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JURIDICAL ANALYSIS OF CHILD AND WIFE NEGLIGENCE IN THE HOUSEHOLD BASED ON SUPREME COURT RULING NO.528K/PID.SUS/2019

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Abstract: A household consists of a husband and wife and their dependents. There are many cases when family members commit violence against each other. For example, when a husband or father fails to provide for his family, this is considered household neglect. This research uses a Normative Juridical methodology, which utilizes secondary sources such as books, journals and online sources to compile its findings.

Criminals who commit acts of domestic neglect against their wives and children can be prosecuted and sentenced to criminal sentences that are not in accordance with the demands of the Public Prosecutor. This is the crux of the problem. The second way to look at this issue is from a legal perspective, when the judge considers the sentence imposed in the case. Supreme Court judges consider the evidence of defendants and witnesses when handing down sentences. Although the author believes that the punishment imposed by this decision is fair, the author also believes that this term does not discourage violators. As the author argues, it is the judge's responsibility to consider the material and mental well-being of the victim.

Keywords: Neglect of Children and Wife, Neglect of the Household.

INTRODUCTION

The purpose of marriage is to start a family and ensure everyone is satisfied, both emotionally and physically. The roles of husband and wife are balanced in society and at home. (Hadiati, 2010). In the family there are several roles, namely the role of parent and the role of child.

The family may be the best social structure to help each member reach his or her maximum potential, but it is also the site of many deviations and other wrongdoings that cause pain and suffering to other family members. This can happen if those involved in the family fail to see the importance of upholding moral and ethical standards. (Dikdik, 2007). Children who should need more attention and affection will start to be neglected.

Partners, like children, are often victims of domestic violence. When one family member deliberately and deliberately commits an unlawful act against another family member, either for his or her own or someone else's benefit, and the victim experiences psychological, physiological or social harm, then this is called domestic violence (Rena, 2010). Article 1 of the 2004 Domestic Violence Law (No. 23 of 2004). What is meant by "domestic violence" is: "Domestic violence is any act against someone, especially women, which results in physical, sexual, psychological misery or suffering, and/or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household sphere."

The regulations governing domestic violence crimes have very important meaning. Although it is usually classified as an internal, "separate" process. Many people are reluctant to report and are even embarrassed to

talk about the violence they experience because it is considered a shame that must and must always be covered up in order to maintain self-esteem (Rena, 2010). The act of neglecting individuals who should be provided financially and with their survival needs is an urgent concern

The case of domestic neglect which violates Law 23 of 2004 which aims to eliminate domestic violence was decided by the Supreme Court in decision number 528 K/Pid.Sus/2019. It is suspected that the defendant committed family negligence by abandoning his children and legal wife. Because the role of the breadwinner is to ensure the survival of his family, this behavior constitutes desertion. According to Article 9 of Law Number 23 of 2004, it is regulated that no one may leave members of their household without supervision, regardless of whether that person is obliged to support, care for, or support them according to applicable law or by contract or agreement.

Domestic neglect, sometimes referred to as economic abuse, occurs when a defendant fails to provide emotional and material assistance to his wife and children. It can be seen from the defendant's actions – such as refusing to provide food, basic necessities, financial assistance, health services, work, etc. – that he is worried about the welfare of his wife and children. The author is interested in learning more about how law and legal considerations are applied to specific situations to overcome these challenges.

MAIN PROBLEM

The author is interested in exploring this problem further by focusing on the problem formulation, as seen in the description above:

1. What is the meaning of decision 528K/Pid.Sus/2019 for the application of substantive criminal law against perpetrators of crimes of domestic neglect?
2. In decision 528K/Pid.Sus/2019, the panel of judges imposed crimes including the crime of neglect in the domestic environment; What factors do judges consider when sentencing for these crimes?

METHOD OF RESEARCH

The author uses a Normative Juridical methodology in this research, which is based on primary legal literature and involves the analysis of relevant ideas, concepts, principles and laws. Reading books, laws, court decisions, and other relevant documents is the essence of this method, sometimes called the bibliographic approach.

RESEARCH RESULT AND DISCUSSION

A. A. Application of Material Criminal Law to Cases of Criminal Neglect in the Domestic Scope Regarding Decision Number 528K/Pid.Sus/2019

Neglect in the family sphere can be interpreted as the action of a person who does not fulfill his obligations to provide support, protection and care to family members such as wife and children. *Strafbaar feit* or delict, or an act of violence, is neglect of the household, such as leaving one's wife and children alone. This kind of behavior is prohibited under Indonesian criminal law, and violators

will face criminal penalties. (Satria, 2016)

Law on the Elimination of Domestic Violence of 2004 (Law No. 23). Anyone proven to be neglecting family members will face a maximum fine of fifteen million rupiah (Rp) or three years in prison, according to Article 49 of the PKDRT Law. So, the PKDRT Law provides a legal basis for handling cases of neglect which appear to be acts of domestic violence.

In the Sumenep District Court Decision Number 41/Pid.Sus/2018/PN Smp dated 2 May 2018, the judge decided that the defendant was proven guilty of "abandoning other people within his household" based on the prosecutor's demands and subsequent test. The defendant was sentenced to three months in prison and ordered to return the extract from his marriage certificate to Silvi Qomariah. The defendant was also charged a court fee of five thousand rupiah.

The defendant appealed the decision of the Sumenep District Court to a higher court so that it could review the district court's decision. The East Java High Court reviewed the appeal and accepted it, strengthening the district court decision dated 2 May 2018 (Number 41/Pid.Sus/2018/PN Smp), in which the Defendant was obliged to pay court costs. The defendant then proceeded to the next level court, the Supreme Court, to challenge the High Court's decision.

The Supreme Court rejected the defendant's cassation request and ordered the prosecutor to pay the court costs after reviewing the defendant's cassation arguments in the cassation memorandum.

1. Decision Analysis

In accordance with Decision Number 528K/Pid.Sus/2019, the Judge has rejected the cassation petition of the Cassation Petitioner/DEFENDANT EKO SUTRISNO bin MASDAWI. In the previous trial at the Sumenep District Court, the judge determined in the Sumenep District Court Decision Number 41/Pid.Sus/2018/PN Smp dated 2 May 2018 that the defendant Eko Sutrisno Bin Masdawi was legally and convincingly proven guilty of committing the crime. the crime of "abandoning other people within the scope of one's household". This crime is regulated and threatened by Article 49 letter a of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

The author assesses that the law applicable in this case is appropriate because it is in line with article 49a of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. It is known that the defendant neglected people in his household, especially his children and wife.

To determine the defendant's guilt in committing the offense as intended in Article 49 letter a of Law Number 23 of 2004 concerning the Eradication of Domestic Violence, it is necessary to fulfill the main elements of a criminal act, namely:

a. Everyone's Elements

in particular, persons in their capacity as responsible and legally accountable agents. While on trial. A defendant in good physical and mental health appeared before the court, claiming to be EKO SUTRISNO bin MASDAWI. In accordance with the provisions of the law, the panel of judges considered that "everyone" was satisfied.

b. Abandoning other people within the household as intended in Article 9 paragraph 1

It can be interpreted as the action of a person who does not fulfill his obligations to provide support, protection and care to his family members, such as his wife and children. Neglect can occur in various forms, such as economic neglect, emotional neglect, and physical neglect. Neglect can be a form of domestic violence.

Based on the facts, in the trial there was evidence that corroborated the statements of each witness and the statement of the Defendant himself. The dispute between the Defendant and the Victim began because the Defendant had an affair and married another woman without his wife's consent. In the end, the Defendant did not remain silent to provide any assistance or support to the victim or the Defendant's child. The victim, who is the Defendant's wife and a descendant of this marriage, was abandoned by the Defendant, and "the existence of an element of neglect of other people within her household" was proven and satisfied by the Defendant's actions.

All the elements contained in Article 49 letter a of Law Number 23 of 2004 have been fulfilled, therefore the defendant has been proven to have committed a criminal offense that harmed other people, namely his children and wife. The sentence imposed by the judge is half of the criminal charge demanded by the Public Prosecutor, namely 6 (six) months in prison. However, the judge sentenced him to prison for 3 months. This sentence does not exceed the maximum sentence stipulated in the law charged by the Public Prosecutor.

2 B. Legal Considerations of the Panel of Judges Regarding Cases of Criminal Neglect in the Domestic Scope in Imposing Crimes Regarding Decision Number 528K/Pid.Sus/2019.

1. Consideration of the Supreme Court Judge

In deciding this case, the Supreme Court Judge had many considerations. First, the judge considered that the defendant's cassation request could not be justified because *Judex Facti* did not misapply the law and the application of the law was correct and appropriate, and did not exceed the authority of all parties. Furthermore, according to the statements of the witnesses and the defendant's own statement which was connected to the evidence, the defendant was proven to have neglected his children and wife thereby fulfilling the criminal elements in Article 49 letter a of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Finally, the remaining reasons for the cassation of the cassation applicant/defendant regarding the severity of the crime in this case are the authority of *Judex Facti* which is not subject to examination at the cassation level and has given sufficient consideration to the aggravating and mitigating circumstances of the sentence in accordance with Article 197 Paragraph (1) letter f of the Criminal Procedure Code .

The appeal for cassation is now rejected for the reasons stated above, as well as the fact that *Judex Facti*'s decision in this case does not violate any statutory regulations or legal precedents. After the judge's consideration, the Supreme Court of Justice's decision was issued which

essentially rejected the cassation request from the cassation applicant or defendant, and charged the court costs to the defendant.

C. Author's Analysis

To make a decision, the judge must look at the case from a sociological and juridical perspective. A judge must be able to consider all the facts and evidence in the case and make a decision that is fair to all parties involved. The foundation of human society is the ideals upheld by its judges. Therefore, a judge must remain impartial in carrying out his responsibilities, and place the values of humanity, truth and justice above all else. (Revelation, 1984).

Judex Facti has tried the Defendant in accordance with the relevant Criminal Penalty and did not exceed the limits of its authority, in accordance with the legal considerations contained in decision Number 528K/Pid.Sus/2019. Apart from that, according to Article 49 letter a of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, the Defendant's act of neglecting his wife and children is a criminal element.

Judges consider legal and non-legal factors in making decisions. Referred to in Lilik (2007) Matters that are not directly related to the law include the defendant's mental health, social context, and the consequences of the defendant's actions. The court's discretion in determining punishment is not unlimited. When making decisions, judges are obliged to pay attention to the law on which the law is based.

The Supreme Court Judge rejected the defendant's cassation request after carefully considering all relevant factors. Therefore, the defendant will be subject to the same sentence as

the previous decision, namely being sentenced to three months in prison and paying a court fee of five thousand rupiah (Rp), as intended in Article 49 letter s of Law Number 23 of 2004 concerning the Elimination of Violence In the Household.

The results of this research show that the defendant Eko Sutrisno bin Masdawi committed an unlawful act by neglecting his wife Silvi Qomariyah and their illegitimate children. The author stated that the sentence handed down to the defendant was too light considering his history of neglecting his family, including his wife and children. As stated in Article 49 letter s of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, the maximum penalty is three years in prison or a fine of fifteen million rupiah. The judge has the discretion to impose a criminal sentence up to the maximum penalty, which in this case is six months in prison, but the judge decided that the defendant would only serve a sentence of three months.

One way that laws can be enforced is by enforcing compliance, which in turn becomes a punishment for society. When people follow legal rules and face consequences for breaking them, we say that the law is effective. The deterrent impact or positive impact of punishment depends on whether the punishment is negative or positive. However, in this decision, the criminal punishment given was only half of the prosecutor's demands and according to the author, this was less effective and therefore had less of a deterrent effect.

Sanctions for perpetrators of child neglect are outlined in Law Number. 35 of 2014 concerning Child Protection. Criminal sanctions and/or

finest of up to IDR 25,000,000 are available for those who violate Article 59 of the Law and neglect children. At the same time, Articles 304–308 of the Criminal Code regulate child neglect and carry a maximum penalty of 4,500 rupiah or two years and eight months in prison for the perpetrator. Given the defendant's history of child abuse, the author believes that he should be fined more to ensure the welfare of his children.

Fines not only function as punishment, but can also provide benefits for victims as well as for society. Fines given to perpetrators of child neglect can also be effective in preventing acts of child neglect in the future and are a form of effective punishment that needs to be given to prevent acts of violence and protect children's rights.

Apart from neglecting his children and wife, the defendant also had an affair and married another woman without his wife's permission. Because of this, the difficulties faced by the defendant got worse. If the husband and wife wish, the court can give permission for them to have more than one wife based on Article 3 paragraph (2) of the Marriage Law. Apart from that, men who want to marry multiple wives are required based on Article 56 paragraph (1) KHI to ask permission from the Religious Court. Based on Article 279 of the Criminal Code, the defendant Eko Sutrisno committed a crime when he married for the second time. According to this article, a husband/wife faces a maximum sentence of five years in prison if he remarries even though he knows that his previous marriage made the act unlawful. Apart from that, the husband could face criminal charges for his actions which violate Article 280 of the Criminal Code. This article states that

if a person marries without informing his partner of legal obstacles, he can be imprisoned for up to five years.

Remarrying without the legal wife's consent is a crime. Article 279 of the Criminal Code regulates the criminal offense of a husband entering into a polygamous marriage without court approval or the consent of his legal wife. If a partner remarries while knowing that his or her current marriage makes it illegal, he or she faces up to five years in prison, according to this article. Apart from that, the husband could also face criminal penalties for his actions related to Article 280 of the Criminal Code which states that a person faces a maximum prison sentence of five years if they enter into a marriage without notifying the other party of legal obstacles. As a result, the legal wife can report her husband to the authorities for the crime and file criminal charges.

allowed to work with certain conditions Individuals in Indonesia are protected from arbitrary actions by other parties and are guaranteed legal certainty. Justice and providing protection for human rights violated by others are additional goals of legal protection. The victim's mental health must be taken into account with the victim's legal status. According to the Domestic Violence Law, medical personnel who treat victims of domestic violence have the responsibility to carry out a thorough examination in accordance with professional standards, document their findings in writing, and submit a report at the request of a police investigator or a medical certificate. The autopsy results of the victim and police met the standards set by investigators or a doctor's certificate.

Additionally, victims may also benefit from psychotherapy sessions with psychiatrists and counseling with social workers, which can help victims feel safer, educate them about their rights to seek protection from authorities, and build their sense of self-worth.

Both the justice system and aspects of external coercion are linked to law when discussing the efficacy of law. A regulation must also have the possibility of coercion in order to be considered a law; Therefore, the effectiveness of a legal regulation or provision is closely related to this coercive aspect. (Soerjono, 1988). Judges must also consider the impact that the perpetrator's actions have on the victim and society.

It must be ensured that the punishment imposed can provide a deterrent effect for perpetrators of neglect and prevent similar cases from occurring in the future. Apart from that, judges must also pay attention to the interests of victims and the community in imposing sentences, so that the decisions taken can provide justice for all parties involved. In the context of the marriage of the victim and the defendant, it is important to know that the Islamic religion has certain rules regarding marriage. One of these rules is Taklik Nikah, which contains the provision that divorce must occur if certain circumstances arise as stated in the agreement. The couple reads it after the wedding ceremony in front of all the wedding attendees. Issues that are often discussed in marriage contracts are:

- Failed to provide him with mandatory maintenance for a period of three months.
- Causing harm to my wife's physical health, or.

- Leaving my wife for at least six months.

According to the agreement, the victim, who is the defendant's husband/wife, has the right to file a divorce suit in court. This has the potential to influence divorce. In the Religious Courts, violation of the divorce agreement can be a reason for divorce, and the result of the divorce can be a divorce.

CONCLUSION

Based on the things that have been discussed, the author can conclude;

1. In accordance with the provisions of Article 49 letter a of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, this case is handled in accordance with substantive criminal law. The maximum criminal penalty has not been exceeded and all requirements of this article have been met. However, in terms of prosecution and sentencing, the defendant should take into account the causes and effects of the defendant's actions on the victims so that it is hoped that a heavier sentence can be imposed on the defendant, considering that the impact of the defendant's actions is very detrimental. Not only are there material losses, the defendant's actions can also affect the victim's mental and psychological health.
2. In deciding a case, the judge has the right to impose a minimum or maximum sentence in accordance with the article in which the person charged is charged. In this case, the charges received did not exceed

the maximum limit of Article 49 letter a of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. The judge's considerations in making the decision are also quite numerous, namely the *Judex Fact* which states that there is no misapplication of the law in handling cases at the District Court level and there is no abuse of authority, witness statements, defendant statements, evidence, and also the facts revealed in the trial.

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mengatur tentang perkawinan yang terhalang.

Pasal 49 Undang-undang Republik Indonesia No. 23 tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.

Putusan Mahkamah Agung Nomor 528K/Pid.Sus/2019.