

Disparity in Sentencing in Domestic Violence Cases

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Abstract. *The increasing prevalence of Domestic Violence cases in Indonesia demonstrates that such offenses within the domestic sphere constitute a serious issue that not only threatens social order and family dignity but also infringes upon fundamental human rights. Although Law Number 23 of 2004 on the Elimination of Domestic Violence provides a firm normative foundation for the enforcement of domestic violence laws, disparities in sentencing remain evident in practice, even among cases with similar characteristics. This phenomenon, known as sentencing disparity, refers to a condition in which judges impose different punishments for comparable offenses without objective and adequate justification. This study aims to analyze the judicial reasoning underlying court decisions in domestic violence cases and to identify the existence of sentencing disparities, particularly as reflected in the decisions of the Purwodadi District Court specifically Decision Number 124/Pid.Sus/2021/PN Pwd and Decision Number 56/Pid.Sus/2024/PN Pwd. Using a normative juridical research method through statutory and case approaches, this research examines the legal construction, evidentiary basis, juridical and non-juridical considerations, as well as the alignment of the decisions with the objectives of judgment and the principle of legal certainty. The findings reveal that although the two decisions share similarities in offense elements, forms of physical violence, and evidentiary foundations, they differ significantly in the length of imprisonment imposed. This disparity is primarily influenced by variations in judicial assessments, degree of culpability, and the impact of their actions. Nevertheless, not all judicial considerations in these cases reflect a proper application of the principles of proportionality, consistency, and victim protection as mandated by the Domestic Violence Law. Consequently, comprehensive sentencing guidelines are urgently needed to ensure that decisions in domestic violence cases uphold legal certainty, substantive justice, and optimal protection for victims.*

Keywords: *Considerations; Disparity; Domestic; Judicial; Sentencing.*

1. Introduction

In every criminal act, it is understood that proper, proportional, and fair handling and resolution of the case is the main goal to be achieved by the parties involved. In order to realize this goal, the role of law enforcement officers, especially judges, in this case, seems to have a crucial position considering that judges are the ones who ultimately hold the authority to determine the direction of the case resolution through their decisions. Furthermore, Prof. Sudikno Mertokusumo, SH himself provides a definition related to the judge's decision as an official statement uttered by the judge in a trial, as an official authorized by law, with the main goal of ending or resolving the case or dispute submitted by the parties to the case.¹Based on this definition, it is increasingly clear that the judge's decision has a very decisive position, so that therefore the judge as a state apparatus who is given the authority to administer justice, is required to have a comprehensive understanding of the actual circumstances of the case and is also required to master the relevant legal norms to be applied, both in the form of written law as contained in statutory regulations and unwritten law that lives and develops in society.²Only with such a foundation can the judge's decision fulfill its main function, which is none other than to create legal certainty and at the same time provide substantial justice for the disputing parties.

However, the ideality of the judge's decision above often remains a challenge in judicial practice in Indonesia, considering that, as is known, in judicial practice, especially in Indonesia, it is not uncommon to find judges' decisions on similar cases that show quite significant differences both in terms of legal considerations and the length of the sentence imposed. This is further known as disparity in sentencing. Related to disparity in sentencing, Prof. Harkristuti Harkrisnowo explained that disparity in sentencing is essentially a condition characterized by differences in sentencing for cases that have the same or equivalent level in terms of seriousness, without being accompanied by clear reasons or justification.³Furthermore, the phenomenon of disparity in criminal sentences has long been a major focus for many parties, including academics, observers, and legal practitioners worldwide. This is worth emphasizing, given that the problem of disparity in sentencing is not solely a problem in Indonesia, but is also a phenomenon encountered in various countries around the world. Within the Indonesian context, disparity in sentencing can essentially be understood as a logical consequence of Indonesia's positive criminal law, which often uses alternative systems for specifying criminal sanctions and the application of a

¹Sudikno Mertokusumo, *Civil Procedure Law*, Yogyakarta, 1984, p. 158.

²Riduan Syahrani, *Civil Procedure Law in the General Court Environment*, Jakarta, Pustaka Kartini, 1998, p. 83.

³Harkristuti Harkrisnowo, "Reconstruction of the Concept of Criminalization: A Challenge to the Legislation and Criminalization Process in Indonesia," (oration delivered at the Inauguration as Professor, Depok, March 8, 2003), p. 7.

general minimum, general maximum, and specific maximum penalty system for sanctions against each crime.⁴

When viewed ideologically, disparity in sentencing is not always inherently negative. For example, according to the Positive School of Modern Criminal Law, which developed around the 19th century, disparity in sentencing arising from various court decisions under certain conditions can be justified, considering that this is in line with one of the doctrines of the Modern Criminal Law school itself, which emphasizes that "Let the punishment fit the criminal."⁵Even one of the pioneers of the modern criminal law school, Cesare Lombroso, believed that "different criminals have different needs," so that the existence of disparities in sentencing arising from "judicial discretion" is very possible.⁶However, in this context it is necessary to emphasize that the disparity in sentencing as intended by the modern criminal law school must always be understood as a disparity in responsible sentencing, considering that if this is not the case, it will then raise questions, especially from those who are trying to seek justice (justiciabellen) regarding the certainty and legal justice that are the goals of the criminal justice system.

Furthermore, the irresponsible practice of disparate sentencing, if allowed to persist for too long, is also very dangerous, as it can lead to demoralization, especially among convicts, due to the disparity in sentences imposed for similar cases. Furthermore, convicts can ultimately become victims of judicial caprice and lose faith in the criminal justice system.⁷This is in line with Muldadi's opinion, which essentially states that if disparities in sentencing are not immediately addressed, this will further become a cause, indicator, and manifestation of the failure of a legal system in achieving equal justice and can also weaken public trust in the criminal justice system.⁸

The issue of disparity in sentencing can in principle occur in every criminal act without exception, including in the crime of Domestic Violence ("DV"). Before going any further, it is necessary to understand that as a state based on the rule of law based on Pancasila, Indonesia views that all forms of violence, including DV, are in principle violations of human rights, crimes against human dignity, and forms of discrimination. This is in line with what is mandated by the Indonesian

⁴Muladi, *Things That Judges Must Consider in Imposing Criminal Sentences in the Context of Seeking Justice in Selected Chapters on the Criminal Justice System*, Diponegoro University Publishing Agency, Semarang, 1995, p. 107.

⁵Muladi-Barda Nawawi Arief, *Criminal Theories and Policies*, Alumni, Bandung, 1984, p. 58.

⁶*Ibid.*

⁷HM Syarifuddin, *Principles of Justice in Adjudicating Corruption Crimes Implementation of PERMA 1 of 2020*, Kencana, Jakarta, 2020, p. 121.

⁸Muldadi, *Implementation of the Correctional System in the Perspective of the Integrated Criminal Justice System in Selected Chapters on the Criminal Justice System*, Diponegoro University Publishing Agency, Semarang, 1995, p. 120.

constitution, namely the 1945 Constitution of the Republic of Indonesia ("UUD 1945"), specifically in the provisions of Article 28B paragraphs (1) and (2) which state:

"(1) Everyone has the right to form a family and continue their lineage through a legal marriage;

(2) Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination."

As well as the provisions of Article 28G paragraph (1) of the 1945 Constitution which mandates that:

"Everyone is free to protect themselves, their family, their honor, their dignity, and their property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is their basic human right."

In simple terms, domestic violence can be understood as the use of various forms of violence or threats of violence, whether physical, psychological, emotional, sexual or neglect, which is carried out by a person with the aim of dominating their partner, child, family member or other individual in the same household environment.⁹Based on this understanding, it can also be understood that domestic violence has unique characteristics that distinguish it from other violent crimes in general. These characteristics lie in the relationship between the perpetrator and the victim. Unlike most crimes, where there is often no significant personal bond between the perpetrator and the victim, in cases of domestic violence, a special relationship exists between the two. This relationship can be marital, blood or family, or even a work relationship, such as between an employer and a domestic worker living under the same roof. Furthermore, this relationship is inseparable from the dimension of power (power relationship), thus impacting the psychological burden on the victim because power relationships inherently involve elements of trust and dependency to a certain degree. As a result, data on domestic violence cases is difficult to accurately document, which has implications for the high number of dark numbers of domestic violence crimes.¹⁰

2. Research Methods

The type of research used in this paper is research with a normative juridical approach, namely a research method that refers to legal norms contained in laws and court decisions as well as legal norms that exist in society, also looking at the synchronization of a regulation with other regulations in a hierarchy. Normative

⁹Sulistiyowati Irianto and Lidwina Inge Nurtjahjo, *Women and Children in Law and Court*, Yayasan Pustaka Obor Indonesia, Jakarta, 2020, p. 168.

¹⁰Ridwan Mansyur, *Penal Mediation for Domestic Violence Cases*, Gema Yustisia Indonesia Foundation, 2010, p. 6.

legal research is a scientific research procedure to find the truth based on the logic of legal science from a normative perspective to produce a sharp legal analysis based on doctrines and norms that have been established in the legal system through analysis of the primary and secondary materials.¹¹ The normative legal approach in this study is used to analyze whether the legal norms related to domestic violence as regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence have become a reference in resolving domestic violence cases that occur, especially in domestic violence cases decided by the Purwodadi District Court.

3. Results and Discussion

3.1. Analysis of the Differences in the Imposition of Criminal Sanctions on Perpetrators in Domestic Violence Cases in Decision Number 124/Pid.Sus/2021/PN Pwd and Decision Number 56/Pid.Sus/2024/PN Pwd

In order to provide a comprehensive answer to the question of the extent to which law enforcement against domestic violence crimes in Indonesia shows differences in sanctions or disparities in sentencing, especially for perpetrators of Domestic Violence Crimes, an in-depth analysis is certainly needed through a comparison of court decisions that have similar characteristics. As described in the previous section, the sample decisions used in this study consist of 2 (two) decisions of the Purwodadi District Court, namely Decision Number 124/Pid.Sus/2021/PN Pwd with the Convict named Mundakir bin Jafar and Decision Number 56/Pid.Sus/2021/PN Pwd with the Convict named Evian Eka Saputra bin Wagimin. The author chose these two decisions as the objects of this study because both decisions basically show a number of similarities, as follows:

1. The crimes that occurred were both crimes of physical violence within the household committed by a husband against his wife;
2. The motives of the perpetrators in both cases stemmed from personal emotional issues, namely jealousy in the case of Decision Number 124/Pid.Sus/2021/PN Pwd and anger due to the rejection of the request for money in the case of Decision Number 56/Pid.Sus/2024/PN Pwd;
3. As a result of the perpetrators' actions, the victims in both cases were proven to have suffered real physical injuries; and
4. The judge declared both perpetrators legally and convincingly guilty of committing the crime of physical violence within the household as stipulated in Article 44 paragraph (1) of the Domestic Violence Law or in other words the legal

¹¹Johnny Ibrahim. *Normative Legal Research Theory and Methodology*, Surabaya, Bayumedia Publishing, 2016, p. 64.

basis used by the judge in making a decision in each case refers to the same legal norms.

Before going any further, in order to gain a complete understanding of the cases in the two decisions above, it is necessary to first explain the position of each case as stated in the Indictment, namely as follows:

Position Case in Decision Number 124/Pid.Sus/2021/PN

"That the Defendant Mundakir Bin Jafar on Tuesday, May 18, 2021 at around 14.00 WIB or at least at another time in May 2021, at Jalan Kampung Dusun Bantengan, Tlogomulyo Village, Gubug District, Grobogan Regency or at least at another place which is still included in the jurisdiction of the Purwodadi District Court, has committed an act of physical violence as referred to in Article 5 letter a in the household sphere, the Defendant's actions were carried out in the following ways:

- That the Victim Witness Siti Warsipah Binti Kaserin and the Defendant are a married couple who married on July 12, 1996 according to the marriage certificate issued by the KUA of Gubug District, Grobogan Regency, at first the Defendant often felt jealous of the Victim Witness Siti Warsipah Binti Kaserin then when the Victim Witness Siti Warsipah Binti Kaserin also worked as a massage therapist when she arrived in the middle of the road in Gayas Hamlet, Ringinharjo Village, Gubug District, the Victim Witness Siti Warsipah Binti Kaserin met the Defendant then the Defendant crashed his motorbike into the motorbike ridden by the Victim Witness Siti Warsipah Binti Kaserin so that it was about to fall then the Defendant got off the motorbike and approached the Victim Witness Siti Warsipah Binti Kaserin then slapped the Victim Witness Siti Warsipah Binti Kaserin's left cheek and forced the Victim Witness Siti Warsipah Binti Kaserin to go home. Upon arriving home, the Defendant and the Victim Witness Siti Warsipah Binti Kaserin had an argument or quarrel, then the Defendant hit the Victim Witness Siti Warsipah Binti Kaserin with a clenched right hand towards the left eye of the Victim Witness Siti Warsipah Binti Kaserin so that as a result of the Defendant's actions, the Victim Witness Siti Warsipah Binti Kaserin suffered injuries according to the Visum et Repertum Number 12/Ver/IV.5/AU/H/V/2021 which was made and signed by Dr. Emi Puspita Sari with the result that there were bruises on the left eyelid."

For the above actions, the Defendant was then charged with an Alternative Charge, namely Article 44 paragraph (1) of the Domestic Violence Law which reads: "Any person who commits an act of physical violence within the household as referred to in Article 5 letter a shall be punished with a maximum prison sentence of 5 (five) years or a maximum fine of IDR 15,000,000.00 (fifteen million rupiah)."

Or Article 44 paragraph (4) of the PKDRT Law which reads:

"In the case of an act as referred to in paragraph (1) carried out by a husband against his wife or vice versa which does not cause illness or obstacles to carrying out work or position or livelihood or daily activities, the punishment shall be imprisonment for a maximum of 4 (four) months or a maximum fine of IDR 5,000,000.00 (five million rupiah)."

Position Case in Decision Number 124/Pid.Sus/2021/PN

"That the Defendant Evian Eka Saputra Bin Wagimin, on Monday, February 26, 2024 at approximately 09.00 WIB or at least at a time that was still in February 2024, at the house of Witness Sunarto whose address is in Bago Village RT. 03/RW. 02 Kradenan District, Grobogan Regency or at least at a certain time that is still included in the Jurisdiction of the Purwodadi District Court which has the authority to try and examine this case, committed an act of physical violence within the scope of the household as referred to in Article 5 letter (a), which act was carried out by the Defendant in the following ways:

- That the Defendant Evian Eka Saputra Bin Wagimin who is still the legal husband of Witness Nuzul Fajariah (based on the marriage certificate number 628/27/XII/2021 dated December 12, 2021) and both of them still live in 1 (one) house, where the Defendant at the time and date referred to above asked for money in the amount of IDR 10,000.00 (ten thousand rupiah) from Witness Nuzul Fajariah, but at that time Witness Nuzul Fajariah did not give the money to the Defendant, thus making the Defendant angry until finally an argument occurred between the Defendant and Witness Nuzul Fajariah, and in an emotional state, the Defendant suddenly used his fist to hit the lips and left cheek of Witness Nuzul Fajariah, then the Defendant took a broom and the Defendant hit the left lip and back of Witness Nuzul Fajariah using a broom handle made of bamboo until the broom handle that was hit broke;

- That as a result of the Defendant's actions, Witness Nuzul Fajariah experienced pain and injuries that could disrupt Witness Nuzul Fajariah's daily activities for 2 (two) days, which was confirmed by Visum et Repertum Number 455.1/173.PKM.KRD1/2024 dated February 29, 2024 signed by Dr. Lincah Sumarwinigrum, a doctor at the Kradenan Health Center and acknowledged by Sukisno, S.KepNs.MMas Head of UPTD Kradenan 1 Health Center, with the conclusion "an examination was conducted on an eighteen year old woman, in a fully conscious state, with brown skin, adequate nutrition, on external examination it was found that there were possible signs of blunt force trauma in the form of bruises and abrasions on the left cheek, abrasions above the lip and dried blood spots, swelling on the upper lip and right back waist accompanied by pain."

For the above actions, the Defendant was then charged with a Single Charge, namely Article 44 paragraph (1) of the Domestic Violence Law which states "Any person who commits an act of physical violence within the household as referred to in Article 5 letter a shall be punished with a maximum prison sentence of 5 (five) years or a maximum fine of IDR 15,000,000.00 (fifteen million rupiah)."

Furthermore, in the two domestic violence cases, the comparison between the criminal charges filed by the Public Prosecutor ("JPU") and the decision handed down by the Court is as follows:

DECISION NUMBER	CHAPTER	PROSECUTOR'S DEMANDS	CRIMINAL PROSECUTION BY JUDGE
124/Pid.Sus/2021/PN Pwd	Article 44 paragraph (1) of the Domestic Violence Law	7 (seven) months	5 (five) months
56/Pid.Sus/2024/PN Pwd	Article 44 paragraph (1) of the Domestic Violence Law	1 (one) year	8 (eight) months

The comparison table above demonstrates that there is indeed a difference or disparity in prison sentences imposed in cases of domestic violence, as reflected in Decisions Number 124/Pid.Sus/2021/PN Pwd and Number 56/Pid.Sus/2024/PN Pwd. These differences do not, in essence, indicate a significant disparity, given that the difference in prison sentences imposed is only three months. However, even though the apparent difference appears minimal, it still constitutes a form of disparity in sentencing that requires further analysis to determine whether the difference in sentences imposed by the judges can be classified as unwarranted disparity or whether it is justifiable.

To get this answer, first we will explain the comparative characteristics of each case as follows:

COMPARATIVE CATEGORY	DECISION NUMBER 124/Pid.Sus/2021/PN Pwd	DECISION NUMBER 56/Pid.Sus/2024/PN Pwd
Age of the perpetrator	47 (forty seven) years	20 (twenty) years
Gender of the Perpetrator	Man	Man
The perpetrator's motive for committing the crime	Caused by feelings of jealousy that arose in the perpetrator towards the victim who worked as a massage therapist (especially regarding the victim's interactions with the massage service patients)	This was motivated by the perpetrator's feelings of annoyance, emotion and anger due to the victim's refusal to give the perpetrator Rp. 10,000.00 (ten thousand rupiah).
How the Perpetrator	1. Slapping the victim's left cheek; and	1. Hitting the victim with a clenched right hand twice,

Commits the Crime	2. Hitting the victim using a clenched right hand towards the victim's left eye.	hitting the victim's lips and left cheek; 2. Beating the victim using a wooden broom handle twice, the first blow hitting the victim's back and the second blow hitting the area above the victim's lip, causing the wooden handle to break; 3. Kicked the victim with his right foot twice, hitting the victim's stomach.
Consequences/Effects of Criminal Acts on Victims	In accordance with Visum et Repertum No. 12/Ver/IV.5/AU/H/V/2021, the victim suffered bruises on the left eyelid	In accordance with Visum et Repertum No.455.1/173/PKM.KRD1/2024 the victim experienced pain and injuries which resulted in disruption of daily activities for two days, with the following details: 1. There are bruises and abrasions on the left cheek; 2. There were abrasions on the upper lip and dried blood spots; and 3. There is swelling on the upper lip and upper right waist accompanied by pain.
History of Domestic Violence of Perpetrators and Victims	Before the incident in this case occurred, the perpetrator had in fact committed a number of acts of physical violence against the victim with the following details: 1. On May 11, 2021, the perpetrator kicked the victim with his right foot 1 (one) time, hitting the victim's face; 2. In 2021, on an unknown date and month, the perpetrator twisted the victim's left little finger, causing the victim's little finger to be sprained; and 3. Other acts of violence that the victim can no longer remember.	Not identified
Victim's Opinion	The victim was no longer able to bear all the violent acts committed by the perpetrator, so she took legal action by reporting the incident to the Gubug Police and decided to file for divorce.	The victim could no longer bear the violence perpetrated by the perpetrator, so he decided to report the perpetrator to the authorities.
Alleviating Factors	1. The defendant has never	1. The Defendant's actions

Aggravating Factors	been convicted; 2. The defendant confessed frankly and politely during the trial; and 3. The defendant regretted his actions and would not repeat them.	caused pain to the victim witness; and 2. The Defendant's actions were committed against the Defendant's legal wife.
	1. The defendant's actions caused the victim to suffer injuries; and 2. The Defendant's actions as a husband do not reflect actions that are worthy of emulation.	1. The defendant has never been convicted; 2. The defendant was frank at the trial; and 3. The defendant admitted his guilt and regretted his actions and promised not to repeat them.

Through the comparison table of the cases above, after examining it in more depth, apart from a number of similarities that make the two cases above comparable, in reality there are also several differentiating conditions that can be identified in each case, such as:

1) Intensity and Form of Violence Committed

In Decision Number 124/Pid.Sus/2021/PN Pwd, the physical violence was limited to slapping and hitting with bare hands. In contrast, in Decision Number 56/Pid.Sus/2024/PN Pwd, the perpetrator not only hit with his hands but also used a broom handle, breaking it, and kicked the victim.

2) Level of Loss or Consequences Experienced by the Victim

The victim in Decision Number 124/Pid.Sus/2021/PN Pwd suffered bruising on his left eyelid. Meanwhile, the victim in Decision Number 56/Pid.Sus/2024/PN Pwd suffered more diverse injuries, including bruising, abrasions, swelling, and pain that disrupted his daily activities for two days.

3) History of Domestic Violence

In Decision Number 124/Pid.Sus/2021/PN Pwd, there was a history of prior violence, including kicking, finger twisting, and other acts of violence that the victim could no longer recall. In contrast, Decision Number 56/Pid.Sus/2024/PN Pwd contained no information regarding a history of prior violence.

By referring to the various distinguishing conditions identified, it is clear that the differences in the length of sentences imposed in the two cases essentially have justifiable legal justification. Differences in the intensity and form of violence, as well as the level of harm or consequences experienced by the victim, are aspects that can directly influence the perpetrator's level of culpability and the degree of harm caused. First, the differences in the intensity and form of violence indicate that the perpetrator's actions in Decision Number 56/Pid.Sus/2024/PN Pwd were

more aggressive than those in Decision Number 124/Pid.Sus/2021/PN Pwd. The use of a tool, such as a broken broom handle, and repeated kicking constitute an escalation of violence that objectively increases the level of danger of the perpetrator's actions in Decision Number 56/Pid.Sus/2024/PN Pwd. In the doctrine of criminal punishment, it is understood that the higher the degree of guilt or depravity of the perpetrator, the heavier the criminal responsibility that can be appropriately imposed on him. Viewed from the perspective of the combined theory of punishment, the severity of the punishment imposed is not merely intended as a form of retribution for the perpetrator's actions, but also serves as a means of prevention, rehabilitation, and protection for the community. Secondly, the level of harm or consequences experienced by the victim also shows substantial differences. The victim in the case of Decision Number 56/Pid.Sus/2024/PN Pwd suffered more, more serious injuries, and even disrupted the victim's daily activities for 2 (two) days. Meanwhile, the injuries to the victim in the case of Decision Number 124/Pid.Sus/2021/PN Pwd were relatively lighter. This difference reflects the greater physical impact experienced by the victim in the case of Decision Number 56/Pid.Sus/2024/PN Pwd, which can proportionally affect the severity of the punishment imposed. Based on the differences in the impacts experienced by the victims, the author believes that these conditions provide further justification for the heavier sentence imposed in Decision Number 56/Pid.Sus/2024/PN. This also aligns with the primary objective of the Domestic Violence Law, which prioritizes fulfilling the rights and interests of victims.

3.2. Efforts to Minimize Disparities in Sentencing in Cases of Physical Violence in the Household

To minimize disparities in sentencing in cases of physical violence within the household, especially to maintain the image and dignity of law enforcement in domestic violence cases in Indonesia, one concrete step that can be taken is to establish sentencing guidelines for domestic violence cases. Sentencing guidelines are essentially an instrument developed by policymakers (lawmakers) to provide direction and parameters that judges must consider when sentencing. These sentencing guidelines contain fundamental principles that form the basis for sentencing, namely the principle of legality and the principle of culpability or fault. The establishment of these sentencing guidelines is expected to provide a basis for judges to comprehensively consider all aspects of a criminal incident. These considerations can include the severity of the crime, the character and personal background of the perpetrator, and various other circumstances and situations surrounding the crime. Thus, sentencing guidelines can function to ensure that the decisions rendered truly reflect the facts and the proportionality of the punishment.

The guidelines for sentencing domestic violence in England and Wales, established by the Sentencing Council through the Overarching Principles: Domestic Abuse, are an example of a structured and binding sentencing system that has been proven to be able to minimize unreasonable disparities in sentencing.¹² These guidelines have strong legal legitimacy because they are established based on the authority in the Coroners and Justice Act 2009 and must be followed by all courts in accordance with the provisions of the Sentencing Act 2020, except in special circumstances that are contrary to justice.¹³ Through these guidelines, the sentencing process is carried out through a measured assessment of the level of culpability and the degree of impact experienced by the victim (harm) based on specific sentencing guidelines to determine the starting point and sentencing range, which are then adjusted to the specific principles of domestic violence as an aggravating factor. The domestic context in these guidelines is explicitly treated as an aggravating circumstance because it reflects the existence of an imbalance of power relations, the vulnerability of the victim, and the risk of repeated violence. Other aggravating factors, such as the presence or exposure of children and the abuse of a position of trust or power are also taken into account in sentencing, which indirectly also indicates that the British criminal system views domestic violence as a crime with a multidimensional impact on the victim and the family. Furthermore, the principle in the British domestic violence sentencing guidelines that also places the severity of the sentence rather than the victim's desire to continue or discontinue the case also emphasizes the orientation of victim protection and the objectivity of sentencing. Thus, through such a comprehensive normative configuration, the English legal system is able to produce consistency between decisions and reduce reliance on judicial discretion, so that disparities in sentencing can be significantly reduced.

4. Conclusion

Referring to the research findings, it can be concluded that in deciding and adjudicating domestic violence cases, judges can base their decisions on both the impersonal characteristics (in rem) of the domestic violence crime that occurred and the personal characteristics (in personam) of the perpetrator of the domestic violence crime. The impersonal characteristics (in rem) themselves focus on the factual conditions inherent in the domestic violence crime itself, such as the level or magnitude of the loss arising from the crime, the degree of the perpetrator's culpability, the method of committing the crime, and so on. On the other hand, the personal characteristics (in personam) that judges can consider in their decisions can be seen from matters relating to the personal circumstances of the

¹²Anna Draper, "Sentencing Domestic Abuse: A Review of the Practical Issues," available at <https://www.sentencingacademy.org.uk/wp-content/uploads/2023/08/Sentencing-Domestic-Abuse-A-Review-of-the-Practical-Issues.pdf>, accessed November 22, 2025.

¹³Sentencing Act 2020, available at <https://www.legislation.gov.uk/ukpga/2020/17/section/59>, accessed November 22, 2025.

perpetrator of the crime, such as economic circumstances, mental and emotional conditions at the time of the crime, family identity and background, family responsibilities, and so on. In addition to these two aspects, the Domestic Violence Law emphasizes that the interests of the victim must be the primary orientation in every case handling. Therefore, judges not only assess the aspects of the act and the perpetrator, but must also pay attention to the protection of the victim as a substantive consideration in sentencing. The victim's interests include the right to a sense of security, recovery, protection from further threats, and legal certainty that the perpetrator is accountable for his actions. Therefore, the orientation of victim protection must reflect the principle that criminalization is not merely a punishment for the perpetrator, but also a means of restoring the dignity, security, and well-being of the victim, as mandated by the Domestic Violence Law. Furthermore, the principle of legal certainty must also be used as a reference so that the decision rendered remains within the corridor of positive law, even though the scope of sanction options in the Domestic Violence Law is relatively broad due to the adoption of a special maximum system. Therefore, a balance between normative considerations, the characteristics of the case, the characteristics of the perpetrator, and the interests of the victim is the main foundation in producing a decision that is fair, proportional, and in line with the objectives of the Domestic Violence Law.

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