

## Perspective of Law Enforcement Regarding Criminal Sanctions for Domestic Violence by Police Officers



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**ABSTRACT:** This research identifies, analyzes, and reformulates the juridical basis regarding criminal sanctions for domestic violence committed by law enforcement officials. By focusing on the criminalization policy in the application of criminal sanctions in the Law on the Elimination of Domestic Violence and the minimum limit of criminal sanctions for domestic violence according to Indonesian legislation and the application of the code of ethics for the Police.

This research uses a normative juridical approach, namely by examining/analyzing secondary data in the form of legal materials, especially primary legal materials and secondary legal materials, by understanding the law as a set of positive rules or norms in the legislative system that regulates human life.

The results show that the new Criminal Code Law and the PKDRT Law have undergone significant evolution in dealing with domestic violence in Indonesia. The new Criminal Code Law regulates sexual violence by incorporating elements of the PKDRT Law, albeit with lighter criminal penalties. The PKDRT Law introduces a system of formulating alternative criminal sanctions, giving judges flexibility, but the main challenge is the consistency of law enforcement and the application of professional codes of ethics in law enforcement officials, such as those stipulated in the POLRI Code of Ethics.

**KEYWORDS:** law enforcement, criminal sanctions, domestic violence, police officers.

### INTRODUCTION

Marriage is a physical and mental bond between a man and a woman to build a household that aims to form a happy and eternal family, for husband and wife it is necessary to help and complement each other so that each can develop their personality and achieve spiritual and material well-being.<sup>1</sup> Violence in society is actually not a new thing. Even in the household sphere, both electronic and print media often provide information on violence that has been committed by the husband to the wife by hitting her limbs and threatening her to do what the husband wants. Domestic violence is often called a hidden crime. It is called this because both the perpetrator and the victim try to keep the act a secret from public view.<sup>2</sup>

In general, women have a higher fear of crime than men. The suffering experienced by women both during and after violence is in fact much more traumatic than that experienced by men. Greater trauma generally occurs when the violence is committed by people who have a special relationship with them, such as their own family (husband, father, uncle, etc.). Trauma that women have experienced due to painful and frightening actions will continue to imprint on a person. People who are constantly in a state of tension, indecision, fear, will eventually experience mental disorders (psychoneurose) whose manifestations can vary, ranging from mild to severe.

The issue of domestic violence is then mostly resolved in ways that are less favorable to victims, especially women and children. This arises because of the assumption that criminal acts of domestic violence are household affairs arising between husband and wife whose legal relationship between individuals occurs because they are bound in marriage, so that if there is a violation in the legal relationship between these individuals, law enforcement is carried out by filing a lawsuit in court by the party who feels aggrieved. The Marriage Law does not regulate the sanctions that can be imposed on perpetrators of domestic violence.<sup>3</sup> Domestic violence is a violation of human rights and a crime against the dignity of humanity as well as a form of discrimination that must be eliminated, as stated in the 1945 Constitution amendment IV Article 28 letter G paragraph (1) which states “Everyone has the right to protection of self, family, honor, dignity and property under their control and is entitled to a basic sense of security and protection from threats of fear to do and or not do something that is a human right.”

<sup>1</sup> Sution Usmanadji. 1989. *Kawin Lari dan Kawin Antar Agama*. Yogyakarta: Liberty, hlm 17.

<sup>2</sup> Moerti Hadiati Soeroso. 2011. *Kekerasan Dalam Rumah Tangga Dalam Perspektif Yuridis-Viktimologis*. Jakarta: Sinar Grafika, hlm. 1

<sup>3</sup> Waluyo, B. (2022). *Penegakan hukum di Indonesia*. Jakarta: Sinar Grafika. Hlm. 2

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Domestic violence is one of the problems that the government has finally paid attention to. This is reflected in the enactment of Law No. 23/2004 on the Elimination of Domestic Violence (hereinafter abbreviated as the Domestic Violence Elimination Law). This law was born and became a legal reference because in the Criminal Code (KUHP), the criminal threats and fines for domestic violence problems are very light so that they are not enough to deter the perpetrators.

According to Article 1 paragraph (1) of Law Number 23 of 2004, Domestic Violence is any act against a person, especially women, which results in physical, sexual, psychological, and or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household.

Victims of domestic violence, most of whom are women, must receive protection from the state and or the community, in order to avoid and be free from violence, torture or treatment that degrades human dignity.<sup>4</sup> Domestic violence, especially violence committed by a husband against his wife, not only causes physical suffering but also psychological suffering. Therefore, victims of domestic violence must receive maximum protection.<sup>5</sup> Legal protection is a form of protection provided by the state with rules maintained by the state or ruler with the intention of achieving the order of living together and all interests related to it.<sup>6</sup>

The term sanction in the repertoire of legal science cannot be separated from criminal law or in other words the term sanction is always attached to criminal law. As stated by Jan Rummelink, criminal law is the law (about the imposition) of sanctions: the matter of enforcing norms (rules) by instruments of power (state) aimed at countering and eradicating behavior that threatens the validity of the norm is more visible here than in other areas of law, such as civil law.<sup>7</sup>

Furthermore, Jan Rummelink stated that generally the sanction appears in the form of punishment, the conscious and mature imposition of a punishment by the authorized authority to the offender who is guilty of violating the rule of law.<sup>8</sup> Jan Rummelink also points out that the authorized authority, the criminal judge, does not only impose sanctions, but also imposes measures (maatregel) for norm violations committed wrongfully and sometimes also due to negligence.<sup>9</sup>

Based on the characteristics of the idea of individualization of punishment, M. Sholehuddin explained that the emergence of the double track system thought requires that the element of deterrence / suffering and the element of guidance are equally accommodated in the criminal law sanction system. This is the basic explanation why the double track system requires equality between criminal sanctions and actions.<sup>10</sup> Criminal sanctions in legal science are related to the existence of laws that aim to uphold legal order and protect legal communities where there is a close relationship between the state and society. Based on this, domestic violence committed by a husband against his wife is categorized as a criminal act because there is prohibited and unlawful behavior, so that the act contains sanctions imposed on those who violate the prohibition. In addition, domestic violence committed by a husband against his wife does not only cause physical suffering but also psychological suffering. This is in accordance with the forms of domestic violence listed in Article 5 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, namely physical violence, psychological violence, sexual violence or domestic neglect.

The criminal sanctions against domestic violence in Law No. 23 of 2004 on the Elimination of Domestic Violence are listed in Articles 44-Article 50 as follows:

Article 44

- (1) Every person who commits acts of physical violence within the scope of the household as referred to in Article 5 letter a shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp 15,000,000.00 (fifteen million rupiah).
- (2) In the event that the act as referred to in paragraph (1) results in the victim getting sick or seriously injured, shall be punished with imprisonment of 10 (ten) years or a maximum fine of Rp 30,000,000.00 (thirty million rupiah).
- (3) In the event that the act as referred to in paragraph (2) results in the death of the victim, the person shall be punished with imprisonment of 15 (fifteen) years or a maximum fine of Rp 45,000,000.00 (forty five million rupiah).
- (4) In the event that the act as referred to in paragraph (1) is committed by the husband against the wife or vice versa which does not cause illness or impediment to the performance of official work or livelihood or daily activities, he shall be punished with imprisonment for a maximum period of 4 (four) months or a maximum fine of Rp 5,000,000.00 (five million rupiah).

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<sup>4</sup> Bambang Waluyo. (2023). *Sistem pemasyarakatan di Indonesia*. Jakarta: Sinar Grafika. Hlm. 1

<sup>5</sup> Bakhtiar, H. S. (2022, December). Utilization of Forensic Evidence in the Criminal Justice System. In *International Conference on Law Studies (INCOLS 2022)* (pp. 237-245). Atlantis Press.

<sup>6</sup> Garry Garry, dan Beniharmoni Harefa. "Perlindungan Hukum Anak Korban Eksploitasi Sebagai Publik Figur di Media Sosial." *JURNAL USM LAW REVIEW* 7.1 (2024): 129-143.

<sup>7</sup> Jan Rummelink, 2003, *Hukum Pidana. Komentar atas Pasal-pasal Terpenting KUHP Belanda dan Padanannya dalam KUHP Indonesia*, Gramedia, Jakarta, hlm. 6

<sup>8</sup> *Ibid.*, hlm. 7.

<sup>9</sup> *Ibid.*

<sup>10</sup> Barda Nawawi Arif dalam M. Sholehuddin, 2004, *Sistem Sanksi dalam Hukum Pidana*, Raja Grafindo Persada, Jakarta, hlm. 29.

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### Article 45

- (1) Every person who commits acts of psychological violence within the scope of the household as referred to in Article 5 letter b shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of Rp 9,000,000.00 (nine million rupiah).
- (2) In the event that the act as referred to in paragraph (1) is committed by the husband against the wife or vice versa which does not cause illness or impediment to the performance of official work or livelihood or daily activities, shall be punished with imprisonment for a maximum period of 4 (four) months or a maximum fine of Rp 3,000,000.00 (three million rupiah).

### Article 46

Every person who commits an act of sexual violence as referred to in Article 8 letter a shall be punished with a maximum imprisonment of 12 (twelve) years or a maximum fine of Rp 36,000,000.00 (thirty six million rupiah).

### Article 47

Every person who forces a person who resides in his/her household to have sexual intercourse as referred to in Article 8 letter b shall be punished with imprisonment for a minimum of 4 (four) years and a maximum imprisonment of 15 (fifteen) years or a fine of at least Rp 12,000,000.00 (twelve million rupiah) or a maximum fine of Rp 300,000,000.00 (three hundred million rupiah).

### Article 48

In the event that the acts as referred to in Article 46 and Article 47 result in the victim receiving an injury from which there is no hope of complete recovery, suffering a disturbance of thinking or psychiatry for at least 4 (four) weeks continuously or 1 (one) year non-consecutively, the abortion or death of a fetus in the womb, or resulting in the malfunctioning of the reproductive organs, shall be punished with a minimum imprisonment of 5 (five) years and a maximum imprisonment of 20 (twenty) years or a fine of at least Rp 25.000,000.00 (twenty five million rupiah) and a maximum fine of Rp 500,000,000.00 (five hundred million rupiah).

### Article 49

Shall be punished with imprisonment of 3 (three) years or a maximum fine of Rp. 15,000,000.00 (fifteen million rupiah), every person who:

- a. neglects other persons within the scope of his/her household as referred to in Article 9 paragraph (1);
- b. neglecting other persons as referred to in Article 9 paragraph (2).

### Article 50

In addition to the punishment as referred to in this Chapter, the judge may impose additional punishment in the form of:

- a. restrictions on the movement of the perpetrator, either aimed at keeping the perpetrator away from the victim for a certain distance and time, or restrictions on certain rights of the perpetrator;
- b. the determination of the perpetrator to participate in a counseling program under the supervision of a certain institution.

The Police of the Republic of Indonesia is a government institution that stands alone and is directly under the President of the Republic of Indonesia as included in Article 2 of the Law of the Republic of Indonesia No. 2 of 2002 concerning the Police that "The function of the police is as one of the functions of state government in the field of maintaining security and public order law enforcement, protection protection and service to the community"<sup>11</sup> The Indonesian National Police in carrying out its duties, functions and authorities must comply with the Code of Ethics in the Regulation of the Indonesian National Police No. 7 of 2002 concerning the Professional Code of Ethics of the Indonesian National Police as a provision for the attitude and behavior of Police Officers.<sup>12</sup> Apart from that, the Indonesian National Police through Government Regulation of the Republic of Indonesia No. 3 of 2004 concerning the Technical Implementation of Institutional General Courts for Members of the Indonesian National Police (Kepolisian Negara Republik Indonesia) explained in detail that members of the Indonesian National Police are subject to the General Courts.<sup>13</sup> So it can be said that in law the police are no longer part of the subject of military law, but as civilians. In connection with violations of the Code of Ethics committed by police officers, the police officers will receive a Professional Code of Ethics Hearing and Disciplinary Provisions in accordance with applicable regulations.

Being a servant of the state and as a protective institution for the community has very strict duties and obligations. Starting from the implementation to the actions in the life of the community, everything has been regulated in detail and written in the provisions that have been authorized by the authorized body and should be implemented. Thus it can be interpreted that a police officer must be an example and role model for the community in his area or in the area where the police are on duty. The key to success in implementing police ethics is actually determined by three things including having a person who is determined to act

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<sup>11</sup> Heru Sugiyono, et al. "Law Enforcement Strategy in Indonesia's Economic Recovery Due to the COVID-19 Pandemic." *Revista de Gestão Social e Ambiental* 18.5 (2024): e06833-e06833.

<sup>12</sup> Abdulkadir Muahammad, 2006, *Etika Profesi Hukum*, PT. Citra Bakti, Bandung, hlm 2.

<sup>13</sup> Bakhtiar, H. S. (2024). Implementation of Electronic Medical Record System in Indonesia Viewed from the Perspective of Legal Certainty. *International Journal of Engineering Business and Social Science*, 2(04), 1114-1122.

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ethically, a leader who directs or guides and a supporting factor from the community.<sup>14</sup> On the other hand, if one or all of them lose this ethical attitude, it will damage the performance and image of the police. But it is very unfortunate that even though it is bound by strict regulations, there are still many unscrupulous police officers who commit actions that do not reflect the identity of a police officer such as abusing the authority of brokers, arrogance, persecution and many others.<sup>15</sup>

As supporting data regarding one of the cases of police officers committing domestic violence, based on the Decision of the Sumbawa Besar District Court Number: 153/Pid.B/2021/PN Sbw with the defendant A.n. Mulawarman AK. Jamiri with a case of domestic violence as regulated and punishable in Article 44 paragraph (1) of Law No. 23/2004 on the Elimination of Domestic Violence. The defendant A.n. Mulawarman AK. Jamiri was sentenced to 7 (seven) months imprisonment, reduced while the defendant was under arrest. The defendant committed physical violence against his wife, who is referred to as the Victim Witness. This incident occurred on 9 February 2018 in Sumbawa Regency, and the Defendant was accused of hitting, biting and pulling the hair of the Victim Witness.

Based on the evidence presented during the trial, the Court concluded that the Defendant was guilty of committing an act of domestic violence in accordance with Article 5 letter a of Law No. 23/2004 on the Elimination of Domestic Violence. Therefore, the Court sentenced the Defendant to 7 months imprisonment, with deduction for the period of detention already served. The Defendant was also ordered to pay court costs of Rp 2,500.

The court considered the Defendant's request for a lighter sentence, but still decided in accordance with the charges of the Public Prosecutor. The court also noted that although the Defendant and the Victim Witness were still in a marital relationship, these acts of violence did not prevent the Victim Witness from carrying out her work or daily activities. In addition, the court also noted that the Victim Witness had filed for divorce against the Defendant at the Religious Court. The Defendant himself is a member of the National Police who is assigned to the Alas Police Station. Thus, the Court's decision was that the Defendant was guilty of committing domestic violence and had to serve a prison sentence, while divorce proceedings had also been initiated between the Defendant and the Victim Witness.

Based on the above background, the problem formulation in this study is How is criminal policy in the application of criminal sanctions in the Law on the Elimination of Domestic Violence?

### RESEARCH METHODS

The type used in writing this thesis law is descriptive analytical, namely in the form of describing, examining, and analyzing applicable legal provisions.<sup>16</sup> In the context of criminal law, particularly Law No. 23 of 2004 on the Elimination of Domestic Violence, appropriate and concrete principles of criminal law are used. This approach will provide a structured, fact-based, and accurate picture of the aspects and characteristics of the object of research.

This thesis research uses a normative juridical approach method by inventorying, reviewing, and examining secondary data.<sup>17</sup> In the form of laws and regulations, legal definitions and cases related to the problems that researchers will discuss, namely related to the Crime of Domestic Violence among Members of the Police. This research uses a method of approach, including:

#### 1. Statute Approach

The statutory approach is carried out by reviewing all laws and regulations relating to the legal issues studied. The statutory approach is used to study the consistency and compatibility between a law and other laws or between laws and the Constitution or between regulations and laws. Researchers will look for ratio legis on the basis of the birth of the law to understand the philosophical content of the law.<sup>18</sup>

#### 2. Comparative Approach

A comparative approach is one that compares a country's laws with the laws of one or more other countries on the same subject. The purpose of this approach is to obtain similarities and differences between the laws.<sup>19</sup>

#### 3. Conceptual Approach

This approach departs from the views and doctrines that develop in legal science. This approach is important because an understanding of the views / doctrines that develop in legal science can be a foothold for building a third legal argument to resolve the legal issues at hand. Views or doctrines will clarify ideas by providing legal notions, legal concepts, and legal principles that are relevant to the problem.

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<sup>14</sup> Di Polres et al., 2011, "*Proses Penindakan Pelanggaran Kode Etik Polisi Pelaku Tindak Pidana Berdasarkan Peraturan Kapolri Nomor 14 Tahun 2011 Tentang Kode Etik Profesi Kepolisian Negara Republik Indonesia*".

<sup>15</sup> Setiadi, Wicipto, et al. "The Role of Indonesia Constitutional Court Decision in the Process of Establishing the Law: A Case Study in the Process of Establishing the Law on General Elections." *J. Legal Ethical & Regul. Issues* 24 (2021): 1.

<sup>16</sup> Soejono Soekanto, 1984, *Pengantar Penelitian Hukum*, UI Pres, Jakarta, hlm. 53.

<sup>17</sup> Soerjono Soekanto dan Sri Mamudji, *Op.Cit.*, hlm. 52.

<sup>18</sup> Peter Mahmud Marzuki, 2013, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, hal. 133-134.

<sup>19</sup> *Ibid.*, hal. 135.

### DISCUSSION

#### Criminal Policy on the Implementation of Criminal Sanctions for Domestic Violence in Indonesia

Domestic violence tends to be perpetrated by men who are young, unemployed, not in a legal marriage, may have witnessed domestic violence in childhood, and have psychiatric problems that range from depression to substance abuse.<sup>20</sup> Some other circumstances that need attention for the possibility of domestic violence are drug and alcohol related issues, situations related to stress and depression.<sup>21</sup> Many perpetrators of domestic violence commit violence under the influence of alcohol or the more recent phenomenon of addiction to gaming or worse, online gambling. However, domestic violence perpetrators who commit violence while sober make up a larger proportion. Domestic violence perpetrators can be divided into three types:<sup>22</sup>

1. Cyclically emotionally volatile perpetrators, this type of domestic violence perpetrator is dependent on the existence of their partner. He or she has developed a pattern of increased emotion followed by aggressive actions towards the partner. If the perpetrator starts with psychological violence, the violence can lead to severe physical violence.
2. Overcontrolled perpetrators, this type of perpetrator is a group in which a pattern of control has been formed that leads to psychological control rather than physical violence.
3. Psychopathic perpetrators, perpetrators in whom no emotional connection or remorse is formed, and tend to be involved in violence between men as well as other criminal behavior.<sup>23</sup>

In general, in every action between the perpetrator and the victim, they often do not know each other, even seem strangers. Indeed, there are some criminal acts committed by people who already know each other (such as friends, friends, neighbors), as well as people who have blood relations.<sup>24</sup> Actually, the forms of violence that occur in the household are the same as the forms of criminal acts in general, such as maltreatment regulated in Article 351 of the Criminal Code, murder in Article 338 of the Criminal Code, rape in Article 285 of the Criminal Code, insult in Article 310 of the Criminal Code, adultery in Article 284 of the Criminal Code and other acts that can be categorized as criminal acts regulated in the Criminal Code. However, domestic violence has a special nature and characteristics that lie in the relationship between the perpetrator and the victim, as well as the ways to resolve it.<sup>25</sup>

The formulation of norms or rules in Law Number 23 Year 2004 on the Elimination of Domestic Violence is set out in Article 5 to Article 9. Article 5 of Law Number 23 Year 2004 states, “every person is prohibited from committing Domestic Violence against persons within the scope of their household by means of a. physical violence; b. psychological violence; c. sexual violence; or d. domestic neglect.”

Article 6 states that, “physical violence as referred to in Article 5 paragraph a is a change that causes pain, illness or serious injury.” Another correlation that domestic violence is a form of gender-based violence and also a form of discrimination is as stated in the fourth paragraph of the General Elucidation of the PKDRT Law, which states that “...the State is of the view that all forms of violence, especially domestic violence, are violations of human rights and crimes against human dignity as well as forms of discrimination.”

The statement of the state's view is as mandated in the provisions of Article 28 of the 1945 Constitution of the Republic of Indonesia and its amendments, and the mandate of Article 28 G paragraph (1) determines that “Everyone has the right to protection of self, family, honor, dignity, and property, which is under his control, and is entitled to a sense of security and protection from threats of fear to do or not do something that is a human right.” Article 28 H paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that “Everyone has the right to receive special facilities and treatment to obtain equal opportunities and benefits in order to achieve equality and justice.”

Article 7 states that, “psychological violence as referred to in Article 5 letter b is an act that causes fear, loss of confidence, loss of ability to act, helplessness, and/or severe psychological suffering to a person.” Meanwhile, Article 8 states, “sexual violence as referred to in Article 5 letter c, includes: (a) coercion of sexual relations committed against a person stipulated within the scope of the household, (b) coercion of sexual relations of one of the persons in the household with another person for commercial purposes and/or certain purposes.”

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<sup>20</sup> Ahmad Rifai Rahawarin, Anita, Suwito, Muhammad Amin Hamid, “Perlindungan Hukum bagi Perempuan atas Tindak Pidana Kekerasan dalam Rumah Tangga”, *Journal of Law Review*, Volume 2, Nomor 1, 2023, hal. 13-40. <https://doi.org/10.55098/jolr.v2i1.48>

<sup>21</sup> Yandi Manopo, “Kebijakan Hukum Pidana dalam Pemberian Sanksi terhadap Penanggulangan Tindak Pidana Kekerasan dalam Rumah Tangga”, *Lex Administratum*, Volume 10, Nomor 4, 2022, hal. 1-11.

<sup>22</sup> Damara Wibowo, “Perlindungan Hukum terhadap Korban Kekerasan dalam Rumah Tangga menurut Hak Asasi Manusia selama Proses Penyidikan”, *USM Law Review*, Volume 4, Nomor 2, 2021, hal. 818-827. [10.26623/julr.v4i2.4187](https://doi.org/10.26623/julr.v4i2.4187)

<sup>23</sup> Bakhtiar, H. S. (2024). The Evolution of Scientific Evidence Theory in Criminal Law: A Transformative Insight.

<sup>24</sup> Josua Otniel Sondakh Walangitan, “Sanksi Pidana dalam Pemberantasan Tindak Pidana Kekerasan Rumah Tangga yang Dilakukan Suami pada Istri”, *Lex Privatum*, Volume 8, Nomor 1, 2020, hal. 78-85.

<sup>25</sup> Abdul Aziz, Ghufron Maksum, Ali Mutakin, “Pendekatan Keadilan Restoratif dalam Penyelesaian Tindak Pidana Kekerasan dalam Rumah Tangga”, *Al Ashriyyah: Journal of Islamic Studies*, Volume 9, Nomor 2, 2023, hal. 99-112. <https://doi.org/10.53038/alashriyyah.v9i2.173>

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Article 9 states, “(1) every person is prohibited from neglecting a person within the scope of his/her household, when according to the law applicable to him/her or by virtue of an agreement or contract he/she is obliged to provide life, care or maintenance to such person; (2) neglect as referred to in paragraph (1) also applies to every person who causes economic dependence by restricting and/or prohibiting proper work inside or outside so that the victim is under the control of such person.”

This law also states that physical violence as referred to in Article 44 paragraph 4 is a complaint offense (Article 51). Likewise, the crime of psychological violence as referred to in Article 45 paragraph (2) is a complaint offense (Article 52). Likewise, the crime of sexual violence as referred to in Article 46 committed by a husband against his wife or vice versa is a complaint offense (Article 53).

Every crime that occurs will cause victims. The victims of a crime are those who suffer physically and mentally as a result of the actions of other people who seek the fulfillment of their own or other people's interests that are contrary to the interests and human rights of those who suffer.<sup>26</sup>

Article 108 paragraph (1) of the Criminal Code stipulates that “Every person who experiences or becomes a victim of a criminal offense is entitled to file a complaint”, it should be noted that according to the provisions stipulated in the Criminal Code, not everyone is entitled to make a complaint of a criminal offense that he/she sees, because there is a criminal offense that occurs that can only be investigated if there is a complaint from the victim (in the case of a complaint offense).<sup>27</sup> In complaint offenses, the above circumstances are important for investigators, namely so that complaints can be used as a valid basis for conducting investigations, and to prevent investigators from being blamed for conducting investigations that are not based on the law.<sup>28</sup> Complaint offenses (*klacht delict*) essentially also contain elements that are common to every offense. Complaint delicts have special characteristics and the specificity lies in the “prosecution”. Normally, every offense arises, requiring prosecution from the public prosecutor, without any explicit request from the victimized person or those who are harmed. In a complaint offense, a complaint from the victim or aggrieved party is the main requirement for the right to prosecute by the Public Prosecutor.<sup>29</sup>

Gerson W. Bawengan distinguishes complaints into two parts, namely absolute complaints and relative complaint.<sup>30</sup> Sementara Satochid membedakannya atas delik pengaduan absolut (absolute *klachtdelicten*) dan delik aduan relative (relative *klachtdelicten*).<sup>31</sup> From these two experts, it can be concluded that complaints can be divided into two types, namely:<sup>32</sup>

### 1. Absolute *Klachtdelicten*

Absolute or absolute complaint offenses are certain crimes for which prosecution generally requires a complaint. The nature of the complaint in the offense of absolute complaint (absolute *klachtdelicten*) is that the complaint may not be limited to some specific person, but is considered to be addressed to anyone who commits the crime in question. In this case it is said, that this complaint cannot be broken down (*onsplitsbaar*). This absolute complaint is a complaint to prosecute the event, so the complaint reads “I ask that this event be prosecuted”. If the complaint is accepted, the prosecutor has the right to prosecute all those who participated in the crime. Complaints about crimes of absolute complaint concern the act, not the author or any other person who participated in it. The complainant therefore has no right to limit the right to prosecute, i.e. to prosecute one and not the other. This prohibition is expressed in the words “Complaints about crimes of absolute complaint cannot be split.” The crimes included in the absolute complaint offense regulated in the Criminal Code are:<sup>33</sup>

- a) Crimes of decency (*zedenmisdriven*), which are regulated in Article 284 on adultery (*overspel*), Article 285 on rape (*verkrachting*), Article 293 on obscene acts (*ontucht*), in one paragraph of which it is stipulated that prosecution must be made by complaint.
- b) The crime of insult, which is regulated in Article 310 on “defamation” (*menista*), Article 311 on “defamation” (*laster*), Article 315 on “simple insult” (*oenvoudige belediging*), Article 316 (the insult is against a government official or public servant who

<sup>26</sup> Siswanto Sunarso, *Viktimologi dalam Sistem Peradilan Pidana*, Sinar Grafika, Jakarta, 2012, hal. 41.

<sup>27</sup> Bambang Waluyo. (2022). *Viktimologi: Perlindungan Korban dan Saksi*. Jakarta: Sinar Grafika. Hlm. 12

<sup>28</sup> Dheid Setiawan, Muhadar Muhadar, Wiwie Heryani, “Pembuktian Tindak Pidana Psikis dalam Kasus Kekerasan dalam Rumah Tangga”, *Paharuyuang Law Journal*, Volume 2, Nomor 1, 2018, hal. 1-23. <https://doi.org/10.31869/plj.v2i1.886>

<sup>29</sup> Dedy Doreswati, Agus Riyanto, “Analisis Yuridis Penerapan Mediasi Penal oleh Kepolisian Republik Indonesia dalam Penyelesaian Kasus Pidana di Indonesia”, *Scientia Journal*, Volume 1, Nomor 2, 2019, hal. 1-10.

<sup>30</sup> Salam Amrullah, “Perlindungan Hukum terhadap Korban Tindak Pidana Pemerkosaan”, *Jurnal Andi Djemma: Jurnal Pendidikan*, Volume 3, Nomor 1, 2020, <http://dx.doi.org/10.35914/jad.v3i1.338>

<sup>31</sup> Farahwati, Ekawati, Erwansa Nazara, Ony Rosifany, “Juridical Review of Defect Complaints Theft in the Family Based on Article 367 of the Criminal Law Book”, *GPH-International Journal of Social Science and Humanities Research*, Volume 6, Nomor 11, 2023, hal. 256-267. <https://doi.org/10.5281/zenodo.10430029>

<sup>32</sup> Setiawan Setiawan, Dwi Putri Melati, Yuli Purwanti, “Penyelesaian Hukum Tindak Pidana Pemalsuan Tandatanganan Pada Delik Aduan Secara Non Litigasi (Studi Kasus Polres Tanggamus)”, *Viva Themis*, Volume 4, Nomor 2, 2021, hal. 160-174. <https://doi.org/10.24967/vt.v4i2.1730>

<sup>33</sup> Muhammad Ramadan Kiro, Muhamad Saktiawan, “Penerapan Delik Kohabotasi dalam KUHP Nasional ditinjau dari Tujuan Hukum Pidana, *DELAREVEV: Lakidende Law Review*, Volume 3, Nomor 1, 2024, hal. 546-556. <https://doi.org/10.47353/delarev.v3i1.72>

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is lawfully performing his duties, for prosecution under Article 319, no complaint is required), Article 319 (here it is stipulated that the crime of insult can be prosecuted after a complaint has been made by the sufferer except in the case of Article 316, which is a deviation from the provisions of the offense of complaint itself).

- c) The crime of revealing secrets (*schending van geheimen*), which is regulated in Articles 322 and 323, i.e. that a complaint must be made in order to prosecute this crime, is specified in the last paragraph of both articles.
- d) The crime of threatening (*efdreiging*), which is provided for in Article 369 that in paragraph (2) it is specified that a complaint is required in order to bring a prosecution.

In addition to the absolute complaint crimes regulated in the Criminal Code, outside the Criminal Code there are also regulations regarding complaint crimes, such as domestic violence which is regulated in Law Number 23 Year 2004 on the Elimination of Domestic Violence. Articles 51-53 determine domestic violence criminal offenses that are included in the complaint offense. The domestic violence offenses are:<sup>34</sup>

- a) Criminal acts of physical violence committed by the husband against the wife or vice versa that do not cause illness or hindrance to carry out work, position, livelihood or daily activities. This is regulated in Article 51 jo Article 44 paragraph (4) of the PKDRT Law. According to Article 6 of the PKDRT Law, what is meant by physical violence is an act that causes pain, illness, or serious injury.
- b) The crime of psychological violence committed by a husband against his wife or vice versa that does not cause illness or hindrance to carry out an official job or livelihood or daily activities. This is regulated in Article 52 jo Article 45 paragraph (2) of the PKDRT Law. According to Article 7 of the PKDRT Law, what is meant by psychological violence is an act that results in fear, loss of self-confidence, loss of ability to act, a sense of helplessness, and/or psychological suffering, severe in a person. The crime of sexual violence which includes coercion of sexual intercourse committed by a husband against his wife or vice versa.

With the determination of several types of domestic violence as complaint offenses, the legislators have recognized the existence of a private element in domestic violence cases.

### 2. Relative complaint offense (Relative Klachtdelicten)

Relative complaints are certain types of crimes in which it is only stipulated that the complaint is a condition if there is a certain relationship between the perpetrator and the complainant. The particular relationship between the offender and the complainant is that of blood relatives in the straight line (father, grandmother, children, grandchildren) or in the second degree of the divergent line (siblings) and marital relatives in the straight line (in-laws, sons-in-law) or in the second degree of the divergent line (in-laws). Examples of relative complaints that are regulated separately in the Criminal Code are:<sup>35</sup>

- a) Article 362 on the crime of theft (*diefstal*),
- b) Article 367 on the crime of theft commonly referred to as “theft within the family”,
- c) Article 369 in conjunction with Article 370 in conjunction with Article 367 on extortion by defamation (*afdreiging or chantage*), for example A knows B's secret, then B comes and asks B to give money to A with the threat that if he does not give the money, his secret will be spread. Because B is afraid of being humiliated, he is forced to give the money,
- d) Article 372 jo Article 376 jo Article 367 on embezzlement committed within the family circle,
- e) Article 378 in conjunction with Article 394 in conjunction with Article 367 on fraud committed within the family circle.

The family relationship must be declared at the time of filing the complaint. Prosecution is limited to the person named in the complaint. If, for example, only the perpetrator of the crime is named, then no prosecution can be brought against the accomplice, who may also be a close relative. The complaint is therefore *splitbaar*. From the articles listed regarding the offense of complaint, the term “can only be prosecuted if there is one” is used. This sentence gives rise to the idea or opinion that the investigation can thus be carried out by law officers for preventive purposes.

Although such an opinion is correct, in the interests of legal order, it is more in good faith if the investigation is filed orally from the aggrieved party that he will file a complaint. According to Modderman, there are specific reasons for making crimes of complaint relative when committed within the family, namely:

- a) Immoral reasons, namely to prevent the government from confronting people with each other who are still closely related and in court;
- b) Material reasons (*stoffleijk*), namely the fact that in a family between a married couple there is a kind of condominium.

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<sup>34</sup> Dwi Ratna Kamala Sari Lukman, “Pencabutan Pengaduan dalam Tindak Pidana Kekerasan dalam Rumah Tangga”, *Widya Kerta: Jurnal Hukum Agama Hindu*, Volume 2, Nomor 2, 2019, hal. 91-99. Retrieved from <http://e-journal.iahn-gdepudja.ac.id/index.php/WK/article/view/150>

<sup>35</sup> Muhammad Yusuf Siregar, Zainal Abidin Pakpahan, “Diskresi Kepolisian dalam Memberhentikan Perkara Pidana karena Adanya Perdamaian oleh Lembaga Kepolisian Resort Labuhanratu dilihat dari Segi Hukum”, *Jurnal Ilmiah Advokasi*, Volume 5, Nomor 2, 2017, hal. 66-93. <https://doi.org/10.36987/jiad.v5i2.307>

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Both absolute complaint offenses and relative complaint offenses, which are often referred to as complaints only, are intended to prioritize the interests of the injured party over the interests of the prosecution.<sup>36</sup> In other words, the legislator gives the aggrieved party respect and the opportunity to make a choice, whether he intends to file a complaint or keep the matter quiet, for example for the sake of the good name of the family or perhaps to keep it as a secret that does not need to be known to the public.

According to Utrecht, the only reason for the legislator to establish a complaint offense is the consideration that in certain cases the importance for the aggrieved party that the case not be prosecuted is greater than the importance for the state that the case be prosecuted.<sup>37</sup>

The juridical consequence of this determination is that law enforcement officers cannot determine any legal action against the perpetrator, even though they know that a criminal offense has occurred, if the victim of the criminal offense does not make a complaint.<sup>38</sup> The PKDRT Law determines several articles that are included in the complaint offense, so the provisions in Chapter VII of the Criminal Code to include and withdraw complaints in criminal cases, which can only be prosecuted upon complaint, apply to the PKDRT Law. In the PKDRT Law, there is no provision that regulates the period of time a person is allowed to complain and the period of time a person is allowed to withdraw the complaint. Therefore, Article 74 of the Criminal Code regarding the period of time within which a person is allowed to file a complaint applies, namely:

- 1) A complaint may only be filed within 6 (six) months of the person entitled to complain becoming aware of the crime, if residing in Indonesia, or within nine months if residing outside Indonesia.
- 2) If the person against whom the crime has been committed is entitled to file a complaint at a time when the period referred to in paragraph 1 has not expired, then after that time, the complaint may still be filed only during the remaining period of that period. Meanwhile, Article 75 of the Criminal Code regulates the grace period for withdrawing a complaint, namely: the person who files the complaint has the right to withdraw it within three months after the complaint is filed. The stipulation of the criminal offense of domestic violence, whether physical, psychological, sexual violence or neglect in the household as a complaint offense is intended to pay attention to the interests of victims, but in some cases, for example against criminal acts of physical violence and sexual violence, it is better to be directed to become ordinary offenses or general criminal offenses. The consideration of changing the offense of complaint into an ordinary offense is seen from the consequences and impacts of criminal acts that can be proven not only based on the victim's complaint, and is an obligation of the state to protect its citizens whose rights have been clearly violated.

The new Criminal Code Law is more comprehensive or more complete in accommodating the scope of domestic violence, especially related to sexual violence in Article 423 which states that Criminal Offenses in Articles 414 through Article 422 are qualifications for sexual offenses; This is a new study, because it regulates the formulation of a new norm that the lure/promise of gifts or authority (social relations) that is misused to order or allow himself to commit obscene acts with the object of a child has been formulated in Article 417; while if it occurs with biological children, stepchildren, adopted children, or more broadly occurs with children who should be supervised/ entrusted to him, he will be sentenced to a maximum of 12 years. In terms of sexual violence, the Criminal Code Law only accommodates the PKDRT Law with complete or broad elements, but the criminal penalties in the Criminal Code Law are lighter than the PKDRT Law. This is possible due to the nature of the law which is *lex specialis* and *lex generalis*. The PKDRT Law regulates economic neglect, while the Criminal Code Law only regulates as a whole that according to Article 149 people who experience physical and mental suffering and/or economic loss caused by the overall criminal offense are considered victims; furthermore, in the case of economic neglect, it can be further interpreted with the analysis tool of Article 495 which regulates that fraudulent acts / methods result in economic loss to other parties, sentenced to imprisonment for a maximum of one year.

According to science, there are several types of criminal sanction formulation systems (*strafsoort*), namely:<sup>39</sup>

- 1) That the cumulative-alternative formulation system substantially also includes the single, cumulative, and alternative formulation systems, thus explicitly and explicitly covering the weaknesses of each of these formulation systems;
- 2) That the cumulative-alternative formulation system is a formulation system pattern that directly combines the nuances of legal certainty (*rechts-zekerheids*) and the nuances of justice; and

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<sup>36</sup> Ferry Asril, "The Existence of Complaint Offense Delict and Common Delict in Normative and Empirical Perspective", *PENA LAW: International Journal of Law*, Volume 2, Nomor 1, 2023, hal. 25-30, <https://doi.org/10.56107/penalaw.v2i1.124>

<sup>37</sup> Hidayat Bastanta Sitepu, Syafruddin Kalo, Edi Yunara, Marlina Marlina, "Analisis Yuridis Pertimbangan Hakim Mahkamah Agung terhadap Pencabutan Pengaduan yang Melewati Batas Waktu dengan Menerapkan Pendekatan Restorative Justice (Analisis Yurisprudensi Mahkamah Agung Nomor 1600 K/Pid/2009 dan Putusan Nomor 2338 K/Pid.Sus/2013)", *Iuris Studia: Jurnal Kajian Hukum*, Volume 2, Nomor 2, 2021, hal. 144-155.

<sup>38</sup> Lies Sulistiani, "Problematisasi Hak Restitusi Korban pada Tindak Pidana yang diatur KUHP dan di Luar KUHP", *Jurnal Bina Mulia Hukum*, Volume 7, Nomor 1, 2022, hal. 81-101. <https://doi.org/10.23920/jbmh.v7i1.948>

<sup>39</sup> Vera Rimbawani Sushanty, "Pornografi Dunia Maya menurut Kitab Undang-Undang Hukum Pidana, Undang-Undang Pornografi dan Undang-Undang Informasi Elektronik", *Jurnal Gagasan Hukum*, Volume 1, Nomor 1, 2019, hal. 109-129. <https://doi.org/10.31849/jgh.v1i01.2894>



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- 3) Because it is a combination of the nuances of justice and legal certainty (rechts-zekerheids), the main characteristics of this formulation system in its application policy are flexible and accommodating.

For this reason, for the sake of recommendations on future formulation / legislative policies or as a *ius constituendum* in the future, the legislator should make a formulation system that is cumulative-alternative. Criminal law science also recognizes 4 (four) systems of formulating the length of criminal sanctions (strafmaat), namely:<sup>40</sup>

- 1) Fixed/definite sentence system in the form of a definite punishment;
- 2) Indefinite sentence system in the form of maximum punishment length;
- 3) Indeterminate sentence system in the form of no maximum limit of punishment so that the lawmaking body fully submits the criminal policy (discretion) to the criminal implementing apparatus at a lower level, for example in determining the size, nature, or length of punishment for certain criminals;
- 4) Determinate sentence system in which the minimum/maximum length of criminal punishment is determined.

The formulative policy towards the type of criminal sanction formulation system (strafsoort) and the formulation of the length of criminal sanctions (strafmaat) finally boils down to the way of implementing the punishment (strafmodus), so from the point of view of the coaching system (treatment) and its institutions. Prior to the enactment of Law No. 23/2004 on PKDRT, law enforcement used Article 356 KIHP to ensnare perpetrators of domestic violence. The article states that the punishment prescribed in Articles 351, 353, 354, and 355 may be increased by one third, namely 1 (e). if the perpetrator commits the crime against his mother, legal father, wife (husband) or child. Meanwhile, Article 351 of the Criminal Code stipulates:

- 1) Maltreatment shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of three hundred Rupiahs;
- 2) If the fact results in a serious physical injury, the offender shall be punished by a maximum imprisonment of five years;
- 3) If it results in death, it shall be punished by a maximum imprisonment of seven years;
- 4) With maltreatment shall be equated intentional damage to health;
- 5) Attempt to commit this crime shall not be punished.

Looking at the wording of paragraph (4) of the above Article, it must be interpreted that any act committed by a person, be it hitting, kicking, slapping, etc. that can result in damage to a person's health, must be considered as maltreatment.<sup>41</sup> The character of Indonesian law is still guided by the character of colonial law, so that the philosophy of colonial law always accompanies Indonesian law enforcement, such as Indonesian criminal law is still guided by the philosophy of the *Wetboek van Strafrecht voor Nederlandsch-Indie* with a retributive theory, although in various forms or reforms of Indonesian criminal law has stated that it is guided by the philosophy of Pancasila, but in reality it cannot be denied that the legislators in Indonesia use the philosophy, principles or basic principles of colonial law.<sup>42</sup>

The purpose of victim protection is to provide a sense of security to victims, especially when providing information to every criminal justice process, provide encouragement and motivation to victims so that they are not afraid to undergo the criminal justice process, restore the victim's confidence in living in society, and initiate a sense of justice, not only to victims and their families, but also to the community.<sup>43</sup> In its implementation, the PKDRT Law uses an alternative formulation system in the form of imprisonment or fines. This form of formulation is found in Chapter VIII Article 44 (physical violence), Article 45 (psychological violence), Article 46, Article 47, and Article 48 (sexual violence), and Article 49 (neglect).

Article 44 of the PKDRT Law stipulates:

1. Every person who commits acts of physical violence within the scope of the household as referred to in Article 5 letter a, shall be punished with a maximum imprisonment of 5 (five) years or with a maximum fine of Rp. 15,000,000,- (fifteen million rupiah).
2. In the event that the act as referred to in paragraph (1) results in the victim getting sick or seriously injured, shall be punished with imprisonment for a maximum of 10 (ten) years or a maximum fine of Rp. 30,000,000,- (thirty million rupiah).
3. In the event that the act as referred to in paragraph (2) results in the death of the victim, he/she shall be punished with imprisonment for a term not exceeding 15 years or a fine not exceeding Rp. 45,000,000,- (forty five million rupiah).

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<sup>40</sup> Wisnu Murtopo Nur Muhammad, Yanuar Adi Nugroho, Riki Saputra, Mochamad Fitri Adhy, Dimas Pranowo, *Rekonstruksi Strafsoort dalam Hukum Pidana Indonesia*, Penerbit Adab, Indramayu, 2023, hal. 23.

<sup>41</sup> Adellia Eddiesa Putri, dan Bambang Waluyo. "Criminal Responsibility For Perpetrators of Criminal Acts With Schizophrenic Mental Disorders." *Journal of Law, Politic and Humanities* 4.4 (2024): 1058-1066.

<sup>42</sup> Bambang Joyo Supeno, "Efektifitas Kebijakan Kriminal dalam Penanggulangan Tindak Pidana Narkotika (dalam Kerangka Pembaharuan Hukum Nasional)", *Jurnal Ilmiah Hukum dan Dinamika Masyarakat*, Volume 14, Nomor 1, 2016, hal. 1-15. <http://dx.doi.org/10.56444/hdm.v14i1.439>

<sup>43</sup> Rhendy Ahmad Fauzi, "Review of Victimology of Victims of Theft in the Criminal Justice System", *Jurnal Ilmiah Advokasi*, Volume 11, Nomor 2, 2023, hal. 214-231. <https://doi.org/10.36987/jiad.v11i2.3356>

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4. In the event that the act as referred to in paragraph (1) is committed by the husband against the wife or vice versa which does not result in an impediment to the performance of official work or livelihood or daily activities, shall be punished with a maximum imprisonment of 4 (four) months or a maximum fine of Rp. 3,000,000.00 (three million rupiah).

Pasal 45 Undang-Undang PKDRT menentukan, bahwa:

1. Every person who commits acts of psychological violence within the scope of the household as referred to in Article 5 letter b shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of Rp. 9,000,000.00 (nine million rupiah).
2. In the event that the act as referred to in paragraph (1) is committed by the husband against the wife or vice versa which does not result in an impediment to the performance of official work or livelihood or daily activities, shall be punished with imprisonment of not more than 4 (four) months or a fine of not more than Rp. 3,000,000.00 (three million rupiah).

This provision on psychological violence carries a lighter penalty than other provisions on violence within the household.<sup>44</sup> Even though the consequences of psychological violence are as severe as physical violence because it is related to self-esteem, even though this psychological violence does not leave physical wounds so it is difficult to see with the naked eye. But psychological violence can cause stress to the victim, from this stress it can make the body weak so that it easily falls ill.<sup>45</sup>

Article 46 of the PKDRT Law states that:

“Every person who commits an act of sexual violence as referred to in Article 8 letter a shall be punished with a maximum imprisonment of 12 (twelve) years or a maximum fine of Rp. 36,000,000,000.00 (thirty six million rupiah).”

Article 47 of the PKDRT Law stipulates that:

“Any person who forces a person who resides in his/her household to have sexual intercourse as referred to in Article 8 letter b shall be punished with imprisonment of not less than 4 (four) years and imprisonment of not more than 15 (fifteen) years or a fine of not less than Rp. 12,000,000.00 (twelve million rupiah) or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).”

Article 48 of the PKDRT Law stipulates that:

“In the event that the acts as referred to in Article 46 and Article 47 result in the victim receiving an injury from which there is no hope of complete recovery, suffering a mental or physical disturbance for at least 4 (four) weeks continuously or 1 (one) year non-consecutively, the abortion or death of a fetus in the womb, or the loss of reproductive organs, the victim shall be punished with a minimum imprisonment of 5 (five) years and a maximum imprisonment of 20 (twenty) years or a fine of at least Rp. 25,000,000.00 (twenty five million rupiah) and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). 25,000,000.00 (twenty five million rupiah) and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).”

Pasal 49 Undang-Undang PKDRT menentukan bahwa:

“Shall be punished with imprisonment of 3 (three) years or a maximum fine of Rp. 15,000,000.00 (fifteen million rupiah), every person who: a. Neglects another person within the scope of his/her household as referred to in Article 9 paragraph (1); b. Neglects another person as referred to in Article 9 paragraph (2).”

In the case of neglect, it is not explained the difference in criminal sanctions for economic neglect or physical and mental neglect. If the neglect that occurs is only economic neglect, then the imposition of imprisonment is not appropriate, it would be better if the punishment imposed is in the form of fines with minimum and maximum limits and compensation for victims who are neglected.<sup>46</sup> So even victims feel that their rights are fulfilled by the law. The judge's decision in imposing punishment on the perpetrator is entirely in the hands of the judge. If it is examined more deeply on the PKDRT Law which adopts an alternative criminal formulation in the form of imprisonment or fine, the judge may decide to impose a fine only. The existence of this option will be very beneficial for the perpetrator, so that the perpetrator does not need to serve imprisonment for a certain period of time. The perpetrator is still free to roam and there is a high possibility of insecurity and discomfort for the victim. Meanwhile, the inclusion of the maximum penalty only provides an opportunity for the perpetrator to receive a low criminal sanction due to the absence of a minimum limit.

In addition, if the consequences of domestic violence do not cause illness or hindrance to carry out daily activities, it is determined as a complaint offense as stated in Article 51 and Article 52 which reads as follows:

Article 51: “The crime of physical violence as referred to in Article 45 paragraph (4) is a complaint offense.”

Article 52: “Criminal acts of psychological violence as referred to in Article 45 paragraph (2) shall constitute a complaint offense.”

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<sup>44</sup> Asri Alawqiah, Muh. Darwis, “Kajian Yuridis Tindak Pidana Kekerasan dalam Rumah Tangga”, *Julia: Jurnal Litigasi Amsir*, 2023, hal. 76-93., Retrieved from <http://journalstih.amsir.ac.id/index.php/julia/article/view/269>

<sup>45</sup> Kayus Kayowuan Lewoleba, Muhammad Helmi Fahrozi, “Studi Faktor-Faktor Terjadinya Tindak Kekerasan Seksual pada Anak-Anak”, *Jurnal Esensi Hukum*, Volume 2, Nomor 1, 2020, hal. 27-48. <https://doi.org/10.35586/esensihukum.v2i1.20>

<sup>46</sup> Zulkifli Ismail, Melanie Pita Lestari, Ahmad, “Pertanggungjawaban Pidana Pelaku Tindak Pidana Eksploitasi Seksual Anak: Tinjauan Terhadap Peraturan Perundangan”, *Krtha Bhayangkara*, Volume 15, Nomor 2, 2021, hal. 241-270. [10.31599/krtha.v15i2.754](http://doi.org/10.31599/krtha.v15i2.754).

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The final part of the PKDRT Law contains criminal provisions, with several forms of punishment, namely imprisonment, fines and supervision. The amount of imprisonment and fines is in the range of one year to fifteen years, which seems to refer to the provisions in the Criminal Code, because the parameters for determining this punishment have never been elaborated, as in other regulations. A parameter for determining criminal sanctions can only be created if it has been agreed in advance what is to be used as the basis for thinking about punishment. With regard to the parameters for determining the punishment, the Criminal Code Drafting Team has made a ranking based on the seriousness (gravity) of criminal offenses. This ranking is divided into five levels using a semantic scale technique, from very light to very serious with the note that very light criminal offenses are not subject to deprivation of liberty, while very serious criminal offenses are criminal offenses that are subject to imprisonment of more than seven years.

Victim recovery according to Government Regulation No. 4/2006 is regulated in Article 1 paragraph (1), that victim recovery is all efforts to strengthen victims of domestic violence to be more empowered, both physically and psychologically. Efforts to recover victims of domestic violence need to continue, the implementation of which is carried out in coordination and integrated between sectors at the central, provincial, and district or city levels. To support this implementation, it is necessary to regulate the organization and cooperation of victim recovery by determining the duties and functions of each and the obligations and responsibilities of health workers, social workers, spiritual advisors, and accompanying volunteers. To further streamline integrated services, this regulation establishes a coordination forum that will coordinate between service officers, as well as develop a program plan for improving recovery efforts for victims of domestic violence.<sup>47</sup>

The coordination forum is established at the central and regional levels. The Minister establishes the coordination forum at the central level, while at the regional level it is established by the governor. The implementation of cooperation in the recovery of victims of domestic violence is directed at restoring the victim's condition to its original state both physically and psychologically in a short period of time, so that the victim can carry out their daily activities and can live in the community as before.<sup>48</sup> Therefore, services must be carried out as much as possible immediately after a complaint or report from the victim to obtain services for the recovery of the condition of victims of domestic violence.

Efforts to organize the recovery of victims of domestic violence basically aim to ensure the implementation of easy services for victims of domestic violence, ensure effectiveness and efficiency for the recovery process of victims of domestic violence and create good cooperation and coordination and recovery of victims of domestic violence between agencies, between implementation officers and between other related institutions. Victim recovery based on Article 1 of Government Regulation No. 4/2006 is all efforts to strengthen victims of domestic violence to be more empowered, both physically and psychologically. The implementation of issue recovery itself is any form of action that includes services and assistance to victims of domestic violence. Assistance efforts provided by assisting institutions include counseling, psychological therapy, advocacy, and spiritual guidance, in order to strengthen victims of domestic violence to solve the problems they face.<sup>49</sup>

Legal protection for victims of domestic violence, especially wives and children, requires an effort to recover victims, who experience suffering from physical, psychological, sexual violence, and domestic neglect.<sup>50</sup> Therefore, Government Regulation No. 5/2006 on the Implementation and Cooperation of Recovery for Victims of Domestic Violence was drafted. Considering the number of cases that occur against domestic violence at this time and also the cruelty of the actions taken against victims, the interests of victims need to be considered.

The definition of victim recovery according to Government Regulation No. 4/2006 is stipulated in Article 1 paragraph (1), that victim recovery is all efforts to strengthen victims of domestic violence to be more empowered, both physically and psychologically. Efforts to recover victims of domestic violence need to continue, which are carried out in coordination and integrated between sectors at the central, provincial, and district or city levels. For the smooth implementation of the recovery of victims of domestic violence, it is necessary to have laws and regulations that regulate the implementation and cooperation between government agencies by involving the community. These recovery efforts are mandated by Article 43 of the PKDRT Law.

The recovery efforts of victims of domestic violence aim to provide assistance in the form of services in the form of legal assistance, health services, counseling, spiritual guidance up to the resocialization of victims in accordance with Government Regulation No. 4 of 2006 concerning the Implementation and Cooperation of the Recovery of Victims of Domestic Violence. The

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<sup>47</sup> Heni Hendrawati, Agna Susila, "Kajian Yuridis PP Nomor 4 Tahun 2006 tentang Penyelenggaraan dan Pemulihan Korban Kekerasan dalam Rumah Tangga", *Varia Justicia*, Volume 13, Nomor 2, 2017, hal. 112-122. <https://doi.org/10.31603/variajusticia.v13i2.1885>

<sup>48</sup> Badriyah Khaleed, *Penyelesaian Hukum KDRT*, Penerbit Medpress Digital, Yogyakarta, 2015, hal. 1.

<sup>49</sup> Eriyantouw Wahid, "Pemberian Perlindungan Hukum terhadap Perempuan Korban Kekerasan dalam Rumah Tangga di Daerah Semarang, Yogyakarta dan Surabaya", *Hukum Pidana dan Pembangunan Hukum*, Volume 2, Nomor 2, 2020, hal. 18-44. <https://doi.org/10.25105/hpph.v2i2.9023>

<sup>50</sup> Karenina Aulery Putri Wardhani, "Perlindungan Hukum terhadap Perempuan Korban Kekerasan dalam Rumah Tangga (KDRT) pada Tingkat Penyidikan berdasarkan Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga (UUPKDRT)", *Journal Riset Ilmu Hukum*, Volume 1, Nomor 1, 2021, hal. 21-31, <https://doi.org/10.29313/jrih.v1i1.70>

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implementation of victim recovery is carried out by government agencies and local governments as well as social institutions in accordance with their respective duties and functions, including providing facilities needed for victim recovery. The implementation of victim recovery is an action that includes services and assistance to victims of domestic violence. Assistance can be provided in the form of counseling, psychological therapy, advocacy and spiritual guidance, in order to strengthen the victim to solve the problems they face.

Facilities provided to victims of domestic violence include:

1. Special service rooms in the police force;
2. Expert and professional personnel;
3. Service centers and safe houses; and
4. Other facilities and infrastructure needed for victim recovery.

The implementation of victim recovery activities includes:

1. Health services are carried out by health workers in health facilities owned by the government, local government and the community, including the private sector by providing treatment services and restoring the health of victims;
2. Victim assistance is carried out by health workers, social workers, shelter volunteers and / or spiritual advisors by providing counseling, therapy, spiritual guidance, advocacy to strengthen and restore victims;
3. Providing counseling is carried out by social workers, volunteer assistants, by listening empathetically and exploring problems for psychological strengthening of victims;
4. Spiritual guidance is carried out by spiritual advisors by providing an explanation of their rights and obligations, as well as strengthening faith and piety in accordance with their religion and beliefs;
5. Resocialization of victims is carried out by social agencies and social institutions so that victims can return to carrying out their social functions in society.

To fulfill the interests of the recovery of victims who experience physical violence, victims are entitled to receive services from health workers in the form of treatment and health recovery in accordance with professional standards, standard operational procedures, and the medical needs of victims. Health recovery services can be carried out at basic health facilities, government-owned and private referral health facilities.

Efforts to provide recovery services to victims, there are several steps taken by social workers, namely:

1. Exploring the victim's problems to help solve the problem;
2. Recovering victims from traumatic conditions through psychosocial;
3. Make referrals to hospitals or safe houses or service centers or alternative places according to the needs of the victim;
4. Accompanying victims in recovery efforts through counseling assistance; and/or
5. Conducting resocialization so that victims can return to carry out their social functions in the community.

In addition to the steps mentioned above, to facilitate the process of implementing victim recovery services, assistance efforts are also carried out, namely as follows:

1. Build an equal relationship with the victim so that they are willing to open up about their problems;
2. Empathize with and not blame the victim about or related to the problem;
3. Reassure the victim that no one should commit acts of violence;
4. Ask what the victim wants to do and what help is needed;
5. Providing information and connecting with institutions or individuals who can help overcome their problems; and/or
6. Help provide information about legal consultation services.

The application of criminal sanctions is the final part of the criminal justice system after investigation and prosecution. After a report on domestic violence, the investigator conducts an investigation and applies it in the minutes of the examination and then submits it to the public prosecutor to make an indictment based on the minutes of the investigator's examination. After the indictment is deemed sufficient, the public prosecutor will refer the case to the court to prove what the public prosecutor has charged. If the charges are proven after going through a long process of proof, then the judge will hand down his decision. The judge's decision can be in the form of acquittal, release, and punishment. The next stage of the law enforcement process or legal concretization is the stage or application or judicial stage. In this case it will be carried out by the judge.

The importance of applying maximum criminal sanctions against perpetrators of domestic violence aims to provide a deterrent effect while fulfilling a sense of justice for victims of domestic violence.<sup>51</sup> To see the basic things that are considered by the judge to impose criminal sanctions, the author can elaborate by analyzing cases related to criminal acts of domestic violence

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<sup>51</sup> Risdianto Risdianto, "Hukuman terhadap Tindak Pidana Kekerasan dalam Rumah Tangga menurut Hukum Islam", *Ilamic Review: Jurnal Riset dan Kajian Keislaman*, Volume 10, Nomor 1, 2021, hal. 59 76.  
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where the criminal sanctions imposed on the defendant are too light, so that there is no deterrent effect for the convict after leaving prison or carrying out the sentencing process.

The PKDRT Law contains various reforms and breakthroughs in the protection of human rights that prioritize the prevention (prevention) of domestic violence, rather than punitive (repressive) actions and expand the concept of domestic violence, which not only includes psychological, physical and sexual violence.<sup>52</sup> However, it also includes the act of 'neglecting the household' as an act of violence that can be punished. The PKDRT Law is a law that regulates specific issues in a special way, so it contains the elements of *lex specialis*. These elements consist of: 1) Corrective elements towards the perpetrator; 2) Preventive elements against the community; 3) Protective elements for the victim;

The Criminal Code and Criminal Procedure Code have so far proven unable to provide protection for victims of domestic violence (DV). Because both regulations are still very general, they do not consider the difficulties of victims to access legal protection, especially because of their gender. Neither the Criminal Code nor the Criminal Procedure Code consider the context of patriarchal and feudal culture and the existence of class/social status differences that create inequality in social relations, especially in domestic relations. These rules presuppose that everyone is equally capable and empowered to obtain legal justice.<sup>53</sup>

The PKDRT Law regulates the rights of victims, which are contained in Article 10 including receiving protection, health services, special handling and assistance by social workers, having the following rights:

1. Get compensation for their suffering;
2. Refuse restitution for the benefit of the perpetrator (do not want to give restitution because they do not need it);
3. Obtain restitution/compensation for his/her heirs if the victim dies because of the act;
4. Receive guidance and rehabilitation;
5. Receive his/her property rights back;
6. Receive protection from threats from the perpetrator when reporting and becoming a witness;
7. Receive the assistance of legal counsel;
8. Utilize legal remedies.

It is hoped that victims of domestic violence will receive protection from the state and/or community so that it does not result in a prolonged traumatic impact. In accordance with the preamble of the PKDRT Law, victims of domestic violence, who are mostly women, must receive protection from the state and / or society in order to avoid and be free from violence or threats of violence, torture or treatment that degrades human dignity. In addition to regulating the rights of victims, the PKDRT Law also regulates the protection of victims of violence provided by the police in collaboration with health workers, social workers, volunteers, assistants and / or spiritual advisors to assist victims.<sup>54</sup>

Regarding the procedure for reporting domestic violence incidents, victims of domestic violence can report domestic violence directly to the police either where the victim is located or at the scene of the crime or can also authorize the victim or another person to report the violence they experience. After the crime of domestic violence is reported to the authorities, then within 1 x 24 hours (one time twenty-four hours) from the time of knowing or receiving a report of domestic violence, the police are obliged to immediately provide temporary protection to the victim. Such protection is provided for a maximum of 7 (seven) days from the time the victim is received or handled and the police are required to request a protection order from the court.

## CONCLUSION

The new Penal Code introduces a more comprehensive regulation on domestic violence. In the aspect of sexual violence, the new Penal Code accommodates the elements of the PKDRT Law but with a lighter punishment, due to its *lex specialis* and *lex generalis* characteristics. In addition, the Criminal Code also includes provisions on economic neglect through Article 149 and Article 495. The PKDRT Law itself uses an alternative criminal sanction formulation system and determines the threat of imprisonment or fines for various forms of domestic violence, as well as paying attention to aspects of victim recovery both physically and psychologically through assistance and health services as regulated in Government Regulation No. 4/2006. The legal protection provided aims to provide a sense of security and restore the victim's confidence in society.

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