



**JUDICIAL SYSTEM MONITORING PROGRAMME**  
**PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL**

**Press Release**

*26-27 March 2008*

**The Prosecution and Adjudication of Cases Relating to Domestic Violence**

According to the agenda of the Baucau District Court, nine criminal cases (both serious and minor) were scheduled for hearing during the final week of March 2008. However, two of the scheduled nine cases could not be heard due to the absence of defendants and witnesses. Three of the seven cases heard related to domestic violence.

In this press release, JSMP will only focus on one case of domestic violence (light maltreatment) decided by the aforementioned court. This case has been selected for discussion in consideration of the articles used by the prosecution to charge the defendant and the article applied by the court in its final decision. The presiding judge decided that the articles used to charge the defendant were not proven and the judge therefore applied a different article to convict the defendant.

This case involved the defendant PR (husband) who threw an empty bottle at the victim LDS (wife) which caused bleeding to the victim's ear. During the final recommendation of sentence, the prosecution recommended that the defendant be found guilty for violating Article 351 (1) and Article 356 (1) of the Indonesian Penal Code which relate to light maltreatment and whereby such an act is committed against a spouse the sentence should be increased by one third.

During the trial the defendant admitted his guilt and regretted the action he committed against the victim. The victim testified during the trial that the defendant threw an object at her which caused a minor injury and bleeding to her ear. However this case was settled through mediation and the victim has returned to her husband and they are now living in harmony.

In the final recommendation of sentence, the prosecutor charged the defendant for violating Article 351 (1) and Article 356 (1) of the Indonesian Penal Code. The prosecutor requested for the presiding judge to sentence the defendant to 6 months imprisonment with a probation period of 1 ½ years.

The court found the defendant not guilty for committing an act in violation of Article 351 (1) and Article 356 (1) of the Indonesian Penal Code and issued its

decision pursuant to Article 352 (1) of the Indonesian Penal Code (amending the articles charged by the prosecution in the indictment and the final recommendation of sentence). Pursuant to Article 352 (1), the court sentenced the defendant to 2 months imprisonment with a probation period of one year.

Based on monitoring conducted by JSMP, the prosecutor was not present when the sentence was announced so it is unclear if the prosecutor accepts the judge's decision or not. On the other hand, the lawyer for the defendant accepted the final decision of the court.

JSMP believes that, in accordance with Article 142 of the Criminal Procedure Code, the outcome of the proof by means of confrontation is freely assessed by the court. However, articles charged by the prosecutor can only be amended pursuant to Articles 273 & 275 of the Criminal Procedure Code, which basically state that if any facts that are not set forth in the indictment but are relevant the court shall, on a discretionary basis, report those facts to the public prosecutor and the defender, giving them time to prepare their procedural position. However the court did not proceed in the aforementioned manner.

JSMP believes that in accordance with the facts revealed during the trial the most appropriate articles that should have formed the basis of the indictment and the final decision are Article 351 (1) and Article 356 (1) of the Indonesian Penal Code, as charged by the Prosecutor, and JSMP considers Article 352 (1) of the Indonesian Penal Code, which formed the basis for the court's final decision, to be inappropriate. The court should have found the defendant guilty, as the elements of these two articles had been established, namely that the defendant committed light maltreatment (Article 351 (1) of the Indonesian Penal Code) and that the victim was the legitimate spouse of the defendant (Article 356 (1) of the Indonesian Penal Code).

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