal Procedure Code, the suspect must be accompanied by a legal adviser. Examination of suspected minors is guided by Law Number 3 of 1997 concerning Juvenile Justice.

When the Investigator/Assisting Investigator is conducting an examination of a suspect, the legal adviser can follow the course of the examination by seeing and hearing the examination, except in cases of crimes against state security, the legal adviser cannot hear the examination of witnesses. A suspect has the right to be clearly informed in a language he understands about what is suspected of him when the examination begins.

During the examination, it was also asked whether the suspect wanted to be heard by a favorable witness (witness a de charge), and if so, the Investigator/Assistant Investigator is obliged to summon and examine the witness. The

Minutes of Examination of the Suspect is signed by the Investigator/Assisting Investigator, the suspect, and the legal adviser and language translator (if a legal adviser and language translator are involved).

Regarding the examination of witnesses or victims, those who can be examined as witnesses are people who saw, heard, knew, or directly experienced a crime themselves. Opinions and conjectures obtained from the results of a person's thoughts are not witness statements. The testimony of one witness to another has a truth value if it has concordance.

In carrying out confrontational examinations, conflicts are always avoided and a feeling of sympathy is aroused so that witnesses are willing to give clearer and more complete information. Witnesses who are suspected of having sufficient reasons for not being able to attend the trial at the Court can take an oath or make a promise, either before or after giving testimony.

Examination of witnesses who are abroad is guided by the Implementation Manual on Examinations. The Minutes of Examination of Witnesses shall be signed by the Investigator/Assisting Investigator and the witness and language translator if necessary (Mulyadi, 2002).

In the event that an investigator requires expert testimony, the investigator may request the assistance of someone who has special expertise on matters required to shed light on a criminal case for the purposes of

examination. Before being examined, an expert is obliged to take an oath or make a promise before the investigator that he will provide information to the best of his knowledge, unless due to the dignity of his job or position which obliges him to keep secrets, he may refuse to provide the information requested.

The taking of oaths or promises is carried out by investigators in accordance with statutory regulations regarding oaths or promises, both regarding the contents and procedures. Investigators can submit requests for expert information from judicial medical experts or doctors and/or other experts to examine victims who are injured or poisoned or die as well as evidence and other matters related to their expertise. The information provided by the expert as mentioned above can be in the form of Minutes or written statements.

Matters to be considered in the examination of the crime of domestic violence at the Demak Police Station:

- a. A room is provided that meets the requirements for carrying out examination activities and can accommodate the needs of legal assistance for suspects without disrupting the smooth running of the examination.
- b. The suspect and/or witness being examined must be in good physical and mental health.
- c. In the event that the suspect is not willing to sign the Minutes of Examination, this is recorded in the Minutes of

- Examination by stating the reasons and the Investigator/Assistant Investigator makes Minutes of Refusal to Signature.
- d. In the case of examining women, it is necessary to pay attention to the norms of decency and religion.
 - e. Paying attention to and protecting a person's human rights by not publishing the statements of suspects/witnesses or experts according to the principle of the presumption of innocence.

Then, the Settlement and Submission of Case Files includes:

1. Completion and submission of case files is the final activity of the process of investigating the crime of domestic violence carried out by investigators/assisting investigators.
2. Activities in the completion and submission of the Case Files include:
 - a. Resume creation.
 - b. Making a resume is an investigator's activity to compile summaries and conclusions based on the results of investigations into criminal acts that have occurred.
 - c. The resume must meet the formal requirements and material requirements as well as the specified writing requirements.

Next, The composition of this case file includes:

1. Cover of Case Files.

2. Table of Contents of the Case File.
3. The contents of the case file include a resume, police report, minutes of documents, including ordinary letters, warrants, list of witnesses, list of suspects, and list of evidence.

Filing is an activity to file the contents of a Case File with certain binding and sealing arrangements and conditions. Submission of Case Files is an activity of sending Case Files along with transferring responsibility for the suspect and the evidence to the Public Prosecutor which is carried out in two stages as follows:

1. In the first stage, the investigator only submits the case files.
2. The next stage is that the investigator hands over the responsibility of the suspect and the evidence to the Public Prosecutor (Prosecutor) after the case file is declared complete.
3. If within 14 days the case file is not returned by the Public Prosecutor, then the investigation is considered complete and the investigator hands over the responsibility of the suspect and the evidence to the Public Prosecutor.

Termination of investigation is one of the settlement activities of a case that is carried out if:

1. There is insufficient evidence, or;
2. The incident is not a criminal act or,

3. Terminated by law because the suspect has died, the criminal charge has expired, the complaint has been withdrawn for the complaint offense or the crime has received a judge's decision that has permanent and definite legal force.
 4. In the event of termination of the investigation, the case file is not submitted to the Public Prosecutor, but the Investigator/Assisting Investigator is obliged to send a letter of notification of termination of the investigation to the Public Prosecutor
 5. In the event that the termination of an investigation is declared invalid by a pretrial decision and/or new evidence is found, the investigator must resume the investigation by issuing a Decision Letter regarding the Cancellation of the Investigation Termination and a Continuation of Investigation Order.
- 2) If the case file is returned by the Public Prosecutor, the investigator is obliged to complete it according to the Public Prosecutor's instructions.
 - 3) If within 14 days since the submission of the case dossier the Public Prosecutor does not return it, the investigation is considered complete and henceforth the responsibility for the suspect and the evidence is immediately transferred.
 - 4) If the investigation has been carried out optimally, then the case file is returned to the Public Prosecutor with a statement that the investigation has been optimal,
 - 5) As far as possible it is avoided to return the Case Files either in the form of instructions P 19 or P 22.

Based on the author's observations, the patterns of settlement of Domestic Violence Crimes (KDRT) can be classified into 2, namely:

Things that must be considered in carrying out investigations into criminal acts of domestic violence at the Police:

- 1) In the absence of provisions regarding the number of times the Public Prosecutor can return the case dossier to the investigator for completion, then prior to submission of the case dossier is examined carefully, whether it meets the formal, material requirements of the investigation administration.

- 1) Mediation, namely cases of Domestic Violence (KDRT) were resolved by mediation initiated by the Police, at the time before the case was transferred to the Prosecutor's Office for prosecution in court.
- 2) Settlement through the Court, namely the Crime of Domestic Violence (KDRT) is resolved by means of the police carrying out an investigation of the Crime of Domestic Violence (KDRT), then after the case investigation file is

complete (P 21), it is transferred to the Prosecutor's Office to prosecute the accused perpetrator of the Crime of Domestic Violence (KDRT) in Court.

Based on the results of research on domestic violence crimes reported to the Demak Police, domestic violence cases can generally be resolved by mediation. Of the 82 cases of domestic violence that were reported to the Demak Police from 2013 to 2015, 81 cases were successfully resolved by the Police through mediation, and 1 case was P 21 (devolved to the prosecutor's office to proceed to court) and is now sentenced (sentenced).

One case of the crime of domestic violence that was P21 and which had been terminated was in the form of an act of abuse, namely the husband slashed his wife. So crimes of domestic violence that occur in general can be resolved by the Police through mediation. Settlement by mediation is the best, most efficient step and provides better satisfaction to those involved in the crime of domestic violence.

In settlements through mediation, the complainant is usually the victim of the crime of domestic violence, will withdraw the report (do not report it) or withdraw the report, because the victim of the crime of domestic violence claims to forgive and thinks that no crime of domestic violence has occurred, so the case does not need to proceed to court. During mediation, police officers usually summon all those involved in the crime of domestic violence so that they reconcile with each other.

Based on experience and observation, mediation usually results in agreements. The police in this case becomes the "superpower" that protects the agreements in the mediation to be carried out. What's interesting about the Domestic Violence Crime (KDRT) case which was resolved by mediation, namely: several households involved in domestic violence ended in divorce.

In the case of a crime of domestic violence that cannot be resolved through mediation, the police will conduct an investigation and continue the case of the crime of domestic violence to court. The investigation process has been described earlier.

2. Obstacles Faced By The Police In Investigating And Resolving Cases Of Domestic Violence

Based on the observations during research, the main obstacles faced by police officers in resolving cases of Domestic Violence (KDRT), namely:

"the difficulties to seek information from a suspect in a criminal act if it is only guided by the technical manual or juridical provisions because there are no practical methods for seeking information from a suspect in the Crime of Domestic Violence (KDRT). In interrogating suspects to find the information they need, according to the author, techniques, and tactics are needed outside of juridical provisions, for example, pressure is needed on the suspect. On the other hand, there are human rights as suspects which must be respected and must not be violated by the police."

Based on observations, in investigations, there are often obstacles. These obstacles include:

- 1) Witnesses are outside the area.
- 2) Suspect or Defendant convoluted.
- 3) Victims of domestic violence suffer from illness so there is a need to postpone the examination because the victim must seek treatment until he is completely healthy for questioning.
- 4) The suspect or defendant for the crime of domestic violence ran away, which greatly hindered the speedy completion of the case.
- 5) The existence of legal advisors who intentionally slow down the trial process because the longer the trial, the greater the legal advisors are paid by their clients, and legal advisors often determine rates when the legal advisor wants to guarantee their client's victory or free his client so that the inflation costs faced by the defendant when you have to hire the services of a legal advisor which turns out to be hindering the course of the trial process.

The obstacles that exist in interrogating suspects, especially those coming from legal advisors, according to the author, cannot be fully justified. The existence of legal advisors in the midst of the community is very significant in the law enforcement process. Legal advisors generally function to protect the rights of suspects or defendants from possible abuse of

the law during the investigation process. This task should not be misinterpreted as distorting facts.

Indeed, in assisting and defending a criminal case, legal advisors must be very observant in providing legal consultations to clients, because it is not uncommon for clients to tell the position of a criminal case dishonestly. This has very fatal consequences in the implementation of the provision of legal assistance by lawyers.

At the level of law enforcement agencies, such as the police, there is still a negative perception of the existence of legal advisors assisting their clients. This happens because there is a paradigm that the presence of legal advisors in the investigation process can hinder investigators from carrying out interrogation or investigative duties. This paradigm assumes that lawyers are people who will defend clients in various ways.

CONCLUSION

Based on the discussion and analysis of this research, then the conclusion is:

1. The process of investigating and solving domestic violence (domestic violence) at the police can be explained as follows:
 - a. There are 7 main and common investigative processes in the Police, namely: (1) Examination of Victims (reporters) of criminal acts of domestic violence, witnesses, and those who are reported as accused of criminal acts of domestic violence, (2) Arrest or summons the reported party, (3) Detention if necessary, (4) Medical

- examination of the victim and/or Visum Et Repertum, (5) Examination of the suspect, (6) Reconstruction, and (7) Filing of the results of the investigation to be delegated to the Prosecutor's Office.
- b. Patterns of settlement of Domestic Violence Crimes (KDRT) can be classified into 2, namely: (1) Mediation, and (2) Settlement through the Court. Most cases of domestic violence reported to the Police can be resolved through mediation initiated by the Police.
2. Obstacles that are often faced in resolving domestic violence cases by the Police include:
 - a. Rather difficult to find information from a suspect.
 - b. The police faced several obstacles in the form of (1) The witnesses were outside the area, (2) The suspect or defendant was complicated, (3) The victim of domestic violence suffered from illness, (4) The suspect or defendant of the crime of domestic violence ran away, and (5) the existence of legal advisers who sometimes intentionally slow down the investigation process.

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