

LEGAL POLITICS OF FORMULATION OF THE CRIMINAL ACT OF DOMESTIC VIOLENCE AS A SPECIAL FORM OF CRIMINAL ACT

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Abstract

Domestic violence, such as physical, psychological, sexual, and economic violence, is a form of crime that occurs in a household where the perpetrator and victim come from the same household. The government's penal policy in resolving domestic violence is formed in the codification of positive legal norms (*positif wettelijk*), by implementing Law Number 23 of 2004 concerning the Elimination of Domestic Violence. This regulation demonstrates the government's attention to human rights (HAM), gender, non-discrimination, and protection. victims of domestic violence.

Keywords: *Domestic Violence, Criminal Acts, Penal Policy*

Introduction

Indonesia is a state based on the rule of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia.¹This is stipulated in the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3). Therefore, Indonesia is obliged to provide legal certainty in society so that it acts in an orderly manner and guarantees justice for everyone regarding their rights so as to create an orderly and peaceful society. Thus, as a state of law, all aspects of life in society, nation, and state, including the government, must be based on laws that are in accordance with the national legal system. Indonesia as a state of law (*rechtstaat*) has implications for Human Rights (HAM). Clearly, the concept of *rechtstaat*, and the concept of the rule of law, places human rights as one of the characteristics of a state called *rechtstaat*, and upholds the rule of law. In a democratic state, recognition and protection of human rights is one measure of the good or bad of a government.²The principle of recognition and protection of human rights above is in line with the principle of legality in criminal law, that no act is prohibited and threatened with criminal punishment if it is not first determined in legislation, which in Latin is known as *nullum delictum nulla poena sine praevia lege poenale* (there is no crime, no punishment without prior regulation).

Clearly, every person is essentially free from legal prosecution. In line with this, the Indonesian constitution, namely the 1945 Constitution, has clearly mandated the protection and maintenance of human rights, namely in Articles 28 to 28 J concerning Human Rights. In terms of protection of human rights, one thing that is expressly guaranteed by the constitution is freedom from torture or acts that degrade human dignity. This is as stated in Article 28 G paragraph (2) of the 1945 Constitution of the Republic of Indonesia. One of the acts that degrade human dignity in this article is sexual violence. Therefore, the elimination of all forms of sexual violence is a necessity in protecting the right to be free from treatment that degrades human dignity.³The family is the first social environment humans encounter. Within the family, humans learn to interact with others. Therefore, people generally spend a great deal of

¹Hariyanto, "National Legal Development Based on Pancasila Values", *Volksgeist: Journal of Legal and Constitutional Studies*, Vol. 1, No. 1, 2018, p. 57. <http://ejournal.uinsaizu.ac.id/index.php/volksgeist/article/view/1731>, Accessed September 16, 2025, at 6:08 WIB.

²Osman Abdel Malek. "The Right of the Individual to Personal Security in Islam," in M. Cherif Bassiouni, *The Islamic Criminal Justice System*. London: Oceana Publications Inc., 1982.

³Luh Made Khristianti Weda Tantri, "Human Rights Protection for Victims of Sexual Violence in Indonesia," *Jurnal Media Iuris*, Vol. 4, No. 2, June 2021, pp. 145-146. <https://www.researchgate.net/publication/352253327>, Accessed September 16, 2025, at 6:13 WIB.

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Based on data from the Annual Report (CATAHU) of the National Commission on Violence Against Women (Komnas Perempuan)⁹The number of cases of violence against women in 2019 was 406,178, an increase compared to the previous year of 348,466. Based on the collected data, the most prominent type of violence against women, the same as the previous year, was domestic violence/RP (personal sphere) which reached 71%, namely 9,637. Thus, under the legal umbrella of the Criminal Code (KUHP), Law Number 1 of 1974 concerning Marriage and Law

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Number 23 of 2004 concerning the Elimination of Domestic Violence, the problem of domestic violence, which in previous years was considered an internal problem of a person's family, can now be submitted to legal prosecution as a form of criminal offense. Furthermore, the Law on Domestic Violence, in addition to containing regulations on criminal sanctions for perpetrators, also regulates procedural law, the state's obligation to provide immediate protection to victims who report it.¹⁰ Another legal scope that is also included in the Domestic Violence Law is regarding the identification of perpetrators who have the potential to be involved in domestic violence.¹¹ The Domestic Violence Law is a legal policy response to the rise in domestic violence crimes. Legal policy is the activity that determines the patterns and methods of forming laws, overseeing their implementation, and updating laws for state objectives. This encompasses law formation, law enforcement, and the development of a legal culture. Furthermore, misunderstandings regarding the meaning of sexuality and rape also complicate the handling of sexual violence cases. The psychological factors of victims, when they must report cases of sexual violence, also contribute to the complexity of handling cases. Therefore, the state should guarantee a sense of security and protection to all its citizens regarding sexual violence, which can occur at any time by anyone. The state must also be present for victims of sexual violence, as victims of sexual violence bear multiple burdens in their lives.

Some domestic violence cases are difficult to resolve legally because the Criminal Code (KUHP), for example, does not include domestic violence as a form of crime, making it difficult to resolve using articles on assault, making cases difficult to follow up. Physical violence in the household, which was once considered a private matter, is now a fact and reality in household life. With the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU-PKDRT), the issue of domestic violence has become a public problem. Diverse understandings of domestic violence, particularly physical violence, create uncertainty in the implementation of Law Number 23 of 2004, both in law enforcement, community support, and governance, so that the handling of domestic violence cases tends to harm the rights of victims. Therefore, to realize Access to Justice, support efforts are needed, including. Therefore, the aspect of public trust in the protection of domestic violence contained in the Domestic Violence Law needs to be questioned, in the sense of whether the existence of the Domestic Violence Law will increase public trust in law enforcement against domestic violence.

Some domestic violence is difficult to enforce the law. One example of domestic violence is economic violence. Economic violence is based on low family income due to the husband's low salary, the husband does not work or the husband cannot work (due to disability or being caught in a criminal case), the existence of household neglect is characterized by the absence of fulfillment of living expenses by the husband, as well as the household being entangled in debt matters. Household neglect, namely any person who neglects within the scope of his household, even though according to the law that applies to him or because of an agreement or contract he is obliged to provide life, care, or maintenance to that person. Included in the definition of neglect is any person who causes economic dependency by limiting and/or prohibiting decent work inside or outside the home so that the victim is under the control of that person.¹² Judging from the explanation in the article, domestic neglect is not only referred to as economic violence, but also as complex violence. This means that it encompasses not only financial neglect, such as providing a living and not meeting needs, but also general neglect that affects household life, such as limiting health and education services, not providing affection, excessive control, and so on.

Furthermore, verbal violence falls within the scope of actions prohibited by the Domestic Violence Law. Verbal violence is a type of emotional abuse that occurs when someone uses their words to attack, dominate, ridicule, manipulate, and/or demean another person. This action can negatively impact the victim's psychological health. Verbal violence also includes acts of hurting someone through words such as cursing, threatening, and insulting.¹³ Verbal abuse is a harsh way to control and maintain power over others. Some forms of verbal abuse include blaming, which makes the victim feel as if they did something to deserve being yelled at or cursed at. Second, criticism, which uses negative, unconstructive judgments intentionally to hurt. Third, gaslighting, which denies the victim's perceptions to the point where the perpetrator questions them. Fourth, shaming, which involves words thrown at the victim with the intent to insult, demean, or humiliate them privately or publicly. Fifth, threatening, which is a statement made with the intent to make you fear the consequences and to control you.¹⁴ According to Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Domestic Violence is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the

¹⁰Philipus, *Legal Protection for the Indonesian People*. First edition; (Surabaya: PT. Bina Ilmu), 1987.

¹¹Andi Hamzah, *Principles of Criminal Law*, Revised Edition, (Jakarta: PT. Rineka Cipta), 2008.

¹²Cynthia Nathania, *Economic Violence Within the Scope of the Domestic Violence Law*, 2018.

¹³<https://health.kompas.com/read/23F16103000168/kenali-apa-itu-kekerasan-verbal-dan-jenisnya>, Accessed August 15, 2025, at 12:51 WIB

¹⁴Ibid.

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household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household.

Article 2 paragraph 1 of Law Number 23 of 2004 explains that the scope of a household consists of:

- “1. Husband, wife and children (including adopted children and stepchildren);
2. People who have family relationships with husband, wife and children due to blood relations, marriage, breastfeeding, care and guardianship;
3. People who work to help with the household and live in the household.”

Then, Article 2, paragraph 2 explains that a person who works as referred to in letter c is considered a family member for the period of time while they are in the household in question. Acts of violence committed by a husband against his wife are actually a serious element in a criminal act, the legal basis for which is Article 356 of the Criminal Code, which in broad terms reads:

“Anyone who commits violence against a father, mother, wife or child is threatened with criminal penalties.”

According to Law No. 23 of 2004, acts of violence against wives in the household are divided into 4 (four) types, namely as follows:

1. Physical Violence

Physical violence is any act that results in pain, illness, or serious injury. Violent behavior that falls into this category includes slapping, hitting, spitting, hair pulling, kicking, lighting a cigarette, hitting/injuring someone with a weapon, and so on.

2. Psychological/emotional violence

Psychological or emotional violence is any act that causes fear, loss of self-confidence, loss of ability to act, feelings of helplessness, and/or severe psychological suffering in a person. Violent behavior that includes emotional abuse includes insults, hurtful or demeaning comments, isolating a spouse from the outside world, and threats or intimidation as a means of enforcing one's will.

3. Sexual violence

This type of violence includes distancing the wife from her inner needs, forcing sexual relations, forcing one's own sexual desires, and not paying attention to the wife's satisfaction.

4. Economic violence

Everyone is prohibited from neglecting a person within their household, even though according to the law that applies to them or because of an agreement or contract, they are obliged to provide for the life, care, or maintenance of that person. An example of this violence is not providing for one's wife, or even spending one's money. Basically, human relations in everyday life are very positive on the one hand because humans depend on each other to meet their needs. However, on the other hand, these relationships sometimes give rise to conflicts of interest that lead to criminal acts or violence by one party against another (the victim).

The limited legal protection available is not commensurate with the complexity of sexual violence cases, which leads to impunity, recurrence, and frustration for victims in seeking their right to justice. Although various regulations in Indonesia already explain criminal acts related to sexual violence, including Law Number 1 of 1946 concerning the Criminal Code (KUHP), Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), Law Number 23 of 2002 which was later amended to Law Number 35 of 2014 concerning Child Protection (Child Protection Law), and Law Number 21 The 2007 Law on the Eradication of the Criminal Offense of Human Trafficking (UU TPPO) was enacted. However, the existing legal system, as a whole, does not comprehensively guarantee the elimination of sexual violence, encompassing prevention, protection, recovery, and empowerment of victims. Despite the controversy, the TPKS Bill is necessary to ensure protection and legal certainty for the public from the high rate of sexual violence.

Based on this idea, the author is interested in analyzing the "Legal Politics of Formulating Domestic Violence Crimes as Special Forms of Crimes" with the problem formulation regarding how the legal policy of domestic violence crimes as special crimes in the formulation of Law Number 1 of 2023 and how the implementation of domestic violence as a special crime can have an impact on protecting victims of sexual violence in Indonesia. In this research, the author will use an interdisciplinary research method, an approach that involves combining various disciplines to gain a more comprehensive understanding of a phenomenon or problem. In this case, the author uses an interdisciplinary method that involves combining various perspectives from the perspective of the human rights law approach and criminal law, which will later be used to analyze the legal policy of domestic violence as a special form of crime in the formulation of Law Number 1 of 2023 and the implementation of domestic violence as a special crime can have an impact on protecting victims of sexual violence in Indonesia. The nature of the research is descriptive analysis, according to Sugiyono, the definition of the descriptive analytical method is a method that functions to describe or terms used in legislation conceptually, while also knowing their application in practice, especially about the legal policy of domestic violence as a special form of crime in the formulation of Law Number

1 of 2023 and the implementation of domestic violence as a special crime can have an impact on protecting victims of sexual violence in Indonesia.

Domestic violence

According to Erna Sofyan Syukrie¹⁵ Whether in the West or the East, the development of human civilization has grown within the framework of patriarchal culture and ideology. In Western countries, such as the United States and Western Europe, this culture was first eroded along with the development of technology and democracy, which places equality and justice as central values. In third world countries, including Indonesia, this culture and ideology remain very strong, influencing various aspects of life and societal structures, creating gender inequalities. Culture and ideology are not simply things that descend from the sky, but are shaped by humans and socialized from one generation to the next. Cultural values are mental factors that determine the actions of an individual or society. In our culture, patriarchy remains very strong. In social, political, economic, and especially cultural life, the state of inequality, asymmetry, and subordination of women is very apparent.

In such conditions, women are marginalized, leading to a loss of autonomy. Exploitation and violence against women occur, both in the domestic and public spheres. In such situations, gender differences, discrimination, and injustice thrive. This is ironic because, formally, the 1945 Constitution does not differentiate between men's and women's rights (equal rights), but empirically, they differ significantly. In traditional societies, patriarchy is seen as unquestionable, as it is always associated with undeniable nature and power. The belief that God has ordained differences between men and women dictates that differences in human life are also governed by these differences. Religious factors have also been used to strengthen men's positions. Biological determinism has further reinforced this view. This means that because men and women are biologically different, their social and work functions within society are also created differently. Education, a crucial process for a person's intellectual development, remains deeply patriarchal. Families typically prioritize sons as the successors to the family, while daughters move on to other families. Family education also socializes the centrality of the father, thus unconsciously diminishing the role of women within the family. Girls are rarely involved in discussions about family policy, so socialization of such norms can impact the formation of their personalities and attitudes, which tend to be less open.

Domestic violence, particularly violence against wives, generally occurs because many societies still believe in and are dominated by patriarchal culture. Literally, patriarchy means a system that places the father (man) as the ruler of the family. This term is then used to describe a society where men have power over women and children. This can be interpreted as meaning that men are superior and women are inferior, so that men are justified in dominating and controlling women and the position of women is subordinate. The embodiment of patriarchy as a cultural value system is practiced in various institutions of social life, both in the economic and political fields, as well as within the family institution. According to Kate Millet in her book *Sexual Politics*, as quoted by Suparno, patriarchy initially grew and developed steadily in family life where basically the family was the main part of the power structure of society which directly or indirectly helped preserve patriarchal power.¹⁶

Domestic Violence According to Law No. 23 of 2004 concerning the Elimination of Domestic Violence

After the ratification of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, the rights of victims are contained in Article 10:¹⁷

1. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on a court order of protection. Guarantees of protection are very important to ensure that the victim is treated sympathetically and carefully by law enforcement, his/her safety is guaranteed so that the testimony given will be obtained to punish the perpetrator.
2. Health services according to medical needs. The right to receive medical recovery, namely healing the physical injuries suffered by the victim by providing a referral to a hospital that provides integrated services for victims of domestic violence, including psychological, legal, and social, especially to restore their self-confidence and to be able to undergo legal procedures after receiving information about the procedures to be followed in the criminal justice process.
3. Special handling related to the confidentiality of the victim. The victim's right to obtain compensation for the losses suffered, both from the government as an organization that is obliged to provide protection to him,

¹⁵Erna Sofyan Syukrie, "Women's Empowerment in Sustainable Development", paper presented at the 8th National Legal Development Workshop Seminar held by the National Legal Development Agency, Ministry of Law and Human Rights of the Republic of Indonesia, July 14-18, 2003 at the Kartika Plaza Hotel, Denpasar, Bali, 2003

¹⁶Suparno, translation of Kate Millet's *Sexual Politics*, Perception of Knowledge, p. 8

¹⁷Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Article 10.

and from the perpetrator of the crime who has caused extraordinary losses to the victim. The provisions that allow victims to receive compensation are very lacking, especially because the compensation permitted is related to the reimbursement of costs incurred by the injured party, such as in cases of domestic violence because the losses experienced are difficult to measure in material terms.

4. Assistance by social workers and legal aid at every level of the examination process in accordance with the provisions of laws and regulations.

5. The victim's right to receive information regarding the progress of the case and the judge's decision. Spiritual guidance services. Spiritual guidance is provided by a spiritual guide by providing an explanation of their rights and obligations.

6. Strengthening faith and piety in accordance with the religion and beliefs that one adheres to.

In addition to the above article, which regulates the fulfillment of the rights of victims of domestic violence, the government and society also have an obligation to provide protection for victims of domestic violence, as stipulated in the following chapters and articles. The obligations of the government and society to provide protection against domestic violence are contained in Chapter V, Articles 13 and 14 of Law No. 23 of 2004.

The text of Article 13 of Law No. 23 of 2004 reads:

"To provide services to the government and regional governments in accordance with their respective functions and duties in carrying out efforts:

1. Provision of service space;

2. Especially at police stations;

3. Provision of personnel, health workers, social workers, and spiritual considerations;

4. Actions and development of work systems and mechanisms in service programs that involve parties that are easily accessible to victims; and

5. Providing protection for companions, witnesses, families, and victims. Article 14 states that in carrying out efforts as referred to in Article 13, the government and regional governments, in accordance with their respective functions and duties, may collaborate with the community or other social institutions.

However, in reality, even though the rights of victims of domestic violence have been regulated in the regulations on the elimination of domestic violence contained in Law No. 24 of 2014, it is still not enough to be able to overcome problems that occur related to violence within the scope of the household. Victims who have the right to protection of rights regulated in Law No. 24 of 2014 concerning the Elimination of Domestic Violence are only victims who have a legal bond within the scope of the household, besides those who do not have a legal bond in the household do not have these rights, such as wives or children born from an illegitimate marriage according to applicable law. Usually those who experience acts of domestic violence, but they do not have the rights as explained in Articles 13 and 14 of Law No. 24 of 2014 concerning the Elimination of Domestic Violence will choose to report acts of violence to the National Commission on Human Rights or the National Commission for Child Protection. Not receiving protection of rights by the Law does not mean that the act of violence cannot be punished. However, the scope of the violence is no longer domestic violence but rather violence and/or abuse against women which is also protected by other laws and regulations, such as Law No. 39 of 1999 concerning Human Rights, Presidential Decree No. 181 of 1998 concerning the Establishment of the National Commission on Violence Against Women or Komnas Perempuan which was amended by Presidential Decree No. 65 of 2005. Thus, women's rights not covered by the Domestic Violence Law are still protected by other regulations. Although the Domestic Violence Law already regulates the rights of victims of domestic violence, law enforcement still faces obstacles in protecting victims' rights as stipulated in the Domestic Violence Law. These include:¹⁸

1. Lack of Police Budget

Protecting the rights of victims of domestic violence requires significant costs, fully borne by the state, and this has not yet been realized as mandated by the Domestic Violence Law. Police law enforcement in various sectors requires substantial costs, so if this budget is allocated for external purposes, it could disrupt police operations. Therefore, an increase in the police budget is necessary.

2. There is rejection from the victim

Refusal here refers to a refusal to be assisted by a professional. This occurs due to the victim's lack of trust in others due to trauma or other factors. Victims prefer to be assisted by family and close friends rather than professionals trained in handling domestic violence cases.

3. Protecting Victims' Confidentiality is Difficult

¹⁸Oni Suryono, Domestic Violence: Legal Dimensions and Justice for Indonesian Women, Vol 7 No. 1, 2022, p. 72.

Protecting the confidentiality of victims of domestic violence is crucial to protect them from unpleasant conversations that could disrupt their mental health. However, such information often spreads rapidly before authorities can intervene. This is extremely difficult to address with today's advances in information technology.

Protection of Victims of Domestic Violence According to Law No. 23 of 2004 concerning the Elimination of Domestic Violence

Domestic violence (DV) is a serious violation of human rights and a social problem faced by many countries, including Indonesia. This act not only causes physical harm to victims but can also lead to psychological trauma, emotional distress, and significant economic losses. Violence (particularly within the home) is a form of crime that violates and tarnishes human dignity and should be categorized as a crime against humanity.¹⁹ However, not all crimes contain elements of violence, and not all acts of violence can be said to be components of crime, even though the government has enacted Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law) as a legal basis for protecting victims and prosecuting perpetrators, its implementation still faces various obstacles. Legal protection for victims of crime has received less attention under the law, both in substantive criminal law and criminal procedure (formal criminal law), compared with legal protection for suspects and defendants. This is influenced by several factors, including:

1. Legal factors;
2. Legal awareness of victims;
3. Supporting facilities;
4. Human resources.

The existence of legislation within a legal system is crucial to the establishment of legal order, as it is the primary source of law. Therefore, despite the existence of Law Number 23 of 2004, many victims still do not report their cases to the police, citing reasons such as shame, embarrassment from extended family, and the perceived disgrace of public knowledge. These reasons stem from the perception of some members of society that:²⁰

1. The violence experienced by the wife is the result of the wife's own mistakes;
2. Great economic dependence on the perpetrator (husband); and

Domestic violence has specific characteristics. To implement the Domestic Violence Law, the government, through relevant ministries, has established various implementing regulations. One of these is Regulation No. 1 of 2010 of the Minister of Women's Empowerment and Child Protection of the Republic of Indonesia, which stipulates Minimum Service Standards in Integrated Services for Women and Children Victims of Violence. This regulation aims to ensure that victims of domestic violence receive comprehensive services, including legal assistance, health care, and social rehabilitation.

Domestic violence is any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering and/or neglect of the household, including threats to commit acts, coercion or unlawful deprivation of liberty within the household.²¹ The government has issued Regulation No. 1 of 2009 of the Minister of State for Women's Empowerment and Child Protection, which establishes Guidelines for Handling Victims of Domestic Violence for Law Enforcement Officials and Related Institutions. These guidelines serve as a reference for law enforcement officials in handling domestic violence cases, ensuring effective law enforcement and a more responsive approach to victims' needs.

On the other hand, perpetrators of Domestic Violence (KDRT) in the application of criminal sanctions still often experience dualism in the application of criminal provisions. This dualism occurs, namely with the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT), it turns out that the rules in the Criminal Code are still in effect, containing Article 351 concerning abuse, Article 285 concerning rape, and Article 289 concerning molestation, which can be applied to ensnare perpetrators of domestic violence (KDRT) in certain conditions. Violence against women according to the United Nations in the declaration of the elimination of violence against women, violence against women is any form of gender-based violence that results or will result in pain or suffering to women whether physical, sexual, psychological, including threats, restrictions on freedom, coercion, whether occurring in public or domestic areas. Violence against women is an action or attitude carried out with a specific purpose so that it can harm women both physically and psychologically. Another important thing is

¹⁹Wardah, Legal Protection for Victims of Domestic Violence Based on Law Number 23 of 2004 concerning the Elimination of Domestic Violence, (Semarang; Unisula), 2024, p. 24.

²⁰Ibid., p. 73.

²¹Loc.Cit., Law Number 23 of 2004 concerning the Elimination of Domestic Violence

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that an incident that is coincidental is not categorized as violence even though it causes harm to women.²² Domestic Violence (KDRT) has received a serious response from various women's organizations, both governmental and non-governmental, leading to the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Furthermore, the police have established a Women and Children's Service Unit (PPA) tasked with providing services and protection for women and children, including victims of domestic violence (KDRT). This unit plays a role in handling domestic violence cases with a gender- and child-responsive approach and ensuring that victims receive the necessary protection. The establishment of this PPA Unit is regulated in Regulation of the Chief of the Republic of Indonesia National Police Number 10 of 2007 concerning the Organization and Work Procedures of the Women and Children's Service Unit within the Republic of Indonesia National Police.

Domestic Violence is any act against a person, especially a woman, that results in physical, sexual, psychological misery or suffering, or neglect of the household, including things that cause fear, loss of self-confidence, loss of ability to act, distrust, or severe psychological suffering in a person. Law Number 23 of 2004 does not aim to encourage divorce, as is often alleged. The Law on the Elimination of Domestic Violence actually aims to maintain the integrity of a (truly) harmonious and prosperous household by preventing all forms of violence while protecting victims and prosecuting perpetrators of domestic violence. Domestic violence is a violation of human rights and a crime against human dignity and a form of discrimination that must be eliminated. This law is a guarantee provided by the state to prevent domestic violence, prosecute perpetrators of Domestic Violence (KDRT), and protect victims of Domestic Violence (KDRT).²³ According to Herkutanto, forms of violence can include psychological violence, a form of violence that is difficult to define because emotional sensitivity varies greatly. In a household, this can include not providing a wife with affection to meet her emotional needs.²⁴ This is important for the development of a person's soul. Identification of what arises from psychological violence is more difficult to measure than physical violence, such as:

- a. Neglect of Women, neglect is negligence in providing the necessities of life for someone who is dependent on another party especially in the household environment.
- b. Physical violence, if the treatment is not due to an accident women. This treatment can result from a single act of violence or recurring, from mild to fatal.
- c. Sexual Violation, any sexual activity carried out by an adult or women. This sexual violation can be committed by force or without coercion. Sexual violations with elements of coercion will resulting in injuries related to deep trauma to the person women. In general, the factors that cause violence in household factors can be formulated into two, namely external factors and internal factors.

One indication of social problems that have a negative impact on the family is violence that occurs within the family institution, almost all forms of violence in the family by men, for example, beatings against wives, rape in the family and so on, all of which rarely become the subject of public news because it is considered no problem, something taboo or inappropriate for victims to talk about, of various forms of violence that are generally women, more specifically wives, tend to remain silent because they feel useless. The victims are usually ashamed and do not even dare to tell others about their situation. The impact of violence experienced by wives can cause psychological consequences such as anxiety, depression, stress, inferiority, loss of trust in their husbands, self-blame and so on. Physical consequences such as bruises, broken bones, physical disabilities, menstrual disorders, uterine damage, miscarriage, contracting infectious diseases, psychosomatic diseases and even death. The performance of law enforcement in handling cases is a consideration for women to report violence that occurs to them. The lack of public trust, including victims of domestic violence, in the legal system in Indonesia is due to the fact that before the enactment of Law Number 23 of 2004, many reports of domestic violence were not followed up to the investigation stage against the perpetrator. This also strengthens the belief of victims that even if someone reports, they will not receive special protection from law enforcement, especially the police. After the enactment of Law Number 23 of 2004, it is hoped that there will be an increase in awareness among victims to report to the authorities if an act of

²²Herikutanto, Violence Against Women in the Criminal Law System, in the book *Eliminating Discrimination Against Women*, (Bandung; PT.Alumni), 2000, p. 25.

²³<https://peraturan.bpk.go.id/Details/40597/uu-no-23-tahun-2004>. Accessed July 23, 2025, at 14:38 WIB

²⁴Op.Cit., Herikutanto, Violence Against Women in the Criminal Law System, in the book *Elimination of Discrimination Against Women*, Bandung, PT. Alumni, 2000. Page 25

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domestic violence occurs. Victims according to this law are socially weak victims, namely those with a weak social position that causes someone to become a victim, especially women and children. In this study, victims of domestic violence are limited to wives who experience violence from their husbands.

According to this law, the parameters for eliminating domestic violence are based on four principles, namely:²⁵

- a. Respect for human rights;
- b. Gender justice and equality;
- c. Non-discrimination; and
- d. Protection of victims.

Article 4 of the law explains that one of the aims of eliminating domestic violence is to prevent all forms of domestic violence.

Thus, it is hoped that the various acts of domestic violence that have been rampant in Indonesia can be minimized and, if possible, eliminated from society. Relevant to the principles and goals of eliminating domestic violence, the law specifically regulates how to resolve domestic violence, culminating in efforts to protect the victim. In this regard, the methods for resolving domestic violence consist of five parts:²⁶

1. Domestic violence is often considered a normal or normal occurrence in households. Consequently, victims often ignore it or fail to report it to the authorities for further action. Victims typically report domestic violence only after the violence has resulted in a child, serious injury, or even death.
2. Lack of socialization by related parties regarding domestic violence, so that data on cases of domestic violence are often ignored or considered trivial, especially for small domestic violence problems.
3. There is a very clear division of power within the household, between the man (husband) and the woman (wife), as well as between children and parents. The husband, as head of the household, has greater power than the wife and children. Therefore, in such households, household matters are usually private matters and should not involve other parties, including law enforcement. This is also referred to as a cultural factor within the household.
4. Domestic factors: These factors are similar to cultural factors. However, they are more related to the victim's feelings. Domestic violence is considered a disgrace that should not be revealed to others, as it would cause shame for the household. Therefore, victims often choose to hide their feelings.
5. Environmental factors: To reduce the high incidence of domestic violence, a responsive and supportive environment is crucial. This will encourage victims to be more open and courageous in disclosing problems within their household that are no longer legally permissible.

Protection for victims of domestic violence has not been fully achieved

This issue is addressed by Law No. 23 of 2004 concerning the Elimination of Domestic Violence. Therefore, strong cooperation between relevant parties is needed to address domestic violence. According to Law No. 23 of 2004 concerning the Elimination of Domestic Violence, acts of domestic violence are as follows:

1. Overt violence is physical violence that can be seen, such as fighting, punching, kicking, pulling hair, pushing, and even killing.
2. Covert violence is usually known as psychological or emotional violence.
3. This violence is hidden in nature, such as threats, insults, or ridicule which then causes the victim to have difficulty sleeping, lack self-confidence, feel helpless, terrorized, and have suicidal thoughts.²⁷
4. Sexual violence is violence committed to satisfy sexual desires (physical) and verbal (physical). Physical violence, for example, includes sexual harassment (groping, touching sexual organs, forced kissing, forcing sexual intercourse with the perpetrator or other person).
5. third, forcing sexual intercourse.²⁸
6. Meanwhile, verbal acts include making comments, nicknames, or pornographic jokes that are mocking in nature, as well as making facial expressions, body movements, or other sexual acts that are harassing and/or insulting to the victim.²⁹

²⁵Loc.Cit., Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Article 4.

²⁶Loc.Cit., Oni Suryono, Domestic Violence: Legal Dimensions and Justice for Indonesian Women, Vol 7 No.1, 2022, pp. 74-75.

²⁷<https://www.nusabali.com/berita/110950/kenapa-kekerasan-yang-dipilih>. Accessed August 1, 2025, at 6:05 PM WIB

²⁸<https://lifestyle.kompas.com/read/2014/10/12/230000220/4-jenis-kekerasan-yang-masuk-kdrt>.

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²⁹<https://www.limapagi.id/30449/kenali-empat-jenis-domestic-agar-tidak-menjadi-korbannya>. Accessed August 1, 2025, at 6:05 PM WIB

7. Financial abuse, or the definition of abuse²⁴, involves exploitation, manipulation, and control of the victim for financial gain, including forcing the victim to work, forbidding the victim from working but neglecting them, or taking the partner's assets without their consent.

Protection of Victims of Domestic Violence According to Law No. 23 of 2004 concerning the Elimination of Domestic Violence

Domestic violence is any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering and/or neglect of the household, including threats to commit acts, coercion or unlawful deprivation of liberty within the household.³⁰ Article 5 of Law Number 23 of 2004 states that:

“Everyone is prohibited from committing domestic violence against people within the household by:

- 1) Physical violence;
- 2) Psychological violence;
- 3) Sexual violence;
- 4) Domestic neglect”.

Furthermore, Article 10 of Law Number 23 of 2004 states that:

The victim has the right to receive:

- (1) Protection from the family, police, prosecutors, courts, advocates, social institutions or other parties, either temporarily or based on a protection order from the court;
- (2) Health services according to medical needs;
- (3) Special handling related to victim confidentiality;
- (4) Assistance by social workers and legal aid at every level of the examination process in accordance with the provisions of laws and regulations; and
- (5) Spiritual guidance services.

In order to realize all the rights of victims of domestic violence as mentioned above, the government and regional governments, in accordance with their respective duties and functions, can work together with the community and institutions. relevant law enforcers, by making efforts:

- 1) Provision of special service rooms in police offices;
- 2) Provision of personnel, health workers, social workers and spiritual guides;
- 3) Creation and development of systems and mechanisms for cooperation in service programs involving parties that are easily accessible to victims; and
- 4) Providing protection for companions, witnesses, families and friends of victims

Guaranteeing women's rights in the legal and policy fields, as well as guarantees for women. The state is not only obliged to guarantee equal rights de jure/legally, but also de facto, namely by encouraging the realization of women's rights. The state's obligations include preventing discrimination against women, prohibiting discrimination against women, and identifying instances of discrimination against women. women and take steps to address them, implement sanctions for discriminatory acts against women, provide support for the enforcement of women's rights and promote equality, equity and justice through proactive measures, and increase de facto equality between women and men.

Penal Policy in the Elimination of Domestic Violence

There are several legal experts who have provided a conception of legal politics. The author quotes Teuku Muhammad Radhie's opinion which is more appropriate in this study, legal politics in Radhie's view is as a statement of the will of the State authorities regarding the laws that apply in their territory, and regarding the direction of legal development that is being built.³¹ By paying attention to the words "the will of the state ruler" in the formulation of legal policy above, it is clear that the law was born and created in accordance with the wishes of the state ruler regarding when the law was made and when the law was implemented, after the law was implemented, the government's steps were how to enforce the law and develop the law in accordance with the development of society, because the words "development of the law that was built" by Radhie above are clear regarding the law that is aspired to be implemented in the future which is usually called *ius constituendum*."

In Hikmahanto's view, legal politics can be divided into two dimensions, namely:³²

³⁰Farha Ciciek, *Efforts to Overcome Domestic Violence* (Jakarta: The Asian Foundation), 1999, p. 22

³¹Teuku Muhammad Radhie, "Legal Reform and Politics in the Framework of National Development" *Prisma Magazine*, No. 6, Year II, December 1973, p. 4

³²Hikmahanto Juwana, "Legal Politics of Economic Law in Indonesia." Handout for the Legal Development Policy lecture, Publish by **Radja Publika**

LEGAL POLITICS OF FORMULATION OF THE CRIMINAL ACT OF DOMESTIC VIOLENCE AS A SPECIAL FORM OF CRIMINAL ACT

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1. Legal policy is the fundamental rationale for enacting legislation. The first dimension is called "basic policy."
2. The purpose or rationale behind the enactment of legislation. This second dimension is called enactment policy.

The enactment of Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) is likely to be met with a variety of responses, both positive and negative. However, awareness of domestic violence must continue to be raised. The main ideas underlying Law No. 23 of 2004, as contained within the law, are as follows:

1. Domestic violence cases are showing a significant increase daily, including physical and psychological violence, sexual violence, and economic violence. In fact, it has even escalated into criminal acts of assault and threats against victims, which can cause fear, severe psychological suffering, and even insanity.
2. The view that all crimes should be regulated in a legal codification, such as the Criminal Procedure Code or the Criminal Code, is a view that does not support legal reform in accordance with the demands of existing developments, because these laws and regulations have not touched on fundamental problems.
3. Victims of domestic violence face various obstacles in accessing the law, such as difficulty reporting their cases or receiving a lack of positive responses from law enforcement. Provisions under the Criminal Procedure Code or other legislation have so far proven ineffective in providing protection for victims of domestic violence.

Crime prevention efforts through criminal law are essentially part of law enforcement efforts (particularly criminal law enforcement). Therefore, it is often said that criminal law policy is also part of law enforcement policy. This is of course implemented through the criminal justice system, which consists of the police subsystem, the prosecutor's office subsystem, the court subsystem, and the correctional system subsystem.³³ Sudarto's view above is in accordance with Marc Ancel's writing as quoted by Arief Amrullah³⁴ Modern science has three primary essential components: criminology, criminal law, and penal policy. Criminology studies crime in all its aspects. Furthermore, criminal law explains and applies positive regulations to societal reactions to criminal activity. Penal policy, both as a science and an art, has the primary practical purpose of enabling better formulation of positive regulations and providing guidance not only to legislators who must draft criminal law legislation, but also to the courts where those regulations are enacted and to prison administration, which has a practical impact on court decisions.

Furthermore, efforts to combat crime through reforming criminal law are essentially an integral part of efforts to protect society's social welfare. Therefore, it is natural that criminal law policy or politics is also an integral part of social policy or politics. Social policy can also be defined as all rational efforts to achieve social welfare while simultaneously protecting it. Therefore, the definition of social policy encompasses both social welfare policy and social defense policy.³⁵ *Penal policy* or criminal law policy, is essentially how criminal law is formulated properly and provides guidance to lawmakers (legislative policy), and application policy (judicial policy). Legislative policy is a crucial stage for subsequent stages because when criminal legislation is to be created, the direction to be taken by the creation of the law is already determined. In this context, the intended direction is the formation of a law on the elimination of domestic violence. The policy for creating good criminal law regulations is essentially inseparable from the goal of crime prevention. Therefore, criminal law policy or policy (penal policy) is also part of criminal policy, so criminal law policy is identical to the concept of "crime prevention policy with criminal law." Criminal law in Indonesia as a means to combat crime does not seem to be a problem. This is evident from the practice of legislation so far, which shows that the use of criminal law is part of the policy or legal policy adopted in Indonesia. The use of criminal law is considered normal and natural, as if its existence is no longer questioned.³⁶ Thus, it can be emphasized that criminal law reform, including the enactment of Law Number 23 of 2004, is part of criminal law policy. The meaning and essence of criminal law reform are closely related to the background and urgency of criminal law reform itself. The background and urgency of criminal law reform can be viewed from socio-political, socio-philosophical, and socio-cultural aspects, or from various policy aspects (especially social policy, criminal policy, and law enforcement). This means that the meaning and essence of criminal law reform are also closely related to these various aspects. This means that criminal law reform must also essentially be a manifestation of change and renewal of the various aspects and policies that underlie it. Thus, criminal law reform essentially implies an effort to

Doctoral Program (S3), Islamic University of Indonesia.

³³Barda Nawawi Arief, *Criminal Law Politics* (Jakarta: UI Postgraduate Program), 1992, p. 3

³⁴Arief Amrullah, *Criminal Law Politics: In the Framework of Protecting Victims of Economic Crimes in the Banking Sector* (Malang: Bayumedia Publishing) 2003, p. 17

³⁵Barda Nawawi Arief, *Anthology of Criminal Law Policy* (Bandung: Citra Aditya Bakti) 1996, p. 30

³⁶M. Hamdan, *Criminal Law Politics* (Jakarta: RajaGrafindo), 1997, p. 21

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"reorient and reform" criminal law in accordance with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society that underlie social policy, criminal policy, and law enforcement policy in Indonesia. In short, it can be said that criminal law reform must essentially be pursued with a policy-oriented approach and simultaneously a value-oriented approach.³⁷

Character of Law Number 23 of 2004

Law Number 23 of 2004 concerning the Elimination of Domestic Violence, enacted in Jakarta on September 22, 2004, is a transitional legal product. The enactment of Law Number 23 of 2004 can be said to be as a responsive legal product born from a politically responsive institution or agency amidst the shift of legislative rights to the legislature following the amendment to the 1945 Constitution. Responsive law can be defined as serving the social needs and interests experienced and discovered, not by officials but by the people. Responsiveness implies a commitment to the legal subject or something subject to the rules. The law in this article is Law Number 23 of 2004, where, in the context of responsive law, the law has responded to all the needs of society through the authorized institution, in the Indonesian context, the House of Representatives (DPR), as the institution that holds legislative power. A responsive institution strongly maintains the essentials of its integrity while still paying attention to or taking into account the existence of new forces within its environment. To do so, responsive law implements ways in which openness and integrity can support each other despite conflicts between the two. This responsive institution views social pressures as a source of knowledge and an opportunity for self-correction.³⁸

The concept of responsive law envisions a solution to this dilemma that attempts to combine openness with integrity. Responsive law's answer is selective adaptation to new demands and pressures. Responsive legal products are characterized by power based on the law, which is now no longer defined as formal procedural appropriateness, but rather as the progressive reduction of arbitrariness and abuse of power in political, social, and economic life. Thus, responsive law does not discard the concept of justice, but rather expands it to encompass substantive justice. In general, the characteristics of responsive legal products are as follows:³⁹

1. Shifting emphasis from rules to principles and sovereignty of purpose;
2. The importance of the obligations and politeness of society in welcoming legal regulations both as one of the aims of law and as the final goal to be achieved by responsive legal products; and
3. Legal participation and political participation, as the legal system expands its critical resources, it delegates more discretion to decide authoritative matters.

Legal participation has expanded to encompass the creation and interpretation of legal policy. The enactment of Law No. 23 of 2004 has addressed all domestic violence issues that were previously not specifically regulated. Therefore, within the context of the Indonesian legal system, Law No. 23 of 2004 is able to fulfill substantive justice within the domestic sphere. In relation to progressive law, as Satjipto Rahardjo views it, progressive law was born to affirm that law is for humans, and not the other way around.⁴⁰ He further stated that law is not merely a structure of regulations, but also a structure of ideas, culture, and ideals. Because the purpose of law is to make people happy, the legal problem lies with the people.

Closing

The conclusions drawn regarding the nature of criminal law reform are as follows:

I. Viewed from a social approach perspective

1. As part of social policy. Criminal law reform is essentially part of an effort to address social problems (including humanitarian problems) in order to create or support national goals (people's welfare and so on);
2. As part of criminal policy. Criminal law reform is essentially part of efforts to protect society (especially efforts to combat crime).
3. crime);
4. As part of law enforcement policy, criminal law reform is essentially an effort to update the legal substance in order to make law enforcement more effective.

II. Viewed from the value approach perspective

³⁷Arief, Anthology, pp. 30 – 32.

³⁸Philippe Nonet and Philip Selznick, *Responsive Law, Choices in Times of Transition*, trans. (Jakarta: Elsam and Huma), 2003, p. 62

³⁹*Ibid.*, pp. 62-67.

⁴⁰Satjipto Rahardjo, "Progressive Law: Law that Liberates", *Journal of Law Progressive*, Vol. 1 Number 1, 2005.

Criminal law reform is essentially an effort to review and re-evaluate (re-orientation and re-evaluation) the socio-political, socio-philosophical, and socio-cultural values that underlie and provide content to the normative content and substance of the desired criminal law. It is not a criminal law reform if the value orientation of the desired criminal law, for example the new Criminal Code, is the same as the value orientation of the old criminal law inherited from Dutch colonialism (the old Criminal Code or WvS).

III. As seen from Law Number 23 of 2004

The criminal law policy effort in regulating the problem of domestic violence is one of the tasks of the government and the DPR to provide a very adequate legal umbrella for witnesses and victims of domestic violence, because the legal policy that the government wants to achieve in enacting Law Number 23 of 2004 as contained in Article 3 states that the elimination of domestic violence is carried out based on the principles of respect for human rights, justice and gender equality, non-discrimination and protection of victims. The definition of discrimination in Article 1 can be seen in Article 4, that what is not considered discrimination is an action called affirmative action, namely a special action of a temporary nature with the aim of achieving real equality of opportunity and equal treatment between women and men.

The meaning of criminal law reform as stated by Arief above in the context of this article, is a form of reform from general criminal law (KUHP) which contains general crimes to general criminal law. specifically in this case Law Number 23 of 2004 as a special law (*lex specialis derogat lex generalis*). The criminal law policy in efforts to eliminate domestic violence is a government action in the form of legal norms by enacting Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which classifies domestic violence as a criminal act. Therefore, all forms of violence, such as physical, psychological, sexual, and domestic neglect (economic violence), are strictly prohibited by Law Number 23 of 2004 concerning the Elimination of Domestic Violence, with the threat of severe criminal penalties. The criminal law policy (penal policy) which is embodied in Law Number 23 of 2004 in the context of eliminating domestic violence is implemented based on the principles of respect for human rights, justice and gender equality, non-discrimination, and protection of victims.

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