

## **Legal Analysis into Domestic Violence that does not lead to Physical Ailments**

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### **Abstract**

Domestic violence is a despicable and prohibited act because it is a violation of human rights, and state law and is also prohibited in all religious teachings. Domestic violence must be eliminated so that families in Indonesian society live and are built whole and well by the values of religion and culture of the Indonesian nation. Law Number 23 of 2004 regulates various types of domestic violence that can be prosecuted and some articles regulate forms of violence that do not cause the victim to suffer pain. From the results of the study, it was concluded that domestic violence that does not cause the victim to suffer pain is a complaint offence that can only be prosecuted with a complaint from a person who has the right to complain, the criminal sanctions applied in general are imprisonment while there are still alternative punishments that are more beneficial for both the perpetrator and the victim and other family members, namely conditional sentences.

**Keywords:** Law, Domestic Violence, Victims

### **Introduction:**

The integrity and harmony of the family, characterized by a sense of peace, happiness, security, and tranquility, are aspirations deeply rooted in the hearts of all married couples. In Indonesia, a nation that embraces religious values as the foundation of its state philosophy, the sanctity of the family is enshrined in the 1945 Constitution, particularly in Article 29. This article underscores that Indonesia is a country based on belief in God, and it guarantees the freedom of every citizen to practice their religion. Consequently, all family members within a household are expected to be guided by their religious principles as they navigate their rights and obligations.

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This religious guidance serves as a moral compass, fostering unity, love, and respect within the family unit (Saihu, 2020).

Given the centrality of the family in shaping individuals and society at large, it is imperative to continually nurture the unity and stability of the household. The realization of a harmonious family environment is not merely the responsibility of one member but rather a collective effort that hinges on the active participation of all family members (Manuputty et al., 2024). Each person within the family plays a crucial role in maintaining the delicate balance of the household. This balance is significantly influenced by the quality of self-control, behaviour, and the ability to resolve conflicts amicably. When these elements are in place, the family becomes a source of strength, comfort, and support for its members. However, when these elements are lacking or disregarded, the family structure can become vulnerable to conflicts and discord.

The family, as the fundamental unit of society, is the first social environment where individuals learn to interact, communicate, and build relationships with others. It is within the family that core values, norms, and behaviours are instilled. This foundational role of the family is what makes it so meaningful and critical to the development of individuals and, by extension, society as a whole. However, despite its significance, the family is not immune to challenges and struggles. In reality, the family can also be a space where various forms of deviance or behaviours that are prohibited by both law and religion emerge. These behaviours, which may include dishonesty, neglect, or abuse, can lead to significant emotional, psychological, and even physical harm, causing deep misery and suffering within the family (Iwaniec, 2006).

One of the most pressing issues that can threaten the harmony of a family is domestic violence. Domestic violence, whether severe or mild, is a manifestation of deeper underlying issues within the family, often stemming from a lack of self-control, poor communication, unresolved conflicts, or external stressors such as financial difficulties or substance abuse (Bennett et al., 2011). The severity of domestic violence can vary, ranging from verbal and emotional abuse to physical assault. Even in cases where the violence does not result in visible injuries or does not seem to hinder the victim's ability to carry out daily activities, its impact should not be underestimated. Domestic violence, in any form, can erode the trust and love that binds a family together, leading to long-term emotional scars, and in some cases, the eventual disintegration of the family unit (Hornor, 2005).

The triggers for domestic violence are varied and complex. They can include factors such as economic hardship, cultural norms that condone or minimize violence, power imbalances within the family, and individual psychological issues (Aisyah & Parker, 2017). However, regardless of the triggers, it is essential to recognize that domestic violence is a violation of both legal and religious principles. It is a destructive force that undermines the very foundation of the family, turning what should be a sanctuary of love and support into a battleground of fear and control.

To combat the threat of domestic violence and other forms of family discord, it is crucial to promote the values of mutual respect, empathy, and open communication within the household (Purnamasari et al., 2020). Families must be encouraged to seek help and support when faced with challenges, whether through counselling, religious guidance, or community resources. Additionally, raising awareness about the importance of maintaining a healthy and harmonious family environment, and the devastating effects of domestic violence, can help prevent such issues from taking root in the first place.

Domestic Violence is regulated as a criminal act and is subject to criminal penalties based on Law Number 23 of 2004 (Yulia, 2006). Several articles stipulate that the criminal act of violence

referred to in the Law can occur in various forms and is classified as an ordinary crime and a complaint crime. Of course, the way it is handled/resolved will be different.

### **Problem Formulation:**

- i. How is the prosecution of domestic violence cases that do not cause illness to the victim?
- ii. How is the application of criminal sanctions for perpetrators of domestic violence that does not cause illness to the victim?
- iii. Are there any more beneficial alternatives other than imprisonment (deprivation of liberty) in cases of domestic violence that do not cause illness to the victim?

### **Research Methods:**

The choice of methodology is crucial as it dictates the approach researchers take to gather information, analyze it, and ultimately conclude. In the context of legal research, particularly when examining legal texts, doctrines, and legislative frameworks, the normative juridical research method is often employed. This method is a specialized approach within the broader umbrella of legal research methodologies and is sometimes referred to as the “library method” due to its reliance on existing literature and legal sources (Mann, 2015).

The normative juridical research method is particularly suited for research that aims to analyze legal principles, norms, and regulations as they exist in written law. Unlike empirical research methods that focus on observing and collecting data from real-world experiences and behaviours, the normative juridical method is concerned with the interpretation of legal texts. This method seeks to understand, clarify, and critique legal concepts and norms based on authoritative sources such as legislation, case law, legal doctrines, and scholarly commentaries (Budianto, 2020).

One of the fundamental aspects of the normative juridical research method is its systematic and logical approach to data collection and analysis. Researchers using this method begin by identifying the legal issues or questions that need to be addressed. They then proceed to collect data from a range of legal sources, including statutes, regulations, judicial decisions, legal journals, and textbooks. These sources provide the foundational material needed to explore the research question comprehensively.

The data collected through this method is processed and analyzed systematically. Researchers categorize and organize the legal materials, ensuring that they are examined in a way that reveals the underlying legal principles and norms. The logical structure of this analysis is essential, as it allows researchers to draw clear and reasoned conclusions about the legal issues under investigation. This method is not merely about compiling legal texts but involves critical thinking and interpretation to understand how laws should be applied in specific contexts, how they have evolved, and how they interact with other legal norms.

The normative juridical research method is particularly valuable in legal studies because it allows researchers to delve deeply into the theoretical aspects of law. It is a method that respects the complexity of legal systems and acknowledges that laws are not just rules to be followed but are also expressions of societal values, ethics, and justice. By engaging with legal texts in a detailed and methodical manner, researchers can uncover the nuances of legal norms, explore the intentions behind legislative provisions, and critique the coherence and consistency of legal doctrines.

Furthermore, this method provides a platform for the development of legal theories and the proposal of legal reforms. Through the normative juridical approach, researchers can identify gaps in the law, inconsistencies in legal interpretations, and areas where the law may need to evolve to better serve justice. This makes the method not only a tool for understanding existing laws but also a means for contributing to the development of the legal system. In legal research, the normative juridical method is often complemented by comparative analysis, where researchers examine how different legal systems address similar issues. This can provide valuable insights into alternative approaches and best practices, which can inform legal reform and the harmonization of laws across different jurisdictions. Additionally, the method can be integrated with historical analysis to trace the development of legal norms over time, offering a deeper understanding of their origins and evolution.

### **Discussion:**

**Prosecution of domestic violence cases that do not cause disease for victims:** Domestic violence should not be narrowly interpreted as only involving physical actions such as hitting, pulling hair, or slapping. It also encompasses psychological forms of violence, which can be just as damaging. Psychological violence includes behaviours like continuous insults, emotional manipulation, or being persistently pressured and cornered by one or more family members. Even actions that might seem less overt, such as shouting or using harsh words, are considered forms of violence. While it is often perceived that men are the primary perpetrators of domestic violence, this does not imply that illegal actions are never committed by women against other family members. Domestic violence is a complex issue that can affect anyone, regardless of gender, and it can take many forms, all of which are harmful and unjust.

In reality, acts of violence, in their various forms, frequently occur, and women are disproportionately affected. This troubling pattern is evident across all strata of society, from the lower to the upper classes. The prevalence of such violence is highlighted by the mass media, social media, and electronic media, which frequently report cases involving women and children as victims. These reports underscore the harsh reality that domestic violence is not confined to any particular demographic but is a widespread issue that requires urgent attention.

Victims of domestic violence are individuals who experience violence and/or threats of violence within the household. According to the law, these victims are often socially vulnerable, lacking the means or the support to protect them from abuse. Historically, society tended to view domestic violence as a private matter, not something to be discussed openly or addressed through legal channels. This cultural silence perpetuated the cycle of abuse, leaving victims without the necessary support to seek help or escape their circumstances (Gultom, 2006).

However, this perspective began to shift with the enactment of Law Number 23 of 2004 on the Elimination of Domestic Violence in Indonesia. This landmark legislation marked a significant turning point in how society views and addresses domestic violence. The law not only recognizes the gravity of domestic violence but also empowers victims by providing them with the legal framework to seek justice. It also raises public awareness about the importance of addressing domestic violence and encourages victims to report such incidents to the authorities.

The law's introduction has played a crucial role in increasing public and victim awareness, leading to a growing willingness to report domestic violence cases to the police. This shift is essential for preventing and ultimately eliminating domestic violence from our society. However,

the responsibility to combat domestic violence does not rest solely with the victims. The broader community must also play an active role in preventing and addressing these acts of violence.

To effectively prevent and eliminate domestic violence, it is imperative that everyone who witnesses, hears about, or becomes aware of such acts takes the responsibility to report them. Reporting domestic violence is not just a moral duty but also a legal obligation that can help protect victims and hold perpetrators accountable. When individuals take the initiative to report domestic violence, they contribute to creating a safer environment for everyone and reinforce the message that such behaviour will not be tolerated.

Moreover, creating a supportive environment for victims is crucial. This includes ensuring that there are accessible resources such as counselling, legal aid, and safe shelters for those who need them. Public campaigns and educational programs can also play a significant role in changing societal attitudes toward domestic violence, encouraging more people to speak out against it, and providing victims with the knowledge and confidence to seek help.

Domestic violence is a pervasive issue that manifests in both physical and psychological forms. It affects individuals across all walks of life, with women and children often bearing the brunt of the abuse. The introduction of Law Number 23 of 2004 has been instrumental in shifting societal attitudes and increasing awareness about the importance of addressing domestic violence. However, to fully eradicate this issue, a collective effort is required. Every member of society must be vigilant, proactive, and committed to reporting and preventing domestic violence, thereby contributing to the creation of a safer, more just community for all. In Article 5 of Law Number 23 of 2004, it is determined that domestic violence occurs in the form of:

- i. **Physical violence:** Forms of physical violence are actions or deeds that cause pain, illness, serious injury or even death, kicks, strangulation, pushing, punches, burns, violence with sharp objects, and others
- ii. **Psychological violence:** Psychological violence can be done by insulting, using language that is intended to demean and hurt the self-esteem of the wife or husband, prohibiting the wife from socializing, threatening to divorce the wife or distancing herself from the child which causes inner feelings of torture and depression.
- iii. **Sexual violence:** Sexual violence is a broad term encompassing any sexual act or attempt to obtain a sexual act through coercion, force, or without the consent of the individual involved. It includes a wide range of behaviors, from verbal harassment to physical assault, and can occur in various contexts.
- iv. **Domestic neglect:** The act of not providing a living, not providing care for people within the household that the perpetrator is obliged to do. In some cases of domestic violence, some are carried out without causing an illness to the victim or not causing the victim to be disturbed in carrying out their daily work or activities.

To find out the type of crime in the Law, it is necessary to pay attention to several provisions that are specifically stipulated in Law Number 23 of 2004 as complaint offences in the following articles:

- i. The crime of physical violence as referred to in Article 44 paragraph (4), namely: The crime of physical violence committed by a husband against a wife or vice versa which does not cause illness or obstacles to carrying out work or livelihood or daily activities (Article 51).

- ii. The crime of psychological violence is referred to in Article 45 paragraph (2), namely: The crime of psychological violence committed by a husband against a wife or vice versa which does not cause illness or obstacles to carrying out work or livelihood or daily activities (Article 52).
- iii. The crime of sexual violence as referred to in Article 46, namely: sexual violence committed by a husband against a wife or vice versa (Article 53).

From these provisions, it can be understood that the type/form of violence directed either physically or psychologically from a husband to a wife or vice versa that does not cause illness or obstacles to carrying out work or livelihood or daily activities, which is regulated as a complaint offence is categorized as minor violence.

Considering the nature of the violence that is qualified as a crime, it can be understood that the intention of the lawmakers to regulate this form of violence as a complaint offence is based on the idea of protecting the personal interests of those who are harmed/sufferers/who have the right to complain considering that this violence occurs between a husband and wife whose scope is very personal and sensitive. In other words, the interests of someone who has the right to complain are more harmed if the case is brought to the legal realm compared to the harm to the public interest.

In Article 1 point 7 of the Criminal Procedure Code, prosecution is an action by the public prosecutor to refer a case to the competent District Court in the case and according to the method regulated in the law with a request that it be examined and decided by a Judge in court. The public prosecutor is obliged to carry out his duties against the accused who has committed a crime within his jurisdiction except:

- i. if the legal interest or public interest requires the public prosecutor not to refer the case to the court for trial
- ii. if there are grounds to close the possibility for the public prosecutor to prosecute the perpetrator (*vervolgingsuits luitingsgronden*); and
- iii. if there are grounds that require the public prosecutor to suspend the prosecution of the perpetrator (*vervolgingsopschortingsgronden*)

The public prosecutor carries out the prosecution task after receiving the file from the investigator. The investigator knows that an act of violence has occurred, from a report, complaint or being caught red-handed or perhaps it was accidentally discovered by the investigator himself. This is in line with the provisions outlined in the Implementation Guidelines for the Criminal Procedure Code that the investigator's obligation to immediately carry out the necessary investigative actions if he knows or has received a report, whether it comes from the investigator with or without a report, or from a report or complaint from someone who experienced, saw, witnessed and or became a victim of the incident that constitutes a criminal act.

Based on the report or complaint, the investigator will immediately investigate the incident experienced by the victim. A complaint can be defined as a firm statement (verbal or written or written) from a person who has the right (to complain) which is submitted to an investigating officer or an investigating officer (Indonesian police) about a crime (in case of a complaint crime) being committed by someone accompanied by a request for an investigation to be carried out for further prosecution in court (Chazawi, 2002).

Based on the general principle, it is not important what the victim asks for in a criminal case. The state is obliged to prosecute criminal cases. However, this principle is excluded in the

case of a complaint crime. In the case of a complaint crime, the state does not have the jurisdiction to prosecute if the person who has the right to complain does not request or complain that the case being complained about be examined, submitted to the court and decided.

Thus, for acts of violence that do not cause illness to the victim and have been classified as complaint crimes based on the Law, the prosecution can only be carried out by the public prosecutor if the victim (husband or wife) has submitted a letter of complaint to the investigator or if it has not been submitted to the investigator but the investigator has conducted an investigation, the victim must submit a complaint about this to the public prosecutor and the complaint (in written form) will be attached by the public prosecutor together with the case files/transfer of the case to the district court.

**Implementation of criminal sanctions for perpetrators of domestic violence who do not cause disease to the victim:** From the provisions of Law Number 23 of 2004 in Article 44 paragraph (4), Article 45 paragraph (2), the criminal sanctions for the perpetrators are “imprisonment, or, fines. The presence of the words “or” in the provisions of sanctions in Law Number 23 of 2004 provides the understanding that the punishment is alternative in nature, so it is entirely up to the judge’s discretion to determine it. However, in practice, imprisonment is still the judge’s choice to be imposed in cases of domestic violence.

**Conditional sentences as an alternative to imposing imprisonment in settling domestic violence cases:** With the imposition of imprisonment, the freedom of the convict has been taken away, although it is temporary. However, this still has a bad impact, especially on family members. With this criminal deprivation of liberty, the perpetrator’s livelihood or job will most likely be lost and this can result in the neglect of the perpetrator’s children or wife.

About this, it is necessary to find an alternative to the criminal deprivation of liberty, namely in the form of a conditional sentence as regulated in the Criminal Code. With certain considerations, for example, that the defendant has never previously committed a crime, the defendant’s actions are also inseparable from the role of the victim, a wife who always corners her husband because of her small income, the defendant must earn a living, and the defendant has shown deep regret. In addition, the victim himself has forgiven the defendant’s actions and other considerations that can convince the judge that it would be more beneficial for the defendant to be sentenced to a conditional sentence than to imprisonment.

With a conditional sentence, the convict does not need to be executed as long as the conditions determined by the judge are not violated. Conditional sentences will be beneficial for the convict, the victim’s family members and the community.

The imposition of a conditional sentence is expected to improve perpetrators of domestic violence who are not real criminals, especially for those who do it because they are driven by certain factors within the family.

## **Conclusion:**

- i. Criminal acts of physical violence and psychological violence within the scope of the household that do not cause illness or obstacles for the victim to carry out work, position livelihood or daily activities are classified as complaint offences, therefore prosecution can only be carried out by people who have the right to complain.

- ii. Criminal sanctions for perpetrators of domestic violence that do not cause illness to the victim are imprisonment or fines.
- iii. Conditional sentences or probation will be more useful to be applied as an alternative to imprisonment (deprivation of liberty) in resolving domestic violence cases for both victims and perpetrators.

### Recommendations:

- i. Law enforcers, especially investigators, first try mediation to reconcile the victim and perpetrator before conducting further investigations in cases of domestic violence that do not cause illness to the victim.
- ii. Judges consider the advantages and disadvantages, especially for the perpetrator/victim's family members before issuing a verdict in the form of imprisonment or better yet, applying a conditional sentence.
- iii. Husband and wife always control themselves to overcome problems that arise in the family.

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