



The Crime Of Elder Abuse According To Criminal Law Law

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Abstract. *The aim of this research is to analyze the factors causing abuse by biological children against their parents and the judge's considerations regarding the decision in case Decision Number 421/PidSus/2020/PN.Tgn. This research method uses a normative juridical research approach by reviewing statutory regulations, law books and Islamic law books related to the research focus. The research results show that the factors behind the abuse of biological mothers are economic, family, social environment and social jealousy. Based on the considerations of the judge at the Tangerang District Court with Decision Case Number 421/PidSus/2020/PN.Tgn. Regarding criminal cases, we have referred to legislation no. 23 of 2004 concerning the Elimination of Domestic Violence. However, in terms of justice, the punishment given was not fair for the victim who had been treated badly by his own biological child.*

Keywords: *Crime, Elder Abuse, Criminal Law*

INTRODUCTION

Children are a gift from Allah Almighty as potential future generations of the nation. In Islamic law, parents are obliged to educate their children well. If a child becomes naughty, it means that the parents do not carry out their obligations well, then the parents are the ones who bear the consequences, namely being given sanctions (punishment) for negligence. Parents have an obligation towards their children to care for and educate their children until the children get married and can stand on their own, even though the marriage between the parents has broken up, the parents' obligations towards the children will not end because in reality there is no such thing as a former child and former parents. The bond between children and parents is a physical and spiritual bond that cannot be legally broken.

This abuse often occurs, both in society and within the family environment. The crime of abuse is one of the crimes that is increasing over time. One of them can be seen from the perpetrators who are no longer adults but also children, the perpetrators are not only other people but can occur within the family environment. A family consisting of a father, mother and children whose function is to protect and care for each other, and there are ties, blood relations and kinship relations. Children in the family have a role that is explicitly stated in that

the state guarantees every child's right to survival, growth and development as well as protection from violence and discrimination.

Protection of children and parents through law. One of the laws regulates the right to alimony in Article 46 paragraph 1 of Law Number 1 of 1974 concerning Marriage which states "If the child is an adult, he is obliged to look after his parents and family according to his ability in a straight line upwards, if they are need his help. Meanwhile, Article 321 of the Civil Code states "Every child is obliged to provide support for their parents and blood relatives in the upper line, if they are poor.

Efforts to regulate domestic violence into legislation have been made through Law no. 23 of 2004 concerning the Elimination of Domestic Violence is a demand from society which is in accordance with the objectives of Pancasila and the Constitution of the Unitary State of the Republic of Indonesia 1945 (hereinafter abbreviated to UUNKRI 1945) to eliminate all forms of violence in Indonesia, especially domestic violence. In Law No. 23 of 2004 concerning the Elimination of Domestic Violence.

RESEARCH METHODS

This research uses a qualitative approach, namely discussing the problem of abuse perpetrated by biological children against their parents as contained in article 44 paragraph (2) of Law no. 23 of 2004 and articles 351 – 356 of the Criminal Code.

- a. The research technique used in this research is reviewing case decisions and literature, namely systematically identifying and analyzing documents that contain information related to the themes, objects and problems studied.
- b. The type of research used in this research is to examine qualitative case decisions. Examining existing literature through judge's decisions, books, notes, articles on the internet, magazines and scientific journals as well as the results of previous research

Data collection technique

The data collection used is a qualitative method, namely by collecting as much data as possible and then processing it to describe the problem to be discussed by taking material according to the problem, then comparing it from primary data sources and secondary data. The data sources are classified to make it easier to analyze them.

Data analysis

The data analysis method in research is the juridical-normative method. Research that uses juridical-normative analysis is research that refers to legal norms contained in statutory regulations and judicial decisions

RESULTS AND DISCUSSION

Factors Causing Abuse Perpetrated by Children against Their Parents.

Achieve justice for the parties involved in a lawsuit. Many criminal cases require judges to consider humanitarian, sociological and anthropological aspects in imposing sentences. In this case, a child is so determined to abuse his biological mother that of course he has very strong motivation which causes the criminal act to be committed. The motivation for a person to commit a criminal act can be for many reasons, which often occurs in society due to the unequal relationship between parents (in this case a mother) and children.

Family Factors

The family is the first and main vehicle for children's character education. If the family fails to provide character education for its children, it will be difficult for other institutions outside the family (including schools) to improve it. The failure of families to shape children's character will result in the growth of a characterless society. Therefore, every family must have the awareness that national character is very dependent on children's character education at home. On the other hand, parents need to monitor their children's interactions, because relationships and the environment play a huge role in shaping children's personalities.

Wrong parenting will have the impact of aggressive behavior, namely always wanting to hurt people both verbally and physically, always having a negative view of the surrounding environment, such as feeling insecure, worried, insecure, suspicious of other people, and feeling that other people are criticizing them. Emotional instability, namely intolerance or intolerance to stress, irritability, irritability, and a nature that cannot be predicted by other people. Parents who do not provide a sense of security and put too much pressure on their children will make the children feel like they are not close, and will not make their parents "role models".

Social environmental factors

Humans as social creatures, who are with other humans, need other people who always show relationships with other people. He will feel lonely, if he is alone, and will also feel homesick if his relationship with the person he loves is broken. These factors that concern the

relationship between a human being and other humans are called the social environment, which is always tied to the relationship between a human being and another human being. This relationship can form an individual's relationship with the natural environment and for residence and individual development and behavior.

The social environment is one of the factors that continues to develop over time, attitudes and behavioral patterns in changing society make a person's actions continue to develop, so that in this case there is a lot of inequality within each individual which is the background for someone to be better or have a bad attitude. Someone who has a good social environment will have an influence on their behavior patterns, but if someone lives in a poor environment, the effect will also be affected, because humans are social creatures who always socialize with their surroundings.

Educational Factors

Education as a social institution has the task of educating, guiding and leading children to become good and intelligent human beings. Schools are formal educational institutions that have a strong and stable organization. This institution displays full and professional duties and responsibilities. According to Tilaar, he wrote that: "A school has a strong organization, which means it must have a clear mission, vision and program as an organization, the school must develop an organizational culture, namely a commitment to developing intellectual abilities in students." Schools ideally must be able to foster intellectual values, namely an attitude of curiosity, logical and creative thinking, an open attitude, and even being ready to be criticized.

An academic culture such as experimentation, dissatisfaction with what has been achieved, truth that continues to develop, must become school culture. The teaching and learning process prioritizes freedom of thought and creativity, schools are institutions that develop critical thinking, academic and analytical skills for the full development of human resources (HR), however in this case there are still many acts of violence or bullying committed by children in the school environment.

Social Media Factors

Television media can present programs depicting everyday life and behavior in the form of true stories or dramatizations according to the desired goals. Television media is also the most popular mass media and is favored by all levels of society, including children and teenagers. Through television, messages can be presented in audio-visual and motion forms.

Television can also present live broadcasts or news coverage from the source at the same time. With the help of other media, television also presents interactive programs.

Television media actually has advantages in helping teachers and parents in instilling character education in children on an ongoing basis. This is because television can present audiovisual and motion messages, and can dramatize and manipulate messages according to the desired goals. Unfortunately, the national television shows that children and teenagers watch every day do not fully convey educational messages. The world of television is now threatened by elements of vulgarism, violence and pornography.

Personality Factors

Personality is a way of regulating or patterning relationships that are ways and patterns of behavior. The entire pattern of individual behavior forms a certain harmonious rule or system. Personality is dynamic, an individual's personality is not something static, fixed, unchanging, but the personality develops dynamically. Human development is different from static animals, which follow a closed circle, dynamic human development forms an open circle or spiral. Even though the general patterns are the same, there is always the opportunity for new special patterns.

Individual personality is always in unique adjustment to its environment. Individual personality is not something that stands alone, apart from its environment, but is always in interaction and adaptation to its environment. It is part of its environment and develops together with its environment. An individual's interaction or adjustment to their environment is unique, or distinctive, different from one individual to another. Thus, it may be around the individual, it may also be far from the individual, it may be in the present, or has long passed, in an effective or ineffective environment.

Economic Factors

The conditions of the existing economic environment and the challenges faced in meeting economic needs will greatly influence the development and behavior of individuals in that environment. Children who live and develop in a family or community environment with good economic conditions will develop differently compared to children who grow up in an environment of complete deprivation. Economic conditions will not only affect children's nutrition and health, but will also affect learning opportunities and quality.

Committing a crime is determined (determined) by external influences or the environment, whereas according to the theory of indeterminism, a person's will to commit a

crime is controlled by their own will and is not influenced by "external factors". Thus, the driving factors for domestic violence can be caused by various factors. these factors. This means that it can be influenced by external factors or the environment, but can be triggered by factors within the perpetrator himself. The driving factors for violent acts will be explained in detail as follows.

Judge's Consideration of Case Decision Number 421/PidSus/2020/PN.Tgn

Case Chronology

However, the defendant Cucu Suganda did not give it to him, then the defendant gave witness Harno the keys to his younger brother's Honda Vario motorbike, but the victim witness did not give him the key because he wanted to use the defendant's younger brother, so the defendant became angry and immediately hit him using his right hand, but It didn't hit, then the defendant kicked and hit the witness' hip, causing the witness to fall. A scared witness. tried to dodge and leave, at the same time the defendant threw a piece of red brick and it hit the upper left side of his head, causing a laceration and bleeding, so that at that time the witness Harno's husband and another neighbor tried to help the victim by taking him to the Tangerang Regional Hospital.

That according to the results of Tangerang Regional Hospital Ver No: 326/2711/404.6.8/2020 /Tgn dated 28 June 2020 which was made and signed by Dela Hakim Andara concluded that the victim suffered a torn peripheral blood vessel, a three centimeter laceration and bruising on the top of the head. As a result, the victim became ill and had to be treated at Tangerang District Hospital for 4 days. That after being hospitalized. The victim witness is still in outpatient care and is still taking medication because he often feels pain in his head.

Judge's Consideration of Case Decision Number 421/PidSus/2020/PN.Tgn.

Based on the indictment of the Public Prosecutor, the actions of the defendant Cucu Suganda are as regulated and punishable by crime in Article 44 paragraph (2) of the Law, namely Law no. 23 of 2004 concerning the Elimination of Domestic Violence, which reads: In the event that the act as intended in paragraph (1) results in the victim becoming ill or seriously injured, he will be punished with imprisonment for a maximum of 10 (ten) years or a fine of a maximum of Rp. 30,000,000.00 (thirty million rupiah)".

Whereas to the Public Prosecutor's indictment, the Defendant did not raise any objection. A criminal act committed either intentionally or unintentionally according to the positive law of punishment or punishment must contain elements, among others, that punishment must contain some kind of loss or misery which is usually reasonably formulated as the target of the criminal action. This element is basically a loss or crime suffered by the subject who is the victim as a result of an action carried out consciously by the perpetrator.

Judge's Consideration of Case Decision No. 421/PidSus/2020/PN.Tgn.

- a. Witness Moh. Badri, under oath, basically explained as follows: That what the witness knows about this case is the abuse that the defendant committed against his biological mother, Harno. That it happened on Saturday. June 28 2020 at approximately 10.00 WIB at Batu Ceper RT.O4-RW.01.
- b. Witness Harno, under oath, basically explained as follows: That the defendant is the biological child of witness number 2 (two) and is not married and still lives at home with the witness. That on Saturday, June 28 2020 at approximately 10.00 WIB in Dukuh Tengah RT.04-RW.01, Mauk District. Tangerang Regency, the witness was kicked by the defendant and had a brick thrown at him on the head, but finally fell, but at that time the witness was still conscious and fainted after being in hospital. That the witness was treated in hospital for 4 (four) days, blood came out on the left side of his head where the red brick was hit and he received stitches.
- c. Witness Fadli, under oath, basically explained as follows: That the defendant is the biological son of the witness and witness Harno. number 2 (two) of 4 (four) siblings; That the defendant is not married and still lives in the same house as the witness; That the defendant abused his mother by kicking her hip and throwing a red brick hitting her mother on the upper left side of her head: That witness Harno received a wound on the upper left side of her head that was bleeding and received treatment and was hospitalized (hospitalized) for 4 (four) days; Regarding the witness's statement, the Defendant confirmed this.
- d. Witness Dani Yani was not present and her statement in the BAP was read in essence as follows: on Saturday. June 28 2020 at approximately 10.00 WIB at Batu Ceper RT.04-RW.01. Badman's Condemnation. Tangerang Regency, the defendant kicked his own mother with his right foot hitting her hip and threw a red brick with his right hand hitting her mother's upper left side of the head: That the reason the defendant

committed this act was because the defendant asked his mother for the keys to his motorbike, which resulted in an argument with his mother. and then there was persecution.

Mitigating Matters

- a. The defendant admitted his actions;
- b. The defendant behaved politely in court;
- c. The defendant has apologized to the victim and the victim has forgiven him.

Weigh. that by paying attention to aggravating things, mitigating things. the nature of the criminal act committed by the defendant. Also connected to the preventive, educative, rehabilitative and curative functions of punishment, the Panel is of the opinion that the punishment imposed on the defendant is appropriate and fair and commensurate with the error committed by the defendant; Pay attention to Article 44 paragraph (2) UURI No.23 of 2004 concerning the Elimination of Domestic Violence, Law No.8 of 1981 concerning the Criminal Procedure Code and the laws and regulations related to this case.

Judge

- a. Declare that the Defendant Cucu Suganda has been legally and convincingly proven guilty of committing the crime of physical violence within the household which resulted in the victim falling ill;
- b. Sentencing the Defendant Cucu Suganda to prison for 1 (one) year and 2 (two) months;
- c. State that evidence in the form of 1 (one) piece of red brick was confiscated for destruction;
- d. Charge the Defendant with a court fee of IDR 2000.00 (two thousand rupiah)

In giving consideration to the elements of Domestic Violence. The Panel of Judges really understands and has properly stated whether these elements are fulfilled or not. And know the meaning of balance theory. However, the problem is based on the legal facts in cases of domestic violence. The judge should have decided on a heavier sentence for the defendant as charged by the Umun prosecutor. In giving the sentence given by the judge, it was felt that it

was not fair for the victim who had been treated badly by her own biological child, so the judge should have decided on this case of domestic violence. in accordance with the indictment of the Public Prosecutor.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

From the discussion above regarding the problem of criminal acts of abuse committed by children against their parents. So several conclusions can be drawn, namely as follows:

- a. In terms of factors, criminal acts of violence or abuse are caused by the condition of the community around them which can influence them. Because of the promiscuity that occurs in society, there is a lack of self-control in dealing with problems that are in front of them, then things like that happen, due to the minimal economic conditions that exist in the family, basic needs. which is increasing while there is so much competition, causing people to commit criminal acts to fulfill their daily needs by means of violence or abuse.
- b. Based on the considerations of the Tangerang District Court judge with Case Decision Number 421/PidSus/2020/PN.Tgn. The application of law in this decision concerns criminal cases of abuse of biological parents, which have referred to the statutory regulations in Article 44 paragraph (2) No. 23 of 2004 concerning the Elimination of Domestic Violence

Suggestion

Based on the discussion and conclusions regarding acts of abuse of biological children against their parents, recommendations can be made in the form of suggestions, namely as follows:

- a. Judges should be aware of criminal law sanctions, especially regarding criminal acts of domestic violence and abuse. And be able to implement it well and be able to make efforts to overcome these criminal acts, with the aim of eliminating or minimizing cases of Domestic Violence and cases of abuse that occur in Indonesia.
- b. For the community, socialization must continue to be carried out because until now many people do not know about the Law on the Elimination of Domestic Violence to the community by providing legal counseling, outreach to clergy and religious leaders to change the culture and interpretation of religion.

- c. For other researchers in particular and other researchers in general, they can make an even greater contribution in studying problems relating to domestic violence, especially those that result in serious injuries, so that their scientific contributions can be utilized optimally in practice in society.

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