

## A REVIEW OF JURIDICAL AND CRIMINOLOGICAL THE CRIME OF HORRIBLE BODILY DAMAGE

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### Abstract

This study aims to examine the application of material criminal law related to the crime of grievous bodily harm and the consideration of judges in determining criminal sanctions against perpetrators. Conducted in the Makassar District Court with a qualitative approach using the interview method. The results showed that the panel of judges in certain cases found the defendant guilty in accordance with Article 351 of the Criminal Code, based on the facts of the trial such as witness statements and evidence. Although the judge's decision tends to judicial considerations without specifying the background of the subjective consideration, the sanctions imposed are in accordance with the law, although they are lower than the prosecutor's demands.

*Keywords: Constitution; System of Government; Trias politica.*

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### Abstrak

Penelitian ini bertujuan untuk mengkaji penerapan hukum pidana materiil terkait tindak pidana mencelakakan tubuh secara pedih dan pertimbangan hakim dalam menetapkan sanksi pidana terhadap pelaku. Dilakukan di Pengadilan Negeri Makassar dengan pendekatan kualitatif dengan menggunakan metode wawancara. Hasil penelitian menunjukkan bahwa majelis hakim dalam perkara-perkara tertentu menyatakan tergugat bersalah sesuai dengan Pasal 351 KUHP, berdasarkan fakta-fakta persidangan seperti keterangan saksi dan barang bukti. Meski putusan hakim cenderung pada pertimbangan yuridis tanpa menjabarkan latar belakang pertimbangan subyektifnya, sanksi yang dijatuhkan sudah sesuai dengan undang-undang, meski lebih rendah dari tuntutan jaksa.

*Kata Kunci: Konstitusi; Sistem Pemerintahan; Trias Politika.*

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## INTRODUCTION

Indonesia as a legal state that ideologizes Pancasila which means a legal system based on the principles or norms contained in Pancasila is used as a reflection in social life. It can be said that a country that has the ideology of pancasila will regulate all the actions or behaviors of its people as stated in the 1945 Constitution, namely creating, maintaining, and maintaining peace from the citizens of the Republic of Indonesia in accordance with what has been stated or mandated by pancasila as the nation's philosophy of life.<sup>1</sup> this sentence is clearly stated in the Constitution (UUD) 1945, namely in Article 1 Paragraph (3) that therefore,<sup>2</sup> everyone has the same rights and obligations under the law. To realize the rule of law, one of them is needed a legal instrument used to regulate balance and justice in all areas of life and livelihood of the people through legislation by not excluding the function of jurisprudence. This shows that the legislation has an important role in the rule of Law of Indonesia. It can be seen that the Indonesian state is trying to make the law as a regulator in the lives of its citizens to achieve a prosperous life.<sup>3</sup> To implement this, the Indonesian state has a Criminal Justice system consist of elements of law enforcement in this country.

As we know, the concept of modern democracy state policy in this case the president and state officials must include the contribution of public opinion (public opinion) in order to create a goal that can be accepted by all parties, especially the state policy should be oriented towards the public interest (Public interest).<sup>4</sup> one of the rules of Indonesian law that aims to maintain order in society is criminal law, because in criminal law consists of rules about community life that are made in terms of material, namely regulating the legal relationship between citizens and the state. In the case of an investigation into the alleged occurrence of criminal acts.

Criminal law in Indonesia is one of the very important guidelines in realizing justice. Therefore, law and Justice cannot be separated from the interaction of human life itself. It is very difficult to separate these two things in life. Because law and justice are the basis of human life, and judging is a task for the court institution that requires good care and maturity in drawing up legal considerations and in determining its decisions.<sup>5</sup> Law enforcement through the criminal justice system is currently still dominated by the way of thinking legismen, how to enforce the law (criminal) based solely on legislation.<sup>6</sup> The book of the law of Criminal Law (KUHP) is a strong basis in order to determine the prohibited acts and has strict sanctions for those who violate it. General provisions, crimes up to offenses into three important parts contained in the Criminal Code. We know that crime in its existence

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<sup>1</sup> A.Astri Surya Ramadani, Kasjim Salenda, Ashabul Kahpi, "Beban Pembuktian Visum Et Repertum Dalam Penanganan Kasus Tindak Pidana Penganiayaan Di Kota Makassar", *Journal Alauddin Law Development (ALDEV)* Vol, 1 No. 2, Agustus 2019, hlm.2.

<sup>2</sup> Vivi Ariyanti, *Kebijakan Penegakan Hukum Dalam Sistem Peradilan Pidana Indonesia*, *Jurnal Yuridis*, Vol 6, No 2, Desember 2019, hlm 34

<sup>3</sup> Mutmainnah, Rahman Syamsuddin, Abd. Rais Asmar, "Kekuatan Sidik Jari Sebagai Alat Bukti Petunjuk Dalam Mengungkap Tindak Pidana Pencurian", *Alauddin Development (ALDEV)*, Volume 1 Nomor 3, November 2019, h.27.

<sup>4</sup> Andi Safriani, *Telaah Terhadap Asas akuntabilitas dalam Pengelolaan Keuangan Daerah*, (Makassar: *Jurnal Jurisprudentie*, Vol.4 no.1, 2017) h.26

<sup>5</sup> Feby Reski Utami, Hamsir, Maret 2021, "Penyelesaian Tindak Pidana Pencurian Ringan Berdasarkan Penyesuaian Batasan Tindak Pidana Ringan Dan Jumlah Denda" *Alauddin Law Development Journal (ALDEV)*, Vol 3 No. 1 Maret 2021, h 2

<sup>6</sup> Mahrus Ali, *Sistem Peradilan Pidana Progresi: Alternatif Dalam Penegakan hukum Pidana*, *Jurnal Hukum*, Vol 14, No 2 April 2007, hlm 210

is felt very disturbing, in addition to disturbing order and peace in society which results in violating ethics and morals so that crimes committed by someone then of course these acts have a very painful impact and harm people as subjects of law.<sup>7</sup>

One type of crime that often occurs is, penganiayaan. The form of persecution crimes, which often occur in people's lives, the acts of persecution that we see from various sources is a sign that it cannot be separated from the behavior of people who are less controlled and the occurrence of disputes either individually or in groups can be a factor that can lead to acts of violence that lead to persecution. According To According to the Quran a Muslim is one who has absolutely surrendered to Allah and his commands and believes in pure Tawhid (the oneness of God ) that isn't tainted with any shirk and this is why the Almighty has introduced Prophet Abraham as a true.<sup>8</sup>

In the Criminal Code we know that the offense of persecution is a form of action that can harm others physically and can even have an impact on the loss of life of others, the criminal rules of persecution that can cause serious injury or cause loss of life of others must clearly be viewed as an act that is very detrimental to the victim as a legal subject who deserves to get justice because someone who commits persecution is clearly aware and knows what he is doing is wrong in the eyes of the law. And this, of course, will not make the offender escape from criminal liability. Where criminal liability is one of the very important things and supports the realization of the goals and tasks and functions of law in society. In the Criminal Code, the offense of persecution is regulated from Article 351 to Article 358.

Community factors can also affect law enforcement itself, sebab law enforcement comes from the community and aims to achieve peace in the community, using the type of evidence that intersects with violence and persecution is important to do law enforcement to get justice in the community.<sup>9</sup>

As for one of the cases that I will discuss in this writing is the case of serious injury persecution in decision number 417/Pib.B / 2020 / PN Mks the defendant on behalf of Hardi Bin Ahmadin in the verdict was on Wednesday, January 1, 2020, around 07.00 wita or at least at another time in January 2020 at Jalan Maccini Raya Lorong Safari, sinrijali village, panakkukang district, Makassar city. the defendant in the name of Hardi Bin Ahmadin has been proven to have committed persecution that resulted in serious injuries that have been described in the Visum Et Revertum with number: 001/ER/RSIS/YW UMI/I/2020 dated January 1, 2020.

In the Makassar Court decision number: 417 / Pid.B / 2020 / PN.Mks which has been decided in a consultative hearing of the Makassar state court judges panel, on Wednesday, April 29, 2020, where the verdict in a hearing open to the public on that day was also decided that the defendant Hardi Bin Ahmadin was found legally and convincingly guilty of committing the crime of molestation and grievous bodily harm as stipulated in Article 351 Paragraph (2) of the Criminal Code.<sup>10</sup>

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<sup>7</sup> Asrullah Dimas, Ashabul Kahfi, Rahmatiah HL, 2019, *pelaku residivis tindak pidana pencurian dan kekerasan*, Jurnal Alauddin Law Devenlompent ( ALDEV), Vol 1, No 1, Maret 2019 hlm 2

<sup>8</sup> Leden Marpaung, *Tindak Pidana Terhadap Nyawa dan Tubuh ( pemberantas dan prevensinya )*, (Jakarta: Sinar Grafika, 2002), hlm. 5

<sup>9</sup> Kadek Herry Witarsa, I Ketut Rai Setiabudhi, I Gusti Ngurah Parwati, *Tinjauan Kriminologi Tindak Pidana Penganiayaan "Penyayatan Paha" Yang Dilakukan Terhadap pengendara Sepeda Motor*, Jurnal Ilmu Hukum, Vol 6, No 5, Desember 2017, hlm 3

<sup>10</sup> *Putusan pengadilan negeri makassar nomor: 417/Pid.B/2020/PN.Mks*

that the crime of persecution is a crime that most often occurs in the community hasusnya in Makassar resulting in serious injuries to victims of persecution, This is the background to the writing in order to better discuss and conduct analysis of cases of persecution that resulted in serious injuries with the title juridical and Criminological review of the crime of persecution of serious injuries (study verdict number: 417/Pid.B / 2020 / PN.Mks).

The issues that will be raised, namely: what factors are the background to the occurrence of the crime of grievous bodily harm in Makassar City and how the application and consideration of the law by the panel of judges related to the crime of grievous bodily harm based on decision number 417/Pid.B / 2020 / PN.Mks?

## **METHOD**

The research method used in this paper is empirical legal research. The type of empirical juridical research conducted in this study is by conducting studies in various legal literature in the form of formal legal rules such as the Criminal Code (KUHP), the Code of Criminal Procedure (KUHAP), regulations and literature that contain theoretical concepts, as well as taking the facts in the field.

## **RESULT AND DISCUSSION**

### *1. Factors Behind the Occurrence of Serious Injury Persecution In Makassar*

Criminal law is the theory of rules or norms, while criminology is the theory of legal phenomena. Both of them met in a crime that is behavior or action that is punishable. The difference between criminal law and criminology lies in its object, that is, the main object of criminal law is to point to what can be punished according to the norms of applicable law, while the attention of Criminology is directed to humans who violate criminal law and the environment of these humans.

The interaction between criminal law and criminology is due to the following points:

- a. The development of criminal law lately adheres to a system that gives importance to the personality of the criminal and connects it with the nature and severity (size) of the punishment.
- b. Indeed, since long ago there has been a special treatment for Special done crazy people and children. Attention to the individual doing the deed, however, has recently reached a completely different meaning from previous efforts.

Actually, the factors or causes of crime can be mentioned in terms of criminology. Criminology is a science that studies the causes and effects, improvement and Prevention of crime as a human phenomenon by collecting the contributions of various sciences. According to Ediwarman criminology is a science that studies crime (whether committed by individuals, groups or communities) and the causes of crime and countermeasures so that people do not commit crimes again

Based on the results of the author's research, the data on cases of serious injury abuse in the city of Makassar there are many cases and are delegated cruelty makassar. In this case, the factors causing the persecution that resulted in serious injury are:

#### 1) Alcohol factor

Liquor factor (alcohol), it turns out that with the influence of alcoholic beverages, a person can perform actions without him realizing whether his actions are considered right or wrong. The act acts outside his mind, because it is still under the influence of alcoholic beverages. A person who is affected

by alcoholic beverages will make him irritable, his attention to the environment becomes disturbed and makes the self-control of the person concerned become aggressive and bold.

#### 2) Psychological Factors,

Psychological or psychiatric here is a person called normal if he can use his abilities and talents to the full and if not then he is called abnormal. This adaptation is also closely related to normal and abnormal, which means that if a person manages to adjust his behavior to his environment or if a person can adapt to applicable legal methods, the result is normal.

#### 3) Economic Factors

Poverty is a phenomenon that cannot be denied in every country. Until now there has been no way out to solve the phenomenon. Plato argued that in every country where there are many poor people, secretly there are many criminals, abuses and criminals of various kinds.

#### 4) Economic System

The new economic system with massive production, free competition, enliven the production by means of advertising, modern ways of selling and others, that is, generate the desire to possess goods and at the same time prepare a basis for the opportunity to commit criminal acts such as murder to obtain payment.

#### 5) Unemployment

Factors either directly or not, affect the occurrence of crime, especially in times of crisis, unemployment is considered the most important. Working too young there is no hope of progress, permanent periodic unemployment, moving jobs from one place to another, salary changes so that it is impossible to make a budget so that it can be concluded that unemployment is the most important factor. Unemployment can lead people to commit the crime of murder either of their own free will or at the behest of someone in exchange for or with the payment of a sum of money

#### 6) Family Factors

Family problems. This refers more to the family situation, especially the less harmonious relationship between parents. A father will be able to use violence against his children solely as an outlet or an attempt to release his irritation and anger towards his wife. The attitude of parents who do not like children, angry and unable to control emotions can also cause violence in children which results teruma to the child. For parents who have children with problems such as: physical or mental disabilities (idiots) are often less able to control their patience when caring for or caring for their children, so they also feel burdened by the presence of these children and not infrequently parents become disappointed and frustrated.

#### 7) Internal Factors

Internal factors are factors that are found in individuals such as age, sex, individual position, Individual Education, individual reaction/holiday problems, religion.

## *2. Application and Consideration of The Law By The Panel Of Judges Related To The Crime Of Grievous Bodily Harm Based On Decision Number 417/Pid.B / 2020 / PN.mks*

The principle of Checks and Balances is very important in the Trias Politica system, with a mechanism for monitoring the powers of state institutions to achieve the ideals of the nation based on the Constitution. In the Indonesian government based on the 1945 Constitution gives great power to the president, the president is given authority as well as legislative and judicial. Based on the 1945 Constitution which is executive heavy in design, meaning that it gives more power to the executive in the implementation of government, especially to the president as head of state and government, Checks and balances are present in the Indonesian political system as applicable to the 1945 Constitution.

Judges in considering a case before imposing criminal sanctions must be guided by Law Number 48 of 2009 on judicial power in particular and the Code of Criminal Procedure in general. In addition, judges must also pay attention to the principles of criminal law in issuing decisions, especially the principle of legality, the principle of *ex aequo et bono*, and the principle of equality before the law. Where, in addition to providing legal certainty for all parties related to the case, the decision issued by the panel of judges must also contain elements of justice for all parties, and in essence the judge must provide the same treatment for all parties, meaning that the judge treats the defendant as he treats the defendant in general without violating the provisions of the law.

We know that legal consideration is needed by the judge in making a decision that will be handed down to the defendant. This is very necessary to create a proportional verdict and approach the defendant's sense of Justice. therefore, before sentencing, the judge must first assess the truth of the proposed event by looking at the existing evidence and accompanied by his conviction, after which consider and give an assessment of the events that occurred and relate them to the applicable law. then the judge makes a decision by setting a criminal sanction against the act committed by the defendant.

Based on the foregoing, the judge's competence and clarity in capturing and relating the facts are necessary for a fair decision and the consideration of the judge in case number 417/Pid.B / 2020 / PN.Mks.

### *a. Consideration of Facts And Laws Of The Judge*

Based on the legal facts revealed at the trial, then the next The panel of judges must consider whether the defendant's actions have fulfilled the elements of the article stated in the indictment filed by the public prosecutor or vice versa. In its consideration, the judge is bound by the rules of evidence in the trial stated in Article 183 of the Code of Criminal Procedure which states that a judge may not impose a crime on a person unless with at least two valid pieces of evidence he obtains confidence that a criminal offense actually occurred and that the accused is guilty of committing it.

It can be said that the consideration of the facts and the legal consideration of the judge are based on the indictment, valid evidence, as well as the subjective and objective conditions under which a person can be convicted. In the case of Decision number 417 / Pid.B / 2020 / PN Mks, that based on the evidence and evidence submitted, the panel of judges who examined and tried the case obtained the following legal facts;

- 1) That started on Wednesday, January 01, 2020 at around 07.00 wita the defendant while walking from Gajah Mada Hall to Jl. Lorong Safari together with bro. HAEKAL intends to go to warung sdri. HAJE to buy fried food while the defendant waited for fried food to come Thamrin Alias

SANDA and not long after came bro. HENDRIK then we chat while eating fried food and at that time bro. HENDRIK offended the defendant and then the defendant reprimanded bro. HENDRIK with dirty words and at that time the witness Thamrin Alias SANDA rebuked the defendant by saying "Why Are you talking dirty" and the defendant replied "Not us the defendant BILANGI" and answered again the same witness Thamrin Alias SANDA " let not the defendant You BILANGI but the defendant was also offended because the defendant was here" then saksi THAMRIN Alias SANDA angry and wanted to stand up and the defendant see want to hit the defendant then the defendant directly hit the head of the witness Thamrin Alias SANDA and there was a fight between the defendant with the witness Thamrin Alias SANDA and not long after come bro. PAI separated us and told the defendant to go home finally the defendant returned home the defendant and soon the defendant returned to the scene with a kitchen knife and the defendant heard the witness Thamrin Alias SANDA talking to brother. DG. ELA and then the defendant was angry and the defendant immediately pulled out a knife in the left defendant's waist and attacked the witness Thamrin Alias SANDA and stabbed him three times and at that time the witness Thamrin Alias SANDA did not resist and walked to his home and after that the defendant also went straight to my house then the

- 2) That as a result of the defendant's actions, the victim suffered injuries as stated in the VISUM ET REVERTUM with No. 001/VER/RSIS/YW UMI / I / 2020 dated January 01, 2020, issued by Ibnu SINA Hospital Makassar, with the following examination results
  - a) Visible torn wound on the back with a size of 1.5 cm x 5 cm bleeding active ( + ) basic wound tanpak clean.
  - b) Visible torn wound on the abdomen the size of 3 cm x 0.5 cm active bleeding (-).
  - c) Visible torn wound on the abdomen the size of 4 cm x 0.5 cm active bleeding (-)

Conclusion: Taruma on Sharp Objects

Considering, that subsequently all the statements of the witnesses and the defendant who are clearly recorded in the minutes of the examination of the trial and put forward by the public prosecutor in his claim, to abbreviate the contents of this decision is considered to have also been contained in the description of this decision ;

Considering, that subsequently the tribunal will consider whether from the series of actions of the defendant, the defendant is found guilty or not of the article charged to him ;

Considering, that in order to declare the defendant guilty of the charges, then all the actions of the defendant must meet all the elements of the article charged to him;

Considering that the defendant was charged by the Public Prosecutor with a single charge of violating Article 351 paragraph (1) of the Criminal Code, with the following elements :

- (1) Elements of who's who;
- (2) Elements deliberately persecute

b. Amar Judge Verdict

- 1) In Article 417 / Pid.B/2020/PN MKS the panel of judges concluded the verdict against the defendant as follows:

- 2) States Defendant HARDI Bin AHMADIN, has been proven legally and convincingly guilty of committing the crime of persecution
- 3) Unify criminal terhadap HARDI Bin AHMADIN, therefore with imprisonment for 1 (one) year;
- 4) Establish the period of arrest and detention that has been lived by the defendant deducted entirely from the criminal United;
- 5) Order for the defendant to remain in custody;
- 6) Ordered evidence in the form of: 1 (one) white knife blade with a length of 22 cm complete with scabbard, seized for destruction;
- 7) fCharge the defendant to pay the cost of the case of Rp. 2.000, - (two rupiah)

c. Author Analysis

A judicial process ends with a final decision (verdict) in which there is the imposition of a criminal sanction (punishment), and in that decision the judge expresses his opinion on what has been considered and what is the amar of his decision. Before arriving at these stages, there are stages that must be done before, namely the stages of proof in imposing a criminal charge against the defendant. In this case the consideration of the judge to unite the verdict should reflect the sense of justice in both for the victim and the defendant. the judge demands that the defendant be proven guilty or not to be guided by the proof system as set out in Article 184 of the Criminal Procedure Code as follows;

"A judge may not assign a crime to a person unless he has at least two valid evidences that he is convinced that a crime has actually occurred and that the accused is guilty of committing it."

Based on the formulation of the article above, the system of proof adopted in the criminal code is a system of evidence according to the law in a combination of positive and negative proof systems. The proof system consists of two components, namely;

- 1) vidence must be conducted in a manner and with lawful means of evidence.
- 2) The conviction of the judge must be based on the means and with the lawful means of evidence.

Valid evidence as stipulated in Article 184 paragraph (1) of the code of criminal procedure consists of:

- a) Witness testimony
- b) Member description
- c) letter
- d) Instructions
- e) testimony of the accused

Related to the case that the author discusses, the author conducted an interview with one of the judges who handled this case, namely, Harto Pancono S.H.,M.H., gives a general description of the case that the authors lift states that; In deciding the case, the judge considers several things such as witness statements, defendant statements, letters, prosecutor's demands, judge's convictions and so on. All of them are things that must be considered and require foresight in exploring the actual events so that a decision can be obtained that approaches a sense of justice for all parties. According to the author, that the consideration of the panel of judges before making a decision in the case with the number 417/Pid.B



/ 2020 / PN.Mks, more on juridical considerations. The subjective consideration of the judge in this case is focused only on the perpetrators of the crime. But the judge should also consider the losses suffered by the victim. This should come into consideration the judge incriminating the defendant.

Based on the results of the interview above, the author concludes that the legal considerations of the judge in making a decision on this case, there are some shortcomings as described above. The consideration used by the judge in this case, tends to focus on the circumstances of the perpetrator of the criminal act only. Whereas Article 5 Paragraph (1) of Law No. 48 of 2009 on judicial power requires judges to explore, follow, and understand legal values and a sense of justice that lives in society. This means that the judge must also consider the harm from the side of the victim of the crime and society.

Thus, it will create a verdict that is close to a sense of justice for all parties. This is important to maintain public trust in the judiciary and maintain the existence of the court as a judicial institution that is really able to accommodate the needs of the community justice. Therefore, judges are needed who have high integrity and consistency towards the values of Justice. Then in terms of criminal sanctions imposed according to the author, it is very light to see the suffering experienced by the victim due to the injuries he experienced. The demands of the public prosecutor, namely 2 years in prison, according to the author, are more appropriate and even more than 2 years are still reasonable, considering the consequences of the defendant's actions that caused injuries that left an imprint resulting in prolonged trauma. However, it is undeniable that the sense of human justice is different because of the subjective nature of justice, and the panel of judges with sanctions imposed 1 (one) year 5 (five) months in prison is appropriate according to the sense of Justice.

## **CONCLUSION**

Persecution serious injuries that occur in the city of makassar are very often obtained, many reasons that arise resulting in persecution and the most dominant in causing persecution in the city of makassar is alcohol because someone who consumes alcohol results in lack of self-awareness and it can cause violence or persecute without him realizing it, that's why alcohol is very influential in the persecution. Application of material criminal law by the Makassar District Court judges in case number 417 / Pib.B / 2020 / PN.Mks stating the defendant HARDI Bin AHMADIN, has been proven legally and convincingly guilty of committing the crime of persecution resulting in serious injury sesuai with market 351 paragraph (2) Kitap Criminal Procedure Law is appropriate. related to the evidence submitted by the public prosecutor, pay witness statements, evidence, visa et repertum, and the defendant's statement. The Makassar District Court panel of judges in consideration decided that the defendant was more of a juridical consideration, where the judge focused his views and considerations on the facts revealed in the trial, both from the indictment, evidence, and the demands of the public prosecutor in unifying the verdict.

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