

Legal Analysis of Justice-Based Criminalization of Perpetrators of Domestic Violence (Case Study Number 1/Pid.Sus/2025/Pn Tjt)

Sefriana Fajar¹⁾ & Arpangi²⁾

¹⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: sefrianafajar.std@unissula.ac.id

²⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: arpangi@unissula.ac.id

Abstract. *Harmony and integrity within a household can be disrupted if self-quality and self-control are not maintained. This condition has the potential to give rise to domestic violence which results in feelings of insecurity and injustice for family members. Therefore, the state and society have an obligation to undertake preventive measures, provide protection to victims, and prosecute perpetrators in accordance with the values of Pancasila and the mandate of the 1945 Constitution of the Republic of Indonesia. Legal development is not only limited to formulating rules, norms, or principles, but must be carried out systematically and comprehensively. This includes thorough legal planning, the formation of new regulations based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the implementation and provision of quality legal services, and effective and efficient law enforcement, while still upholding humanitarian values. Essentially, criminal law reform is a concrete manifestation of changes and improvements to various aspects and policies that form its background. Therefore, a planned and systematic legal development is needed to accelerate the renewal and formation of the existing legal system in Indonesia. Law Number 23 of 2004 concerning the Elimination of Domestic Violence was ratified in Jakarta on September 22, 2004 and signed by Megawati Soekarnoputri as the President of the Republic of Indonesia at that time. Law Number 23 of 2004, which is often referred to as the PKDRT Law, firmly states that every citizen has the right to live safely and free from all forms of violence, based on the values of Pancasila and the 1945 Constitution. The main objective of this regulation is to eliminate the practice of domestic violence while creating a balance of position between husband and wife, children and parents, as well as between the nuclear family and parties involved in household life, which is an important factor in preventing domestic violence.*

Keywords: *Criminalization; Criminal Acts; Domestic Violence; Violence.*

1. Introduction

Harmony and integrity within a household can be disrupted if self-quality and self-control are not maintained. This condition has the potential to give rise to domestic violence, which can lead to feelings of insecurity and injustice for family members. Therefore, the state and society have an obligation to take preventive measures, provide protection to victims, and prosecute perpetrators in accordance with the values of Pancasila and the mandate of the 1945 Constitution of the Republic of Indonesia.¹

Legal development is not merely the formulation of rules, norms, or principles; it must be carried out systematically and comprehensively. This includes thorough legal planning, the creation of new regulations based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the implementation and provision of quality legal services, and effective and efficient law enforcement while still upholding humanitarian values. Essentially, criminal law reform represents a concrete manifestation of changes and improvements to various aspects and underlying policies. Therefore, planned and systematic legal development is necessary to accelerate the renewal and formation of the existing legal system in Indonesia.²

Law Number 23 of 2004 concerning the Elimination of Domestic Violence was passed in Jakarta on September 22, 2004, and signed by Megawati Soekarnoputri, then President of the Republic of Indonesia. Law Number 23 of 2004, often referred to as the Domestic Violence Law, firmly affirms that every citizen has the right to live safely and free from all forms of violence, based on the values of Pancasila and the 1945 Constitution. The primary objective of this regulation is to eliminate the practice of domestic violence while creating a balance between husband and wife, children and parents, and between the nuclear family and other parties involved in the household, a crucial factor in preventing domestic violence.

Today, empirical evidence shows that various forms of domestic violence, including physical, psychological, sexual, and neglect, remain common. This can be seen through the direct experiences of victims in the field and through media coverage. This situation reflects a discrepancy between the law in regulatory documents and legal practice in society, which requires scientific attention and resolution. Article 10 of the Domestic Violence Law explains the rights that victims of domestic violence should receive, including:

- a. Protection from family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on a court-ordered protection order;
- b. Health care services according to medical needs;
- c. Special handling related to victim confidentiality;
- d. Assistance by social workers and legal aid at every stage of the investigation process in accordance with statutory provisions; and
- e. Spiritual guidance services.

2. Research Methods

The approach used in this research is normative legal research. A normative legal approach is legal research conducted by examining library materials or secondary data solely. Normative legal research is legal research that positions law as a system of norms. The system of norms in question concerns the principles, norms, and rules of legislation, court decisions, agreements, and doctrines (teachings).³

3. Results and Discussion

3.1. Legal Analysis of Justice-Based Criminalization of Perpetrators of Domestic Violence (Case Study Number 1/Pid.Sus/2025/PN.Tjt)

In this thesis, the author examines the decision in case No. 1/Pid.Sus/2024/PN TJT, which involved a domestic violence crime involving the defendant VRU. The analysis is as follows: On Sunday, October 27, 2024, at approximately 6:00 PM WIB, in Parit Culum I, RT. 012, RW. 003, Muara Sabak Barat District, East Tanjab Regency, a domestic violence incident occurred between the victim HNP and the defendant VRU. Prior to the incident, an argument had occurred between the victim and the defendant because the victim did not follow the victim's instructions to cook food and was deemed to have disrespected the defendant as the head of the family. The victim, annoyed, threw several items, namely a helmet and a soap dish. Seeing this, the defendant hit the back of the right head hard once with a plastic teapot until the teapot broke. In early March 2024, the victim forgot the date and time, there was also an incident of domestic violence between the victim and the defendant. The defendant, who came home late at night after drinking palm wine with his friend, when he returned home, did not accept the victim's reprimand, finally became angry and hit the wall of the house until it broke several pieces. However, the incident has been reconciled by the family and the local village head.

That the act was committed against the turban of HNP, who is the defendant's legal wife and as a result of the defendant's actions, VRU conducted a post-mortem at the Nurdin Hamzah Hospital, East Tanjung Jabung Regency, on Sunday, October 27, 2024 at approximately 9:30 PM WIB. Based on the results of the post-mortem examination, the victim's body was found to be swollen measuring 4 cm X 3 cm on the right back of the head and painful when pressed. For his actions, the defendant VRU was tried and held accountable at the Tanjung Jabung Timur District Court.

Article 140 paragraph (1) of the Criminal Procedure Code (KUHP) stipulates that the Public Prosecutor is authorized to prepare an indictment. Given this function, a Public Prosecutor is required to possess the capability to prepare an indictment, preventing errors in drafting an indictment that could result in the acquittal of a truly guilty defendant. In this case, the public prosecutor presented subsidiary charges, namely:

³ Amiruddin dan H. Zainal Asikin, 2014, *Pengantar Metode Penelitian Hukum*, Rajawali Pers, Jakarta, hlm. 12-13

Master of Law, UNISSULA

a. Primary: The defendant was charged with committing an act of physical violence within the household as referred to in Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

b. Subsidiary: the defendant is accused of committing an act of physical violence within the household as referred to in Article 5 letter a committed by a husband against a wife that does not cause illness or obstacles to carrying out work or livelihood or daily activities as regulated and threatened in Article 44 paragraph (4) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

That the defendant has been charged by the Public Prosecutor with a subsidiary charge as regulated in the primary charge has violated Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, the subsidiary has violated Article 44 paragraph (4) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Because the charge is subsidiary, the panel of judges will prove the Primary charge first and if the primary charge has been proven, the panel of judges no longer needs to prove the subsidiary charge.

From a social justice perspective, socioeconomic factors such as poverty, poor social relationships, or lack of access to education and decent work can be criminogenic factors behind a perpetrator's actions. While these factors do not justify criminal acts, they can be considered in imposing progressive and proportionate punishment. In the context of social justice, judges should not only consider the appropriateness of the article to the offense, but also consider:

3.1. Legal Analysis of Justice-Based Criminalization of Perpetrators of Domestic Violence (Case Study Number 1/Pid.Sus/2025/PN.Tjt)

In this thesis, the author examines the decision in case No. 1/Pid.Sus/2024/PN TJT, which involved a domestic violence crime involving the defendant VRU. The analysis is as follows: On Sunday, October 27, 2024, at approximately 6:00 PM WIB, in Parit Culum I, RT. 012, RW. 003, Muara Sabak Barat District, East Tanjab Regency, a domestic violence incident occurred between the victim HNP and the defendant VRU. Prior to the incident, an argument had occurred between the victim and the defendant because the victim did not follow the victim's instructions to cook food and was deemed to have disrespected the defendant as the head of the family. The victim, annoyed, threw several items, namely a helmet and a soap dish. Seeing this, the defendant hit the back of the right head hard once with a plastic teapot until the teapot broke. In early March 2024, the victim forgot the date and time, there was also an incident of domestic violence between the victim and the defendant. The defendant, who came home late at night after drinking palm wine with his friend, when he returned home, did not accept the victim's reprimand, finally became angry and hit the wall of the house until it broke several pieces. However, the incident has been reconciled by the family and the local village head.

Master of Law, UNISSULA

That the act was committed against the turban of HNP, who is the defendant's legal wife and as a result of the defendant's actions, VRU conducted a post-mortem at the Nurdin Hamzah Hospital, East Tanjung Jabung Regency, on Sunday, October 27, 2024 at approximately 9:30 PM WIB. Based on the results of the post-mortem examination, the victim's body was found to be swollen measuring 4 cm X 3 cm on the right back of the head and painful when pressed. For his actions, the defendant VRU was tried and held accountable at the Tanjung Jabung Timur District Court.

Article 140 paragraph (1) of the Criminal Procedure Code (KUHP) stipulates that the Public Prosecutor is authorized to prepare an indictment. Given this function, a Public Prosecutor is required to possess the capability to prepare an indictment, preventing errors in drafting an indictment that could result in the acquittal of a truly guilty defendant. In this case, the public prosecutor presented subsidiary charges, namely:

a. Primary: The defendant was charged with committing an act of physical violence within the household as referred to in Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

b. Subsidiary: the defendant is accused of committing an act of physical violence within the household as referred to in Article 5 letter a committed by a husband against a wife that does not cause illness or obstacles to carrying out work or livelihood or daily activities as regulated and threatened in Article 44 paragraph (4) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

That the defendant has been charged by the Public Prosecutor with a subsidiary charge as regulated in the primary charge has violated Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, the subsidiary has violated Article 44 paragraph (4) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Because the charge is subsidiary, the panel of judges will prove the Primary charge first and if the primary charge has been proven, the panel of judges no longer needs to prove the subsidiary charge.

From a social justice perspective, socioeconomic factors such as poverty, poor social relationships, or lack of access to education and decent work can be criminogenic factors behind a perpetrator's actions. While these factors do not justify criminal acts, they can be considered in imposing progressive and proportionate punishment. In the context of social justice, judges should not only consider the appropriateness of the article to the offense, but also consider:

The author believes that the judge's decision was appropriate because, when compared to several theories of punishment, the principle objective of punishment is to protect society and improve the perpetrator. The goal is to prevent, reduce, or control criminal acts and restore social balance, while the aspect of improving the perpetrator encompasses various objectives, including rehabilitation and reintegration into society, and protection from arbitrary, extrajudicial treatment.

3.2. Judge's Considerations in Prosecuting Perpetrators of Domestic Violence Based on Justice (Case Study Number 1/Pid.Sus/2025/PN.Tjt)

Judges, when examining a case, also require evidence, which will be used as consideration in deciding the case. Evidence is the most crucial stage in a trial. Evidence aims to establish certainty that a factual event presented actually occurred, thereby achieving a correct and just verdict. The judge cannot make a decision before it is clear to him that the event/fact actually occurred, that is, its truth has been proven, so that there is a legal relationship between the parties.⁴ The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, in addition to containing benefits for the parties concerned, so the judge's consideration must be addressed carefully, properly, and precisely.

Provisions regarding the judge's consideration are regulated in Article 197 paragraph (1) letter d of the Criminal Procedure Code, which states that the judge's consideration is compiled briefly regarding the facts and circumstances along with the evidence obtained from the examination in court that serves as the basis for determining the defendant's guilt. The judge's consideration consists of legal considerations and facts in the trial. In addition, the panel of judges must master or be familiar with the theoretical and practical aspects, jurisprudence, and the case being handled.⁵

In Decision Case Number 1/Pid.Sus/2025/PN Tjt, the author examined the defendant VRU, the son of P.H. Sihombing, who committed the crime of physical violence within the household. As a result of his actions, defendant VRU must be tried at the East Tanjung Jabung District Court. The judge's legal considerations are those based on the legal facts revealed during the trial and, as stipulated by law, must be included in the decision. The author will outline the legal analysis of the judge's decision as follows:

1. The Public Prosecutor's Indictment

The indictment is the legal basis for criminal procedure because it is the basis for the trial examination. In addition to identifying the defendant, the indictment also contains a description of the crime charged, specifying the time and place of the crime. In Decision Case Number 1/Pid.Sus/2025/PN Tjt, defendant VRU was charged with primary and subsidiary charges. Under the primary charge, the defendant was charged under Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, while the subsidiary charge was charged under Article 44 paragraph (4) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Whereas in Decision Number 1/Pid.Sus/2024/PN Tjt, where the defendant VR is the son of P.H. Sihombing, the public prosecutor used a subsidiary charge, namely the primary charge of Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic

⁴ Mukti Arto, 2004, *Praktek Perkara Perdata pada Pengadilan Agama*, Cetakan V, Pustaka Pelajar, Yogyakarta, hlm. 141

⁵ Lilik Mulyadi, 2007, *Putusan Hakim dalam Hukum Acara Pidana*, PT Citra Aditya Bakti, Bandung, hal 193-194

Master of Law, UNISSULA

Violence, "any person who commits an act of physical violence within 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. Defendant's Statement

According to Article 184 point e of the Criminal Procedure Code, the defendant's statement is classified as evidence. The defendant's statement is what the defendant states in court about the actions he or she committed, knew about, or experienced. Considering various court decisions, it appears that the defendant's statement is a consideration for the judge, and it is reasonable to include it in the considerations, as that is the law's intent.⁶

In Decision Number 1/Pid.Sus/2025/PN Tjt, defendant VRU testified that on that day, the defendant, irritated and angry at the victim's behavior, eventually hit the victim's head with a plastic water jug, breaking it. It is true that there had been a previous and frequent argument between the victim and the defendant due to the defendant's habit of drinking palm wine late at night. This incident also led to the issuance of the agreement on March 30, 2024.

1. Witness Testimony

One of the elements that the judge must consider when issuing a verdict is witness testimony. Witness testimony can be categorized as evidence as long as it relates to a criminal incident that the defendant personally heard, saw, or experienced and must be presented in court under oath. In practice, the Public Prosecutor will summon the arresting witness, witnesses from the victim's family, or other witnesses relevant to the case. The absence of witnesses can raise doubts in the judge's decision. The judge must not have reasonable doubt in sentencing the defendant to guilt (*beyond a reasonable doubt*).⁷

In case No. 1/Pid.Sus/2025/PN Tjt, the following witnesses were requested to testify:

1. Witness HNP as Victim

On October 27, 2024, at approximately 2:00 PM, an argument occurred between the victim and the defendant regarding the victim's refusal to host a large gathering of community members because the victim was feeling well. At 2:30 PM, the victim left the house with her child to attend a massage. At 5:30 PM, when the victim and her child returned from the massage, she saw the defendant had prepared a large amount of food for the community gathering. Seeing this, the victim, who was ill, felt disappointed and disrespected and threw her helmet and soap box. The defendant, upset and displeased, hit the victim with a plastic teapot on the right side of her head, breaking it. As a result of the incident, the victim suffered

⁶ Rusli Muhammad, 2007, *Hukum Acara Pidana Kontenporer*, Citra Aditya Bakti, Bandung, hlm. 214

⁷ <https://www.hukumonline.com/klinik/a/wajibkah-ada-keterangan-saksi-dalam-perkara-pidana-lt5c6e3a2189b32/> di akses pada tanggal 11 oktober 2025 Pukul 19.05 WIB

Master of Law, UNISSULA

bruising and a 3-4 cm lump on the right side of her head, which was painful to the touch. A previous dispute had also occurred in March 2024, but it was resolved, leading to the issuance of an agreement on March 30, 2024.

2. Witness SBS

The witness learned about the domestic violence incident directly from the victim, HNP. On October 27, 2024, at approximately 6:00 PM, the witness received a phone call from the victim, who said he wanted to report the chronology of the incident and to ask for assistance from the victim's immediate family at the scene. An argument had occurred between the victim and the defendant in early March 2024 at approximately 12:00 AM WIB at the witness's home in Bandar Jaya, RT. 018, Bandar Jaya Village, Rantau Rasau District, East Tanjung Jabung Regency. The dispute arose because the defendant was reprimanded by his wife, HNP, for drinking palm wine until drunk and returning home late at night. Due to the incident, the defendant struck the wooden wall of the witness's house with his clenched fist, causing slight damage. The nails on the boards came loose, and three boards were also knocked loose. As a result of the incident, an agreement was issued between the victim, HNP, and the defendant, VRU, to refrain from repeating the domestic violence.

3. Witness S

The witness explained that after the domestic violence incident on October 27, 2024, experienced by the victim, HNP, the victim and her child immediately went to the witness's house and asked for permission to stay overnight. There, the victim explained what had happened to the victim and how she was currently feeling.

4. Evidence

Evidence refers to objects subject to confiscation and presented by the public prosecutor in court. The aforementioned evidence is not considered physical evidence, as the law defines five types of evidence: witness testimony, expert testimony, letters, clues, and the defendant's testimony. The types and forms of evidence considered by the judge varied considerably, depending on the type of crime committed by the defendant in the case of domestic violence. The public prosecutor presented the following evidence:

- a. 1 (one) dull white plastic teapot without a lid, broken from the bottom to the handle;
- b. 1 (one) red short-sleeved t-shirt with a yellow floral pattern;
- c. 1 (one) pair of purple trousers; 1 (one) sheet of agreement/statement from Voller Rulias Ubandriansen Sihombing, son of P.H. Sihombing (deceased) and Hanna Novia Purba, also known as Hanna, son of Johanes Purba (deceased) on Saturday, March 30, 2024.

4. Conclusion

In the case of decision Number 1/Pid.Sus/2025/PN Tjt, the defendant was charged by the Public Prosecutor with the charges as stipulated in the primair that the defendant had violated Article 44 paragraph (1) of the Domestic Violence Law and sentenced the defendant to 6 (six) months in prison. This approach shows that the judge is not only oriented towards rigid punishment, but also applies a more substantive principle of justice. Thus, the application of criminal responsibility in this case reflects a balance between legal certainty and social justice values that emphasize rehabilitation and opportunities for social reintegration for the perpetrator. The judge's considerations in making a decision by determining both juridical and non-juridical first. Considerations also include the defendant's social background, cooperative attitude and remorse shown by the defendant are also taken into account as mitigating factors. This approach reflects the spirit of restorative justice, where the judicial process does not only emphasize punishment, but also considers the humanitarian side, potential for rehabilitation, and social protection. In other words, this decision shows that the judge is trying to achieve proportional and dignified justice, in accordance with the social context surrounding the case.

5. References

Journals:

Sri Endah Wahyuningsih, (2014), Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai–Nilai Ketuhan an Yang Maha Esa, *Jurnal Pembaharuan Hukum*,l(1)

Books:

Amiruddin dan H. Zainal Asikin, (2014), Pengantar Metode Penelitian Hukum, Rajawali Pers, Jakarta

Lilik Mulyadi, (2007), Putusan Hakim dalam Hukum Acara Pidana, PT Citra Aditya Bakti, Bandung

Mukti Arto, (2004), Praktek Perkara Perdata pada Pengadilan Agama, Cetakan V , Pustaka Pelajar, Yogyakarta

Pendidikan dan Pelatihan Pembentukan Jaksa, (2019), Modul Penghapusan Kekerasan Dalam Rumah Tangga, Tim Penyusun Modul Badan Diklat Kejaksaan Republik Indonesia, Jakarta

Rusli Muhammad, (2007), Hukum Acara Pidana Kontenporer, Citra Aditya Bakti, Bandung

Internet:

<https://www.hukumonline.com/klinik/a/wajibkah-ada-keterangan-saksi-dalam-perkara-pidana-lt5c6e3a2189b32/> accessed on 11 october 2025 at 9.05 WIB