



CRIMINAL ACTS OF WIFE'S ABANDONMENT BASED ON LAW NUMBER 23 OF 2004 CONCERNING ELIMINATION OF VIOLENCE IN HOUSEHOLD (Analysis of Judgment 85/pid.sus/2019/PN.sbh)

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Abstract

One form of crime that occurs in the household environment is domestic violence (KDRT). The thing that is dreamed of by a couple in a marriage is to form a family that is able to provide eternal happiness and create harmony and peace besides having children in accordance with Law Number 1 of 1974 concerning Marriage. Regarding the elimination of domestic violence, it is regulated in Law Number 23 of 2004. Today household neglect of wives is still common, although various efforts have been made to reduce or even overcome it. Based on this, the problem arises what factors cause neglect in the household and how to punish perpetrators of domestic violence. Then research is needed, namely the type of empirical legal research. In this case law is conceptualized as an empirical phenomenon that can be observed and researched in the field. Factors that cause neglect in the household are economic problems, infidelity and behavioral factors. The problem of sentencing from the analysis of cases of neglect in the household raised the conviction of the defendant with a very light 6 month prison sentence that should have been.

Keywords: Wife Abandonment, Domestic Violence, Criminal.

1. INTRODUCTION

A household is formed since the occurrence of a legal marriage between husband and wife which aims to form a happy, eternal and prosperous family based on love.(Martha 2015). Each family member has their respective roles and duties, such as the husband acting as father and head of the family, whose job is to earn a living, provide education and protect his family members and the wife acts as a mother having the duty to take care of the household and care for her children. The role of the household is very important in the life of every human being, because it is in household life that every human being can share affection, receive protection, and meet their needs.(Ediwarman 2014). In every human's household, when he was a baby, he first interacted and got to know his environment(Samadani 2013). Education in the household plays an important role in shaping the character of each family member. So that if the interaction in the household is carried out with love, it will have a good influence on the formation of the character of family members. Vice versa, if the interaction within the family is carried out with violence it will have a bad influence on the formation of character and relationships within the family(Waluyo 2014).

Article 27 of the 1945 Constitution of the Republic of Indonesia clearly states that all citizens have the same position. This affirmation contains a statement that all citizens, men and women, will receive the same treatment. In addition, the rights and obligations are no different between men and women. So, all forms of discrimination against women should be eliminated. This is stated in Article 15 of Law Number 7 of 1984 concerning Ratification of the Convention Concerning the Elimination of All Forms of Discrimination Against Women(Ramadani & Yuliani 2017). The household should be a safe place for its members because the husband and wife build the family on the basis of physical and spiritual bonds between the two. Husband and wife have equal rights and positions in household life and social life in society and have the right to take legal

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action(Pettanase 2015). Domestic violence is a type of crime that does not get enough attention and reach from the law. Acts of violence in the household generally involve perpetrators and victims among family members in the household, while forms of violence can be in the form of physical violence and verbal violence. Perpetrators and victims of domestic violence can happen to anyone, without being limited by social status, educational level, and ethnicity. Violence against wives in the household is a serious social problem, but it has received little response from society and law enforcers(Pettanase 2015).

As an example of a case that occurred in neglect in the household committed by a husband in Padang Lawas Regency, to be precise in the jurisdiction of the Sibuhuan District Court, a husband left his children and wife where he should be obliged to provide a life of care and maintenance for his family. One of the reasons for the abandonment was caused by quarrels between husband and wife over the alleged affair committed by the husband. In reality, even though there are many cases of neglect of wives in the household, the legal system in Indonesia has not guaranteed protection for victims of domestic violence. The Criminal Code has regulated persecution and decency as well as the neglect of people who need to be provided with a living and life(Prayudi 2012). The crime of neglecting people in the household, namely wives and children, and people who are responsible (participating in the household) is regulated in Law No. 23 of 2004, which carries a lighter sentence compared to domestic violence or abuse. This has resulted in many husbands not heeding the threats of punishment contained in Article 49 of Law No. 23 of 2004, so that they can treat their wives arbitrarily for their power as the head of the family.(Khaled 2015).

So from the wording of the article above neglect can be seen as a form of neglect of one's obligations and responsibilities in the household which according to the law a person has been designated as the holder of responsibility for the lives of people who are in his family environment. Abandonment also violates what is stated in the Marriage Law. Article 1 Paragraph (1) of Law Number 1 of 1974 which states: "Marriage is a physical and spiritual bond between a man and a woman as husband and wife by forming a happy and eternal family (household) based on Belief in the One Almighty God". Based on the background above, this research is very important to do because nowadays there are very often quarrels in the household which result in husbands not caring about their obligations as husbands to provide maintenance for their wives. Often the wife becomes a victim of domestic violence and is abandoned by her husband. However, the problem is that people do not understand that this act is a crime. Therefore, this research also aims to protect women.

2. RESEARCH METHODS

The type of research used is normative legal research. Normative legal research is legal research that places law as a building system of norms. The norm system in question is about principles, norms, rules of law and regulations, court decisions, agreements and doctrines(Marzuki 2016). The approach used in a normative study allows a researcher to utilize the findings of empirical law and other sciences for the purposes of analysis and explanation of law without changing the character of law as a normative science.(Ibrahim 2007). This research was conducted based on the decision of the Sibuhan District Court judge, which is in the jurisdiction of Padang Lawas Regency, Sumatra Province. This research was conducted from 25 October 2022 to 10 January 2023. The legal research materials used are secondary data which are generally known as legal materials which consist of primary legal materials, secondary legal materials and tertiary legal materials. Secondary data used in this study include: (1) the 1945 Constitution of the Republic of



Indonesia, (2) the Criminal Code, (3) Law No. 1 of 1974 concerning Marriage, (4) Law No. Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Data collection techniques and tools in this study were through library research and document research at the Medan District Court, North Sumatra. In this study, qualitative data analysis will be carried out. Qualitative data analysis was carried out using descriptive analysis techniques, evaluative techniques, and argumentative techniques.

3. DISCUSSION

3.1 Legal Basis for the Crime of Abandonment of a Wife Carried Out by a Husband

Law Number 23 of 2004 concerning the Elimination of Domestic Violence which was passed in 2004 is the result of a long struggle carried out by Indonesian women activists, who consider that there is so much violence against women and the desire to protect women's rights and equality of treatment and protection of rights before the law. This became the background for the creation of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Departure with the aim of protecting women, especially from domestic violence. Law Number 23 of 2004 concerning the Elimination of Domestic Violence aims to give every citizen the right to feel safe and free from all forms of violence in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia which explains that all forms of violence, especially domestic violence, is a violation of human rights and a crime against human dignity as well as a form of discrimination that must be eradicated.

Victims of domestic violence, most of whom are women, must receive protection from the state and/or society in order to avoid and be free from violence or threats of violence, torture, or treatment that degrades human dignity. In fact, many cases of domestic violence still occur, so regulations are needed to guarantee protection for victims of domestic violence. In the explanation of Law no. 23 of 2004 concerning the Elimination of Domestic Violence states that legal reform in favor of vulnerable or subordinated groups, especially women, is very much needed in connection with the large number of cases of violence, especially in households.(Soeroso 2010).

The enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence is one of the milestones for efforts to protect victims of violence that occur within the household sphere, especially women and children as groups that are vulnerable to becoming victims of violence. In addition, this law also regulates steps to anticipate the birth of new violence and the clarity of strict sanctions for perpetrators of violence.(Ridwan 2006). Legal renewal is necessary because the existing laws are inadequate and no longer in accordance with the development of community law. In this regard, it is driven because of a need because of the rampant acts of violence by husbands against members of their families that occur in the household. Although in general the Criminal Code (KUHP) has regulated persecution and decency as well as the neglect of people who need to be provided with a living and livelihood. However, it is not fully able to handle cases that occur in the household.

Therefore, a special law (Lex Specialis) is needed that can deal with cases of domestic violence and protect victims. Prior to Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it was as if there had never been acts of violence within the household sphere. Because in the past, the handling of domestic violence was always too late. This means that victims or their families report violence that occurs after they are seriously injured or have even died. Law Number 23 of 2004 concerning the Elimination of Domestic Violence, in addition to regulating prevention and protection as well as recovery for victims of domestic violence, also specifically

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regulates violence that occurs in households with elements of a crime that are different from the crime of persecution which regulated in the Criminal Code.

The existence of Law Number 23 of 2004 concerning the Elimination of Domestic Violence has a positive contribution to law enforcement on domestic violence in Indonesia. With this law, the police can protect victims and at the same time provide legal certainty for victims in seeking justice. If domestic violence was previously positioned as a civil case which is the private matter of each individual, now it has become a criminal case so that it becomes a public matter. In Article 1 paragraph (1) of Law no. 23 of 2004 concerning the Elimination of Domestic Violence states: Domestic Violence is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts of coercion, or deprivation independence unlawfully within the household sphere.”

Birth of Law no. 23 of 2004 concerning the Elimination of Domestic Violence is a breath of fresh air for victims of violence in seeking justice. The socialization was carried out to introduce the existence of a new law which was carried out by various groups. For example the government (law enforcement), social organizations engaged in education and religion, as well as women's organizations at the central and regional levels. Besides that, with the promulgation and dissemination of this law, it encourages the public and victims to be more open and to be more courageous in reporting about acts of violence they have experienced. It should also be remembered that various forms of domestic violence are reported in the mass media almost every day (Soeroso 2010).

Furthermore, Article 4 of Law Number 23 of 2004 regulates the purpose of drafting the law, namely:

1. Prevent all forms of domestic violence;
2. Protect victims of domestic violence;
3. Take action against perpetrators of domestic violence; And
4. Maintaining the integrity of a harmonious and prosperous household.

Prohibition of Domestic Violence according to Law no. 23 of 2004 concerning the Elimination of Domestic Violence are contained in Articles 5 to Article 9. In terms of the scope of domestic violence specifically regulated in Article 2 paragraph (1) of Law no. 23 of 2004. From the provisions above, it can be said that husband and wife are part of the subject included in the scope of the scope regulated in Law no. 23 of 2004 this. The scope of the category of wives referred to as victims of violence is for those who are officially registered at the KUA and civil registry (Soeroso 2010). According to Pudjijangyanti, in this life the family environment is the smallest vessel in society, in recent years it has been said to be the most productive place for acts of violence against women. (Pudjijangyanti 1993). In general, in the case of domestic violence, the person who is suspected or suspected of committing the crime is a family member in the household.

Violence in the form of physical violence such as hitting and threats. In Indonesian laws and regulations, there is a law regarding the elimination of domestic violence (UUKDRT), namely Law Number 23 of 2004. Legal sanctions for husbands who abandon their wives within the scope of the household are regulated in Article 9 paragraph (1) of the Law. Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Abandonment of wives is progressing, even though efforts have been made to overcome it, including law enforcement that is so strict against the perpetrators. However, this does not seem to have a deterrent effect and they are not afraid of the legal consequences they will receive. According to Natabangsa Surbakti this violence is a criminal act of



complaint, so criminal law is maintained as the final step in an effort to eradicate criminal acts of domestic violence (Prayudi 2007).

Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence states that everyone is prohibited from committing domestic violence against people within the scope of their household by:

1. Physical abuse

Physical violence is acts that result in pain, falling ill or serious injury (Douglas and Waksler 2002). Physical violence in the form of:

- a. Severe physical violence; in the form of serious abuse such as kicking, hitting, cornering, attempting to kill or murder, and all other actions that can result in:
 - 1) Serious injury
 - 2) Not able to carry out daily tasks
 - 3) Faint
 - 4) Serious injuries to the victim's body and/or wounds which are difficult to heal or which pose a danger of death
 - 5) Losing one of the five senses.
 - 6) Got disabled.
 - 7) Suffering from paralysis.
 - 8) Disturbed thinking power for more than 4 weeks
 - 9) The death or death of a woman's womb
 - 10) Victim's death.
- b. Mild Physical Violence Mild Physical Violence; in the form of slapping, grabbing, pushing, and other actions that result in:
 - 1) Minor injury
 - 2) Pain and physical injuries that are not in the category of severe
 - 3) Doing repetition of mild physical violence can be included in the type of heavy violence.

2. Psychic Violence

Psychological violence is an act that results in fear, loss of self-confidence, loss of the ability to act, a feeling of helplessness, and/or severe psychological suffering to someone. (Prayudi 2012). Psychological violence consists of:

- a. Severe psychological violence; in the form of acts of control, manipulation, exploitation, arbitrariness, humiliation and humiliation, in the form of prohibitions, coercion and social isolation, demeaning or insulting actions and or speech, stalking, violence and or threats of physical, sexual and economic violence, each of which can result in severe psychological suffering in the form of one or more of the following:
 - 1) Sleep or eating disorders or drug addiction or sexual dysfunction, one or all of which are severe and/or chronic.
 - 2) Post traumatic stress disorder.
 - 3) Severe impairment of body function (such as sudden paralysis or blindness without medical indication)
 - 4) Severe depression or self-destruction
 - 5) Mental disorders in the form of loss of contact with reality such as schizophrenia and/or other psychotic forms
 - 6) Suicide

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- b. Mild Psychic Violence; in the form of acts of control, manipulation, exploitation, arbitrariness, humiliation and humiliation, in the form of prohibition, coercion and social isolation, demeaning or insulting actions and or speech, stalking, threats of physical, sexual and economic violence, each of which can result in psychological suffering mild, in the form of one or more of the following:
- 1) Fear and feeling of terror
 - 2) Feelings of helplessness, loss of self-confidence, loss of ability to act
 - 3) Sleep or eating disorders or sexual dysfunction
 - 4) Mild impairment of body function (eg, headache, digestive disturbances without medical indication)
 - 5) Phobias or temporary depression

3. Sexual Violence.

Sexual violence is any act in the form of coercion of sexual intercourse, coercion of sexual intercourse in an unnatural and/or undesirable manner, coercion of sexual intercourse with another person for commercial purposes and/or certain purposes. Such sexual violence includes:(Prayudi 2012)

- 1) Coercion of sexual relations committed against people who live within the scope of the household.
- 2) Forcing sexual relations with someone within the scope of the household with another person for commercial purposes or certain purposes.

4. Household Abandonment

Everyone is prohibited from abandoning people within the scope of his household, even though according to the law that applies to him or because of an agreement or agreement he is obliged to provide life, care or maintenance for that person. Abandonment also applies to anyone who causes economic dependence by limiting and/or prohibiting decent work inside or outside the home so that the victim is under the control of that person. Household neglect is a form of Domestic Violence (KDRT). To find out household neglect as a form of Domestic Violence (KDRT), it must first be explained about the definition of Domestic Violence in the Household itself.

Violence is a problem experienced by humans from time to time. Violence is a human problem, therefore where there are humans, there must be violence (Crime is eternal as eternal as society)(Wahid and Irfan 2001). Kalyanamitra explained that a number of things below could be categorized as elements or indications of violence against women in the household, namely:

- a. Every act of violence both verbally and physically, whether in the form of actions or actions, or threats to life.
- b. This action was directed at the victim because she is a woman. Here we can see the neglect and demeaning attitude towards women so that perpetrators consider it normal to commit acts of violence against women.
- c. Acts of violence can take the form of humiliation, deprivation of freedom, and so on.
- d. Such acts of violence can harm women physically and psychologically.
- e. The act of violence occurs in the family or household environment.(Kalyanamitra 1999)

The Criminal Code also contains the wife's opportunity to get justice. Violence and mistreatment of a wife in the Criminal Code are criminal acts whose sanctions are one third larger than the crime of ordinary maltreatment or committed by and against other people, as explained in articles 351 to 355 of the Criminal Code.



This statement in the Criminal Code was further confirmed by the issuance of Law Number 23 of 2004 concerning Domestic Violence (KDRT) on September 22, 2004 which was the result of a long period of work by various elements of the nation, both from the government, parliament, and of course the wider community. which in this case are represented by institutions that have serious concern for the resolution of domestic violence and the development of a just law for all levels of society.

Article 1 paragraph 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence states that domestic violence is any abuse against someone, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion or unlawful deprivation of liberty within the household sphere. Domestic violence is any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty within the household sphere. Meanwhile, the Elimination of Domestic Violence is a guarantee provided by the State to prevent domestic violence and protect victims of domestic violence (Vide Article 1 number 2, Law Number 23 of 2004). The crime of neglecting a person within the scope of the household is regulated in Article 9 paragraph 1 of Law Number 23 of 2004 which reads:

- 1) "Every person is prohibited from abandoning people within the scope of his household, even though according to the law that applies to him or because of an agreement or agreement he is obliged to provide life, care, or care for that person.
- 2) "Abandonment as referred to in paragraph (1) also applies to anyone who results in economic dependence by limiting and/or prohibiting decent work inside or outside the home so that the victim is under the control of that person."

Sanctions and threats of punishment for people who commit criminal acts of neglecting people within the scope of the household as stated in Law Number 23 of 2004 Article 49 are:

"Sentenced by imprisonment for a maximum of 3 (three) years or a fine of a maximum of Rp. 15,000,000.00 (fifteen million rupiah), any person who:

1. Abandoning other people within the scope of the household as referred to in Article 9 paragraph (1);
2. Abandoning other people as referred to in Article 9 paragraph (2)".

The two articles indicate that neglect in the household is a form of domestic violence. The sound of the two verses can be interpreted that:

- a. "each person". That is, both men and women;
- b. "abandoned". That is, not providing a living, not maintaining, allowing including limiting and/or prohibiting proper work inside or outside the home;
- c. "household". That is, both perpetrators and victims are people within the scope of the household, namely this household (husband, wife, and children), including people who are related by blood, marriage (in-laws, sons-in-law, in-laws, and in-laws). , breastfeeding, care, and guardianship, and those who work to help the household and live in the household concerned.

3.2 Factors Causing Abandonment Of Wives By Husbands

Every State has obligations to the nation and its citizens. The state has an obligation to keep its citizens safe. One of the obligations of the State is to uphold justice and prevent crimes including violence against women which can usually be found in cases of domestic violence.

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People often think that violence that occurs in the household is normal because it is within the family circle, so there are many cases that are difficult to disclose in society.

Violence is an act that results in physical, sexual or psychological misery or suffering, including threats that occur in private life or in public or in front of many people. The household environment usually consists of husband, wife and children. Even people who work in the household such as housemaids and people who live in the house.

Factors that cause neglect in the household, namely:

1. Economic Factors

Humans as individual beings and social beings are always faced with economic problems. In fact, humans are never satisfied with what they get. There are always desires that must be achieved. While the desire is inversely proportional to the needs that exist in this life. The economic factor is the factor that plays the most role in life because with an economy that is synonymous with producers, it can meet the needs that everyone needs. Quarrels in a husband and wife relationship can be triggered by a husband's income problem. It is not uncommon for fights to end in violence. The husband's meager income often makes the wife confused to meet the needs that must be met. Not only the husband's income is small,

2. Affair Factor

Infidelity is the presence of a new person or a third person who enters the husband and wife relationship. This factor can lead to domestic violence. Physical and psychological violence often occurs because a husband or wife has a special relationship with another person. A husband or wife can beat their husband or wife without hesitation if one of them has a special relationship with someone outside. Sometimes there are still wives who maintain their relationships, their households because they think about the fate of their children, want to be with society and are even afraid of being beaten or divorced. This made him prefer to stay and be silent with pressure in his heart.

3. Behavioral Factors

Behavior is formed from parental upbringing and is formed from the surrounding environment where a person lives and associates. A person's behavior can trigger domestic violence such as emotions, likes to gamble and even drunkenness or drinking. In a household, husband and wife should love and respect each other. In addition to acts of behavior, harsh words issued by a husband or wife can also cause psychological violence. Victims who experience incidents of domestic violence do not report the incident to the authorities, namely the police. This is because there is a threat of pressure from one of the parties so that the perception arises in society that domestic violence is a natural thing that happens in a husband and wife relationship and is a problem in the internal domain. People don't need to know other people's household affairs and don't need to interfere.

Article 9 of Law Number 23 of 2004 concerning Domestic Violence has divided two forms of neglect in the household against wives, including:

1. Not providing a living
2. One of the husband's obligations is to fulfill all the needs of his wife according to his ability which is expressly regulated in Article 34 of Law Number 1 of 1974 concerning Marriage
3. Create a dependency
4. In addition to not providing a living for his wife, husband's neglect can also be said to be a behavior that prohibits his wife from working and controls the space for his wife to move. The prohibition of the wife to work is emphasized on 2 things, namely:



- a. Forbidding the wife to work because it will result in economic dependence, so that when the husband is not around, the wife cannot independently meet her own needs. Prohibiting the wife from working with the aim of controlling the wife thereby opening the possibility for the husband to act arbitrarily.
- b. So based on the phenomena of family abandonment that often occur, it needs to be followed up and paid attention to by all authorized parties. The aggrieved party should report the incident to the police for follow-up and the perpetrator can be given a sanction according to what he did.

3.3 The Legal Process of the Criminal Act of Neglect of a Wife by a Husband. (Analysis of Decision Number 85/Pid.Sus/2019/Pn.Sbh)

1. Judge's Consideration

The judge's considerations in imposing a sentence in a case involving the defendant Sarjono Hasibuan are:

- 1) Considering, that the public prosecutor has charged the defendant with a single indictment as stipulated in Article 49 letter (a) Jo article 9 paragraph (1) of the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence.
- 2) Considering, that the elements of Article 49 letter (a) Jo Article 9 paragraph (1) of the Law of the Republic of Indonesia Number 23 of 2004 Concerning the Elimination of Domestic Violence have been fulfilled, the Defendant must be declared legally and convincingly proven to have committed a crime as charged in single indictment.
- 3) Considering, that based on the facts revealed at trial obtained from the testimony of the witnesses, the Defendant's statement and instructions in this case, legal facts were found based on the Quote of the Marriage Certificate Number: 177/II/XI/2015 between the Defendant and witness Arlena Suryani Nasution married at the home of the Defendant's parents on Saturday April 27 2002 and based on a photocopy of Family Card Number: 1221082104090008 on behalf of the head of the family Sarjono Hasibuan has a wife Arlena Suryani Nasution and 3 (three) children;
- 4) Considering, that the Defendant never gave birth and spiritual support to witness Arlena Suryani Nasution and gave birth to Aqila Putri Hsb so that witnesses Arlena Suryani Nasution and Aqila Putri Hsb since May 2018 until the Defendant was reported, so they became neglected;
- 5) Considering whereas thus the element of neglecting a person within the scope of his household, even though according to the law that applies to him is obliged to provide life, care or care for that person has been fulfilled.
- 6) Considering, that based on the demands of the Public Prosecutor who demanded that the Defendant be sentenced to imprisonment for 8 (eight) months, for this reason the Panel of Judges did not agree with the demand from the public prosecutor, because it was not in accordance with the purpose of punishment so that the Defendant could improve his behavior and actions for the better. forward in society, apart from that the Defendant and witness Arlena Suryani Nasution have divorced so that if the Defendant is subjected to forced corporal punishment, then all the Defendant's children will be abandoned and become victims again, so it is necessary to apply probation sentence to the Defendant as specified in Article 14 letter a of the Book Criminal Law Act

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- 7) Considering, that in order to impose a sentence on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant;
 - a. Aggravating circumstances:
 - The actions of the Defendant caused the witness Arlena Suryani Nasution to be neglected.
 - b. Mitigating circumstances:
 - The defendant is polite at trial;
 - The defendant admitted his actions and regretted it;
 - The accused has never been convicted;

2. Judge's Decision

Based on all the elements of Article 49 letter (a) Jo article 9 paragraph (1) of the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, the Panel of Judges concluded that the defendant had been legally and convincingly proven to have committed the crime he was charged with against him in the single indictment made by the public prosecutor. Sentenced punishment against the Defendant therefore with imprisonment for 3 (three) months. Determining the sentence does not need to be served unless in the future there is a judge's decision that determines otherwise because the convict committed a crime before the probationary period of 6 (six) months ended.

3. Verdict Analysis

In making a decision, the judge must be able to review the case based on its juridical and sociological nature in order to create a sense of justice for the parties concerned. Because the judge's decision or court decision is a matter that is very important and needs to be scrutinized to determine the outcome of a case in a trial and also to provide legal certainty to the accused and also legal protection. The juridical considerations of the panel of judges in Decision Number 85/Pid.Sus/2019/Pn.Sbh are based on the indictment of the public prosecutor, witness statements, documentary evidence, evidence as well as criminal articles and provisions so that from a juridical perspective the judge can make a decision

Meanwhile, considerations that are sociological in nature (benefits), namely, the background of the implementation of the crime, the causes and effects that arise, the condition of the accused physically and spiritually, in ensuring justice, certainty and legal benefits. In giving or imposing a sentence on the defendant, he must consider the good and bad intentions of the defendant in accordance with what has been determined in Article 8 paragraph 2 of Law Number 48 of 2009 concerning Judicial Power, which states that: "In considering the severity of the crime, the judge is obliged to also pay attention to the good and evil nature of the accused. In this case the circumstances that aggravated the defendant were causing the victim to be hurt, and committing psychological and moral violence against the victim by not giving birth to the victim. This must be considered by the panel of judges before imposing a sentence because it involves the dignity of women so as not to cause violence in the household.

As explained in this case, the panel of judges must also consider the mitigating circumstances for the defendant, namely having admitted his actions, having never been convicted, and having good faith in providing a living for the victim. Based on considerations from both juridical and sociological aspects, the judge gives a prison sentence of 3 (three) months, but stipulates that this sentence does not need to be served unless in the future there is a judge's decision that determines otherwise because the convict committed a crime before the probationary



period of 6 (six)) month ends. This means that the prison sentence of 3 (three) months is a suspended sentence.

In giving this decision, the judge considered the condition of the Defendant's children if the Defendant had to serve a sentence of 3 (three) months in prison which was feared would result in the Defendant's children being abandoned. Coupled with the consideration of the judge who considered that the Defendant and the Victim were legally divorced even though the divorce occurred when the Defendant was undergoing legal proceedings in this case. Thus the judge has correctly given the sentence, but still carries out the applicable legal rules by declaring the Defendant has been proven guilty of violating Article 49 letter (a) Jo article 9 paragraph (1) of the Law of the Republic of Indonesia Number 23 of 2004 Concerning the Elimination of Internal Violence Household. The author's opinion is that in taking into consideration in imposing a sentence, the panel of judges pays more attention to the expediency aspect of the sentence. By giving a probationary sentence of 3 (three) months in prison, the judge in making decisions has thoughts that prioritize the expediency of punishment. The decision can also have a deterrent effect on the defendant because for the general public to go through the examination process in court is something that is very undesirable, because this can be a lesson for the defendant.

There was a forced effort against the Defendant not to abandon his children anymore because the Defendant was obliged to provide maintenance for his children for at least 6 (six) months of the probationary period. If within 6 (six) months it turns out that the Defendant has repeated his mistakes, then the Defendant must serve his sentence in prison for 3 (three) months. However, normatively the judge has the freedom in imposing the type and amount of punishment. As long as it does not deviate from the principles and principles of punishment which are based on the minimum and maximum sanctions in the article being charged. So that in this case the case of neglect within the scope of the household was handed down a very light sentence, namely being punished with imprisonment for 3 (three) months, stipulating that the sentence should not be served unless in the future there is a judge's decision that determines otherwise because the convict committed an act before the probationary period of 6 (six) months ends.

4. CONCLUSION

Based on the research results, it can be concluded that the crime of neglecting people within the household sphere is regulated in Article 9 paragraph 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence which reads: Everyone is prohibited from abandoning people within the scope of his household, even though according to law that applies to him or because of an agreement or agreement he is obliged to provide life, care or maintenance to that person. Sanctions and threats of punishment for people who commit criminal acts of abandonment of people within the scope of the household as stipulated in Law Number 23 of 2004 Article 49 namely, Punished with imprisonment for a maximum of 3 (three) years or a fine of up to Rp. 15,000,000 .00 (fifteen million rupiah), everyone who neglects other people within the scope of his household as referred to in Article 9 paragraph (1) and neglects other people as referred to in Article 9 paragraph (2)". The two articles indicate that neglect in the household is a form of criminal act of domestic violence. Then the application of material criminal law to the criminal act of neglect of a wife by a husband in decision number 85/pid.sus/2019/PN.sbh is in accordance with Law Number 23 of 2004 concerning the Elimination of Domestic Violence which is regulated in Article 9 paragraph 1. The fulfillment

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of the elements of the article is considered by the judge in imposing a sentence on the defendant in accordance with the facts revealed in the trial. The judge's decision to give a sentence of 3 (three) months in prison but in a probationary period of 6 (six) months, this is the right decision because the judge in giving the decision considers the future of the Defendant's family if the defendant serves his prison sentence will decide the Defendant's income for his family, it can even result in the Defendant's family being abandoned.

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