

## CONSIDERATION OF JUDGES IN DECIDING CASES OF DOMESTIC VIOLENCE CRIMES COMMITTED BY HUSBANDS TO WIVES COMMITTED BY HUSBAND TO WIFE

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### Abstract

The purpose of this study is to examine the law enforcement and judges' consideration of the perpetrators of the crime of Domestic Violence committed by husband to wife in decision No. 233/Pid.Sus /2023/PN Ktg. This type of research uses descriptive qualitative with a normative juridical approach. Data collection using literature study. This research uses qualitative analysis with an interactive model. The results showed that law enforcement against perpetrators of domestic violence crimes that the defendant was sentenced to imprisonment for 4 (four) years. The judge's consideration in imposing a sentence on the crime of domestic violence was the beating committed by a husband to his wife in Decision No. 233/Pid.Sus/2023/PN Ktg is based on the testimony of witnesses, evidence and the testimony of the defendant, where the proof is sufficient if it is based on at least 2 (two) pieces of evidence plus the judge's belief.

**Keywords:** law enforcement, domestic violence, criminal act of beating

## INTRODUCTION

A household is the smallest community in society. A happy, safe, and peaceful household is everyone's dream. Everyone within the scope of the household to carry out their rights and obligations (Rianitapri, 2022). The relationship between husband and wife is ideally a harmonious relationship so that their marriage provides mutual happiness, so ideally the wife gets protection and affection from her husband and not the physical, psychological and sexual violence she gets.

Article 1 point 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (KDRT) states that domestic violence is any act against a person, especially women, which causes physical, sexual, psychological, and/or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household. Based on this definition, domestic violence causes misery or suffering to victims with various forms of violence.

Domestic violence has claimed quite a number of victims from various circles of society, it occurs in various forms and is caused by various factors. The National Commission on Violence against Women (Komnas Perempuan) stated that there were 401,975 cases of violence throughout 2023 (news.detik.com, 2023). The state is obliged to prevent, protect victims and take action against perpetrators of domestic violence and take action against perpetrators in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia. The state is of the view that all forms of violence, especially domestic violence, are violations of human rights and crimes against human dignity and discriminatory (Dominggus & Sherly, 2021).

Violence against women includes domestic violence. Various types of domestic violence that occur include physical, psychological, sexual violence, and violence in the form of neglect. (Sutiawati, 2020). Physical violence that is usually carried out is hitting, kicking, slapping, and others. Sexual violence, where the actions taken by the husband are unwanted by the wife, such as forcing the victim to have sex under circumstances that the victim does not want. Economic violence such as taking the victim's money, withholding or not providing economic fulfillment for the victim (Helfrida & Muhammad, 2019).

The actions of perpetrators of domestic violence include physical pressure from within and the result of pressure from a situation. The actions of the perpetrator of violence cause harm to the victim and cause social reactions from the community and violate the law, so this act is categorized as a criminal offense (Darania & Kholifatun, 2021).

Various domestic violence is a crime that is prohibited and threatened with punishment regulated in Law No. 23 of 2004 concerning the Elimination of Domestic Violence so that victims of domestic violence, especially women, get legal protection. The assumption that domestic violence is a domestic affair arises between husband and wife whose legal relationship between individuals occurs because they are bound in marriage which is the scope of civil law, so that if there is a violation in the legal relationship between individuals, the law enforcement is carried out by filing a lawsuit in court by the party who feels aggrieved. The Marriage Law does not regulate the sanctions that can be imposed on perpetrators of domestic violence, such as public (criminal) law.

Domestic violence is a serious problem that occurs when someone builds a married life. Domestic violence is caused by factors internal to the family or external factors. The integrity and harmony of the household can be disrupted if self-control cannot be controlled, which in turn leads to domestic violence, causing discomfort and injustice to someone who is within the scope of the household (Ferlinda, 2020).

Domestic violence is often called a hidden crime, because both the perpetrator and the victim try to keep the act a secret from public view. Domestic violence, which was originally considered an internal family problem by the law, has been criminalized into a serious form of crime, not only a crime against the victim's person but by law domestic crimes have been included as a form of crime or violation of human rights.

The interests of victims of domestic violence must be given attention because of the victim's position as a legal subject who has an equal position before the law (equality before the law). The position of victims who do not have a place in the criminal justice process is because the criminal justice system adheres to retributive justice, the settlement of cases is aimed at imposing sanctions on the perpetrators of crimes without considering the aspects of the losses suffered by victims. The perpetrator must be held individually responsible to the state but also consider the losses suffered by the victim so that the victim needs to get real justice.

One of the cases of domestic violence that has been decided by the Kotamobagu District Court with No. 233/Pid.Sus/2023/PN Ktg where a husband has committed a criminal offense "committing physical violence within the scope of the household against his wife imprisonment for 4 (four) years, this shows that the judge's decision, this shows the need for further discussion of the judge's decision in cases of Domestic Violence (KDRT) with the wife as the victim. Based on the description described above, the authors are interested in conducting research related to domestic violence in a thesis with

the title "Law Enforcement Against Domestic Violence Committed by Husband to Wife (Case Study of Decision No. 233/Pid.Sus /2023/PN Ktg)".

## RESEARCH METHOD

The type of research used in this research is descriptive qualitative with a normative juridical approach, namely examining the judge's decision as a written guideline for litigants, especially in the judge's decision regarding domestic violence committed by the husband to the wife in decision No. 233/Pid.Sus /2023/PN Ktg. Sources of data in qualitative research using secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. Data collection techniques using literature studies by reviewing scientific books, literature and regulations that are related or related to research on domestic violence. The analysis technique uses qualitative descriptive analysis.

## RESEARCH RESULTS AND DISCUSSION

Domestic violence committed by a husband against his wife is a form of injustice, where the wife is placed in a weak position so that the husband sometimes acts at his own will and harms his wife, such as the case in criminal case No. 233/Pid.Sus /2023/PN Ktg.

This research examines Kotamobagu District Court Decision No. 233/Pid.Sus /2023/PN Ktg regarding domestic violence committed by a husband against his wife in the form of physical violence. The judge's decision to sentence the defendant Harianto Dotulong to 4 years imprisonment. The judge's decision is higher than the prosecutor's demand of 3 years, but the judge's decision is still below the rules applied in law enforcement against domestic violence as stated by Jamil, Law Number 23 of 2004 concerning the Elimination of Domestic Violence for physical violence is subject to Article 44 paragraph (1), namely every person who commits acts of physical violence within the scope of the household as referred to in Article 5 letter a shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp 15,000,000.00 (fifteen million rupiah). Article 44 paragraph (2) which states that in the event that the act as referred to in paragraph (1) results in the victim getting sick or seriously injured, shall be punished with a maximum imprisonment of 10 (ten) years or a maximum fine of Rp 30,000,000.00 (thirty million rupiah).

In the opinion of the author, the decision was appropriate because the sentence imposed on the defendant was in accordance with and higher than the charges of the public prosecutor, because the violence committed by the defendant caused the victim to suffer a serious injury to his head which contained a vital organ, namely the brain, which caused the victim to fall ill or be unable to carry out his activities or work for some time, Because of the injuries caused to the Victim Witness by the actions of the Defendant, there were lacerations caused by blunt force to the back of the head, forehead and nose of the Victim Witness, and these injuries caused an obstruction/disturbance in carrying out his daily activities, and the victim also had difficulty walking normally because he still felt dizzy until the time of the trial, Although with various considerations about aggravating and mitigating factors, the actions taken by the husband by hitting the wife's head with a wrench cannot be justified, because in addition to physical violence it can also cause trauma to the victim which affects the wife's psychology and the wife cannot move or work, where the husband is not The husband is not justified in imposing his will on the wife, especially accompanied by persecution or other forms of violence. Wives still have the right to protection from persecution or other forms of violence committed by their husbands or other people.

Law enforcement against domestic violence (KDRT) needs to be carried out consequently by various law enforcement components. Not only regarding legal certainty, but law enforcement must fulfill a sense of justice for everyone, meaning that in addition to legal certainty that must be carried out, it is necessary to consider whether the law fulfills a sense of justice. This is because the term justice is often interpreted negatively, because fairness for one is not necessarily fair for another. This Court Decision is expected to be a form of law enforcement for the rights of victims and respond to the need to prevent the continued threat of domestic violence.

Judges in the judiciary organize trials to uphold law and justice. Law enforcement carried out by judges must be understood as a means to ensure a fair process by considering the interests of both parties. Justice in law is justice that has been formulated by law in the form of rights and obligations, where violations of domestic violence committed by husbands against wives must be resolved through legal proceedings. The reason for imposing criminal sanctions is not only based on the fact that the perpetrator has fulfilled the elements of the offense in the legislation or only ensures that the perpetrator of sexual violence is given sanctions in accordance with his actions, but the perpetrator of domestic violence is required to be able to take responsibility for his actions.

Judges are obliged to uphold law and justice impartially. Judges in providing justice must examine the truth of the events submitted to them, then provide an assessment of the event and relate it to the

applicable law so that the judge can make a decision on the event. Judges are considered to know the law so they cannot refuse to examine and try an event submitted to them. This is regulated in Article 16 paragraph (1) of Law No. 35 of 1999 Jo. Law No. 48 of 2009, namely: the court may not refuse to examine and try a case submitted on the pretext that the law is not or unclear, but is obliged to examine and try it.

The judge in imposing a sentence must examine the truth of the events submitted to him by looking at the evidence and the judge's own conviction through the legal considerations of the judge. The provisions regarding the judge's consideration are regulated in Article 197 paragraph (1) of the Criminal Code which reads: "the consideration is compiled in summary regarding the facts and circumstances along with the evidence obtained from the trial examination which is the basis for determining the guilt of the defendant".

This is also explained in Article 183 of the Criminal Procedure Code which stipulates: "The judge shall not impose a sentence unless he or she is convinced by at least two valid pieces of evidence that a criminal offense has actually occurred and that the defendant is the one guilty of committing it".

The judge's consideration must be carried out before deciding a case. The judge's consideration is basically in imposing the severity of criminal sanctions for the crime of Domestic Violence committed by a husband against his wife if the perpetrator commits an act in accordance with what has been mentioned as a criminal offense in Article 44 paragraph (2) in conjunction with Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Article 5 paragraph 1 of Law Number 48 of 2009 concerning Judicial Power states that "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society."

The application of the sentence in the case of the crime of Domestic Violence committed by a husband against his wife in case No. 233/Pid.Sus/2023/PN Ktg shows that the Kotamobagu District Court Judge with the presiding judge, Jovia Agustien Saija, SH with members of judge I Adyanti, SH, M.Kn and Anisa Putri Handayani, SH has consistently found the defendant guilty.

According to the author, the application of the law is in accordance with the applicable material criminal provisions and the conditions for the defendant to be convicted, this is based on the examination and facts revealed at trial, where the evidence submitted by the Public Prosecutor, namely the testimony of witnesses and evidence, is in accordance with the testimony of the defendant who admitted the actions he had committed, Therefore, the panel of Judges stated that the actions of the defendant had fulfilled the elements of the crime charged by the Public Prosecutor, namely the single charge, namely the actions of the defendant as described above, regulated and punishable in Article 44 paragraph (2) in conjunction with Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

The judge in issuing a decision against the defendant, has a strong basis for consideration in issuing a decision against the defendant. The judge's consideration is a requirement that must be met. This is in accordance with the provisions of Article 6 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which states: "No one can be sentenced to punishment, unless the court, by means of valid evidence according to law, is convinced that a person who is considered to be responsible, has been guilty of the act charged against him".

Based on this, according to the author, the Panel of Judges was appropriate in this consideration because there were at least two valid pieces of evidence, including witness testimony, testimony of the defendant and clues or evidence. The legal considerations of the judge in handing down a verdict on the crime of domestic violence committed by the husband against his wife were appropriate because they were based on a description of the testimony of witnesses, evidence and the testimony of the defendant, where proof is sufficient if it is based on a minimum of 2 (two) pieces of evidence plus the judge's belief. The judge has also considered the facts at trial where the panel of judges did not find things that could release the defendant from criminal liability, either as justification or excuse. The judge has also considered juridical and non-juridical considerations that can alleviate or aggravate the criminal sanction for the defendant, so that the defendant was sentenced to violate Article 44 paragraph (2) in conjunction with Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence with a prison sentence of 4 years.

Evidence plays an important role in determining the responsibility of a defendant, because a defendant cannot be convicted of the charges against him without being supported by valid and convincing evidence. Article 184 of the Criminal Procedure Code regulates the valid evidence that can be used in the process of proving in court, such as witness testimony, expert testimony, letters, instructions and testimony of the defendant, in addition to such evidence, a judge's belief is also needed which must be obtained or generated from valid evidence. The judge's evidence is carried out by listening to the defendant's testimony, witness testimony and comparing it with the evidence of the crime presented at the trial, if deemed necessary, the judge can hear testimony from expert witnesses to

increase his confidence in deciding the case. these things that will later be able to provide clues to assess the subjective elements of the crime of domestic violence. If the evidence is deemed sufficient to give the judge a conviction so as to prove that the perpetrator fulfills the elements of the crime of domestic violence, then the perpetrator can be convicted.

Based on the description above, the author is of the opinion that the judge in the process of proceeding at the examination session at the Court and in determining the matters that have become his consideration has been appropriate and in accordance with the applicable laws and regulations, where this can be proven from the assessment of valid evidence presented at the trial, so that with the consideration of the judge a fair decision can be obtained and it is hoped that by imposing sanctions on the defendant who committed the crime of domestic violence, the defendant can improve his behavior and repair his household so that it can be better.

## CONCLUSION

Law enforcement against perpetrators of the crime of Domestic Violence committed by husband to wife in Decision No. 233/Pid.Sus/2023/PN Ktg that the Defendant Harianto Dotulong has been proven legally and convincingly guilty of committing the crime of "physical violence within the scope of the household" and sentenced to imprisonment for 4 (four) years for violating Article 44 paragraph (2) in conjunction with Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. The judge's consideration in imposing a sentence on the crime of domestic violence committed by a husband to his wife in Decision No. 233/Pid.Sus/2023/PN Ktg is based on the testimony of witnesses, evidence and the testimony of the defendant, where the proof is sufficient if it is based on at least 2 (two) pieces of evidence plus the judge's belief. The judge also considered the facts at trial, so that the judge had considered juridical and non-juridical considerations that could alleviate or aggravate the criminal sanctions for the defendant, so that the defendant was sentenced and sentenced to imprisonment for 4 (four) years for violating Article 44 paragraph (2) in conjunction with Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

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