



JUDICIAL SYSTEM MONITORING PROGRAMME PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

JUSTICE UPDATE

Period: March 2007

Issue: 26/2007

The legal reasoning of the Court conflicts with the legal facts

INTRODUCTION

On 19 March 2007, the Baucau District Court handed down a decision in a case of serious maltreatment which was committed in 2006 within the jurisdiction of Baucau. The Defendant in this case was sentenced to four years imprisonment and fined \$US 50. The Panel of Judges stated in their decision that on 23 June 2005 the defendant DA deliberately and illegally committed an act of serious maltreatment against the victim ACX that resulted in serious injuries to the victim.

This hearing was presided over by a Panel consisting of 2 international judges and one national judge. The Panel read out the personal particulars of the defendant and outlined the criminal act that was alleged in the indictment, as well as mentioning the facts that had emerged throughout the trial¹. The decision was read out by the Presiding Judge at the beginning of the hearing and described how the defendant had confessed to the acts he had committed against the victim. The evidence presented together with witness testimony supported the Prosecutor's allegations that the Defendant had in fact maltreated the victim causing an injury to the victim's foot. However, JSMP is of the opinion that this injury should not be classified as serious.

FACTS AND LEGAL ANALYSIS

- *Legal Facts*

¹ JSMP believes that the elements of the decision fulfill the requirements set out in Article 281 of the Criminal Procedure Code

In the aforementioned case of maltreatment the defendant was convicted by the Panel for having violated Article 354 (1) of the Indonesian Penal Code².

Article 354 (1) of the Indonesian Penal Code is directly related to Article 90 of the Indonesian Penal Code which states:

The definition of “serious injury” includes, among others, any harm or injury which is permanent or which endangers the life of the victim, or prevents the victim from continuing his or her work, or impairs any of their senses, or renders them crippled or incapacitated, or causes psychological damage for longer than four weeks.

Also relevant is Article 351 (2) which states that *if such an action results in serious injury, the sentenced imposed shall not exceed five years imprisonment.*

The Court assessed that the Defendant had in fact violated the aforementioned articles and therefore sentenced the Defendant to 4 years imprisonment (less time spent in temporary detention) and a fine of US\$ 50.

After reading out its decision the court summarized its justification for grading the crime and determining the appropriate sentence. Instructions were also given on how and when the sentence was to be executed, together with other obligations imposed on the convicted person, such as the duration and type of any restrictive measures³. The convicted person and his lawyer did not accept the decision and declared their intent to lodge an appeal.

- Legal Analysis

Based on the aforementioned legal facts, JSMP wishes to determine if the articles applied by the Baucau District Court were in fact correct or in conflict with the legal facts. It is important to note that this legal analysis merely refers to the applicable legal procedures and does not intend to interfere with the decision issued by the court.

We hereby discuss the three articles considered by the Panel in determining their decision.

Article 354 (1) of the Indonesian Penal Code which states that:

Any person who deliberately causes serious injury to another shall be convicted of serious maltreatment and shall be sentenced to a maximum term of imprisonment not exceeding eight years.

The important wording here is “causes serious injury” which means serious maltreatment. According to the Indonesian Penal Code this article can be applied when the Defendant intended to cause serious injury to the victim, or in other

² Article 354 (1) states that *any person who deliberately causes serious injury to another shall be convicted of serious maltreatment and shall be sentenced to a maximum term of imprisonment not exceeding eight years.*

³ Pursuant to Article 282 of the Criminal Procedure Code

words, the victim suffers a serious injury and **if the consequences of the defendant's actions are minor, then these actions should be categorized as ordinary maltreatment, and the appropriate article for consideration is 351 (1) of the Indonesian Penal Code and not Article 354 (1).**

If a judge decides to use Article 354 (1) of the Indonesian Penal Code as grounds for a decision, then automatically Article 90 of the Indonesian Penal Code should also be considered as the two articles are closely linked. Article 90 of the Indonesian Penal Code states that:

The definition of "serious injury" includes, among others, any injury which is permanent or which endangers the life of the victim, or prevents the victim from continuing his or her work, or impairs any of their senses, or renders them crippled or incapacitated, or causes psychological damage for longer than four weeks.

The elements of Article 90 of the Indonesian Penal Code which need to be tested and established, amongst others, are;

- a, any injury that is permanent or which endangers the life of the victim,
- b, or prevents the victim for continuing his or her work,
- c, impairs any of their senses,
- d, incapacitates,
- e, or causes psychological damage.

JSMP concurred with the statement made by the defence that several of the elements of the aforementioned article were not established. The victim was able to appear in court without any inconvenience and was only suffering a minor injury to the foot. The judge only gave consideration to the medical report and doctor's statement presented by the prosecution and did not consider the actual physical condition of the victim who appeared normal when attending the hearing.

Also, Article 351 (2) states that:

"if such an action results in serious injury, the sentence imposed shall not exceed five years imprisonment".

As stated above, the victim only appeared to be suffering from a minor injury, based on his physical appearance when he attended the court to hear the announcement of the decision.

CONCLUSIONS & RECOMMENDATIONS

- Conclusions

Pursuant to the facts and legal analysis outlined above, JSMP concludes that the articles cited in the indictment, and subsequently considered by the court in determining its sentence, were not actually proven. When deciding on the

sentence, Article 351 (1)⁴ would have been more appropriate, as the actions of the defendant should have been categorized as light maltreatment in line with the injury suffered by the victim.

- Recommendations

In the aforementioned case, JSMP recommends that the decision making process should refer to the facts and should reflect the seriousness of the injury inflicted on the victim by the defendant's actions. The actions of the defendant also need to fulfill the requirements of the articles alleged against him in order that justice can truly be upheld. What is meant here is justice that is acceptable to both parties, namely the defendant and the victim.

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⁴ Article 351 (1) states that *the punishment for maltreatment shall not exceed two years and eight months or a maximum fine of Rp. 4.500.*