

## **Legal Analysis of The Imposition of Criminal Sanctions Against Perpetrators of Abuse in Domestic Violence Relationships in Smg Pn (Decision Number 513/Pid.B/2024/Pn Smg)**

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***Abstract.*** This study aims to analyze the judges' legal considerations in imposing criminal sanctions on the perpetrator of assault within a domestic violence context in Decision Number 513/Pid.B/2024/PN Smg, as well as to assess whether the judgment reflects the principles of justice, legal certainty, and victim protection. The study also aims to identify the conformity of legal application between the Indonesian Criminal Code (KUHP) and the Law on the Elimination of Domestic Violence (UU PKDRT) as *lex specialis*. This research employs a normative juridical method using statutory, case, and literature approaches. The analysis is carried out descriptively and analytically by examining positive legal provisions, scholarly doctrines, and relevant court decisions to evaluate the relevance and accuracy of the judges' considerations. The results of the study show that the panel of judges appropriately applied Article 351 paragraph (2) of the Criminal Code by ensuring that the elements of serious assault and valid evidence were fulfilled. The imposed sentence of 4 years and 6 months' imprisonment is considered to meet the aspects of legal certainty and deterrence. However, the judges did not apply the Domestic Violence Law (UU PKDRT) as the primary legal basis, resulting in suboptimal protection for the victim. The decision reflects formal justice but does not fully achieve substantive justice and comprehensive victim protection.

***Keywords:*** Assault; Domestic Violence; Judicial Considerations.

## 1. Introduction

Indonesia is a state of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution which states that "The State of Indonesia is a state of law." The concept of a state of law in this context is not only interpreted as enforcing applicable positive norms, but also as an effort to realize a just and moral social order. Sri Endah Wahyuningsih (2012) explains that from the perspective of a religious law system, law does not only function as a means of social control, but also as an instrument that guarantees the protection of human rights based on divine values. Therefore, every policy and legal decision must be oriented towards substantive justice, legal certainty, and benefit, while ensuring the fulfillment of the rights of every individual to be free from all forms of violence and treatment that degrades human dignity.<sup>1</sup>

The history of the development of law in Indonesia cannot be separated from the influence of Dutch colonial law which gave birth to *Wetboek van Strafrecht voor Nederlandsch-Indie* as the forerunner of the Criminal Code (KUHP). After independence, the KUHP remained in effect, with adjustments to align with local values and national aspirations. The ongoing legal reforms aim to establish a legal system that is responsive to social dynamics while strengthening protection for victims of crime.<sup>2</sup>

Domestic violence (DV) is a form of human rights violation and a criminal act that has a broad impact on family resilience. Under Indonesian law, domestic violence is comprehensively regulated through Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT). This law emphasizes that all forms of violence in the domestic sphere must be dealt with seriously to ensure protection for victims, especially women and children. The PKDRT Law also emphasizes the principle *lex specialis derogat legi generali*, which means that special provisions override general provisions in the Criminal Code<sup>3</sup>.

From a criminal law perspective, abuse is regulated under Article 351 of the Criminal Code, which imposes criminal penalties on anyone who intentionally commits violence against another person. Meanwhile, the Domestic Violence Law provides broader protections and strengthens law enforcement efforts by placing victims as the primary subject of protection.<sup>4</sup>

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<sup>1</sup>Sri Endah Wahyuningsih, (2012), Comparative Criminal Law from the Perspective of Religious Law Systems (Semarang: Sultan Agung Press), pp. 48–49.

<sup>2</sup>Gunarto, G. (2021). Criminal Policy in the Indonesian Criminal Justice System. UNISSULA Law Journal, 11(2), pp. 45–60.

<sup>3</sup>Mashdurohatun, A. (2022). Substantive Justice in Criminal Sentencing. UNISSULA Law Journal, 12(1), pp. 45–60.

<sup>4</sup>Laksana, AW (2024). Restorative Justice in Resolving Children's Cases in Conflict with the Law. Journal of Legal Reform, 4(1), p. 55–70.

Islamic legal perspective (*criminal law*) views domestic abuse as an act that is contrary to principle *maṣlahah* (benefit) and *al-‘adl* (justice). Violence against family members not only violates legal norms but also damages the moral and spiritual fabric of the community. This is in line with Allah's word in Surah An-Nahl, verse 90: God bless you (Indeed, Allah commands us to act justly and do good), which provides normative legitimacy for the enforcement of justice and the protection of victims.

Empirical data reported in Mustikasari's (2024) research shows that victims of domestic violence (KDRT) face widespread impacts, including not only physical aspects but also psychological, social and economic aspects.<sup>5</sup> The psychological impact is often more severe than the physical injuries, characterized by profound trauma, persistent fear, and emotional disturbances that prevent victims from returning to normal life. Many victims require intensive support through counseling or rehabilitation services to overcome these long-term effects.<sup>6</sup>

The social dimension presents a unique challenge for victims of domestic violence. Victims often face negative stigma, both from their families and the surrounding community. Misperceptions from society often exacerbate victims' psychological well-being, leaving them feeling isolated and reluctant to report their experiences of violence.<sup>7</sup> However, in reality, negative stigma from family and community remains a major obstacle for victims of domestic violence in seeking justice. Misguided views that blame or belittle victims can exacerbate their psychological well-being, leaving them isolated and reluctant to report their experiences. Within a religiously based criminal law framework, this stigma must be addressed through legal policies that not only enforce criminal law but also restore victims' honor and standing within society.<sup>8</sup>

Economic factors also contribute significantly to victims' vulnerability. Financial dependence on the perpetrator is often the primary reason victims remain in abusive relationships. This lack of economic independence weakens victims' ability to assert their rights before the law and hinders the comprehensive recovery process.<sup>9</sup> Therefore, economic empowerment of victims through

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<sup>5</sup>Mustikasari, A. (2024). Experiences of Housewives Victims of Domestic Violence in Semarang City: A Phenomenological Study. Sultan Agung Islamic University, Semarang.

<sup>6</sup>Gunarto, G. (2021). Criminal Policy in the Indonesian Criminal Justice System. UNISSULA Law Journal, 11(2), pp. 45–60.

<sup>7</sup>Mashdurohatun, A. (2022). Substantive Justice in Criminal Sentencing. UNISSULA Law Journal, 12(1), 45–60.

<sup>8</sup>Sri Endah Wahyuningsih, (2012) Comparative Criminal Law from the Perspective of Religious Law Systems (Semarang: Sultan Agung Press), pp. 40–48.

<sup>9</sup>Laksana, AW (2024). Restorative Justice in Resolving Children's Cases in Conflict with the Law. Journal of Legal Reform, 4(1), pp. 55–70.

government and community support is a step that cannot be ignored in the strategy for dealing with domestic violence.<sup>10</sup>.

Furthermore, the effectiveness of law enforcement in domestic violence cases is also determined by the ability of law enforcement officials to apply the principle of justice proportionally. Judges, prosecutors, and police have a moral responsibility to ensure that the sanctions imposed not only meet the requirements of legal certainty but also fulfill a sense of justice for victims and the community.<sup>11</sup>This approach, which combines legal, sociological, and moral aspects, is necessary so that court decisions are not only repressive, but also provide a lasting social recovery effect.<sup>12</sup>.

Furthermore, this ruling reaffirms that domestic violence not only physically harms victims but also undermines family resilience and the broader social fabric. Therefore, the application of criminal sanctions must be accompanied by efforts to protect victims and prevent the recurrence of similar incidents. In this context, the integration of a victim-oriented justice approach becomes relevant, where the focus of the judiciary is not only on punishing the perpetrator but also on restoring the victim's well-being. This ruling aligns with Mashdurohatun's (2022) view, which emphasizes that substantive justice must be the basis of every decision, not merely formal justice limited to the text of the law.<sup>13</sup>.

Furthermore, the analysis of this case also illustrates that efforts to eradicate domestic violence are not sufficient by simply punishing the perpetrator. A comprehensive legal policy is needed, encompassing victim empowerment, witness protection, and psychological and social support. The court, through this ruling, has provided a deterrent effect for the perpetrator, but the next challenge is ensuring the victim's recovery and preventing similar violence from occurring in the future. Therefore, Semarang District Court Decision No. 513/Pid.B/2024/PN Smg can serve as an important reference in strengthening victim protection policies and enforcing just law enforcement.

By conducting a legal review of this decision, this research is expected to contribute to the development of legal science, particularly in the areas of criminal law and the protection of victims of domestic violence. This study not only highlights the implementation of laws and regulations but also strengthens efforts to realize the supremacy of law in Indonesia based on justice, as

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<sup>10</sup>Rahardjo, S. (2006). *Progressive Law: A Synthesis of Indonesian Law*. Jakarta: Kompas. p. 30

<sup>11</sup>Gunarto, G. (2021). *Criminal Policy in the Indonesian Criminal Justice System*. UNISSULA Law Journal, 11(2), pp. 45–60.

<sup>12</sup>Hadjon, PM (2011). *Legal Protection for the Indonesian People*. Surabaya: Bina Ilmu. p. 18.

<sup>13</sup>Laksana, R. (2024). *Restorative Justice in Criminal Law Enforcement in Indonesia*. Journal of Legal Reform, 16(3), pp. 200–215.

mandated by the 1945 Constitution and in line with the principles of *maqāṣid al-shari'ah*.<sup>14</sup>

Domestic violence (DV) is a form of human rights violation that has serious implications for both the victim and the social order. This crime has been expressly regulated in Article 351 of the Criminal Code and Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT), which stipulates a prison sentence of up to five years or a maximum fine of IDR 15,000,000. To ensure substantive justice, every court decision related to domestic violence needs to be analyzed in depth, including Semarang District Court Decision Number 513/Pid.B/2024/PN Smg. This analysis aims to assess the extent to which the decision is in line with positive legal norms and reflects the principles of social justice that exist in the society of Semarang City.

Research related to the legal review of this decision is still rare, particularly within the academic environment of Sultan Agung Islamic University (Unissula), thus providing significant novelty. This research is expected to provide a more comprehensive understanding of the implementation of criminal law and victim protection in domestic violence cases, while also providing recommendations for strengthening judicial practices in Indonesia.

## 2. Research Methods

Research methods play a strategic role in ensuring that all research procedures are conducted systematically and provide comprehensive answers to the research questions. In the context of legal studies, selecting the right approach determines the validity of the analysis, critical thinking regarding norms, and the relevance of the results to prevailing legal practices. This research applies *juridical normative approach*, which allows for in-depth analysis of positive legal norms, expert opinions, and court decisions in domestic violence (KDRT) cases.<sup>15</sup>.

## 3. Results and Discussion

### 3.1. The judge's legal considerations in imposing sanctions on perpetrators of abuse in domestic violence in Decision Number 513/Pid.B/2024/PN Smg

The judge's legal considerations are a fundamental aspect of every criminal court decision because they reflect the legal reasoning process that forms the basis for imposing sanctions on the defendant. In cases of Domestic Violence (KDRT), the judge's considerations have a more complex weight because they concern the protection of victims in the domestic sphere who are often in a powerless position, as well as efforts to uphold the values of justice and humanity. Decision

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<sup>14</sup>The 1945 Constitution of the Republic of Indonesia. (2020). Fourth Amendment to the 1945 Constitution of the Republic of Indonesia. Jakarta: Secretariat General of the MPR RI.

<sup>15</sup>Semarang District Court Decision Number 513/Pid.B/2024/PN Smg.

Number 513/Pid.B/2024/PN Semarang provides a concrete illustration of how the panel of judges assesses a series of legal facts, evidence, and elements of articles in the Law on the Elimination of Domestic Violence (UU PKDRT) to determine the perpetrator's criminal responsibility.

### 1. Chronology of Decision Number 513/Pid.B/2024/PN Smg

The victim, Sri Astutik, daughter of the late Rochani, was a woman in her 30s who was the unregistered wife of the defendant Munhawi, also known as Sulis, also known as Kenter, son of the late Yasman. They had a secret marriage in 2020 and lived together in Ambarawa, Semarang Regency. However, during their marriage, the defendant was known to be abusive and physically violent towards the victim, leading to her running away from him several times. Approximately seven months before the incident, the victim had separated and had not seen the defendant again.

After leaving the defendant, the victim worked as a domestic helper on Jl. Wologito IV/68 RT 02 RW 08, Kembangarum Village, West Semarang District, Semarang City. The victim lived there and lived her life without contact with the defendant.

He then pulled the knife from his body and handed it to his brother. Seeing the victim's extremely weak condition and profuse bleeding, Sutarto and Eko Susanto immediately took him to Columbia Hospital in Semarang. Due to the seriousness of his condition, the hospital referred him to Dr. Kariadi Hospital in Semarang for further treatment. There, he underwent treatment and stitches and was hospitalized for one day.

### 2. Proof of Facts

The author describes the evidentiary facts revealed in the trial of Decision No. 513/Pid.B/2024/PN Smg

#### a. Legal Facts

The criminal incident in this case occurred on Sunday, April 21, 2024, at around 7:00 PM to 8:00 PM WIB in the yard of the victim's workhouse, located at Jalan Wologito IV/68 RT 02 RW 08, Kembangarum Village, West Semarang District. At that time, the defendant Munhawi alias Sulis alias Kenter came to the location and suddenly committed an act of violence against the victim Sri Astutik binti (Alm) Rochani. Using a sharp weapon in the form of an iron knife with a wooden handle approximately 25 cm long, the defendant attacked the victim by slashing and stabbing repeatedly to the victim's neck, arms, stomach or waist, and chest.

As a result of this action, the victim suffered cuts, tears, and abrasions on several parts of her body, requiring medical treatment. The victim was hospitalized for one day at Dr. Kariadi Hospital in Semarang and experienced impaired bodily

functions which resulted in a temporary inability to work as a domestic assistant for several months after the incident. Based on the results of the medical examination and the facts at trial, the injuries suffered by the victim were classified as serious injuries according to the elements of Article 351 paragraph (2) of the Criminal Code concerning assault resulting in serious injuries.

The defendant was arrested by police officers the day after the incident, precisely on April 22, 2024 in the Rengas area, Tambakboyo, Ambarawa. During the investigator's examination, the defendant admitted all of his actions without any pressure from any party. Evidence in the form of an iron knife with a wooden handle was confiscated by investigators as a tool used to commit the crime. Subsequently, the defendant was detained and brought to trial at the Semarang District Court. Based on the results of the evidence, witness statements, evidence, and the defendant's confession, the Panel of Judges stated that the defendant's actions were legally and convincingly proven guilty of committing the crime of assault resulting in serious injury, as regulated in Article 351 paragraph (2) of the Criminal Code.

b. Witness Statements Summary of each witness and their evidentiary value

1) Witness SUTARTO alias PELANG (victim's brother)

Confirming that he had given a statement at the Police Headquarters; knowing the victim; seeing the defendant come out of the yard and being chased; seeing the victim covered in blood carrying a knife; the victim stated that he was "stabbed by Munhawi"; taking the victim to Columbia Hospital, then referred to Kariadi Hospital.

Being an eyewitness corroborating the victim's condition after the attack (wounds, victim's confession) and the defendant's escape. Supporting the victim's testimony and the post-mortem examination.

2) Witness SRI ASTUTIK (victim)

Telling the chronology of the defendant's arrival, the initial words of conversation, the defendant's actions in taking out a knife and stabbing/slashing several times (neck, left arm, waist, chest), the knife was stuck; the victim was rushed and hospitalized for 1 day; unable to work for 4 months; status as the defendant's common-law wife and history of previous violence.

Key witness (victim witness). The victim's direct testimony is crucial to determining the elements of the act and its consequences (injuries, work interruption). Consistency of the victim's testimony with the post-mortem examination adds weight to the evidence.

3. Analysis of Fulfillment of Criminal Elements of Article 351 paragraph (2) of the Criminal Code

Article 351 paragraph (2) of the Criminal Code reads:

*"If the act results in serious injury, the guilty party will be subject to a maximum prison sentence of five years."*

To determine whether the actions of the defendant Munhawi alias Sulis alias Kenter bin Alm. Yasman fulfill the elements in this provision, the Panel of Judges assessed it based on legal facts, witness statements, evidence, and the *visum et repertum* revealed at the trial.

a. Subjective Element of "Whoever" (Legal Subject)

This element indicates who the perpetrator of the act can be held criminally responsible. In this case, the identity of the defendant Munhawi alias Sulis alias Kenter bin Alm. Yasman was clearly and irrefutably proven. The testimony of witnesses Rayhan Luthfi Veriandra, Sutarto alias Pelang, and Eko Susanto alias Kodok confirmed that the person who came looking for the victim, carried out the attack, and then fled was the defendant himself, whom they knew as the victim's common-law husband. The defendant's testimony at the trial also confirmed that he was the one who stabbed the victim using a knife he himself carried.

The defendant is an adult, physically and mentally healthy, and has no evidence of mental illness. He was also not under duress or under psychological pressure that would have diminished his legal awareness. Therefore, the element of a legal subject (whoever) is fulfilled because the defendant is a person who can be held fully criminally responsible.

b. Elements of the Act "Intentionally Committing Persecution"

This element consists of two important parts: the element of intent (*dolus*) and the element of the act of abuse (*actus reus*).

1) Element of Intention

Intention in criminal law is defined as the perpetrator's will and knowledge to commit a prohibited act and awareness of the consequences of his actions (Moeljatno, 2008: 81). In this case, the defendant's intention was proven by:

- a) The defendant's behavior in coming carrying a knife from his house indicates preparation or at least the intention to face a possible confrontation with the victim.
- b) The attack was repeated—stabbing and slashing the victim in several vital areas of the body, including the neck, chest under the left breast, stomach, arms, and waist. These repeated actions confirm the intent to harm, not a spontaneous, unconscious reaction.

From the facts revealed at the trial, the Panel of Judges is of the opinion that the element of "intentionally" has been proven legally and convincingly.

## 2) Elements of the Act of Assault

Abuse is defined as any act that intentionally causes discomfort, pain, or bodily injury to another person (R. Soesilo, 1981: 245). Based on the evidence:

- a) Witnesses saw and heard directly the consequences of the defendant's actions which caused the victim to be covered in blood and fall with open wounds.
- b) The post-mortem examination showed stab wounds and incised wounds caused by sharp weapons on several parts of the victim's body.

A direct causal link was proven between the defendant's actions and the serious injuries suffered by the victim. The defendant's stabbing and slashing caused serious physical injuries, resulting in the victim being hospitalized and unable to work. No intervention or other cause was found to break this causal link. The panel of judges concluded that the serious injuries were a direct result of the defendant's actions.

## 4. Judge's Legal Considerations

The judge's legal considerations are an important part of a criminal decision, because they reflect how the panel of judges assesses the evidence, elements of the crime, and the legal responsibility of the defendant. In the a quo case, the Panel of Judges' legal considerations are based on valid evidence according to Article 184 paragraph (1) of the Criminal Procedure Code, including witness statements, the defendant's statement, evidence, and the post-mortem examination letter. These considerations can be explained as follows:

### a. Considerations Based on Legal Facts and Evidence

The panel of judges first assessed that based on the statements of the witnesses presented at the trial, namely Rayhan Luthfi Veriandra (the victim's nephew), Sutarto alias Pelang (the victim's older brother), and Eko Susanto alias Kodok (the victim's brother), all of them provided consistent and mutually consistent testimony regarding the assault incident.

- 1) Witness Rayhan stated that the defendant came to his house looking for the victim and then asked to be taken to his workplace. After the victim left the house, the defendant immediately attacked him with a knife.
- 2) Witness Sutarto saw the victim covered in blood with the knife still stuck in his body, and heard the victim say "I was stabbed by Munhawi."

These witnesses' statements were corroborated by the defendant's own testimony, who admitted to stabbing the victim out of hurt after the victim refused to return to him. Furthermore, a post-mortem examination from Dr. Kariadi Hospital in Semarang confirmed that the victim's injuries were caused by a sharp weapon and were classified as serious, leaving him unable to work for months.

The panel is of the opinion that all of the evidence has fulfilled the formal and material requirements for proof as referred to in Article 183 of the Criminal Procedure Code, namely at least two valid pieces of evidence and the judge's belief that a crime has occurred.

b. Considerations for Fulfilling the Elements of Article 351 paragraph (2) of the Criminal Code

The judge then analyzed the elements of the crime of assault resulting in serious injury according to Article 351 paragraph (2) of the Criminal Code, by explaining each element one by one as follows:

- 1) The element of "whoever": Fulfilled because the identity of the accused is clear and not denied.
- 2) The element of "intentionally committing assault": Fulfilled because the defendant consciously carried out repeated attacks with a knife on the victim's body.
- 3) The element of "causing serious injury": Fulfilled based on the results of the post-mortem examination and the medical impact that causes long-term physical impairment for the victim.

The panel emphasized that there was no doubt whatsoever that all the elements of the crime had been fulfilled, so that the defendant was legally and convincingly proven to have committed the crime as charged by the Public Prosecutor.

In describing this research, the author assesses the considerations of the Panel of Judges in Decision Number 513/Pid.B/2024/PN Smg, there is a normative debate regarding the choice of legal basis used by the judge, namely Article 351 paragraph (2) of the Criminal Code, instead of using Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law). This debate is directly related to the principle of *lex specialis derogat legi generali*.

The author argues that, in theory, the Domestic Violence Law constitutes a *lex specialis* to the provisions on abuse in the Criminal Code. This is because:

1. The Domestic Violence Law specifically regulates domestic violence, including physical violence (Article 44), psychological violence (Article 45), neglect (Article 49), and so on.
2. The legal relationship between the perpetrator and the victim in this case fulfills the elements of a domestic violence relationship, namely:
  - a. the victim is a common-law wife,
  - b. the perpetrator is a common-law husband,

Article 44 paragraph (3) of the Domestic Violence Law stipulates:

*"If the act results in serious injury, the perpetrator shall be punished with a maximum prison sentence of 10 years."*

When compared with Article 351 paragraph (2) of the Criminal Code with a maximum sentence of 5 years, it is clear that:

1. The Domestic Violence Law provides greater protection for victims,
2. recognizing power relations and inequality in domestic violence,

From the perspective of the *lex specialis* principle, in my opinion, judges should more appropriately apply the Domestic Violence Law, not the Criminal Code. However, it is understandable that in practice, judges might choose Article 351 paragraph (2) of the Criminal Code for the following reasons:

1. The elements of the crime of serious assault in the Criminal Code are clearly proven, supported by the post-mortem examination, witnesses, and the defendant's confession.
2. The household life between the defendant and the victim had been broken off for 7 months, so the judge could judge that the household legal relationship was "not ongoing".

Therefore, the judge adhered to the limits of the charges and chose the offense deemed to have the simplest proof. The author sees serious problems in the application of the principle of *lex specialis derogat legi generali* in this decision.

1. The Domestic Violence Law applies even if the couple does not live together, as long as there is a domestic relationship or a previously valid religious marriage. The victim and perpetrator are husband and wife, so sociologically and theologically, the domestic relationship still exists.
2. A seven-month severance of the relationship does not eliminate the recognition that violence occurred in the domestic relationship, because the

perpetrator's motives ("lacking children", being angry because the victim left) indicate a conflict typical of domestic violence.

Therefore, from the academic perspective that I use in this thesis, the judge's choice to use the Criminal Code can be seriously debated. By considering both perspectives, it can be emphasized that in theory and legal principles, the judge should apply the Law on the Elimination of Domestic Violence (UU PKDRT) as *lex specialis*, because the criminal incident in this case clearly occurred in a husband-wife relationship, even though it was a secret marriage, which still fulfills the elements of a household relationship as regulated in Article 1 of the Law on the Elimination of Domestic Violence. In addition, the pattern of repeated violence committed by the defendant is a key characteristic of domestic violence, so the more appropriate legal instrument is the Law on the Elimination of Domestic Violence, which is designed to address the dynamics of violence based on domestic relations.

This law also provides more comprehensive protection for victims, including recognition of the imbalance in power relations, the need for victim recovery, and the urgency of special protection. Therefore, the principle of *lex specialis derogat legi generali* requires the application of the Domestic Violence Law over the Criminal Code to ensure justice for victims. Therefore, the judge's choice to apply the Criminal Code has the potential to reduce protection for victims and deviate from the spirit of the Domestic Violence Law as a specific instrument for eradicating domestic violence. However, in judicial practice, judges are indeed bound and limited by the formulation of the indictment prepared by the Public Prosecutor, so this issue indicates a structural weakness in the prosecution system that requires criticism, not merely the judge's approach to sentencing.

### **3.2. The criminal sanctions decided by the judge against the perpetrator of abuse in a domestic violence relationship in Decision Number 513/Pid.B/2024/PN Smg already reflect the principle of justice.**

The imposition of criminal sanctions in cases of Domestic Violence (KDRT) is not only an implementation of statutory provisions, but also a reflection of the principle of justice that must be realized by judges in every decision. In the context of the case in Decision Number 513/Pid.B/2024/PN Semarang, assessing whether the criminal sanctions imposed have fulfilled a sense of justice is important, considering that this case involves the personal relationship between the perpetrator and the victim, the inequality of position within the household, and the psychological and physical impacts caused by the act of abuse.

#### **1. Form and Basis of Criminal Sanctions in Decision Number 513/Pid.B/2024/PN Smg**

In Case Decision Number 513/Pid.B/2024/PN Smg, the Panel of Judges at the Semarang District Court sentenced the defendant MN alias Sulis alias Kenter to 4

(four) years and 6 (six) months in prison, who was legally and convincingly proven to have committed the crime of assault resulting in serious injury as regulated in Article 351 paragraph (2) of the Criminal Code (KUHP). Article 351 paragraph (2) of the KUHP expressly states:

*"If the act results in serious injury, the guilty party will be subject to a maximum prison sentence of five years."*

The legal basis for sentencing the defendant refers to these provisions, because the elements of the crime of serious assault have been proven in court through evidence in the form of a post-mortem examination, witness statements, and the defendant's own confession.

#### a. Reconstruction of Facts and the Defendant's Actions

The trial revealed that the defendant injured his common-law wife with a kitchen knife during an argument at their rented house in Semarang. In a fit of rage, the defendant attacked the victim by stabbing and slashing the knife at her neck, stomach, and arm. As a result of the attack, the victim suffered serious injuries that required several weeks of intensive care in the hospital and prevented her from working for several months.

The judge considered that the repeated use of a sharp weapon on a vital body part indicated an intention (opzet) to cause serious injury, not simply a spontaneous reaction or self-defense. Therefore, the defendant's actions constituted serious assault within the meaning of Article 351 paragraph (2) of the Criminal Code.

#### b. Basis for Criminal Sentencing: Legal Elements and Evidence

The Panel of Judges based its sentencing on the fulfillment of the three main elements of Article 351 paragraph (2) of the Criminal Code, namely:

- 1) The element of "whoever" → Fulfilled because the defendant's identity is clear as an adult individual who is legally responsible.
- 2) The element of "intentionally committing assault" → Proven because the defendant consciously used the knife as an attack tool, not an accidental tool, so the element of intent is fulfilled.

If these three elements are fulfilled, the judge considers that the charge of Article 351 paragraph (2) of the Criminal Code has been proven legally and convincingly (wettig en overtuigend bewezen).

The author, in viewing the criminal decision in case 513/Pid.B/2024/PN Smg, can be analyzed critically through the lens of the theory of sanction legitimacy (Weber and Durkheim). From a Weberian perspective, the legitimacy of

punishment depends on compliance with applicable legal norms and the recognition of rational-legal authority; in this case the panel of judges appears to act within a legal framework because it imposed a sentence based on the provisions of Article 351 paragraph (2) of the Criminal Code which has been proven to fulfill its elements. However, normatively, a question mark arises: if the principle of *lex specialis* (PKDRT Law) is ignored even though the context of domestic relations is fulfilled, the formal legitimacy becomes fragile because legitimacy is not only a matter of procedural consistency but also the relevance of the chosen norm to the characteristics of the crime faced. In other words, punishment can be formally valid (Weber) but loses some of its substantial legitimacy if more specific and protective norms for victims are not utilized, so that the community of victims of domestic violence may not feel the full "truth" of the punishment.

From a Durkheimian perspective, punishment serves to restore social balance and strengthen collective solidarity; the prison sentence of 4 years and 6 months in this case has the potential to fulfill this function by providing a deterrent effect and affirming the intolerability of domestic violence. However, the Durkheimian critique is also relevant: when sanctions are merely repressive without mechanisms for victim recovery and perpetrator reintegration, punishment can result in merely symbolic moral restitution, and long-term social balance is not automatically restored. Moreover, in the context of domestic violence, fractured family and community solidarity is not resolved simply by isolating the perpetrator; victims continue to face trauma, economic insecurity, and stigma that require a broader response than mere incarceration.

This verse explains the basic principles of the husband-wife relationship in Islam by emphasizing that marriage is one of the signs of Allah's greatness. The creation of a couple of the same sex is understood as *Father* (a sign) of His power and wisdom, so that humans can live complementing each other, strengthening each other, and finding balance in life. The purpose of marriage is also emphasized through the phrase *litaskunū ilayhā*, which indicates that marriage is a means of achieving *sakinah* or tranquility, both in the form of peace of mind, emotional stability, and a sense of security and peace within the household. In this context, Allah has implanted two main elements that form the foundation of the husband-wife relationship, namely *mawaddah* and *rahmah*. *Mawaddah* describes strong, warm love, as well as emotional and physical attraction that generally appears in the early phase of marriage, while *rahmah* indicates a deeper affection in the form of empathy, sacrifice, kindness, and tenderness that grows over the course of life together.

These two elements are the pillars that support household harmony. Furthermore, this verse emphasizes that the husband-wife relationship is not merely a social and biological bond, but also a space of worship where love and

affection are manifestations of devotion to God. Therefore, building a marriage must be grounded in moral and spiritual responsibility. This verse concludes with a call to reflection, demonstrating that the profound meaning of marriage as a divine institution can only be understood by those willing to contemplate the wisdom behind God's creation and provisions.

From the perspective of Islamic jurisprudence (*jurimah ḥarb wa jurḥ*), the defendant's actions fall into the category of *jarimah ḥarb wa jurḥ* (the crime of assault and wounding). The majority of scholars, such as Al-Māwardī and Ibn Qudāmah, state that acts of wounding that cause serious injury can be qualified as *jināyāt*, which requires punishment of *qīṣāṣ* or *diyat*, depending on the intensity of the injury and the perpetrator's intention. In the context of this case, the use of a knife on a vital part of the victim's body indicates an element of intent ('amd), which in Islamic law leads to a more severe sanction because it reflects a strictly prohibited aggressive act. Therefore, normatively, imprisonment in Indonesian judges' decisions can be seen as the equivalent of *ta'zīr*, namely a punishment left to state authorities to maintain public order and prevent similar crimes—in line with Weber's approach to rational-legal authority.

However, Islamic law also provides a broader framework for justice, particularly in the context of the family. Violence against a wife is seen as a violation of the household trust. The Prophet Muhammad (peace be upon him) said:

*"The best of you are those who are kindest to their families" (HR. Tirmidhi).*

This demonstrates that the husband has a moral and legal obligation to protect, not harm. Therefore, from an Islamic legal perspective, the moral legitimacy of a decision rests not only on punishment but also on restoring the victim's honor and safety. This aligns with Durkheim's critique of the need to restore social balance, rather than simply resort to punitive measures.

*Maqāṣid al-syārī'ah* provides analytical space in line with the principles of restorative justice. Islam recognizes the concepts of *ṣulḥ* (reconciliation), *taubatan naṣūḥa* (sincere repentance), and victim restitution through *diyat* (compensation). However, sharia also emphasizes that reconciliation cannot be implemented if it endangers the victim or perpetuates injustice. Therefore, restorative justice in the context of domestic violence can only be implemented if the victim's safety is fully guaranteed and the perpetrator demonstrates a real commitment to change.

In the case of Decision 513/Pid.B/2024/PN Smg, the prison sentence imposed can be justified as a form of *ta'zīr*, but the criticism remains relevant: the punishment does not fully reflect the model of reparation offered by Islamic law, such as the obligation to provide compensation or ensure long-term protection for the victim. In Islamic law, reparation is not only about punishing the

perpetrator, but also about restoring the victim's dignity, ensuring the safety of the family, and preventing broader social harm (mafsadah).

From an Islamic legal perspective, judges' decisions do have state legitimacy (ta'zīr) and protective value, but they still leave room for substantial criticism: there has been no effort to rehabilitate victims, which is the core of comprehensive sharia justice. Therefore, as the author of this thesis, I believe that the ideal approach is to integrate the ta'zīr aspect (state criminalization) with the maqāṣid al-syarī'ah principle, which demands protection, restoration, and an end to the cycle of violence within the family. Such an approach will produce justice that is not only formal and repressive, but also spiritual, humanitarian, and transformative, in accordance with the goals of Islamic law to safeguard human dignity and family integrity.

#### **4. Conclusion**

1. The judge's legal considerations in imposing sanctions on perpetrators of abuse in domestic violence in Decision Number 513/Pid.B/2024/PN Smg: The Panel of Judges' legal considerations in Decision Number 513/Pid.B/2024/PN Semarang demonstrate that the legal assessment process was carried out carefully, systematically, and in accordance with the provisions of criminal procedure law. The judges assessed that all evidence, including witness testimony, the defendant's testimony, the knife evidence, and the post-mortem examination consistently led to the belief that defendant Munhawi, alias Sulis, alias Kenter, intentionally committed serious assault against the victim, Sri Astutik. The Panel of Judges was proven to have succeeded in ensuring that all elements of Article 351 paragraph (2) of the Criminal Code were fulfilled, namely: (1) the identity of the perpetrator as "whoever"; (2) the existence of intent and real actions in the form of stabbing and slicing with a knife; (3) the occurrence of serious injuries as evidenced by a post-mortem and the real impact in the form of the victim's inability to work for several months. In addition, the judge emphasized the existence of a direct causal relationship between the defendant's actions and the serious injuries experienced by the victim. The judge's legal considerations reflect the application of the principle of legality, the principle of prudence in assessing evidence, and a protective orientation toward vulnerable victims of domestic violence. This decision demonstrates that the panel of judges considered not only the normative legal aspects but also the context of domestic violence, which involves an unequal power relationship. Therefore, the imposition of criminal sanctions on the defendant is deemed to be in accordance with the objectives of sentencing, namely to provide justice for the victim, ensure legal certainty, and create a deterrent effect for perpetrators of domestic violence.
2. The criminal sanctions decided by the judge against the perpetrator of abuse in a domestic violence relationship in Decision Number 513/Pid.B/2024/PN Smg already reflect the principle of justice: Based on the

considerations of the Panel of Judges in Decision Number 513/Pid.B/2024/PN Smg, the defendant's actions were legally and convincingly proven to fulfill the elements of assault resulting in serious injury according to Article 351 paragraph (2) of the Criminal Code; the imposition of a prison sentence of 4 years and 6 months reflects the judge's efforts to uphold legal certainty, provide a deterrent effect, and protect the victim normatively. However, from a broader legal perspective, there are important shortcomings: the judge chose the Criminal Code framework even though the context of a husband-wife relationship (even though it is a secret marriage) and the pattern of repeated violence show the relevance of applying the Domestic Violence Law as *lex specialis*, so that the use of the Criminal Code has the potential to reduce the dimension of special protection for victims and weaken the deterrent power of norms designed for domestic violence. Theoretically and normatively, from the perspective of the legitimacy of sanctions (Weber and Durkheim), the principles of restorative justice, and the *maqāṣid al-syarī'ah*, this decision is valid as a form of state *ta'zīr*, but it does not fully fulfill substantive justice. Ideal justice demands a combination of fair punishment with victim recovery measures (long-term protection, rehabilitation, restitution) and preventive mechanisms (enforcing *lex specialis* norms, improving prosecution practices). Therefore, the analytical recommendations are: a. strengthening the implementation of the Domestic Violence Law in domestic violence cases; b. include restorative elements in sentencing decisions and post-conviction policies; and c. improve prosecution practices so that charges reflect the most appropriate norms for comprehensive legal legitimacy and substantive justice for victims.

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