

Analysis of Criminal Responsibility of Perpetrators of Criminal Act of Assault Causing Death from the Perspective of Victim Protection (Decision Study Number: 185/Pid.B/2024/PN Smg)

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Abstract. *The act of abuse is one of the phenomena that is difficult to eliminate in community life, which often occurs such as beatings and physical violence often resulting in injuries to the victim's body or limbs, not infrequently making the victim physically disabled for life, or even resulting in death. Even to the point of causing the victim to die, the demands of punishment for the perpetrator of the crime must really provide a sense of justice for the victim, the victim's family and even the perpetrator himself in order to provide a lesson and a deterrent effect. As a responsibility towards the perpetrator of the crime in connection with the law enforcement process given to the guilty person lies in what crime he committed. The approach method used is normative juridical, namely a library legal research conducted by examining library materials or secondary data only using deductive thinking methods. The writing specifications use descriptive analysis, the sources and types of data used are secondary data. The data collection method is by collecting data using secondary data collection methods. The problem is analyzed with the theory of criminal responsibility and the theory of justice. The act of abuse committed by a person, whether intentionally or unintentionally, must first be ascertained to determine the penalty that will be imposed on the person. The existence of abuse by the perpetrator is actually intended for the pain of a person only, not for the purpose of his death, meaning the perpetrator's intention. Human rights are basic rights that are inherently inherent in humans, are universal and direct. This also includes the rights that must be obtained by victims of abuse. In a legal event, of course, it begins with a legal act, from a legal act a legal bond or relationship will arise, so it can be interpreted that the legal consequences can arise from legal acts and/or legal relationships. Victims of crime generally face a criminal justice system that is often preoccupied with police and prosecutorial affairs rather than directly dealing with the perpetrator. Worse still, the focus of attention in the justice and criminal justice system is not on the victim who clearly suffers the most losses, but rather more on the perpetrator of the crime.*

Keywords: *Abuse; Criminal; Responsibility; Victims.*

1. Introduction

Law enforcement in a country of law like Indonesia is important to be able to create justice in society in accordance with the goals of Indonesian National development. The court is the right institution for law enforcement because the court is a judicial body that is the mainstay of hope for seeking justice and is the best way to resolve all cases in a country of law.¹

The lack of legal awareness in today's society has caused distrust between members of society themselves as well as distrust with law enforcement officers and the government. Moreover, with the current difficult economic conditions of our country, it has resulted in the emergence of crime in society which is motivated by the increasing needs of life in each member of society. Conditions that occur every day and are experienced by society, for example mugging, armed robbery, theft, robbery, assault, rape, murder, teenage brawls, or better known as "street crime" are challenges for the law enforcement process. The development of crime as described above, then the law occupies an important position to overcome the problem of this crime. Legal instruments are needed to resolve conflicts or crimes that exist in society. One of the efforts to prevent and control crime is by using criminal law with its sanctions in the form of criminal penalties.²

Abuse is one of the phenomena that is difficult to eliminate in community life. Various acts of abuse that often occur such as beatings and physical violence often result in injuries to the victim's body or limbs, and often even cause the victim to become physically disabled for life, or even result in death. In addition, acts of abuse also often cause psychological effects or impacts on the victim such as trauma, fear, threats, and sometimes there are victims of abuse who experience mental and psychological disorders.³

Abuse is also one of the phenomena that is difficult to eliminate in community life. Various acts of abuse that often occur, such as beatings and physical violence often result in injuries to the victim's body or limbs, sometimes even causing the victim to be physically disabled for life, including death.⁴

Meanwhile, perpetrators of criminal acts of abuse resulting in death can be subject to relevant punishment in accordance with Article 351 paragraph (3) of the Criminal Code which states: "Assault resulting in death is punishable by a maximum of seven years' imprisonment". The phenomenon of many acts of abuse together resulting in death often occurs in society and is influenced by several things, including the economic situation of the perpetrator, the perpetrator's unstable emotions, how the perpetrator was raised in the family, how the environment was supervised or perhaps the victim who provoked the violence and many other factors that cause abuse to result in death.

One example of a case studied and reviewed by the Author in this writing is a case of criminal assault that resulted in the loss of another person's life in the study of Decision Number 185/Pid.B/2024/PN Smg which was tried by the Semarang District Court that the defendant AES bin Suroto on Thursday, December 14, 2023 at around 23.00 WIB who was hanging out

¹CST Kansil, 1989, Introduction to Indonesian Law and Legal System, Balai Pustaka, Jakarta, p. 56.

²Muladi and Barda Nawawi, 1998, Criminal Theories and Policies, Alumni, Bandung, p. 148

³Muhammad Raflenchy, Eddy Rifai, Dona Raisa M, Criminal Liability of Perpetrators of Criminal Acts of Assault Resulting in Death, Multidisciplinary Scientific Journal Vol.2, No.2, January 2023, pp. 433-434.

⁴Laola Subair and Umar Laila, "Legal Analysis of the Criminal Act of Assault," Jurnal Tociung (Journal of Legal Studies Vol. 2, No. 2 (2022), pp. 83-84.

with his friends while drinking alcohol. Then on Friday, December 15, 2023 at around 01.00 WIB, Mr. RFQ did a live Instagram at which time the Kampung Tikus camp challenged to WAR then the Kuningan camp agreed. Witness PTR brought 1 (one) sharp weapon in the form of a sickle with a black wooden handle approximately 85 cm long which was then given to the defendant AES bin Suroto and a brawl ensued where the position of the defendant AES bin Suroto who was successfully chased by the victim was then the defendant was slashed by the victim using the sharp weapon hitting his left shoulder so that the defendant AES turned around and immediately swung 1 (one) sharp weapon with a sickle handle towards the victim's neck then at 06.00 WIB the defendant AES bin Suroto and his friends were secured by officers and taken to the Semarang Police.

The consequences of criminal acts of abuse have occurred frequently and frequently, even to the point of causing the victim to die, so the demands for punishment for the perpetrators of the crime must truly provide a sense of justice for the victim, the victim's family and even the perpetrator himself so that it can provide a lesson and a deterrent effect.⁵

Legal protection is providing protection for human rights that are harmed by others and this protection is given to citizens so that they can enjoy all the rights granted by law or in other words, legal protection is a number of legal efforts that must be given by law enforcement officers to provide a sense of security, both mentally and physically from disturbances and various threats from any party. Victims of abuse are generally those who suffer greatly from a crime, because they do not receive the protection provided by law for perpetrators of abuse.

Based on the problems above, regarding the many phenomena of criminal acts of abuse so that people who do not know the rules for the community are careful and vigilant, such as the case registered by the Semarang District Court Number 185/Pid.B/2024/PN Smg, it has become a special attraction for the author to study this in more depth by conducting research, for writing a thesis entitled "ANALYSIS OF CRIMINAL RESPONSIBILITY OF PERPETRATORS OF CRIMINAL ACTS OF ASSAULT CAUSING DEATH FROM THE PERSPECTIVE OF VICTIM PROTECTION (Study of Decision Number: 185/Pid.B/2024/PN Smg)."

2. Research Methods

The approach method used in this study is the normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as basic materials for research by conducting a search for regulations and literature related to the problems being studied. Data collection is carried out through library studies by reviewing literature related to research problems. The data analysis technique is qualitative analysis in the form of exposure, description, and description of the research results.

3. Results And Discussion

3.1. Criminal Responsibility for Perpetrators of Criminal Acts of Assault Causing Death from the Perspective of Victim Protection in Current Positive Law

A crime committed with violence is certainly one of the actions that can cause harm to others due to the treatment of a perpetrator of a crime, with the aim of hurting either physically or

⁵Kadek Agus Irawan. 2019. "Criminal Acts of Assault Resulting in the Death of a Person". Journal of Legal Analogy Volume 1. No. Number 3, p. 342.

mentally another person. Basically, many violent crimes occur in society due to several factors, such as poor economy, the perpetrator's unstable soul, poor education from the family, as a result of the violence, the perpetrator wants revenge with the aim of making the victim feel the same pain or injury as the victim feels, generally in Criminal Law, violent crimes will give rise to legal responsibility for the perpetrator.⁶

Criminal liability is a continuation of the principle of legality regulated in Article 1 Paragraph (1) of the Criminal Code which states that "an act cannot be punished, except based on the power of existing criminal legislation". The principle of legality is used as the basis for holding criminal liability for criminal acts committed by a person. Criminal liability can be interpreted as a logical consequence that must be accepted for the mistakes made by the perpetrator of the crime. Roscoe Pound said that criminal liability is an obligation to pay retribution that the perpetrator will receive from someone who has been harmed.

R. Soesilo said that according to jurisprudence, what is meant by persecution is intentionally causing unpleasant feelings (suffering), pain or injury. Based on the fourth paragraph of the article, what is also included in the definition of persecution is intentionally damaging someone's health. Examples of what is meant by unpleasant feelings, pain, injury, and damaging health:⁷

1. Unpleasant feelings, for example pushing people to jump into rivers so they get wet, making people stand in the hot sun and so on.
2. Pain, for example pinching, kicking, hitting, slapping and so on.
3. Wounds, for example slicing, cutting, stabbing with a knife and so on.
4. Damaging health, for example, someone who is sleeping and sweating, then the window of the room is opened so that the person catches a cold.

The existence of the perpetrator's abuse is actually intended for the pain of a person only, not for the purpose of his death, meaning that the perpetrator's intention as stated in Article 353 Paragraph (3) of the Criminal Code explains that the perpetrator did not want the act of abuse he committed to result in the death of a person. The Criminal Code explains that the sanctions against perpetrators of abuse that causes the death of a person, can be subject to a maximum prison sentence of 9 (seven) years.

In the case of decision Number 185/Pid.B/2024/PN Smg which the author studied and examined, the defendant AES bin Suroto had committed a criminal act of assault that caused the loss of another person's life or caused death. The defendant's actions were carried out on December 14, 2023 by hanging out with RFQ, PV, YD and other friends at the Boom Lama Bridge, Kuningan Village, North Semarang District, Semarang City while drinking alcohol. Then on Friday, December 15, 2023 at around 01.00 WIB, Mr. RIFQI did a LIVE Instagram via his account (BADUT_KENDAL1) at that time from the Kampung Tikus camp joined the LIVE and challenged to WAR (brawl) then from the Kuningan camp agreed/agreed. However, at that time the Defendant Aditya Eka Saputra Bin Suroto was in the rearmost position, so the Victim managed to catch up, when the distance was close, the Defendant AES Bin Suroto was slashed

⁶Adia Nugraha, "Imposition of Conditional Sentences on Perpetrators of Criminal Acts of Assault," FIAT JUSTISIA, Journal of Legal Studies Vol. 10, No. 1 (2017), pp. 35–60.

⁷Soesilo, R. Criminal Code (KUHP) and its Complete Commentaries Article by Article, Politeia, Bogor, pp. 245-246.

by the victim using a sharp weapon, a sickle, so that it hit the left shoulder, so that the Defendant immediately turned around and immediately swung 1 (one) sharp weapon, a sickle, with a black wooden handle, approximately 85 cm long towards the victim's neck. that based on Visum et Repertum Number: B5 / VI2t.2 / 10/2024 dated December 14, 2024, wounds due to sharp violence were found in the form of stab wounds to the neck; incised wounds to the back; and slash wounds to the neck, blood seepage was found on the inner skin of the neck, neck muscles and cervical spine. Signs of severe bleeding were found. Signs of suffocation were found. The cause of death was sharp violence in the form of a slash wound to the neck that severed the large blood vessels of the neck which resulted in severe bleeding and suffocation.

The defendant's actions have committed the crime of assault with the intention of planning to cause death. The defendant's actions by the public prosecutor were charged with violating the Primary charge of Article 338 of the Criminal Code and the Subsidiary charge of Article 353 paragraph (3) of the Criminal Code by imposing a criminal sentence on the defendant with imprisonment for 7 (seven) years and 10 (ten) months, reduced by the time the defendant was in temporary detention.

This shows that the system of sanctions and criminal liability is not aimed at protecting victims directly and concretely, but only protecting victims indirectly and abstractly. So criminal liability for the perpetrator is not liability for the victim's losses/suffering directly and concretely, but rather is more focused on personal/individual liability.⁸

The rules regarding the position of perpetrators of abuse are guaranteed legal protection as regulated in the Criminal Procedure Code, but for victims of abuse it has not been regulated, this does not reflect a sense of justice for victims of abuse. The description above shows that in resolving criminal cases, the law often prioritizes the rights of the suspect/defendant, while the rights of the victim are ignored. In discussing criminal procedural law, especially those related to human rights, there is a tendency to examine matters related to the rights of the suspect without also considering the rights of the victims.

3.2. Criminal Liability of Perpetrators of Criminal Acts of Assault Causing Death from the Perspective of Victim Protection in Future Positive Law

The Criminal Code does not specifically provide a definition of what is meant by persecution. The literal meaning of persecution can be seen for example in the Great Dictionary of the Indonesian Language, which means arbitrary treatment (torture, oppression, and so on). Persecution can be interpreted as an act carried out intentionally to cause misery (leed) or damage the health of others. The elements contained in persecution are subjective elements (the existence of intent) and objective elements (the existence of an act and the existence of the consequences of the intended act, namely pain and/or injury to the body).⁹

The act of assault is regulated in the Criminal Code, Articles 351 to 358. The act of assault is classified into ordinary assault (regulated in Article 351 of the Criminal Code), minor assault (Article 352 of the Criminal Code), premeditated assault (Article 353 of the Criminal Code),

⁸https://PROTECTION_OF_VICTIMS_OF_ABUSE_IN_HANDLING_CRIMINAL_ACTIONS_IN_INDONESIA.accessed on Monday, September 1, 2024 at 13.24 WIB.

⁹Soeharto HM, 1993, Material Criminal Law; Objective Elements as the Basis for Indictment, Sinar Grafika, Jakarta, p. 36

serious assault (Article 354 of the Criminal Code), and serious premeditated assault (Article 355 of the Criminal Code). In addition to the classification of assault as above, the Criminal Code also regulates the crime of participating in a fight or assault on another person as regulated in Article 358 of the Criminal Code. In Indonesian criminal law, the act of assault is included in the general crime category, meaning that investigators still have the authority to process the case without requiring the consent of the injured party (victim). Normatively, the resolution of assault is usually resolved through the courts. Even if there is forgiveness or reconciliation between the perpetrator and the victim, this does not stop the legal process. Only in some cases, minor assault can sometimes be resolved outside the courts, namely through mediation. The perpetrators of abuse are threatened with a minimum prison sentence of 3 months (minor abuse), and a maximum of 15 years (serious abuse with premeditation resulting in death). In addition to imprisonment, perpetrators of abuse can also be punished with a fine according to the classification of abuse committed.¹⁰

In Indonesian criminal law, victims cannot determine how the process of seeking justice for themselves should be. The interests of victims in positive law are considered to be represented by the police or prosecutors, who act based on normative law. Victims cannot convey what they need for recovery, let alone actively participate in determining how the resolution of the abuse that has befallen them will be. The participation of victims in the trial is limited to being "victim witnesses" whose testimony will be heard regarding the crime that has befallen them, not their need for recovery, as well as their need for a just resolution for them. In this situation, the victim is still the party that seems to be forgotten. The focus of resolving abuse is more on how to prove the perpetrator's guilt and what punishment is appropriate for them. As a result, victims often feel dissatisfied with the court's decision and feel that they have not received any benefit from the decision. This dissatisfaction is caused by several things, including the perpetrator's sentence being considered too light and/or the victim feeling that they cannot regain their rights that were revoked due to the crime.

Crime victims generally face a criminal justice system that is often preoccupied with police and prosecutors rather than dealing directly with the perpetrators. Worse still, the focus of attention in the justice and criminal justice system is not on the victims who clearly suffer the most losses, but rather on the perpetrators of the crime. In court, only the perpetrators are given the opportunity to speak about the crime from a personal perspective. Meanwhile, the victims only talk about what they experienced, not what they felt or needed. Even when the perpetrators are imprisoned, they still receive attention from the state in the form of consumption and rehabilitation. Criminals are even considered "seekers of justice" in criminal law.¹¹

Indonesia also has Law of the Republic of Indonesia Number 13 of 2006 concerning Protection of Witnesses and Victims as amended by Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2016 concerning Protection of Witnesses and Victims, which is followed up by Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. The legislation aims to provide a sense

¹⁰Agus Raharjo, 2008, Mediation as a Basis for Settling Criminal Cases, Jurnal Mimbar Hukum, Vol. 20, Number 1, February 1998, pp. 99-100.

¹¹Mudzakir, 2011, The Position of Victims of Crime in the Indonesian Criminal Justice System, UJI Journal of Law, Vol. 14, No. 1 March 2011, Yogyakarta, pp. 31-32.

of security to witnesses and/or victims in providing information in every criminal justice process. Protection of victims in this law is interpreted as all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims which must be implemented by the Witness and Victim Protection Agency (LPSK) or other institutions.

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It is hoped that criminal law policies will help overcome stalking by creating criminal regulations that are in accordance with future circumstances and situations. As conveyed by Barda Nawawi Arief, criminal law reform is essentially an effort to foster and reform criminal law so that it is in accordance with socio-political, socio-philosophical, and socio-cultural values that constitute and fulfill the normative and material content of criminal law that is aspired to, therefore, "criminal law reform must be carried out using a policy-oriented approach and a value-oriented approach."

Therefore, to prevent and overcome this criminal act of abuse, it is expected to formulate positive legal provisions by emphasizing and clarifying the formulation of articles that regulate criminal acts of abuse. Efforts to emphasize and clarify this are not an effort to strengthen restrictions on human rights to move freely and do what they want, but this effort is expected to provide legal protection to victims of abuse themselves.

4. Conclusion

Criminal liability based on the perspective of the occurrence of a criminal act, then a person is criminally responsible if his actions are against the law. In the settlement of criminal cases, many victims of abuse are found in the author's opinion to not receive adequate legal protection, both immaterial and material protection, the victim is the party who is greatly harmed in a criminal act who should receive protection. The rules regarding the position of the perpetrator of abuse receive legal protection as regulated in the Criminal Procedure Code, but for victims of abuse it has not been regulated, this does not reflect a sense of justice for victims of abuse. The description above shows that in the settlement of criminal cases, the law often prioritizes the rights of the suspect/defendant, while the rights of the victim are ignored.

The interests of victims in positive law are considered to have been represented by the police or prosecutors, who act based on normative law. Victims cannot convey what they need for recovery, let alone actively participate in determining how the resolution of the abuse that has befallen them will be. To prevent and overcome this criminal act of abuse, it is hoped that positive legal provisions can be formulated by emphasizing and clarifying the formulation of articles that regulate criminal acts of abuse. Therefore, criminal law reform must be carried out using a policy-oriented approach and a value-oriented approach.

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