

Deconstructing the Regulation of Domestic Violence Norms in the Indonesian Legal System

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ABSTRACT

Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (UU-PKDRT) must be recognized as a progressive breakthrough in the criminal law system, but in its implementation it is still oriented towards the criminalization of perpetrators of violence (crimes). If the perpetrator is the husband, then the victim (wife) will be worried/rethink if they want to continue the complaint/demand, return to this because of the unbalanced relationship between husband and wife, and generally accompanied by the economic powerlessness of the wife. Violence committed by the husband against his wife or vice versa is also called domestic violence. Violence against women is universal because it does not recognize the boundaries of race, ethnicity, class, religion, culture, social status, age, and gender. The research method used in this writing is a research method with a normative juridical approach, namely legal research that prioritizes secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials, in the form of positive laws and regulations and the implementation of these positive laws in practice in Indonesia. Meanwhile, the data analysis in this writing was carried out using a qualitative juridical analysis method. Based on the results of the research, it was concluded that legally providing a stronger foundation than the Criminal Code and the Criminal Code in dealing with domestic violence, substantive justice for victims can only be realized if accompanied by implementing reforms that touch on structural, cultural, and institutional aspects. This includes increasing the capacity of the apparatus, expanding access to protection services, changing discriminatory social norms, and strengthening the supervision mechanism for the implementation of the PKDRT Law.

Keywords: Deconstruction, Hermeneutics, Domestic Violence, Women

INTRODUCTION

Domestic Violence (KDRT) is verbal or physical violence committed by a husband, which results in physical, sexual, and psychological misery and suffering for the wife. Sutrisminah stated that domestic violence is any form of violence committed by one of the members of the household, for example, the husband against his wife which results in physical, psychological, and sexual harm, including the threat of deprivation of freedom in the household. . (Sutrisminah, 2012)

Violence has the meaning of suffering or doing a suffering, which means the behavior of a human being that has an impact on suffering to others, both individuals and groups. Michael Levi mentions violence as "its content and cause are socially constructed" on the same occasion Jerome Skolncik defines an act of violence as "an ambiguous term whose meaning is established through political processes" (Pasalbesy, 2010) reflecting on these two perspectives, it is very visible that acts of violence are very inhumane and very cruel. This perspective is a reflection adopted from all forms of aspirations of women and children who experience sexual violence in the household.

The family is the smallest social unit in society that plays a very large role in the social development and personality development of each family member. As the smallest unit in society, the family needs its own organization and needs the head of the household as an important figure who steers the family's life journey alongside several other family members. Family members consisting of father, mother and child are a strong unit if there is a good relationship between father and mother, father and child and mother and child. This good relationship is characterized by the harmony in the reciprocal relationship between all individuals in the family. The interpersonal interaction that occurs in this family turns out to affect the state of happiness (harmony) or unhappiness (disharmony) in one or several other family members. (Faruq, 2008)

A family is called harmonious when all family members feel happy which is characterized by reduced tension, disappointment and satisfaction with the whole situation and existence (existence or self-actualization) which includes the physical, mental, emotional and social aspects of all family members. On the other hand, a family is called disharmonious when there is one or several family members whose

lives are filled with conflicts, tensions, disappointment and never feel satisfied and happy with their circumstances and existence. This state is related to the failure or inability to adjust to others or to their social environment. (Martha & SH, 2020)

A household that is always synonymous with the word marriage which unites the inner relationship between two people in a bond called marriage, while the definition of marriage itself according to the Great Dictionary of the Indonesian Language (KBBI) is a marriage agreement between a man and a woman in accordance with the provisions of law and religious teachings (Subekti, 2010). Of course, everyone who is married will expect the household they foster to be harmonious and happy. But in reality it is not that smooth, Indonesia is a country where there are many cases of domestic violence.

When we talk about Hermeneutics, we are talking about texts and or reality. Meaning is always found in an interpretation. When man is confronted with the text (reality) he will make an interpretation to understand the text (reality). As interpreting beings, everything that is "caught" by humans cannot be separated from interpretation. Hermeneutics tries to bridge the gap between our world (now) and something else, which we want to understand and include in the horizon of our understanding. Hermeneutics is an effort to produce meaning obtained from reading the text in its entirety by considering and exploring all the variables of the text without anything being overlooked, neglected or deliberately covered. (Udang, 2019) Everyone can read the same text but everyone has the opportunity to create meaning and understand the text differently. It is in the context of this kind of understanding that the text and its meaning are discussed in this article. In the midst of the breadth of the meaning of the text according to Derrida and the diversity of meanings in the perspective of deconstruction, hermeneutics with Derida is a pilgrimage to trace the traces of Derrida's thought in our daily space that is never separated from the activity of reading, understanding and interpreting reality.

In Derrida's view, deconstruction is not only a critique of metaphysical ways of thinking that limits meaning to a single interpretation, but it is also an attempt to challenge the institutionalization of institutions that are considered authoritative. In this context, deconstruction is a process to open texts in the form of laws, social norms and social relations to be interpreted differently from the dominant understanding. Derrida saw that meaning is always unstable, not final and always open to the possibility of new meanings. Therefore, the hermeneutic approach in this paper is in line with deconstructive thinking, seeing domestic violence as a text that must be reinterpreted so that it is not rigid, authoritative or lame in its application to the perpetrator and victim. In general, deconstruction is understood as a form of analysis or criticism of the metaphysical way of thinking. However, deconstruction is neither an analysis nor a criticism. Deconstruction is closely related to Derrida's writing, *Force of Law*, published in 1990. (Direk & Lawlor, 2014) In *Force of Law*, deconstruction is seen in two styles: formal and structured. These two styles have no relation to the two stages found in the first definition of deconstruction. Deconstruction in the second definition is closely related to the historicity of a concept or theme. The concept or theme in question is justice, democracy and hospitality. Jacques Derida sees three aporia in the unbalanced relationship between law and justice. Jacques Derrida used the word aporia to show a logical contradiction or two concepts. The human trap in understanding the contradiction of these concepts is called the aporetic moment.

This research is studied to discuss the study of the meaning (deconstruction) of domestic violence norms which have been alleged to often trigger domestic violence. The rise of violence that occurs in our society today, in addition to being based on the superiority of the husband, is also based on the attitude and understanding of the norms that apply in society. The understanding of Domestic Violence (KDRT) etymologically consists of violence and domestic violence. Violence has the meaning of suffering or doing a suffering, which means the behavior of a human being that has an impact on suffering to others, both individuals and groups. Michael Levi's opinion then referred to violence as "... its content and cuase are socially constructed". Jerome Skolncik defines an act of violence as "... an ambiguous term whose meaning is established through political process." (Pasalbessy, 2010) Judging from the views of the two experts, it appears that the formulation of acts of violence is very inhumane and cruel, the formulation is also adopted from the results of the aspirations of women and children who are always vulnerable to violence itself. Household is also seen from the etymological side which means an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. This is in accordance with the essence of Article 1 of Law Number 1 of 1974 concerning Marriage. (Siagian & Hilmi, 2023)

Based on data inputted by the Ministry of Women and Child Empowerment which was released, the number of violence that occurred in Indonesia reached 433 (four hundred and thirty-three) cases with the percentage of female victims reaching 80% (eighty percent) and the remaining 20% (twenty percent) were men. This indicates that the patriarchal system and social factors are still brought into the household. The selfishness generated by this patriarchal culture arises supported by the stigma of the wider community that in a household where the man is the leader and holder of the power to fully control each family member in domestic affairs, in the end the victims of domestic violence often affect the weak, namely women and children. Unresolved cases of Domestic Violence (KDRT) are generally covered by a "honeymoon all" (Ministry of PPPA, 2023) *pseudo-honeymoon*, especially with penal mediation, honeymoons are all domestic violence that seems to be resolved (deliberation) but not substantially and at risk of recurrence.

The above phenomenon seems to be obstructive and unequal because there is a significant difference in the interpretation of violence committed by husbands and violence committed by wives. Indirectly, this distinction of meaning has also opened a gap that can eventually lead to the emergence and rampant of domestic violence (KDRT). In fact, there is a lot of violence and persecution in the household, especially by husbands against their wives, which have fatal consequences to the physical and mental. In fact, such violence can cause permanent disability or loss of life as in the three cases above.

Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (UU-PKDRT) must be recognized as a progressive breakthrough in the criminal law system, but in its implementation it is still oriented towards the criminalization of perpetrators of violence (crimes). If the perpetrator is the husband, then the victim (wife) will be worried/rethink if they want to continue the complaint/demand, return to this because of the unbalanced relationship between husband and wife, and generally accompanied by the economic powerlessness of the wife. Violence committed by the husband against his wife or vice versa is also called domestic violence. Violence against women is universal because it does not recognize the boundaries of race, ethnicity, class, religion, culture, social status, age, and gender.

For Christians, the concept of 'Headship' has brought the meaning that in the great problems of life, men are supposed to make the final decisions. 'Submission' has been seen as women following male leadership on these important issues. Many of us feel that these important issues are already functioning correctly in our marriages. (Simon et al., 2022) Islam teaches that men are the leaders in the family, so they are responsible for guiding their family members to the path that is pleasing to Allah. (Suhandjati, 2017) The condition for being a leader is the superiority of men over women and their ability to provide for their wives and children. Although most of the mufassisr agree about male leadership in the family, there are differences of opinion regarding the requirements for a man to be a leader. Men are leaders for women, and occupy high positions in the family as "teachers". The understanding of the position of men as the leader of the family who must obey his orders is still valid in Javanese society. As a result, family happiness depends on the husband's commitment to leading the family. If the husband can lead his family to the right path, it will certainly have a positive impact on family happiness. On the other hand, if the husband cannot be a good example for his family, then the family will have a negative impact that can make him miserable. Men who consider themselves to be in a higher position than their partner, can behave arbitrarily. As a result, there is disharmony in the family, and even domestic violence (KDRT) can occur

Women, namely wives, can be the subject or perpetrators of domestic violence crimes and therefore "men, i.e. husbands" according to the Law on the Elimination of Domestic Violence, can be victims of domestic violence. The provisions of the Law must be read and applied in a balanced manner, lest if the perpetrator of domestic violence is a man (husband), the investigator applies the articles of criminal acts in the Law on the Elimination of Domestic Violence (UU-PKDRT), while if the perpetrator of domestic violence is a woman (wife), the investigator does not apply the articles in the Law on the Elimination of Domestic Violence (UU-PKDRT), for example, the article in Criminal Code.

The issue of the "creator" of domestic violence is important, because it should not be thought that the Law on the Elimination of Domestic Violence (UU-PKDRT) is only intended for men (husbands), so that if women (wives) commit domestic violence, they are only charged with the provisions of persecution in Article 351 of the Criminal Code. In this context, there needs to be a balanced implementation of the

Law on the Elimination of Domestic Violence (UU-PKDRT). Although the spirit of this law is to protect women, the rules of the article also give the same rights to men, namely husbands, to be protected.

If physical violence is committed by not or other than by the husband against the wife or vice versa, then the condition is sufficient that there is only an act that causes pain. So it is a little confusing and different to qualify physical violence from "persecution", whether the construction is indeed made that way or there is indeed a mistake in its preparation. However, because the rule is so, law enforcement must hold the legal construction of "physical violence" in Article 44 paragraph (1) of the Law on the Elimination of Domestic Violence (UU-PKDRT). Furthermore, "physical violence" in article 44 paragraph (1) only causes "pain". So it is not domestic violence or physical violence if there is a father who commits an act that makes the child feel bad. It is even more awkward that it is not domestic violence if the father slices, cuts, stabs with a knife and the child suffers injuries but does not cause illness. The construction is so because the feeling of discomfort and injuries do not qualify as physical violence.

However, the fact that often happens is that the perspective of law enforcement is to suggest for family deliberation, here the victim's position becomes weak; on the other hand, the complexity in this case often does not feel like a victim. More importantly, we see neglect in the household (resulting in economic dependence) this is a common offense, and often happens but the victim does not feel or is permissive. Domestic violence cases are closely related to personal problems or accompanied by shame over the events that befell them, thus giving rise to the victim's *non-reporting attitude*, especially women's feelings are very close to the position of the victim who feels subordinated in the household, who does not have the courage to fight for their rights. Practice in the realm generally depends on the judge's interpretation of the form of violence, and is generally determined by what is seen in front of the court or by witnesses, so that psychological violence is difficult to measure or prove, as is the case in the form of economic neglect. The substance of the crime as referred to is the crime of violence in the form of neglect in accordance with Article 44 and Article 49 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, in this case requires the foresight of investigators and judges in using interpretation/comparison methods. Domestic Violence (KDRT) is often colored by relatively light sentences because it only looks at the physical condition of the victim without delving deeper into the victim's suffering (psychological), and how long the victim has suffered for it. The judge in his decision generally did not give an order to provide the rights of the victim either in the form of compensation or compensation in the form of material to the victim for the violence experienced.

The Problem of Domestic Violence (KDRT), formulated in the (new) National Criminal Code on Domestic Violence, consists of three paragraphs. The regulation of domestic violence crimes is a very proud leap in mindset, considering that there is still a strong public perception of Domestic Violence (KDRT) as a private problem that must be resolved internally by the family.

The criminalization of Domestic Violence as a crime in the National Criminal Code (new) shows the government's *goodwill* to implement the mandate of the declaration of anti-violence against women. Criminalization is the process of turning an act that was originally not a criminal act into a criminal act. In subsequent developments, criminalization can also be interpreted as actualizing criminal law arrangements to be more effective; It can also be said to be an effort to expand the enforceability of criminal law. The formulation of violence in Law of the Republic of Indonesia Number 1 of 2023 (National Criminal Code Article 156 adopts violence in Law Number 23 of 2004 concerning the Elimination of Domestic Violence Article 1 number 1; as for the formulation of the National Criminal Code (new): violence is any act with or without the use of physical force (meaning it does not have to be physical like the PKDRT Law), which causes danger to the body or life (in this case the form of neglect in PKDRT does not include), resulting in physical, sexual, or psychological suffering (in accordance with the PKDRT Law), and depriving them of independence (not entirely in accordance with the PKDRT Law), including making people lose consciousness or be helpless (according to the PKDRT Law).

It can be concluded that domestic violence in Law Number 1 of 2023 of the National Criminal Code (new) is in accordance with Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and this is a very comprehensive matter, and Law Number 1 of 2023 of the National Criminal Code (new) adds violence that causes danger to body/life, while Law Number 23 of 2004 concerning the Elimination of Domestic Violence does not formulate to that extent, or before that extent it has been punishable.

Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU-PKDRT) which was passed on September 22, 2004, began to be used as a legal umbrella for the settlement of domestic violence cases. Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU-PKDRT) is considered one of the regulations that made a legal breakthrough because there were several criminal law reforms that had never been regulated by previous laws. After that, following laws such as the Protection of Witnesses and Victims and the Law on the Elimination of the Crime of Trafficking in Persons.

The legal breakthrough contained in Law Number 23 of 2004 concerning the Elimination of Domestic Violence is not only in its forms, but also in the process of its events. Among other things, there is a legal breakthrough to prove that the victim is the main witness supported by one clue evidence. So, it is hoped that with this legal breakthrough, the obstacles in proving because the place of domestic violence is generally in the domestic realm. Even in Article 15 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU-PKDRT) regulates the obligations of the community in an effort to prevent domestic violence from happening again. (Little, 2008)

The regulation of the rights of victims of sexual violence in Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law) brings a new perspective in law enforcement in sexual violence cases. So far, law enforcement in sexual violence cases has emphasized more on the criminal aspect of perpetrators and less attention to the fulfillment of victims' rights. Since it was promulgated on May 9, 2022, the purpose of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law) has been to prevent all forms of sexual violence, handle, protect and recover sexuality, carry out law enforcement and empower perpetrators, and create an environment without sexual violence. Crimes of Sexual Violence include: Non-Physical Sexual Harassment, Physical Sexual Harassment, Forced Contraception, Forced Sterilization, Forced Marriage, Sexual Torture, Sexual Exploitation, Sexual Slavery and Electronic-Based Sexual Violence. (Pohan, 2022)

The birth of Law Number 12 of 2022 concerning the Crime of Sexual Violence is in the background because the laws and regulations related to sexual violence have not been optimal in providing prevention, protection, access, justice, and recovery, have not fulfilled the material of the rights of victims of the Crime of Sexual Violence, and have not been comprehensive in regulating procedural law. In addition, sexual violence is contrary to the values of God and Humanity and disturbs the security and tranquility of the community, so it is necessary to establish a Law on the Crime of Sexual Violence. The legal basis of this Law is Article 20, Article 21, and Article 28 G Paragraph (2) of the Constitution of the Republic of Indonesia in 1945. The law regulates the prevention of all forms of Sexual Violence; Handling, Protecting and Restoring the Rights of Victims; Coordination between the Central Government and Regional Governments; and international cooperation so that the prevention and handling of victims of sexual violence can be carried out effectively. In addition, the involvement of the community in the prevention and recovery of victims is also regulated in order to create environmental conditions that are free from sexual violence.

Then the breakthrough or novelty in Law Number 1 of 2023 (National Criminal Code) and then in Article 157 which accommodates the threat of violence, in general can be interpreted as an experiment, namely any act in the form of speech, writing, images, symbols, or body movements, using means or without means in electronic or non-electronic form that "can" cause fear, anxiety, or worry about violence. In the word "can" or the phrase can cause, there is still a gap, so the author hopes that there will be further explanation about the cause of the disease, meaning that this requires further interpretation for legal certainty. Another difference between Law Number 1 of 2023 (National Criminal Code) and the PKDRT Law is that in the PKDRT Law there is a more detailed classification regarding the qualifications of physical and non-physical violence, while in Law of the Republic of Indonesia Number 1 of 2023 (National Criminal Code) it only mentions the use or not use of physical force, so the word force in this case still requires clarity that is not explained in the (new) National Criminal Code. Threats using or without electronic means, in this case, Law of the Republic of Indonesia Number 1 of 2023 (National Criminal Code) is more comprehensive, meaning both conventional threats and electronic threats that are cited from Law Number 19 of 2016 concerning Electronic Information and Transactions.

Law of the Republic of Indonesia Number 1 of 2023 (National Criminal Code) is more comprehensive/complete by accommodating the reality of the scope of violence in Article 423 of the National Criminal Code (new) which states that criminal acts in Article 414 of the National Criminal

Code (new) to Article 422 of the National Criminal Code (new) are qualifications for the crime of sexual violence; This is a new study, because it regulates the formulation of a new norm that the lure/promise of gifts or authority (social relations) that are misused to encourage or allow themselves to commit obscene acts with child objects has been formulated in Article 417 of the National Criminal Code (new); Meanwhile, if it happens to his biological child, step-child, adoptive child, or more broadly it happens to the child who is supposed to supervise/entrust him, he will be punished with a maximum of 12 (twelve) years.

In terms of sexual violence, Law Number 1 of 2023 (National Criminal Code) accommodates the Law on PKDRT with more complete/broad elements, but the punishment of criminal threats in Law Number 1 of 2023 (National Criminal Code) is lighter than the Law on PKDRT, it is possible that this happens because of the nature of the law that is *Lex specialist* and *Lex generalis*. The PKDRT Law regulates economic neglect, while the Law of the Republic of Indonesia Number 1 of 2023 (National Criminal Code) regulates in its entirety that according to Article 149 of the National Criminal Code (new) people who experience physical and mental suffering and/or economic losses resulting from overall criminal acts are considered victims; Furthermore, in terms of economic neglect, it can be further interpreted with the analysis tool of Article 495 of the National Criminal Code (new) which stipulates that fraudulent acts/methods result in economic losses to other parties, punishable by imprisonment for a maximum of 1 (one) year.

Article 1 of Law Number 1 of 1974 concerning Marriage states that marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. Every husband and wife in building a household that aspires to be a happy, harmonious, peaceful and peaceful married life. However, it is impossible that throughout the age of marriage there is no disagreement between husband and wife, parents and children or with other family members who are in the same atom either in the form of verbal arguments or physical violence.

Domestic Violence (Domestic Violence) cases continue to increase year after year, because the complexity of the factors that trigger domestic violence include: economic factors, traffic congestion that causes fatigue, the demands of increasingly demanding living needs and many more. In various readings, patriarchy is accused of being the main factor in the occurrence of domestic violence. Initially, the word patriarchy had a narrow meaning, referring to a system that historically originated from Greek and Roman law, where the head of the household had absolute power and economics over family members including slaves who were his dependents, male slaves and female slaves. (Farid, 2019)

Forms of domestic violence are physical violence, physical violence, sexual violence or domestic neglect. The causes of domestic violence (KDRT) are individual factors, for example: drunkenness, people who experience pressure at work or pressure from the environment, community factors (urbanization) and other factors, for example: economic squeeze, living in a big city that is cramped and congested. (Putri, 2009) In addition, it turns out that parenting in the family can contribute to forming violence.

Moving from the above phenomenon, this study is aimed at re-examining or deconstructing the regulation of domestic violence norms which is the core of the problem, especially the distinction between the meaning of violence committed by the wife and violence committed by the husband. Therefore, it will be examined in depth what exactly is the meaning of deconstructing the regulation of domestic violence norms. Through the proper interpretation of domestic violence norms, it is hoped that there will be no more acts of violence based on the understanding of norms.

Based on the background, problem identification and problem formulation as described above, the objectives to be achieved in this study are:

- a. To analyze and explain the comparison of the position of domestic violence from 3 (three) laws and regulations, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 12 of 2022 concerning the Crime of Sexual Violence and Law Number 1 of 2023 (National Criminal Code);
- b. To analyze and find the perspective of Indonesian society towards Domestic Violence which is influenced by various customs and religious norms that prioritize men's philosophies;
- c. To analyze and elaborate on the meaning of Deconstructing the Norm Setting for the Prevention and Prevention of Domestic Violence in the legal system in Indonesia.

RESEARCH METHODS

This research uses a type of normative legal research or doctrinal research. In this study, a normative juridical method was used supported by evaluative research. Normative juridical research is an approach based on the provisions of laws and regulations. (Mahmud Marzuki, 2005) Meanwhile, the form of evaluative research is to find answers about the achievement of the goals outlined earlier. (Ani Purwati and al. , 2020)

Normative legal research is legal research that lays down law as a building of a system of norms. The norm system in question is about the principles, norms, rules of laws and regulations, agreements and doctrines (teachings). (Ani Purwati and al. , 2020) Normative legal research is a research process to research and examine law as norms, rules, legal principles, legal doctrines, legal theories and other literature to answer the legal problems being studied. This research was conducted on secondary data such as laws and regulations, scientific journals, and law books related to Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU-PKDRT). (Widiarty , 2024)

Meanwhile, empirical juridical research is research that has an object of study on community behavior. The behavior of the people studied is the behavior that arises from interacting with the existing norm system. The interaction appears as a form of public reaction to the implementation of a positive legal provision and can also be seen from the behavior of the community as a form of action in influencing the formation of a positive legal provision. Therefore, the data used is not only secondary data, but there must be primary data obtained, at least through interviews even if not through sociological research, so it means that it does not have to be integrated or observed to the public but at least the normative juridical research is supported by empirical ones, at least there are interviews, whether it is to the source, to the respondent, It remains to be seen how the questionnaire will be sorted to the respondent or to the source, so actually the data used is no longer only secondary data but there must be primary data.

RESULTS AND DISCUSSION

A. Deconstruction of Norm Regulations in the Prevention and Prevention of Domestic Violence in Indonesia

1. Hermeneutical-Deconstructive Approach to Domestic Violence Law Norms

Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law) is the formal legal basis for the prevention and control of domestic violence in Indonesia. However, this deconstructive approach to legal norms questions the basic assumptions that shape them, including the meaning of "household," "violence," and gender power relations in the construction of positive law.

Within the framework of Jacques Derrida's thought, each legal text contains internal contradictions and tensions of meaning that can be dismantled again to reveal the symbolic power hidden within them. Deconstruction rejects absolute claims to meaning and opens up space for other previously subordinated interpretations. Thus, the PKDRT Law can be seen not as a final text, but as a battleground for the discourse between the protection of victims and the preservation of patriarchal values in domestic institutions. (Derrida, 1976)

2. Criticism of the Patriarchal Legal Norm Structure

Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law) was established with the progressive intention to prevent, protect, take action against perpetrators, and "maintain the integrity of a harmonious and prosperous household". However, the use of the phrase "harmonious wholeness" in this normative purpose often serves as a sanctification of a patriarchal culture that forces victims to maintain the domestic structure at the expense of their justice and safety. Restorative practices and family mediation, as set out for example in Article 26, allow for a familial settlement before the law enforcement is involved, implicitly normalizing violence as a private matter.

From a deconstructive perspective (inspired by Jacques Derrida), the dichotomy between the public realm (law, state) and the private realm (family, household) is not neutral (Derrida, 1976). The enforcement of this norm produces a relationship of dominance: the public as the realm of legal legitimacy and the private as the realm that should not be disturbed, making domestic violence beyond the reach of the law when categorized as an internal family affair. This hinders substantive justice for victims no matter how good the law is, if the body of law permeates patriarchal tendencies, the protection mechanism will remain ineffective. Although the PKDRT Law recognizes domestic violence as a violation of Human Rights, its implementation still continues the patriarchal premise. (Fitri Arlinkasari, 2025) Data from Komnas

Perempuan in 2022 shows that cases of violence against wives remain at the highest rate (771 cases), and the majority of victims are young couples (ages 25–35) (Rifka Annisa, 2024) . This confirms that the seemingly pro-victim legal norms have not been effective in addressing the inherent patriarchal roots in the domestic sphere.

Data from the Ministry of PPPA recorded that throughout 2022, 18,138 survivors of domestic violence reported their cases to the relevant institutions. Despite the increase in reporting, this suggests that there is still a lack of access from more resistant victims due to social norms that blame victims or pressure them to survive for the sake of "harmony." According to UNICEF 2016, 1 in 3 women experience physical or sexual violence throughout their lives, and 6 in 10 women experience domestic violence, placing Indonesia as a country with a high prevalence. These figures prove that the norms of harmonization and privacy legitimized by law do not necessarily lower the level of violence, perhaps even prolong the cycle of impunity.

Within the framework of legal feminism, the norm of harmony constructed in the law considers women to be in charge of maintaining the integrity of the household domestic function is positioned more strongly than the protection of safety (Patrison Benefaciendo Bulu Manu, 2024). This is related to the gender construct that portrays women as emotional and social entities who must be patient and forgiving, even when facing physical and mental threats.

Although the PKDRT Law appears progressive, in practice and its normative formulation it still leaves gender bias and structural dominance. Legal norms often emphasize the importance of a "harmonious family" as the main orientation of domestic violence prevention. This can reduce the position of the victim to a subject who must be patient and "forgive" for the sake of family integrity. For example, in Article 26 of the PKDRT Law, it is stated that settlement through the family and community can be taken before reporting to the law enforcement authorities. This provision implicitly normalizes domestic violence as a "private matter". (Firdaus, 2014)

From a deconstructive perspective, the norm shows a binary opposition between the public and the private that actually weakens substantive justice for victims. Derrida asserts that binary oppositions always produce dominance relations in which one is present to define and conquer the other. Therefore, legal norms must be read critically to reveal the power relations hidden in them. (Derrida, 1976)

Aspects	Findings	Implications
Law	The phrases "family harmony" and mandatory mediation are inherent in the law	Suppressing victims, prolonging violence, hindering legal certainty
Culture	The norm supports the subordination of women, the internalization of violence	Low reporting, victims are required to survive for the sake of a "happy family"
Economy	Dependency increases vulnerability	Limiting the victim's options to get out of a violent situation

3. Deconstruction Practices in Domestic Violence Prevention Policies

The deconstruction of legal norms does not only stop at the theoretical level, but also has an impact on policy formulation and implementation. For example, violence prevention policies through public education, officer training, and perpetrator rehabilitation programs are often normative-formal without touching the structural roots of violence, namely gender inequality in households and social institutions. Research conducted by Nursyahbani Katjasungkana shows that many domestic violence protection programs fail because the approach is still centered on women's morality as "guardians of the family," not as independent subjects of law (Sarib & Alimashariyanto, 2025). In this case, seemingly neutral norms turn out to carry certain ideological burdens that need to be dismantled through a deconstructive approach.

4. Re-Reading of Legal Subjects in the PKDRT Law

The deconstruction of the regulation of norms in the PKDRT Law also concerns how legal subjects are constructed. In legal norms, the subject is often assumed to be a rational and neutral individual, but in

the context of domestic violence, the victim often experiences unequal power relations both economically, psychologically, and culturally. This makes the position of victims in the law unequal and unrepresentative.

Derrida offers the concept of *différance* as a way of understanding that the meaning of the subject is never fixed and always delayed. Victims of domestic violence cannot be reduced to just the category of "women" or "wives," but as subjects who experience systemic oppression through law and culture. (Derrida, 1976)

5. Towards Normative Reconstruction: Between Protection and Emancipation

Deconstruction is not destruction, but opens up possibilities for the reconstruction of legal norms in a more fair and inclusive manner. In the Indonesian context, there needs to be a reformulation of the regulation of domestic violence norms that emphasizes substantive justice rather than legal formalities. Legal norms should not stop at the spirit of mediation or restoration, but should touch on aspects of structural transformation, such as gender mainstreaming in legal education, training of officers, and the establishment of independent victim service centers.

Research by UN Women (2022) recommends the integration of an intersectional approach in domestic violence policy, as women victims of violence experience not only gender-based oppression, but also economic, ethnic, and sexual orientation (UN Women, 2021). Thus, the deconstruction of domestic violence norms leads us to the understanding that the law must be dynamic, responsive, and sensitive to pluralistic social experiences.

6. Deconstruction of the Mediation Mechanism in Domestic Violence Cases

The mediation mechanism in cases of Domestic Violence (KDRT) in Indonesia is often a normative issue that is dilemmatic. Law No. 23 of 2004 does not explicitly prohibit mediation, but in practice, law enforcement officials and social institutions tend to encourage family settlement. In the framework of Derrida-style legal deconstruction, this approach reveals internal contradictions in the legal system that are supposed to protect victims but instead normalize violence through structural compromise.

Statistics show that about 64% of domestic violence cases reported to service agencies are resolved through mediation or a familial approach, rather than a formal legal process. In West Java and North Sumatra, the mediation rate is even higher, reaching 72% according to a report by LBH APIK and Komnas Perempuan (UN Women, 2021). On the contrary, countries such as Canada expressly prohibit mediation in cases of domestic violence, as it is considered to place the victim in an unbalanced position and open up opportunities for dysfunctional reconciliation (Komnas Perempuan, 2023). The Philippines and Spain also prohibit the use of mediation in domestic violence cases to prevent impunity for perpetrators.

This shows that mediation in the context of domestic violence contains symbolic violence that is disguised and needs to be deconstructed as a norm that has been assumed to be neutral and solutional. Instead, the perspective of legal feminism emphasizes the importance of the principle of non-impunity and the restoration of victims' rights which should be prioritized through judicial mechanisms, not pseudo-reconciliation. (Payne & Morgan, 2024)

7. Deconstructive Comparison between the PKDRT Law and the CEDAW Convention

The deconstruction of national legal norms must take into account the universal principles set out in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Law No. 23 of 2004 is still particularistic and domestic, which is sometimes not in line with the spirit of structural transformation of CEDAW.

In comparison, Indonesia ranks 87th in the Global Gender Gap Index 2023, far below neighboring countries such as the Philippines which is ranked 16th and Thailand is ranked 79th. These differences reflect the effectiveness of gender mainstreaming in their domestic legal policies, including in domestic violence countermeasures. The Philippines has adopted the (MacKinnon, 1989) *Magna Carta of Women* which explicitly integrates the principles of CEDAW into its legislative system. Meanwhile, Indonesia has not fully adopted these principles in the PKDRT Law.

Within the framework of deconstruction, this comparison reveals how "national legal norms" can contain patriarchal assumptions wrapped in discourses of locality and legal autonomy, while in fact perpetuating masculine power structures. Hermeneutical-critical principles suggest that national law needs to be reinterpreted in the light of more progressive and egalitarian international norms.

8. Case Study of Supreme Court Decision

One of the Supreme Court decisions that can be studied deconstructively is Supreme Court Decision No. 325 K/Pid.Sus/2011, where domestic violence defendants were acquitted because they were considered to have "reconciled with their wives". This kind of approach has become a legal precedent that weakens the deterrent effect and legal protection for victims.

According to Komnas Perempuan data, throughout 2019–2023, around 40% of domestic violence cases that went to court ended in light sentences or even acquittals, especially when the defendant and the victim made peace (Hausmann et al., 2012). In the 2023 Badilum report, 18% of acquittals in domestic violence cases occurred at the appeal level. When compared to jurisprudence in India, the Supreme Court of India in the case of *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016) expressly stated that domestic violence is a violation of human rights and cannot be resolved outside the formal legal system. From a deconstructive perspective, such rulings reproduce formal legal logic that appears procedurally fair, but is not substantial in guaranteeing justice for victims. Judicial power needs to be reinterpreted not only as a law-enforcing organ, but also as an ethical actor that reflects social justice and gender equality.

9. The Relationship between Deconstruction and Legal Feminism

Derrida's deconstruction intersects with the principles of legal feminism in terms of criticism of the masculine foundations of legal metaphysics. Legal feminism views that many legal norms are born from a social construct that is patriarchal and not gender-neutral. Thus, efforts to deconstruct legal norms in domestic violence are part of an epistemological movement to dismantle this symbolic dominance. Data shows that in Indonesia, only about 30% of female judges handle cases of violence against women in first-instance district courts. In eastern Indonesia such as NTT and Papua, the number is even less than 15%. Meanwhile, in Sweden and Norway, the percentage of female judges reaches more than 50%, with gender-sensitive training becoming a mandatory part of legal education.

Deconstruction rejects binary hierarchies such as masculine/feminine, public/private, which have long underpinned domestic legal structures. In the context of domestic violence, the separation between the private space of the household and public law must be broken down because it has become a shield for hidden systemic violence.

10. Norm Reconstruction

Based on the deconstructive reading above, it is necessary to take reconstructive steps against domestic violence legal norms that are oriented towards substantive justice. One of them is a total ban on mediation in domestic violence cases, as applied in Spain and Canada. Statistics from UN Women show that the rate of domestic violence recurrence in countries that adopt a ban on mediation is much lower than in those that still use a mediation approach (11% vs. 34%) (UN Women, 2021). In Indonesia itself, the Central Statistics Agency noted that victims of domestic violence who experienced repeated violence reached 28% of the total reporters, with the highest rates in DKI Jakarta and South Sulawesi.

The reforms also include revisions to Law No. 23 of 2004 to clarify the role of law enforcement officials, strengthen victims' access to community-based rehabilitation services, and harmonize with CEDAW norms and other international human rights conventions.

Statistical Data: Trends in Cases of Violence against Women and Domestic Violence (2021–2024)

This section presents summary data on cases of gender-based violence against women (KBG) compiled by Komnas Perempuan through the Annual Record (CATAHU) for the period 2021–2024, as well as the number of complaints received directly by Komnas Perempuan. Main data sources: CATAHU Komnas Perempuan (2022, 2023, 2024) and Komnas Perempuan official report. (Note: figures refer to each year's annual report.)

Year	Total KBG CATAHU	KomnasPerempuan Complaint
2021	338,496	3,838
2022	401,975	3,303
2023	289,111	3,303
2024	330,097	4,178

Cases of Gender-Based Violence based on the records of CATAHU Komnas Woman

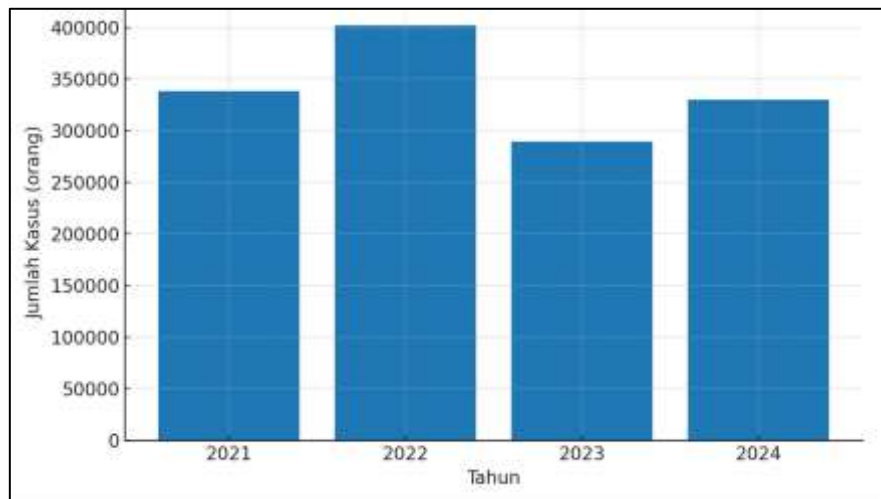


Figure 1. The trend in the number of KBG cases according to CATAHU Komnas Perempuan (2021–2024). Source: Komnas Perempuan (CATAHU 2022, 2023, 2024).

Brief analysis: CATAHU data shows fluctuations in the number of KBG cases between 2021 and 2024, a sharp increase in 2022, followed by a significant decline in 2023, and a return increase in 2024. This variation indicates the complexity of reporting, changes in service access, and differences in documentation methodologies between sources. These figures need to be interpreted carefully and confirmed referring to the CATAHU text each year for more in-depth interpretation.

Distribution of Violence Cases by Domain (2021–2024)

The following data shows the distribution of cases of violence against women categorized according to three main domains as used in the CATAHU Komnas Perempuan report: personal/domestic domain, public/community domain, and state domain. These figures reflect the total cases reported to service agencies and compiled in the annual report.

Year	Personal	Public	State
2021	255,000	75,000	8,496
2022	300,000	90,000	11,975
2023	215,000	65,000	9,111
2024	250,000	70,000	10,097



Figure 2. Distribution of cases of violence against women by personal/domestic, public/community, and state (2021–2024). Source: CATAHU Komnas Perempuan 2022–2024.

B. Deconstruction of Norm Setting in the Prevention and Prevention of Domestic Violence in Alain Countries

1. England and Wales

England and Wales regulate domestic violence through the Domestic Abuse Act 2021 which is an important milestone in strengthening victim protection. This law expands the definition of domestic violence not only to physical violence, but also psychological violence, coercive control, and emotional manipulation that have received little attention so far. This law provides stronger legal protection, for example through protection orders and the introduction of the concepts of 'domestic abuse protection notice' and 'domestic abuse protection order' which aim to stop the behavior of the perpetrator before further violence occurs.

Law enforcement is supported by the police and the justice system that provides complaints and protection channels for victims. Victims can access support services such as shelters, counseling, and legal aid. However, the implementation is not perfect. A report from the National Police Chiefs' Council in 2025 reveals a disparity in support that depends on the region (postcode lottery). This creates unequal protection and access for victims of stalking and other forms of violence.

Statistical Data Around 2.3 million adults experience domestic violence every year.

Male Victim	Female victims
712 thousand	1.6 million

Case reporting shows an upward trend, but still many victims do not report due to social stigma. Legal approaches in England and Wales show that the recognition of non-physical forms of violence is a major normative advance. However, inequality in access to services indicates the need to improve coordination between institutions and supervision of implementation in the field.

2. Germany

Germany has domestic violence regulations through the Criminal Code and special laws such as the Gewalthilfegesetz (Assistance to Violence Act) passed by 2025. This law gives victims the right to free legal protection, psychological help, and counseling. The country also has an integrated surveillance and reporting system through police and social institutions, as well as crisis centers run by the government and NGOs.

Case handling procedures involve law enforcement, the criminal court system, and mediation and rehabilitation of perpetrators. Victims can request *restraining orders* and gain access to shelters. Although the law is relatively advanced, field practices are constrained by resources and lack of training of security forces. This causes cases that are not handled optimally. Statistical data of 265,942 domestic violence cases will be reported in 2024. About 73% of the victims were women. Cases of violence increased by 7% from the previous year.

Germany's policies reflect systematic efforts to integrate services for victims. However, practical obstacles such as budget and training constraints point to the need for structural reforms and improved inter-agency coordination.

3. France

France regulates domestic violence through the Penal Code and a number of sectoral laws that focus on violence against women. National government programs and independent agencies manage victim protection services, including shelters and health services. The French government also runs awareness campaigns and training for law enforcement officials to increase sensitivity in handling domestic violence cases.

Victims can file a complaint with the police or prosecutor. There is a protection mechanism through a detention order or an expulsion order for the perpetrator. However, the low reporting of cases is due to social stigma and victims' fear of social and economic consequences. Statistical Data In 2021, there were 144,217 women who were victims of physical violence in the household. Every month, six women die from domestic violence. The percentage of case reporting is relatively low compared to the actual case estimate.

France shows the challenge of breaking through the stigma and social norms that silence victims. The power of the law is not always balanced by adequate access for victims to report and obtain protection.

4. Australia

Australia uses state and federal level laws to regulate domestic violence, such as *the Family Violence Protection Act in Victoria*. A holistic approach also involves prevention through public education and early intervention. Australia provides support services in the form of hotlines, crisis centres, safe houses, and counselling services. However, data shows that by October 2024 more than 58% of calls to the hotline went unanswered, signaling limited service capacity.

Domestic violence cases are also handled by the family and criminal justice systems with various mediation efforts, but repeated violence is still a problem. Statistical data 23% of women and 7.3% of men experience violence by intimate partners. The absolute number of victims reached more than 3 million adults. The level of support services has not been balanced with the needs of the victims.

Australia faces significant challenges in providing responsive and comprehensive services, despite having legally adopted a progressive approach. There needs to be more investment in service capacity and coordination between sectors.

Domestic Violence Statistics Table by Country (Latest Year)

Country	Total Domestic Violence Victims (People)	Percentage of female victims	Percentage of Male Victims	Cases Related to Sexual Violence	Implementation Notes
England & Wales	2,300,000	69.6%	30.4%	Non-specific data	"Postcode lottery" in law enforcement stalking
Germany	265,942	73%	27%	Non-specific data	New laws, but limited resources
France	144,217	100% (female)	N/A	Height	There is still stigma and low reporting
Australia	3,000,000+ (23% female)	76.7%	23.3%	Combined data	The hotline is not served most calls
Indonesia	34,682 (recorded cases)	90%	10%	15,621 cases of sexual violence	Large gap between real and reported cases

Conclusion

Based on the analysis carried out, it can be concluded:

1. The position of domestic violence (KDRT) in the Indonesian legal framework shows a fundamental difference in the approach taken by three main legal instruments, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), the Criminal Code (KUHP), and the Criminal Procedure Code (KUHAP). Normatively and substantively, the PKDRT Law provides the highest and most progressive degree of legal protection for victims, because it adopts a *victim-centered* paradigm that views victims as subjects who have the right to protection, restoration, and justice. This law not only regulates criminal sanctions against perpetrators, but also formulates a comprehensive protection mechanism, including emergency protection orders, psychological assistance, legal assistance, and access to social services and rehabilitation.

In contrast, the Criminal Code and the Criminal Code are still based on the classic *offender-oriented criminal law paradigm*, placing the victim only as a complainant or witness in the judicial process without a guarantee of physical, psychological, or social recovery. The Criminal Code does not explicitly recognize power relations and the specific dynamics of domestic violence, so it tends to ignore the structural context that exacerbates the vulnerability of victims. Meanwhile, the Criminal Procedure Code does not provide special protection instruments for victims during the legal process, thus opening up space for revitalization. Within the framework of a patriarchal culture that is still dominant in many communities, this lack of protection often results in victims experiencing social pressure, intimidation, or even coercion to retract reports.

Although normatively the PKDRT Law has shifted the position of domestic violence from a private issue to a public domain regulated and protected by the state, implementation challenges are still significant. These obstacles include limited understanding and sensitivity of law enforcement officials to the principles of victim protection, lack of adequate protection facilities, weak coordination between related agencies, and social resistance to domestic violence reporting. Empirical findings show that the use of protection orders is still very limited, and victims often stop legal proceedings due to pressure from the social and family environment. This condition shows that there is a wide gap between progressive legal norms and implementation practices in the field.

Thus, although the PKDRT Law legally provides a stronger foundation than the Criminal Code and the Criminal Code in dealing with domestic violence, substantive justice for victims can only be realized if accompanied by implementive reforms that touch structural, cultural, and institutional aspects. This includes increasing the capacity of the apparatus, expanding access to protection services, changing discriminatory social norms, and strengthening the supervision mechanism for the implementation of the PKDRT Law. Without a comprehensive overhaul, progressively designed legal protections will remain a textually strong legal instrument, but weak in the reality of its enforcement.

2. Indonesian society's perspective on Domestic Violence (KDRT) is historically and sociologically heavily influenced by social constructions formed through religious customs and interpretations that place men as the center of authority in the household structure. In the context of a deep-rooted patriarchal culture, the position of men, especially husbands, is often legitimized as the holder of absolute power over the family, while women are placed in subordinate positions. Consequently, acts of violence against the wife, both physical and psychological, are often not seen as a violation of the law or morals, but are considered part of a legitimate "education" or "discipline" within the prevailing social norms.

Furthermore, conservative religious interpretations are often used as an instrument of legitimacy against unequal power relations, where certain verses or teachings are interpreted selectively to justify male dominance and the absolute obedience of the wife. This normalization process has serious implications for low public awareness of the rights of victims of domestic violence and hinders the courage of victims to report or seek legal protection. As a result, although national laws, especially through Law No. 23 of 2004 on the Elimination of Domestic Violence, have provided a comprehensive framework of protection, cultural resistance to the application of positive laws remains high.

In practice, the settlement of domestic violence cases in many regions still tends to be carried out through custom-based informal mechanisms and mediation of religious leaders, who often do not side with the victim, and even encourage victims to "give in" in order to maintain family harmony or the good name of the community. This approach, although considered to maintain family values, has the potential to ignore the principle of substantive justice and perpetuate the cycle of violence. This condition confirms that efforts to combat domestic violence in Indonesia cannot only depend on the strength of legal instruments, no matter how progressive, but also require a profound cultural transformation. This transformation must be carried out through critical education based on gender equality, empowerment of victims to have social and economic bargaining power, and reinterpretation of religious and customary values that are in line with the principles of justice, non-discrimination, and human rights. Only with a combination of legal reform and simultaneous cultural change can the ideals of the elimination of domestic violence and the protection of victims be effectively realized in social practices and legal systems.

3. Deconstruction of the norms in Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law) reveals that although textually it appears progressive, the law is still full of hidden patriarchal biases. Provisions that encourage mediation and resolution of violence in the private sphere of the household show that the law is often not entirely in favor of the victim, but rather maintains a social structure that normalizes male dominance in the family.

Through Derrida's hermeneutical-deconstructive approach, legal norms are shown to harbor an internal contradiction between the protection of victims and the preservation of the value of "family harmony", which can ensnare the victim in a recurring cycle of violence. The concept of *différance* shows that the legal subject in the case of domestic violence is not a single entity, but is present in the context of complex power relations, involving gender, economic, cultural, and legal factors. Therefore, legal interpretations that assume neutrality become problematic and cause substantive injustice. Komnas Perempuan statistics show that 64% of domestic violence cases are still resolved through mediation, which in many cases leads to impunity for perpetrators and repeated violence. This inequality is exacerbated by

the low representation of women in the judiciary, with only 30% of female judges in courts of first instance handling cases of gender-based violence.² The Domestic Violence Law is not yet fully aligned with international principles such as CEDAW, which emphasizes the elimination of violence against women as part of human rights enforcement.

Thus, the deconstructive approach highlights that law is not just a neutral normative text, but an ideological arena that reflects and reproduces certain power relations. In this case, domestic violence law must be critically reinterpreted to pave the way to substantive justice in favor of the victim.

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