

Criminal Law Policy in an Effort to Combat Domestic Violence Criminal Acts Based on Justice Values

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Abstract. *This research is motivated by the complexity of domestic violence, which occurs within the private sphere yet constitutes a violation of human rights and fundamental humanitarian values. From the perspective of the rule of law and Islamic principles, domestic violence contradicts the values of justice (al-'adl), compassion (ar-rahmah), and equality (al-musawah), which should serve as the foundation of family relationships. Although it has been regulated under Law Number 23 of 2004 on the Elimination of Domestic Violence, the implementation of criminal law policy still faces various challenges, particularly in achieving substantive justice for victims. The main issue of this research is how criminal law policy can address domestic violence based on the value of justice. This study employs a normative juridical approach with a descriptive-analytical specification. The data were collected through library research, including primary, secondary, and tertiary legal materials, and analyzed qualitatively using both statute and conceptual approaches. The findings reveal that criminal law policy in addressing domestic violence remains predominantly formalistic and has not fully reflected substantive justice. The criminal justice system has not optimally ensured victim protection and recovery. Therefore, a reformulation of criminal law policy is necessary through a more progressive and justice-oriented approach, including the application of restorative justice, strengthening victim protection, and integrating penal and non-penal policies grounded in the value of al-'adl. In conclusion, criminal law policy based on justice values should not merely emphasize punishment of offenders, but also prioritize victim recovery and social balance, thereby fostering a humane, just, and civilized legal system.*

Keywords: *Criminal Law Policy; Domestic Violence; al-'adl, Victim Protection.*

1. Introduction

Domestic violence (DV) is a complex crime that occurs within the private sphere of the family, yet its impact transcends domestic boundaries and touches upon fundamental human rights. Although it occurs within the household, domestic violence cannot be viewed as merely an internal family issue, but rather as a violation of human dignity that demands the presence of the state through firm, just, and victim-oriented legal instruments.¹

Constitutionally, the Republic of Indonesia affirms itself as a state based on law that upholds the protection of human rights. This is reflected in Article 28D paragraph (1) and Article 28G of the 1945 Constitution of the Republic of Indonesia, which guarantees protection, a sense of security, and justice for every citizen without exception. In this context, the state has an obligation not only to punish perpetrators of crimes but also to guarantee the recovery and protection of victims with dignity.²

Furthermore, domestic violence is also closely related to the principle of social welfare as mandated in Articles 27 to 34 of the 1945 Constitution, which affirms the state's responsibility to protect every citizen, create social justice, and ensure physical and spiritual well-being. Therefore, addressing domestic violence is not only a criminal law issue but also part of the state's constitutional responsibility to create a just welfare state.³

From a criminal law perspective, domestic violence has serious implications because it not only causes physical suffering but also leaves long-term psychological, social, and structural scars. Victims, particularly women and children, are vulnerable due to often unequal power relations within the household. Therefore, domestic violence is a crime that cannot be resolved through a purely legalistic approach but requires an approach sensitive to the social and humanitarian context.⁴

The specific normative basis for domestic violence is regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. This law affirms that all forms of physical, psychological, sexual violence, and neglect within the household constitute criminal acts that must be prevented and prosecuted. The enactment of the Domestic Violence Law demonstrates the state's recognition of the urgency of protecting victims in the domestic sphere, a previously hidden priority.⁵

¹Moeljatno, *Principles of Criminal Law*, Rineka Cipta, 2008, p. 1.

²The 1945 Constitution of the Republic of Indonesia, Article 28D paragraph (1) and Article 28G.

³The 1945 Constitution of the Republic of Indonesia, Articles 27–34.

⁴Soekanto, S., *Introduction to Legal Research*, UI Press, 2014, p. 32.

⁵Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

However, in law enforcement practice, the implementation of criminal law policies in domestic violence cases still faces various challenges. At the normative, institutional, and cultural levels, criminal law often fails to provide optimal protection for victims. Consequently, law enforcement is often formalistic and fails to fully address the substantive justice aspect, which should be the primary goal of law.⁶

Current criminal law policies tend to be oriented toward a formal-legalistic approach, emphasizing the textual fulfillment of the elements of the crime without fully considering the social context underlying domestic violence. Yet, in many cases, factors such as economic dependence, unequal power relations, and psychological pressure are crucial factors influencing victims not to report or even to return to the abusive environment.⁷

In judicial practice, victims of domestic violence are often placed in an unequal position, sometimes even merely used as evidence in the trial. This situation demonstrates that the criminal justice system is not yet fully oriented towards victim protection. However, from a substantive justice perspective, victims should receive primary attention in every law enforcement process.⁸

The concept of justice (al-'adl / العدالة) in criminal law cannot be understood narrowly as legal certainty alone, but must encompass the dimensions of benefit and protection of humanity. Substantive justice demands that the law not only punish the perpetrator but also ensure reparation for the victim and prevent similar incidents from recurring.⁹

In line with developments in modern criminal law, Indonesia, through the National Criminal Code (Law No. 1 of 2023), has reformed its criminal law paradigm, emphasizing a balance between the interests of the state, perpetrators, victims, and society. The National Criminal Code (KUHP) shifts toward a more humanistic approach by strengthening the principles of restorative justice and corrective justice.¹⁰

In the National Criminal Code, provisions concerning crimes against the body, including assault, are regulated in Chapter XXII, which includes Articles 466 to 469. These provisions provide the legal basis for protecting human physical integrity as a fundamental legal interest. These provisions are normatively relevant in handling domestic violence cases involving physical violence.¹¹

⁶Arief, BN, *Anthology of Criminal Law Policy*, Kencana, 2011, p. 87.

⁷Hiariej, EOS, *Principles of Criminal Law*, Cahaya Atma Pustaka, 2016, p. 41.

⁸Wahyuningsih, SE, "Criminal Law Policy from the Perspective of the Integrated Criminal Justice System", *Journal of Legal Studies*, 2018, p. 10.

⁹Radbruch, G., *Legal Philosophy*, Harvard University Press, 1969, p. 73.

¹⁰Law Number 1 of 2023 concerning the Criminal Code, pp. 1–5.

¹¹*Ibid.*, Articles 466–469.

However, the relational, emotional, and closed nature of domestic violence demands a law enforcement approach that is not solely repressive. Therefore, criminal law policy needs to be directed toward a more comprehensive, integrative approach, oriented toward victim protection and social recovery.¹²

Based on this description, this research is entitled: "Criminal Law Policy in Efforts to Overcome Domestic Violence Crimes Based on Justice Values."

2. Research Methods

This research is normative legal research, that is, research that positions law as a norm or rule that regulates human behavior in society. Normative legal research focuses on the study of written legal materials, including statutory regulations, court decisions, and the doctrines of legal experts.¹³

In normative legal research, law is understood as an autonomous and logical system, so analysis is directed at the consistency of norms, legal principles, and the purpose of legal formation. According to Barda Nawawi Arief, normative legal research is not only descriptive but also prescriptive, as it aims to provide arguments regarding what the law should do in addressing concrete problems.¹⁴

By its nature, this research is prescriptive-analytical. It is prescriptive because it seeks to formulate legal arguments related to ideal and just domestic violence prevention policies, and analytical because it critically examines applicable legal norms using criminal law theories and concepts.

3. Results and Discussion

3.1. Is the Current Criminal Law Policy in Addressing Domestic Violence Not Based on Justice?

Criminal law policies in addressing domestic violence (DV) fundamentally do not fully reflect the values of justice, particularly substantive justice focused on victim protection. This is reflected in the continued dominance of a repressive approach within the criminal justice system, which places greater emphasis on punishing perpetrators than on victim rehabilitation, the limited availability of effective victim protection mechanisms, and the significant gap between written legal norms (law on the books) and law enforcement practices (law in action). In this context, criminal law has not yet fully fulfilled its role as an instrument for

¹²Prasetyo, T., "Criminal Code Updates and Restorative Justice", *Khaira Ummah Journal*, 2022, p. 210.

¹³Soekanto, S. (2015). *Introduction to legal research*. Jakarta: UI Press, pp. 42–50.

¹⁴Arief, BN (2018). *Criminal law policy*. Jakarta: Prenadamedia Group, pp. 12–18.

protecting human rights and as a means to achieve social justice in community life.¹⁵

Conceptually, domestic violence can no longer be viewed as a private issue within the domestic sphere alone, but has transformed into a public issue closely linked to the protection of human rights and the principle of gender equality. Unequal power relations within the family institution often give rise to patterns of domination and subordination that place certain parties, especially women and children, in vulnerable positions. Within this framework, the existence of criminal law is not sufficient to function only as an *instrumentum regni*, namely a tool of state power to regulate society, but must also be transformed into an *instrumentum iustitiae*, namely a means to uphold justice oriented towards respect for human dignity. Thus, criminal law ideally not only functions formally in upholding norms, but also substantively is able to bring benefits (تحقيق المصلحة) and prevent social damage (درء المفاسد) in community life.¹⁶

1. Limitations of Normative Aspects in the Domestic Violence Law

Normatively, Indonesia already has a relatively progressive legal framework through Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law). This regulation not only prohibits various forms of violence within the domestic sphere but also comprehensively classifies the types of violence, including physical, psychological, and sexual violence, as well as domestic neglect. This regulatory framework reflects the development of legal thought that is increasingly inclusive and responsive to the complexity of the phenomenon of violence, where the law no longer solely focuses on the visible physical dimension but also recognizes the existence of non-physical suffering that is psychological and emotional.

However, upon closer and more critical examination, this normative framework still leaves a number of fundamental issues that contribute to suboptimal protection for victims. One crucial issue lies in the continued retention of the complaint mechanism (*klachtdelict*) in several provisions of the Domestic Violence Law. This mechanism implicitly places victims in an ambivalent, even dilemmatic, position, as the continuation of the law enforcement process depends heavily on the victim's initiative to report and their consistency in pursuing the complaint.

In empirical reality, such conditions often constitute significant structural barriers. Victims of domestic violence generally find themselves in complex situations of vulnerability, characterized by psychological pressure, economic

¹⁵Arief, BN (2018). *Problems of Law Enforcement and Criminal Law Policy*. Jakarta: Kencana, pp. 57–60.

¹⁶Wahyuningsih, SE (2021). *Legal Protection for Victims of Violence from a Victimology Perspective*. Semarang: Unissula Press, pp. 140–145.

dependence on the perpetrator, and unequal power relations within the household. Furthermore, cultural factors, such as strong patriarchal structures, exacerbate these conditions, often making it difficult for victims to freely and independently access legal mechanisms. In such situations, the complaint mechanism has the potential to hinder the effectiveness of legal protection, as the burden of initiating the judicial process falls disproportionately on the victim.

Thus, the existence of complaint offenses in the context of domestic violence indicates a lack of synchronization between the goal of victim protection and the normative design of criminal law itself. This condition confirms that criminal law is not fully oriented towards the interests of victims (victim-oriented approach), so it is not able to realize substantive justice that should be the primary orientation of the law. From a value perspective, such laws do not fully reflect the principle of welfare (تحقيق المصلحة) and are not optimal in preventing the emergence of social harm (درء المفساد), which is the essence of justice in the broader sense.¹⁷

2. The Gap between Norms and Implementation (Implementation Gap)

Another equally fundamental problem in the context of addressing domestic violence is the gap between written law (law on the books) and law enforcement practices in the field (law in action). Although normatively, relatively progressive regulatory instruments exist that are oriented toward victim protection, the reality of implementation shows that their effectiveness remains far from expectations. This gap indicates that the existence of ideal legal norms does not automatically guarantee the realization of justice if not accompanied by consistent, responsive, and victim-centered implementation.

Empirically, this phenomenon is reflected in various structural and cultural barriers. From a structural perspective, there are still slow case handling processes, limited capacity and professionalism of law enforcement officers, and suboptimal coordination between institutions within the criminal justice system. Meanwhile, from a cultural perspective, a lack of sensitivity among officers to gender perspectives and a persistent social bias that views domestic violence as a domestic issue contribute to exacerbating the situation. As a result, victims often lack adequate protection during the judicial process, including security, psychological recovery, and access to justice.

This situation demonstrates that the effectiveness of law is determined not only by the quality of its normative substance, but also by the extent to which it is actually implemented in practice. In other words, a textually sound law is not necessarily factually effective if it is not supported by a conducive legal structure and culture. In this context, the implementation gap phenomenon is an indicator

¹⁷Wahyuningsih, SE (2021). Legal Protection for Victims of Violence from a Victimology Perspective. Semarang: Unissula Press, pp. 140–145.

that criminal law policies in addressing domestic violence have not fully achieved concrete justice that is felt by victims.

From a value perspective, the gap between norms and implementation indicates that the law has not fully realized the principles of substantive justice that are oriented towards the welfare (تحقيق المصلحة) and the prevention of social harm (درء المفاسد). Therefore, without improvements in the implementation aspect, even the existence of progressive regulations will lose their functional meaning as an instrument of justice in society.¹⁸

3. The Dominance of Repressive Approaches in Criminal Law Policy

Criminal law policy in handling domestic violence (DV) crimes still strongly favors a repressive approach focused on punishing the perpetrator. This orientation reflects the dominant paradigm of retributive justice, which places punishment as the primary response to criminal acts, emphasizing retaliation as a means of enforcing legal norms. Within this framework, the success of law enforcement is often measured by the severity of the sanctions imposed on the perpetrator, rather than by the extent to which justice is actually experienced by the victim.

However, when viewed within the context of domestic violence, which has multidimensional complexity encompassing social, psychological, and relational aspects, a solely repressive approach becomes inadequate. Domestic violence not only causes physical harm but also long-term psychological trauma and damage to social relationships within the family. Therefore, justice cannot be reduced to merely imposing criminal sanctions but must encompass the dimensions of victim recovery, perpetrator rehabilitation, and the reconstruction of social relationships impacted by the violence.

From a modern victimology perspective, victims are no longer positioned as passive objects in the criminal justice process, but rather as subjects entitled to comprehensive recovery and protection. Accordingly, Sri Endah Wahyuningsih emphasized that addressing domestic violence must be carried out through an integral and comprehensive approach, one that is not solely oriented toward punishing the perpetrator but also encompasses aspects of victim recovery and prevention efforts as part of a long-term strategy.¹⁹

Thus, the dominance of a repressive approach in criminal law policy indicates limitations in accommodating holistic and humanistic values of justice. From a value perspective, such criminal law does not fully reflect the principle of public welfare (تحقيق المصلحة) and is not optimal in preventing social harm (درء المفاسد).

¹⁸Khaira Ummah Journal. (2025). "Substantive Justice in Handling Domestic Violence Crimes." Khaira Ummah Journal, Vol. 20 No. 3, pp. 50–57.

¹⁹Wahyuningsih, SE (2021). Legal Protection for Victims of Violence from a Victimology Perspective. Semarang: Unissula Press, pp. 152–158.

Therefore, a reorientation of criminal law policy is needed that does not only emphasize the aspect of retribution, but also integrates a more restorative approach, so as to be able to provide substantive justice that balances the interests of the perpetrator, the victim, and society.

3.2. Criminal Law Policy in Addressing Domestic Violence Crimes Based on Justice Values.

Criminal law policy in the context of addressing domestic violence (DV) is an integral part of the direction of national legal development, which focuses on protecting humans as the primary subject of law. Within this framework, criminal law is no longer understood narrowly as a means of retribution, but rather as a normative instrument that functions to create social order and realize civilized justice.

1. The Concept and Nature of Criminal Law Policy

Criminal law policy in the context of addressing domestic violence (DV) is an integral part of the direction of national legal development, which focuses on protecting human beings as the primary subject of law. From this perspective, criminal law is no longer understood narrowly as a means of retribution, but rather as a normative instrument that functions to create social order while ensuring civilized justice. Therefore, criminal law policy (penal policy) must be placed within the broader framework of social policy, which aims to achieve the welfare and protection of society as a whole.²⁰

Conceptually, criminal law policy encompasses a series of processes, including formulation (legislative policy), application (judicial policy), and execution (executive policy). These three stages must operate synergistically to optimally achieve legal objectives. In the context of domestic violence, the success of criminal law policy is largely determined by the extent to which these three stages can accommodate the interests of victims, perpetrators, and the community in a balanced manner.²¹

Domestic violence, as both a social phenomenon and a criminal offense, is complex because it occurs within the domestic sphere, fraught with emotional, economic, and power relations. This complexity demands a legal policy approach that is not only repressive but also preventive and rehabilitative. Therefore, criminal law must be able to encompass broader social dimensions and not become trapped in a purely legalistic approach.²²

2. Legal Regulations for Domestic Violence Crimes in Indonesia

²⁰Arief, BN (2018). Problems of Law Enforcement and Criminal Law Policy. Jakarta: Kencana, pp. 45–47.

²¹Muladi, & Arief, BN (2010). Criminal Theories and Policies. Bandung: Alumni, pp. 89–92.

²²Rahardjo, S. (2009). Progressive Law. Jakarta: Kompas, pp. 67–70.

Normatively, domestic violence in Indonesia is specifically regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. This law provides a comprehensive definition of domestic violence, encompassing physical, psychological, and sexual violence, as well as domestic neglect. This regulation demonstrates a paradigm shift in criminal law, from previously neglecting the domestic sphere to becoming more responsive to the protection of individuals within the family.²³

In addition to the Domestic Violence Law, related provisions are also stipulated in the Criminal Code, including the National Criminal Code (Law No. 1 of 2023), which expands the scope of protection for victims of violence. In this regard, the Domestic Violence Law serves as a *lex specialis*, providing more detailed regulations, particularly regarding the mechanism for protecting victims through the issuance of protection orders by the courts.²⁴

These regulations are also reinforced by various other legal instruments, such as Law No. 39 of 1999 concerning Human Rights and Law No. 7 of 1984 concerning the ratification of CEDAW. Both instruments affirm that domestic violence is a violation of human rights, and therefore the state has an obligation to prevent, respond to, and provide protection to victims.²⁵

3. Criminal Law Policy Based on Justice Values

The value of justice is a primary foundation in formulating criminal law policy. Justice, in this context, is not only defined as conformity to legal norms (formal justice), but also as substantive justice that takes into account the actual circumstances experienced by victims. This approach requires sensitivity to the social inequalities underlying domestic violence.²⁶

Satjipto Rahardjo's thinking emphasizes that law must be human-oriented (law as a tool of social engineering), so that its application must not ignore human values. In the context of domestic violence, this approach requires law enforcement officials to adhere not only to the legal text but also to understand the social realities surrounding the victim.²⁷

Eko Soponyono developed the idea that just criminal law policies must be victim-oriented. In cases of domestic violence, this approach is particularly relevant given the often weak and powerless position of victims. Therefore, victim protection must be a top priority in any criminal law policy.²⁸

²³Republic of Indonesia. (2004). Law No. 23 of 2004 concerning Domestic Violence, Article 1.

²⁴Republic of Indonesia. (2023). Law No. 1 of 2023 concerning the Criminal Code, pp. 112–115.

²⁵Republic of Indonesia. (1999). Law No. 39 of 1999 concerning Human Rights, pp. 23–25.

²⁶Prasetyo, T. (2015). *Justice with Dignity*. Yogyakarta: Nusa Media, pp. 102–104.

²⁷Rahardjo, S. (2009). *Progressive Law*, pp. 72–75.

²⁸Soponyono, E. (2020). *Justice-Based Criminal Law Policy*, pp. 134–136.

Sri Endah Wahyuningsih added that addressing domestic violence must be carried out through an integrated approach encompassing both penal and non-penal aspects. This approach aligns with the concept of restorative justice, which aims to restore social relationships and provide more meaningful justice for victims.²⁹

From a gender justice perspective, domestic violence criminal law policies must accommodate the specific needs of women as the most vulnerable group to victimization. This requires non-discriminatory policies that address unequal social structures.³⁰

From an Islamic legal perspective, the value of justice (العدل) is a key principle in family relations. All forms of violence contradict the values of justice and equality, so addressing domestic violence also has strong moral and spiritual dimensions.³¹

4. Implementation of Criminal Law Policy in Addressing Domestic Violence

At the formulation stage, criminal law policy on domestic violence has shown quite progressive development with the enactment of the Domestic Violence Law. However, various studies, including one published in the *Khaira Ummah Journal* in 2025, indicate that there are still weaknesses in the formulation of norms, particularly regarding the implementation of victim protection.³²

At the practical level, the role of law enforcement officers is crucial in achieving justice. However, reality shows that obstacles remain, such as a lack of victim perspective in handling domestic violence cases. This results in the law enforcement process not fully reflecting substantive justice.³³

Research in the *Khaira Ummah Journal* (2025) also revealed an implementation gap between legal norms and practice. Patriarchal cultural factors, economic dependency, and social stigma are the main obstacles to enforcing domestic violence laws.³⁴

At the executive level, the implementation of court decisions is often suboptimal in fulfilling victims' rights, such as restitution and rehabilitation. This indicates that justice has not been fully realized in practice.³⁵

1. Non-Penal Approach and Policy Reformulation

²⁹Wahyuningsih, SE (2021). Restorative Justice-Based Domestic Violence Response, pp. 78–80.

³⁰Republic of Indonesia. (1984). Law No. 7 of 1984 (CEDAW), pp. 5–7.

³¹Al-Qur'an, QS. An-Nisa: 19.

³²Khaira Ummah Journal. (2025). Implementation of Domestic Violence Law, pp. 12–15.

³³Khaira Ummah Journal. (2025). Victim Perspective, p. 21–25.

³⁴Khaira Ummah Journal. (2025). Implementation Gap Domestic Violence, pp. 30–33.

³⁵Khaira Ummah Journal. (2025). Victim Protection, p. 40–43.

In addition to penal approaches, non-penal policies play a strategic role in preventing domestic violence. Preventive efforts through public education, women's empowerment, and strengthening family institutions are crucial in creating a violence-free environment.³⁶

Synergy between various institutions, both government and civil society, is also a key factor in the effectiveness of domestic violence prevention. This collaboration enables the creation of a comprehensive and sustainable protection system.³⁷

Reformulation of criminal law policy is an urgent need to address various existing weaknesses. This reformulation must be directed at strengthening victim protection, increasing the capacity of law enforcement officials, and integrating penal and non-penal approaches.³⁸

Thus, criminal law policies addressing domestic violence based on values of justice must be holistic, progressive, and responsive to social dynamics. The law serves not only as a means of control but also as a means to achieve civilized justice.³⁹

4. Conclusion

Based on the research results and discussions outlined in the previous chapters, the following conclusions can be drawn: 1. Current criminal law policies addressing domestic violence are not based on the values of justice. This is reflected in: the complaint mechanism in the Domestic Violence Law, which places victims in a vulnerable position; the gap between the law on the books and the law in action due to low gender sensitivity among officials and a strong patriarchal culture; the dominance of a repressive approach that ignores victim recovery; a weak victim protection system; and the disharmony between the substance, structure, and culture of the law. These conditions indicate that criminal law policies have not been able to realize substantive justice that is oriented towards the public interest (قيق المصلحة المتكاملة) and prevention of social damage (درء المفساد) as the essence of the value of al-'adl. 2. Criminal law policies in addressing domestic violence based on justice values must be holistic and victim-oriented, encompassing three dimensions: formulative, namely reviewing the complaint mechanism and strengthening victim protection norms; applicative, namely integrating a restorative justice approach and increasing the capacity of gender-based officials; and non-penal, namely synergy between penal and non-penal policies through education and community empowerment. All of these policies must reflect the values of al-'adl (العدل), al-rahmah (الرحمة),

³⁶Khaira Ummah Journal. (2025). Domestic Violence Prevention, pp. 50–53.

³⁷Khaira Ummah Journal. (2025). Institutional Synergy, p. 60–63.

³⁸Soponyono, E. (2022). Reformulation of Criminal Law Policy, pp. 150–152.

³⁹Arief, BN (2018). Law Enforcement Issues, pp. 90–92.

and al-musawah (المساواة) in order to realize a humanistic, just, and civilized legal system.

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