



Sexual Violence against Wife Based on Law No. 23 of 2004 Concerning Elimination of Violence in Households and Islamic Law (Analysis of the Decisions of the Bangil, Denpasar and Medan District Courts)

Masdoki

Universitas Islam Negeri Sumatera Utara, Indonesia

Email: masdokisagala@gmail.com

Abstract:

This study aims to determine what forms of sexual violence against wives are based on Law no. 23 of 2004 and Islamic Law. To find out what forms of sexual violence against wives in the decision of the Bangil District Court No. 912/Pid/B/2011/PN.Bgl, Denpasar District Court Decision No.89/Pid.Sus/2014/PN.Dps and Medan District Court Decision No.264/Pid.Sus/2018/PN Mdn. To find out what were the basis for the judge's consideration in giving a decision at the Bangil District Court, the Denpasar District Court decision, and the Medan District Court decision regarding sexual violence against wives. Qualitative research was conducted with a revelatory approach, a statute approach, a case approach and a comparative approach. The results of this study indicate that: (1) forms of sexual violence against wives based on Law no. 23 of 2004 and Islamic Law is any act in the form of coercion of sexual relations, in an inappropriate and/or inappropriate manner, forcing sexual relations with other people for commercial purposes and/or for specific purposes. (2) the forms of sexual violence against wives in the decisions of the Bangil District Court, Denpasar District Court decisions and Medan. (3) The consideration of the Bangil District Court judge.

Keywords:

sexual violence against wives; law no. 23 of 2004; and Islamic law

I. Introduction

In Article 1 of law no. 16 of 2019 the amendment to law No.1 of 1974 concerning marriage states that: "*The basis of marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty Godhead*".

The article above shows that the purpose of marriage is to form a happy and eternal household or family. The house should be a safe place for family members, because the family is built by both partners on the basis of the inner and outer bond, mutual love, respect, loyalty and giving between the two. Article 8 of Law No. 23 of 2004 sexual violence includes:

- a. *Forcing sexual intercourse carried out against people who live within the scope of the household.*
- b. *Forcing sexual relations between one person in the household and another for commercial purposes and / or certain other purposes.*

Furthermore, Article 46 states that every person who commits sexual violence as referred to in Article 8 letter a will be sentenced to a maximum imprisonment of 12 years or a maximum fine of Rp. 36,000,000 (thirty six million rupiah). Komnas Perempuan emphasizes that rape in marriage is included in the realm of law and is regulated in Article 8 (a) of the law and is regulated in the bill on the elimination of sexual violence.

Article 53 of Law No.23 of 2004 states that domestic rape occurs when a person, either husband or wife, does not want to have sex or engage in any sexual activity, but is forced by one of the two. The following are things that can be said as rape in marriage:

1. Forced to have sex
Marriage rape occurs, when one of the parties is forced to have sexual relations. Coercion can be physical or verbal. Any social activity in which one party feels forced, even though he or she insists that he does not want to, is an act of rape violence in a marriage.
2. Threatened to have sex
Often victims of marital rape are threatened so that they want to comply with the perpetrator's wishes. For example, threats of cheating, or threats of divorce, so that the wife finally complies with her husband's wishes to have sex even though she doesn't want to. Not infrequently, threats are accompanied by physical violence that injures the victim.
3. Manipulation
Manipulation here is the husband's words that demean the wife. Like not being able to serve your husband in bed or something. Dan said he would find another woman if his wife could not satisfy his lust.
4. Intercourse in a state of unconscious partner
Whatever the reason, relating to someone who is not conscious is categorized as rape. While the wife is sleeping, fainted or drunk so that she can be exploited without being able to say no. Is an act of rape which can be subject to criminal law, even though both of them are married.
5. Limiting freedom
There are still many men in patriarchal cultures who restrict and limit their partners in such a way. Starting from forbidding his wife to go out with friends to controlling her finances and career.

In this case the husband may give the lure of leniency or freedom if his wife is willing to serve her sexual needs at any time and do whatever is asked. If this happens, the wife can be called a household hostage. There is an assumption that the marriage contract is a contract of ownership that causes a man (husband) to have full rights over a woman (wife), including the right to absolute obedience, service to sexual needs and control over women's sexuality. Wives are required to be obedient and obedient in serving the interests and desires of their husbands regardless of the circumstances. If the wife refuses or doesn't do it, then the wife is considered nusyuz so that the husband deserves to beat her. Such assumptions actually marginalize women and ignore their rights to their own bodies.

II. Research Methods

The principles and objectives of the drafting of this law are listed in Article 3 and Article 4 of law number 23 of 2004 as follows: the following states in article 3 of law number 23 of 2004: "*The elimination of domestic violence is carried out based on the principles of: (a) Respect for human rights; (b) Gender equity and equality; (c) Non-discrimination; and (d) Protection of victims.*" In criminal law, the definition of rape is inseparable from the notion of decency because rape is a part of decency crime regulated in Chapter. XIV contained in articles 285, 286, 287 and 288 of the Criminal Code. In article 285 it reads:

"Anyone who by force or threat of violence forces a woman to have intercourse with him outside of marriage, is threatened with committing rape with a maximum imprisonment of twelve years."

Thus article 285 of the Criminal Code views that an act is called rape if it meets the elements (Prasetyo (eds), 1997: 188):

1. Perpetrator, is a man who can have intercourse;
2. Victims, namely women who are not his wife;
3. The existence of violence or threats of violence;
4. The occurrence of intercourse.

Article 286 of the Criminal Code states: "*Anyone who has intercourse with a woman outside of marriage, even though it is known that the woman is unconscious or helpless, shall be punished by a maximum imprisonment of nine years.*" And article 287 of the Criminal Code states: (1) *Any person who has intercourse with a woman outside of marriage, even though he knows it or should be suspected that he is not yet fifteen years old or if his age is unclear, that it is not yet time for marriage, shall be punished by a maximum imprisonment of one month.* (2) *Prosecution is only carried out on a complaint, unless the woman is not yet twelve years old or if there is one of the things in articles 291 and article 194.*

With the provisions of the article above, the Criminal Code states that what is called rape is forced sexual intercourse on a woman who is not a wife who is conscious, unconscious or who is not yet 15 years old. Meanwhile, Article 288 of the Criminal Code states: (1) *Anyone who in marriage has intercourse with a woman whom he knows or should reasonably suspect that it is not yet time for him to marry her, if the act results in injuries, he shall be punished by a maximum imprisonment of four years.* (2) *If the act results in serious injuries, a maximum imprisonment of eight years is imposed.* (3) *If the result is death, a maximum imprisonment of twelve years shall be imposed.*

The provisions in the article above only concern the rape of the wife but are limited to wives who have not yet married or are not yet 16 years old. Thus the Criminal Code does not recognize sexual violence against wives. Therefore, wives cannot bring their husbands to court for reasons of rape. If possible, the case will be considered and processed as assault and not rape (Tridianto, T.TH: 127) ..

As quoted by Agus Tridianto, David Finkelhor said that this kind of law gives a man license to rape his wife. Finkelhor further states that this is a consequence of Matthew Hale's theory of marriage and sex in the 17th century AD which reads (Tridianto, T.TH: 125): "*A husband cannot be called evil or guilty because of the rape committed against his wife, which is lawful, because thanks to the agreement and the marriage contract between husband and wife, the wife has fully surrendered to the husband irrevocably.*"

The increasing number of acts of violence against women, especially sexual violence against their partners, is closely related to weak law enforcement (*law enforcement*) and leniency of legal threats. Article 423 of the 2000 Criminal Code Draft states the provisions for rape as follows (Martha, 2003: 55-56):

- (1) *Rape and rape are committed with the longest prisoners 12 years and a minimum of 3 years. Meanwhile, the criminal act of rape in question is:*
- a. *Men have intercourse with women, against the will of women.*
 - b. *Men have intercourse with women without consent.*
 - c. *Men have intercourse with women while this intercourse is manifested through threats of death or injury.*
 - d. *The man has intercourse because the woman believes that he is her legal husband.*
 - e. *The man has copulation with a 14 year old woman, even with her consent.*
 - f. *Men have intercourse with women, even though it is known that the woman is helpless and fainted.*

(2) It is also deemed to have committed the crime of rape, if in the circumstances referred to in paragraph (1):

- a) The man inserts his penis into the woman's anus or mouth.
- b) The male inserts an object that is not part of the body into the vagina or anus of a woman.

Forms of domestic violence are stated in article 5 of Law Number 23 of 2004 which states that, "Everyone is prohibited from committing domestic violence against people within the scope of their household by: (a) Physical violence; (b) Psychic violence; (c) Sexual violence, or (d) Domestic neglect." As also explained in article 8 of Law Number 23 Year 2004, sexual violence, namely: "Sexual violence as referred to in article 5 letter c includes: (a) Forcing sexual relations between people who live within the scope of the household; (b) Forcing sexual relations between one person within the scope of his household with another for commercial purposes and / or certain purposes."

Forcing sexual relations against their partners is included in sexual violence in which both the perpetrator and the victim are included in the household scope. So that the articles above can be used as a juridical basis if the victim wants to follow up on the case he is experiencing through legal channels.

Law No.23 of 2004 recognizes that the reality of rape does not only occur outside of marriage, but even in a marriage bond, the reality of sexual violence can also occur. As for the criminal sanctions for perpetrators of sexual violence regarding sexual violence against partners (*marital rape*) based on the criminal provisions in article 46 of Law Number 23 Year 2004. Article 46 states: "Every person who commits acts of sexual violence as referred to in Article 8 letter (a) shall be punished with imprisonment of up to 12 years or a maximum fine of Rp. 36,000,000.00 (thirty six million rupiah).

Furthermore, article 48 states: "In the case as meant in articles 46 and article 47 it results in the victim receiving wounds that do not give hope of a complete recovery, experiencing mental or mental disorders for at least 4 (four) weeks continuously or one (one) year out of order. - According to, the death or death of the fetus in the womb, or resulting in malfunctioning of the reproductive organs, shall be punished with imprisonment of at least 5 years and imprisonment for a maximum of 20 (twenty) years or a fine of at least Rp. 25,000,000.00 (twenty five). million rupiah) and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). "

Regarding additional penalties in article 53 states: "The criminal act of sexual violence as referred to in Article 46 which is committed by a husband against his wife or vice versa is a complaint offense." As mentioned above, sexual violence perpetrated by husbands against wives or vice versa is a complaint offense so that they will not be subject to legal action without complaints from related parties, namely victims.

In the UN Declaration on 20 December 1993 concerning the Elimination of Violence against Women in article 2 states,

"Violence against women must be understood, including but not limited to the following:

- a. Acts of physical, sexual and psychological violence that occur within the family, including beatings, sexual abuse of female children in the household, violence related to dowry, rape in marriage (*marital rape*), destruction of female genitals, and traditional practices others which are harmful to women, violence outside the husband and wife relationship, and violence related to exploitation;
- b. Physical, sexual and psychological violence that occurs in the wider community, including rape, sexual abuse, sexual harassment and threats in the workplace, in educational institutions and as such, trafficking in women and forced prostitution;

- c. *Violence physically, sexually and psychologically committed or justified by the state wherever it occurs.* "

III. Results and Discussion

3.1 Matters that became the basis for the judges' considerations in the Bangil District Court, Denpasar District Court and Medan District Court on Sexual Violence Against Wives

a. Basic Considerations of Judges in the Bangil District Court Decision

Basic Judicial Considerations:

Considering whereas in order to prove the guilt of the defendant as charged in the indictment, it must be proven that the defendant has committed a criminal act as charged by the Public Prosecutor in his indictment; Considering, that in the trial the defendant has been charged by the public prosecutor with cumulative charges, namely the first being accused of violating Article 46 of Law Number 23 Year 2004 and secondly Article 49 letter (a) Law Number 23 Year 2004; Considering, that furthermore, the Panel will prove whether the defendant actually committed the act as the first indictment of the Public Prosecutor, namely violating Article 46 of Law Number 23 Year 2004, which elements are as follows:

- a) Each person;
- b) Committing sexual violence as referred to in article 8 (a);

It is burdensome:

- 1) The defendant's actions caused severe trauma to the victim witness Sri Wahyuni and her child;
- 2) The defendant's actions hurt the feelings of the victim's parents;

Relief:

- 1) The defendant was polite in the trial;
- 2) The defendant has never been convicted;
- 3) The defendant is still young so it is hoped that he can improve himself;

Bearing in mind, Article 46 Jo Article 49 Letter (a) Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 4 of 2004 concerning Judicial Power, Law No: 8 of 1981 concerning KUHAP and regulations others relating to this matter;

On trial:

- 1) Stating that the Defendant Hari Ade Purwanto was legally and convincingly proven guilty of committing the crime of "committing sexual violence to his wife and neglecting other people within the scope of his household";
- 2) Imposing a criminal sentence against the Defendant with imprisonment for: 1 (one) year and 3 (three) months;
- 3) To determine that the entire detention period that has been served by the defendant is deducted from the sentence imposed;
- 4) To stipulate that the Defendant remains in detention;
- 5) To charge the Defendant to pay the court fee in this case of Rp. 5,000.00 (five thousand Rupiah);

Thus it was decided in a deliberation meeting of the Panel of Judges at the Bangil District Court on Monday, March 5, 2012 by Hj. ISTINING KADARISWATI SH. M.Hum as the Chief Judge of the Panel, RUDITA SETYA SH, MH and AYU PUTRI CEMPAKASARI SH, MH as Member Judges respectively, which verdict was pronounced on

Tuesday, March 6, 2012 in a trial open to the public by the Chief Judge and Judges- The Member Judge, assisted by NUR KHALIM, SH Substitute Registrar at the Bangil District Court, was attended by ANINDYAH ANUGRAHWATI SH, the Public Prosecutor at the Bangil District Attorney, Around the beginning of January 2011, their household life often occurred in conflict over economic problems and caused Sri Wahyuni to return to the home of her parents at the end of January 2011. Besides that, the defendant Hari Ade Purwanto had behaved violently, violently, and did not provide a living (monthly money and proper spending money to meet his family's daily needs.

b. Basic Consideration of Judges in Denpasar District Court Decision

1. Basic Judicial Considerations:

Considering, that the Defendant was brought to trial with the first charge: violating Article 46 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence or Second: violates Article 44 paragraph (1) of Law no. 23 of 2004 concerning the Elimination of Domestic Violence; Or Third: violating Article 44 paragraph (4) of Law no. 23 of 2004 concerning the Elimination of Domestic Violence. Because the indictment was prepared in an alternative manner, the Panel of Judges would consider the accusation which was deemed proven, namely the First Alternative Accusation of violating Article 46 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, which elements are as follows:

- 1) Everyone's element;
- 2) The element of committing acts of sexual violence as referred to in article 8 letter a of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, which has the following elements:
 - a) Everyone's element; What is meant by the element of everyone here is an individual or a corporation. From the facts at the trial, the defendant M. TOHAR als TOTO, at the beginning of the trial examination, was asked by the panel of judges the identity of the defendant listed in the indictment letter and the defendant answered that his identity was correct as stated in the indictment and every question raised before the trial to the defendant can be answered properly so that the defendant is not mentally disabled and is able to be responsible for the actions the defendant has committed. Thus the element of each person has been proven to be valid and convincing.
 - b) The element of committing acts of sexual violence as referred to in article 8 letter a of Law No. 23 of 2004 concerning the Elimination of Domestic Violence;

What is meant by sexual violence as referred to in Article 5 letter c Law No. 23 of 2004 concerning the Elimination of Domestic Violence includes:

- a) forcing sexual intercourse carried out on a person who lives within the scope of the household;
- b) Forcing sexual relations between one person within the scope of his household with another for commercial and / or specific purposes.

This element can be proven based on the evidence of witness testimony stating that physical or sexual violence actually occurred where the incident experienced by witness Siti Fatimah occurred on Tuesday, September 30, 2014 at around 17:15 pm at Jl. Raya Sesehan Gg. Paku Sari No. 8 Denpasar. At that time, it was true that the witness testified that the witness knew about the incident of physical or sexual violence from the neighbor of the witness 'mother, Mrs. NOVI, where on Tuesday, September 30, 2014, around 17.30 pm Bu NOVI came to the witness's boarding house and said that ' Please Ms. beaten at Opa ", after informing like that Mrs. NOVI returned to her house and the witness immediately came to the witness's mother's house on Jl. Raya Sesehan Gg. Paku Sari No. 8 Denpasar. That was true when the witness arrived at the defendant's house, the witness saw that the witness's mother

was crying and sitting on the floor, then the witness asked witness Siti Fatimah what had happened, and witness Siti Fatimah said that she was forced by the defendant to have intimate relations, but witness Siti Fatimah did not want to be sick, namely was experiencing shortness of breath and heart disease. That was true before the incident the defendant forced witness Siti Fatimah to have sex. As a result of the incident of physical and sexual violence experienced by witness Siti Fatimah, witness Siti Fatimah suffered a fracture to her right rib, bruises on her chest, left arm, and abrasions that caused an infection on her genitals, besides witness Siti Fatimah also experienced suffocation breath. Based on the evidence, the letters in court that have been shown and read are in the form of: Et Repertum visum number .E.19 / ryER / 550/2014 dated 12 October 2014 which was drawn up and signed by Dr. Ida Bagus Putu Alit Sp.F, DFM, a government doctor at the Sanglah Central General Hospital, and Marriage Certificate Number 231 / S / X1981 dated October 6, 1981. Thus the element of committing acts of sexual violence as referred to in article 8 letter a of Law No. . 23 of 2004 concerning the Elimination of Domestic Violence has been proven legally and convincingly. and Marriage Deed Number 231 / S / X1981 dated October 6, 1981. Thus the element of committing acts of sexual violence as referred to in Article 8 letter a of Law No. 23 of 2004 concerning the Elimination of Domestic Violence has been proven legally and convincingly. and Marriage Deed Number 231 / S / X1981 dated October 6, 1981. Thus the element of committing acts of sexual violence as referred to in Article 8 letter a of Law No. 23 of 2004 concerning the Elimination of Domestic Violence has been proven legally and convincingly.

Things that are burdensome:

- (1) That the attention of the Tedakwa had hurt and injured the victim witness, Siti Fatimah, who was the defendant's wife;
- (2) The defendant did not feel guilty about what he had done

Things to lighten up:

- (1) The defendant has never been convicted;
- (2) Tedakwa is old.

In view of the laws and regulations concerned, in particular Article 8 letter a and Article 46 UUNo. 23 of 2004, as well as other relevant provisions;

On trial:

- a) Declare that M TOHARI Als TOTO has been legally and convincingly proven guilty of a criminal act. Committing Domestic Sexual Violence;
- b) Sentenced M TOHARI Als TOTO to imprisonment for 5 (five) months;
- c) Determine that the duration of the Defendant's detention is fully deductible from the charged sentence;
- d) To stipulate that the defendant remains in detention;
- e) To charge the defendant to pay a court fee of Rp. 2,000, - (Two thousand rupiah);

This was decided in the Deliberative Meeting of the Panel of Judges at the Denpasar District Court, on: Monday, February 9 2015, by us: ACHMAD PETEN SILI, SH.MH. as Chief Judge, M. DJAELANI, SH, and PUTU GDE HARIADI, SH, MH. each as a Member Judge, which decision on that very day, was pronounced in a court open to the public by the Chief Judge of the Panel accompanied by each Member Judge, assisted by IDA AYU GDE WIDNYANI, SH, as Substitute Registrar at the District Court Denpasar attended by: NI LUH WAYAN ADHI ANTARI, SH, the Public Prosecutor at the Denpasar District Attorney and the Defendant.

2. Basic Sociological Considerations:

On Tuesday, September 30, 2014, around 17.30 pm Bu Novi came to the witness's boarding house and said help Ms. Mba Beaten by Opa ", after informing her like that Mrs. Novi returned to her house and the witness immediately came to the witness's mother's house on Jl. Raya Sesetan Gg. Paku Sari No. 8 Denpasar. That was true when the witness arrived at the defendant's house the witness saw the witness's mother crying and sitting on the floor, then the witness asked witness Siti Fatimah what had happened, and witness Siti Fatimah said that she was forced by the defendant to have sex but witness Siti Fatimah did not want to be sick because she was experiencing shortness of breath and heart disease.

c. Basic Consideration of Judges in Medan District Court Decisions

1. Basic Judicial Considerations:

The defendant was brought to trial with the charges of violating article 45 paragraph (1) in conjunction with article 5 letter b of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, which has the following elements:

- 1) Each person;
- 2) Committing acts of psychological violence within the scope of the household;
- 3) Resulting in fear, loss of self-confidence, loss of ability to act, feeling helpless and or severe psychological suffering for someone;

(1) The "Everyone" Element

Considering whereas what is meant by "every person" in this element refers to a legal subject as a supporter of the rights and obligations presented as a defendant with an indictment and is able to be accountable for his actions legally;

(2) The element of "Committing acts of psychological violence within the scope of the household"

Considering, whereas based on the legal facts revealed in the trial, the defendant and the victim witness were husband and wife who got married on 10 February 2012 as stated in the Marriage Certificate Number : 165/70 / II / 2012, dated 10 February 2012 and in their marriage already has 2 (two) children;

Considering, that after the marriage, the defendant and the victim's witness since 2013 have often made a fuss in their household due to the inadequate household economic conditions and the defendant often behaved rudely to the victim, and the peak of their argument occurred on Friday, December 08, 2016 around 16.00 WIB at his house at Jalan Kawat Raya No. 220 Lk. XII Ex. Tanjung Mulia Hilir Kec. Medan Deli, Medan; At that time the defendant asked for the victim's jewelry and then sold it for no apparent reason and because the victim showed objection, the defendant got angry and then kicked the victim in the stomach and punched the victim's head until it was swollen and the defendant's actions against the victim, who had previously often been angry, caused the victim to feel angry. fear, sadness and like shutting himself up in his house, as the expert's opinion states that the victim was severely depressed, which in the opinion of the Panel of Judges was an act of psychological violence within the scope of the household that the defendant committed; Thus this element has been fulfilled according to law;

(3) The element "Resulting in fear, loss of self-confidence, loss of ability to act, feeling helpless and or severe psychological suffering in a person"

Things that are burdensome:

- a) Whereas the Defendant as a civil servant could not set a good example in marriage;
- b) That the defendant should protect his wife;

Things to lighten up:

- a) That the Defendant has never been convicted;
- b) That the Defendant was polite in the trial;

In view of Article 45 paragraph (1) in conjunction with Article 5 letter b of RI Law no. 23 of 2004 concerning the Elimination of Domestic Violence, KUHAP and other relevant provisions;

On trial:

- a) State that the defendant FAHRUL RHOZI has been legally and convincingly proven guilty of committing a crime of "psychological violence within the scope of the household";
- b) Imposing a sentence against the Defendant therefore with imprisonment for 1 (one) year;
- c) Determine evidence in the form of:
 - a. 1 (one) photocopy of KKNo.127106130120005;
 - b. One photocopy of Marriage Certificate legalized No.165 / 70 / II / 2012 dated 10 February 2012;
 - c. (one) photocopy of legalized talaq statement;
 - d. 1 (one) photocopy of KTP An. Fauziyatul Hamamy, M.Pd.,;
 - e. 1 (one) sheet of Certificate from Bhayangkara Hospital, IRSaid Sukanto
 - f. 1 (one) Pascard size photograph; Remain attached to the case file;
- c) To charge the Defendant to pay a court fee of Rp. 5,000 (five thousand rupiah);

Thus it was decided in a deliberation meeting of the Medan District Court Judges on Thursday, April 26 2018 by us DESON TOGATOROP, SH., MH., As Chief Judge, RICHARD SILALAH, SH., And MUHD. ALI TARIGAN, SH., Respectively as Member Judges, the decision was pronounced in a court open to the public on the same day by the Chief Judge accompanied by the Member Judges, assisted by HENDRA BUDI, SH., As Substitute Court Registrar Negeri Medan which was attended by ANWAR KETAREN, SH. and INDRA ZAMACHSYARI, SH., as Public Prosecutor at the Medan District Attorney and in front of the Defendant who was accompanied by the Legal Advisor.

2. Basic Sociological Considerations:

Since 2013, there have been frequent disturbances in the defendant's household due to the lack of household economic conditions and the defendant often behaved rudely to the victim, and the peak of their argument occurred on Friday, December 8, 2016 at around 16.00 WIB at his house at Jalan Kawat Raya No. 220 Lk. XII Ex. Tanjung Mulia Hilir Kec. Medan Deli, Medan, at which time the defendant asked for the victim's jewelry and then sold it for no apparent reason.

3.2 Comparative Studies, Analysis and Research Findings

The consideration of the Bangil District Court judge in the lawsuit number: 912 / Pid / 2011 / PN.Bgl, namely the defendant had violated article 46 (committed an act of sexual violence) and article 49 letter a (neglected other people within the scope of his household) Law Number 23 of 2004, the consideration of the Denpasar District Court judge in the lawsuit No. 899 / Pid.Sus / 2014 / PN Dps. The defendant violated Article 46 (committed an act of sexual violence) Law No. 23 of 2004, furthermore the decision of the Medan District Court No. 264 / Pid. Sus / 2018 / PN Mdn. The defendant violated Article 45 paragraph 1 (committed an act of psychological violence) in conjunction with Article 5 letter b of Law No. 23 of 2004 concerning Elimination of Domestic Violence.

IV. Conclusion

Whereas in the case of sexual relations violence against the Bangil District Decision No.912/Pid/B/2011/PN.Bgl, the defendant Hari Ade Purwanto and the Denpasar District Court Decision No. 899/Pid.Sus/2014/PN Dps. The defendant M. Tohari Als Toto had violated the rights and obligations of the wife, where the wife had the same rights in intercourse. The actions of the defendant Hari Ade Purwanto bin Moch. Toha towards his wife Sri Wahyuni is a relationship that is not desired by either party. Furthermore, the relationship begins with threats and violence perpetrated by the perpetrator against his wife and the act aims to satisfy lust only in an open place (forest). Likewise, the act committed by the defendant M. Tohari Als Toto against his wife Siti Fatimah, who at that time was sick but the defendant insisted on doing it.

The consideration of the Bangil District Court judge in the lawsuit number: 912/Pid/2011/PN.Bgl, namely the defendant had violated article 46 (committed an act of sexual violence) and article 49 letter a (neglected other people within the scope of his household) Law Number 23 of 2004, the consideration of the Denpasar District Court judge in the lawsuit No. 899/Pid.Sus/2014/PN Dps. The defendant violated Article 46 (committed an act of sexual violence) Law No. 23 of 2004, furthermore the decision of the Medan District Court No. 264/Pid.Sus/2018/PN Mdn. The defendant violated Article 45 paragraph 1 (committed an act of psychological violence) in conjunction with Article 5 letter b of Law No. 23 of 2004 concerning Elimination of Domestic Violence. In Islamic law, perpetrators of sexual violence against wives can be subject to ta'zir sanctions, which have not been determined by the law by the syara 'and the authority to determine the law is given to ulil amri or the judge.

References

- Al-Farra' al-Baghawi as-Syafii, Muhammad bin, Mu'alimu at-Tanzil fii Tafsir Alqur'an. Beirut: Daar Ihya' at-Turats al- Arabi, jilid 1, t.t.
- Ash-Shiddieqy, Hasby, Falsafah Hukum Islam. Semarang: Pustaka Rizki Putra, 2001.
- Ashshofa, Burha, Metode Penelitian Hukum. Jakarta: Rieneka Cipta, 2004.
- Azizy, Qodri, Hukum Nasional Eklektisisme Hukum Islam dan Hukum Umum, Jakarta: Teraju, 2004.
- Andiko, Toha, Fiqh Kontemporer. Bogor: PT. Penerbit IPB Press, 2014.
- Ayyub, Syaikh Hasan, Fikih Keluarga, terj. M. Abdul Ghoffar. Jakarta: Pustaka Al-Kautsar, cet kelima, 2006.
- Bukhari, Imam, Sahih al-Bukhari. Beirut: Daar al-Fikr, juz VII, 1981.
- Burhanuddin, Tindak Pidana Kekerasan Dalam Rumah Tangga. Medan: Latansa Pres, 2012.
- Djafar, Muhammadiyah, Pengantar Ilmu Fiqh. Jakarta: Kalam Mulia, 1993.
- Departemen Agama RI, Quran Tajwid dan Terjemahannya. Jakarta: Magfirah Pustaka, 2006.
- Departemen Pendidikan Dan Kebudayaan RI, Kamus Besar Bahasa Indonesia. Jakarta: PT. Gramedia, 1991.
- DJannah, Fathul dkk, Kekerasan Terhadap Istri. Jakarta: Lkis Pelangi Aksara, 2003,
- Ghazali, Muhammad, Tafsir Tematik Dalam Al-Qur'an. Jakarta : Gaya Media Pratama, 2004.
- Ghoffar, M Abdul dkk, Tafsir Ibnu Katsir terjemahan. Bogor: Pustaka Imam As-Syafi'i, 2012.
- Hasbi Ash Shiddieqy, Teungku Muhammad, Koleksi Hadis-Hadis Hukum 8. Semarang : PT Pustaka Rizki Putra, , Cet 3, 2001.
- Hasan, Ali, Pedoman Hidup Berumah Tangga Dalam Islam. Jakarta: Siraja, 2006.
- Jarir at-Thabari, Muhammad bin, Jaami'atul Bayan fii Ta'wil Qur'an, Muasasah ar-Risalah, juz 8, t.t.

- Farid Wajidi dan Cici Farkha Assegaf, Hak-Hak Perempuan Dalam Islam. Yogyakarta: Yayasan Benteng Budaya, 1994.
- Imam Nawawi, Syarh Uqududdujain. Jakarta: Lajnah Dirasah Kutub al-Turats, t.t.
- Khallaf, Abdul Wahab, Ilmu Ushul Fiqh. Bandung: Al-Ma'rif, 1987.
- Marlia, Mirda, Marital rape: Kekerasan Seksual Terhadap Istri. Yogyakarta: Lkis, 2007.
- Mas'udi, Masdar F, Islam dan Hak-hak Reproduksi Perempuan. Bandung: PT. Mizan Hazanah Ilmu-ilmu Islam, 1997.
- Muhammad Azzam, Abdul Aziz & Sayyed Hawas, Abdul Wahhab. Fiqh Munakahat, edisi terjemah. Jakarta: Amzah, 2009.
- Marzuki, Peter Mahmud, Penelitian Hukum. Jakarta: Kencana, cet. 8, 2013.
- Musthafa az-Zuhaili, Wahbah bin, At- Tafsir al- Munir fii al Aqidati wa as-Syariati wa al-manhaj. Damaskus: Daar al-Fikri al-Mu'ashir, jilid 5, t.t.
- Nasution, Khoiruddin, Islam Tentang Relasi Suami Istri (Hukum Perkawinan I). Yogyakarta: Academia Dan Tazzafa, 2004.
- Subhan, Zaitunah, Kekerasan Terhadap Perempuan, Yogyakarta: PT. LKiS Pelangi Aksara, 2003.
- Putusan Pengadilan Negeri Bangil No. 912/Pid/B/2011/PN.Bgl.
- Putusan Pengadilan Negeri Denpasar No.89/Pid.Sus/2004/PN.DPs.
- Putusan Pengadilan Negeri Medan No.264/Pid.Sus/2018/PN.Mdn.
- Shihab, M. Quraish, Tafsir Al-Misbah Pesan, Kesan Dan Keserasian Al-Qur'an. Jakarta: Lentera Hati, Volume 2, 2002.
- Shalih Al-Utsaimin, Muhammad bin, Shahih Fiqih Wanita Menurut Al-Qur'an dan As-Sunnah, Jakarta : Akbar Media, 2009,
- Suaedy, Ahmad, Kekerasan Dalam Perspektif Pesantren, Jakarta: PT Grasindo, t.t.
- Syarifuddin, Amir, Garis-garis Besar Fiqh. Jakarta: Prenada Media, 2003.
- Thalib al-Jazairi, Abdurahman, Bercinta Seperti Rasulullah. Kalasan Sleman: Cahaya Hati, 2009.
- Undang-Undang Republik Indonesia No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga.
- Undang-Undang Republik Indonesia No. 16 Tahun 2019 Tentang Perkawinan perubahan atas undang-undang No 1 Tahun 1974.
- Undang-undang Nomor 1 Tahun 1946 tentang Kitab Undang-Undang Hukum Pidana.
- Undang-Undang Nomor 8 Tahun 1981 tentang Kitab Undang-undang Hukum Acara Pidana.
- Wardi Muslich, Ahmad, Hukum Pidana Islam. Jakarta : Sinar Grafika, cet 1, 2005.