

Reflection of Power Relations Inequality in The Domestic and Community Sphere Perspective Review of Criminal Law Protection Against Domestic Violence

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Abstract. *Violence against women in Indonesia continues to show an increasing trend despite various legal instruments that have been established, including the PKDRT law and the TPKS law. This phenomenon confirms the ineffectiveness of the legal system in providing comprehensive protection for women as a vulnerable group. The failure lies not only in the implementation aspect, but also rooted in the inequality of patriarchal-based power relations that affect the legal substance, institutional structure, and legal culture of society. In the context of criminal law, the purpose of punishment, whether retaliation, prevention, or rehabilitation, is not optimally achieved because the law still reflects social biases that place women in a subordinate position. This study uses normative legal research methods with legislation, conceptual, and comparative approaches. The Data were analyzed through an analysis of the concept of primary rules and secondary rules, and associated with the reality of patriarchy in law enforcement practice. This study also compared Indonesia's legal system with several countries to see the extent to which the reform of the substance, structure, and legal culture affect the effectiveness of Victim Protection. The results showed that the enforceability of criminal law in Indonesia is weakened due to the substance of the law that has not been gender responsive, biased law enforcement structure, and legal culture that still normalizes violence. Primary rules lose social power, while secondary rules do not function consistently in enforcement proceedings. Thus, legal reform is needed that focuses not only on regulatory changes, but also on the transformation of institutional perspectives and legal culture in order to realize a gender-fair sentencing system and effectively protect women.*

Keywords: *Criminal; Domestic; Inequality; Law; Violence.*

1. Introduction

Violence against women constitutes a violation of human rights that contradicts the principles of constitutional protection under the 1945 Constitution of the Republic of Indonesia. Data from the National Commission on Violence Against Women (Komnas Perempuan) shows an increase in reported cases from 279,688 in 2013 to 293,330 in 2014, indicating that violence occurs systematically and that the existing protection mechanisms have not been effective. This situation contradicts Article 28G paragraph (1), which guarantees the right to personal protection, dignity, and a sense of security, as well as Article 28I paragraph (1), which affirms the right to be free from torture and degrading treatment as a non-derogable right under any circumstances. Furthermore, Article 28I paragraph (4) obligates the state to respect, protect, and fulfill human rights, while Article 28J paragraph (1) emphasizes the duty of every individual to respect the rights of others (Widyastuti, 2011). Thus, the increasing rate of violence against women indicates a structural problem and the failure of the state to fulfill its constitutional mandate to provide effective protection.

The majority of cases of violence against women in Indonesia dominated by domestic violence (KDRT) reaching approximately 68 percent reflect what is explained by Michel Foucault's theory of power relations and Sylvia Walby's theory of patriarchy, namely that violence emerges and persists due to deeply rooted power imbalances within social structures and family institutions. The domestic sphere, which ideally should serve as a space of protection, instead becomes the most vulnerable space for women because unequal power relations within marriage provide social and cultural legitimacy for male domination, which is then manifested in forms of control, coercion, and violence (Walby, 2014a). Meanwhile, around 30 percent of cases that occur within the community environment indicate that this pattern of inequality is not limited to the private sphere, but also extends into broader social interactions, reinforcing scholars' views that violence against women is a structural phenomenon rooted in patriarchal social norms and an unequal distribution of power.

Although Law No. 23 of 2004 on the elimination of domestic violence has been promulgated as a form of State commitment, its inadequate implementation shows that legal development is not fully aligned with the philosophical aspects of development that place humans-especially vulnerable groups as the center of protection and empowerment. (Atikah, 2019a) In line with Dewi Haryani Susilastuti, the spirit of protection that underlies the law does not work effectively because it is not supported by harmonization with other regulations, such as the Marriage Law and the Criminal Code, thus creating overlapping norms and gender bias in practice. This inconsistency reflects that the development of law has not met the principle of substantive justice that is the foundation of national development, where the law should function as an

emancipatory instrument, not a reproducer of injustice . As a result, women often become double victims of domestic violence while facing structural injustice in the legal process, which indicates that the development goals to realize a just, dignified, and Humanist Society have not been fully achieved.(Nugraha & Susilastuti, 2022)

From the perspective of Lawrence M. Friedman's legal system theory, the issue of violence against women must be examined through the interconnected elements of legal substance, legal structure, and legal culture (Al Kautsar & Muhammad, 2022a). which divides legal effectiveness into three elements—legal substance, legal structure, and legal culture—the structural gaps that result in the failure to protect women can be understood as a simultaneous failure across all three elements. In terms of legal substance, the disharmony between the Domestic Violence Law (UU PKDRT), the Marriage Law, and the Criminal Code (KUHP) demonstrates that legal substance does not adequately support victim protection because it still contains gender bias and evidentiary standards that disadvantage women. In terms of legal structure, overlapping authority between the Ministry of Women's Empowerment and Child Protection (Kementerian PPA) and the Ministry of Home Affairs (Kemendagri), the absence of a centralized command system, and the lack of binding performance indicators illustrate a legal structure that fails to function effectively as the mechanism responsible for implementing legal norms.

Meanwhile, in terms of legal culture, domestic violence constitutes a violation of human rights, yet Indonesian legal culture still perceives it as a private domestic matter. This perception is influenced by the naturalization of gender hierarchy that positions men as dominant and women as subordinate. As a result, reporting rates for domestic violence are low, and case resolution is often directed toward "peaceful" mediation, which ultimately neglects justice for victims. Domestic violence can occur across all social strata, and perpetrators often justify their actions under the pretext of authority or religion. This condition reflects a legal culture that remains insufficiently sensitive to gender-based violence (Azzahra, 2017). Thus, in accordance with Friedman's framework, the three elements reinforce each other's stagnation, explaining why despite a strong normative framework, the incidence curve of violence does not decrease; so solutions must target pro-victim substance, coordinated institutional structures, and legal culture transformation as prerequisites for the constitutional mandate to be truly realized.

Limited funding, institutional dysfunction, and socio-cultural factors that reinforce the cycle of violence have a direct correlation with the previous discussion and can be explained through Donald Black's theoretical framework on the behavior of law, particularly the concept that the degree to which law operates is highly influenced by social structure. (Vidyapramatya, 2021a). In this

context, insufficient funding for women's protection service units results in a low "volume of law" in operation because institutional capacity to respond to, assist, and follow up on domestic violence cases is severely limited—from the shortage of professional personnel and weak coordination, to the failure to meet minimum service standards. When structural capacity is low, the level of legal intervention also declines, making it more likely that victims will not receive adequate protection or recovery. On the other hand, cultural factors and social relations, as explained by Prof. Dr. Koentjoro such as economic dependency, fear of abandonment, social stigma, and male dominance within the family demonstrate that the social position of victims lies within a layer that has weaker "access to law.(Abdillah, 2015). According to Donald Black, the lower the social position of a party, the less the law moves to protect them; this is reflected in the many women who ultimately do not report or withdraw divorce petitions due to social pressure and economic uncertainty.(Donald, 1976)

Violence against women that occurs both within marriage and during dating relationships demonstrates that this problem does not arise solely from personal relationships, but also from the lack of firmness within the legal system in providing protection. When linked to H.L.A. Hart's legal positivism, this issue can be explained through the misalignment between primary rules (rules that regulate the behavior of society) and secondary rules (rules regarding how law is created, modified, and enforced).(Hart, 1961)

In simple terms, primary rules such as the prohibition of violence, the protection of bodily integrity, and the state's obligation to prevent discrimination already exist, yet the secondary rules—particularly enforcement mechanisms, procedural clarity, regulatory harmonization, and institutional capacity have not operated effectively. When secondary rules are weak, primary rules lose their practical force even though they have been normatively established. This is reflected in the limited services available to victims due to budget constraints, overlapping authority among institutions, and the absence of consistent operational standards in the field. As a result, rules that are intended to protect women fail to materialize as factual protection.

This situation demands a shift in how law is understood: the effectiveness of women's protection cannot be measured merely by the existence of legislation, but by the extent to which the legal system—through secondary rules can ensure that the law functions, is enforced, and is applied uniformly in practice. In other words, legal knowledge must move from viewing "law as text" to viewing "law as an operationally functioning system." (Gunaryo, 2007) These values are the direction for concrete actions in strengthening procedural rules, improving enforcement mechanisms, and ensuring that every woman gets real protection, not just normative protection.

In a criminal law perspective, violence against women constitutes a serious violation of the constitutional right to security, dignity, and protection from violence. Criminal law as an ultimum remedium should serve to protect the legal interests of victims through effective regulation of behavior and sanctions (Candra & Abrian, 2025). However, as stated by Sudarto, the effectiveness of criminal law depends on the alignment between legal substance, legal structure, and legal culture three aspects that, in the Indonesian context, continue to face significant barriers. Although the Criminal Code (KUHP) and the Domestic Violence Law (UU PKDRT) provide a framework for criminalization, law enforcement practices demonstrate that protection for women is still far from optimal due to institutional bias and the strong influence of patriarchal culture. (Suzanalisa, 2019)

Within the framework of criminal policy, Barda Nawawi Arief emphasizes the importance of harmonizing penal and non-penal approaches. The penal approach through criminal prosecution of perpetrators often fails to achieve either preventive or repressive objectives due to low reporting rates, difficulties in the evidentiary process, and the continued use of mediation in cases that should be handled through criminal proceedings. Meanwhile, non-penal approaches such as education, women's economic empowerment, and social interventions have not yet been adequately integrated into the national legal system (Irmawanti & Arief, 2021). From a victimology perspective, many women experience secondary victimization when legal processes themselves generate new trauma, for example through victim-blaming questions or law enforcement officers who are reluctant to process domestic violence reports because they are considered a "private family matter." This reflects a justice system orientation that remains offender-oriented and has not yet comprehensively adopted the principles of victim-centered justice. In relation to the purposes of punishment, the retributive, preventive, and rehabilitative aspects have not been achieved. The minimal sentencing and weak post-conviction supervision create conditions of domestic impunity, in which perpetrators do not fully take responsibility for their actions.

The novelty in this study that distinguishes it from other studies is that it not only looks at violence against women as a purely patriarchal social or cultural issue, but also analyzes how power relations inequalities in the domestic and community spheres contribute to the failure of the criminal law system to provide effective protection for women victims of violence. Previous studies, such as those by Sulistyowati Irianto, have put more emphasis on gender inequities in legal practice and how the law often does not work effectively for women. Meanwhile, research by Wendy Agus Budiawan focuses on the use of feminist legal theory to understand injustices against women in the legal system,

as well as research by Zuhrai that highlights the influence of culture and customary law on the position of women in society.

In contrast to these studies, this study examines more comprehensively the relationship between power relations inequality, community legal culture, and weaknesses in the substance and structure of criminal law enforcement in dealing with violence against women in Indonesia. Thus, this study provides a new perspective by placing violence against women not only as a problem of gender relations, but also as a problem of failure of the criminal law system in carrying out the functions of protection, prevention, and enforcement of justice for victims. This approach is expected to contribute conceptually to understanding why existing regulations have not been able to effectively break the cycle of violence against women in Indonesia. For more details can be seen in the following table:

No	Author	Journal Name	Article Title	Research Findings	Difference from This Research	Novelty of This Research
1	Sulistiyowati Irianto	<i>Indonesia Feminist Journal</i>	<i>Law Does Not Work for Women</i>	The study shows that the law often fails to provide justice for women because law enforcement officials tend to interpret the law rigidly and do not consider victims' experiences, making access to justice difficult.	This study mainly highlights issues of legal interpretation and judicial bureaucracy in cases of violence against women.	The novelty of this research lies in not only examining legal interpretation but also linking the failure of criminal law with unequal power relations in domestic and community spheres, as well as structural failures of the legal system.
2	Wendy Agus Budiawan	<i>Justice Jurnal Hukum</i>	<i>Pro: Feminist Legal Theory for Legal Research from a Women's Perspective Related to Legal Issues</i>	The research indicates that feminist legal theory can be used to explain injustice against women in a legal system still influenced by patriarchal culture.	This study focuses more on feminist legal theory as an analytical framework in legal research.	The novelty of this research is that it does not only use a gender perspective but also analyzes the failure of criminal law functions in providing deterrence and protection for victims of violence.

3	Zuhraini	<i>Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam</i>	<i>Women and Law in the Sebatin Lampung Customary Law Community</i>	The study shows that cultural values and social interpretations within customary law communities can lead to injustice against women and reinforce their subordinate position.	This study focuses on gender inequality within customary law and community culture.	The novelty of this research is expanding the analysis by examining the relationship between patriarchal culture, domestic power relations, and the failure of the criminal justice system in addressing violence against women.
4	Ruth Meilianna, Marya Yenita, Sitohang, Yulinda Nurul Aini	<i>Musāwa: Jurnal Studi Gender dan Islam</i>	<i>Gender Inequality, Unpaid Care Work, and Working Women</i>	The study shows that women contribute significantly to the family economy through unpaid domestic work, yet this contribution is often invisible and socially undervalued.	This research highlights gender inequality within the family economy.	The novelty of this research lies in analyzing how unequal power relations within the family may contribute to violence against women and weaken criminal law protection for victims.
5	This Research	<i>Reflection on Unequal Power Relations in Domestic and Community Spheres: A Perspective of Criminal Law Protection Against Domestic Violence</i>	<i>Power Relations Inequality and the Failure of the Criminal Law System in Addressing Violence Against Women in Indonesia</i>	This study finds that the high rate of violence against women is influenced by unequal power relations within families and communities, weak implementation of criminal law, and a legal culture that tends to normalize violence.	–	The novelty of this research is integrating the analysis of domestic power relations, patriarchal culture, and the failure of the criminal law system to explain why legal protection for women remains ineffective in Indonesia.

Thus, based on the background of increasing violence against women which shows the failure of constitutional protection, supported by the theoretical framework of power relations, patriarchy, and the theory of the legal system that reveals weaknesses in the aspects of substance, structure, and legal culture, as well as the existence of research gaps that are still limited in assessing the relationship between power relations, therefore, this study aims to analyze in depth how the inequality of power relations in the domestic and social spheres contributes to the ineffectiveness of criminal law protection for women victims of violence in Indonesia, as well as formulate efforts to improve the legal system that is more oriented to the protection of victims and substantive justice.

Inequality of power relations in the domestic and community spheres is one of the main factors that drive the high rate of violence against women in Indonesia. Although the country has passed various legal instruments such as the Domestic Violence Elimination Act (UU PKDRT) and the Sexual Violence Crime Act (UU TPKS), the reality is that cases of violence against women are still on the rise. This shows that the criminal law system has not been fully effective in providing comprehensive protection for victims. The problem lies not only in the aspect of law enforcement, but also influenced by patriarchal social structures and inequality of power relations that affect the legal substance, institutional structure, and legal culture of society. As a result, criminal law often fails to perform the functions of protection, prevention, and enforcement of justice for women victims of violence.

Based on the formulation of the problem, this study aims to examine and analyze the inequality of power relations in the domestic and community spheres that contribute to the high rate of violence against women in Indonesia. This study also aims to assess the extent to which the criminal law system in Indonesia is able to provide effective protection for women victims of violence, especially when viewed from the aspects of legal substance, institutional structure of law enforcement, and community legal culture. In addition, this study aims to analyze the failure of the criminal justice system in the perspective of legal positivism, patriarchy, and power relations that affect the effectiveness of law enforcement against perpetrators of violence. Through the analysis, this study is expected to formulate a more comprehensive conceptual framework to strengthen the protection of criminal law with a gender perspective in order to realize justice and more effective protection for women victims of violence in Indonesia.

2. Research Methods

This research employs a normative legal research method, focusing on the study of legal norms governing the protection of women from violence, including domestic violence and violence in dating relationships, by examining the

coherence between rules and enforcement mechanisms (Hadjon & Djatmiati, 2016). As a form of legal research, this study examines normative problems through an analysis of legislation such as Law Number 23 of 2004 on the Elimination of Domestic Violence, the Marriage Law, the Criminal Code (KUHP), and sectoral regulations related to integrated services, in order to assess the extent to which legal substance provides adequate and non-contradictory protection. The approaches employed include the Statute Approach to assess regulatory harmony and disharmony, the Case Approach to examine patterns in handling domestic violence and dating violence cases along with institutional barriers such as limited funding, unclear authority, and service quality that fails to meet established standards, and the Comparative Approach by analyzing women's protection systems in other countries such as Sweden, Canada, and Australia, which implement integrated victim-based frameworks, rapid response mechanisms, and strong institutional coordination (Marzuki, 2017). This research is a qualitative study employing qualitative descriptive analysis techniques (Ibrahim, 2006). namely by interpreting legal substance, mapping the mechanisms of its implementation, and linking it to social realities such as the high prevalence of violence, low reporting rates, and the influence of patriarchal culture that weakens legal effectiveness.

The analysis is carried out through the interpretation of legal norms, evaluation of institutional structures, and examination of implementation based on case evidence, in order to understand the extent to which the law substantively functions in protecting women. The comparative study is used to provide additional perspectives regarding the effectiveness of legal instruments, integrated service models, national coordination mechanisms, and prevention strategies based on education and empowerment implemented in other countries. This approach aims to provide an in-depth understanding of the effectiveness of Indonesia's legal system in responding to violence against women, identifying points of normative and structural weakness, and formulating necessary reforms so that protection does not stop at the formal level but materializes as factual protection that is consistent, measurable, and just. this research has the advantage of being able to provide a comprehensive and systematic analysis of legal norms, integrate various approaches (legislation, cases, and Comparative), and provide a deeper conceptual understanding of structural weaknesses in the legal system, thereby contributing to the formulation of legal reform that is more integrated, victim-oriented, and substantive justice.

3. Results and Discussion

3.1. Power Relations Inequality in the Domestic and Community Sphere and Its Relevance to Criminal Liability for Violence Against Women in Indonesia.

Violence against women is one of the most frequent forms of human rights violations occurring in Indonesia. According to reports from the National Commission on Violence Against Women (Komnas Perempuan), the number of cases continues to increase from year to year, encompassing physical, sexual, psychological, and economic violence (Sodah, 2023). This phenomenon cannot be viewed merely as an individual or domestic incident, but rather as a reflection of an unequal social structure. This inequality originates from the patriarchal system, a social structure that positions men as holders of authority and women as subordinate parties (Kumari et al., 2009). Within the framework of patriarchal theory as explained by Sylvia Walby, the domination of men over women operates through various social institutions family, state, religion, and culture all of which reinforce the position of men as those in control. This system creates unequal power relations in everyday life, both in the domestic and community spheres, and significantly contributes to the high rate of violence against women in Indonesia (Walby, 2014b).

Patriarchal theory asserts that the power relations between men and women are not natural phenomena, but rather social constructs upheld by norms, ideologies, and institutions that legitimize male domination. Michel Foucault explains that power is not only repressive, but also productive it shapes knowledge and social behavior. In the context of a patriarchal society, this power operates by normalizing gender differences: men are perceived as rational, strong, and entitled to lead, whereas women are regarded as emotional, weak, and obligated to obey (Mudhoffir, 2013). As a result, this inequality produces a rigid division of roles between the public and domestic spheres. Men maintain control over the public domain and economic resources, while women are confined to domestic roles that are often undervalued both socially and economically. Such power relations create situations in which violence against women is not only made possible, but is also frequently justified by culture and even by gender-biased legal systems. As described by Lawrence M. Friedman, the legal culture that develops within a patriarchal society often fails to internalize the values of equality, causing legal practices to neglect substantive justice for women (Mastur et al., 2020).

The domestic sphere becomes the most visible arena for the operation of unequal power relations. In many Indonesian families, men are still regarded as the head of the household and the ultimate decision-maker. Meanwhile, women are burdened with moral and emotional responsibilities to maintain family harmony, even if it requires enduring violence. A. Widyastuti emphasizes that domestic violence is often not considered a human rights violation, but rather a private matter. The low rate of reporting cases of violence against women reflects

the strength of patriarchal culture, which pressures women to accept suffering as part of their moral obligation. In addition, law enforcement officers often encourage peaceful settlement, as found by Gita Ayu Atikah, under the pretext of preserving family unity. This pattern demonstrates that law and social culture reinforce one another in normalizing violence against women. Domestic violence does not only take the form of physical abuse, but also psychological, economic, and sexual violence, all of which are rooted in the belief that husbands possess the right to control their wives as a legitimate form of leadership (Atikah, 2019).

The inequality of power relations does not stop within the household, but also extends into the community sphere. In various social institutions such as religious, educational, and political institutions—women still frequently face barriers to participation and decision-making. They are perceived as less suitable to lead due to socially embedded gender biases. Koentjoro, in his study on cultural psychology, demonstrates that local cultural values often position women as symbols of morality, patience, and devotion. Although seemingly positive, these values actually restrict women from spaces of expression and leadership (Soeparno, n.d.). Nurindria Naharista Vidyapramatya explains that in law enforcement, discrimination against women victims of violence frequently occurs because authorities view them through a patriarchal moral lens. Victims are often blamed and even considered responsible for the violence they experience. This demonstrates how patriarchal power relations operate not only interpersonally, but also structurally embedded within social systems, legal frameworks, and state institutions.(Vidyapramatya, 2021)

From Lawrence M. Friedman's perspective, the legal system consists of three components: structure, substance, and legal culture (Friedman, 2009). Of the three, legal culture plays a major role in determining how the law is implemented. In Indonesia, legal culture remains deeply influenced by patriarchal values that position women as those who must concede for the sake of family and social stability. Izzy Al Kautsar and Danang Wahyu Muhammad highlight that although society has transformed from the industrial era to the digital era, legal culture has not been able to keep pace with these social developments. Patriarchal power relations are now also evident in digital spaces through new forms of violence such as cyber harassment and online sexual harassment against women.(Al Kautsar & Muhammad, 2022). This demonstrates that although social spaces have transformed, patriarchal power structures persist in different forms. A. Gunaryo reminds us that the law is not merely a set of regulations, but also a reflection of societal values. As long as patriarchal values continue to dominate, the law will remain biased in favor of perpetrators and neglect the suffering of women victims.

The inequality of power relations rooted in the patriarchal system constitutes a structural cause of the high rates of violence against women in Indonesia. To address this issue, transformative efforts are required at multiple levels legal, social, and cultural. First, law enforcement must be grounded in a gender

perspective and adopt a victim-centered approach as mandated by Law No. 23 of 2004. Second, legal authorities must receive gender-sensitivity training to enable them to understand the complexity of women victims' experiences without moral prejudice. Third, education and mass media must play an important role in transforming societal perspectives on gender and power. Women must be empowered to possess agency the ability to determine their own life choices, both within the household and in public spaces. In the long term, such efforts are expected to create a new legal culture that is just and equitable, as emphasized by Friedman, who argues that legal reform will only be effective if followed by changes in societal legal culture. Thus, the struggle to eliminate violence against women is not merely an effort to combat individual crimes, but rather a struggle against an unequal social system.

The inequality of power relations within the domestic sphere in Indonesia remains deeply entrenched and rooted in the patriarchal system, which rigidly regulates role distribution between men and women. In Indonesian families, men are generally positioned as the head of the household, the authority holder, and the ultimate decision-maker. Meanwhile, women are burdened with domestic, emotional, and moral responsibilities to maintain family harmony, even when they must endure violence. This pattern produces unequal power relations, causing domestic violence to frequently be perceived as a private matter rather than a violation of human rights. The low reporting rate of violence against women in Indonesia demonstrates that social norms continue to pressure women to accept violence as part of their household duties..(Wolter et al., 2024). Law enforcement officers also frequently encourage peaceful settlement under the justification of preserving family unity, thereby allowing patriarchal power relations within the domestic sphere to continually persist and be legitimized by legal culture.

Compared to developed countries such as Sweden, Canada, and Australia, these nations have successfully reduced patriarchal domination within the household through welfare-state policies that structurally support gender equality. In Sweden, for example, the "dual earner/dual carer" model is implemented, encouraging both men and women to work (earners) and to share caregiving responsibilities (carers) through gender-neutral parental leave, affordable childcare services, and economic support for women. Such policies reduce women's economic dependency on their husbands or partners, which in turn can balance power relations within the household and lower the risk of domestic violence. For instance, under Sweden's parental leave system, both parents have equal rights to leave time, ensuring that caregiving responsibilities are not automatically placed solely on women (Anheier & Markovic, 2024).

Nevertheless, it is important to note that certain challenges remain. Several studies indicate that equality in family caregiving does not automatically eliminate or reduce domestic violence. The phenomenon known as the "Nordic Paradox" highlights this issue, showing that despite the high levels of formal

gender equality in Nordic countries, gender-based violence continues to persist (Castro et al., 2024.) On the other hand, in Indonesia, patriarchal social and cultural structures still strongly influence the division of roles within families and society. Therefore, structural policies such as those implemented in developed countries have not been fully adopted or have not yet achieved equivalent outcomes in the household sphere, communities, and public institutions.

Power relations within community spheres and social institutions also reveal a clear comparison between Indonesia and developed countries. In various social institutions in Indonesia—whether educational, religious, or political—women often face structural and cultural barriers to participation and decision-making. Gender-biased social perceptions remain strong, such as the belief that women are less suited to lead or that their primary role is as guardians of morality and family harmony. These cultural values may appear normatively positive, yet they in fact restrict women's space to articulate political, academic, and professional aspirations. In law enforcement, similar biases appear through practices of victim blaming, where women victims of violence are often blamed for allegedly violating moral norms. Such legal culture makes it difficult for women to obtain substantive justice. Conversely, developed countries have built more gender-responsive institutions through affirmative policies for officials and educational systems that instill equality from an early age. Parliaments in countries like Iceland, Finland, and Sweden have more than 40 percent female representation, demonstrating that formal structures provide significant space for women's leadership. (Castro et al., 2024). This more egalitarian social attitude reduces cultural pressures that restrict women's roles and strengthens protection mechanisms for victims of violence. Thus, developed countries have not only reformed legal regulations, but also cultivated a social culture that supports gender equality within communities and public life.

A further distinction can be seen in the legal culture and state responses to violence against women. In Indonesia, domestic violence and gender-based violence including the increasingly prevalent forms of digital violence are often not handled effectively because legal culture is still influenced by patriarchal values. The legal structure is not yet fully gender-sensitive, legal substance still contains gaps in implementation, and the public's legal culture tends to normalize violence as a private matter. Although the Domestic Violence Elimination Act (UU PKDRT) and the Sexual Violence Crimes Act (UU TPKS) exist, law enforcement officers often lack an understanding of victim-centered perspectives, resulting in slow case handling and processes that do not favor women.

An example of a case that illustrates the weakness of legal protection for women in Indonesia can be seen in the case experienced by Baiq Nuril in 2018. Baiq Nuril, an honorary teacher in Mataram, recorded the principal's conversation containing verbal sexual harassment as a form of self-defense. But the recording actually made it reported using the ITE Law because it was considered to spread immoral content. The court sentenced him to six months in prison and a fine,

while the offender was not immediately prosecuted. This case shows that the application of the law is still not sensitive to victims. After receiving wide public support, Baiq Nuril finally obtained amnesty from President Joko Widodo in 2019.

Meanwhile, developed countries treat violence against women, both offline and online, as a serious crime supported by rapid-response mechanisms. Law enforcement agencies are equipped with specialized gender-based violence units, witness protection mechanisms, and integrated victim support systems. In addition, digital platforms in Europe and Australia are strictly regulated through online safety policies, enabling more effective prosecution of cyber harassment perpetrators. This difference demonstrates that developed countries have successfully reformed all three elements of the legal system described by Lawrence M. Friedman structure, substance, and legal culture—consistently to create a social environment that rejects violence against women. While Indonesia still faces challenges in transforming a legal culture influenced by patriarchy, developed countries show that progressive social and legal reforms can reduce power imbalances and significantly decrease rates of violence (Friedman, 2006).

The imbalance of power relations within domestic and community spheres, as explained in patriarchal theory and power relations theory, is recorded as a fundamental factor driving the high rate of violence against women in Indonesia. Patriarchy, as a social system that positions men as the primary holders of authority, forms hierarchical and unequal power relations between men and women. This unequal power dynamic not only shapes family life, but also influences broader social institutions such as communities, religious organizations, and legal institutions. In many cases, violence against women does not arise merely as an individual act, but rather as a manifestation of social norms that legitimize male dominance and the subordination of women (Hartanto & Astuti, 2022). In this context, the final theory of criminal law is said to provide a foundation for the state in formulating criminal liability for gender-based crimes, including domestic violence, sexual violence, and other forms of violence influenced by power disparities.

The classical concept of punishment provides an initial illustration of how the state responds to crime. The absolute theory introduced by Kant, Hegel, Stahl, and Binding views punishment as retribution for moral wrongdoing. Its focus is on restoring moral balance rather than improving social conditions. Therefore, this theory is insufficient to explain violence against women that arises from unequal power relations within households or communities. Gender-based violence is not merely a matter of moral violation, but also emerges from patriarchal social structures that place women in a subordinate position. (Rivanie et al., 2022)

The relative theory then offers an approach that places greater emphasis on prevention, both for the wider society and for offenders. Thinkers such as

Feuerbach, von Liszt, Van Hamel, and Prins view punishment as a tool to prevent the recurrence of crime. This approach is more relevant for understanding violence against women, which often continues over time because perpetrators exploit unequal power relations within domestic and community spheres. Nevertheless, the relative theory is still criticized for prioritizing social utility without sufficiently addressing victim recovery or the social roots of the violence they experience. The development of modern law then introduced the combined theory (*vereinigungstheorie*), which integrates elements of retribution, prevention, and rehabilitation. Scholars such as Mueller, Merkel, and Van Bemmelen emphasize that these three aspects must work together so that the penal system can respond to the complexity of gender-based violence (Koeswadji, 1995). This approach is more appropriate to the conditions in Indonesia, where violence against women frequently occurs in private spaces and is often unreported due to unequal power relations between women and perpetrators, whether as partners, family members, or influential figures in the community. By combining retribution to uphold justice, prevention to break the cycle of violence, and recovery for victims, the combined theory provides a stronger normative foundation for criminal liability. This approach enables the criminal justice system to operate with greater sensitivity toward the social realities of Indonesian women particularly regarding how power imbalances contribute to the emergence, recurrence, and concealment of violence. The combined theory becomes the most relevant framework for realizing criminal accountability that is fair, humane, and responsive to violence against women in Indonesia, because it is able to address the real complexity of gender-based violence—something that neither the absolute theory nor the relative theory can fully encompass (Utami et al., 2024).

1. First, the retributive element in the combined theory ensures that perpetrators face moral and legal consequences proportionate to their actions. This is crucial for upholding the dignity of victims, especially when violence occurs within unequal power relations, such as in households or communities. Retribution sends the message that violations against women's bodies, integrity, and autonomy are intolerable.
2. Second, the preventive element, both for society and for the offender, is highly relevant in the Indonesian context, where violence against women often recurs due to deeply rooted patriarchal norms. General prevention encourages changes in social behavior through deterrent effects, while special prevention focuses on preventing offenders from repeating their actions. This helps break the cycle of violence, which often goes unnoticed because it occurs in private spaces.
3. Third, the combined theory incorporates aspects of rehabilitation and recovery, which are critical in cases of gender-based violence. Many victims require support not only legally but also psychologically and socially to regain safety and empowerment. This approach also allows for interventions with

offenders to change behaviors rooted in domination and control, ensuring that prevention can be sustained over the long term.

By integrating these three dimensions retribution for justice, prevention for protection, and rehabilitation for recovery the combined theory is able to address the root causes of violence against women that stem from power imbalances. This approach makes the criminal accountability system more attuned to the social context of Indonesia, more supportive of victims, and more effective in breaking the cycle of violence.

The results of this study indicate that violence against women in Indonesia is still high due to the inequality of power relations in the domestic and social spheres, as well as the ineffectiveness of the legal system in providing adequate protection. The analysis shows that weaknesses occur simultaneously in aspects of legal substance, legal structure, and legal culture, where regulatory disharmony, overlapping authority between institutions, limited resources, and patriarchal social norms contribute to ongoing violence and low levels of reporting. Comparative findings from countries such as Sweden, Canada, and Australia suggest that an integrated legal framework, strong institutional coordination, and a victim-oriented approach are more effective in addressing the problem. However, this study has limitations because it only uses normative analysis and secondary data without being supported by empirical field data, so it has not fully described the real experiences of victims and practical challenges in law enforcement. Therefore, further research is recommended to use empirical methods, such as field studies and interviews, in order to obtain a more comprehensive understanding, as well as to examine the implementation of an integrated service system and legal reforms that are more responsive, coordinated, and focused on Victim Protection.

3.2. The Failure of the Criminal Justice System within the Frameworks of Positivism, Patriarchy, and Power Relations as a Cause of High Rates of Violence Against Women in Indonesia

Violence against women in Indonesia is a social and legal phenomenon that continues to increase despite the many legal instruments that have been established to protect victims. (Yasmin & Ashidiq, n.d.)Based on data from the National Commission on Violence Against Women (Komnas Perempuan), the number of reports of gender-based violence increases every year, indicating that positive law has not been effective in protecting women's rights. This condition raises fundamental questions regarding the effectiveness of the national legal system in carrying out its protective function. In the perspective of Lawrence M. Friedman's legal system theory, law is not only influenced by substance (regulations), structure (institutions), and legal culture (societal values), but also by the power relations that operate behind its formulation and implementation. (Friedman, 1975). When these three elements fail to perform their functions in a fair and gender-equal manner, the law instead has the potential to perpetuate

social inequality. In this context, H.L.A. Hart's theory of legal positivism, with its concepts of primary rules and secondary rules, can be used to analyze the extent to which the failure of the Indonesian legal system affects the effectiveness of legal protection for women amid the strong patriarchal structure and unequal power relations (Sistyawan et al., 2024a).

The substance of law in Indonesia often still contains gender bias and reflects patriarchal views embedded in social culture. Although Indonesia has various regulations such as the Law on the Elimination of Domestic Violence (UU PKDRT) and the Law on Sexual Violence Crimes (UU TPKS), these legal substances still face numerous challenges in their implementation. Many regulations have not positioned women as autonomous legal subjects, but rather still view them in a subordinate position.

One case that is often used as a reference in the discussion of sexual violence in the educational environment is the case experienced by Agni, a survivor of sexual violence at Gadjah Mada University in 2017. The incident occurred when the victim attended a real work lecture (KKN). Although the victim has reported the incident to the campus, the handling of the case is more directed to internal mechanisms that are administrative and not immediately processed through criminal law. The protracted process of handling and the social pressure experienced by victims shows that the sexual violence treatment system still faces structural and cultural barriers, so that legal protection of victims has not been fully implemented effectively.

Within Hart's framework of legal positivism, the primary rules that should function to regulate societal behavior to prevent violence instead lose their effectiveness because patriarchal values remain deeply rooted. When the law is viewed merely as a neutral written command without considering its social context, it fails to achieve substantive justice (Hart, 2017). Positive law that is insensitive to women's lived experiences creates a gap between legal texts and social reality. As a result, the existing laws are unable to reduce the incidence of violence against women because they do not address the sociocultural roots that normalize such violence (Sistyawan et al., 2024b).

Legal institutional structures, such as the police, prosecutors, courts, and correctional institutions, play an important role in the enforcement of law. However, in practice, these institutions often demonstrate insensitivity toward female victims of violence. Many cases of violence are not followed up seriously and are instead met with stigma and discrimination. In Hart's theory, secondary rules function as rules that regulate how law is created, applied, and changed. When legal institutions do not function effectively, secondary rules lose their legitimacy, resulting in weak law enforcement. Patriarchal power relations within institutional structures cause authorities to more frequently side with perpetrators, especially when the perpetrator is a man with a higher social status (Halizah & Faralita, 2023).

Legal culture is a crucial element in determining how society understands, obeys, and enforces the law. In the Indonesian context, a legal culture that remains patriarchal contributes significantly to the failure of law enforcement related to violence against women. Society often views domestic violence or sexual violence as a family disgrace that must be concealed. Female victims are frequently blamed, accused of violating norms of modesty or provoking male behavior. Within the framework of power relations, this perspective positions women as submissive and powerless (Rahayu, 2023). This makes the law difficult to enforce because social norms within society are often stronger than written legal norms. A legal culture that does not support gender equality causes the primary rules to lose their social force people do not feel the need to comply with regulations protecting women because they are perceived as conflicting with 'traditional values.' As a result, the sociological validity of the law becomes weak, and the law lacks corrective power against the oppressive patriarchal structure. (Saputra et al., 2024)

From the perspective of legal positivism, injustice toward women victims of domestic violence occurs because the law, which should be neutral, is instead influenced by unequal power relations within a patriarchal structure. According to H.L.A. Hart, the effectiveness of law depends on the functioning of primary rules and secondary rules. However, in the Indonesian context, authorities often fail to carry out secondary rules such as the recognition, application, and enforcement of law fairly, causing the primary rules that prohibit violence against women to function suboptimally. As a result, the protection promised in Articles 25 and 29 of Law No. 23 of 2004, which regulate victims' rights to protection and assistance, is not fully realized. This demonstrates that without a gender perspective, legal positivism easily becomes a tool for reproducing injustice against women. (Mashdurohatuna & Gunarto, 2020)

Patriarchy theory explains that a social system which positions men as the center of power will shape a legal structure that tends to be masculine (Mahardhikasih, 2025). Catharine MacKinnon, a prominent feminist legal theorist, argues that law is constructed based on male experiences and often ignores the experiences of women (MacKinnon, 1982). In the Indonesian context, power relations formed at various social levels from the family and the workplace to state institutions cause the law to not truly side with female victims. Institutionalized male dominance results in laws that are insensitive to gender inequality. Pierre Bourdieu adds that this domination is symbolic, where patriarchal power is legitimized through language, norms, and institutions, including the legal system. As a result, women experience not only physical violence but also structural and symbolic violence. The failure of the legal system to uphold gender justice reinforces the view that law in Indonesia has not yet fully transformed into a system that is fair for everyone. (Bourdieu, 2020)

The failure of legal substance, weak institutional structure, and a gender-biased legal culture significantly reduce the effectiveness of the law in Indonesia. Many

legal rules are not implemented properly because public trust is low, and women victims of violence often hesitate to report cases due to the belief that the legal system does not support them. This creates a vicious cycle where violence continues without adequate resolution. When primary rules are not accepted by society and secondary rules are misused by biased law enforcement, the law loses its role as a tool for social change and instead reinforces social inequality.

To build an effective and gender-just legal system, Indonesia needs comprehensive reform in legal substance, institutions, and legal culture. Laws must reflect substantive justice and equality, legal institutions must be strengthened through gender-sensitive training and transparent accountability, and legal culture must shift through education that promotes gender equality. Compared to developed countries such as Sweden, Canada, Australia, and the Netherlands, Indonesia still lacks strong legal substance free from patriarchal bias. Although laws like the Domestic Violence Act and the Sexual Violence Act exist, they have not fully adopted a gender perspective, weakening women's position as autonomous legal subjects.

Primary rules that are intended to prohibit violence and ensure protection fail to function effectively because patriarchal social norms continue to dominate legal practice. In contrast, developed countries position gender equality as a fundamental legal principle, resulting in legal provisions that are designed with consideration of women's lived experiences as a vulnerable group. These countries adopt more comprehensive definitions of violence, include explicit regulations on marital rape, implement anti-discrimination frameworks, and apply evidentiary standards that do not burden victims. (Anto et al., 2023). This demonstrates that within their legal systems, primary rules are not merely written, but are designed based on the principle of substantive justice. In addition, secondary rules concerning legal reform are more rapid and responsive to social developments (Purwanda et al., 2022). When cases of violence increase, or when new forms of violence emerge such as cyber harassment developed countries promptly implement legal reforms that take into account the needs of victims. This comparison underscores that the effectiveness of law largely depends on the extent to which legal substance is separated from cultural bias and deeply rooted patriarchal power relations.

The institutional structure of law enforcement in Indonesia also shows a significant gap when compared to that of developed countries. In Indonesia, the legal system still demonstrates a lack of sensitivity toward victims, particularly women experiencing sexual violence or domestic abuse. Many law enforcement officers police, prosecutors, and judges continue to apply patriarchal moral perspectives when handling cases, for example by questioning a victim's clothing or behavior, or encouraging amicable settlement. In the framework of Hart's theory, the secondary rules that govern how law is applied, changed, and recognized become ineffective because the institutions responsible for implementing them are not free from gendered power bias. In contrast,

developed countries have established far more professional and well-trained institutional structures. Sweden, for instance, has specialized police units dedicated to gender-based violence, supported by psychologists, social workers, and specialized prosecutors. Canada and Australia implement gender-sensitive law enforcement, involving mandatory training for officers to understand trauma and the lived experiences of women victims. Evidence standards, evidence-collection procedures, and trial processes are designed to minimize the potential for revictimization. Legal structures in developed countries also strengthen secondary rules through digital reporting systems, free legal assistance, and transparent inter-institutional coordination. With such structures, secondary rules governing adjudication and enforcement operate effectively, enabling primary rules the prohibition of violence to obtain real social and legal force. This comparison demonstrates that legal effectiveness is determined by the capacity and perspectives of the institutions that implement the rules.

The sharpest difference between Indonesia and developed countries lies in their legal culture. Indonesia's legal culture remains dominated by patriarchal values that normalize gender inequality and often blame women for the violence they experience. Domestic violence is treated as a private matter, victims are viewed as bringing shame to the family, and society tends to trust perpetrators, especially when they are men of high social status. In such a legal culture, both primary and secondary rules lose substantive meaning, as social norms become more influential than the written law. Meanwhile, the legal culture in developed countries is built on principles of equality, non-discrimination, and the protection of human rights. (Rossevelt et al., 2023)

Societies in developed countries tend to adopt a zero-tolerance approach toward gender-based violence. Such a legal culture reinforces the sociological validity of the law, as the public actively supports the enforcement of regulations that protect women (Fitri et al., 2022). In Europe and Australia, for example, workplace sexual harassment is addressed promptly due to strong social and cultural pressures that reject any tolerance for gender-based violence. This illustrates that a progressive legal culture can simultaneously strengthen the effectiveness of both primary and secondary rules. Thus, comparisons with developed countries reveal that the failure of legal substance, institutional structure, and legal culture in Indonesia is not merely a technical problem, but rather an issue rooted in deeply embedded patriarchal power relations within the social structure.

The failure of criminal law to respond to violence against women in Indonesia is evident in the weaknesses of legal substance, institutional structure, and legal culture, all of which remain heavily influenced by patriarchal bias. At the level of legal substance, criminal provisions often fail to fully accommodate the lived experiences of women as victims of violence, reflected in narrow definitions of violence, burdensome evidentiary standards, and norms that overlook the dynamics of power relations within domestic and community contexts. The

orientation of criminal law, which continues to emphasize retribution as adopted in absolute theories, also demonstrates its inability to address the structural roots of gender inequality. The lack of a gender perspective in the formulation of legal norms causes criminal law to fail in performing its preventive function, as perpetrators remain protected by social structures that normalize male domination over women.(Rani et al., 2024)

At the same time, the failure of institutional structures and legal culture exacerbates the ineffectiveness of criminal law. Law enforcement officials often display gender bias, such as treating domestic violence cases as private matters or questioning the morality of victims, thereby undermining the investigation and prosecution processes (Mozes, 2017). Inconsistent inter-agency coordination and the lack of gender-sensitive education result in many cases never progressing to the judicial process, preventing the deterrent effect envisioned by relative theories of punishment from being realized. Meanwhile, a legal culture that continues to normalize violence within patriarchal relations produces victim blaming and social pressure for reconciliation, causing victims to hesitate to report their cases. This condition demonstrates that criminal law—even within the framework of mixed theories of punishment—has not been able to function effectively to protect women and break the cycle of violence, because legal substance, institutional structure, and legal culture simultaneously weaken the effectiveness of primary and secondary rules within Indonesia’s legal system.

The findings of this study are further reinforced by broader legal and sociological analysis, which shows that violence against women in Indonesia is not merely an individual or incidental issue, but a structural problem rooted in the interaction between legal substance, institutional structure, and legal culture. Although various legal instruments such as the Domestic Violence Law and the Sexual Violence Law have been enacted, their effectiveness remains limited due to persistent gender bias and patriarchal values embedded within the legal system. Drawing on Lawrence M. Friedman’s legal system theory and H.L.A. Hart’s legal positivism, the ineffectiveness of legal protection can be understood as the failure of both primary rules and secondary rules to operate properly in a context dominated by unequal power relations. In practice, legal norms often lose their social force due to weak institutional enforcement, lack of gender sensitivity among law enforcement officials, and societal attitudes that normalize violence and blame victims. Empirical illustrations, such as the handling of sexual violence cases in educational institutions, demonstrate that legal protection is frequently hindered by administrative approaches, social pressure, and institutional bias. Furthermore, comparative analysis with countries such as Sweden, Canada, and Australia highlights that effective protection requires not only comprehensive legal frameworks but also strong institutional coordination and a progressive legal culture that supports gender equality. Therefore, the persistence of violence against women in Indonesia reflects a deeper systemic failure, where

the law has not yet functioned as an instrument of substantive justice but instead risks reproducing existing social inequalities.

4. Conclusion

a) Power imbalances within domestic and community spheres remain a major factor driving the high prevalence of violence against women in Indonesia. Male dominance within the family often leads to violence being perceived as a private matter, causing victims to hesitate to report, while law enforcement frequently normalizes such situations. At the community level, gender-biased social norms reinforce women's subordinate position and create social justification for various forms of violence. As a result, many women do not obtain effective access to criminal justice, whether due to reporting barriers, social pressure, or the lack of sensitivity among authorities to victims' experiences. The failure of criminal handling becomes increasingly evident in the inconsistent application of legal provisions, the lack of strict sanctions against perpetrators, and the tendency to encourage non-criminal settlement in cases that actually require firm legal procedures. When criminal processes do not proceed, the message that violence is intolerable becomes weakened. This reinforces the cycle of violence because perpetrators face no clear consequences, while victims lose their sense of safety and the protection of the state. b) Violence against women in Indonesia demonstrates that the legal system, including criminal law, has not yet been able to effectively fulfill its protective function. Although legal instruments such as the Domestic Violence Law (UU PKDRT) and the Sexual Violence Law (UU TPKS) exist, the failure of legal substance, institutional structure, and legal culture prevents punishment from achieving its goals of retribution, deterrence, and rehabilitation. Patriarchal bias embedded within legal norms results in criminal provisions that do not reflect women's lived experiences as victims, weakening the deterrent purpose and diminishing the protective force of primary rules because legal texts remain disconnected from social reality. At the institutional level, the lack of gender-sensitive law enforcement renders secondary rules ineffective, as many cases remain unprocessed, evidentiary burdens fall heavily on victims, and non-criminal settlements are prioritized over accountability. Meanwhile, a legal culture that normalizes unequal power relations further undermines the function of criminal law as an instrument of social control.

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