

# The Parameter Analysis of Serious Injury in the Crime of Maltreatment

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## Abstract

*This legal research aims to identify and analyze the representation of injury parameters in maltreatment cases in terms of medicolegal aspects or the implications of medical science and legal science. In this research, the author uses the normative juridical method. In the conclusion of the discussion that juridically, Article 90 of the Criminal Code has included several circumstances into the definition of serious bodily injury or the definition of "zwaar lichamelijk letsel" as a disease or injury that cannot be expected to heal completely or which poses a danger to life, incapacity to carry out official activities or work on an ongoing basis, loss of use of one of the five senses, paralysis, impairment of common sense for more than four weeks, and miscarriage or death of the fetus in the womb of a woman. Medically, the thing that affects the determination of the qualification of an injury is the anatomical region affected by the trauma. For example, if the neck region is traumatised, even though there is little visible impact, there is a tendency to assign a more severe wound qualification. This is because the neck region contains organs that are vital for life, such as the carotid artery, jugular vein, and respiratory tract. Violence to the face and other areas of the head are also considered factors that contribute to wound qualification.*

*Keywords: Maltreatment, Parameters, Trauma.*

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## 1. Introduction

Indonesia is a state of the law in which the exercise of government power is based on law. In a state of law, the power to run the government is based on the sovereignty of law (rule of law) and aims to implement legal order.<sup>1</sup> Another opinion states that in a state of law, the law as a basis is realised in legislation culminating in the constitution or basic state law. The state constitution must also contain the idea of constitutionalism, namely the limitation of power and the guarantee of the basic rights of citizens.<sup>2</sup> Thus, in a state of law, state power is based on law, not mere power and state government is based on a constitution that understands constitutionalism, without which it is difficult to be a state of law.<sup>3</sup>

Along with the times, humans need regulations that are by the times as well. One of the tasks of government in a country is to formulate regulations whose main

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<sup>1</sup> Haris Wahyu Sunarno and Akhmad Khisni. (2020). *Analysis of Criminal Liability as Doer of Preening Criminal (Case Study in the Blora State Court)*, Jurnal Internasional Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8779/4074>

<sup>2</sup> Muhammad Adiel Aristo. (2020). *Criminal Law Policy against Actor of Criminal Performance Persecution*, Jurnal Internasional Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/issue/view/434>

<sup>3</sup> Supriyono. (2020). *Criminology Study of Crime of Fencing the Stolen Goods*, Jurnal Internasional Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8407/4068>

purpose is to realise justice, certainty and benefit for the community. This is as intended by Article 1 paragraph (3) of the 1945 Constitution, which explains that Indonesia is a state of law.<sup>4</sup> The legal policy that aims to make the law a rule that protects its citizens from authority as the Indonesian nation that saves lives for the future. The legal system in several countries is different, Indonesia has a poor legal system because there are still many rules that have not been enforced under legal rules. In Indonesia, the rule of positive law is the main element in realising a safe and orderly life. The field of law that plays a role in maintaining the order and security of the nation is criminal law.

Forms of crime that occur around us are in the form of violence such as maltreatment. The crime of maltreatment occurs because of the personality of people who lack supervision both in terms of insufficient education, as well as the influence of the surrounding environment that is not good. The Criminal Code has classified several rules or articles relating to maltreatment and the types of maltreatment have different sentencing consequences. In the criminal code, the offence of maltreatment represents an act that harms another person physically and can also result in the loss of life.

The elucidation of the law does not stipulate what constitutes maltreatment. According to jurisprudence, maltreatment is defined as intentionally causing unpleasant feelings, pain or injury. Persecution also includes intentionally damaging the health of another person. This is called ordinary maltreatment and is punishable by a heavier penalty if the ordinary maltreatment results in serious injury or death. Article 90 of the Criminal Code provides information on serious injury.

In the definition of "serious injury" Article 90 of the Criminal Code formulates the meaning of serious injury in the original formulation as (*zwaar lichamelick letsel*) which is translated as serious bodily injury which is always abbreviated as serious injury. Some experts refer to "severe wounds" and it is not appropriate to use the word "heavy" for wounds because the word "heavy" is generally used to denote size. In the large Indonesian dictionary, the meaning of the word "severe" is listed, including "heavy (wound), severe (disease)". Thus "severe injury" is synonymous with "severe injury".

In this case, the serious injury becomes a juridical problem for legal practitioners when these parameters affect the decision in court. In the implementation of the trial process against the defendant of the crime of maltreatment, the judge needs to analyse carefully in giving his decision by determining the class of maltreatment. Because this affects the weight of the penalty received by the defendant for his actions by presenting evidence, specially sourced from the physical victim who was the target of persecution. Here the judge is tested on the quality of his analysis in terms of knowledge in each field that contributes to achieving the fairest possible decision for the defendant and the victim.

## 2. Research Methods

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<sup>4</sup> Nuryanto and Umar Ma'ruf. (2020). Dynamics of the Community in the Implementation of Complete Systematic Land Registration Program in the Land Office of Blora Regency, *Jurnal Internasional Daulat Hukum*, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8430/4065>

To conduct a study in this writing the author uses a normative juridical method. This research uses writing specifications with descriptive methods with the process of solving a problem investigated by describing or describing the state of the subject or object of research at present based on the facts that appear or as they are.<sup>5</sup> The data used for this writing is secondary data. To obtain data in this writing, secondary data collection methods are used which are obtained from literature books, laws, and opinions of legal experts. The data that has been obtained is then analysed with qualitative analysis.

### 3. Results and Discussion

#### 3.1. Representation of Injury Parameters in Maltreatment Cases from Medicolegal Aspects or Implications of Medical Science and Legal Science

In general, crimes against the body are referred to as persecution in the Criminal Code. From a grammatical point of view, maltreatment is an adjective derived from the root word "*aniaya*" which receives the prefix "pe" and the suffix "an" while maltreatment itself is derived from the word *aniaya* which indicates the subject or perpetrator of the maltreatment.

Mr M. H. Tirtaamidjaja defines "maltreatment" as follows. "persecution" means intentionally causing pain or injury to another person. However, an act that causes pain or injury to another person cannot be considered persecution if the act is done to maintain bodily safety.<sup>6</sup> The Indonesian dictionary states that maltreatment is arbitrary treatment (torture, oppression, etc.). In other words, to say that a person has committed maltreatment, the person must have deliberately committed an act to cause pain to another person or injury to another person's body or the person in the act has harmed the health of another person.

Based on the above description, J.M.Van Hammel asserts that to determine whether or not a form of maltreatment has occurred, there are 3 (three) criteria that must be met, namely:

- Any act that intentionally causes pain, injury or displeasure is prohibited. The exception to this prohibition under the criminal law is established by events where the law contains a recognised justification for causing this harm, e.g. forced defence, official orders, statutory regulations, such as acting by the rules of the office of a doctor, as well as with the consent of the victim under the recognised rules of participating in certain sports (boxing matches);
- An exception can also arise from the absence of fault at all, namely in cases where the perpetrator in good faith or reasonably suspected that he or she should act under a justification, but this suspicion was based on a misdirection that could be exploited.
- The additional syllable "*Mis*" *mishandeling* (maltreatment) already states that the infliction of pain, injury or displeasure is unlawful and that if measures are

<sup>5</sup> Soemitro. (1998). *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta, Ghalia Indonesia, p. 24.

<sup>6</sup> Leden Marpaung. (2002). *Tindak Pidana terhadap nyawa dan tubuh (pemberantas dan prevensinya)*, Sinar Grafika, Jakarta, p 5.

taken under medical science should not be considered as maltreatment, and therefore not prohibited under the criminal law, the judge should acquit the accused.<sup>7</sup>

Therefore, to determine whether or not there is a crime of maltreatment, the three criteria mentioned above must be considered. Furthermore, J.M. Van Bemmelen asserted that suffering must be interpreted as pain.<sup>8</sup> R. Soesilo further elaborated that the persecution must all be done intentionally and not with the proper intention or exceeding the permitted limit. For example, a dentist pulls out his patient's tooth. Actually, the doctor deliberately causes pain, but his actions are not persecution, because there is a good intention (treatment). A father hits his child on the bum with his hand, because the child is naughty. This is deliberately causing pain, but it is not persecution, because there is a good intention (teaching the child). However, if these two incidents are carried out in a manner that exceeds the permissible limits, such as a dentist pulling a tooth while joking with his wife or a father teaching his child by striking him with a piece of iron and putting it on his head, then these acts are also considered as persecution.

### 3.2. Juridical Parameters of Serious Injury as a Result of an Act of Maltreatment

The crime of maltreatment resulting in serious injury is regulated in Article 351 paragraph (2) which reads: "If the act results in serious injury, the offender shall be punished with a maximum imprisonment of 5 years". The elements contained in the Article are:

*Subjective Element ; Intentionality.* The element of intent is a subjective element (fault). In the crime of maltreatment, the element of intent must be interpreted narrowly, namely intent as intent (*opzet alsogmerk*). However, it should be noted that although intent in the crime of maltreatment can be interpreted as the intent with awareness of the possibility, this interpretation is also limited to the existence of intent as a possibility of consequences. This means that the possibility of a broad interpretation of the element of intent, namely intent as intention, intent as a possibility, and even intent as certainty, is only possible for the consequences. Meanwhile, the act itself must be the purpose of the perpetrator. This means that the act must be the act that the perpetrator intended or intended.<sup>9</sup>

*Objective Element; Existence of Actions*

The element of action is an objective element. The act in question is a positive activity, where humans use their limbs to carry out their daily activities, while the abstract nature in question is an act that contains physical violence in the form of hitting, kicking, pinching, slicing, hacking, and so on.

The existence of the effect of the action (the intended one)

- Makes you feel bad;
- Pain in the body, suffering that does not reveal changes in the body;

<sup>7</sup> Muhammad Hamdan. (1997). *Politik Hukum Pidana*, Jakarta: Raja Grafindo Persada p. 45.

<sup>8</sup> R. Soesilo. (1996). *Hukum Penitentier*, Jakarta: Bina Cipta, p 245.

<sup>9</sup> Adami Chazawi. (2010). *Kejahatan Terhadap Tubuh & Nyawa*, Jakarta: PT. Raja Grafindo Persada, p. 10

- Wounds to the body, showing changes to the body as a result of maltreatment.<sup>10</sup>  
Another important element in the formulation of the crime of maltreatment in its principal form is the element of serious injury or *zwaar lichamelijk letsel*, which is contained in the formulation of Articles 351 and 353 of the Penal Code. Article 90 of the Criminal Code has included several circumstances in the definition of serious bodily injury or *zwaar lichamelijk letsel*, as follows:
  - Diseases or injuries that cannot be expected to heal completely or that pose a danger to life;
  - Incapacity to carry out the activities of the position or occupation on an ongoing basis;
  - Loss of use of one of the five senses;
  - Paralysed;
  - Impairment of common sense for a period of more than four weeks; and
  - Miscarriage or death of a foetus in a woman's womb.<sup>11</sup>

### 3.3. Medical Parameters of Serious Injury resulting from Maltreatment

The function of *Visum Et Repertum* itself with the determination of suspects and proving criminal offences, we must realise that we are within the scope of the *criminal justice system* which includes 3 (three) levels of examination, namely: *Investigation; Prosecution; Trial by the court.*

Regarding evidence in the form of a *Visum Et Repertum*, in cases of maltreatment, this is requested immediately after the receipt of the complaint by the investigator. Based on the complaint received, the investigator then makes a police report, which is a written report made by a police officer about a notification submitted by a person due to rights or obligations under the law, that a criminal event has occurred or is occurring.<sup>12</sup>

After a Police Report is made, a procedure is then carried out to obtain a *Visum Et Repertum* which aims to determine the condition of the victim, especially about proving the elements of violence/threat of violence in the crime of maltreatment. The production of a *Visum Et Repertum* must be done immediately after the receipt of a complaint of maltreatment so that the victim's condition does not change too much and can be known as soon as possible after the maltreatment.

*Visum et Repertum* (VeR) is one of the assistants that is often requested by investigators (police) to doctors regarding injuries to the human body. *Visum et Repertum* (VeR) is evidence in the judicial process that not only meets the standards of medical record writing but also must fulfil the things required in the judicial system.<sup>13</sup> Data in several hospitals show that the number of injury cases that require VeR in the emergency department reaches 50-70%. Compared to murder and rape cases, maltreatment resulting in injury is the most common type, and therefore investigators need to request VeRs from doctors as evidence before the court.

<sup>10</sup> *Ibid*, pp. 10-12

<sup>11</sup> R. Soesilo. (1998). *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-komentarnya Lengkap Pasal Demi Pasal*, Bogor: Politea, p. 98

<sup>12</sup> Peranan Ilmu Forensik dalam Penegakan Hukum, Jakarta, Pustaka Dwipar, p. 48

<sup>13</sup> Herkutanto. (2005). *Peningkatan Kualitas Pembuatan Visum et Repertum (VeR) Kecelakaan di Rumah Sakit Melalui pelatihan dokter unit gawat darurat (UGD)*, JPMK, 8 (3), p 163.

Currently, there is a tool that is starting to be used to improve the quality of VeR, namely TRISS. *Trauma Related Injury Severity Score* (TRISS) is a method of grading injuries that has logical grading parameters and has been widely used worldwide. Another tool is the calculation of the total wound area. According to research using diagnostic tests, this method is quite practical and relatively easy to use, especially among general practitioners, and has good sensitivity and specificity values, with a high sensitivity of 85.5% and specificity of 87.3%. The disadvantage of the total wound area calculation is that it can only be used to determine the degree of injury in cases of closed wounds caused by blunt force.<sup>14</sup>

There are commonly used examination-based wound qualifications. The terms used to qualify injuries in medicine and criminal law are different and must be adjusted accordingly. The qualification of wounds is generally only divided into three:

- Class C or first-degree injuries, victims of criminal offences only require an examination of their condition and from the results of the forensic medical examination do not require further treatment at a hospital. The conclusion of first-degree injuries in VR, in the context of criminal law, relates to the crime of light maltreatment as stipulated in Article 352 of the Criminal Code (injuries that do not result in illness or hindrance to the performance of an occupation or livelihood).
- Class B or second-degree injuries are injuries that require temporary treatment of the victim of the criminal offence. The conclusion given on the second-degree injury is an injury that causes temporary obstruction to performing the position/job/activity. The conclusion in the VR is linked to Article 351 paragraph (1) of the Criminal Code.
- Class A injuries or third-degree injuries are injuries that result in serious injuries that prevent you from carrying out your position/work/activity. This relates to Article 90 of the Criminal Code on serious injury. The qualification of third-degree injuries from the results of the forensic medical examination is qualified as serious maltreatment as stipulated in Article 351 paragraph (2) and/or Article 354 paragraph (1).<sup>15</sup>

#### 4. Conclusion

Juridically, Article 90 of the Criminal Code has included several circumstances into the definition of serious bodily injury or the definition of *zwaar lichamelijk letsel*, as diseases or injuries that cannot be expected to heal completely or that pose a danger to life, incapacity to carry out the activities of office or work continuously, loss of use of one of the five senses, paralysis, impairment of reason for a period of more than four weeks, and miscarriage or death of the foetus in the womb of a woman. Medically, the thing that affects the determination of the qualification of an injury is the anatomical region affected by the trauma. For example, if the neck region is traumatised, even though there is little visible impact, there is a tendency

<sup>14</sup> Herkutanto. (2004). *Kualitas visum et repertum perlukaan di Jakarta dan Faktor yang mempengaruhinya*, Maj Kedokt Indon, 54 (9), p 355.

<sup>15</sup> Afandi D. (2009). *Visum et Repertum Pada Korban Hidup*, Jurnal Ilmu Kedokteran, 3 (2), p.79-84.

to assign a more severe wound qualification. This is because the neck region contains organs that are vital for life, such as the carotid artery, jugular vein, and respiratory tract. Violence to the face and other areas of the head are also considered factors that contribute to wound qualification.

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