

## Unraveling the Legal Labyrinth: An In-depth Review of Domestic Violence Regulation in Indonesia

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**Abstract:** Domestic violence cases continue to increase every year, due to factors such as economic problems, fatigue due to traffic congestion, increasing life demands, and many other factors. Nowadays, news about domestic violence incidents is increasingly common. To date, Indonesia has four laws and regulations governing domestic violence. However, the existence of these four laws and regulations has created a new problem, namely over-regulation or excessive regulation which has caused several negative impacts which are the subject of discussion in this paper. The research method used in this research is qualitative through normative legal research. The data obtained is analyzed using a conceptual approach to understand the concept of domestic violence in four different laws and regulations in Indonesia. This research focuses on the harmony of norms and ideas of domestic violence in Indonesian law. The purpose of this research is to find a conception to simplify the regulations governing domestic violence in Indonesia by unifying the four regulations above. Based on the results and discussion, the author provides recommendations in terms of streamlining regulations related to domestic violence. Simplification of regulations is needed to help reduce barriers in handling domestic violence, increase protection for victims, and support prevention efforts. Therefore, it is important to involve stakeholders, legal experts, human rights activists, and other communities in designing changes to domestic violence laws to make them more effective.

## Introduction

Household is always synonymous with the word marriage, which unites the inner relationship between two people in a bond called marriage, while the definition of marriage itself is a marriage agreement between a man and a woman by the provisions of the law and religious teachings. the household they build to be harmonious and happy. However, the reality is not that smooth, Indonesia is a country with many cases of domestic violence.

Based on data entered by the Ministry of Women's and Children's Empowerment, the number of violence that occurred in Indonesia reached 433 cases with the percentage of female victims reaching 80% and the remaining 20% were men. (KPPA, 2023). Patriarchal systems and social factors create household dynamics where men are seen as leaders, leading to domestic

violence against women and children. Unresolved cases often appear resolved but risk recurrence (Pichon et al., 2020).

PKDRT (Elimination of Domestic Violence) must be recognized as a progressive breakthrough in the criminal law system, but its implementation is still oriented toward punishing the perpetrators of violence (crime). If the perpetrator is the husband, then the victim (wife) will be worried / rethinking if she wants to continue the complaint/prosecution, again in this case because of the unbalanced relationship between husband and wife, and generally accompanied by the wife's economic powerlessness. (Trimmings & Momoh, 2021). In addition, law enforcement officials still view domestic violence as a crime of violence or a family matter, while complaints of offenses are only limited to crimes of violence in certain articles, namely: physical violence in Article 44 paragraph (4) which does not cause illness/in carrying out work/daily activities; psychological violence in Article 45 (2) Violence between husband and wife which does not cause illness/inhibition to carry out work or daily activities; Article 46 on forced sexual intercourse. Meanwhile, those that are not included in the above articles are ordinary criminal offenses, meaning that the victim cannot withdraw the complaint. (Darussamin & Armansyah, 2020).

However, it is often the case that law enforcers suggest settlement by family deliberation which weakens the victim's position. Here is an example of a recent domestic violence case reported in the media: Ahmad Jais, a resident of Palembang, was arrested by the police for beating his wife over money. (DetikSumbangsel, 2024). A child in Lebak reported her biological father to the police for allegedly committing years of domestic violence. (Rachmawati, 2024). Domestic neglect can lead to economic dependency and underreporting of abuse, with courts struggling to prove psychological harm (Holt, 2021).

The substance of transfer as referred to in the provisions of Article 44 and the increasingly complicated criminal offense of violence in the form of neglect by with Article 49 of the PKDRT Law; in this case, the foresight of investigators and judges is needed in using the interpretation/comparison method. Transfers in domestic violence are often characterized by relatively lenient criminal sentences because they only look at the physical condition of the victim without going deeper into the victim's suffering (psychological), and how long the victim has suffered this. Judges in their verdicts generally do not give orders to provide victims with their rights in the form of compensation or material compensation for the violence experienced (Violin & Nafi, 2022).

The Draft Penal Code's domestic violence clause, which includes three paragraphs, marks a significant shift in mindset towards the idea that it is a private family matter (KPPA, 2023). Criminalizing domestic violence in the Penal Code reflects the government's commitment to its anti-violence against women mandate, expanding and improving legal measures (Choirinnisa, 2022). Law No. 1 the Year 2023 redefines violence in the Criminal Code to include non-physical acts that cause harm, suffering, or deprivation of liberty, in line with but not limited to the definition of the PKDRT Law. The new Criminal Code is in line with the PKDRT Law, expanding the definition of

violence to include harm to the body or life. Article 157 introduces threats of violence, which include acts that may cause fear or anxiety, whether through speech, writing, or electronic means. The Code requires further clarity on the interpretation of 'force' and 'may cause' legal certainty. It also expands the scope of sexual violence to include manipulation using gifts or authority, especially involving children, with severe penalties for offenses against children under one's care.

The new Penal Code's sexual violence provisions expand on the PKDRT Law but impose lighter penalties. It broadly defines victims as those who suffer harm or loss due to a crime and addresses economic neglect with potential prison sentences for fraudulent acts that cause financial loss. (Reckdenwald et al., 2020). Article 1 of Law Number 1 of 1974 concerning Marriage states that marriage is a physical and mental bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on God Almighty, very married couples build a household aspire to a happy, harmonious, quiet and peaceful household life (Kusmardani et al., 2022). However, it is unlikely that throughout the life of marriage, there will be disagreements between husband and wife, parents' behavior or with other family members in the same household in the form of quarrels or physical violence (Nauval & Nasution, 2023).

Domestic violence is on the rise, influenced by various factors such as economic pressure and social pressure. The rapid spread of such news through social media highlights tragic cases, such as the 2020 incident in Cisalengka Bandung where a toddler was killed by his drunken stepfather. Families should be a place of dignity and mutual support, making such violence, especially by a loved one, extremely distressing. (Ismaidar & Rahmayanti, 2023).

Violent behavior is a condition in which a person commits acts that can physically harm themselves and others accompanied by uncontrollable anger and agitated noise (Rajendram et al., 2023). Violent behavior is a condition that can cause physical harm to oneself, others, and the environment (Derzon, 2023). Domestic violence includes verbal and physical abuse by a husband, which causes various forms of suffering to the wife. It includes threats and control within the family, often characterized by verbal abuse and lack of emotional support. (Rahmayanti & Ismaidar, 2023).

Domestic violence can stem from uncontrollable emotional outbursts, leading to varying degrees of harm or even homicide, often fuelled by perceived threats to the perpetrator's self-esteem. (Walker et al., 2024). Domestic violence includes physical, sexual, and emotional abuse, often fuelled by individual stress, urban pressure, economic hardship, and family caregiving (Holt, 2021). The parenting pattern that most favor domestic violence is authoritarian parenting. This makes the child temperamental (Pichon et al., 2020). Children should get good and loving care in the family because children are buds, potential, and the younger generation of successors to the ideals of the nation's struggle, have a strategic role, and have characteristics and

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characteristics that ensure the continued existence of the nation and state in the future. Children's human rights are part of the human rights contained in the 1945 Constitution of the Republic of Indonesia (Trimmings & Momoh, 2021).

Based on the background of the above problems, the author finds the following problem formulation: what is the position of domestic violence in the Indonesian legal system? The purpose of this research is to find a conception to simplify the regulations governing domestic violence in Indonesia.

### **Method**

The research method used in this research is qualitative through normative legal research. Normative legal research is legal research conducted by examining library materials or secondary data obtained from library materials in the form of books various laws and regulations and other legal documents (Taekema, 2018). In analyzing the data used in this research, the author uses a conceptual approach by examining various laws and regulations related to domestic violence in the Indonesian legal system, as well as observing the development of the concept and term domestic violence from several scientific opinion papers and international journals such as the Journal of Gender-Based Violence and the International Journal of Social Science and Human Research. The results of the analysis of legal materials obtained are then interpreted using grammatical and systematic interpretation methods. Grammatical interpretation is used to be able to decipher the meaning of legal provisions into simple common everyday language (Caroccia, 2023). Furthermore, the use of systematic interpretation is a method of legal interpretation that interprets laws and regulations by linking them with other laws and regulations or with the entire legal system (Caroccia, 2023). Systematic interpretation is used because what is interpreted are articles in the law, therefore legal provisions and principles in other legal regulations must also be used as references.

The conceptual approach is used to find the concept of domestic violence, where there are differences in the concept of domestic violence between the four laws and regulations, namely Law Number 23 of 2004 on the Elimination of Domestic Violence (UU PDKRT), Law Number 4 of 2004 on Domestic Violence (UU KDRT), Law Number 23 of 2014 on the Elimination of Sexual Violence (UU PKS) and the old version of the Criminal Code (UU PPndr) and the new version of the Criminal Code (new Criminal Code/National Criminal Code). In analyzing the results of this research, the author will use the positivist legal theory initiated by Hans Kelsen and the sociological legal theory initiated by Roscoe Pound as an analytical knife. Hans Kelsen is the initiator of the Pure Law School. Kelsen argued that law must be purged of non-juridical factors such as sociological, political, historical, and ethical. According to him, the law is a 'sollenkategorie' or imperative/ideal category, not a 'seinskategorie' or factual category. (Paulson, 2003). Roscoe Pound was one of the leading figures in the legal sociology movement in the United States

(Munir, 2023). He is known for his concept of 'social law', which emphasizes the function of law in society (Ahmad Qiram As-Suvi & Zainullah, 2022).

## **Results and Discussion**

### **Differences in the Regulation of Domestic Violence Between the Old Criminal Code and the New Criminal Code**

This research is organized into four frameworks. First, the paradigm of domestic violence is regulated in the new Criminal Code (KUHP). How is domestic violence criminal offense regulated by the state in Indonesia? There are differences in the regulation of domestic violence between the old version of the Criminal Code and the new version of the Criminal Code. In the previous version of the Criminal Code (old version), domestic violence is regulated in several articles, namely:

1. Article 44 on Maltreatment: This article regulates acts of maltreatment that cause injury or illness to another person, including family members.
2. Article 351 on Serious Maltreatment: This article regulates acts of maltreatment that result in serious injury or disability to the victim, including in a domestic context.
3. Article 333 on Ordinary Maltreatment: This article regulates acts of maltreatment that cause minor injury or illness to another person, including family members.
4. Article 338 on Aggravated Murder: This article deals with the act of premeditated murder and can cover domestic situations.
5. In addition to these articles, other provisions can be used in domestic violence cases, such as articles on threats, psychological maltreatment, or sexual abuse, depending on the nature and severity of the offense.

The (new) National Criminal Code regulates domestic violence in Article 473. Article 473 of the new Penal Code is included in Book Two on Criminal Offenses, Chapter XXII on Crimes Against the Body, and Part Three on Rape. In the old Criminal Code, the crime of rape was regulated in Article 285, where the crime of rape was included in crimes against decency. It distinguishes between decency, rape, sexual harassment, trafficking of children, and women. Meanwhile, in the new Criminal Code, the crime of rape is included in crimes against the body. In the new Penal Code, there is an expansion of behaviors categorized as the crime of rape in the new Penal Code (Pantat, 2023).

In Article 473 Paragraph (3), there are three behaviors included in the crime of rape. First, inserting the genitals into the anus or mouth of another person. Second, inserting another person's genitals into their anus or mouth. Third, inserting a body part that is not the genitals or an object into the genitals or anus of another person. The offense also applies if the rape is committed on a child (Soares & Setyawan, 2023).

Article 473 Paragraph (2) of the Criminal Code only describes four acts that fall into the category of the crime of rape (Arifin, 2023) i.e.:

1. Copulation with a person with his/her consent, because the person believes that the person is his/her lawful spouse,
2. Sexual intercourse with a child,
3. Copulation with a person, knowing that the other person is unconscious and helpless, or
4. Disability with a person with mental disability and/or intellectual disability by giving or promising money or goods, by abusing the authority arising from a relationship of circumstance, or by misleading him/her into having or permitting carnal knowledge of the condition of the disability.

Second, the paradigm of domestic violence is regulated in Law No. 23/2004 on the Elimination of Domestic Violence (PKDRT Law). This law contains several rules governing the criminal offense of domestic violence, including the provision of penalties or sanctions for perpetrators of domestic violence. In the author's observation, several articles that need attention in the PKDRT Law (Meliana Fransisca Sembiring et al., 2022) i.e.:

1. Articles that do not protect victims: The PKDRT Law still does not provide adequate protection for victims of domestic violence, where there are weaknesses in articles relating to the prevention, protection, and rehabilitation of victims, such as the lack of firmness in the process of handling domestic violence cases and the lack of adequate support for victims (Husain et al., 2021).
2. Articles on legal procedures and law enforcement: there are weaknesses in the articles governing legal procedures and law enforcement in cases of domestic violence, namely in terms of the length of the legal process, weaknesses in investigations, prosecutions, or sentences imposed on perpetrators of violence. (Barrick & O'Donnell, 2024).
3. Articles on child protection: There are concerns about articles relating to child protection in the PKDRT Law, which do not provide adequate protection for child victims of domestic violence or do not consider the special needs and rights of children in the context of domestic violence. (Hijriah & Ramadani, 2022).

Third, regarding the paradigm of domestic violence regulated in Law Number 4/2004 on Domestic Violence (Domestic Violence Law). In the author's observation, several articles in the Domestic Violence Law that need attention or need to be improved, namely:

1. Article 5: This article defines domestic violence. It should be noted that the definition of domestic violence in the law is quite narrow and only covers violence committed by a husband against his wife in a marital relationship. Expansion of the definition to include violence in dating

relationships, extramarital relationships, or domestic violence involving other family members may need to be considered for this law to cover all forms of domestic violence. A study by Hadjimatheou suggests empowering survivors of domestic violence by giving them access to information about their partner's criminal history. (Injil, 2022).

2. Article 7: This article regulates the reporting and handling of domestic violence cases. A Mahfud study concluded that although this article contains an obligation for the community to report cases of domestic violence, its implementation still faces obstacles (Mahfud & Rizanizarli, 2021). Further efforts are needed to raise public awareness of the importance of reporting domestic violence cases and ensure a responsive and effective response system.
3. Article 8: This article addresses temporary protection measures for victims of domestic violence. Although this article provides a legal basis for providing temporary protection, its implementation requires further attention (Hayati dan Ali, 2021). It is necessary to ensure that victims of domestic violence can quickly obtain adequate and safe temporary protection to avoid further risks.
4. Article 16: This article regulates the legal actions that can be taken against perpetrators of domestic violence. Although this article provides a legal basis for the prosecution and trial of perpetrators, its implementation still faces challenges (Quintas et al., 2024). Improved coordination between the criminal justice system and law enforcement agencies is needed to ensure effective law enforcement and adequate action against perpetrators of domestic violence.
5. Article 18: This article relates to the rehabilitation and reintegration of victims of domestic violence. Although this article provides a legal basis for providing support and rehabilitation to victims, its implementation still needs to be strengthened. Expanding and improving accessibility to physical, psychological, and social rehabilitation services for victims of domestic violence is important. A study by Sullivan states that some victims experience increased revictimisation and mental health problems and decreased well-being (Sullivan et al., 2021). Improvements and attention to these articles can help strengthen protection and response to domestic violence in Indonesia. It is important to involve various parties, including government, non-governmental organizations, and civil society, in the process of improving and updating the law to increase the effectiveness of protection for victims of domestic violence.

Fourth, the domestic violence paradigm is regulated in the Law on the Elimination of Sexual Violence. The Law on the Elimination of Sexual Violence in Indonesia was passed in 2016 based on Law No. 23/2014 on the Elimination of Sexual Violence (UU PKS). This law aims to protect victims of sexual violence, punish perpetrators of sexual violence, and encourage prevention and recovery efforts for victims (I Made Wahyu Chandra Becausena & Ni made

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Liana Dewi, 2022). The author observes several aspects regulated by the Elimination of Sexual Violence Law (UU PKS), which include:

1. Definition of sexual violence: The law provides a broad definition of sexual violence, including rape, sexual harassment, sexual abuse, forced prostitution, and other acts of sexual violence.
2. Victim protection and support: The law provides rights and protections for victims of sexual violence, including privacy protection, medical and psychological care, access to counseling services, and legal assistance.
3. Prosecution and sentencing: The law provides for the prosecution and trial of perpetrators of sexual violence. Perpetrators may be subject to criminal sanctions appropriate to the level of violence committed, including imprisonment.
4. Prevention and education: The law promotes the prevention of sexual violence through education programs, public awareness, and public campaigns.

**Regulation on Domestic Violence and Legal Protection for Victims of Sexual Violence**

Indonesia's domestic violence law does not specifically address domestic violence. It focuses more on sexual violence as a distinct form of violence and has specific provisions to protect victims of sexual violence. However, it is important to note that domestic violence and sexual violence are often closely related and can occur together in the same situation (Mahfud & Rizanizarli, 2021). In this context, several articles in the law can be used to protect victims of sexual violence who are also victims of domestic violence. Some of the relevant articles in the law that can be applied in cases of domestic violence are:

1. Article 7 on Coercive Acts: This article prohibits and sanctions acts of coercion to perform sexual acts against another person without consent, including in the context of domestic relationships.
2. Article 8 on Rape: This article regulates the act of rape and provides criminal sanctions for perpetrators of rape who commit forced sexual acts against others, including in a domestic setting.
3. Article 10 on Sexual Harassment: This article prohibits and provides sanctions against acts of sexual harassment committed by a person against another person, including in a domestic setting.

Although the law does not specifically regulate domestic violence, articles regulating sexual violence can protect victims of sexual violence who are also victims of domestic violence.

Based on the explanation of the research results above, the author found that although Indonesia already has 4 (four) laws regulating domestic violence, domestic violence crimes continue to increase every year. Why does this happen? Based on the author's observation, the cause of the increase in



domestic violence cases in Indonesia is a complex problem that does not have a single answer. Some factors that may contribute to the increase in domestic violence cases in Indonesia are as follows:

1. **Cultural and Norms Factors:** Several aspects of culture, norms, and traditions in Indonesian society can influence the prevalence of domestic violence. Norms that condone or trivialize domestic violence, patriarchal attitudes, and the perception that domestic problems should be resolved internally without outside interference can discourage victims from reporting or seeking help. A study on the causes of increased domestic violence in South Africa came to the same conclusion (Dirilis, 2020).
2. **Ignorance and Limited Access:** Lack of awareness about rights and protections for victims of domestic violence and limited access to support and protection services can make it difficult for victims to report violence or seek help. This factor can be caused by a lack of information, geographical distance, limited resources, and weaknesses in the law enforcement system. (Abdus Samad Khan dkk., 2023).
3. **Ineffectiveness of Law Enforcement:** Weaknesses in law enforcement, such as weak handling of domestic violence cases, lack of effective courts, slow legal processes, and inadequate penalties for perpetrators, can reduce victims' trust in the justice system and encourage victims not to report the violence they experience. (Tajuddin et al., 2020).
4. **Economic and Social Instability:** Economic factors, such as poverty, job instability, and economic inequality, as well as social factors such as stress, pressure, and strain in domestic relationships, can lead to domestic violence. (Showalter, 2016).
5. **Lack of Holistic Prevention and Intervention Approach:** Addressing domestic violence requires a comprehensive approach, involving various sectors such as education, health, police, and the community. Lack of effective prevention efforts, lack of rehabilitation and reintegration programs for perpetrators, and lack of coordination between agencies and sectors can be factors that exacerbate the situation of domestic violence. (Notko et al., 2022).

It is important to note that these are some of the factors commonly associated with increased cases of domestic violence, but each situation may vary depending on the social, cultural, and economic context of each region. Addressing domestic violence requires a holistic and sustainable approach, involving prevention, protection, education, victim support, strong law enforcement, and deep social change. The heterogeneous state of Indonesian society which is one of the causes of the increase in domestic violence cases is very interesting to study further so the author makes it one of the problem formulations in this study. This finding is in line with a positivist legal theory that focuses on laws written and regulated by the state. In this context, we look at how the criminal law (both old and new versions) and the PKDRT

Law regulate domestic violence. We also look at how changes in criminal law affect the regulation of domestic violence, including the expansion of behaviors categorized as the crime of rape. These findings are also in line with sociological legal theory which emphasises the influence of law on society and how society influences law. In this context, we look at how over-regulation in the regulation of domestic violence can affect the implementation, and effectiveness of protection for victims of domestic violence in Indonesia. We also looked at how existing laws can affect coordination and collaboration between agencies and parties involved in handling domestic violence cases.

Using these two theories, we can see that there is a need to conduct a thorough evaluation of the three existing laws and merge them into one comprehensive law. This will ensure consistency, clarity, and effectiveness of protection for victims of domestic violence and facilitate law enforcement and holistic handling of domestic violence cases. In addition, the author suggests a technological approach to facilitate reporting and victims' access to assistance. Thus, this research shows that legal reforms and new approaches are needed in handling domestic violence in Indonesia.

### **Conclusion**

Based on the results and discussion above, it can be concluded that there is over-regulation in the regulation of domestic violence. This over-regulation can have an impact on the implementation and effectiveness of protection for victims of domestic violence in Indonesia, including (1). Conflict and legal uncertainty. (2). Systemic chaos. (3). Fragmentation of resources. (4). Lack of coordination and collaboration. To address the impact of over-regulation in domestic violence regulations, the author considers it important to conduct a comprehensive evaluation of the three laws and merge them into one comprehensive law. This will ensure consistency, clarity, and effectiveness of protection for victims of domestic violence and facilitate law enforcement and holistic handling of domestic violence cases. In addition, the author suggests a technological approach to facilitate reporting and victims' access to assistance.

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