



Seeking Justice: Criticizing the Decision of the Tapak Tuan District Court Number 37/Pid.Sus/2020/PN. Ttn Regarding Domestic Violence

Andi Hakim Lubis^{1*}, Ariman Sitompul², Serimin Pinem³, Rizkan Zulyadi⁴, Fahrizal S.Siagian⁵

^{1,3,4}Universitas Medan Area, Medan, Indonesia

²Universitas Dharmawangsa, Medan, Indonesia

⁵Universitas Sumatera Utara, Medan, Indonesia

e-mail : andihakimlubis@staff.uma.ac.id

*Corresponding Author

Submitted: June 02, 2023	Accepted: July 16, 2024	Published: July 23, 2024
How to Cite (Chicago): Lubis, Andi Hakim, Ariman Sitompul, Serimin Pinem, Rizkan Zulyadi, and Fahrizal Siagian. 2024. "Seeking Justice: Criticizing the Decision of the Tapak Tuan District Court Number 37/Pid.Sus/2020/PN. Ttn Regarding Domestic Violence". <i>Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan</i> 11 (1), 86-100. https://doi.org/10.32505/qadha.v11i1.8591 .		

Abstrak

The research aimed to analyze the alignment between the judge's decision in cases of domestic violence against children and the provisions of Law Number 23 of 2004 on the Elimination of Domestic Violence and Qonun Number 9 of 2019 on the Implementation of Handling Violence Against Women and Children. The study also considered moral considerations and the overall benefits. The research methodology employs a case law study, which involves examining court decisions to get insight into the application of the law in specific circumstances. Specifically, the study focuses on the Decision of the Tapak Tuan District Court Judge Number 37/Pid.Sus/2020/PN. Case law is utilized to examine court rulings to comprehend how the law is implemented in specific instances. The library research method is employed in conjunction with a sociological juridical perspective. The data for the research is sourced from the Law and various pertinent articles addressing the research difficulties. Furthermore, to bolster the ideas of the study, the paper also incorporates the findings of several empirical studies. According to the findings, it appears that the judge primarily focuses on formal factors and gives little weight to material considerations in their decision-making process. This aligns with the viewpoint expressed by Member Judge II and the concurring opinion within the panel of judges. However, the author acknowledges and values the decision made by the panel of judges. The author recognizes the challenging nature of the judges' task, as they must not only consider the legal interests involved in the case, but also consider the community's sense of justice in order to achieve legal certainty.

Keywords: Decision, Judge, Criminal, Domestic Violence

Abstrak

Penelitian ini bertujuan untuk menganalisis keselarasan antara putusan hakim dalam kasus KDRT terhadap anak dengan ketentuan Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga dan Qonun Nomor 9 Tahun 2019 tentang Penyelenggaraan Penanganan Kekerasan Terhadap Perempuan dan Anak. Penelitian ini juga mempertimbangkan pertimbangan moral dan manfaat secara keseluruhan. Metodologi penelitian ini menggunakan studi kasus, yang melibatkan pemeriksaan putusan pengadilan untuk mendapatkan wawasan tentang penerapan hukum dalam situasi tertentu. Secara khusus, penelitian ini berfokus pada Putusan Hakim Pengadilan Negeri Tapak Tuan Nomor 37/Pid.Sus/2020/PN.TAP. Studi kasus digunakan untuk mengkaji putusan pengadilan untuk memahami bagaimana penerapan hukum dalam kasus-kasus tertentu. Metode penelitian kepustakaan digunakan bersama dengan perspektif yuridis sosiologis. Data untuk penelitian ini bersumber dari Undang-Undang dan berbagai artikel terkait yang membahas kesulitan-kesulitan penelitian. Selain itu, untuk memperkuat gagasan penelitian, artikel ini juga menggabungkan temuan dari beberapa studi empiris. Berdasarkan temuan-temuan tersebut, terlihat bahwa hakim lebih berfokus pada faktor formal dan memberikan sedikit bobot pada pertimbangan material dalam proses pengambilan keputusan. Hal ini sejalan dengan sudut pandang yang diungkapkan oleh Hakim Anggota II dan pendapat hakim yang sependapat di dalam majelis hakim. Namun demikian, penulis mengakui dan menghargai keputusan yang dibuat oleh majelis hakim. Dapat disadari bahwa tugas hakim tidak mudah, karena tidak hanya mempertimbangkan kepentingan hukum yang terlibat dalam kasus tersebut, tetapi juga harus mempertimbangkan rasa keadilan masyarakat demi tercapainya kepastian hukum.

Kata Kunci: Putusan, Hakim, Pidana, KDRT

Introduction

Domestic violence is a prevalent crime inside our society. Domestic violence encompasses not only physical violence but also psychological violence. The enactment of Law Number 23 Year 2004 on the Eradication of Domestic abuse underscores that any actions perpetrated against a woman that cause distress, physical or psychological pain are considered acts of domestic violence. ¹ Typically, domestic violence is perpetrated against the wife and children, who deserve the utmost attention and affection. ²

Various variables might contribute to the incidence of domestic violence, such as socio-economic, educational, psychological, environmental, religious, and other causes. Perpetual violence creates a distressing scenario and exacerbates an individual's spiritual state. In order to safeguard the well-being of one's spouse and offspring, it is imperative that the protocols governing their protection are unambiguous, so as to effectively address any potential circumstances that may arise in the future.

Particularly when it comes to children, they have a responsibility to uphold the trust placed in them. It can be inferred that the individual who is entrusted will not betray and

¹ Nasihin, *Korban Kejahatan Kekerasan Dalam Rumah Tangga* (Jakarta: Rajawali Press, 2017).

² Lutfiah Fauzi and Emy Rosnawati, "Analisis Putusan Hakim No. 180/Pid.Sus/2020/PN Sda Terhadap Korban Tindak Pidana Kekerasan Dalam Rumah Tangga," *ResearchJet Journal of Analysis and Inventions* 2, no. 4 (2023): 1–10, <https://doi.org/10.47134/researchjet.v2i4.9>.

will diligently uphold the trust with fairness. Children hold a crucial significance as they serve as an essential foundation and model for effecting positive transformations in the lives of children. They also play a vital role in fostering quality education, building future generations, shaping communities, and driving cultural advancement, while upholding the principles of honor and civilization.³ In the future, he is anticipated to assume the role of a staunch advocate for his religion and country.⁴ likewise, it should be noted that legal protection is not extended to every child who undergoes violence. This can be attributed to a lack of comprehensive understanding and awareness of legal matters. Furthermore, the individuals who have been victimized do not desire a legal resolution but rather perceive it as a normal occurrence in their daily lives.⁵

The majority of domestic violence victims consist of women (spouses) and children, with the perpetrator typically being the husband. However, there are other cases when the roles are reversed, or where individuals who are subordinate within the family become victims.⁶ The individual involved in domestic violence can be either the perpetrator or the victim. This includes those who have a familial connection by blood, marriage, breastfeeding, parenting, guardianship, as well as domestic servants residing in the same household. Paradoxically, victims of domestic violence frequently conceal such cases due to their association with cultural frameworks, religious beliefs, and an unfamiliar legal system, despite the state and society's efforts⁷ to safeguard victims and prosecute offenders.

Based on the latest information released by the Ministry of Women's Empowerment and Child Protection, there have been 1,411 reports of domestic violence between January 1 and February 21, 2022. In 2021, there were 10,247 incidents with a total of 10,365 casualties. Due to the prevalence of such incidents, sanctions have been established for perpetrators under Article 44 of the Domestic Violence Law regarding penalties for domestic violence.⁸

Despite having its own regional legislation or qonun, Aceh Province is not exempt from the issue of domestic abuse, which also includes violence against children. The number of instances has been steadily increasing over the previous three years. Specifically, in 2021, there were 924 cases, which increased to 1,029 cases⁹ in 2022. By the end of 2023, the number

³ Muhammad Hidayat et al., "Islamic Law Paradigm Of Effort To Children Educational Protection" 4, no. 2022 (2023): 101-10.

⁴ Muazzul Muazzul and Andi Hakim Lubis, "Perlindungan Anak Perspektif Hukum Islam (Sosiologi Hukum Islam Sebagai Pendekatan Pengkajian)," *Journal of Gender and Social Inclusion in Muslim Societies* 2, no. 1 (2021): 1, <https://doi.org/10.30829/jgsims.v2i1.9639>.

⁵ Rochmat Wahab, "Kekerasan Dalam Rumah Tangga: Perspektif Psikologis Dan Edukatif," *Unisia* 61, no. 3 (2012): 247-56.

⁶ Iva Nurfaizah, "Dampak Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Kesehatan Mental Anak," *Gunung Djati Conference Series* 19 (2023): 95-103.

⁷ Muhammad Hidayat et al., "Islamic Law Paradigm Of Effort To Children Educational Protection" 4, no. 2022 (2023): 101-10.

⁸ Muazzul Muazzul and Andi Hakim Lubis, "Perlindungan Anak Perspektif Hukum Islam (Sosiologi Hukum Islam Sebagai Pendekatan Pengkajian)," *Journal of Gender and Social Inclusion in Muslim Societies* 2, no. 1 (2021): 1, <https://doi.org/10.30829/jgsims.v2i1.9639>.

⁹ Safrina, "Kemen PPPA - DP3A Aceh Cegah Dan Tangani Kekerasan Terhadap Perempuan," accessed July 14, 2024, <https://acehprov.go.id/berita/kategori/pemerintahan/kemen-pppa-dp3a-aceh-cegah-dan-tangani-kekerasan-terhadap-perempuan>.

of cases nearly surpassed 1,000. An instance of a legally binding court case or *inkracht van gewijsde* is the Tapak Tuan District Court Decision Number 37/Pid.Sus/2020/PN. Ttn.¹⁰

The child's biological father, who was engrossed in playing cell phones in the living room, offered the boy to take a motorcycle at his grandmother's house. During this interaction, physical aggression was inflicted by the father. Nevertheless, the boy declined his father's request, citing his drowsiness due to the late hour. He expressed his intention to postpone the activity until the following morning. Upon hearing the child's statements, the father reacted with anger, forcefully gripping the youngster's right hand and striking it against the door, resulting in the child bleeding.

Ultimately, the judge rendered a verdict, determining him to be legally and conclusively culpable for the offense of "inflicting physical harm within the household upon an individual residing therein." Subsequently, he was convicted and given a prison sentence of 1 year and 6 months. Domestic violence has a profound influence on children's behaviour, affecting their cognitive skills, problem-solving abilities, coping mechanisms, and emotional functions.¹¹

Undoubtedly, this situation presents a moral quandary, particularly when considering the underlying factors that led to the occurrence of domestic abuse against the children. While violence is never justified under any circumstances, parents have a responsibility to instill in their children the values and principles necessary to become morally upright individuals. Given the aforementioned issues, scholars assert the importance of scrutinizing the judgment made by the presiding judge in the trial. In order to ascertain the legal reasoning behind the judge's decision in the case, an examination will be conducted on the Qonun Number 9 of 2019, which pertains to the Implementation of Handling Violence Against Women and Children regulation. The objective of this analysis is to determine whether this qonun aligns with the goals set forth in the issuance of the qonun and Law No. 4 of 2003, which aims to eliminate domestic violence.

According to a study conducted by Alfitri,¹² Roswita Sitompul,¹³ Lily Zakiyah Munir,¹⁴ dan Hasanudin¹⁵ despite the existence of rules in Indonesia aimed at eradicating domestic violence (PKDRT), it is nevertheless inevitable and frequently happens. Martina

¹⁰ Safrina, Kemen PPPA - DP3A Aceh Cegah dan Tangani Kekerasan terhadap Perempuan, <https://www.acehprov.go.id/berita/kategori/pemerintahan/kemen-pppa-dp3a-aceh-cegah-dan-tangani-kekerasan-terhadap-perempuan>.

¹¹ Suryani Guntari, Azmiati Zulia, and Ariman Sitompul, "Legal Regulations for Children Involved in Narcotics Crimes in Indonesia," 2012, 194-202.

¹² Alfitri Alfitri, "Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia," *Studia Islamika* 27, no. 2 (August 3, 2020): 273-307, <https://doi.org/10.36712/sdi.v27i2.9408>.

¹³ Roswita Sitompul, Alesyanti, and Muhammad Ridwan, "Domestic Violence as Initiated by Batak Culture in East Medan, Indonesia," *Journal of Human Behavior in the Social Environment* 30, no. 7 (October 2, 2020): 835-42, <https://doi.org/10.1080/10911359.2020.1750526>.

¹⁴ Lily Zakiyah Munir, "Domestic Violence in Indonesia," *Muslim World Journal of Human Rights* 2, no. 1 (September 2, 2005), <https://doi.org/10.2202/1554-4419.1031>.

¹⁵ Hasanudin Hasanudin et al., "Phenomena of Domestic Violence Against Women and Divorce in 2020-2022 in Indonesia: An Islamic Perspective," *Al-Manahij: Jurnal Kajian Hukum Islam*, August 23, 2023, 137-52, <https://doi.org/10.24090/mnh.v17i2.7686>.

Purna Nisa Jaliansyah¹⁶ research validates that a significant number of divorces in Indonesia, Malaysia, and the Maldives are attributable to instances of domestic violence. Linda R. Bennett¹⁷ research also confirms that based on the results of a survey conducted in Nusa Tenggara Barat that the standard of domestic violence is understood as an act that includes infidelity, verbal violence, threats of violence, economic violence, physical violence is part of a form of domestic violence. Euis Nurlaelawati¹⁸ research explains that religious courts are the main option for Muslim women in Indonesia to end marriages due to several reasons that make it impossible to continue the marriage relationship.

Several studies have explained the sociological phenomenon of violence, highlighting the prevalence of women as the dominant victims. This problem is of utmost significance as marriage serves not just to satisfy biological necessities, but is intricately linked to accountability, sustenance, and complementing one another's deficiencies. Hence, it is crucial to conduct this research with a specific emphasis on the elements of court rulings rendered by judges in upholding principles of fairness for the parties involved in the litigation.

This study employs a case law analysis¹⁹ approach to examine court rulings and gain insights into the practical application of the law. Specifically, it focuses on the Decision of the Tapak Tuan District Court Judge Number 37/Pid.Sus/2020/PN. Ttn. Within the realm of domestic violence, particularly when it involves children, examining judicial decisions can offer valuable understanding into the application of judges' rulings in domestic violence cases, the nature of the penalties imposed, and the efficacy of current legislation in safeguarding children. This study utilizes two types of data sources, specifically primary and secondary legal sources.²⁰ Primary legal sources consist of the judge's judgment Number 37/Pid.Sus/2020/PN. Ttn. and Law Number 23/2004 about the eradication of domestic violence. Legal sources encompass scientific papers, journals, articles, books, and similar materials.

Legal Treatment of Domestic Violence (KDRT) in Law Number 23 of 2004

Domestic violence (KDRT) can be understood as synonymous with *domestic abuse* according to the definition provided by the United Nations (UN). *Domestic abuse* is characterised as a consistent pattern of behaviour within partnerships that is employed to acquire or uphold power and control. These behaviours encompass physical, sexual, emotional, economic, or psychological actions or threats that impact another individual. It

¹⁶ Martina Purna Nisa, "Critical Review of Domestic Violence as Reason for Divorce (Comparison of Divorce Laws in Indonesia, Malaysia and the Maldives)," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 22, 2021): 1-23, <https://doi.org/10.19105/al-lhkam.v16i1.4292>.

¹⁷ Linda R. Bennett, Sari Andajani-Sutjahjo, and Nurul I. Idrus, "Domestic Violence in Nusa Tenggara Barat, Indonesia: Married Women's Definitions and Experiences of Violence in the Home," *The Asia Pacific Journal of Anthropology* 12, no. 2 (April 1, 2011): 146-63, <https://doi.org/10.1080/14442213.2010.547514>.

¹⁸ Euis Nurlaelawati, "Muslim Women in Indonesian Religious Courts," *Islamic Law and Society* 20, no. 3 (2013): 242-71, <https://doi.org/10.1163/15685195-0010A0003>.

¹⁹ Andrew Knight and Leslie Ruddock, eds., *Advanced Research Methods in The Built Environment* (Chichester, U.K. ; Ames, Iowa: Wiley-Blackwell, 2008).99

²⁰ I. Gusti Ketut Ariawan, "Metode Penelitian Hukum Normatif," *Kertha Widya* 1, no. 1 (December 31, 2013), <https://doi.org/10.37637/kw.v1i1.419>.

encompasses actions that instil fear, intimidate, terrorise, manipulate, harm, humiliate, assign blame, or cause injury to an individual. Domestic violence is a phenomenon that can occur regardless of an individual's colour, age, sexual orientation, religion, or gender.²¹

Indonesian law precisely regulates the management of domestic violence through Law No. 23/2004 on the Elimination of Domestic Violence. This law defines domestic violence as any action against an individual, particularly women, that causes physical, sexual, or psychological suffering, as well as neglect within the household. It includes threats, coercion, and unlawful restriction of independence.

The Law Number 23 of 2004 categorizes crimes of domestic violence into four distinct acts:²²

1. Physical violence refers to actions that might result in physical pain, illness, or severe injuries, such as being struck with bare hands or other objects, or being kicked with a foot.
2. Psychological violence refers to actions that induce dread, diminish self-confidence, impede one's ability to act, create a sense of powerlessness, and produce significant psychological distress. Examples of such actions include the use of aggressive language and intimidation through threats.
3. Sexual violence refers to the act of forcing someone to engage in sexual intercourse against their will. This can occur inside a home or involve multiple individuals for commercial or specific reasons.
4. Domestic neglect refers to the deliberate act of neglecting a person within their own household. This occurs when the neglecting person, either by legal obligation or agreement, fails to provide necessary life necessities, care, or financial support to the victim. Additionally, domestic neglect may involve restricting or prohibiting the victim from working effectively both inside and outside the house, thereby creating economic dependence and exerting control over the victim.

The objective of preventing domestic violence, targeting both women (wife) and children, is to proactively anticipate and address different manifestations and categories of domestic violence. This includes ensuring the safety and well-being of victims, holding perpetrators accountable, and preserving the overall well-functioning and peaceful nature of a family.²³

The Law requires the use of an integrated justice system to address cases of domestic violence. This system aims to eradicate domestic violence by ensuring a balanced approach

²¹ Samuel Saut Martua Samosir, Gautama Budi Arundhati, and Firman Floranta Adonara, "Prevention and Treatment of Domestic Violence in Legal Perspective," *UNEJ E-Proceeding* 1, no. 1 (July 2, 2022): 238–43.

²² Ihsan Nasrudiansyah and Adudin Alijaya, "Kajian Yuridis Undang-Undang No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga Ditinjau Berdasarkan Hukum Islam," *MIM: Jurnal Kajian Hukum Islam* 1, no. 1 (June 21, 2023): 39–64.

²³ Aini Jannah, M. Nazaruddin, and Dahlan A. Rahman, "Implementasi Qanun Aceh Nomor 9 Tahun 2019 Tentang Penyelenggaraan Penanganan Kekerasan Terhadap Perempuan Dan Anak," *Jurnal Transparansi Publik (JTP)* 2, no. 1 (June 28, 2022): 10–18, <https://doi.org/10.29103/jtp.v2i1.7716>.

between perpetrators and victims, and prioritizing victim recovery during the investigation and court proceedings. Addressing instances of domestic violence involves not only the legal prosecution of the individuals responsible for the violence, but also considering the rights of the victims and devising strategies for their recovery.

Handling refers to the measures taken to safeguard victims from any attempts made by their family, advocates, social institutions, police, prosecutors, courts, or other parties to provide them with a feeling of safety. These efforts may be temporary or based on court rulings.

When dealing with domestic violence cases, the PPA Unit focuses on understanding the causes of domestic violence and prioritizes the safety of victims and enforcement of the law against perpetrators. The recovery process is carried out in a comprehensive manner, with investigators working together with counsellors and clergy to find the most effective solution for addressing the problems reported by victims and restoring the integrity of the household.²⁴

Handling Domestic Violence in Qanun Number 9 of 2019 Concerning the Implementation of Handling Violence Against Women and Children

Qanun No. 9/2019 addresses the enforcement of measures that fight violence against women and children, specifically focusing on domestic violence that causes or has the potential to cause physical, psychological, sexual, economic, and social harm or distress to women and children. This includes acts such as making threats, using coercion, or depriving individuals of their independence, regardless of whether the violence occurs in public or private settings.

The goal of addressing violence against children and women is to:²⁵

1. Enhancing the quality of services for Women and Children through integrated and comprehensive services that encompass complaint handling, recording and reporting, rehabilitation, legal assistance and enforcement, as well as repatriation and social reintegration.
2. Strengthening the support for Aceh's policies and budget in efforts to address violence against women and children;
3. Enhancing the institutional capacity and human resources at the Procurement Service Agency
4. Strengthening the commitment of policy makers in the comprehensive implementation of addressing violence against women and children.
5. Promoting widespread knowledge and awareness among the public to support the handling of violence against women and children.
6. Enhancing coordination, integration, synchronization, and synergy across SKPA and institutions, between the government and other stakeholders such as religious organizations, professional organizations, academics, private sector, and the community in addressing violence against women and children.
7. Establishing an integrated data system for addressing violence against women and children.

²⁴ Syarifuddin, "Penanganan Dan Pencegahan Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Perempuan Dan Anak," *Jurnal Hukum Dan Masyarakat Al-Hikmah* 2, no. 4 (2021): 623–34.

²⁵ Jannah, Nazaruddin, and Rahman, "Implementasi Qanun Aceh Nomor 9 Tahun 2019 Tentang Penyelenggaraan Penanganan Kekerasan Terhadap Perempuan Dan Anak."

8. Decreasing the incidence of violence against Women and Children in accordance with the National Medium-Term Development Plan, the Aceh Medium-Term Development Plan, and the achievement of the Sustainable Development Goals. (*Sustainable Development Goals*)

The occurrence of domestic violence, regardless of the cause, will gradually erode the cohesion and stability of the family, ultimately leading to its disintegration. If this scenario occurs, the individuals who experience the greatest amount of detriment are the children, particularly in terms of their future prospects.²⁶ Hence, it is imperative to persist in finding the optimal approach to preserve the institution of the family, while simultaneously ensuring sufficient care for its members, and by extension, the broader community.²⁷

The prevention, service, and protection of women and children, as well as their empowerment and rehabilitation, are all achieved through the act of managing violence. The implementation of this management is conducted in three stages: prevention, service and protection, and empowerment and rehabilitation. The prevention of violence²⁸ against children is achieved through the establishment of a functional network aimed at preventing such violence. This involves coordinating and integrating violence prevention efforts with community partnerships, private sector involvement, and non-governmental organizations focused on child protection. Additionally, it entails creating an integrated child protection system within the community, promoting active participation of children through forum organizations, providing safe and supportive public facilities for child development, and implementing an integrated security system that includes the placement of security officers in high-risk areas. Furthermore, it involves strengthening family consultation institutions to ensure the fulfilment of children's rights.²⁹

The Government of Aceh is obligated to handle the implementation of efforts against Violence against Women and Children, as stipulated in Qonun Number 9 of 2019:

1. Develop policies, programs, and initiatives to address the issue of violence against women and children.
2. Enactment of policies on the management of violence against women and children.
3. Ensuring the provision of facilities and infrastructure to support the implementation of measures addressing violence against women and children.

²⁶ Maisah Maisah and Yenti Ss, "Dampak Psikologis Korban Kekerasan Dalam Rumah Tangga Di Kota Jambi," *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin* 17, no. 2 (October 1, 2016): 265–77, <https://doi.org/10.14421/esensia.v17i2.1292>.

²⁷ Siti Meylissa Puspitasari, "Perlindungan Hukum Terhadap Korban Tindak Pidana Kekerasan Dalam Rumah Tangga," *Lex LATA* 1, no. 3 (January 11, 2020): 223–30, <https://doi.org/10.28946/lexl.v1i3.514>.

²⁸ Sidiq Aulia Lilik, "Penanganan Kasus Kekerasan dalam Rumah Tangga (KDRT) oleh Berencana Pemberdayaan Masyarakat dan Pemberdayaan Perempuan (BKBPMPP) Kabupaten Sleman," *University Of Bengkulu Law Journal* 4, no. 2 (October 24, 2019): 152–70, <https://doi.org/10.33369/ubelaj.4.2.155-176>.

²⁹ Laely Wulandari, "Kebijakan Penanganan Kekerasan Dalam Rumah Tangga Melalui Mediasi Penal," *LAW REFORM* 4, no. 1 (October 23, 2010): 1–19, <https://doi.org/10.14710/lr.v4i1.312>.

4. Ensuring the efficacy and competence of the organizers of Handling Violence against Women and Children
5. Ensure that the budget is available at its highest level of efficiency.
6. Oversee and manage the execution of measures to address violence against women and children.
7. Establish an integrated information system to manage incidents of violence against women and children.
8. Promote awareness and understanding of laws and regulations pertaining to the empowerment of women and the protection of children who are victims of abuse.

When examining this Qonun, the paralegal not only addresses the legal requirements but also provides support to the victim's psychological well-being, aiming to minimize the trauma experienced by the victim. Subsequently, the case is diligently resolved, with continuous support provided throughout the stages of social reintegration and termination. The officer assigned to the victim also closely monitors the victim's psychological progress both prior to and after their handover to their family, in order to foster and facilitate a successful transition to a more improved life.³⁰

Criticizing Judge Decision Number 37/Pid.Sus/2020/PN. Ttn in a Criminal Case of Domestic Violence

An essential factor in the judge's exercise of judicial power is their deliberation in determining the gravity of a criminal sentence. The judge's consideration can be seen as an evaluation of the merits or drawbacks of a matter, with the purpose of reaching a resolution or decision. This evaluation is carried out by judges at both the supreme court and lower judicial bodies, as stated in the judge's decision.³¹ The judge's considerations refer to the judge's ideas or opinions when rendering a decision, considering factors that can either mitigate or implicate the culprit. Each judge is required to provide written deliberations or comments on the case under review, which will then be incorporated into the final decision.³² Judges should possess the ability to discern the beneficial outcomes and prevent detrimental consequences for humanity through their legal deliberations.³³

The judge's deliberation is a crucial factor in determining the actualization of a judge's decision that embodies fairness (*ex aequo et bono*) and legal certainty, as well as providing advantages for the involved parties. Therefore, it is imperative to handle this deliberation with utmost care, precision, and caution. If the judge's evaluation is not comprehensive, sound, and meticulous, then the judge's decision resulting from the

³⁰ Jannah, Nazaruddin, and Rahman, "Implementasi Qanun Aceh Nomor 9 Tahun 2019 Tentang Penyelenggaraan Penanganan Kekerasan Terhadap Perempuan Dan Anak."

³¹ Andi Hakim Lubis and Mhd Hasbi, "Pertimbangan Hukum Hakim Dalam Menetapkan Suatu Putusan Di Persidangan Perkara Pidana," *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 12 (December 29, 2023), <https://doi.org/10.5281/zenodo.10441033>.

³² Andi Hakim Lubis, *Kedudukan Hakim Dalam Konstitusi*, Medan (Pustaka Pratama, 2024).

³³ Andi Hakim Lubis, "Maslahat Aspects As a Basis for Judges Considerations in the Implementation of Forced Money (Dwangsom) in Religious Courts," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 2 (2023): 262-72, <https://doi.org/10.31941/pj.v22i2.2967>.

evaluation will be invalidated by the High Court / Supreme Court. When judges evaluate a case, they also need evidence, which will be used as a basis for deciding. Evidence is the pivotal phase of the trial examination. The purpose of evidence is to establish certainty on the occurrence of a submitted event or fact, with the goal of facilitating an accurate and impartial judgement by the court. The judge cannot render a decision unless the event or fact has been conclusively established as true, thereby establishing a legal nexus between the parties involved.³⁴

The decision made by the judge should reflect profound philosophical concepts, consistently characterized by qualities such as divinity, humanity, unity, benevolence, and justice.³⁵ A judge's decision is fundamentally the result of a judge's internal conflict, involving his own thoughts, interactions with other judges, and his surroundings, in order to comprehend the truth. By exercising their authority, judges have the power to transfer ownership from one person to another, restrict the freedom of individuals, invalidate the government's unjust actions against the community, and even deprive someone of their right to life. A significant amount of power is utilised in order to maintain the principles of law, truth, and justice. This position requires a significant level of responsibility, as the decisions made must be answerable both to the community on a horizontal level and to God Almighty on a vertical level.³⁶

Upon reviewing the Decision of the Tapak Tuan District Court Judge Number 37/Pid.Sus/2020/PN, some significant points about the judge's legal analysis should be thoroughly investigated. Upon careful examination of the ruling, it appears that the judge primarily focuses on formal aspects that are largely intangible and have less impact on the material considerations of the decision. Consensus exists that violence is wrong under any circumstances. Nevertheless, judges should also consider the past record of domestic violence, assessing whether the behaviour is an isolated incident or a recurring pattern.

The judge's assessment of aggravating and mitigating factors does not provide clarity regarding the defendant's prior behaviour towards the victim, who is the defendant's kid. Undoubtedly, every parent desire to prevent their child from experiencing any form of distress. Furthermore, in the judgment, the father (defendant) confessed that his anger may have been a result of his recent return from nocturnal employment.

The panel of judges' decision to impose a sentence of 1 year and 6 months should be mitigated due to the defendant's role as the head of the family. In the author's perspective, imposing the indicated punishment on the defendant will give rise to other issues. How can the family sustain their livelihoods while the breadwinner is unable to provide income? Consistent with the author's viewpoint, Judge II shared the same perspective:

³⁴ Mukti Arto, *Praktek Perkara Perdata Pada Pengadilan Agama* (Pustaka Pelajar: Yogyakarta, 2004).

³⁵ Andi Hakim Lubis, Junaidi Lubis, and Said Rizal, "Optimalisasi Pengawasan Dan Pembinaan Hakim Menuju Kekuasaan Kehakiman Yang Berintegritas Dan Bermartabat," *Jurnal Ilmu Hukum Prima* 5, no. 1 (2022): 12–24.

³⁶ Abdul Satar, Surnada Surnada, and Ariman Sitompul, "Comparison Of Criminal Sanctions Against Sexual Harassers In Indonesia And Malaysia," *Legalpreneur Journal* 2, no. 2 (2024): 181–87, <https://doi.org/10.46576/lpj.v2i2.4225>.

During the deliberation session, the panel unanimously agreed on the criminal offense proven in the case. However, Member Judge II (Taufik Hidayat) had a different opinion regarding the length of sentencing, as stated in Article 14 of Law Number 48 of 2009 concerning Judicial power. This article requires that if there is no unanimous consensus among the judges, the dissenting judges must be included in the decision. Judge II's considerations were as follows:

In relation to the duration of the penalty to be imposed on the Defendant, it is noteworthy that Member Judge II holds a differing opinion regarding the length of punishment stated in the Charges of the Public Prosecutor in the case of Defendant Herman bin Nyak Mubin. Considering the Charges indicated earlier, Judge Member II believes that the punishment proposed by the Public Prosecutor in this instance will result in inequality, so causing unfairness for the Defendant Herman bin Nyak Mubin. The actions of Defendant Herman bin Nyak Mubin in the current case are essentially similar in terms of quality and quantity to the case involving Defendant Adli Safwan A.md bin Abdullah (Decision Number 84/Pid.Sus/2019/PN Ttn), who was prosecuted and sentenced to 7 months imprisonment and 4 months imprisonment, respectively.

When evaluating the duration of a criminal punishment, it is important to consider the extent to which the Defendant's actions have disrupted the harmony of societal order from a humanitarian perspective. Additionally, the duration of punishment should also serve as an opportunity for the Defendant to engage in self-introspection and reflect on the mistakes they have made, from an educational standpoint. Considering the victim's age of 16, the absence of disclosed psychological trauma as confirmed by qualified experts, and the lack of clear evidence regarding repeated acts of violence by the Defendant, Judge Member II concluded that there was no immediate need to deliver a verdict with a significantly different degree of criminal punishment.

Given that excessively lengthy sentences may hinder the intended goal of punishment, which is to reform the defendant's behaviour, there is concern that the original objective of the penalty may be undermined. Hence, as per Member Judge II, the duration of incarceration resulting from the Judges' deliberation in this case differs from the majority opinion. This is because the suitability of the punishment's duration should be directly proportional to the detrimental consequences arising from the Defendant's actions, as well as the significance of achieving fairness in terms of material justice, ensuring that the punishment aligns with the committed actions.

The verdict elucidates the judge's endeavours to facilitate the reconciliation of the family in order to restore peace. Despite the familial relationship and shared residence, this case involves a dispute between a father and son. While the responsibility for peace efforts or restorative justice mostly lies with the police and prosecutors, judges should also actively participate in these endeavours. To ensure the accuracy and appropriateness of his choice, the judge must utilise his reasoning abilities, conscience, emotions, desires, and intuition. This will allow him to uncover the genuine essence of his objective, explain the rationale behind his decision, and ensure that his legal considerations are advantageous.

Therefore, the judge's legal considerations must prioritize profound philosophical values, specifically characterized by conclusions that are godly, compassionate, promote

unity, benevolence, and social justice for all Indonesian citizens. Philosophy should assist the judge in mentally preparing for the deliberation of their decision, ensuring that the decision incorporates philosophical principles.³⁷

However, we should acknowledge the panel of judges' decision as they recognise the challenging nature of their role. They must not only consider the legal interests involved in the case, but also consider the community's concept of justice in order to establish legal certainty. The public continues to expect judges to make fair decisions, but due to their human nature, judges are unlikely to satisfy all parties involved. Nevertheless, judges are expected to render decisions that are as fair as possible, considering the legal facts presented during the trial and adhering to clear legal principles (such as the principle of legality), while also relying on their own conscience. Judges are often regarded as divine emissaries in the world, as they are expected to embody the principles of truth and impartiality in their rulings. Therefore, judges should not waver in their commitment to upholding justice. However, it is crucial that the decisions made by judges are not only just, but also capable of being effectively enforced by those seeking justice.

Conclusion

According to decisions in Number 37/Pid.Sus/2020/PN, it is evident that the judge primarily focusses on formal aspects and neglects to address material issues in the ruling. It is well acknowledged that there is no valid rationale for engaging in violence under any circumstances. Nevertheless, judges should also consider the past record of domestic violence, assessing if the behaviour is a first occurrence or has been recurrent. The judge's assessment of the aggravating and mitigating factors in the sentencing does not provide clarity regarding the defendant's past treatment of the victim, namely the father's history behaviour towards the child. Undoubtedly, every parent desire to prevent their child from experiencing any form of distress. Furthermore, in the verdict, the father (defendant) confessed that his anger may have been a result of his recent return from work during the late hours of the night.

The panel of judges' decision to impose a sentence of 1 year and 6 months should be mitigated due to the defendant's role as the head of the family. If the criminal is sentenced to the indicated punishment, it will undoubtedly give rise to additional issues, according to the author's perspective. How can the family sustain its livelihood when the family's breadwinner is unable to generate income, as supported by the perspective of Member Judge II. However, the author acknowledges and values the decision made by the panel of judges. The author understands that the judges face a challenging task, as they must not only consider the legal aspects when deciding the current case, but also consider the community's perception of justice in order to establish legal certainty.

³⁷ Baby Suryani Fithri, Windy Sri Wahyuni, and Ariman Sitompul, "Implementation Of The Child Protection Act As A Positive Law In Eradicating Child Marriage In Indonesia," *Legal Brief* 11, no. 5 (2022): 2808–17, <https://doi.org/10.35335/legal>.

References

- Alfitri, Alfitri. "Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia." *Studia Islamika* 27, no. 2 (August 3, 2020): 273–307. <https://doi.org/10.36712/sdi.v27i2.9408>.
- Andi Hakim Lubis. *Kedudukan Hakim Dalam Konstitusi*. Medan. Pustaka Pratama, 2024.
- Ariawan, I. Gusti Ketut. "Metode Penelitian Hukum Normatif." *Kertha Widya* 1, no. 1 (December 31, 2013). <https://doi.org/10.37637/kw.v1i1.419>.
- Bennett, Linda R., Sari Andajani-Sutjahjo, and Nurul I. Idrus. "Domestic Violence in Nusa Tenggara Barat, Indonesia: Married Women's Definitions and Experiences of Violence in the Home." *The Asia Pacific Journal of Anthropology* 12, no. 2 (April 1, 2011): 146–63. <https://doi.org/10.1080/14442213.2010.547514>.
- Fauzi, Lutfiah, and Emy Rosnawati. "Analisis Putusan Hakim No. 180/Pid.Sus/2020/PN Sda Terhadap Korban Tindak Pidana Kekerasan Dalam Rumah Tangga." *ResearchJet Journal of Analysis and Inventions* 2, no. 4 (2023): 1–10. <https://doi.org/10.47134/researchjet.v2i4.9>.
- Guntari, Suryani, Azmiati Zuliah, and Ariman Sitompul. "Legal Regulations for Children Involved in Narcotics Crimes in Indonesia," 2012, 194–202.
- Hasanudin, Hasanudin, Oyo Sunaryo Mukhlas, Muhammad Farhan Bin Mat Noradin, Ending Solehudin, and Dedah Jubaedah. "Phenomena of Domestic Violence Against Women and Divorce in 2020-2022 in Indonesia: An Islamic Perspective." *Al-Manahij: Jurnal Kajian Hukum Islam*, August 23, 2023, 137–52. <https://doi.org/10.24090/mnh.v17i2.7686>.
- Hidayat, Muhammad, Arwin Juli Rakhmadi, Abdul Rahman Cemda, and Marataon Ritonga. "Islamic Law Paradigm Of Effort To Children Educational Protection" 4, no. 2022 (2023): 101–10.
- Jannah, Aini, M. Nazaruddin, and Dahlan A. Rahman. "Implementasi Qanun Aceh Nomor 9 Tahun 2019 Tentang Penyelenggaraan Penanganan Kekerasan Terhadap Perempuan Dan Anak." *Jurnal Transparansi Publik (JTP)* 2, no. 1 (June 28, 2022): 10–18. <https://doi.org/10.29103/jtp.v2i1.7716>.
- Knight, Andrew, and Leslie Ruddock, eds. *Advanced Research Methods in The Built Environment*. Chichester, U.K. ; Ames, Iowa: Wiley-Blackwell, 2008.
- Lilik, Sidiq Aulia. "Penanganan Kasus Kekerasan dalam Rumah Tangga (KDRT) oleh Berencana Pemberdayaan Masyarakat dan Pemberdayaan Perempuan (BKBPMPP) Kabupaten Sleman." *University Of Bengkulu Law Journal* 4, no. 2 (October 24, 2019): 152–70. <https://doi.org/10.33369/ubelaj.4.2.155-176>.
- Lubis, Andi Hakim. "Maslahat Aspects As a Basis for Judges Considerations in the Implementation of Forced Money (Dwangsom) in Religious Courts." *Pena Justisia:*

- Media Komunikasi Dan Kajian Hukum* 22, no. 2 (2023): 262–72. <https://doi.org/10.31941/pj.v22i2.2967>.
- Lubis, Andi Hakim, and Mhd Hasbi. "Pertimbangan Hukum Hakim Dalam Menetapkan Suatu Putusan Di Persidangan Perkara Pidana." *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 12 (December 29, 2023). <https://doi.org/10.5281/zenodo.10441033>.
- Maisah, Maisah, and Yenti Ss. "Dampak Psikologis Korban Kekerasan Dalam Rumah Tangga Di Kota Jambi." *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin* 17, no. 2 (October 1, 2016): 265–77. <https://doi.org/10.14421/esensia.v17i2.1292>.
- Muazzul, Muazzul, and Andi Hakim Lubis. "PERLINDUNGAN ANAK PERSPEKTIF HUKUM ISLAM (Sosiologi Hukum Islam Sebagai Pendekatan Pengkajian)." *Journal of Gender and Social Inclusion in Muslim Societies* 2, no. 1 (2021): 1. <https://doi.org/10.30829/jgsims.v2i1.9639>.
- Mukti Arto. *Praktek Perkara Perdata Pada Pengadilan Agama*. Pustaka Pelajar: Yogyakarta, 2004.
- Munir, Lily Zakiah. "Domestic Violence in Indonesia." *Muslim World Journal of Human Rights* 2, no. 1 (September 2, 2005). <https://doi.org/10.2202/1554-4419.1031>.
- Nasihin. *Korban Kejahatan Kekerasan Dalam Rumah Tangga*. Jakarta: Rajawali Press, 2017.
- Nasrudiansyah, Ihsan, and Adudin Alijaya. "Kajian Yuridis Undang-Undang No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga Ditinjau Berdasarkan Hukum Islam." *MIM: Jurnal Kajian Hukum Islam* 1, no. 1 (June 21, 2023): 39–64.
- Nisa, Martina Purna. "Critical Review of Domestic Violence as Reason for Divorce (Comparison of Divorce Laws in Indonesia, Malaysia and the Maldives)." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 22, 2021): 1–23. <https://doi.org/10.19105/al-lhkam.v16i1.4292>.
- Nurfaizah, Iva. "Dampak Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Kesehatan Mental Anak." *Gunung Djati Conference Series* 19 (2023): 95–103.
- — —. "Dampak Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Kesehatan Mental Anak." *Gunung Djati Conference Series* 19, no. 1 (February 10, 2023): 95–103.
- Nurlaelawati, Euis. "Muslim Women in Indonesian Religious Courts." *Islamic Law and Society* 20, no. 3 (2013): 242–71. <https://doi.org/10.1163/15685195-0010A0003>.
- Puspitasari, Siti Meylissa. "Perlindungan Hukum Terhadap Korban Tindak Pidana Kekerasan Dalam Rumah Tangga." *Lex LATA* 1, no. 3 (January 11, 2020): 223–30. <https://doi.org/10.28946/lexl.v1i3.514>.
- Safrina. Kemen PPPA - DP3A Aceh Cegah dan Tangani Kekerasan terhadap Perempuan, <https://www.acehprov.go.id/berita/kategori/pemerintahan/kemen-pppa-dp3a-aceh-cegah-dan-tangani-kekerasan-terhadap-perempuan> 1 (2023).
- — —. "Kemen PPPA - DP3A Aceh Cegah Dan Tangani Kekerasan Terhadap Perempuan." Accessed July 14, 2024.

<https://acehprov.go.id/berita/kategori/pemerintahan/kemen-pppa-dp3a-aceh-cegah-dan-tangani-kekerasan-terhadap-perempuan>.

- Samosir, Samuel Saut Martua, Gautama Budi Arundhati, and Firman Floranta Adonara. "Prevention and Treatment of Domestic Violence in Legal Perspective." *UNEJ E-Proceeding* 1, no. 1 (July 2, 2022): 238–43.
- Satar, Abdul, Surnada Surnada, and Ariman Sitompul. "Comparison Of Criminal Sanctions Against Sexual Harassers In Indonesia And Malaysia." *Legalpreneur Journal* 2, no. 2 (2024): 181–87. <https://doi.org/10.46576/lpj.v2i2.4225>.
- Sitompul, Roswita, Alesyanti, and Muhammad Ridwan. "Domestic Violence as Initiated by Batak Culture in East Medan, Indonesia." *Journal of Human Behavior in the Social Environment* 30, no. 7 (October 2, 2020): 835–42. <https://doi.org/10.1080/10911359.2020.1750526>.
- Syarifuddin. "Penanganan Dan Pencegahan Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Perempuan Dan Anak." *Jurnal Hukum Dan Masyarakat Al-Hikmah* 2, no. 4 (2021): 623–34.
- Wahab, Rochmat. "Kekerasan Dalam Rumah Tangga: Perspektif Psikologis Dan Edukatif." *Unisia* 61, no. 3 (2012): 247–56.
- Wulandari, Laely. "Kebijakan Penanganan Kekerasan Dalam Rumah Tangga Melalui Mediasi Penal." *LAW REFORM* 4, no. 1 (October 23, 2010): 1–19. <https://doi.org/10.14710/lr.v4i1.312>.