

JURIDICAL ANALYSIS OF JUDGE DECISION REGARDING THE IMPOSITION OF CRIMINAL ABOVE THE MAXIMUM THREAT IN DOMESTIC VIOLENCE CASE (KDRT) :

Case Study of Padang District Court Decision Number 543/Pid.Sus/2021

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Abstract: *The judge decision is the result of a deliberation based on the indictment with everything that is proven in the examination in court. The judge may pass a verdict lower, equal to or higher than the claim of the public prosecutor but the judge may not pass a verdict beyond the maximum threat contained in the Law. Padang District Court Decision Number 543/Pid.Sus/2021, the judge sentenced the defendant to imprisonment for 6 (six) months Article 44 paragraph (4) of the Law on the Elimination of Domestic Violence, the decision is considered to have exceeded the penalty the maximum contained in the Domestic Violence Elimination Act.*

Key Words: *Judge Decision, Imposition of a Crime Above the Maximum Threat, Domestic Violence.*

1. INTRODUCTION:

The application of the division of power in Indonesia consists of two parts, namely the horizontal division of power, namely the division of power according to the functions of certain institutions (legislative, executive and judicial), and the vertical division of power, which is the division of power according to level, namely the division of power between several parties. government level.

The judge's decision as the final process in law enforcement is the most problematic activity, dilemma and has a high level of controversy. Efforts to seek, find and apply these laws often lead to discontent among the parties and the community.

Cases of Domestic Violence (KDRT) is a social phenomenon that has been going on for a long time in some households in the world, including in Indonesia. If so far this incident has been almost unheard of, it is more due to the perception in society that Domestic Violence (KDRT) is a taboo domestic event to be discussed openly.[1]

2. THEORITICAL FRAMEWORK:

a. Criminal Theory

Criminalization is another word for punishment. According to Sudarto, that punishment comes from the basic word of law, so it can be interpreted as setting the law or deciding about the law.[2]

b. Legal Certainty Theory

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is enforced, that those entitled by law can obtain their rights and that decisions can be enforced.[3]

c. Theory of Justice

Aristotle's view of justice can be found in his work *nichomachean ethics, politics, and rhetoric*. Specifically seen in the book *nicomachean ethics*, the book is entirely devoted to justice, which, based on Aristotle's legal philosophy, must be considered as the core of his legal philosophy, because law can only be established in relation to justice.[4]

3. LITERATURE REVIEW:

Sentencing can be interpreted as the stage of determining sanctions and also the stage of imposing sanctions in criminal law. The word criminal is generally defined as law, while punishment is defined as punishment.

The application of positive law by judges must prioritize the values of justice that live in society as well as possible, so that the decisions made by judges can be accepted by the parties. Therefore, the judge in imposing a crime in order to guarantee the establishment of truth, justice and legal certainty for a person.[5]

Crime comes from a term known in Dutch criminal law, namely *strafbaar feit*, consisting of three words, namely *straf* is translated as criminal and law, *baar* is translated as can and may, and *feit* is translated with acts, events, violations, and deeds.[6]

5. METHOD:

The method used in this study is a normative juridical approach, namely a legal approach that is only aimed at written regulations so that this research is very closely related to libraries because it will require secondary data from libraries, or normative legal research can be limited to the use of document studies or library materials only, namely on secondary data.[7]

6. DISCUSSION:

The case of Christian Khaidir (CK) committing physical violence against his wife (Welly Yusa Fitri (WYF)), there was an argument because it started with CK finding a chat on WYF's cellphone, CK was emotional and asked WYF to return the ring that CK had given to WYF at the time of marriage, but WYF was not willing to give the ring to CK, and CK still tried to take the ring from WYF's finger with force, CK pushed WYF's body so that it leaned against the wall then CK held WYF's right hand firmly and tried to take the ring on WYF's finger, CK pulled WYF's right hand forcefully but he didn't manage to get the ring. Then CK asked for help from his two children to hold WYF's hand, because he couldn't find the ring, CK got more emotional and told his son to take duct tape in the room to tie WYF and finally because of exhaustion WYF fell and was unconscious in the living room of the house. After WYF regained consciousness and found both his feet and hands wrapped in duct tape, WYF cried asking CK to untie the duct tape but CK didn't care so WYF tried himself to untie the duct tape from his hands and feet, after the duct tape was untied, WYF tried to stand up and CK who was sitting on the dining table chair again approached WYF and pushed to the bedroom door, then CK placed the witness's body on top while searching the witness's entire body to find the ring, then CK stood up and walked towards the room WYF followed while trying to hug CK's body from behind but CK told his two children to hold WYF and CK pushed a chair so that it hit WYF's back waist and fell to the floor.

The demand from the public prosecutor with imprisonment for 4 (four) months in accordance with the maximum criminal threat in Article 44 paragraph (4) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), but in the decision of the Padang District Court Number 543/Pid.Sus/2021 the judge sentenced the case to 6 (six) months in prison. So that the decision of the Padang District Court judge is considered to have exceeded the maximum punishment contained in the Law on the Elimination of Domestic Violence (UU PKDRT). So, the judge can make a decision lower, equal or higher than the demands of the public prosecutor, but the judge may not make a decision that exceeds the maximum threat contained in the law, unless there is a repetition of a crime (*recidive*), or a combination of several criminal offense (*samenloop*) penalty plus one third.

7. ANALYSIS:

a. Basis for Judges' Consideration in Sentencing Criminals Above the Maximum Threat in Cases of Domestic Violence (Kdrt) in the Padang District Court Decision Number 543/Pid.Sus/2021

In addition, the former railroad track and the station area have been widely used by the people of Based on aggravating circumstances and mitigating circumstances, the panel of judges disagreed with the criminal penalty imposed. contained in the criminal prosecution of the public prosecutor (4 (four) months in prison), according to the panel of judges the criminal sentence handed down in the verdict (six (6) months in prison) was fair and commensurate with the actions of the defendant, referring to the Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law, then Article 4 letter d and letter g of the Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law, that the psychological impact experienced by the victim, and the history of violence from the perpetrator against the victim/witness. Gender justice is a process to be fair to men and women. In this decision, the judge prioritizes justice and overrides legal certainty.

b. Sentencing of Criminals Above the Maximum Threat in Cases of Domestic Violence (Kdrt) in the Padang District Court Decision Number 543/Pid.Sus/2021 Seen from the Perspective of Legal Assurance and Justice

The decision of the Padang District Court Number 543/Pid.Sus/2021, prioritizes justice by putting aside legal certainty, the more legal certainty is created, the more justice is needed for women. Justice for victim witnesses, namely justice for women, refers to the Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law. Cases of domestic violence (KDRT) by committing physical violence against women, should as a man especially as the head of the family should protect especially his wife, not even commit violence within the household.

8. CONCLUSION

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) The basis for the judge's consideration in imposing a crime above the maximum threat in the case of domestic violence (KDRT) in the Padang District Court decision Number 543/Pid.Sus/2021, the panel of judges did not find things that could erase the guilt of the defendant, the defendant also was convoluted in providing information so as to complicate the trial process, and the defendant did not show any remorse for his actions, and the defendant did not make any attempt to make peace with the victim's witness or the victim's witness's family, then the panel of judges also referred to the Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Prosecuting Women's Cases in Conflict with the Law.
- 2) The punishment for the maximum threat in cases of domestic violence (KDRT) in the Padang District Court decision Number 543/Pid.Sus/2021 is seen from the perspective of:
 - a. From the perspective of legal certainty, Article 44 paragraph (4) of the PKDRT Law is a clear rule, and is issued by the state, but when applying the rules or in the judge's decision, the judge does not obey or obey the rules in the PKDRT Law, because the judge imposes a criminal sentence that exceeds the criminal the maximum that is in Article 44 paragraph (4) of the PKDRT Law because it is guided by the basic considerations.
 - b. From the perspective of justice, the decision to impose a criminal sentence above the maximum threat is unfair to the defendant, and the defendant accepts the execution, the defendant should take legal action because the defendant did not receive a criminal sentence in accordance with the provisions of Article 44 paragraph (4) of the PKDRT Law or the defendant did not receive the rights in accordance with the mistakes and the violation, while the decision to impose a criminal sentence on the maximum threat is fair to the victim because the judge prioritizes justice by overriding legal certainty, justice for victim witnesses, namely justice for women.

REFERENCES:

1. Fibrianti, 2021, *Pernikahan Dini dan Kekerasan dalam Rumah Tangga*, Ahlimedia Press, Malang, page 1.
2. Muladi dan Barda Nawawi, 1984, *Teori-teori dan Kebijakan Pidana*, Alumni, Bandung, page 1.
3. Sudikno Mertokusumo, 2007, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, page 160.
4. L. J. Van Apeldoorn, 1996, *Pengantar Ilmu Hukum*, cetakan kedua puluh enam Pradnya Paramita, Jakarta, page 11-12.
5. Bambang Waluyo, 2004, *Pidana dan Pemidanaan*, Sinar Grafika, Jakarta, page 33.
6. Adami Chazawi, 2004, *Kejahatan terhadap Tubuh dan Nyawa*, PT .Raja Grafindo, Jakarta, page 69.
7. Soerjono Soekanto, 2020, *Pengantar Penelitian Hukum*, UI Pers, Jakarta, page 66.