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### Policy on Application of Evidence Tools of Psychiatric Expert's Testimonials in Proof of Crimes of Psychical Violence in the House

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#### Abstract

Crimes regulated in the PKDRT Law consist of four types, namely: physical violence, sexual violence, psychological violence and domestic neglect. Normatively, types of domestic violence have their own specifications or characteristics. Domestic psychological violence as one of the criminal acts in the PKDRT Law has different characteristics from other criminal acts because the nature of psychological violence cannot be seen with the naked eye so only with evidence from a psychologist's testimony can it be proven that there is psychological violence against the victim. The criminal act. The urgency of providing evidence for psychiatric expert testimony in proving criminal acts of domestic psychological violence is reviewed from the evidentiary system based on Article 183 of the Criminal Procedure Code, as well as the correlation between psychiatric expert testimony and the judge's confidence in proving criminal acts of domestic psychological violence, then formulating a concept for implementing psychiatric examinations in cases of psychological violence in the household which are oriented towards the goal of finding material truth in criminal law in the future. The problem of differences in the application of the law in proving criminal cases of domestic psychological violence, gives rise to legal uncertainty and even deviates from the objectives of proof in

the Criminal Procedure Code. To resolve this problem, it is necessary to establish regulations in the form of a Joint Decree between the Chief Justice of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of Police of the Republic of Indonesia and the Minister of Health of the Republic of Indonesia regarding guidelines for handling cases of domestic psychological violence which can be used as a basis for law enforcers, especially judges, in understanding and implementing them. The nature of the importance of evidence from a psychologist's testimony in proving criminal acts of domestic psychological violence. Apart from integrating regulations to support evidence, another important thing is increasing human resources in the form of education and training or certification for investigators, public prosecutors and judges who meet the requirements as special law enforcers for domestic psychological violence. In fact, to maintain the binding force of the regulations that have been made, in practice if it is found that law enforcement officials are not implementing the decisions as they should, or there is a violation of the norms in the regulations, then the action is to be given sanctions in accordance with the provisions that apply to each institution. Law enforcer.

**Keywords:** Application Policy, Psychiatric Expert Information, Domestic Psychological Violence

#### Introduction

Domestic violence is a special criminal act regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence (hereinafter referred to as the PKDRT Law).<sup>1</sup> The explanation of UU PKDRT states that legal reform that favors vulnerable or subordinate groups, especially women, is very necessary due to the increasing number of cases of violence in the domestic sphere. The PKDRT Law is the result of the long struggle of Indonesian women and was formed with the aim of protecting women in particular from domestic violence.<sup>2</sup>

<sup>1</sup> Moerti Hadiarti Soeroso, *Kekerasan Dalam Rumah Tangga Dalam Perspektif Yuridis-Victimologis*, (Jakarta, Sinar Grafika, 2010), h. 89

<sup>2</sup> Ester Lianawati, *Konflik Dalam Rumah Tangga; Keadilan dan Kepedulian Proses Hukum Perspektif Phisikologi Feminis*, (Yogyakarta, Paradigma Indonesia, 2020), h.153-154

Before the PKDRT Law came into existence, it was as if acts of violence had never occurred within the household scope, because handling the problem of acts of domestic violence was always too late. This means that victims or their families only report the violence that occurs after they have suffered serious injuries or even died. These criminal acts are usually prosecuted under Article 351 of the Criminal Code (hereinafter referred to as the Criminal Code) concerning Assault or Mistreatment that Causes the Death of the Victim (Article 351 paragraph (3) of the Criminal Code). This case is "only" classified as an ordinary criminal act, not a special offense, namely domestic violence.

Since the enactment of the PKDRT Law, these types of crimes have been specifically regulated in law, namely physical violence, psychological violence, sexual violence and domestic neglect. Apart from regulating prevention, protection and recovery for victims of domestic violence. Types of domestic violence consist of physical, psychological violence or domestic neglect. Domestic psychological violence is an act that results in fear, loss of self-confidence, loss of ability to act, a feeling of helplessness, and/or severe psychological suffering in a person.<sup>3</sup>

The law of evidence in Indonesian criminal procedural law since the enactment of the Het Herziene Indonesisch Reglement (hereinafter referred to as H.I.R) then and now the KUHAP consistently follows the same system. Article 294 paragraph 1 H.I.R states; no one may be subject to punishment, except if the judge is convinced by valid evidence, that an act that may be punished has indeed occurred and that the person accused is the one who was wrong about the act<sup>4</sup>. This system was later adopted and perfected in Article 183 of the Criminal Procedure Code which states: a judge may not impose a crime on a person unless, with at least two valid pieces of evidence, they are convinced that a criminal act has actually occurred and the defendant is guilty of committing it.

A defendant can be declared guilty if the guilt charged against him can be proven in a manner and with legal evidence according to law and at the same time the guilt is proven along with the judge's conviction<sup>5</sup>, M. Yahya Harahap stated that based on the negative legal evidence system, there are two components to determine whether a defendant is guilty or not, namely:

1. Proof must be carried out in a manner and with valid evidence according to law.
2. The judge's confidence must also be based on methods and evidence that are valid according to law.<sup>6</sup>

Meanwhile, Lilik Mulyadi stated that things that are generally known do not need to be proven. Things that are generally known are usually called *notoire feiten* (article

<sup>3</sup> Adami Chazawi, *Hukum Pembuktian Tindak Pidana Korupsi*, (Bandung, Alumni, 2006), h.24-25

<sup>4</sup> R. Tresna, *Komentar HIR*, (Jakarta, Pradnya Paramita, 2000), h.237

<sup>5</sup> Wahyudi, *Hukum Pembuktian Dalam Perkara Pidana untuk Mahasiswa dan Praktisi*, (Bandung, Mandar Maju, 2004), h.39

<sup>6</sup> M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali. Edisi Kedua*. (Jakarta, Sinar Grafika, 2008), h. 279.

184 Paragraph (2) of the Criminal Procedure Code). In general, *notoir facts* are divided into 2 (two) groups, namely:

1. Something or event that is publicly known, that this thing or event is the right thing or should be like that.
2. A reality or experience that always and always results in this or always results in such a conclusion.

In connection with this research, it will scientifically examine the evidence of testimony from psychologists in proving criminal acts of domestic psychological violence. This is based on the fact that proof of the existence of criminal acts of psychological violence has very different characteristics from proof carried out in other criminal acts. The fact is that psychological violence is violence that cannot be seen physically on the victim of the crime. Acts of domestic violence have significant physical, mental and sexual consequences<sup>7</sup>.

Psychology is a science that studies individual behavior in interacting with their environment, including motor, cognitive, conative and effective behavior. Forensic psychology (forensic psychology), is a branch of psychology in preparing information for court purposes (psychology in court).<sup>8</sup> while forensic psychology according to the Psychological Dictionary, its scope discusses legal psychology, courts and procedures that are valid according to law and law, specifically discussing the nature of evidence and whether the evidence can be trusted..<sup>9</sup>

In general, forensic psychology is built by two scientific disciplines, namely psychology and law, which gave birth to forensic psychology. The application of psychologist assistance to find material truths in conducting examinations of mentally disturbed perpetrators of criminal acts and/or examinations of victims of criminal acts, can make its own contribution to the justice system.<sup>10</sup> forensic psychiatry<sup>11</sup>, psychiatry which studies the legal aspects of mental disorders. Referring to the scope of forensic psychology and forensic psychiatry, scientifically there is a correlation between the evidentiary process in the context of law enforcement and psychology and psychiatry.

Writing about the relationship between law and policy regarding the application of information from psychologists in relation to acts of psychological violence in the household has not been widely written in journals or other references, so this article will discuss this matter scientifically. Forensic psychiatry is a branch of medical science dealing with disorders of the mind and its relationship with legal principles. Judicial mental medicine (forensic psychiatry) is a subspecialization of mental medicine (psychiatry) which

<sup>7</sup> Zikra Zikra dalam Y.A. Triana Ohoiwutun, Fiska Maulidian Nugroho, Samsudi, Ari Dewanto *Peran Ahli Jiwa Dalam Pembuktian Tindak Pidana Kekerasan Psikis Dalam Rumah Tangga*, (Jakarta, Jurnal Veritas Et Justitia, Jurnal Ilmu Hukum, Volume 8 No.1, Juni 2022), h.221

<sup>8</sup> Y.A.Triana Ohoiwutun, Fiska Maulidian Nugroho, Samsudi Samsudi, Ari Dewanto, Op.Cit, h.222

<sup>9</sup> C.P. Chaplin (penerjemah Kartini Kartono), Dalam.Y.A. Triana Ohoiwutun, Op.Cit, h. 223

<sup>10</sup> Y.A. Triana Ohoiwutun dan Muhammad Afiful Jauhani, *Integrasi Ilmu Kedokteran Forensik Aplikasi Saintifik dan Komprehensif Ilmu Kedokteran Dalam Penegakan Hukum*, (Depok, Raja Grafindo Persada, 2021), h.230

<sup>11</sup> Ibid, h.220-221

specializes in cases of mental disorders related to criminal acts committed by mentally disturbed perpetrators. Regulation of the Minister of Health of the Republic of Indonesia Number 45 of 2017 concerning Licensing and Implementation of Clinical Psychologist Practices (hereinafter referred to as the Minister of Health Regulation concerning IPPPK) states that clinical psychology services are defined as all activities providing clinical psychology services and practices to help individuals and/or groups intended for examination and intervention. psychology for promotive, preventive, curative, rehabilitative and palliative efforts in clinical psychology problems<sup>12</sup>.

Furthermore, Article 18 of the Minister of Health Regulation concerning IPPPK states that in carrying out examinations that are relevant to legal interests as intended in Article 17 paragraph 2 letter "f" and determining and implementing clinical psychology interventions carried out for legal purposes as intended in Article 17 paragraph (5), psychologists Clinicians must obtain special knowledge that includes at least: a) Understanding criminal and civil law, and b) Understanding the relationship between clinical psychological practice for the purposes of criminal and civil law.

The role of expert psychiatric testimony (forensic psychology and/or forensic psychiatry) is equally important, but its existence is not widely understood in proving cases of domestic psychological violence in court. Victims of domestic psychological violence have the potential to experience depression, stress and trauma which requires explanation from a psychologist because this is very important for the judge in assessing the perpetrator's guilt and proving the case itself. Important issues to be studied include the importance of psychiatric expert testimony in the context of proving criminal acts of domestic psychological violence, viewed from the evidentiary system that has been regulated under the Criminal Procedure Code.

The urgency of a psychiatrist's testimony is an important piece of evidence in relation to proving psychological violence in the household. It needs to be given certainty to be presented at trial as evidence because it is closely related to the judge's efforts to obtain a conviction as stipulated in Article 183 of the Criminal Procedure Code. and will reveal the material truth that violence has occurred. psychology in the household. In fact, in several cases which were used as material for study in this paper, it was found that there was no uniformity in the application of evidence in court through legal evidence, but then without supporting evidence from the testimony of mental experts (forensic psychology and forensic psychiatry), the judge then stated that this had happened. domestic psychological violence.

VeRP is a type of post mortem which is made to determine a person's mental status using the science of practice and based on the results of a psychiatric examination <sup>13</sup>. The Minister of Health Regulation on PPKJ UKPH states that VeRP is a statement from a specialist psychiatrist in the form of a letter as a result of a mental health examination of a person at a health service facility for law enforcement purposes. Mental Health Examinations for the purposes of law enforcement in criminal cases can only be carried out on

<sup>12</sup> Permenkes tentang IPPPK, Pasal 1 Angka 2

<sup>13</sup> Willa Wahyuni, *Cara Pembuktian ke Pengadilan Terkait Kasus Kekerasan Psikis Dalam Rumah Tangga*, (Hukum Online.com, Jakarta, 07 April 2022).

the basis of an official request letter from an agency, namely the Police, Prosecutor's Office, Court or other state law enforcement agency as determined by law.<sup>14</sup>

Based on the decisions used as a study in this writing, the author found problems related to the mechanism for proving cases of domestic psychological violence, based on valid evidence, especially testimony or testimony from psychiatric experts on the one hand, while on the other hand it is also the fact that there was a case of psychological violence which the Panel of Judges declared guilty, but this was not supported by expert testimony or psychiatric expert testimony which was legally required to be heard at trial. The lack of uniformity in the application of evidence in the decisions that this paper is studying is very interesting because in the practice of proving criminal cases, conflicts in the application of legal norms are found which must be straightened out and a legal solution can be found.

If a criminal act of domestic psychological violence is proven, it must be tested with evidence from a mental expert or at least through the results of a forensic psychological and/or forensic psychiatric examination. Based on the background of the problem as the author has described above, the problem can be formulated as follows:

1. What is the urgency of a psychiatrist's testimony in the system of proving criminal acts of domestic psychological violence in terms of the theory of legal certainty?
2. What is the correlation between the testimony of a psychiatrist and the judge's confidence in proving criminal acts of domestic psychological violence in terms of the evidentiary system in the Criminal Procedure Code?
3. How is the application of psychiatric examination in cases of domestic psychological violence oriented towards finding material truths in criminal law in the future?

## Research Methods

Methods are processes, principles and procedures for solving a problem. In fact, what is meant by research methods are ways of thinking and acting, namely being well prepared to conduct research and to achieve a research objective.<sup>15</sup> Legal research (legal research). This writing was carried out based on the type of normative legal research or doctrinal legal research, namely research using secondary data sources or also called library legal research. This research used at least three approaches, namely the Legislative Approach, Conceptual Approach and Case Approach.<sup>16</sup>

## Discussion

### 1. The Urgency of Psychiatric Expert Testimony in the Evidence System for Crimes of Domestic Psychiatric Violence Seen from the Theory of Legal Certainty

Psychological violence that occurs in the household is often considered just "spice" in a marriage and is even considered

<sup>14</sup> Enser Rovido, S.Kep, *Visum Et Repertum*, (Belitung, Rumah Sakit Jiwa Daerah Provinsi Kepulauan Bangka Belitung, 20 Juni 2022).

<sup>15</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, (Jakarta, Pranada Media, 2017), h.47

<sup>16</sup> Johni Ibrahim, *Teori & Metodologi Penelitian Normatif*, cet.III, (Malang, Bayumedia Publishing,2007),h. 321

normal so that it is inappropriate for outside parties to interfere in it, even though psychological violence in the household is an unlawful act for which the perpetrator should be subject to criminal sanctions<sup>17</sup>.

Proving criminal procedural law is very important in the process of examining criminal cases in court. Basically, the evidentiary system is a regulation of the types of evidence used, the description of the evidence, and the way the evidence is used and the way the judge forms his beliefs in court. Evidence is considered very important in criminal procedural law because what is sought in the examination of criminal cases is material truth which is the aim of criminal procedural law itself.

To find the truth in a case, evidence is the most important method used by a judge to determine whether or not the defendant committed the act charged or to obtain the basis for passing a decision in resolving a case. Therefore, judges must be careful, careful and mature in assessing and considering evidentiary issues. In contrast to proof in other cases, proof in criminal cases starts from the preliminary stage, namely investigation and investigation.

One piece of evidence that can be used to reveal acts of psychological violence is documentary evidence. There are many types of documentary evidence, one of which is a report in written form made by judicial medical experts or commonly known as Visum et Repertum. Visum et Repertum itself is not specifically stated in the Criminal Procedure Code, but Visum et Repertum functions as a written report for judicial purposes at the request of authorized law enforcers, especially investigators.

Visum et Repertum is an expert statement made by a doctor in accordance with the agreement between the Indonesian Judges Association (IKAHI) and the Indonesian Doctors Association (IDI) in 1986 in Jakarta, namely to differentiate it from other expert certificates and is made based on everything seen and found during the examination of evidence, based on the oath when accepting the position, and based on his best knowledge<sup>18</sup>.

As has been stated, Article 183 of the Criminal Procedure Code states that in order for a judge to declare a person proven guilty or not proven to have committed a criminal act for which he is accused, it must be based on a minimum of two valid pieces of evidence before the judge can gain confidence about the existence of a criminal act and that the defendant is the perpetrator. This obligation is linked to the attitude of the Panel of Judges at the Blambangan Umpu District Court in the Decision of the Blambangan Umpu District Court Number: 110/Pid.B/2011/PN.BU dated 06 July 2011 in the legal considerations section on pages fourteen to page fifteen. The Panel of Judges at the Blambangan Umpu District Court did not clearly show what evidence was used by the Panel of Judges until the Panel of Judges arrived at the belief that there was psychological violence in the household committed by the defendant.

Legal considerations, which should be based on legal facts and derived from the correspondence between valid evidence, are not shown at all in the description of the decision. Meanwhile, on the other hand, it has been stated

<sup>17</sup> Edwin Manumpah, *Kajian Kekerasan Dalam Rumah Tangga Terhadap Psikologi Anak*, e-journal (Halmahera Barat, Acta Diuma Volume V No.1, 2016), h. 1

<sup>18</sup> Abdul Mun'im Idries, *Pedoman Praktis Ilmu Kedoteran Forensik*, (Jakarta, Sagung Seto,2009), h.10

that to find out about the existence of psychological violence in the household, the main evidence in the sequence of evidence is the testimony of a psychologist and/or VeRP so that you know about the crime.

Based on the description of the case in the decision of the Blambangan Umpu District Court Number: 110/Pid.B/2011/PN.BU dated 06 July 2011 and the Decision of the Lumajang District Court Number: 173/Pid.Sus/2014/PN.Lmj dated 13 July 2015, it was found a real situation that the cases in these decisions are not supported by the provisions of evidence in the form of statements from psychologists and/or documentary evidence in the form of VeRP. In these two decisions, the defendant was declared proven to have committed psychological violence in the household based solely on an opinion that came down to the judge's conclusion alone. Therefore, what about the aspects of legal certainty that must be provided in every criminal justice practice in Indonesia.

Based on the description of the case in these decisions, it is known that the decision of the Kuningan District Court Number: 84/Pid.Sus/2017/PN.Kng dated 4 October 2017 in terms of the evidence presented in the trial by the Public Prosecutor contained evidence in the form of testimony from a psychologist. namely a psychologist who is presented directly in court and heard under oath. Apart from the psychologist's testimony, at the trial, documentary evidence was also presented and read in the form of a Psychological Examination Results Certificate which in its description stated that as a result of the defendant's actions, the victim experienced a state of destruction of self-esteem and loss of self-confidence.

A different situation is found in the decisions of the Kuningan District Court and the South Jakarta District Court where the case is accompanied by evidence from a psychologist's testimony and/or documentary evidence in the form of VeRP. This means that there are two models of law enforcement practice that occur in similar cases, so how this legal practice answers aspects of legal certainty related to law enforcement efforts is reflected in these decisions. The differences in evidentiary practices in the cases that are the subject of this writing prove that there are disparities in legal practices among the public, the result of which is that the quality of law enforcement has not been able to provide legal certainty or benefits to the Indonesian people.

Article 55 of the PKDRT Law states in essence that as a valid form of evidence, the testimony of a witness is sufficient to prove that the defendant is guilty if accompanied by other valid evidence. This implies that the victim's witness statement plus one other piece of evidence is sufficient to prove that the defendant is guilty and is sufficient for the judge to sentence the defendant.

This article basically contradicts the principle of unus testis nullus testis (one witness is not a witness) but in the situation regarding the difficulty of proving domestic violence, the KUHAP opens up opportunities for the emergence of transitional articles due to the existence of special provisions that apply outside the KUHAP, as stated in Article 284 Paragraph (2) KUHAP which states that; Within two years after this law is promulgated, the provisions of this law will apply to all cases, with the temporary exception of special criminal procedure provisions as stated in certain laws, until there are changes and/or they are declared no longer valid.

Article 284 Paragraph (2) of the Criminal Procedure Code is almost the same as Article 103 of the Criminal Code which states that the provisions in Chapters I to Chapter VIII of this book also apply to acts which by other statutory provisions are punishable by criminal penalties, unless by law. the law stipulates otherwise. Article 103 of the Criminal Code is also called the bridge article, namely the article that connects the Criminal Code with criminal law outside the Criminal Code. This is related to the principle of *lex specialis derogate legi generalis*, which means that specific laws (*lex specialis*) override general laws (*lex generalis*). Therefore, the PKDRT Law can override the regulations in the Criminal Code and Criminal Procedure Code<sup>19</sup>

Carrying out an examination of the victim to prove that the victim had indeed experienced violence which caused his psychology to be disturbed was carried out by a team formed by the head of the health service facility through a decree from the head of the health service facility. The team consists of one Dr. SpKJ (psychiatric specialist) who doubles as the team leader and maker of VeRP, assisted by at least two other health workers including another Dr. SpKJ, Dr. Sp (specialist doctor), general practitioner, clinical psychologist, and nursing staff. SpKJ doctors are tasked with carrying out comprehensive psychiatric examinations, leading meetings and summarizing the findings of examinations carried out by other health workers and compiling VeRP.

## **2. Correlation between the testimony of mental experts and the judge's confidence in proving criminal acts of domestic psychological violence in terms of the evidence system in the Criminal Procedure Code**

Discussing the correlation between the testimony of psychologists and the judge's confidence in proving criminal acts of domestic psychological violence in terms of the evidentiary system in the Criminal Procedure Code, in principle, several important things will be explained and discussed as sub-discussions, namely; The relationship between the testimony of a psychologist and the process of gaining the judge's confidence in proving the crime of psychological violence in the household, then this relationship is related to the evidence in court which relies on the applicable evidence system and is regulated in the Criminal Procedure Code.

As explained in the previous section, the evidence that applies in the Criminal Procedure Code is (*Negatief Wettelijke Bewijs Theorie*), namely a system of evidence that is based on the judge's belief, where this belief arises from evidence in law and this is confirmed in the provisions of Article 183 of the Criminal Procedure Code. that the judge obtains confidence in the evidence based on a minimum of two valid pieces of evidence.

Evidence carried out in criminal procedural law is to obtain the material truth regarding a criminal act presented in court. This means that both the requirements for the evidence presented in the trial and the purpose of the evidence itself have a close correlation or relationship and then from the evidentiary mechanism implemented, from there the judge

<sup>19</sup> Husni Thamrin, Eli Tri Kursiswanti, Ira Pebriani, *Tinjauan Yuridis Terhadap Pembuktian Tindak Pidana Kekerasan Psikis Dalam Lingkup Rumah Tangga*, (Collegium Studiosum Journal Vol.4 No.1, 2021), h.5

will gain confidence whether a crime of psychological violence in the household has really occurred or not.

Article 183 of the Criminal Procedure Code states that in order for a judge to declare a person proven guilty or not proven to have committed the criminal act he or she is charged with, it must be based on a minimum of two valid pieces of evidence before the judge can gain confidence that a crime has occurred and that the defendant is the perpetrator. This obligation is linked to the attitude of the Panel of Judges at the Blambangan Umpu District Court in the Decision of the Blambangan Umpu District Court Number: 110/Pid.B/2011/PN.BU dated 06 July 2011 in the legal considerations section on pages fourteen to page fifteen.

The Panel of Judges at the Blambangan Umpu District Court did not clearly show what evidence was used by the Panel of Judges until the Panel of Judges arrived at the belief that there was psychological violence in the household committed by the defendant. Legal considerations should be based on legal facts and originate from the correspondence between valid evidence, which is not shown at all in the description of the decision. Meanwhile, on the other hand, it has been stated that to find out about the existence of psychological violence in the household, the main evidence in the sequence of evidence is the testimony of a psychologist and/or VeRP so that you know about the crime. The next legal consideration was by the Panel of Judges at the Lumajang District Court in the Decision of the Lumajang District Court Number:

173/Pid.Sus/2014/PN.Lmj dated 13 July 2015, where in this decision the Panel of Judges at the Lumajang District Court provided an assessment in the decision on page fourteen Up to page fifteen, we found a form of consideration that was almost the same as the decision of the Blambangan Umpu District Court, where the description of the legal considerations of the Lumajang District Court was basically based on opinions that were not supported by evidence from psychologists and/or VeRP so that it would be known about the existence of fear experienced by the victim as a result of the words made by the defendant, but the Panel of Judges immediately stated their opinion that the defendant's words caused fear in the victim.

Based on the description of the case in the decision of the Blambangan Umpu District Court Number: 110/Pid.B/2011/PN.BU dated 06 July 2011 and the Decision of the Lumajang District Court Number: 173/Pid.Sus/2014/PN.Lmj dated 13 July 2015, it was found a real situation that the cases in these decisions are not supported by the provisions of evidence in the form of statements from psychologists and/or documentary evidence in the form of VeRP. In these two decisions, the defendant was declared proven to have committed psychological violence in the household based solely on an opinion that came down to the judge's conclusion alone. Therefore, what about the aspects of legal certainty that must be provided in every criminal justice practice in Indonesia.

This is different from the trial evidence and legal considerations in the decision of the Blambangan Umpu District Court Number: 110/Pid.B/2011/PN.BU dated 06 July 2011 and the decision of the Lumajang District Court Number: 173/Pid.Sus/2014/PN.Lmj dated 13 July 2015 which the author has described above. In the decision of the Kuningan District Court Number: 84/Pid.Sus/2017/PN.Kng dated 4 October 2017 and the decision of the South Jakarta

District Court Number: 1303/Pid.B/2012/PN.Jkt.Sel dated 29 January 2012.

Based on the description of the case in these decisions, it is known that the decision of the Kuningan District Court Number: 84/Pid.Sus/2017/PN.Kng dated 4 October 2017 in terms of the evidence presented in the trial by the Public Prosecutor contained evidence in the form of testimony from a psychologist, namely a psychologist who is presented directly in court and heard under oath. Apart from the psychologist's testimony, at the trial, documentary evidence was also presented and read in the form of a Psychological Examination Results Certificate which in its description stated that as a result of the defendant's actions, the victim experienced a state of destruction of self-esteem and loss of self-confidence.

The differences in the application of the law of evidence and the submission of evidence in trials of cases of domestic psychological violence relating to the decisions in this thesis certainly give rise to the critical question of how the law of evidence as regulated in the Criminal Procedure Code should be applied to provide legal certainty for both victims and the public interest who receives the final product of the justice.

According to Kelsen, law is a system of norms. Norms are statements that emphasize the "should" or das sollen aspect, by including several rules about what should be done. Norms are the product of deliberative human action. Laws containing general rules serve as guidelines for individuals to behave in society, both in their relationships with fellow individuals and in their relationships with society. These rules become limits for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty.

Hans Kelsen's opinion above places legal norms as the basis for enforcing the law. The problem in practice, as reflected in the description of the legal considerations of the four decisions that became the study of this thesis, was that law enforcement officers (Police Investigators, Public Prosecutors and Judges) were aware of the provisions of Article 183 of the Criminal Procedure Code which became a guideline in law enforcement practices which were supported by provisions of Article 184 Paragraph (1) of the Criminal Procedure Code, but in fact the Panel of Judges at the Blambangan Umpu District Court and the Lumajang District Court, carried out different evidentiary practices and should not have done so because the decisions of the two courts were not supported by evidence of testimony from psychologists and/or VeRP even though the means to find out regarding psychological violence in the household is only available from the testimony of psychologists and/or VeRP.

In connection with the correlation between evidence from a psychologist's testimony and aspects of the judge's confidence in proving the crime of domestic psychological violence, viewed from the evidence system in the Criminal Procedure Code, it is very important and determines the outcome of a case. This is important because based on the provisions of Article 183 of the Criminal Procedure Code, it reaffirms that the judge's belief is obtained from a minimum of two valid pieces of evidence in the trial, but this correlation is not very visible in the evidentiary practice by the Panel of Judges at the Blambangan Umpu District Court and the Lumajang District Court which is reflected in the decision that is studied in this writing.

The legal principle inherent in the judge's belief is that it is valid evidence presented in the trial, but in fact the Panel of Judges at the Blambangan Umpu District Court and the Lumajang District Court did not pay attention to this correlation, that the provisions of Article 183 referred to in legal practice are not just two formalities. evidence but the quality of the evidence presented in the trial. The nature of psychological violence which cannot be seen with the naked eye, essentially requires primary evidence in the form of testimony from a psychologist and/or documentary evidence in the form of VeRP or the results of a psychological examination. With the support of these pieces of evidence, we can qualitatively obtain legal facts about the occurrence of psychological violence, but this was not found in the cases decided by the Blambangan Umpu District Court or the Lumajang District Court.

Evidence, which is the most important part of criminal procedural law, regulates how the state, through its instruments, exercises its right to convict and impose crimes. Evidence is the central point of case examination in court hearings, therefore evidence is the provisions that contain outlines and guidelines regarding methods permitted by law to prove the guilt of the accused.<sup>20</sup>

Next, the Panel of Judges considers whether, using the evidence presented by the Public Prosecutor and the evidence, whether the defendant can be blamed or not. The description of the legal facts from the evidence submitted by the Public Prosecutor which originates from the correspondence between the information or opinion of the psychologist and the documentary evidence, legally confirms that the incident of domestic psychological violence actually occurred and was experienced by the victim. This was confirmed by the Panel of Judges at the Kuningan District Court stating on page nineteen that the defendant was proven to have committed the crime of domestic psychological violence.

Based on the description of the importance of evidence from a psychologist's testimony as absolute evidence to be presented in proving criminal acts of domestic psychological violence, the correlation between these pieces of evidence in order to give rise to the judge's confidence is very important. In providing evidence with other evidence such as statements from witnesses, evidence as evidence and evidence from the defendant's statement, the provisions mandated in Article 183 of the Criminal Procedure Code must fulfill the need for evidence carried out in connection with the crime of domestic psychological violence.

### **3. Application of Psychiatric Examinations in Cases of Domestic Psychological Violence Oriented to the Discovery of Material Truth in Criminal Law in the Future**

The presence of a psychologist in cases of domestic psychological violence puts the presence of a psychologist and/or psychiatrist in a high bargaining position. The functionalization of forensic psychologists and forensic psychiatrists in enforcing criminal law depends on the choice of law enforcement officials in concreto, and in

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<sup>20</sup> Ksirtiawanto, dalam Wika Hawasara, Ramlani Lina Sinaulan, Tofik Yanuar Candra, *Penerapan dan Kecenderungan Sistem Pembuktian Yang Dianut Dalam KUHAP*, (Jakarta, AKSARA: Jurnal Ilmu Pendidikan Nonformal Vol.8,1, Januari 2022), h.2

examining cases of domestic violence, the choice of experts depends on the characteristics of the case, namely physical violence, psychological violence, sexual violence or domestic neglect. Doctors, psychiatrists and psychologists in several domestic violence cases are involved in examining the case from the investigation and investigation stage; specifically regarding psychological violence, both psychiatrists and psychologists are involved in "assessing" whether there is domestic violence or not<sup>21</sup>.

The focus of protection and legal interests aimed at in criminal law includes the legal interests of the state (staaterbuatelangen), the legal interests of society (sociale of maatschappelijke belangen), as well as the legal interests of individuals (individuele belangen). In an effort to prevent acts of domestic violence, the state's interest is to provide protection for the legal interests of individuals, as well as the legal interests of society, especially families. According to the view of the Indonesian people, which has not been shaken to this day, the family is a basic institution that plays an important role in the formation of a child's character and personality.<sup>22</sup>

In the legal practice of criminal evidence which is based on the Criminal Procedure Code as a guideline, the position of evidence is very important and aims to reveal the existence of a criminal act, including the importance of proving criminal acts of domestic psychological violence. As is known, the construction or position of evidence in the Criminal Procedure Code is regulated in Article 184 Paragraph (1), namely; witness statements, expert statements, documentary evidence, instructions and statements from the defendant.

The explanation and requirements as outlined above provide a procedural description of the process for carrying out psychiatric examinations for law enforcement purposes. What is the correlation with criminal acts of domestic psychological violence? Through the procedures contained in the Indonesian Minister of Health's Regulation on PPKJUKPH, it ensures that the party who can act as an applicant in submitting a request for a mental health examination is not only an investigator at the investigation level, but also a public prosecutor at the prosecution level and even a court judge at the trial level, of course paying attention to the procedures that have been established, determined in the provisions of the Republic of Indonesia Minister of Health Regulation concerning PPKJUKPH which apply regarding this matter.

Furthermore, with regard to the practice of forensic psychology, the Indonesian Minister of Health's Regulation on IPPPK states that clinical psychology services are all activities providing clinical psychology services and practices to help individuals and/or groups which are intended for psychological examination and intervention for promotive, preventive, curative, rehabilitative and palliative in clinical psychology problems.

Article 17 of the Republic of Indonesia Minister of Health Regulation on IPPPK states that in carrying out their professional practice, Clinical Psychologists have the authority to provide Clinical Psychologist Services

<sup>21</sup> Y.A. Triana Ohoiwutun, Fiska Maulidian Nugroho, Samsudi dan Ari Dewanto, *Peran Ahli Jiwa Dalam Pembuktian Tindak Pidana Kekerasan Psikis Dalam Rumah Tangga*, (<https://Jurnal Unpar.ic.id>, 22 Mei 2022) h.5,

<sup>22</sup> *Ibid*, h.7

including: a. carrying out clinical psychologist assessments; b. establishing a clinical psychology diagnosis and prognosis; c. determining and implementing clinical psychologist interventions; d. make referrals; and e. implementation of evaluation of clinical psychology assessment and intervention processes.

Then the implementation of the clinical psychology assessment includes examinations related to: a, psychological conditions; b. psychological/mental problems or disorders that occur; c. psychological, intrapsychic and social dynamics as causes of psychological problems or disorders; d. personality and personality disorders; e. potential psychological abilities and their manifestations; and f. legal interests. Clinical psychological assessments are carried out by means of clinical interviews, clinical observations, formal and informal psychological tests.<sup>23</sup>

In carrying out examinations that are relevant to legal interests as intended in Article 17 Paragraph (2) letter f and determining and implementing clinical psychology interventions carried out for legal purposes as intended in Article 17 paragraph (5), clinical psychologists must obtain special knowledge covering at least: a). understanding of criminal and civil law; and b). understanding the relationship between clinical psychological practice for the purposes of criminal and civil law.

Forensic Medicine is a specialized branch of medical discipline, which utilizes medical knowledge to assist the judicial process in enforcing the law and upholding justice. Global changes in the world of education which now uses competency as a reference have brought about many changes. With the implementation of this system, competency standards for each level of education must be made in writing to obtain results as expected. Forensic medicine is also inseparable from these changes. The scientific paradigm used in forensic medicine generally still follows the medical science paradigm which tends to be "empirical" and "descriptive" so that it has certain limitations in applying medical science in the legal field which is more "normative" and "prescriptive", especially in the field of law. certainty of his statement.<sup>24</sup>

In society, it is inevitable that there are a few people who engage in criminal behavior, and these criminal acts result in human casualties. In handling this criminal case, the authorities, in this case the legal apparatus, need the help of an expert in the medical field in clarifying a criminal case, namely a specialist forensic doctor. Only in cases where forensic specialist doctors are not available, law enforcement agencies are forced to be assisted by general practitioners or other specialists, who during their basic medical education have been equipped with basic forensic medical knowledge.

For Indonesian society, which currently has a population of more than 200 million, the number of forensic specialist doctors available is still far from ideal because in reality, the number of forensic doctors throughout Indonesia is estimated to have only reached approximately two hundred people, and this is still concentrated in the central government. certain medical education centers. Not all

<sup>23</sup> Permenkes RI tentang IPPPK, Pasal 17 Ayat (1), ayat (2) dan (3).

<sup>24</sup> Peraturan Konsil Kedokteran Indonesia, Nomor 66 Tahun 2020 tentang Standar Pendidikan Profesi Dokter Spesialis Forensik Dan Medikolegal, Lampiran, h.9

medical educational institutions in Indonesia have teaching staff in the field of forensic medicine, even though Indonesian laws and regulations require every doctor to be able to assist law enforcement.

The complete set of rules for mental health examinations has been regulated starting from the law and is specifically determined in the implementing regulations, which in this case are the Republic of Indonesia Minister of Health Regulation on IPPPK and the Republic of Indonesia Minister of Health Regulation on PKJUKPH. Questions related to practice in the decision of the Blambangan Umpu District Court Number: 110/Pid.B/2011/PN.BU dated 06 July 2011 on behalf of the defendant SBMN and the decision of the Lumajang District Court Number: 173/Pid.Sus/2014/PN.Lmj dated 13 July 2015 on behalf of the defendant AW, there was a difference in the application of evidence so that the decision was made without taking into account the mutual interests of evidence regarding the testimony of a psychologist and/or VeRP as an absolute requirement in the evidence.

Paying attention to normative provisions has provided space for law enforcers at every level to submit requests for mental health examinations, including to judges in court for evidence. This should not happen because the judge should in the trial, guided by the aim of evidence, is to obtain material truth and especially to obtain the judge's confidence, the most important aspect is the judge's knowledge and understanding of this matter.

The author observes that in the evidence carried out by the Judge of the Blambangan Umpu District Court and the Judge of the Lumajang District Court, he was only guided by the evidence that had been prepared since the investigation by the investigator, then the Public Prosecutor continued it, so that due to the lack of knowledge and understanding the judge was satisfied with the interests of request for a mental health examination, the judge looks for an easy way to decide the case, but the principle that is forgotten is that in cases of domestic psychological violence, it is not only the defendant's rights that are taken into account, but the goal is more dominantly the negative effects of the act on the victim in the form of psychological impact received by the victim.

Careful application of evidence occurs in the decision of the South Jakarta District Court, Number: 1303/Pid.B/2012/PN.Jkt.Sel dated 29 January 2013 in the name of defendant DDP and the decision of the Kuningan District Court, Number: 84/Pid.Sus/2017 /PN.Kng dated 04 October 2017 on behalf of the defendant Dr. SF, MMRS, because the judge in these cases was confident with complete evidence and especially the results of mental health examinations and testimony from mental experts who were present directly at the court hearing. However, in these two decisions, special evidence was prepared and submitted from the investigation level, then continued to prosecution and submitted to court. This means that even though the evidence is complete, the presence of specific and absolute evidence is not due to the judge's attitude in placing himself as one of the applicants for a mental health examination related to the case.

Differences in the application of the law of evidence in trials of criminal cases in each court consciously give rise to legal uncertainty, so it is fitting that for the sake of uniform application of the law of evidence in trials of cases of domestic psychological violence, it is necessary to have

regulations that are binding and reaffirm the existence of obligations and special treatment in obtain evidence related to proving it in court. Concretely, the author offers several solutions, including the following:

### **1. Regulatory Synchronization Aspect**

In relation to the regulatory aspect, in legal practice it only relies on the Health Law and the Republic of Indonesia Minister of Health Regulation on IPPPK and the Republic of Indonesia Minister of Health Regulation on PKJUKPH, whereas for the purposes of evidence in court until now there have been no regulations that require the need to submit evidence for testimony from psychologists and/or related VeRP. with domestic psychological violence. Starting from this reality, future consideration should be given for the sake of uniformity in the implementation of criminal evidence for domestic psychological violence, at least the sectoral regulations should be synchronized or integrated into one in the form of a Joint Decree between the Chief Justice of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of Police and Minister of Health regarding guidelines for handling cases of psychological violence in the household, which are used as a basis for law enforcers, especially judges, in understanding and implementing the importance of evidence from psychologists in proving criminal acts of psychological violence in the household.

### **2. Aspects of Increasing Human Resources**

In terms of human resources, especially law enforcement officers, in the future it is necessary and an urgent need to carry out education and training or certification for law enforcers in handling criminal acts of domestic psychological violence. The author believes that if these aspects can be implemented, then the In the future, it is hoped that there will no longer be differences in the application of the law of evidence in criminal cases, as is the legal issue in this thesis, and with the existence of integrated regulations, these regulations will become an obligation for law enforcers to carry out law enforcement duties fairly and with legal compliance and be able to obtain the material truth of a criminal act through binding evidence, so that it is not only the interests or rights of the defendant that are protected but also the perspective of law enforcement in providing legal protection to victims from criminal acts of domestic psychological violence.

### **Conclusion**

Psychiatric Expert testimony is the main evidence in proving criminal acts of psychological violence in the household, however, the practice of proving in court based on several decisions which are the subject of this thesis, there are differences in the application of the evidence. There is still a dualism in understanding the application of the law to the testimony of psychologists to prove psychological violence in the household, which is a challenge and problem that must be resolved for law enforcers. If this is not resolved, it will leave the problem of legal certainty which is one of the objectives of evidence in criminal cases in Indonesia because legal certainty is a system of norms.

In evidentiary practice, there is an important correlation between the evidence of a psychiatrist's testimony and the judge's belief, because in criminal acts of psychological violence in the household, the impact of which cannot be

seen with the naked eye and the only way to prove it is the testimony of a psychologist, so to obtain the judge's confidence regarding the existence of a criminal act must be supported by evidence from the testimony of a mental expert (forensic psychology and/or forensic psychiatry). This is in line with the provisions of Article 183 of the Criminal Procedure Code which states that with at least two valid pieces of evidence, the judge can be sure that a crime has occurred and that the defendant is the perpetrator.

In an effort to provide justice and legal certainty related to proving criminal acts of domestic psychological violence, in the future there must be synchronization of the rules regarding domestic psychological violence, and also increase the quality of law enforcement human resources to understand and implement these rules compulsorily. and tied. Apart from that, it needs to be explicitly regulated in joint provisions which are binding (mandatory) on law enforcers so that in order to prove the existence of a crime of psychological violence in the household, evidence must be submitted as evidence from a mental expert (forensic psychology and/or forensic psychiatry) in the trial. either from the investigation, prosecution, or court judge at the evidentiary level. This is important to avoid differences in legal practice which cause uncertainty in the application of law in society.

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