

## The Ideal Concept of Resolution of Domestic Violence Cases Based on the Values of Justice

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**Abstract.** *The resolution of domestic violence cases requires a justice-based mechanism that not only punishes the perpetrator but also restores the victim through an integrated protection approach, strengthened roles of law enforcement, and the highly selective use of penal mediation in certain cases while still ensuring the victim's safety and rights. The objective of this research is to analyze the current regulations governing domestic violence crimes and to examine the ideal concept for resolving domestic violence cases based on the value of justice. The methodological approach used in preparing this thesis is normative juridical research, with a descriptive-analytical specification. The results of this study show that the regulation of domestic violence crimes in Indonesia is fundamentally supported by a legal framework established under Law Number 23 of 2004 on the Elimination of Domestic Violence. This law not only regulates various forms of violence—physical, psychological, sexual, and domestic neglect—but also broadens the scope of household relations to include spouses, children, blood relatives living together, and domestic workers, while guaranteeing victims' rights to protection, healthcare services, legal and social assistance, and confidentiality. In terms of law enforcement, the PKDRT Law grants authority to the police, prosecutors, and courts to act swiftly through temporary protection mechanisms, court-issued protection orders, and eased evidentiary standards by recognizing the victim's testimony as a significant means of evidence. The ideal concept for resolving domestic violence cases based on the value of justice requires a legal mechanism that not only punishes perpetrators but also ensures full protection for victims. Case resolution must position victims as protected subjects. Law enforcement officials must thoroughly understand the substance of the PKDRT Law, eliminate patriarchal bias, and reject the practice of terminating legal processes solely due to the withdrawal of complaints in ordinary offenses. The ideal resolution model must strengthen victims' access to medical care, psychological and legal assistance, restitution,*

*and effective protection orders, while also providing space for perpetrator rehabilitation.*

**Keywords:** *Concept; Domestic; Ideal; Justice; Violence.*

## 1. Introduction

Every household begins with the bond of marriage between a man and a woman, which is the dream and hope of every human being to continue their descendants, obtain happiness and enjoyment of life. The purpose of marriage as referred to in Article 1 of Law Number 1 of 1974 Jo. Law No. 16 of 2019 concerning Marriage is to form a happy and eternal family (household) based on the One Almighty God. Every household certainly has its own rules or etiquette that is different from other households that are applied when interacting, communicating and socializing both inside and outside the house, these rules must be obeyed by each family member.<sup>1</sup>

In reality, human violence remains a worrying issue in today's world. Violence not only occurs within the community but has also penetrated the family. The home has long been considered the safest place, as all family members feel at peace and protected. This perception stems from the fact that most crimes exposed and publicized occur outside the home, while the home is considered a safe haven for family members and those who live there, as all family members can interact with each other on a foundation of love, mutual respect, and appreciation. People often don't realize that the home can be the most terrifying place for family members.<sup>2</sup>

Although violence can happen to anyone, women are more vulnerable to becoming victims because they are often perceived as weaker and powerless. Gender stereotypes also often justify discriminatory and abusive acts against women. For example, the view that wives should obey their husbands, making domestic violence commonplace. Or the stigma that tends to blame rape victims for their clothing, which is perceived as "inviting" the perpetrator.<sup>3</sup>

The phenomenon of violence against women is not an individual disorder, but rather a part of Indonesian society that creates unequal relations that then create a greater distribution of power for men compared to women. This reality then creates a social condition, namely, the excessive use of power by men against the

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<sup>1</sup>Melisa Jeanet Regoh et al., Law Enforcement Against Domestic Violence Perpetrators and Its Solutions for Family Integrity, Court Review: Journal of Legal Research, Vol. 4, No. 6, 2024, pp. 79-87

<sup>2</sup>Khabib Luthfi, Indonesian Society and Moral Responsibility, Guepedia Publisher, Jakarta, 2018, p. 13

<sup>3</sup>Tantimin, Victim Blaming of Domestic Violence Victims During the Covid-19 Pandemic: A Victimology Perspective, Gorontalo Law Review, Volume 2 No. 2, 2019, pp. 277-289

weaker party. And violence against women plays a role in maintaining the condition of the unequal distribution of power between men and women. Furthermore, Indonesian society has already believed the false opinion that women are by nature less intelligent and weaker than men. Therefore, some Indonesians still believe in the sexual division of labor that subordinates women. A number of stereotypes are then attached to the Indonesian women and men.<sup>4</sup>

The impact of domestic violence generally does not appear in a single form, but can be multiple. For example, physical violence perpetrated by the perpetrator is often accompanied by psychological violence. The fact that women are more vulnerable to domestic violence is inseparable from a culture that places men in power. This is reflected in Article 31 paragraph 3 of Law No. 1 of 1974 concerning Marriage and Article 105 of the Civil Code, which states that the husband is the head of the family, as well as Article 34 paragraph 1 of Law No. 1 of 1974, which regulates the husband's obligation to provide for the family.

The enactment of the Domestic Violence Law in 2004 opened the way for domestic violence to be recognized as a public issue, no longer a purely private matter. This signifies the state's recognition that all forms of violence, whether experienced by women or men, constitute crimes against humanity. Therefore, resolving the issue through legal channels is one alternative available to victims of violence.<sup>5</sup>

Domestic violence cases are still resolved under the same criminal procedure laws as in general criminal cases. The process ends with sentencing if the defendant is proven to have committed a crime as charged by the public prosecutor. If this law requires the integrity and harmony of the household, then a case handling procedure with penal mediation is required as part of the case resolution process.<sup>6</sup>

The resolution of acts of violence within the family or within the household through criminal law is considered inappropriate, considering that the perpetrator and the victim have a very close relationship, so that different resolution methods are needed to handle the conflict within the household.<sup>7</sup>In the development of the settlement of criminal cases, certain cases are no longer resolved through formal channels but are resolved by making peace between the perpetrator and the victim, known as penal mediation, settlement by way of peace or better known in Indonesian society through deliberation and consensus with the mechanism of

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<sup>4</sup>M. Nur Eka Firdaus, Restorative Justice in Domestic Violence at the Prosecution Level, *Journal of Legal Studies: ALETHEA*, Vol. 7, No. 2, 2024, pp. 79-97

<sup>5</sup>Hamidah Abdurrachman, Legal Protection for Victims of Domestic Violence in District Court Decisions as an Implementation of Victims' Rights. *Ius Quia Iustum Law Journal*, Vol. 17, No. 3, 2010, pp. 475-491.

<sup>6</sup>Edy Pane, The Role of the Labuhanbatu District Attorney's Office in Resolving Domestic Violence Crimes Using a Restorative Justice Approach. *Indonesia Berdaya*, Vol. 4, No. 4, 2023, pp. 1419-1430.

<sup>7</sup>Abdul Aziz, et al. Restorative Justice Approach in Resolving Domestic Violence Crimes. *Al Ashriyyah*, Vol. 9, No. 2, 2023, pp. 99-112.

customary institutions, the settlement of criminal cases in the criminal justice system is carried out through discretion by the Police.<sup>8</sup>

Law is a method for regulating social relations in a unique way, making its form very important. Active participation from society seems to be no longer important, everything only leads to criminal decisions or punishment without considering its essence. The measure of justice as mentioned above actually reaches the ideal realm or is within the realm of ideals, because talking about justice means already in the realm of meaning that enters the philosophical order that requires deep reflection to the deepest essence, even Kelsen emphasized the philosophy of law. Plato, that "justice is based on knowledge of something good."<sup>9</sup>

Penal mediation is an alternative conflict resolution between perpetrators and victims of criminal acts that is expected to restore the balance of interests, especially for victims who have been harmed by criminal acts. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution regulates mediation but does not regulate its application in criminal cases. Mediation in domestic violence cases has its own specifics, which makes it different from mediation in other cases. This is due to its scope as a criminal case, emotional relationships/feelings of husband and wife, and the imbalance of position/power between the parties. Therefore, mediation is suitable for handling domestic violence cases because it is in accordance with the basic nature of mediation, which gives full power to the parties to determine the course of the process and the desired outcome of the agreement.<sup>10</sup>

## **2. Research Methods**

This research method uses a normative juridical approach that focuses on the study of theories, concepts, principles, and statutory provisions as a system of norms to examine the ideal concept of resolving domestic violence cases based on the value of justice. The research is descriptive analytical, namely describing the research object in detail and systematically and then analyzing library data and case data to find answers to the problems studied. Data sources are entirely derived from secondary data, including primary legal materials such as the 1945 Constitution, the Criminal Code, the Criminal Procedure Code, the Domestic Violence Law, and Perja 15/2020; secondary legal materials in the form of literature, documents, articles, and research results; and tertiary legal materials such as legal dictionaries. Data were collected through a literature review of

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<sup>8</sup>Yusriando Yusriando, Implementation of Penal Mediation as an Manifestation of Pancasila Values to Support the Supremacy of Law in the Context of National Development. *Journal of Legal Reform*, Vol. 2, No. 1, 2016, pp. 23-45.

<sup>9</sup>Ilyas Sarbini and Aman Ma'arij. Restorative Justice as an Alternative to Criminal Case Resolution. *Fundamental: Scientific Journal of Law*, Vol. 9, No. 1, 2020, pp. 31-42.

<sup>10</sup> I Made Agus Mahendra Iswara and Arya Agung Iswara, Settlement of Domestic Violence (Kdrt) Cases Through Penal Mediation Mechanisms, CV. Adanu Abimata, Indramayu, 2023, p. 34

various relevant written sources, then analyzed descriptively through a process of grouping, interpretation, and inductive drawing of relationships between aspects to gain a comprehensive understanding of the research problem.<sup>11</sup>

### 3. Results and Discussion

#### 3.1. Current Domestic Violence Crime Regulations

Indonesia is a country based on law. Law is a collection of guidelines for living (commandments and prohibitions) that regulate order in a society, and therefore should be obeyed by the members of that society.<sup>12</sup> The enactment of Law No. 23 of 2004 concerning the Elimination of Domestic Violence is expected to be able to prevent and prosecute those who consistently commit acts of domestic violence and to become a legal umbrella for all family members themselves.

Domestic violence (DV) is a human rights violation and a crime against human dignity, as well as a form of discrimination that must be eliminated. Humans have the right to life, which compels every individual to do so. *manto* respect it and which obliges every human being to defend it. No one has the authority to end his life or leave his body and soul unprotected. Whoever does so is doing something contrary to humanity.<sup>13</sup>

The law operates and fulfills its function as a guide, guardian, protector, and guardian of a nation's morality. Law, rooted in the teachings of goodness or morality, carries out its duties in every aspect of national life.<sup>14</sup> Domestic violence can occur against children, parents, husbands against wives, or vice versa. However, the most common form of violence in society is violence by husbands against their wives. This violence often occurs due to various factors, such as male...man who always has power in the household, socio-economic factors between the two parties that are not equal, very closed household conditions and so on.

Domestic violence is gender-based violence that occurs in the personal sphere. This violence often occurs in personal relationships, where the perpetrator is someone the victim knows well and is close to. For example, violence perpetrated by a husband against his wife, a father against his child, an uncle against his nephew, or a grandfather against his grandchild. This violence can also occur in

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<sup>11</sup>Bambang Sunggono, *Legal Research Methodology*, Raja Grafindo Persada, Jakarta, 2016, p. 93.

<sup>12</sup>Wahyu Beny Mukti Setiyawan and Hadi Mahmud, "Initiating a Restorative Justice Model for Marital Rape Crimes in Establishing Protection for Women in Accordance with Legal Norms in Indonesia," *Jurnal Ius Constituendum* 3, no. 1 (2018): pp. 68–82.

<sup>13</sup>Djoko Prakoso, *Justiciable Position in the Criminal Procedure Code*, Ghalia Indonesia, Jakarta, 2006, p. 14.

<sup>14</sup>Hervina Puspitosari and Anggraeni Endah Kusumaningrum, "Victim Impact Statement as an Effort to Provide Legal Protection for Female Victims of Revenge Porn," *Jurnal Usm Law Review* 4, no. 1 (2021): pp. 67–81

dating relationships, or be experienced by people who work and help with household chores and live in the household. Domestic violence is also defined as violence against women by family members who are blood relatives.

Article 1 of the Domestic Violence Law defines domestic violence as, ... an act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household.

In connection with the occurrence of an incident that is reasonably suspected to be a criminal act, investigators or the police can take immediate action, namely by conducting an investigation. Investigation is one method or sub-function of the investigation that precedes it. action others, namely action in the form of arrest, detention, search, confiscation, examination of documents, summons, examination actions, and submission of files to the public prosecutor.<sup>15</sup>

In the event that an incident occurs which is reasonably suspected to be a criminal act, the action that must be taken by the investigator is to conduct an investigation into the incident. This is to collect evidence related to the incident, so as to clarify the crime that occurred and find the suspect.

In the process of examining cases according to the Criminal Procedure Code, there is no attempt at penal mediation, thus in handling cases of Domestic Violence in accordance with the Law on the Elimination of Domestic Violence, there is no loophole in the Criminal Procedure Code to use penal mediation in the problem-solving process.<sup>16</sup>

It is the duty of the police to provide a sense of security and protection for the rights of victims of domestic violence. One effort in providing a sense of security and legal protection for victims is by quickly following up on reports of domestic violence cases, so that by accelerating the process it will minimize the recurrence of domestic violence experienced by the victim. During the process of investigating crimes of domestic violence, the basis for carrying out investigations materially uses a special law, namely Law No. 23 of 2004 concerning the Elimination of Domestic Violence, which provides a little ease in terms of evidence, this is regulated in Article 55 which explains that "as a valid means of evidence, the statement of a victim witness alone is sufficient to prove that the defendant is guilty if accompanied by another valid means of evidence."<sup>17</sup>

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<sup>15</sup>ibid

<sup>16</sup>Andrew Lionel Laurika, Legal Protection for Victims of Domestic Violence, *Lex Crimen* Vol. V/No. 2/Feb/2016, pp. 30-37

<sup>17</sup>Nopiana Mozin and Maisara Sunge, "Providing Education and Legal Aid to Child Victims of Violence," *Jurnal Ius Constituendum* 6, no. 1 (2021): pp. 166–81.

### **3.2. Obstacles and Solutions to the Implementation of Termination of Prosecution Based on Restorative Justice in Domestic Violence Cases at the Indragiri Hilir District Attorney's Office**

Domestic violence is any act against a person, especially a woman, which results in physical misery or suffering, sexual, psychological and / or neglect of the household including threats to commit acts, coercion or unlawful deprivation of liberty, within the scope of the household including, husband, wife and children and people who have family relationships with the above person due to blood relations, marriage, breastfeeding, care, and guardianship who live in the household, or people who work to help the household and live in the household. The elimination of domestic violence is a guarantee provided by the state to prevent the occurrence of Domestic Violence, to take action against perpetrators of domestic violence, to protect victims of domestic violence.<sup>18</sup>

In Indonesia, the law that regulates the crime of domestic violence is Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Article 1 Number 1 of the Domestic Violence Law explains that: "Domestic violence is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household." The most easily recognized form of violence is physical violence, because consequence This type of violence is usually directly visible on the victim's physical appearance. The law contains one article related to the concept of physical violence, namely: Article 6, which states: "Physical violence is an act that results in pain, illness, or serious injury."

Meanwhile, in Malaysia, physical violence is regulated by two laws: the Domestic Violence Act 1994 (Act 521) and the Penal Code of Malaysia (Act 574). To date, Malaysia still uses both laws to address domestic violence.

In the Domestic Violence Act 1994 (Act 521), there is 1 (one) type of Article that regulates the concept of physical violence, namely:

Section 2:

- 1) Intentionally or knowingly placing, or attempting to place, the victim in fear of physical injury;
- 2) Causing physical injury to the victim by an act that is known or should be known to result in physical injury;

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<sup>18</sup>Republic of Indonesia Law No. 23 of 2004 concerning the Elimination of Domestic Violence.



The concept of physical violence contained in Section 2 is intentionally placing or attempting to place the victim in a state of fear of physical violence and causing physical violence against the victim by an act that is known or should be known to result in physical violence. Apart from that, the consequences of physical violence are explained in the Malaysian Penal Code (Act 574) or the Penal Code of Malaysia (Act 574). There are 2 (two) types of Sections that regulate injuries and serious injuries, namely Sections 319 and 320.<sup>19</sup>

Meanwhile in Malaysia, sanctions against perpetrators of physical violence in the household also consist of principal penalties and additional penalties, where the principal penalties are regulated in the Malaysian Penal Code (Act 574) and there are 7 (seven) types of Articles that regulate sanctions against physical violence, namely Section 326A concerning criminal sanctions against perpetrators of physical violence based on Articles 323, 324, 325, 326, 334, and 335, Section 323 concerning intentionally causing injury, Section 324 concerning intentionally causing injury by using weapons or other dangerous objects, Section 325 concerning intentionally causing serious injury, Section 326 concerning intentionally causing serious injury by using weapons or other dangerous objects, Section 334 concerning unintentionally causing injury, and Section 335 concerning unintentionally causing serious injury, while additional penalties are regulated in Section 8 of the Domestic Violence Act.

In addition, the maximum penalty for physical violence in the Domestic Violence Act is 15 (fifteen) years, and the maximum fine is 45 (forty-five) million rupiah. Meanwhile, the maximum penalty in the Malaysian Penal Code (Act 574) is 20 (twenty) years and the fine starts from 1,000 (one thousand) ringgit, but in some Sections the amount of the fine is not mentioned. The fundamental difference between these two regulations lies in the type of offense, where physical violence in the Domestic Violence Act consists of ordinary crimes and relative complaint offenses. Ordinary crimes are crimes that can be prosecuted without the need for a complaint.<sup>20</sup> as in Article 44 Paragraph (1), Paragraph (2) and Paragraph (3). Meanwhile, Article 44 Paragraph (4) is a complaint offense as accommodated by Article 51 which explains that "The crime of physical violence as referred to in Article 44 Paragraph (4) is a complaint offense". A complaint offense is a criminal act that can be prosecuted if there is a complaint from the person who has been harmed.<sup>21</sup>

In April 2017, Kyrgyzstan, a country located in Central Asia, adopted a new law entitled Safeguarding and Protection Against Domestic Violence, a regulation that

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<sup>19</sup>Rizky Amalia, Hafrida Hafrida, and Elizabeth Siregar. Comparison of Domestic Violence Criminal Acts in Indonesian and Malaysian Criminal Law. Pampas: Journal of Criminal Law, Vol. 2, No. 2, 2021, pp. 1-14.

<sup>20</sup>PAF Lamintang, Basics of Indonesian Criminal Law, Citra Aditya Bakti, Bandung, 2011, p. 217

<sup>21</sup>Ibid



can increase protection for survivors, simplify reporting procedures, and introduce rehabilitation programs for perpetrators.

The high rate of physical and sexual violence against women and girls, such as father-on-daughter rape and husband-on-wife abuse, prompted the introduction of this new law. Previously, it was revealed that only two in five women reported physical and sexual violence to the police.

Under the new law, anyone who witnesses domestic violence can immediately report it. This law obligates the police to respond and take all necessary action to address the violence. This is a significant and revolutionary step for Kyrgyzstan, given that 23 percent of women aged 15-49 there have reported experiencing physical violence.

In July 2017, Tunisia announced its first law on combating violence against women. The long-awaited law received 146 votes out of 217 to pass. In 2010, a national survey on violence against women revealed that nearly 50 percent of Tunisian women had experienced violence in their lifetime. This new law ensures that no woman will ever have to endure such pain again.

The new law also removes the discriminatory provision in Article 227 of the Tunisian Penal Code, which previously pardoned perpetrators of sexual acts if they married their victims. Furthermore, the law provides a protection mechanism for survivors to access necessary legal and psychological support. This historic change was made possible by a three-year advocacy effort between the Women's Parliamentary Forum, the UN Secretary-General's UniTE campaign to end violence against women, and the UN Gender Thematic Group in the country.

In Article 48 of Law Number 23 of 2004 it is written that in the case of acts as referred to in Article 46 and 47 resulting in the victim getting injuries that do not give hope of healing at all, experiencing mental or mental disorders for at least 4 (four) weeks continuously or 1 (one) year not consecutively, miscarriage or death of the fetus in the womb, or resulting in the failure of the reproductive organs to function, shall be punished with imprisonment of at least 5 (five) years and imprisonment of at most 20 (twenty) years or a fine of at least Rp. 25,000,000.00 (twenty five million rupiah) and a maximum of Rp. 500,000,000.00 (five hundred million rupiah). Article 48 of Law Number 23 of 2004 threatens criminal sanctions of imprisonment or criminal sanctions of criminal fines which are heavier than those threatened in Article 46 and Article 47.

Article 49 of Law Number 23 of 2004 states that any person who (a) neglects another person within his/her household as referred to in Article 9 paragraph (1) and (b) neglects another person as referred to in Article 9 paragraph (2) shall be punished with imprisonment for a maximum of 3 (three) years or a fine of a maximum of IDR 15,000,000.00 (fifteen million rupiah) and (b) neglects another person as referred to in Article 9 paragraph (2). Article 49 of Law Number 23 of

2004 threatens criminal sanctions in the form of imprisonment or criminal sanctions in the form of a fine against anyone who neglects another person within his/her household. Meanwhile, the definition of neglecting another person within the scope of his household is explained in Article 9 of Law Number 3 of 2004, the definition of which is (1) every person is prohibited from neglecting a person within the scope of his household, even though according to the law that applies to him or because of an agreement or contract he is obliged to provide life, care, or maintenance to that person and (2) neglect as referred to in paragraph (1) also applies to every person who causes economic dependence by limiting and/or prohibiting him from working properly inside or outside the home so that the victim is under the control of that person. The provisions in the UUPKDRT are in the form of a complaint offense against acts that do not cause pain or injury that prevent the victim from carrying out his job or livelihood or daily activities. The UUPKDRT was created with the intention of being a criminal law law that was created to complement the shortcomings of the Criminal Code as a form of legal protection for society in general, women in particular as victims. With the above objectives, but on the other hand this law is in the form of a complaint offense, it is very difficult to achieve the goal. Although many provisions (Articles 51, 52, and 53) apply the nature of the complaint offense, but the impact of an act committed by the perpetrator where men dominate in a household towards women as the weaker sex and always have to give in, so it is felt that this Law is still less pro-partisan. The nature of the complaint offense makes this Law very difficult to guarantee legal protection for victims. Women victims of domestic violence do not have enough courage to report the crime that happened to them so they prefer to keep quiet about the problem with more "nrimo" being a victim because of their female gender.

Article 55 of the UUPKDRT which makes things easier for victims by only requiring two pieces of evidence, but becomes useless when considering that the criminal acts in this Law fall within the domestic sphere of the household and the very low bargaining position of women which makes women reluctant to report their household problems (criminal acts they experience) especially since several provisions of criminal acts are determined as complaint offenses.

#### **4. Conclusion**

The current regulation of domestic violence crimes in Indonesia basically has a legal basis regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. This law not only regulates the types of violence that include physical, psychological, sexual violence, and domestic neglect, but also expands the scope of the household to include husband-wife relations, children, blood relatives who live together, and domestic workers, while also guaranteeing victims' rights in the form of protection, health services, legal and social assistance, and guarantees of victim confidentiality. From a law enforcement perspective, the

Domestic Violence Law provides the basis for the authority for the police, prosecutors, and courts to act quickly through temporary protection mechanisms, court protection orders, and facilitates proof by placing victim statements as significant evidence. However, its implementation still faces various problems such as patriarchal culture, the perception of domestic violence as a private matter, the lack of courage of victims to report, and obstacles in the law enforcement process from the investigation stage to the trial. This situation results in many cases of domestic violence going unreported or not being fully processed, thus the protection objectives of the Law on the Elimination of Domestic Violence have not been fully realized in practice. The ideal concept of resolving domestic violence cases based on the values of justice requires a legal mechanism that not only prosecutes the perpetrator but also ensures protection for the victim. Case resolution must position the victim as a protected subject. Law enforcement officials are required to comprehensively understand the substance of the Domestic Violence Law, eliminate patriarchal bias, and reject the practice of terminating legal proceedings simply because a report is withdrawn in the case of ordinary crimes. The ideal resolution model needs to strengthen victims' access to medical services, psychological and legal assistance, restitution, and effective protection orders, in addition to providing rehabilitation for perpetrators.

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