



Criminal Sanctions for Persecution Resulting in Serious Injury

Fandaria Yasin^{1}, Fence M. Wantu²*

¹ Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: fandayasin6@gmail.com

² Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: fence_wantu@gmail.com

Abstract: This study aims to find out and analyze how to prove the verdict of a criminal offense that results in serious injury based on the title raised in this authorship. An author is a type of writer an Emperis law or a field writer. With a Case approach. The process of collecting data from regulations and other references related to the problem being studied. The results of this author show that the proof of the Determination of the criminal act of assault resulting in serious injury is said to be incorrect but if we refer to the court decision of the defendant/convicted person is proven to have committed a criminal act of assault resulting in serious injury, but is only sentenced to imprisonment for six (6) months. The judge's role in determining the criminal act of assault resulting in serious injury is influenced by two counts, namely the judge's estimate that lawfully and convincingly committed the crime of persecution and the legal act used in the indictment article is more than Article 351 Paragraph 2 of the Criminal Code of persecution resulting in serious injury.

Keywords: Consent; Criminal; Seriously Injured.

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1. Introduction

The main feature of the state is the emergence of the obligation of the government to realize the general welfare of its citizens.¹ In the process of criminal settlement, the imposition of criminal sanctions is considered something to have a deterrent effect on the perpetrator, but that assumption is very wrong because the imposition of criminal sanctions cannot bring benefits from the suffering of the victim. Because criminal sanctions are only a redemption or payment for acts committed by the perpetrator against the state, and it is only a form of accountability to the state, not to the victim. There are three types of legal systems in force in Indonesia, namely the customary law system, civil law, and Islam.² Pidana is not just something that needs to be dropped but a necessity.

The form of criminal acts or crimes that occur in a society that we often encounter is a form of mild persecution, where the incident can occur due to uncontrolled patterns of behavior of the community or group, quickly offended so that disputes occur that lead to persecution.³

The crime of persecution can be distinguished into several kinds, the first of which is ordinary persecution, mild persecution, then severe persecution, and premeditated persecution and severe persecution, which have incriminating qualities that can be seen in the Criminal Code book II on crimes in articles 351 to 356 of the Criminal Code. One form of settlement can be resolved with *Alternative Dispute Resolution* provided that the crime is a minor abuse offense. Take one of the most recent cases of mistreatment that has created a polemic in the boalemo county public; one of the regional heads who is considered to have committed a criminal act of persecution since (10) ten years ago and was sentenced in 2020 based on court decision 160/PID. B/2020/PN GTO this is interesting to examine because it gives rise to several legal interpretations that are Pro and Con to a judgment taken by a judge.

The event is located in the defendant's corn clothesline warehouse in Hamlet I of Kota Raja Village, Dulupi District, Boalemo Regency and is located at the Defendant's house in Hamlet III of Kotaraja Village, Dulupi District, Boalemo Regency, which is still included in the Tilamuta District Court Legal Area, based on the Fatwa / Decision of the Supreme Court of the Republic of Indonesia Number: 204 / KMA / SK / VIII / 2020 dated August 26, 2020, concerning the Appointment of the District Court Gorontalo to examine and decide the Criminal Case On Behalf of Defendant D M Alias KD, the Gorontalo District Court examined and decided the case, had committed mistreatment causing serious Injury. Because the Defendant is found guilty and sentenced, it is under the

¹ Julius T Mandjo dan Suwitno Y Imran, *Implementasi UUD Negara Republik Indonesia Tahun 1945 Pasal 27 Ayat 2 Tentang Hak Untuk Mendapatkan Pekerjaan Dan Penghidupan Yang Layak Bagi Kemanusiaan, Majelis*, vol. Edisi 08 S (Jakarta: Jurnal Majelis Media Aspirasi Konstitusi, 2020).

² Dolot Alhasni dan Muhtar Mohamad Hidayat Bakung, "Determination of The Legal Protection of RightHolders to Neighboring Rights," *Jambura Law Review* 2, no. 1 (2020): 67.

³ Ibid. Hlm, 2

provisions of Article 222 paragraph (1) of the Criminal Procedure Code (KUHAP) Article 351 Paragraph (2) of the Criminal Code and Law Number 8 of 1981 concerning the Criminal Procedure Law and laws and regulations.

2. Method

Writing uses an Empirical type of law writing or field writing. The process of collecting data from the object under study in this writing is to use a search of regulations and other references related to the problem under study referred to as legal writing literature. Data sources are taken from literature study data and writing through field studies. Data collection methods using observation, interview, and documentation methods.

3. Juridical Review of Criminal Acts of Persecution That Result in Serious Injury (study verdict 160/PID. B/2020/PN Gto)

The formation of legal norms is essentially legislation.⁴ Like legislation that uses the term criminal act both in its articles and in its explanation, it is almost always used also the word deed.⁵ According to Amir Ilyas, a criminal act is any act that contains the following elements:⁶

1. Such acts are prohibited by law (Matching the formulation of delik);
2. Has an unlawful nature; and
3. There is no justifying reason.

The right to independence and freedom becomes the foundation for a state in upholding the rule of law on the sovereignty of its jurisdiction.⁷ Simons stated that criminal acts are handling that is unlawful and threatened with criminality, which is related to mistakes and that is committed by a person who can take responsibility.⁸ Heni Siswanto in his book also explained the definition of criminal acts. Heni explained that criminal acts are "the basis of criminal law while evil crimes or behaviors can be interpreted as criminological acts, crimes or evil deeds in the normative juridical sense are as manifested in abstract in criminal regulations, but crimes in the criminological sense are human acts that violate the norms that live in society concretely". Pompe defines a criminal act in Tri

⁴ Fence M. dkk. Wantu, "Kedudukan Peraturan Desa Dalam Sistem Pembentukan Peraturan Perundang-Undangan," *Jurnal Ius Civile* 4, no. 2 (2020): 201.

⁵ Nur Aisyah Bachri, "Tinjauan Yuridis Terhadap Tindak Pidana Penganiayaan Yang Dilakukan Oleh Anak" (Universitas Hasanuddin, 2014).

⁶ Amir Ilyas, *Asas-Asas Hukum Pidana* (Yogyakarta: Mahakarya Rangkeng Offset Yogyakarta, 2012).

⁷ Fence M. dan Usman Rasyid Wantu, "Redefinisi Kewenangan Komisi Yudisial Dalam Konstitusi: Upaya Mengharmonisasikan Putusan Pelaku Kekuasaan Kehakiman Indonesia," *Jurnal Majelis*, 2020, 35.

⁸ I Made Widnyana, *Asas-Asas Hukum Pidana, Fikahati Aneska* (Jakarta: Fikahati Aneska, 2010).

Andarisman positing that⁹ according to the positive law the event or *Feit* which by law is formulated as an act that can be memorized. Meanwhile, according to lamintang, it is asserted that "a criminal act is known as *Feit* which is taken from the Dutch language which means a reality in the original language *strafbaar feit* which is translated into various punishable realities which is something that is considered inappropriate.¹⁰

Moeljatno Manilak denies criminal acts equated with *strafbaar feit* which equates criminal acts with liability, criminal acts only point to the nature of the act, namely the nature of the prohibited with threats with a criminal.¹¹

Criminal acts show the understanding of a person's behavior and physical movements. There is also a person not to do, but by not doing it, he commits a criminal act. Regarding the obligation to do what he did not do, which the law specifies in Article 164 of the Criminal Code, the provisions in this article require a person to report to the authorities if a crime is about to arise, it turns out that he did not report it, then he can be sanctioned. In addition to the understanding, legal experts are also competing to provide criminal terms or criminal acts, namely criminal acts, offenses, and delicts as well as actions that are considered contrary to the law.¹² Criminal liability is the existence of an error consisting of the ability to be responsible, intentional, negligent, and the absence of forgiving reasons further will be described regarding the ability to be responsible, intentional, negligence and the absence of forgiving reasons.¹³

In this case, Ratna Salihi, the wife of the late Lewis Idrus, said she was shocked that the case of beating her husband was raised again by the court. He assumed the case was over. Because she and her husband have officially withdrawn their police report regarding darwis morid's alleged mistreatment.¹⁴

He didn't know who was making the new trouble regarding the old case. Ratna Salihi alleged that certain parties tried to drag the case of her husband to court, for the sake of certain political interests, namely sentencing Darwis Moridu as

⁹ Tri Andarisman, 2006 *Hukum Pidana, Asas-Asas Dan Aturan Umum Hukum Pidana Indonesia* (Bandar Lampung, Universitas Lampung, Hal 53-54

¹⁰ Tri Andarisman, *Hukum Pidana, Asas-Asas Dan Aturan Umum Hukum Pidana Indonesia* (Bandar Lampung: Universitas Lampung, 2006).

¹¹ Moeljatno, *Perbuatan Pidana Dan Pertanggungjawaban Pidana Dalam Hukum Pidana* (Jakarta: Bina AKsara, 1983).

¹² Teguh Prasetyo, *Hukum Pidana* (Jakarta: PT Raja Grafindo Persada, 2012).

¹³ Chirul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Tanpa Kesalahan* (Jakarta: Kencana Prenada Media Grup, 2006).

¹⁴ Wawancara dengan Ibu Ratni Salihi selaku istri dari Almarhum Awsi Idrus, Selasa 18 Oktober 2022

the Regent of Boalemo. Ratna Salihi admitted that she was looking into who or which party had opened this case which had previously been Sp3.

As the Public Prosecutor (JPU) of Gorontalo City, related to the case demanded 1 Year in prison with 2 years probation for the accused Darwis Moridu. Meanwhile, Darwis Moridu's team of lawyers, Inggrid S. Bawias, said that after more than 8 years, the SP3 issued by the police was pre-trial. But those who reported from the NGO were not from the family side. the 2011 SP3 pretrial ruling was overturned and deemed invalid based on information from the police there was peace but according to the judge, it should not be. Based on the facts that developed in the court, the JPU charged the accused Darwis Moridu with criminal charges under article 354 paragraph 2 of the Penal Code. Article 351 paragraph 3 of the Criminal Code. More Subsidiary article 354 paragraph 1 of the Criminal Code. More subsidies article 351 paragraph 2 of the Criminal Code, more subsidizes article 351 paragraph 1 of the Criminal Code. In the prosecution's prosecution, the serious injury that caused the death was not proved but in article 351 paragraph 2 of the Penal Code in his statement it was stated. According to Johannes Andenaes the main objective (primair) of the criminal according to absolute theory is to satisfy the demands of justice while its beneficial influence is secondary.

3.1 Article 351 Paragraph 2

There was a Criminal Case "Murder and or Persecution resulting in the death of persons" as referred to in the primary Article 351 paragraph 2 of Defendant D M Alias KA DARU on Thursday, August 5, 2010, at around 09.00 WITA or in August 2010, located in the corn clothesline warehouse owned by the Defendant in Hamlet I of Kota Raja Village, Dulupi District, Boalemo Regency at the Defendant's house in Hamlet III of Kotaraja Village, Dulupi District, Boalemo Regency, which is still included in the Legal Area of the Tilamuta District Court, based on the Fatwa / Decision of the Supreme Court of the Republic of Indonesia Number:¹⁵

204/KMA/SK/VIII/2020 dated August 26, 2020, concerning the Appointment of the Gorontalo District Court to examine and decide criminal cases on behalf of the accused DARWIS MORIDU Alias KA DARU, so that the Gorontalo District Court is authorized to examine and decide the case, deliberately severely injuring another person resulting in Serious injuries because the Defendant was found guilty and sentenced to a criminal offense, then under the provisions of Article

¹⁵Interview with Mr. Muhamad Kukuh Alfian, SH as the Staff of the Gorontalo District Court Judicial Case Analysis, Monday, October 1, 7, 2022

222 paragraph (1) of the Criminal Procedure Code (KUHAP) Article 351 Paragraph (2) of the Criminal Code and Law Number 8 of 1981 concerning the Criminal Procedure Law and laws and regulations Based on the description above, the author taking one of the recent cases of mistreatment that has led to a polemic in the Boalemo county public; which one of the regional heads who is considered to have committed a criminal act of persecution since (10) ten years ago and was sentenced in 2020 based on court decision 160 / PID. B/2020/PN GTO this is interesting to examine because it gives rise to several legal interpretations that are Pros and Cons to the judgments taken by the judges

It is evident from the facts that the defendant's actions began with emotion towards Awis Idrus who did not pay his debt to the Defendant and immediately the Defendant slapped Awis Idrus, kicked in the thigh and stepped on the abdomen, and pulled his collar to point at Awis Idrus's mouth which resulted in Awis Idrus being unable to carry out activities and getting sick until treatment by medical personnel was carried out.¹⁶

The testimony of witness Awis Idrus which was read out in accordance with the testimony of witness Ratna Salihi who is the wife of Awis Idrus and the testimony of witness SATARI IDRUS and witness HAMURI SAKO who is the parent of Awis Idrus has been real Awis Idrus since the beating incident on August 5, 2010 returned to his home in Towayu Village, Paguyaman Pantai District, Boalemo District from the house of the Defendant in Hamlet III RT.000 RW.000 Kotaraja Village, Dulupi District, Boalemo Regency and was cared for by his wife, namely witness Ratna Salihi and according to the testimony of witness Ratna Salihi that since the incident until Awis Idrus returned home that Awis Idrus every activity must be with the help of witness Ratna Salihi and Witness Awis Idrus could not work as his daily job, namely Farming until he was transferred his treatment to the house of witness HARTIN IDRUS Alias WATI then continued with hospitalization at the Tani and Fisherman Hospital until Visum Et Repertum was taken with the possibility of examination The old wound on the left lower lip is in the form of a regular line measuring 0.5 cm (zero point five centimeters) and an old wound on the lower lip of the vertical middle part measuring 0.2 cm (zero point two centimeters), Compressive pain in the middle abdominal area in central and upper brackets, Compressive pain in the right upper thigh, With the conclusion of an old wound on the lower lip due to blunt force contact on August 26, 2010 then continued with outpatient treatment at the Tani and Fisherman Hospital and treatment at the house of witness HADIDJA SAKO until death

¹⁶Interview with Mr. Muhamad Kukuh Alfian, SH as the Staff of the Gorontalo District Court Judicial Case Analysis, Monday, October 1, 7, 2022

shows that the defendant's actions committed against Awis Idrus have manifestly resulted in Awis Idrus experienced pain and injuries as the results of the Visum Et Repertum examination and in fact also Awis Idrus was unable to carry out his daily activities since the deed was carried out on August 5, 2010;¹⁷ So the author draws a correct conclusion that the elements of Article 351 paragraph 2 of the Criminal Code whose elements are as follows;

1. Whosoever;
2. Committing persecution that results in serious injuries

It is considered to have fulfilled the element of persecution, but not only that the author also quotes the opinion of Poerwodarminto stating: Persecution is an arbitrary treatment to torture or oppress others. This persecution has committed an act aimed at causing pain or endangering another person, the element of purpose here must include the purpose of causing pain or damage to another person. Thus, the perpetrator will want the result of an action. In this case, touching the other person's body naturally causes pain or injury to the other person. For example, hitting, stabbing, scratching, and so on.¹⁸

Article 351 of the Criminal Code What is meant by ordinary persecution or persecution as stipulated in article 351 of the Criminal Code is an act committed by another person to inflict pain on the body such as wounds, so that to perform his duties he has difficulties, but this persecution does not cause such severe injuries as defects that he can no longer perform his duties.

From the explanation above, we understand that the Criminal Code does not explicitly mention what elements are contained in the act of persecution, but we can already determine that the persecution that occurs due to intentionality is carried out to disturb the health of the victim.

And to determine the action to be subject to persecution, the subject or perpetrator of the persecution must have a deliberate intention :¹⁹

1. Giving harm to others (victims) in this case health because it has inflicted pain or injury on the victim's body
2. The actions performed generate physical suffering

¹⁷Interview with Mr. Muhamad Kukuh Alfiyan, SH as the Staff of the Gorontalo District Court Judicial Case Analysis, Monday, October 1, 7, 2022

¹⁸ Poerdaminto, *Kamus Umum Bahasa Indonesia* (Jakarta: Balai Pustaka, 2003).

¹⁹ P.A.F dan Theo Lamintang Lamintang, *Delik-Delik Khusus Kejahatan Terhadap Nyawa, Tubuh, Dan Kesehatan Edisi Kedua* (Jakarta: Sinar Grafika, 2018).

3. The existence of pain felt as a result of the actions that have been performed.

3.2 Article 354 Paragraph 2

Hasil author gets that the article of prosecution of the Act of Defendant D M Alias KA DARU is regulated and threatened with criminality in Article 354 paragraph 2 of the Criminal Code

That the Defendant DM Alias KA DARU on Thursday, August 5, 2010, at around 09.00 WITA or at least at other times in August 2010, was located in the corn clothesline warehouse owned by the Defendant in Hamlet I of Kota Raja Village, Dulupi District, Boalemo Regency and located at the Defendant's house in Hamlet III of Kotaraja Village, Dulupi District, Boalemo Regency or at least in other places that are still included in the Legal Area Tilamuta District Court, based on the Fatwa/Decision of the Supreme Court of the Republic of Indonesia Number: 204/KMA/SK/VIII/2020 dated August 26, 2020, concerning the Appointment of the Gorontalo District Court to examine and decide criminal cases on behalf of the defendant DM Alias KA DARU Darwis Moridu alias Ka Daru, so that the Gorontalo District Court is authorized to examine and decide the case.

Berkenan with this matter first understood what is meant by serious injury i.e. as the provisions of Article 90 of the Criminal Code are :

1. Falling ill or getting a wound that gives no hope of recovery at all or that poses a danger of death
2. Unable to continuously carry out the duties of a position or livelihood job for a long time
3. The naturalness of one of the five senses
4. Got a severe disability
5. Suffering from paralytic pain
6. Disruption of thinking power for more than four weeks
7. The fall or death of a woman's womb

The facts were revealed on August 5, 2010, at 9:00 a.m. at the Defendant's Corn Shed in Hamlet I of Kotaraja Village, Dulupi District, Boalemo District witness Mardjun Bin Adam Alias Junu called witness Awis Idrus to meet with the Defendant and after witness, Awis Idrus met with the accused, the Defendant

asked "do you still remember you there was a taking", and Awis Idrus's brother replied "yes", then the defendant asked again "why haven't you put corn in?" then witness Awis Idrus replied "still taking care of my sick son" hearing the words of witness Awis Idrus.

The Defendant was emotional and instantly swung his hand towards Awis Idrus's face and kicked witness Awis Idrus in the thigh and told witness Awis Idrus to come with the Defendant to the Defendant's house and when he arrived at the Defendant's house, the Defendant who was in a state of emotion again scolded the witness Awis Idrus and pointed a finger towards Awis Idrus's mouth, pulled the collar of Awis Idrus's shirt and when Awis Idrus fell the Defendant stepped on the abdomen of witness Awis Idrus until he was grabbed by witness RICE BIN MALIU ALIAS PADAA RICE by embracing the Defendant from behind and saying "it's all right Mr. Hajj", and at that time the witness RICE BIN MALIU ALIAS PADAA RICE reprimanded.

The defendant by saying that what Mr. Haji demanded of the victim was nothing with the cement 1 (one) row that was in this cement pile, then the Defendant released Awis Idrus then the Defendant invited Awis Idrus's parents, namely witness SATARI IDRUS and the witness HAMURI SAKO come to the house of the Defendant and after witness SATARI IDRUS and witness HAMURI SAKO arrived at the house of the Defendant, The Defendant immediately informed that Awis Idrus's brother had a debt owed to the Defendant and Awis Idrus could not pay it because his son was ill, because of this in the presence of Awis Idrus's parents, namely witness SATARI IDRUS and witness HAMURI SAKO, the Defendant said that Awis Idrus's debt had been paid off and the Defendant tore up the debt receipt before witness SATARI IDRUS and witness HAMURI SAKO and was invited to eat by the Defendant.

In the doctrine of criminal law Article 354 paragraph 2 states that all elements must be fulfilled, in that article so that the determination of the judge is not mistaken

The analysis of the article is explicit if we look at the elaboration of Article 354 Paragraph 2 of the Criminal Code whose elements are as follows :

1. Whoever

From the indictment letter, the testimony of witnesses and the accused, and other papers in the case file, whoever is referring to is appointing the accused DM Alias KA DARU who is faced with the future trial by the Public Prosecutor, then this element according to the author is very fulfilled because it refers to a case of persecution.

2. Deliberately caused severe injuries

since the original purpose of Defendant was to summon A I about his debts and there was no ability on the part of Awis Idrus to pay then the act of the Defendant which was preceded by such emotion resulted in Awis Idrus receiving treatment until he was unable to carry out activities and died according to the tribunal was the result of the defendant's conduct and was not the purpose of the defendant's conduct so against this element, according to this element The Tribunal was not satisfied in the conduct of the Defendant because one of the elements in the *Primair Indictment did not meet so defendant current evident lawfully and convincingly guilty of committing a criminal offense* as in the primair indictment, therefore the accused should be acquitted of the prima air charge of the Public Prosecutor.

3. Which results in the death of a person

it can be seen from the facts that the defendant's actions started with emotion towards Awis Idrus who did not pay his debt to the Defendant and immediately the Defendant slapped Awis Idrus, kicked in the thigh and stepped on the abdomen and pulled his collar to point at Awis Idrus's mouth which resulted in Awis Idrus being unable to carry out activities and pain until treatment by medical personnel according to the tribunal was the result of the defendant's conduct and the *result of his death was* not fulfilled in the defendant's conduct so that against this element according to the tribunal it was not fulfilled therefore the author's thrift cannot be in the said article.

1. Based on the results of the above analysis, in the judgment of the court of the accused Darwis Moridu Alias Ka Daru mentioned above, it was not validly proven and convinced guilty of committing a criminal act as charged by the Public Prosecutor.
2. Defendant Darwis Moridu Alias Ka Daru mentioned above from the primarch's indictment, Public Prosecutor;
3. The accused Darwis Moridu Alias Ka Daru, was not validly proven and found guilty of committing a criminal offense as charged by the Public Prosecutor.
4. Defendant Darwis Moridu Alias Ka Daru mentioned above from the indictment of the Public Prosecutor
5. Defendant Darwis Moridu Alias Ka Daru mentioned above from the charges of more than the Public Prosecutor
6. The aforesaid accused Darwis Moridu Alias Ka Daru, has been validly proven and found guilty of committing the criminal offense of

"Mistreatment resulting in serious injury" as the charges further subsidiary the Public Prosecutor

7. Sentence the Defendant to imprisonment for 6 (six) Months

Based on the results of analysts the author that in the judgment the element of tidak pidana Article 354 Paragraph 2 of the Criminal Code was not fulfilled and what was fulfilled was "Persecution resulting in serious injury" in principle the article is the appropriate article used by the judge to pass judgment because in which case there is a victim who died

Berdasarkan the results of the author's analysis also that in this case whether the deed was intentional certainly the one who knows better is the defendant himself because it concerns the intention that is in one's heart, but from some theories about the aforementioned intentionality it can also be known whether the act entered into intentionality, which based on the facts of the initial agreement the Defendant only wanted to collect the victim's debt so that it was not fulfilled the element with intentionally injuring and committing severe abuse.

4. Conclusion

Proof of Conviction of Criminal Offences Resulting in Serious Injury (Study Verdict 160/PID. B/2020/PN Gto) is said to be incorrect but if we refer to the court decision the accused/convicted person is proven to have committed a criminal offense of assault resulting in serious injury but is only sentenced to imprisonment for six (6) months. Judges' Calculations in The Determination of Criminal Offences Resulting in Serious Injury (study verdict 160/PID. B/2020/PN Gto) are influenced by two estimates, namely, the Pertimbangan hakim who legally and convincingly commits the crime of persecution and the legal calculation used in the article of indictment (moreover Susidair again) Article 351 Paragraph 2 of the Criminal Code of persecution that results in serious injury.

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