

## ELIMINATING DOMESTIC VIOLENCE FROM THE PERSPECTIVE OF THE PRINCIPLE OF BALANCE

**Nemos Muhadar**

Faculty of Law, Universitas Katolik Indonesia St. Paulus, Makasar, Indonesia  
nemos@gmail.com

Received 20 Sep 2025 • Revised 25 Oct 2025 • Published 25 Nov 2025

### Abstract

This dissertation is entitled "The Elimination of Domestic Violence According to the Perspective of the Principle of Balance." Domestic violence (KDRT) fundamentally violates the goals of marriage—to form a happy, perpetual, and harmonious family—and constitutes a gross violation of human rights. Despite the existence of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), the prevalence and complexity of domestic violence cases continue to rise, urging a philosophical and doctrinal re-evaluation of the current legal framework. This study addresses two pivotal legal issues: (1) the underlying philosophy of eliminating domestic violence from the perspective of the Principle of Balance, and (2) the necessary reformulation of the arrangement for eliminating domestic violence based on this principle. The research method is normative legal research using conceptual, statutory, case, and comparative approaches. The current UU PKDRT criminal sanctions are limited to imprisonment and fines. This limitation results in an imbalance, particularly when a victim (eg, a wife) seeks both justice for the abuse and the preservation of her family unit, a core objective explicitly stated in the Law. This study concludes that the Principle of Balance, rooted in monodualistic justice and aligned with Restorative Justice, necessitates the accommodation of alternative criminal sanctions (such as supervision or social work) for certain types of domestic violence. This reformulation is essential for bridging the gap between retributive punishment and the ultimate goal of maintaining a harmonious and prosperous household (*ius constituendum*).

**Keywords:** Elimination, Domestic Violence, Principle of Balance, Alternative Sanctions, Restorative Justice

## INTRODUCTION

The family is the smallest social unit that plays a major role in determining the social and personal development of its members. In the context of Indonesian law, the purpose of marriage, as mandated by Law Number 1 of 1974, is to establish a happy, eternal, and everlasting family based on the One Almighty God. Achieving this goal requires husband and wife to love, respect, be faithful, and protect each other. Therefore, domestic violence (KDRT) is the fundamental antithesis of this goal, making it a serious violation of the promise of marriage and the most fundamental human rights (HAM). Domestic violence not only damages the physical and psychological well-being of the victim, but also destroys the moral and economic foundations of the family, and has a far-reaching impact on the development of children who witness the violence. Given that domestic violence occurs in the domestic sphere, which should be the safest place, this crime often has a much deeper and more layered psychological impact than other common crimes.

Responding to this urgency, the state has enacted Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT). This law is a historical milestone that successfully shifted a private (domestic) problem into a public one, placing domestic violence as a criminal act that must be handled by the state. This shift demonstrates the state's recognition of the human rights dimension and public interest in every case of domestic violence. The main objectives of the PKDRT Law are to: (1) prevent all forms of violence; (2) protect victims; (3) prosecute perpetrators; and (4) most importantly, maintain the integrity of a harmonious and prosperous household. This fourth point distinguishes the PKDRT Law from general criminal law, making it a criminal law that is full of a restorative spirit.

However, even though the Domestic Violence Law has been in effect for more than two decades, data, as recorded by the National Commission on Violence Against Women, shows that domestic violence remains a persistent and complex problem, with the number of complaints continuing to rise. The increase in recorded cases, particularly in the realm of domestic/personal violence, indicates a gap or disharmony in the implementation and doctrine of the law. This ineffectiveness lies in the fundamental tension between the retributive function (revenge) represented by exclusive criminal sanctions and the restorative function (recovery) mandated by the purpose of the Domestic Violence Law, namely maintaining the integrity of the household.

This tension is particularly evident in the criminal sanctions provisions in the Domestic Violence Law (Articles 44 and 45), which exclusively include imprisonment or fines. This limitation of sanctions creates significant legal and social dilemmas in judicial practice. For victims, especially wives, who, despite experiencing violence, still want to maintain their household for the sake of their children, economic stability, or other sociological reasons, the threat of imprisonment for the husband as the perpetrator can actually worsen the family situation and undermine the integrity that is sought to be maintained. Imprisonment, in this context, rather than providing a just and restorative solution, often functions as a purely retributive sanction, contrary to the spirit of the Principle of Balance that should be the spirit of Indonesian criminal law. This failure to achieve a balance between prosecution and protection of family integrity justifies the need for a re-evaluation of the criminal law doctrine used.

Based on the background of the problem above, this dissertation is entitled "Elimination of Domestic Violence According to the Perspective of the Principle of Balance" and asks two main research questions: (1) How can the philosophical basis of the principle of balance in national criminal law be implemented for the elimination of domestic violence, by considering the goal of maintaining the integrity of the household? and (2) How to formulate reforms to the regulation of the elimination of domestic violence so that it is in line with the perspective of the principle of balance, especially to accommodate the goal of household integrity (*ius constituendum*) through the integration of alternative criminal sanctions?

This study aims to analyze and identify the philosophical basis for the principle of balance and to formulate a reformulation of the regulation on the elimination of domestic violence to align with the perspective of the principle of balance, particularly to accommodate the goal of household integrity. Thus, it is hoped that a more humane, restorative, and balanced model of domestic violence criminal law enforcement can be proposed, in line with the demands of national criminal law reform.

## RESEARCH METHOD

This type of research is doctrinal legal research. Normative legal research focuses on the study of positive legal norms, legal principles, and legal doctrine to generate new arguments, theories, or concepts as prescriptions for resolving legal problems. This method was chosen because the main problem lies in the lack of balanced sanction norms and the philosophical disharmony between the objectives of the Domestic Violence Law and its implementation, which can only be addressed through doctrinal legal research.

The approaches used include

1. Conceptual Approach (Conceptual Approach): Used to analyze and build a theoretical framework of the Principle of Balance in criminal law (such as the balance between *zweck* or goals and *vergeltung* or retribution) as well as the Restorative Justice doctrine of criminal law experts such as Muladi and Soedarto. This approach aims to formulate the concept of monodualistic justice as a philosophical basis for the punishment of domestic violence.
2. Legislative Approach (Statute Approach): Conducted by in-depth review of the Domestic Violence Law, its amendments, and specifically examining the normative synchronization between the Domestic Violence Law and the new Criminal Code (KUHP) (Law No. 1 of 2023). The review focuses on the chapter on the Purpose of Punishment (Article 51 of the New Criminal Code) and the types of alternative criminal sanctions accommodated by the New Criminal Code.
3. Case Approach (Case Approach): Used to analyze court decisions (for example, at the Makassar District Court) related to domestic violence that is a complaint offense. Case analysis aims to capture the empirical dilemmas faced by judges and victims in deciding between retributive punishment (imprisonment) and demands for family integrity, thereby providing practical justification for the reformulation of sanctions.
4. Comparative Approach (Comparative Approach): This is done by comparing domestic violence regulations, particularly sanction and restorative mechanisms, in Malaysia (Domestic Violence Act 1994) and Singapore (Community-Based Sentences). This comparison aims to obtain a solution model that has been tested in the Southeast Asian context that emphasizes mandatory behavioral interventions and community-based sanctions, which is relevant to be adapted as *ius constituendum* in Indonesia.

The legal materials used include primary legal materials (laws), secondary (literature, journals), and tertiary (legal dictionaries), which are analyzed using interpretation, systematization, and legal construction techniques.

## RESULTS AND DISCUSSION

### A. Philosophical Basis of the Principle of Balance and Restorative Justice in the Elimination of Domestic Violence

The application of the Principle of Balance in the eradication of domestic violence is rooted in the monodualistic philosophy of balance that is characteristic of Indonesian criminal law. This principle rejects extreme punishments, whether focused solely on retribution (retaliation) or solely on the goal (utilitarianism). In the context of domestic violence, the Principle of Balance demands that the law explicitly accommodate the balance between the interests of protecting society (prosecuting domestic violence crimes) and the interests of protecting the family unit (the perpetrator's human right to be rehabilitated and the victim/child's right to economic and psychological stability). This philosophy places substantive justice, namely justice that is truly felt and restorative, above formal justice.

These philosophical implications encourage the implementation of Restorative Justice as the primary paradigm for handling domestic violence, particularly for cases of complaint offenses and minor violence. Restorative justice views domestic violence not merely as a violation of state norms that warrants punishment, but primarily as a breakdown in interpersonal and social relationships that requires repair. This concept emphasizes three main pillars:

1. Creating Responsibility for the Actor: Punishment must force the perpetrator to face the consequences of his actions responsibly, which means participating in a mandatory rehabilitation program.
2. Holistic Recovery of Victims: Recovery includes not only financial compensation but also psychological and social recovery, as well as ensuring the family's economic stability. Victims must have a dominant voice in determining the form of sanctions that best restore the integrity of their household.
3. Reconciliation and Reintegration: The ultimate goal is to restore social balance through reconciliation (if safe) and the reintegration of reformed offenders into society and their families. Imprisonment, inherently isolating, is diametrically opposed to this goal of reintegration.

Furthermore, the Principle of Balance must be viewed within the context of multi-layered human rights protection. Unbalanced sanctions, such as imprisonment that causes economic and social harm to victims and children, can be interpreted as an indirect violation of victims' economic rights and children's rights to development, thus creating a chain of injustices opposed by the Principle of Balance. Therefore, domestic violence criminal law must transform into an interventional-therapeutic law, rather than merely retributive-isolative.

## **B. Disharmony in Criminal Sanction Regulations: Analysis of Legal Practices and Limitations**

The Domestic Violence Law's limited sanctions to imprisonment and/or fines have created a significant gap in judicial practice. An analysis of law enforcement practices reveals the difficulties judges face in deciding domestic violence cases involving complaints, where victims often face a dilemma of injustice.

### **1. Failure to Implement Ultimum Remedium**

In judicial practice, the lack of alternative sanctions with sufficient coercive and constructive power forces judges to impose prison sentences, even for domestic violence cases that could be resolved through a remedial mechanism. Imprisonment, which should be the ultimum remedium (last resort) in minor domestic violence cases, has instead shifted to primum remedium (first resort) because judges are structurally prevented from implementing truly restorative and non-isolating sanctions. This situation demonstrates a lack of functional norms amidst the increasingly strong spirit of Restorative Justice in the Indonesian criminal legal system.

### **2. The Victim's Dilemma and Limited Discretion**

An analysis of court decisions, such as those recorded in the Makassar District Court's rulings, which frequently cite economic concerns or the well-being of children, demonstrates the judge's forced discretion. Judges are forced to impose the lightest possible sentences to avoid marital breakdown, but these light sanctions are ineffective in providing structured remedial solutions. Meanwhile, for victims, their rights as complainants in a complaint-based offense are a double-edged sword. Choosing retributive justice (imprisonment of the husband) means accepting financial (loss of income) and social (family stigma) consequences, while forgiving the perpetrator entirely without remedial sanctions does not guarantee a change in the perpetrator's behavior, neither of which reflects balanced justice.

### **3. Socio-Economic Impact of Retributive Sanctions**

Imprisonment has a destructive ripple effect in the context of domestic violence. Imprisonment directly cuts off a family's economic access, transforming the victim's status from an abused wife to a forced sole breadwinner, and leaving children without a parent, thus undermining the very foundation of the family that the Domestic Violence Law aims to protect. Furthermore, prison facilities often lack adequate behavioral rehabilitation programs (e.g., anger management or counseling). This means that incarcerated perpetrators tend to return to society and possibly to their families without fundamental changes in their violent behavior, thus maintaining a high potential for recidivism. The principle of balance demands that sanctions be both therapeutic and preventative in the long term.

## **C. Reformulation of Criminal Sanction Regulations Based on the Principle of Balance: *Ius Constituendum***

Sanctions in the Domestic Violence Law must be updated immediately through revision or synchronization with the new Criminal Code (KUHP) (Law No. 1 of 2023). The new KUHP has adopted the principle of holistic balance, including the objectives of punishment, including development, conflict resolution, and restoration of balance (Article 51). This reformulation requires the integration of alternative criminal sanctions that are corrective and restorative.

### **1. Alternative Sanction Priority as Premium Remedium**

For domestic violence involving complaints (minor physical and psychological violence), criminal supervision and community service must be the primary sanctions considered by judges, replacing imprisonment. This aligns with the principle of restorative justice, which mandates sanctions to compel perpetrators to take responsibility and change, without disrupting the integrity of the household.

- a. **Therapeutic-Based Probation:** This sentence must be accompanied by specific, binding obligations oriented toward behavioral change. These obligations must include attending a mandatory counseling program (minimum six months) on anger management, assertive communication, or family counseling under the supervision of a licensed therapist. Strict supervision must be carried out by the Correctional Center (Bapas) in coordination with a psychological or social institution. Failure to comply with these requirements should automatically convert the supervision sentence to imprisonment.
- b. **Community Service Penalties Associated with Restitution:** Community service may be required in conjunction with restitution to the victim and/or family. Community service (e.g., working in a shelter or social service) provides a non-prison deterrent and instills social responsibility, while restitution ensures financial recovery, fulfilling the perpetrator's responsibility without severing the family's economic ties.

## 2. Lessons from Other Jurisdictions (Southeast Asia):

Practices in other regions reinforce the need for this reformulation. Malaysia's Domestic Violence Act 1994 and Singapore's Community-Based Sentences demonstrate the effectiveness of non-imprisonment sanctions. Their criminal justice systems focus not only on retribution but also include binding Protection Orders and mandatory counseling as an integral part of the sentence. Indonesian courts should be given the same authority to issue legally binding mandatory behavioral intervention orders, ensuring that domestic violence law enforcement is truly corrective and preventative, and ensuring that the goal of maintaining family integrity is achieved, in accordance with the Principle of Balance.

## CONCLUSION

Based on the discussion above, the author can draw several conclusions as follows:

That by observing the forms and patterns of business practices that take place in tourist villages in Indonesia, by observing 2 (two) objects of observation, namely Bontang Kuala Tourism Village in Bontang City, and Kampoeng Wisata Putak Tourism Village in Kutai Kartanegara Regency, it can be concluded that most of the business activity patterns in this tourist village area are carried out on a micro, small, medium scale, with business management that is carried out informally. That the determination of these two tourist village objects in the Tourism Master Plan in their respective regional regulations is because the potential for tourist attractions has existed beforehand and not because it is caused by infrastructure development that is entirely initiated by the local government.

That in the implementation of this research, no major and significant legal issues were found that required careful handling by local government officials or law enforcement authorities, however, there were at least several things that were related to the law that basically needed to be paid attention to and further improved in the future in the management of tourist villages in their respective places, namely regarding the synergy between local governments and local communities of tourist villages that needed to be further improved, legal understanding among local business actors that needed to be further improved, and issues of safety standards and tourist insurance that needed to be given attention.

That in an effort to strengthen the role of village communities in managing tourist villages, it is impossible to separate it from the important position of local government in planning, building and ensuring the sustainability of a tourist village, but on the other hand it is also necessary to avoid conditions that...*over-regulation* and the dominance of bureaucracy in the management of tourist villages which can result in local communities in a tourist village area losing their autonomy and creativity in developing tourism potential in their own residential areas, for this reason a business regulation model is offered where there is an affirmation that the local government is a mandatory partner in a tourist village area, which is intended to be in a position as a companion and supervisor in the principle *Community-Led, Government-Supported*, as well as the principle of paying attention to the results of community deliberations in every important decision-making related to the management of tourist villages.

The reorientation of domestic violence law enforcement toward the paradigm of Restorative Justice represents a crucial step in realizing substantive justice based on the Principle of Balance. Domestic violence must no longer be approached solely as a criminal act demanding retribution, but as a multidimensional problem that disrupts social harmony, family integrity, and human dignity. Therefore, criminal sanctions must be transformed from punitive and isolative into therapeutic and interventional mechanisms that ensure accountability, victim recovery, and social reintegration.

The existing legal framework, which heavily relies on imprisonment and fines, has proven inadequate in addressing the complex socio-psychological dynamics of domestic violence. Judges are often constrained by the lack of alternative sanctions, leading to the overuse of imprisonment that paradoxically harms victims and children. Reformulating criminal sanctions under the new Criminal Code (Law No. 1 of 2023) should thus prioritize community-based and rehabilitative sanctions such as mandatory counseling, probation with behavioral obligations, and community service linked to restitution.

Learning from the practices of neighboring countries such as Malaysia and Singapore, Indonesia must establish a more holistic and human-centered justice system. A system that not only punishes but also heals ensuring that perpetrators are corrected, victims are empowered, and families are preserved. In this spirit, domestic violence law enforcement must evolve into an instrument of restoration and balance, fulfilling the true purpose of justice in a civilized and compassionate society.

## REFERENCES

- Angelita Fuji Lestari, Muhadar, & Audyna Mayasari Muin. (2022). THE EFFECTIVENESS OF LAW NUMBER 12 YEAR 1951 AGAINST THE USE OF FIREARMS IN MAKASSAR FROM THE SOCIOLOGY OF LAW PERSPECTIVE. *Awang Long Law Review*, 5(1), 195-204. <https://doi.org/10.56301/awl.v5i1.550>
- Haeranah, Muhadar, Hijrah Adhyanti Mirzana, Nur Azisa, & Andi Muhammad Lutfi Nurdin. (2022). REVIEW OF CRIMINAL PROVISIONS OF FAKE NEWS (HOAX) BASED ON LEGISLATION IN INDONESIA. *Awang Long Law Review*, 5(1), 94-103. <https://doi.org/10.56301/awl.v5i1.538>
- Komisi Nasional Anti Kekerasan Terhadap Perempuan. (2022). *Catatan Tahunan Komnas Perempuan Tahun 2022*. Komnas Perempuan.
- Komisi Nasional Anti Kekerasan Terhadap Perempuan. (2022). *Lembar fakta dan poin kunci Catatan Tahunan Komnas Perempuan Tahun 2022*. <https://www.komnasperempuan.go.id> (Diakses 6 Desember 2022)
- Muladi. (1985). *Lembaga pidana bersyarat*. Alumnus.
- Muhadar. (2018). CRIMINAL JUSTICE SYSTEM. *Awang Long Law Review*, 1(1), 6-14. <https://doi.org/10.56301/awl.v1i1.15>
- Prayitno, K. P. (2012). Restorative justice untuk peradilan di Indonesia (perspektif yuridis filosofis dalam penegakan hukum *in concreto*). *Jurnal Dinamika Hukum*, 12(3).
- Putusan Pengadilan Negeri Makassar Nomor 451/Pid.Sus/2022.
- Putusan Pengadilan Negeri Makassar Nomor 716/Pid.Sus/2022.
- Putusan Pengadilan Negeri Makassar Nomor 869/Pid.Sus/2022.
- Randawar, D. K., & Jayabalan, S. (2018). Definisi keganasan rumah tangga di Malaysia: Kajian perbandingan. *Akademika: Journal of Southeast Asia Social Science and Humanities*, 88(3).
- Soedarto. (1990). *Hukum pidana I*. Yayasan Soedarto.
- Sofyan, H. (2023). Restoratif justice KDRT dan luka yang sulit hilang. <https://www.komnasperempuan.go.id> (Diakses 24 Agustus 2023)
- Thamrin, H., Nursanthy, A. T. R., & Thamrin, M. A. (2025). LAW ENFORCEMENT AGAINST ILLEGAL MINERS. *Awang Long Law Review*, 7(2), 503-507. <https://doi.org/10.56301/awl.v7i2.1737>
- Thamrin, H., Aji Titin Roswitha Nursanthy, Ribeiro, L., & Afriani, L. (2023). GOVERNMENT CONSISTENCY IN ENFORCEMENT OF REGULATIONS REGARDING MINERAL AND COAL MINING RELATED TO MINE RECLAMATION. *Awang Long Law Review*, 5(2), 494-500. <https://doi.org/10.56301/awl.v5i2.764>
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan.
- Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.
- Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.