

## **Legal Analysis of Criminal Liability For Identity Falsement by A Fiduciary Agent**

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**Abstrak:** Penelitian ini bertujuan untuk mengetahui dan menganalisis kualifikasi tindakan pidana pemalsuan identitas dalam perjanjian fidusia serta untuk mengetahui pertimbangan hukum hakim dalam menjatuhkan putusan pada kasus Putusan No. 1097/Pid.sus/2019/PN.Mks. Penelitian ini dilakukan dengan jenis studi hukum normatif yang menggunakan materi hukum sekunder atau studi dengan mengambil sejumlah buku, jurnal atau referensi terkait dengan penelitian. Hasil penelitian ini menunjukkan bahwa (1) Kualifikasi tindakan pidana pemalsuan identitas dalam perjanjian jaminan fidusia adalah syarat-syarat yang harus dipenuhi agar dapat dikategorikan sebagai tindakan tindak pidana. Pemalsuan adalah tindakan mengganti surat atau dokumen yang dilakukan oleh seseorang atau kelompok individu. Tindakan pemalsuan ditandai sebagai kejahatan dengan kerangka kebohongan atau penipuan terhadap suatu objek. Penipuan adalah tindakan yang dilakukan dengan sengaja untuk menipu atau memanipulasi orang lain untuk kepentingan pribadi atau kelompok. Dengan demikian dalam perkara ini atau kasus no. 1097/Pid.Sus/2019/PN.Mks. Tentu saja memenuhi syarat sebagai tindakan pidana. (2) Analisis putusan hakim hukum kasus no. 1097/ Pid.Sus /2019/PN. Max Tentang Pemalsuan identitas dalam Penjaminan Fidusia adalah terdakwa telah memenuhi unsur-unsur Pasal 263 ayat (1) KUHP dan unsur-unsur Pasal 36 UU No. 42 Tahun 1999 tentang Penjaminan Fidusia. Rekomendasi studi ini adalah sebagai aparat penegak hukum dalam menentukan kualifikasi tindakan kejahatan harus lebih teliti lagi dalam mencari unsur-unsur tindakannya, apakah tindakan tersebut berupa tindakan pidana (hukum pidana) atau tindakan perdata (hukum perdata) agar tidak terjadi kesalahan dalam penuntutan, serta pemilik pemberi jaminan objek fidusia atau dalam hal ini perusahaan yang beroperasi di bidang fidusia Untuk lebih rinci dan teliti saat ini setuju dalam memberikan objek fidusia agar tidak terjadi lagi seperti pada kasus yang dijelaskan di atas.

**Kata Kunci:** Tanggung jawab pidana, Pemalsuan identitas, Kewajiban fidusia

**Abstract:** *This research aims to determine and analyze the qualifications of the criminal act of identity forgery in a fiduciary agreement and to determine the legal considerations of the judge in making a decision in the case of Decision No. 1097 / Pid.sus / 2019 / PN. Mks . This research was conducted with a normative legal research type that uses secondary legal materials or is a study by taking several books, journals or references related to the research. The results of this study indicate that (1) The qualifications of the criminal act of identity forgery in a fiduciary guarantee agreement are the requirements that must be met in order to be categorized as a crime. Forgery is the act of replacing a letter or document carried out by an individual or group of individuals. The act of forgery is a crime characterized by a framework of falsehood or fraud against an object. Fraud is an act carried out intentionally to deceive or manipulate others for personal or group interests. Thus in this case or case No. 1097 / Pid.Sus / 2019 / PN. Mks certainly meets the*

requirements as a criminal act. (2) Legal analysis of the judge's decision in case No. 1097/ Pid.Sus /2019/PN. Mks Regarding Identity Forgery in Fiduciary Guarantees is that the defendant has fulfilled the elements of Article 263 paragraph (1) of the Criminal Code and the elements of Article 36 of Law No. 42 of 1999 Concerning Fiduciary Guarantees. The recommendation of this study is that as law enforcement officers in determining the qualifications of criminal acts, they must be more careful in finding the elements of their actions, whether the action is a criminal act (criminal law) or a civil act (civil law) so as not to make a mistake in prosecution, and as the owner of the fiduciary object guarantee or in this case companies engaged in the fiduciary sector to be more detailed and careful when agreeing to provide fiduciary objects so that it does not happen again as in the case explained above.

**Keywords:** Criminal liability, Identity Forgery, Fiduciary



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## **A. INTRODUCTION**

The crime of identity fraud is a recent phenomenon that frequently occurs and harms the party whose identity is falsified. A person who commits an act that harms others, thereby disrupting balance, peace, and order, can be considered a crime. A crime is defined as behavior that violates legally recognized values and norms. Therefore, a crime can be defined as an act that violates criminal law or applicable laws within society. Forgery originate from the word false which means " not" genuine , no legitimate , imitation , fake , whereas forgery Still from same source interpreted as a process, method , action fake ”. Fake signify something goods No original , whereas forgery is the process of making something fake goods . So with thus from the word forgery There is there is perpetrator , there is counterfeit goods and there are objective forgery . Act forgery can classified first of all in group the crime of “ fraud ”, however No all actions fraud is forgery . Act forgery classified as group crime fraud , if somebody give description about something condition on something goods ( letters ) as if original or truth the owned . Because the image This is where other people fall for it and believe it that the situation described on goods / letters the That is Correct or original .

Fiduciary is diversion right ownership something object on base trust with provision that right thing ownership diverted the still in mastery owner objects . Meanwhile guarantee fiduciary can interpreted as right guarantee on object move both tangible or not tangible and tangible No move specifically buildings that are not can burdened right liability , as collateral for repayment of certain debts , which provides preferred position to recipient fiduciary to creditors other . One of example case action criminal forgery in agreement guarantee fiduciary is as happened in Makassar in No.1097/ Pid.Sus /2019/PN Mks which was then will reviewed in study This

Where defendant use identity fake on submission files as condition in submission credit car to PT. Mandiri Utama Finance . The submitted Resident Identity Card named Jane Erly Caroline Ade , but photo on the Resident Identity Card the replaced become Photo owned by defendant Because defendant know if his name Already disabled in banking . This case has sentenced by the Makassar District Court Judge with state that defendant proven in a way valid and convincing , guilty do action criminal offense of " helping " give information in a way misleading , which if matter the known by one of party No give birth to agreement Guarantee Fiduciary ” and dropped criminal to Defendant in the form of criminal prison for 1 ( one ) year 6 ( six ) months and a fine Rp . 20,000,000- subsidiary 2 (two) months imprisonment .

Indonesia has had laws regarding marriage since 1974. Marriage is a form of gratitude to the Creator, who created two people to form a bond that is legally binding under both religion and the state. However, married life is not always filled with happiness. The household, which should be a place of support for husband, wife, and children, can instead become a place of violence that causes suffering and torture to the victims, both physically and psychologically. [1]. When a household fails to maintain family unity, it is not simply bad luck, but rather a reflection of the husband and wife's lack of awareness and willingness to improve and manage their home life together. Domestic violence is not a sudden event, but rather the accumulation of various unresolved issues. A healthy family life rests on a balance of rights and responsibilities between husband and wife. When conflict arises, it should be resolved through deliberation to find a mutual solution. However, many cases of domestic violence are rooted in feelings of inequality, when one party feels their rights are being ignored or their status is being undermined. Yet, both under state law and religious teachings, husband and wife have equal responsibility in building a harmonious household. Neglecting obligations, no matter how small, can trigger arguments that ultimately have the potential to escalate into violence.

Domestic violence is a destructive crime because it not only causes physical harm but also robs family members of their happiness and causes prolonged emotional suffering. Generally, violence can be defined as any action that harms or endangers a person's well-being. However, more narrowly, violence is an intentional act intended to harm another person, usually through unwanted physical contact that causes injury, whether visible or hidden.

Ultimately, a healthy household is evidence that both partners recognize, respect, and fulfill their equality and responsibilities, not just fulfilling their roles [2]. As the smallest social unit in society, the family plays a crucial role in shaping the social and personality development of its members. A harmonious family is characterized by happiness, satisfaction, and minimal conflict and tension among family members. In one city in Indonesia, a 28-year-old wife experienced repeated physical violence from her husband whenever there was a dispute over household finances. In one incident, the perpetrator hit the victim with his hands and a blunt object, causing bruises and wounds on several parts of the body, which then required medical

treatment and a post-mortem examination by a health professional [3]. This act legally fulfills the elements of physical violence within the household as regulated in the legal provisions on domestic violence, and can be qualified as an act of abuse according to criminal law [4].

Although the law allows for enforcement as a general offense to protect victims, in practice, cases are often resolved through family reconciliation to preserve the household. As a result, criminal proceedings do not proceed, and victims remain with their perpetrators without adequate protection, demonstrating a gap between the law and its implementation [5]. A harmonious relationship between husband, wife, and children is a household goal, but it is often unattainable due to conflict that can trigger violence. Domestic violence is a socio-psychological concern, so society needs to strengthen family resilience to face problems, both physical and psychological, that can demean a person's dignity [6]. Domestic violence is fundamentally a devastating crime. It not only causes physical harm but also robs one of happiness. In the context of Islamic teachings, acts of violence, whether physical or psychological, fundamentally contradict humanitarian values and the command to act in a virtuous manner within the relationship between husband and wife. The family is a safe and loving environment. Article 1 of Law Number 1 of 1947 concerning Marriage also states that "Marriage is a physical and spiritual bond between a man and a woman with the aim of forming a happy and eternal family, a household based on the One Almighty God"[7]. However, sometimes, families can become places of suffering and torture due to domestic problems that are sometimes resolved in unethical ways, including violence.

Domestic violence violates human rights and Indonesian law, as stipulated in Article 28 of the 1945 Constitution. It involves verbal abuse, extortion, and abuse, resulting in physical and psychological harm. Therefore, law enforcement through the judicial process is necessary to address perpetrators. As explained in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it affirms that harmony and the integrity of a happy, safe, and peaceful household are the hopes of every couple, built through the bond of marriage. Indonesia is now implementing a new Criminal Code through Law Number 1 of 2023, replacing the old Dutch Criminal Code. This Code strengthens the principles of social justice and humanitarian values, having a significant impact on the handling of criminal acts, including domestic violence and violence against women [8]. In the old Criminal Code, physical violence against wives was regulated generally through Articles 351–355 concerning abuse, without specifying the relationship between the perpetrator and the victim within the household. As a result, victim protection often depended on the interpretation of law enforcement officials or the application of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. Meanwhile, the new Criminal Code (Law No. 1 of 2023) updates the provisions on domestic violence through Articles 467–471, stipulating that this crime can be prosecuted without a complaint from the victim and placing the protection of women and children as a state responsibility. The violence

covered includes physical, psychological, sexual, and economic violations, in accordance with the principles of the Domestic Violence Law.

With these reforms, this research becomes increasingly relevant to examine how the application of criminal provisions, both in the old and new Criminal Codes, can provide effective legal protection for victims of physical violence in the household, particularly wives. This study is also expected to provide an overview of the readiness of law enforcement officials to implement the provisions of the new Criminal Code fairly and from a victim-centered perspective. Positive law, criminal law regulates values of justice and regulates the protection of victims of violence. Resolving domestic violence cases without resorting to coercion or arrest and detention deviates from applicable law because the impact of the perpetrator's criminal act on the victim is disproportionate to the legal protection, in this case, the resolution of the case handled by the police. Furthermore, each protection provided is limited to carrying out the task of handling cases so that they are resolved quickly, but not properly implemented according to statutory provisions. This is the background to the author's research entitled "The Application of Criminal Provisions in Physical Violence Against Wives from the Aspect of Victim Protection.

## **B. METHOD**

The type of research used is normative juridical research. The approach used in this study is twofold: the Statute Approach, which is an approach carried out by examining various positive legal provisions governing domestic violence, such as Law No. 23 of 2004 concerning the Elimination of Domestic Violence, the Criminal Code (Law No. 1 of 2023), and other related laws and regulations, and the Conceptual Approach. The types and sources of legal materials used are primary, secondary, and tertiary legal materials. Primary legal materials are binding legal materials, such as the Law on the Elimination of Domestic Violence. Secondary legal materials include research results, scientific journals, and various supporting literature. Tertiary legal materials are legal materials sourced from the internet, legal dictionaries, and Wikipedia. Data collection is carried out through library research techniques. The author will use descriptive qualitative analysis of legal materials in this study.

## **C. DISCUSSION**

### **1. Criminal Provisions Concerning the Crime of Physical Violence Against a Wife**

Physical violence against a wife is a violation of human rights and a criminal act that violates the principles of justice and human dignity. In the Indonesian legal system, physical violence against a wife is not only understood as a moral violation, but also as a public crime that must be handled by the state, even without a report from the victim [9]. This marks a significant paradigm shift, as the household is no longer immune from the

law. Prior to the enactment of the Domestic Violence Law, domestic violence was generally regulated through Article 351 of the Criminal Code concerning assault. However, the Criminal Code did not accommodate domestic relations and provided special protections for victims. The Domestic Violence Law serves as a *lex specialis*, providing a stronger legal basis for enforcing the law against perpetrators of domestic violence. Supreme Court Decision No. 123 K/Pid/2021 affirms that the Domestic Violence Law must take precedence over the Criminal Code.

The relationship between the Criminal Code (KUHP) and Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) is one of *lex generalis* and *lex specialis*, with the Criminal Code serving as a general rule governing criminal acts, while the PKDRT Law serves as a specific rule governing violence within the family or household. Prior to the enactment of the Domestic Violence Law, law enforcement against domestic violence largely relied on the abuse provisions in the Criminal Code, such as Article 351 of the Criminal Code concerning abuse.

The Domestic Violence Law was enacted in response to growing awareness that domestic violence is not merely a physical act, but also a violation of human rights, family harmony, and gender equality [10]. The Domestic Violence Law recognizes the state's obligation to intervene in the domestic sphere when violations of human dignity occur.

Another important difference is the relationship between the perpetrator and the victim. While the Criminal Code (KUHP) does not prioritize the relationship, the domestic relationship is a key element in the Law, such as the relationship between husband and wife, parent and child, or people living in the same household. In terms of evidence, the Criminal Code emphasizes physical evidence and witness testimony, while the Law recognizes additional evidence such as psychological testimony and repeated patterns of violence, given that victims often experience emotional and social distress. Therefore, the Criminal Code and the Law on Domestic Violence are not mutually exclusive regulations, but rather work in a complementary manner, with the Law on Domestic Violence acting as a *lex specialis*, overriding the Criminal Code in the context of domestic violence. The new Criminal Code includes criminal provisions regarding violence against family members, thus strengthening the protection of victims of domestic violence. This demonstrates Indonesia's criminal law policy is moving toward victim-oriented justice [11].

Enforcement of the Domestic Violence Law still faces cultural, economic, and social barriers. Many victims do not report violence due to economic dependence or social pressure. According to Soerjono Soekanto, the law's effectiveness is influenced by its substance, law enforcement structure, and community culture. [12]. In cases of domestic violence, the legal substance is adequate, but the legal structure and culture have not effectively supported it.

In Indonesia's criminal justice system, regulations regarding physical violence against wives in the household create overlapping norms between several laws and regulations. Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law) specifically prohibits anyone from committing domestic violence, including physical violence, against anyone within the household. This provision is essentially a *lex specialis* designed to provide special protection to victims, including wives, considering the power relations and dependency within the household. However, acts of physical violence by a husband against his wife can also be prosecuted under the Criminal Code (KUHP), specifically Article 351 concerning assault, which carries a prison sentence of up to 2 years and 8 months, increasing to 7 years if it results in serious injury or death. Furthermore, in the context of households with children, the provisions of Law Number 35 of 2014 concerning Child Protection can also overlap if the violence impacts the child or is committed in front of the child. This overlap creates problems in law enforcement practices, particularly regarding the determination of the articles used, the application of the principle of *lex specialis derogat legi generali*, and the potential for differences in criminal penalties, leading to legal uncertainty and disparity in decisions. As a result, legal protection for wives as victims of domestic violence has not been fully consistent and optimal in its implementation..

## **2. Analysis of Criminal Law Provisions in Indonesia Regulating Physical Violence Against Wives in the Household**

The analysis of Indonesian criminal law provisions governing physical violence against wives in the household cannot be separated from the growing understanding that domestic violence (DV) is no longer a private matter, but rather a criminal act that is a public and state matter. This paradigm shift was explicitly realized through the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), which serves as the primary basis for legal protection for victims, particularly wives. Prior to the enactment of the PKDRT Law, physical violence against wives was generally processed using provisions in the Criminal Code (KUHP), particularly articles on assault [13]. However, the Criminal Code does not specifically address domestic relations as a context with specific characteristics, such as power imbalances, economic dependency, and psychological stress. This results in many cases of domestic violence not being optimally handled because they are considered "family matters."

The Domestic Violence Law offers a more comprehensive approach. This law defines physical violence as any act that results in pain, illness, or serious injury. Physical violence against a wife falls within the domestic sphere, which includes the husband, wife, children, and other family members or those living in the same household. The criminal provisions are specifically regulated, with the threat of imprisonment and/or fines varying depending

on the consequences, such as minor injuries, serious injuries, or death [14]. Normatively, this provision demonstrates the state's recognition that marital relations cannot be used as a justification for violence. The principles of equality and respect for human dignity form the philosophical basis for this regulation [15]. Furthermore, the Domestic Violence Law also regulates victims' rights, such as temporary protection from law enforcement officials, the issuance of a protection order by the court, and access to health services and legal assistance. Thus, criminal law functions not only repressively (punishing the perpetrator) but also protectively (protecting the victim).

From a law enforcement perspective, physical violence in the home is a crime that, under certain circumstances, can be prosecuted without a complaint from the victim (not merely a complaint offense), especially if it results in serious injury or death. This is important considering that in many cases, the wife as the victim is in a vulnerable position and often experiences pressure to withdraw the complaint. The state, through law enforcement officials, has an active obligation to ensure protection and justice are maintained. However, in practice, various challenges remain. Patriarchal cultural factors, economic dependency, shame, and a lack of public understanding of victims' rights often hinder the reporting and prosecution of cases. Furthermore, the sensitivity and gender perspective of law enforcement officials also significantly determine the effectiveness of the implementation of the Domestic Violence Law. Overall, the criminal law provisions in Indonesia have provided a strong enough basis to ensnare perpetrators of physical violence against wives in the household. The presence of the Domestic Violence Law complements and strengthens the provisions in the Criminal Code with a more specific approach and is oriented towards victim protection. The challenge going forward lies in the consistency of law enforcement, increasing public awareness, and strengthening the victim protection system so that the legal objectives of justice, certainty, and benefit can truly be realized. Legal protection for victims of physical violence in the household is part of the fulfillment of human rights guaranteed by Article 28G paragraph (1) of the 1945 Constitution. This protection is not only oriented towards prosecuting the perpetrator, but also on prevention, assistance, and recovery of the physical and psychological condition of the victim. Law Number 23 of 2004 concerning the Elimination of Domestic Violence (the Domestic Violence Law) emphasizes that the state is obliged to provide comprehensive protection to victims through structured mechanisms, both preventive and repressive. Legal protection is a protection provided to legal subjects in the form of instruments, both preventive and repressive, both verbal and written. In other words, it can be said that legal protection is a separate illustration of the function of law itself, which has the concept that law provides justice, order, certainty, benefit, and peace. Preventive legal protection efforts aim to prevent domestic violence [15]. Preventive protection is implemented through preventative measures to prevent violence from occurring. This includes legal counseling, gender

equality education, and strengthening an anti-violence culture within the community. The government, along with institutions such as the Center for Women's Empowerment and Child Protection (P2TP2A) and the Ministry of Women's Empowerment and Child Protection (Kemen PPPA), plays a role in disseminating information and providing educational assistance to the community. Preventive legal protection in the Law on the Elimination of Domestic Violence is reflected in the formulation of acts classified as criminal acts of Domestic Violence, which outlines what should not be done and provides protection to victims.

Repressive protection is implemented after the violence has occurred, with the aim of providing a sense of security and justice for the victim. These efforts include enforcing criminal law as stipulated in Article 44 of the Domestic Violence Law and Article 467 of the new Criminal Code, legal assistance from the Legal Aid Institute (LBH), and protection and rehabilitation through the Witness and Victim Protection Agency (LPSK) under Law Number 31 of 2014. Victims also have the right to psychological recovery and restitution from the perpetrator. The Law on the Elimination of Domestic Violence defines two forms of protection: temporary protection and protection based on a court order. Article 16 of the Law on the Elimination of Domestic Violence states that temporary protection is provided directly by the police and/or social institutions or other parties, prior to the issuance of a protection order by the court. Meanwhile, protection based on a court order is provided by the court through a written order containing a protection order for the victim and other family members. The advantage of temporary protection provided by the police and/or social institutions is that the victim can receive protection immediately without having to wait for a court order, allowing the victim to directly and quickly receive protection and security.

A request for a protection order can be submitted by the victim, the victim's family, friends, volunteer companions, or spiritual mentors. If the victim does not file a protection order request, the victim must provide consent. If certain circumstances arise for the victim (e.g., the victim is unconscious, critical, etc.), the request can be submitted without the victim's consent. The protection order is granted for a maximum period of one year and can be extended by court order. In providing temporary protection, the police can collaborate with health workers, social workers, volunteer companions, and/or spiritual guides to assist the victim. In practice, there is an institution that acts as an implementer of protection and recovery for victims of domestic violence, namely the Integrated Service Center for the Empowerment of Women and Children. The provision of protection and recovery for victims must of course follow the procedures and provisions applicable to the Law on the Elimination of Domestic Violence. The form of protection and fulfillment of victims' rights is provided by the Service Center.

## **D. CONCLUSION**

Indonesian criminal law provisions governing physical violence against wives in the household are regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which provides special protection for victims and establishes criminal sanctions for perpetrators of violence. Furthermore, provisions in the Criminal Code can also be applied if the act fulfills the elements of the crime of abuse. Thus, normatively, Indonesian criminal law has provided a fairly clear legal basis for dealing with physical violence against wives, although in practice, optimization of law enforcement and victim protection is still needed so that the goals of justice and a deterrent effect can be achieved effectively. Legal protection against physical violence against wives in the household is carried out preventively and repressively. Legal protection for physical violence against wives in the household in a preventive manner is carried out by strengthening social networks, understanding local cultural wisdom and practicing religious teachings, and strengthening the foundation and structure of the family economy. Meanwhile, legal protection for physical violence against wives in the household in a repressive manner is carried out through temporary protection and protection based on a stipulation.

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