

# DISPARITY IN JUDGES' DECISIONS IN CRIMINAL ACTS OF DOMESTIC NEGLECT (CASE STUDY OF DECISION NUMBER 575/PID.PID.SUS/2017/PN KPN AND DECISION NUMBER 95/PID.SUS/2024/PN TIM)

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## Abstract

Disparity can be associated with the existence of differences or inconsistencies in the application of punishment in court decisions for similar or comparable cases. Disparity may be defined as unjustified differences in legal treatment, either in the type or severity of punishment, for cases with similar characteristics. This research aims to examine and analyze the legal considerations used by the panel of judges that led to the occurrence of disparities in decisions for the crime of domestic neglect, based on Decision Number 575/Pid.Sus/2017/PN Kpn and Decision Number 95/Pid.Sus/2024/PN Tim. It also aims to assess whether the two decisions have fulfilled the principles of justice, utility, and legal certainty. The research method used is normative juridical, employing normative legal, conceptual, and case approaches. The legal research data consist of secondary data, including primary, secondary, and tertiary legal materials. The findings of this thesis indicate that there is a disparity between Decision Number 575/Pid.Sus/2017/PN Kpn and Decision Number 95/Pid.Sus/2024/PN Tim. This is because the conditions of “disparity in the same criminal act,” “disparity in sentencing by different judicial panels for the same crime,” “disparity in sentencing by the same judicial panel,” and “disparity in crimes of equal seriousness” have been met. Additionally, it was found that Decision Number 575/Pid.Sus/2017/PN Kpn satisfies the principles of justice, legal utility, and legal certainty. In contrast, Decision Number 95/Pid.Sus/2024/PN Tim only ensures legal certainty for the interested party, failing to uphold the principles of justice and utility, particularly in relation to the victim.

**Keywords :** *Sentencing Disparity, Domestic Neglect Crime, Panel of Judges' Decision.*

## INTRODUCTION

In Decision Number 575/Pid.Sus/2017/PN Kpn, it is evident that the basis used by the Panel of Judges in deciding the criminal act committed by the defendant was aimed at providing protection to the victim. This is also in accordance with the principles that must be adhered to in resolving issues of domestic neglect as stipulated in the Law on the Elimination of Domestic Violence (Law Number 23 of 2004 on the Elimination of Domestic Violence). The aforementioned decision differs from the ruling handed down by the Panel of Judges in Decision Number 95/Pid.Sus/2024/PN Tim. In that decision, the Panel of Judges did not take into account the fact that the defendant had reconciled with the victim and agreed to pay the victim a sum of IDR 75,000,000 (seventy-five million rupiah). The imposition of a criminal sentence of six (6) months imprisonment on the defendant rendered the defendant unable to work and made it difficult for him to fulfill the agreed settlement amount. This situation, in fact, resulted in harm to the victim and can be said to have failed to uphold the principle of “victim protection,” which should be adhered to in the resolution of domestic neglect cases, as outlined in the Law on the Elimination of Domestic Violence. According to the author, the explanation above shows that a disparity has occurred in the application of law by the Panel of Judges in similar cases. This disparity was caused by differences in legal considerations used by the judges in applying the same articles and in similar cases, in deciding on the imposition of criminal penalties for perpetrators of domestic neglect. Based on the problems described above, this legal research raises the issue of how the legal considerations used by the Panel of Judges have caused disparities in rulings on criminal acts of domestic neglect, as reviewed through Decision Number 575/Pid.Sus/2017/PN Kpn and Decision Number 95/Pid.Sus/2024/PN Tim. It also seeks to answer whether Decision Number 575/Pid.Sus/2017/PN Kpn and Decision Number 95/Pid.Sus/2024/PN Tim have fulfilled the principles of justice, utility, and legal certainty.

## LITERATURE REVIEW

In this legal research, several theories are used and included in the literature review. These theories include the theory of legal justice, the theory of legal utility, the theory of legal certainty, and the theory of legal protection. Justice is always related to equality, proportionality, and balance, which together can create a fair and harmonious order. In this context, *equality* refers to the principle that justice emphasizes the importance of equal treatment of individuals, meaning that no one should be treated differently or subjected to discrimination. Justice is also closely associated with *proportionality*, which means that in carrying out actions, there must be a balance between rights, obligations, and the punishments or sanctions imposed. In addition to equality, *balance* is also an essential element of justice. Justice ensures social balance in society and guarantees that the rights of every individual are protected and fulfilled. Legal utility is closely related to the concept put forward by Jeremy Bentham: "*the greatest happiness of the greatest number.*" This means that utility is always associated with maximizing happiness for as many people as possible. (Inggal Ayu Noorsanti: 2003) Essentially, the concept of utility achieved through happiness is a concept in which happiness should be determined by the majority. The existence of the state and law is aimed at providing true benefit, that is, to bring happiness to the majority of the people. (Van Apeldoorn: 1980) Thus, the state and the law must accommodate all parties, especially society, so that people can feel safe, comfortable, and peaceful—conditions that serve as the greatest sources of happiness for the greatest number of people. (Van Apeldoorn: 1980)

Legal certainty is closely related to the principle of truth, which can be implemented in a legal-formal sense. Legal certainty can be understood in two ways: first, the existence of general regulations allows individuals to know and understand which actions are permitted or prohibited; second, legal certainty prevents individuals from being subjected to arbitrary actions by the government. (Riduan Syahrani: 1999) Legal certainty can be achieved if it fulfills four conditions: (1) positive law must be established by legislation; (2) the law must be based on facts or actual events; (3) the facts must be clearly formulated to avoid misinterpretation of the law; and (4) positive law should not be easily altered. Legal protection can be defined as the safeguarding of human rights that have been violated by the actions of others. The purpose of legal protection is to ensure that every member of society can enjoy their rights as citizens. Legal protection is an effort made by law enforcement to provide a sense of security and to prevent threats or disturbances from other parties or individuals. (Satjipto Rahardjo: 2000) Legal protection is divided into two forms: preventive and repressive.

## METHOD

This type of research is normative legal research or juridical normative research. The approaches utilized include the statutory approach, the conceptual approach, and the case approach. This legal research is based on secondary data obtained through a literature review. The types and sources of legal materials consist of: primary legal materials, which include various statutory regulations; secondary legal materials, which are drawn from legal journals, articles, and previous research findings; and tertiary legal materials, such as the *Kamus Besar Bahasa Indonesia*, English dictionaries, and other reference works. The legal material search technique adopted by the researcher is a library-based study aimed at answering the legal issues raised in this research. In addressing the legal problems posed in this thesis, a descriptive-qualitative analysis is applied. The above analysis was carried out on the legal materials previously obtained. This analysis is conducted on the legal materials previously collected. The term qualitative analysis refers to an analysis conducted by describing the obtained legal materials as they are, within a particular context or specific condition. (Soerjono Soekanto: 2005)

## RESULTS AND DISCUSSIONS

### **Judicial Considerations That Lead to Sentencing Disparities in Domestic Neglect Criminal Cases, Reviewed by Decision Number 575/Pid.Sus/2017/PN Kpn and Decision Number 95/Pid.Sus/2024/PN Tim.**

Disparities in a criminal offense can be classified into several categories, including: (Judicial Commission of the Republic of Indonesia: 2014)

- a. Disparities in sentencing for the same criminal offense;
- b. Disparities in sentencing by different panels of judges for the same offense;
- c. Disparities in sentencing handed down by a single panel of judges;
- d. Disparities in sentencing for offenses of the same degree of seriousness.

In the category of "disparities in sentencing for the same criminal offense," there exists a similarity in the offenses charged. Based on the articles applied and the nature of the cases, it can be said that both cases in Decision Number 575/Pid.Sus/2017/PN Kpn and Decision Number 95/Pid.Sus/2024/PN Tim are similar in nature. The article

applied in both decisions is Article 49 letter a of the Law on the Elimination of Domestic Violence. However, the sentences handed down differ, particularly in Saiful's case, where he received a suspended sentence, meaning he was not required to serve the imposed prison term. This contrasts with Jopi Rumaropen, who did not receive a suspended sentence. The disparity also falls under the category of "disparities in sentencing by different panels of judges for the same offense." In Decision Number 575/Pid.Sus/2017/PN Kpn, Saiful was sentenced to six (6) months of imprisonment. However, the panel of judges ruled that "the prison sentence need not be served unless there is a further order by a judge due to the defendant committing another offense during a probationary period of one (1) year."

The judges based their decision on the following considerations: "the defendant did not lose his job, he was still able to provide school fees and living expenses for his child. Additionally, the defendant fulfilled his obligations as stated in a written declaration attached to his defense statement, in which he agreed to provide his wife with a monthly allowance of IDR 500,000 (five hundred thousand rupiahs)." In Decision Number 95/Pid.Sus/2024/PN Tim, Jopi Rumaropen a.k.a. Yopi was sentenced to six (6) months in prison. The judges did not rule that this was a suspended sentence. They also did not consider Jopi Rumaropen's intention, willingness, or good faith to reconcile with his wife and child. This was evident from a peace agreement reached, under which Jopi Rumaropen agreed to pay his wife IDR 75,000,000 (seventy-five million rupiahs). It was also noted that the wife had agreed to the terms. This explanation forms the basis for the sentencing disparity and meets the category of "disparities in sentencing by different panels of judges for the same offense."

Disparity also falls under the category of "disparities in sentencing for offenses of the same degree of seriousness." Speaking of "the same degree of seriousness" refers to the consequences of domestic neglect. Domestic neglect has serious impacts on the spouse and children. (Endang Hadiati: 2021) These serious consequences may include psychological issues such as trauma and depression, social problems, and developmental issues in children. (Debi Cahya Damayanti: 2023) It also affects the survival and well-being of the wife and children. They may experience a deprived and painful life. Based on this explanation, domestic neglect has severe consequences for both spouse and children. However, even with the same level of seriousness, the two cases received different sentences. Saiful received a suspended sentence, while Jopi Rumaropen received a prison sentence without suspension. The judicial considerations that led to this difference can be seen from the mitigating and aggravating factors in Decision Number 575/Pid.Sus/2017/PN Kpn and Decision Number 95/Pid.Sus/2024/PN Tim.

### **Decision Number 575/Pid.Sus/2017/PN Kpn and Decision Number 95/Pid.Sus/2024/PN Tim Have Fulfilled the Principles of Justice, Utility, and Legal Certainty**

In Decision Number 575/Pid.Sus/2017/PN Kpn and Decision Number 95/Pid.Sus/2024/PN Tim, the principle of justice was fulfilled by the Panel of Judges in Decision Number 575/Pid.Sus/2017/PN Kpn, whereas in Decision Number 95/Pid.Sus/2024/PN Tim, the principle of justice was not fulfilled. This is due to the fact that the elements of equality, proportionality, and balance were not met in Decision Number 95/Pid.Sus/2024/PN Tim. These elements were only fulfilled in Decision Number 575/Pid.Sus/2017/PN Kpn. The failure to uphold the principle of justice in Decision Number 95/Pid.Sus/2024/PN Tim stems from the Panel of Judges' lack of consideration that the sentence could lead to Jopi Rumaropen losing his job and being unable to provide for his wife and children. Furthermore, the judges did not take into account the agreement made between Jopi Rumaropen and his wife regarding the form of responsibility that Jopi Rumaropen was to bear, namely the provision of financial support to meet the living needs of his wife and children. According to the author, this decision ultimately disadvantages Jopi Rumaropen's wife and children.

From the perspective of the principle of utility, the Panel of Judges in Decision Number 575/Pid.Sus/2017/PN Kpn fulfilled the principle of utility, whereas in Decision Number 95/Pid.Sus/2024/PN Tim, the panel failed to provide legal benefits for the victim. The imposition of a six-month prison sentence on Jopi Rumaropen did not provide a sense of legal utility to his wife and children. In this case, although society might feel satisfied with the sentence, considering Jopi Rumaropen's actions were perceived as disturbing, the author argues that society was not directly impacted or harmed by the domestic neglect committed by Jopi Rumaropen. The directly affected parties were his wife and children. The six-month prison sentence without suspension caused Jopi Rumaropen to lose his job, making him unable to fulfill the financial obligations outlined in the peace agreement with his wife. Moreover, the loss of employment hindered Jopi Rumaropen from optimally fulfilling the daily needs of his wife and children, particularly in terms of providing financial support.

From the standpoint of legal certainty, both Decision Number 575/Pid.Sus/2017/PN Kpn and Decision Number 95/Pid.Sus/2024/PN Tim have upheld legal certainty. This is because both decisions met the essential elements of legal certainty. According to Satjipto Rahardjo (2012), these elements include:

a. Law is a positive construct, meaning it refers to codified laws and regulations;

- b. Law must be based on facts or actual events that have previously occurred;
- c. The facts must be formulated clearly to avoid misinterpretation and ensure ease of enforcement;
- d. Positive law must not be easily altered.

## CONCLUSION

Based on the results and analysis presented in the previous chapter, the following conclusions can be drawn :

- a. The consideration that “the defendant did not lose his job and was still able to provide for his child’s education and living expenses. Additionally, the defendant was able to fulfill his obligations as stated in a declaration attached to his defense, wherein he expressed his willingness to provide financial support to his wife in the amount of IDR 500,000.00 (five hundred thousand rupiah) per month,” as used in Decision Number 575/Pid.Sus/2017/PN Kpn, served as the basis for the sentencing disparity with Decision Number 95/Pid.Sus/2024/PN Tim. Consequently, the criminal sentences imposed in the two cases differed. Furthermore, both Decision Number 575/Pid.Sus/2017/PN Kpn and Decision Number 95/Pid.Sus/2024/PN Tim exhibit disparities that meet the criteria for: “disparity in the same criminal offense,” “disparity in sentencing by different panels of judges for the same offense,” “disparity in sentencing by the same panel of judges,” and “disparity between offenses of equivalent seriousness.”
- b. The decision rendered by the panel of judges in Decision Number 575/Pid.Sus/2017/PN Kpn is deemed to have fulfilled the principles of justice, legal utility, and legal certainty. This is evident from the potential positive impact on Saiful’s wife and child, whose living conditions could improve and no longer be neglected, unlike their situation during the period of domestic abandonment by Saiful. This decision could truly realize the principles of justice, utility, and certainty provided that Saiful indeed fulfills the responsibilities outlined in the judges’ considerations. In contrast, the decision rendered in Decision Number 95/Pid.Sus/2024/PN Tim provided legal certainty only to parties with direct legal interests in the case. However, it failed to fulfill the principles of justice and legal utility, particularly for the victims in this case, Jopi Rumaropen’s wife and child.

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