



## **Penal Sanctions for Psychological Domestic Violence under Utilitarianism Theory: A New Sentencing Paradigm in the 2023 Indonesian Criminal Code**

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### **Abstract**

Article 45 of the Law on the Elimination of Domestic Violence (i.e., UU PKDRT) stipulates the penal sanctions for the criminal act of psychological violence for a maximum imprisonment of four months for minor offenses and up to three years for serious offenses. Custodial sentences, however, are deemed less effective, as they do not fully provide benefits to the parties involved, i.e., the victim, the perpetrator, the family, and society at large. On the other hand, the 2023 Indonesian Criminal Code (i.e., KUHP) has introduced a new paradigm of sentencing that puts emphasis on restorative and rehabilitative justice, shifting from a solely punitive orientation to one that also considers victim recovery and offender rehabilitation. This current study aims to examine the application of the sentencing system under the 2023 KUHP from the perspective of Jeremy Bentham's utilitarianism theory. The study employed a normative juridical method, combining statutory, conceptual, and case-based approaches. Primary legal materials comprised the UU PKDRT and 2023 KUHP, whereas the conceptual framework used was Bentham's utilitarianism. Additionally, interviews were carried out with three judges from the court of first instance. The findings of the study indicate that alternative sanctions, e.g., rehabilitation, probation, or community service, are more effective in minimizing recidivism and encouraging social balance. Judges also play a key role in applying more proportionate sentencing, i.e., through the mechanism of *rechterlijk pardon* (i.e., judicial pardon) in certain cases that meet legal and humanitarian considerations. It is hoped that through this approach, the new sentencing system can be more justice-oriented, provide better protection for victims, and become a more effective means of preventing psychological violence in domestic settings.

**Keywords:** 2023 Indonesian Criminal Code, Domestic Violence, Psychological Abuse, Sentencing, Utilitarianism

### **Abstrak**

*Pasal 45 Undang-Undang Penghapusan Kekerasan dalam Rumah Tangga (UU PKDRT) mengatur sanksi pidana terhadap tindak kekerasan psikis, yakni pidana penjara paling lama empat bulan untuk pelanggaran ringan dan hingga tiga tahun untuk pelanggaran berat. Namun, pidana penjara dinilai kurang efektif karena tidak sepenuhnya memberikan manfaat bagi para pihak yang terlibat, yaitu korban, pelaku, keluarga, dan masyarakat secara umum. Sebaliknya, Kitab Undang-Undang Hukum Pidana (KUHP) Tahun 2023 memperkenalkan paradigma baru dalam sistem pidana yang menekankan pada keadilan restoratif dan rehabilitatif. Pendekatan ini bergeser dari orientasi yang semata-mata bersifat represif menuju pendekatan yang juga mempertimbangkan pemulihan korban dan rehabilitasi pelaku. Penelitian ini bertujuan untuk mengkaji penerapan sistem pidana dalam KUHP 2023 dari perspektif teori utilitarianisme Jeremy Bentham. Metode yang digunakan adalah yuridis normatif dengan menggabungkan pendekatan perundang-undangan, konseptual, dan studi kasus. Bahan hukum primer terdiri dari UU PKDRT dan KUHP 2023, sementara kerangka konseptual yang digunakan adalah teori utilitarianisme Bentham. Selain itu, wawancara dilakukan dengan tiga orang hakim dari pengadilan tingkat pertama. Hasil penelitian menunjukkan bahwa sanksi alternatif, seperti rehabilitasi, masa percobaan, atau kerja sosial, lebih efektif dalam menekan angka residivisme dan mendorong keseimbangan sosial. Hakim juga memiliki peran penting dalam menerapkan pidana yang lebih proporsional, salah satunya melalui mekanisme rechterlijk pardon (pengampunan hakim) dalam kasus-kasus tertentu yang memenuhi pertimbangan hukum dan kemanusiaan. Melalui pendekatan ini, diharapkan sistem pidana yang baru dapat lebih berorientasi pada keadilan, memberikan perlindungan yang lebih baik bagi korban, serta menjadi cara yang lebih efektif dalam mencegah kekerasan psikis dalam lingkup rumah tangga.*

**Kata kunci:** KUHP 2023, Kekerasan dalam Rumah Tangga, Kekerasan Psikis, Pidana, Utilitarianisme

### **Introduction**

Psychological violence is a prevalent form of domestic abuse that often remains undetected and unreported. Although it may not always leave visible physical scars, its impact on a victim's mental condition can be quite severe. As stated in *Medical News Today*, "Emotional abuse can affect people in different ways. It can have several long- and short-term effects. These might be physical, psychological, or both."<sup>1</sup> The effects of psychological abuse can also threaten fundamental human needs such as belonging, self-esteem, control, and a sense of

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<sup>1</sup>Jenna Fletcher and Beth Sissons, "What are the effects of emotional abuse?," *MedicalNewsToday*, 23 Mei 2023, Emotional abuse: The short-and long-term effects (medicalnewstoday.com).

meaningful existence.<sup>2</sup> This form of abuse also has a systemic impact on the quality of the relationship with a partner,<sup>3</sup> reduces a person's ability to parent effectively, hinders self-actualization in terms of earning a livelihood, increases the potential for household conflict, and even leads to divorce.<sup>4</sup> Victims of psychological violence may suffer cognitive disturbances, develop conditions like schizophrenia, or experience suicidal thoughts.<sup>5</sup> In addition to its impact on mental health, psychological abuse also causes physical suffering, including sleep disorders, eating disturbances, sexual dysfunction,<sup>6</sup> and mild bodily dysfunctions (e.g., headaches or digestive issues without medical explanation).<sup>7</sup>

Panggabean et al. found that domestic violence, including psychological abuse, ranked as the second most prevalent form of violence in Indonesia.<sup>8</sup> The high incidence of psychological violence is evident in the number of reports received by the National Commission on Violence Against Women (Komnas Perempuan). According to data from Komnas Perempuan and its partners in the 2024 Annual Notes (CATAHU), the most frequently reported cases by type of violence were sexual violence (26.94%), followed by psychological violence (26.94%), physical violence (26.78%), and economic violence (9.84%). Compared to 2023, there has been a noticeable shift in trends, wherein psychological violence previously accounted for the highest number of reports, sexual violence has now emerged as the most frequently reported category. In particular, the partner data from CATAHU records showed that sexual violence topped the list with 17,305 reports, followed by physical violence with 12,626 cases, psychological violence with 11,475 cases, and economic violence with 4,565 cases. In addition, data from Komnas Perempuan indicated that psychological violence still dominated with 3,660 reports, followed by sexual violence (3,166 cases), physical violence (2,418 cases), and economic

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<sup>2</sup>Amy Holtzworth-Munroe et al., "Intimate Partner Violence and Family Dispute Resolution: 1-Year Follow-Up Findings From a Randomized Controlled Trial Comparing Shuttle Mediation, Videoconferencing Mediation, and Litigation," *Psychology, Public Policy, and Law* 27, no. 4 (2021).

<sup>3</sup>Carissa Nabila Putri and Atika Dian Ariana, "Kecemasan Diri Dewasa Awal Yang Menjalani Hubungan Romantis Saat Mendapat Perilaku Silent Treatment," *Buletin Riset Psikologi Dan Kesehatan Mental (BRPKM)* 2, no. 1 (2022).

<sup>4</sup>Uswatun Hasanah Apriyanti Apriyanti, "Nusyuz of Husband and Wife in the Masalahah Perspective," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (2025).

<sup>5</sup>Nur Faizah, "The Spiritualization of Domestic Violence in the Digital Era: Examining the Cathartic Role of Religious Institutions in Empowering Victims," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 2 (2023), p. 251–267.

<sup>6</sup>La Gurusi et al., "Islamic Legal Perspective on Data of Child Victims of Sexual Violence: A Case Study of the Indonesia's Court," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (2024), p. 456.

<sup>7</sup>Lucy C. Potter et al., "Categories and Health Impacts of Intimate Partner Violence in the World Health Organization Multi-Country Study on Women's Health and Domestic Violence," *International Journal of Epidemiology* 50, no. 2 (2021).

<sup>8</sup>Yoan R. N. Panggabean, Sutarto Wijono, and Arianti Ina Restiani Hunga, "Penerapan Expressive Writing Therapy Dalam Pemulihan Post Traumatic Stress Disorder Pada Perempuan Korban Kekerasan Masa Pacaran (Studi Kasus Di Kota Salatiga)," *Molucca Medica*, 2020..

violence (966 cases).<sup>9</sup> These figures suggest that psychological violence has one of the highest probabilities of occurrence among all types of domestic violence.

Forms of psychological violence can include verbal abuse, such as insults, threats, and yelling, as well as non-verbal abuse, such as coercive control<sup>10</sup> and the silent treatment.<sup>11</sup> However, Article 7 of the Indonesian Law on the Elimination of Domestic Violence (UU PKDRT), which specifically addresses psychological violence as a criminal act, does not clearly define what specific actions are categorized under psychological violence.<sup>12</sup>

One main issue in dealing with psychological abuse as a criminal offense is the leniency of penalties, which often fail to provide a meaningful deterrent. In addition, criminal prosecution can further strain family relationships and frequently results in divorce, which complicates efforts to achieve justice while preserving family harmony.<sup>13</sup> Article 45 of the UU PKDRT stipulates that if psychological abuse results in illness or prevents the victim from working, the perpetrator may face a maximum prison sentence of three years or a fine of up to IDR 9,000,000. If no such harm occurs, the maximum penalty is four months' imprisonment or a fine of up to IDR 3,000,000.

Several court rulings related to psychological violence demonstrate the variability in sentencing for such offenses. In the Muara Enim District Court Decision No. 88/Pid.B/2021/PN Mre, the defendant received a sentence of 1 year and 10 months for issuing threats with a weapon. Similarly, in the Bale Bandung District Court Decision No. 788/Pid.Sus/2021/PN Blb, the court imposed a 1-year sentence for making threats using a sharp weapon and a (fake) firearm. In the Luwuk District Court Decision No. 162/Pid.Sus/2020/PN Lwk, the defendant was sentenced to 10 months for issuing threats, while the Medan High Court Decision No. 258/PID.SUS/2023/PT MDN resulted in a 3-month sentence. Finally, the Bandung High Court Decision No. 320/PID.SUS/2020/PT BDG imposed a prison sentence of 2 months.

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<sup>9</sup>Catahu, "Menata Data, Menajamkan Arah: Refleksi Pendokumentasian Dan Tren Kasus Kekerasan Terhadap Perempuan 2024" (Jakarta: Komisi Nasional Anti Kekerasan Terhadap Perempuan, 7 Maret 2025).

<sup>10</sup>Emma Katz, Anna Nikupeteri, and Merja Laitinen, "When Coercive Control Continues to Harm Children: Post-Separation Fathering, Stalking and Domestic Violence," *Child Abuse Review* 29, no. 4 (2020).

<sup>11</sup>Cindy Alfionika, "Silent Treatment: Antara Hukuman Psikologis Dan Kekerasan Emosional," *Komunikasi dan Penyiaran Islam IAIN Kediri*, 30 April 2021, <https://kpi.iainkediri.ac.id/silent-treatment-antara-hukuman-psikologis-dan-kekerasan-emosional/>.

<sup>12</sup>M. Tahir Maloko et al., "Somp Tanah in Makassar Bugis Customary Marriages: Legal, Religious, and Cultural Perspectives," *Jurnal Ilmiah Peuradeun* 12, no. 3 (2024), p. 1213.

<sup>13</sup>Ani Agus Puspawati, Bambang Utoyo Sutiyo, and Yudha Suchmasasi, "Analysis of the Implementation of Protection for Victims of Domestic Violence in Indonesia," *Journal of Public Administration Studies* 7, no. 2 (2022); Tushar Dakua, Margubur Rahaman, and K. C. Das, "An Analysis of the Spatial and Temporal Variations of Human Trafficking in India," *Cogent Social Sciences* 10, no. 1 (2023).

The goals of modern justice, which aim to balance the interests of all parties involved, are not always in line with criminal punishment that focuses solely on retribution against the perpetrator. In cases of psychological abuse within the household, imprisonment may undermine opportunities for reconciliation or the restoration of family relationships. As a result, after serving their sentence, the perpetrator may continue to exhibit the same or even worse behavioral patterns. This lack of change perpetuates the cycle of domestic violence and can have a domino effect on children. Children who witness violent behavior are more likely to either imitate such actions or, conversely, grow up with low self-esteem and withdraw from social life.<sup>14</sup>

Indonesia's penal paradigm has greatly shifted since Law No. 1 of 2023 on the Criminal Code (KUHP) came into effect. Sentencing is now incorporating corrective and rehabilitative components aside from punishment. This approach aligns with Jeremy Bentham's utilitarian theory, which asserts that the law should aim to produce the greatest possible benefit upon society.<sup>15</sup> According to this perspective, criminal sanctions ought to be designed to not only punish offenders but also to benefit victims, perpetrators and their families, and to deter the recurrence of similar offenses.<sup>16</sup>

However, the current penalties for psychological violence in the household are still restricted to fines and imprisonment; neither the victims nor the offenders are offered treatment or rehabilitation, nor is there any wider assistance for restoring the family.<sup>17</sup> This reflects an outdated, absolutist model of sentencing that is driven solely by retribution. Many domestic violence cases, by their very nature, still possess potential for reconciliation and healing, making the old paradigm increasingly inappropriate.<sup>18</sup>

In light of this background, the study aims to answer the following research questions: (1) How is the new penal paradigm of the 2023 KUHP being implemented in cases of psychological domestic violence? (2) How is Bentham's utilitarian theory

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<sup>14</sup>Wan Yi Chen and Yookyong Lee, "Mother's Exposure to Domestic and Community Violence and Its Association with Child's Behavioral Outcomes," *Journal of Community Psychology* 49, no. 7 (2021).

<sup>15</sup>Safrin Salam et al., "The Concept of 'Austin and Jeremy Bentham' and Its Relevance to the Construction of Indigenous People," *Journal of Transcendental Law* 6, no. 1 (2024), pp. 32–43.

<sup>16</sup>Muzakkir Muzakkir, "Dawn of Justice: Evaluating the Alignment of Women and Children in Aceh's Qanun Jinayat," *Al-Ahkam* 32, no. 2 (2022), p. 131–152.

<sup>17</sup>Mohammad Kosim, Faqihul Muqoddam, and Faidol Mubarak, "Al-'Unfu Fi Al-Tarbiyah Min Mandzûr Al-Tashrî' Al-Indûnîsî Wa Al-Sharî'ah Al-Islâmiyah," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 2 (2022), p. 578–610.

<sup>18</sup>Dedy Sumardi et al., "Transition of Civil Law to Public Law: Integration of Modern Punishment Theory in Criminal Apostasy," *Ahkam: Jurnal Ilmu Syariah* 22, no. 1 (2022), p. V. Tymoshenko, "The Doctrine of the Purpose of Criminal Punishment in Modern European Political and Legal Thought," *Uzhhorod National University Herald. Series: Law*, no. 70 (2022); Henda Hanafy, "Bentham: Punishment and the Utilitarian Use of Persons as Means," *Journal of Bentham Studies* 19, no. 1 (2021).

applied in handling psychological violence within the household? and (3) What role do judges play in implementing this new sentencing paradigm under both utilitarian theory and the 2023 KUHP?

This study employed a normative juridical approach, combining statutory, conceptual, and case-based methods. Data were collected from several sources, including primary legal sources, i.e., UU PKDRT and the 2023 KUHP; secondary sources, i.e., court decisions, Jeremy Bentham's utilitarian theory, scholarly articles that explored psychological violence in domestic contexts, and various theories of punishment; and tertiary data, i.e., interviews with judges from the District and Religious Courts and a mediator from the Religious Court.<sup>19</sup>

Aside from addressing these research questions, this study seeks to provide insight and recommendations for judges in considering more proportional sentencing that benefits not only the victim and the perpetrator, but also the family as a whole. It is expected that sentencing for psychological violence in the household will better advance the welfare of all parties involved by taking a more restorative, humanistic, and utility-based approach.

### **The Basic Concept of Sentencing in Legal Philosophy**

Discussing crime and punishment entails examining the sanctions imposed on individuals (criminal) for committing wrongful acts (crime). The concepts of "crime" and "criminal" are not new; they are deeply rooted in human history and have existed since the earliest civilizations. In fact, from a legal-philosophical perspective, even the divine command for Adam and Eve to descend to Earth may be interpreted as one of the earliest representations of "punishment" in response to a transgression. According to Roeslan Saleh, punishment is a reaction to a criminal act, manifested in the form of suffering deliberately imposed by the state upon the perpetrator. Similarly, R. Soesilo defines punishment as an unpleasant (distressing) experience inflicted by a judge's verdict upon a person who has violated criminal law.<sup>20</sup> From both definitions, punishment involves two main elements: the perpetrator of a criminal act and the state as the authority imposing the punishment. All aspects related to punishment—including the process, types, imposition, and objectives—are encompassed within the study of penitentiary law, or the law concerning sanctions.

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<sup>19</sup>Siti Nurjanah et al., "Mitigating the Digital Age Impact: Collaborative Strategies of State and Religious Institutions for Family Harmony in Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024), p. 713.

<sup>20</sup>Bambang Waluyo, *Pidana dan Pemidanaan* (Jakarta: Sinar Grafika, 2014), p. 9; Aria Zurnetti, Nani Mulyani, and Irsal Habibi, "Prevention of Domestic Violence (KDRT) Through the Adat Criminal Law Approach and Local Wisdom in West Sumatra," in *Challenges of Law and Governance in Indonesia in the Disruptive Era II*, 2021.

Achieving justice and deterring crime are two of sentencing's principal objectives.<sup>21</sup> Justice, the highest and most essential value in a legal system, is generally recognized as the ultimate objective of the law.<sup>22</sup> The Latin maxim "*iustitia fundamentum regnorum*" (justice is the foundation of kingdoms) reinforces the notion that justice serves as the very foundation of governance and the state. This maxim supports the concept that justice is an essential principle for maintaining order, balance, and societal well-being.<sup>23</sup> Justice, in Plato's view, may arise if individuals fulfill their roles and contribute to the common good, guided by moral and philosophical ideals. This view forms the philosophical basis for the formulation of laws.<sup>24</sup>

The concept of justice, however, is abstract, as it is rooted in the realm of *sollen* (what ought to be) while continuing to evolve within the human philosophical imagination.<sup>25</sup> Yet, in spite of its abstract nature, the pursuit of justice is universally desired while it cannot be comprehensively theorized or applied. Realizing justice often requires prioritization and contextual judgment, which vary across individuals and circumstances.<sup>26</sup> In cases of psychological abuse, what is perceived as just by the perpetrator may differ significantly from the victim's sense of justice; for instance, a five-month sentence might seem reasonable to the offender but fail to capture the severity of the victim's suffering. Nevertheless, every law created by the state ultimately aims to serve justice and the public good. Therefore, sentencing for psychological violence in the household must strive to fulfill justice and bring benefit not only to the victim and perpetrator but also to the household and society at large.

The philosophy of punishment provides a philosophical foundation for determining fair and just responses to legal violations. Sentencing is closely linked to the general process of criminal law enforcement and can thus be understood from both functional and normative perspectives.<sup>27</sup> From the functional perspective, sentencing encompasses the entire system of legal rules that operationalize and apply punishment, controlling the way criminal law is enforced specifically to apply sanctions against offenders. The normative perspective, on the other hand, includes ethical and moral considerations when determining punishments that align with the

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<sup>21</sup>Sumardi et al., "Transition of Civil Law to Public Law: Integration of Modern Punishment Theory in Criminal Apostasy."; Kania Dewi Andhika Putri and Ridwan Arifin, "Tinjauan Teoritis Keadilan Dan Kepastian Dalam Hukum Di Indonesia," *Mimbar Yustitia* 2, no. 2 (2018).

<sup>22</sup>Mukhlisin Mukhlisin and Sarip Sarip, "Keadilan Dan Kepastian Hukum: Menyoal Konsep Keadilan Hukum Hans Kelsen Perspektif 'Al-'Adl' Dalam Al-Qur'an," *Media Keadilan: Jurnal Ilmu Hukum* 11, no. 1 (2020).

<sup>23</sup>Hyronimus Rhiti, *Filsafat Hukum* (Yogyakarta: Universitas Atma Jaya, 2011), p. 239.

<sup>24</sup>Rhiti, p. 240-241

<sup>25</sup>Bahder Johan Nasution, "Kajian Filosofis Tentang Konsep Keadilan Dari Pemikiran Klasik Sampai Pemikiran Modern," *Yustisia Jurnal Hukum* 3, no. 2 (2014).

<sup>26</sup>Johan Nasution.

<sup>27</sup>Diah Ratna Sari Hariyanto and I Dewa Gede Dana Sugama, "Efektivitas Pemenuhan Ditengah Ide Pemidanaan Dengan Pendekatan Keadilan Restoratif," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 2 (2021).

ethical principles of justice adhered to in society. As a philosophical foundation, the aim of punishment is to achieve justice according to ethical values and legal principles practised within the community.

The sentencing system is organically part of the broader context of criminal law enforcement, which has three dominant sub-systems: substantive criminal law, procedural criminal law, and penal execution law.<sup>28</sup> From the perspective of substantive norms, the sentencing system is the entire body of material criminal law governing the determination, imposition, and enforcement of punishment. These include all relevant legal provisions, either codified in the KUHP or established in special laws in isolation from the KUHP, in order to form a systematic scheme of sentences. In this scheme, general provisions establish overarching principles applicable to a wide range of cases, while special provisions address specific sentencing issues or categories of offenses.

When imposing punishment on perpetrators of psychological violence, judges should consider the future of the offender, as emphasized in Article 54(1)(h) of the 2023 Criminal Code. Imprisonment often has a chain of consequences that may contradict the fundamental purpose of law itself: achieving justice. The justice expected by victims may differ significantly from what is perceived as just by the offender or by the children of both the victim and the offender. Even a short prison sentence, e.g., two months, can generate severe negative stigma for the perpetrator. Considerable harm could also result from such a light sentence, e.g., the stigmatization of the offender's children, who might be identified as the children of a convicted criminal.

Furthermore, imprisoning a spouse can increase resentment, which makes it more difficult to mend a peaceful marriage and may result in continuing arguments (*syiqaq*) and divorce.<sup>29</sup> Article 54(2) of the 2023 KUHP must also be taken into account when imposing prison sentences. According to the article, "the minor nature of the act, the personal circumstances of the offender, or the conditions at the time the offense was committed and those that occurred thereafter may be taken into account as grounds for not imposing punishment or applying certain measures, based on considerations of justice and humanity." This provision puts emphasis on the need for a more humane and context-sensitive approach to sentencing, particularly in cases of psychological violence in domestic settings.

Theories of Sentencing have evolved in response to the dynamics of social life and the emergence and development of crime, which has consistently influenced society throughout history. In the field of criminal law, several theories concerning the purpose of punishment have emerged, including the absolute theory (retributive), the relative theory (deterrence/utilitarian), the combined theory (integrative), the

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<sup>28</sup>Béla Blaskó and Anikó Pallagi, "Aspects of Criminal Policy and Law Enforcement Science," *Magyar Rendészet* 20, no. 3 (2020).

<sup>29</sup>Hasanudin et al., "Phenomena of Domestic Violence Against Women and Divorce in 2020-2022 in Indonesia: An Islamic Perspective," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023), p. 137–152.



treatment theory, and the social defense theory. These sentencing theories consider various objectives that are to be achieved through the imposition of criminal penalties.<sup>30</sup>

Among these, the theory most relevant to the sentencing of psychological violence is the treatment theory. This theory argues that punishment should be directed toward the offender, rather than merely focusing on the offense. Its strength lies in promoting the resocialization process of the perpetrator, with the goal of restoring the offender's moral and social quality so they can reintegrate into society. According to Albert Camus, a criminal remains a *human offender*, and as such, retains the freedom to learn new values and adapt. Thus, sentencing should also be educational in nature; the offender needs a form of rehabilitative or treatment-based punishment.<sup>31</sup> This principle is pertinent in cases of psychological violence, wherein treatment-based sanctions can help boost the quality of the perpetrator's relationships in the household, including with their partner and other family members.

The treatment theory is based on determinism—the positivist school of thought that holds that people are influenced by their surroundings, social circumstances, and personal characteristics rather than acting solely out of free will. According to this perspective, the perpetrator should not be held entirely responsible for their acts since crime is viewed as an expression of abnormal psychological conditions. They ought to receive care or treatment targeted at rehabilitation and reintegration rather than punishment.<sup>32</sup>

### **Criminal Sanctions for Psychological Violence in the Law on the Elimination of Domestic Violence**

Psychological violence can be broken down into two concepts: *violence* and *psychological* (mental/psychic). Violence refers to attacks or violations against a person's physical integrity or mental well-being. According to Article 89 of the KUHP, violence is defined as the unlawful use of significant physical force, for example, hitting with hands or weapons, kicking, punching, and other similar acts.

The term “psychic” (Indonesian: *psikis*) refers to the human soul or the study of the human mind and mental state. Given that the soul and mind are abstract, “psychic” does not directly study them; rather, it concentrates on how they manifest and express themselves, specifically in human behavior and mental processes.<sup>33</sup> The word “*kekerasan*” (violence) is derived from the word “*keras*” (harsh), which means

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<sup>30</sup>Dwidja Priyanto, *Sistem Pelaksanaan Pidana Penjara Di Indonesia* (Bandung: Refika Aditama, 2009).

<sup>31</sup>Teguh Prasetyo and Abdul Halim Barkatullah, *Ilmu hukum dan filsafat hukum* (Jogjakarta: Pustaka Pelajar, 2007).

<sup>32</sup>Muladi dan Barda Nawawi, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2010), 12

<sup>33</sup>Abdul Fatakh, “Kekerasan Psikis Oleh Istri Terhadap Suami Prespektif Hukum Islam Dan Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga,” *Mahkamah : Jurnal Kajian Hukum Islam* 7, no. 2 (2022).

lacking gentleness or compassion, according to Kamus Besar Bahasa Indonesia (Indonesian Big Dictionary). Therefore, the use of force or the state of being harsh can be characterized as “kekerasan.”<sup>34</sup> Violence, as described by Mansour Fakih, is an assault or invasion of someone's physical or mental integrity. Anything pertaining to mental or emotional health is referred to as “*psikis*.”<sup>35</sup> The Indonesian Thesaurus defines “*psikis*” as anything related to: 1) psychology or spirituality, and 2) intellect, mentality, or cerebral function.<sup>36</sup> From these definitions, psychological violence can be understood as violence that targets a person's psyche, causing emotional suffering or psychological harm.

Psychological violence is classified as a material offense (*tindak pidana materiil*), meaning the focus is on the consequences of the act. The methods (or *handeling*) of committing such offenses may vary, as long as the outcomes align with what is prescribed by law. The description of psychological violence is highly subjective as it is heavily influenced by the victim's experience. Psychological violence may cause the victim to stay silent, feel confused, or become unable to speak. The absence of witnesses might also complicate legal proceedings, making it difficult to pursue justice.

In such circumstances, it is necessary to carry out a psychiatric forensic examination (*Visum et Repertum Psikiatrikum* or VeRP) in order to properly assess the victim's mental state. Based on Article 1(2) of the Regulation of the Minister of Health of the Republic of Indonesia No. 1861 of 2015 on Guidelines for Mental Health Examinations for Legal Purposes, VeRP refers to a written statement by a psychiatrist following a mental health examination, which is intended for use in legal proceedings. Although the visum is generally requested by the court and performed by a specialist, in many cases the victim voluntarily undergoes a VeRP examination prior to trial to provide evidence of the psychological suffering that they have experienced.

The sanctions for acts of psychological violence are governed in Article 45 of the UU PKDRT. Article 45(1) of the law states that perpetrators of psychological violence may face a maximum prison sentence of three years or a fine of up to IDR 9,000,000. In addition, Article 45(2) specifically addresses psychological violence between spouses. If the violence does not cause illness or hinder the victim's ability to work or carry out daily activities, the punishment is lighter: a maximum of four months in prison or a fine of up to IDR 3,000,000.

Article 45(2) applies to minor psychological violence, whereas cases involving serious psychological suffering fall under Article 45(1). Yet, unlike paragraph (2), which defines clear thresholds for the impact on the victim, Article 45(1) leaves the assessment of severity to the discretion of the judge, based on the

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<sup>34</sup> Tim Penyusun Kamus Pusat Bahasa, *Kamus Bahasa Indonesia* (Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 2008).

<sup>35</sup> Tim Penyusun Kamus Pusat Bahasa, *Kamus Bahasa Indonesia*, p. 1220.

<sup>36</sup> Tim Penyusun Kamus Pusat Bahasa, *Kamus Bahasa Indonesia*, p. 388.

evidence presented, especially regarding the psychiatric forensic report (VeRP) if available, as well as the victim's testimony.

One example of how this sentencing provision is applied is Decision No. 6168 K/Pid.Sus/2022. In the first trial, the panel of judges sentenced the defendant to 10 months in prison. On appeal, the sentence was reduced to 5 months, and the Supreme Court rejected the cassation request from the defendant. The panel of judges applied Article 45(1), classifying the offense as a case of severe psychological violence. The final sentence of 5 months was perceived as too lenient, considering the severity of the offense, i.e., the husband abandoned his wife and cohabited with another woman. The sentence was also significantly lighter than the prosecutor's demand of 1 year and 6 months. Moreover, the length of the legal process—nearly two years from the initial charges to the cassation decision—reflected a lack of reconciliation and offered no real benefit to the victim.

In such cases, the victim may also file for compensation, particularly in relation to unpaid spousal support. Article 98 of the Indonesian Criminal Procedure Code (KUHP) provides that if a criminal offense causes loss to another party, the victim may file a civil claim for damages within the same criminal proceedings. This makes it possible for victims to receive compensation without submitting a separate civil lawsuit. The victim files a claim for compensation under Article 98; yet, judges may also issue additional orders, such as demanding that the offender undergo rehabilitation or cover the costs of the victim's psychological recovery counseling.

Article 50 of the UU PKDRT states that judges may impose additional penalties, such as “restrictions on the perpetrator's movement to ensure distance from the victim for a specific time or range, limitations on certain rights, or an order to participate in counseling programs under the supervision of designated institutions.” However, in practice, such additional penalties are rarely applied, as evidenced by several court decisions. For example, Decision No. 14/Pid.Sus/2016/PN.Kng imposed a 2-month prison sentence without any supplementary punishment. Decision No. 33/Pid.Sus/2020/PN Mgn sentenced the perpetrator to 3 years in prison without imposing any additional sanctions. In Decision No. 110/Pid.B/2011/PN.BU, the court handed down a sentence of 1 year and 3 months in prison, again without any accompanying penalties.

### **The New Sentencing Paradigm in the 2023 Criminal Code and Its Implementation in Addressing Psychological Violence**

The sentencing concept of Indonesia's 2023 KUHP has been adopting a more restorative and rehabilitative approach, which focuses on case resolution that more fairly considers the interests of the victim, the offender, and society.<sup>37</sup> This marks a significant shift from the previous sentencing system, which was more heavily oriented toward imprisonment. Indonesia's prison sentences have been historically

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<sup>37</sup>Muhammad Fatahillah Akbar, “Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia,” *Masalah-Masalah Hukum* 51, no. 2 (2022).

reflected the absolute theory of punishment, which placed a strong emphasis on retribution toward the offender. At present, however, despite sentencing practices later evolving toward the relative theory, which is more flexible and better aligned with developments in Indonesian criminal law,<sup>38</sup> several practical challenges remain. Among those challenges are the fact that prison time has little effect on behavioral change, is ineffective at preventing recidivism, and has detrimental effects on the offender's family and community. It has been demonstrated that incarceration degrades a household's socioeconomic status, especially when the offender is the primary provider. Further, issues like overcrowding and a dearth of efficient rehabilitation programs still plague Indonesia's penal system. Prison overcrowding frequently prevents inmates from receiving effective rehabilitation services, which impedes their recuperation and subsequent reintegration into society.<sup>39</sup>

The restorative justice approach introduced by the 2023 KUHP opens the door for criminal cases to be resolved outside the conventional court system, e.g., through penal mediation or other forms of agreement that prioritize healing and restoring relationships, while still respecting the rights of victims. With strong roots in legal traditions and philosophies from many cultures, restorative justice is becoming more and more popular among legal professionals and academics. Restorative justice is viewed as a promising substitute for retributive punishment as its acceptance in scholarly research and legal practice increases.<sup>40</sup> Instead of concentrating only on punishing the offender, it seeks to make amends for the harm that victims have endured and to bring peace back to society.<sup>41</sup>

The concept of restorative justice was first introduced by Howard Zehr, who is widely regarded as the “father” of the movement. In his influential works, *Changing Lenses: A New Focus for Crime and Justice* and *The Little Book of Restorative Justice*, Zehr points out that in order to reach a fair and beneficial resolution, this approach needs to involve all parties impacted by a crime, which include the victim, the offender, and the community.<sup>42</sup> While restorative practices have long been applied informally, their formal legal adoption in Indonesia was first seen in the Juvenile Justice System Law through the concept of diversion (*diversi*).<sup>43</sup>

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<sup>38</sup>Muchamad Iksan and Sri Endah Wahyuningsih, “Development Of Perspective Criminal Law Indonesian Noble Values,” *Legal Standing : Jurnal Ilmu Hukum* 4, no. 1 (2020).

<sup>39</sup>Enes Al Weswasi, “Estimating the Incapacitation Effect among First-Time Incarcerated Offenders,” *European Journal of Criminology* 21, no. 6 (2024).

<sup>40</sup>Mark B. Scholl and Christopher B. Townsend, “Restorative Justice: A Humanistic Paradigm for Addressing the Needs of Victims, Offenders, and Communities,” *Journal of Humanistic Counseling*, 2023.

<sup>41</sup>Elsa Rina Maya and Hadibah Zachra Wadjo, “Penerapan Restorative Justice Dalam Penanganan Kasus Kekerasan Terhadap Perempuan Pada Masa Pandemi Corona Virus Disease (COVID-19),” *JURNAL BELO* 6, no. 2 (2021).

<sup>42</sup>Christian Gade, “Promoting Restorative Justice as de Jure Punishment: A Vision for a Different Future,” *The International Journal of Restorative Justice* 5, no. 1 (2021).

<sup>43</sup>Dedy Sumardi, Mansari Mansari, and Maulana Fickry Albaba, “Restoratif Justice, Diversi Dan Peradilan Anak Pasca Putusan Mahkamah Konstitusi Nomor 110/Puu-X/2012,” *Legitimasi:*

The principles of restorative justice are explicitly reflected in Articles 51 and 52 of the 2023 KUHP. Article 51(c) states that the aims of sentencing are to resolve conflicts, restore balance, and promote a sense of security and peace in society. In Article 52, it states that punishment shall not be intended to degrade human dignity. In regard to this, Eddy OS Hiariej argues that Article 52 aligns with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and also resonates with Article 3(g) of Law No. 22 of 2022 on Corrections, which states that “the loss of liberty is the only permissible suffering.”<sup>44</sup> This implies that imprisonment should not result in more physical or mental pain than the loss of freedom. Therefore, rather than simply penalizing offenders, the correctional system ought to strive to rehabilitate them and assist in their reintegration into society.<sup>45</sup>

As alternatives, the 2023 KUHP also stipulates more flexible sentencing options. The court may impose fines, community service, or supervision sentences for those who commit psychological violence. Revocation of specific rights and victim compensation are examples of relevant additional penalties. In particular cases, considering the offender’s future as outlined in Article 54, the court may impose rehabilitative measures as a corrective strategy. Rehabilitative sentencing can be applied depending on the severity and impact of the psychological violence. This approach provides offenders with a chance to reform without immediately destroying the family structure. Family disintegration may result if the offender is sent straight to prison, particularly if they are the main provider. Therefore, rehabilitation preserves family integrity while making room for behavioral improvement. It represents a more efficient and compassionate criminal justice system that aims to both punish offenders and prevent the recurrence of violence.

The 2023 KUHP attempts to ensure that victim receives justice while simultaneously offering the offender opportunities for rehabilitation. Hence, based on Article 70, imprisonment should be avoided whenever possible. To support alternatives to imprisonment in the context of psychological violence, a number of aspects must be taken into account, especially when:

1. The personality and behavior of the defendant indicate that they are unlikely to reoffend;
2. Imprisonment would cause significant suffering for the defendant or their family;
3. Rehabilitation outside of prison is likely to be effective for the defendant;
4. A lighter sentence would not diminish the seriousness of the offense;
5. The crime occurred within a family context; and/or

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*Jurnal Hukum Pidana Dan Politik Hukum* 11, no. 2 (2022), p. 248–65; Sheila Kusuma Wardani Amnesti and M. Aunul Hakim, “Penerapan Diversi Pada Anak Berhadapan Hukum Ditinjau Dari Perspektif Masalah Mursalah,” *Egalita Jurnal Kesetaraan Dan Keadilan Gender* 16, no. 2 (2021).

<sup>44</sup>Eddy OS Hiariej and Topo Santoso, *Anotasi KUHP Nasional* (Depok: Rajawali Pers, 2025), p. 52.

<sup>45</sup>Saowathan Phoglad, “An Education as a Rehabilitation Tool for Incarcerated People,” *ACEID Official Conference Proceedings*, 2024.

6. The crime was committed due to negligence.

### **Applying Utilitarianism in Sentencing for Psychological Violence in Domestic Settings**

In the early 18th century, Scottish-Irish philosopher Francis Hutcheson proposed an early version of the utilitarian principle of “the greatest happiness for the greatest number.” This principle was later adopted by Jeremy Bentham as the foundation of utilitarianism.<sup>46</sup> Bentham developed this maxim into a moral philosophy that emphasizes that the rightness or wrongness of an action should be determined based on the consequences it produces.<sup>47</sup>

Jeremy Bentham, a radical English philosopher and political theorist, is recognized as a central figure in moral philosophy, particularly utilitarianism, which evaluates actions by the extent to which they promote happiness for those affected. Deeply influenced by Enlightenment thinkers, especially empiricists like John Locke and David Hume.<sup>48</sup> Bentham laid out his ideas in one of his seminal works, *An Introduction to the Principles of Morals and Legislation* (published in 1789), where he emphasized the principle of achieving the greatest happiness for the greatest number. According to Bentham, consistently applying this moral principle would lead to a legal theory capable of justifying social, political, and legal conditions.<sup>49</sup>

A good consequence, according to Bentham's utilitarian theory, is one that results in happiness or pleasure, whereas a bad consequence results in pain or suffering. Therefore, the course of action that maximizes happiness and minimizes suffering is the right one in any given situation.<sup>50</sup> He expanded on this idea in the fields of public policy and law,<sup>51</sup> contending that a law or policy is justifiable if it benefits the majority of people. According to this view, sentencing in criminal law should have a definite social purpose, not only in punishing offenders but also in successfully preventing crime, rehabilitating offenders, and eventually improving social welfare in general.

If applied to the handling of psychological violence as a criminal offense, utilitarianism requires that punishment be oriented toward maximizing social benefits in order to achieve the greatest overall happiness. This theory seeks to deliver justice for all parties involved, i.e., the victim, the offender, and their family, while still facing the inherent challenge of balancing collective benefit with the potential harm to specific individuals.<sup>52</sup> Utilitarianism can be used as a framework to evaluate the efficacy of punishment when it comes to sentencing for domestic

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<sup>46</sup>Bryan Magee, *The Story of Philosophy* (Jogjakarta: Kanisius, 2001).

<sup>47</sup>A Mangunhardjana, *Isme-isme dalam Etika dari A sampai Z* (Jogjakarta: Kanisius, 1997), p. 228-231.

<sup>48</sup>Yesmil Anwar and Adang, *Kriminologi* (Bandung: PT Refika Aditama, 2016), p. 4-5

<sup>49</sup>Anwar and Adang.

<sup>50</sup>Lorens Bagus, *Kamus Filsafat* (Jakarta: Gramedia Pustaka Utama, 2000), p. 1144.

<sup>51</sup>Rex W. Mixon, “Bentham, Science and Utility,” 2020.

<sup>52</sup>Hanafy.

psychological violence. A sentence does not meet utilitarian principles if it is solely punitive, focuses only on punishment,<sup>53</sup> and fails to assist the victim, the family, or even the offender. Any approach which encourages rehabilitation, recovery, and prevention, on the other hand, is more in line with utilitarian principles because it provides long-term benefits to all parties involved. Thus, punishment should not be viewed as a tool for retribution, but rather as an instrument for societal reform and protection.<sup>54</sup>

Jeremy Bentham establishes the principles contained in the theory of utilitarianism.<sup>55</sup> First, the principle of utility is based on the idea that actions are shaped by the pursuit of pleasure and the avoidance of pain, which together create happiness or utility. Utility is therefore described as the capacity of an action to generate benefit, advantage, pleasure, good, or happiness and to prevent pain, evil, suffering, or unhappiness. When psychological violence is considered a criminal act, the punishment or action ought to result in “utility” for the victim, the offender, and the general well-being of the family and society. Several measures can be taken to achieve this: reconsidering imprisonment for the perpetrator—especially if they are the primary breadwinner—avoiding imprisonment if it does not have a deterrent effect, such as imposing overly lenient prison sentences. For the victim, therapy may be provided if the effects of psychological violence significantly disturb their personality, and compensation can be given if necessary. Reconciliation between partners can also be an alternative resolution so that the family can regain harmony and avoid divorce. These actions, in addressing psychological violence, offer more benefits than merely punishing the perpetrator with imprisonment.

Second, happiness and suffering are the standard of judgment. Bentham’s utilitarian theory believes that the morality of an action depends on the amount of happiness (pleasure) it produces relative to the suffering (pain) it causes. If an action or event results in greater happiness than suffering, it possesses “utility” for society, and vice versa. Sanctions must be evaluated based on their effects: do they bring about more happiness (justice, security), or do they instead exacerbate suffering?.<sup>56</sup> A punishment is considered appropriate if the suffering inflicted on the perpetrator is proportional to the suffering experienced by the victim. In this regard, accurately understanding the victim’s condition is essential, yet in some court decisions, this

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<sup>53</sup>Gregg D. Caruso, “Justice without Retribution: An Epistemic Argument against Retributive Criminal Punishment,” *Neuroethics* 13, no. 1 (2020).

<sup>54</sup>Mathias Twardawski, Karen T.Y. Tang, and Benjamin E. Hilbig, “Is It All About Retribution? The Flexibility of Punishment Goals,” *Social Justice Research* 33, no. 2 (2020).

<sup>55</sup>Endang Pratiwi, Theo Negoro, and Hassanain Haykal, “Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?,” *Jurnal Konstitusi* 19, no. 2 (2022).

<sup>56</sup>Melissa de Vel-Palumbo, Mathias Twardawski, and Mario Gollwitzer, “Making Sense of Punishment: Transgressors’ Interpretation of Punishment Motives Determines the Effects of Sanctions,” *British Journal of Social Psychology* 62, no. 3 (2023).

has not been done, i.e., relying solely on the victim's statement and the judge's conviction.

Third, the greatest happiness for the greatest number is a guiding principle, which is often associated with Bentham. However, some sources suggest it is better understood as the state's responsibility to ensure individual well-being and reduce societal suffering through legal instruments. Still, this does not mean that the law must always serve the desires of the majority, but rather, happiness and suffering are the benchmarks for the law's effectiveness. Courts must consider the broader social impact when imposing sanctions. The goal of punishments should be to minimize further psychological abuse for both the victim and the offender as well as for society as a whole, e.g., by creating a safer and more just social environment. In the case of Valencya, who was reported by her husband for committing psychological violence, her actions were in fact triggered by her husband's behavior such as frequent gambling, alcohol abuse, and failure to provide for her financially. This case sparked public discontent, as many perceived the outcome as unjust for Valencya, who was essentially the victim.<sup>57</sup>

Fourth, the idea of hedonistic or moral calculus is presented. Bentham asserts that seven variables can be used to quantitatively measure happiness in order to evaluate the intensity and value of the pleasure that an action produces. These variables include the intensity of the pleasure, its duration, the certainty or uncertainty of its occurrence, its propinquity (how soon it will happen), its fecundity (the likelihood that it will be followed by similar pleasures), its purity (the chance that it will not be followed by pain), and its extent (the number of people affected by the pleasure). Similar factors can be applied by the court when deciding on a suitable punishment for a perpetrator. These factors include the severity of the victim's suffering, the length of the trauma, the psychological effects on the victim, and the degree to which the perpetrator's actions impacted other people. This systematic strategy enables the application of fair and proportionate punishment, especially in situations involving psychological violence.

Fifth, Bentham's utilitarian theory incorporates both the separability thesis (separation of law and morality) and the reductive thesis (non-separation of law and fact) that lie at the heart of legal positivism. This means that the validity of a law does not depend on its moral content. Bentham also puts emphasis on the importance of societal aspects (facts) in assessing the sustainability of a positive legal norm. The imposition of sanctions should not be based solely on morality, but must also consider legal facts and their impact on society. From this perspective, the validity of a sanction is more accurately measured by its societal sustainability and acceptance. In decision Number 200/Pid.Sus/2021/PN Clp, for instance, the judge

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<sup>57</sup>Agie Permadi, "Ini Alasan Polda Jabar Tetapkan Valencya Jadi Tersangka KDRT, Usai Dilaporkan Omeli Suami Mabuk," *Kompas.com*, 16 November 2021, <https://regional.kompas.com/read/2021/11/16/172852278/ini-alasan-polda-jabar-tetapkan-valencya-jadi-tersangka-kdrt-usai?page=all>.



sentenced the offender to three years in prison despite the fact that the act was so severe that the victim was almost killed or seriously injured. The offender had threatened the victim with a sharp weapon and also swung the weapon toward the victim, who barely escaped the attack. The legality of the court's ruling is dependent on whether it complies with current legal provisions rather than moral judgment (such as public outrage or ethical standards regarding the seriousness of the crime). This is where Bentham's separability thesis applies. Therefore, even if the three-year sentence is deemed "too lenient" from a moral standpoint, it is legally valid if it complies with the criminal code. This is in line with Bentham's positivist legal theory.

Sixth, Bentham's reductive thesis points out the need for legal validity to be based on factual reality even though it is not dependent on morality. Therefore, in order to decide whether a legal norm is still relevant and appropriate, judges must evaluate the concrete facts of a case. The judge ought to have considered certain facts in this case, including the use of a weapon by the offender, the direct threat to the victim's life, and the physical act of swinging the weapon in the victim's direction. According to Bentham, a judicial decision should ideally reflect a balance between the established facts and the applicable legal norms. If the facts indicate that the perpetrator's actions nearly caused grave harm or death, then positive law must be capable of imposing a sanction proportional to the level of danger posed.

Seventh, legal product evaluation is grounded in ethical assessment, as Benthamism is better understood as a method for evaluating laws based on their capacity to produce pleasure and reduce pain, rather than as a definition of the law's ultimate purpose. The aim of this method is to examine the sustainability and legal certainty of a given legal product. In the case of psychological violence, sanctions must be tested for their effectiveness on whether they actually reduce the incidence of psychological violence and whether they provide a sense of safety for society. If they fail to do so, the legal policies in place must be re-evaluated. Bentham's theory can be applied to evaluate the aforementioned decision: whether the three-year sentence provides a sense of justice to the victim and the public and whether the punishment is sufficient to deter the perpetrator and prevent similar crimes in the future. If the sentence is deemed disproportionate to the threat level and its impact on the victim, then a reassessment of the legal norms used is necessary to ensure the utility of the law for society.

The 2023 KUHP, which provides restorative and rehabilitative procedures as alternatives to imprisonment, is a particular example of using utilitarian theory in sentencing for psychological violence within households. The previous legal system, especially under the UU PKDRT, placed a greater emphasis on imprisoning the offender. However, the 2023 KUHP introduces options such as rehabilitation, supervised probation, or community service. These alternatives reflect utilitarian principles by promoting the greatest happiness for the greatest number: offering offenders the opportunity to reform while allowing victims to recover in a manner that is more effective and less destructive to family and social life.

Utilitarianism also signifies the importance of crime prevention by striking a balance of punishment and rehabilitation. Retributive punishment alone is frequently insufficient for minimizing recidivism in cases of psychological violence in domestic settings. The 2023 KUHP accommodates recovery programs such as psychological counseling and behavioral therapy, which help offenders understand their wrongdoing and work toward behavioral change. Thus, the penal system is not merely punitive, but it also aims to foster broader positive social change.

### **The Role of Judges in Determining Proportional Sentencing**

Judges are indispensable in order to properly implement the the new penal paradigm. The 2023 KUHP allows judges more latitude to select the most suitable type of punishment, taking into account the unique circumstances of each psychological violence case. Judges in these cases must also consider the economic, social, and psychological aspects that both the victim and the offender must deal with. In this way, court rulings do not merely comply with the letter of the law but truly provide benefits to all parties involved and promote substantive justice. In this context, Delta Tamtama, a judge at the Pekanbaru District Court, stated that in cases of psychological violence, penal mediation through restorative justice should be prioritized over imprisonment. He argued that this strategy is more advantageous for the victim and can still deter the offender.<sup>58</sup>

The clear statement of penal objectives in Article 51 of the new KUHP is one of the primary distinctions between the objectives of punishment in the previous KUHP and the 2023 KUHP. In handling criminal acts of psychological violence, the most important purpose is stated in point (c): to resolve conflict, restore balance, and bring a sense of security to society. The inclusion of this penal objective plays a crucial role as a guideline for law enforcement officials, especially prosecutors and judges, in imposing criminal sanctions and/or other legal actions on offenders. In addition, these objectives also serve to inform the public about the rationale behind the imposition of sanctions or legal measures. Criminal sanctions and/or actions function as tools to achieve the broader goals of punishment. Therefore, the proportional application of these sanctions by law enforcement authorities is essential to ensure alignment with the stated goals of the Indonesian penal system.

In line with the development of criminal law in Indonesia, the 2023 KUHP introduces the concept of judicial pardon (*rechtelijk pardon*),<sup>59</sup> which is the authority granted by law to judges to grant leniency to defendants who have been proven guilty of committing a criminal offense, under certain conditions. Article 54(2) of the KUHP illustrates this notion, in which it states that the imposition of punishment or measures should be avoided as much as possible, taking into account the minor

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<sup>58</sup>Interview with Delta Tamtama, Judge of the Pekanbaru District Court, Riau, March 22, 2025.

<sup>59</sup>Adithya Tri Firmansyah R, Adhitya Alliyya Rachman, and Annisa Yastisya, "Criminal Law Politics of *Rechterlijk Pardon* Concept (Comparative Study the New Criminal Code and Juvenile Justice System Law)," *Veteran Law Review*, 2024.

nature of the offense, the personal circumstances of the offender, or the situation in which the crime was committed. Hence, due to the provision of judicial pardon, not all offenders need to undergo the full judicial process or receive criminal sanctions. In some instances, however, the judge still has the authority to decide whether or not to grant a pardon. If a pardon is granted, it must be clearly stated in the court's decision, indicating that the defendant has been found guilty but is pardoned based on specific considerations.

The development of the judicial pardon concept in Indonesia was triggered by growing public sympathy for those prosecuted for minor offenses. In many such cases, more proportionate and restorative alternatives would be more appropriate. However, because these cases proceed through the full judicial process, the offenders end up being sentenced to prison even if only for a short time. For instance, in case number 320/PID.SUS/2020/PT BDG, the perpetrator of psychological violence was sentenced to two months in prison. Such sentencing has created a dilemma between the utilitarian principle of maximizing societal benefit and the imposition of sanctions. It shows that the punishment imposed may be disproportionate to the impact of the crime and fail to produce meaningful benefits, which reveals the need for a more flexible legal mechanism, i.e., judicial pardon. Based on Article 52(1) of the KUHP, judicial pardon is especially pertinent in the context of the UU PKDRT in cases involving minor acts of psychological violence.

Article 53(2) of the 2023 KUHP prioritizes justice in cases where it conflicts with legal certainty, emphasizing that justice must still be grounded in law to prevent misuse. This highlights the importance of clearly regulating the objectives and guidelines of sentencing—an approach that marks a shift from the highly retributive model of the old Criminal Code. Under the new Criminal Code, the establishment of sentencing purposes and guidelines aims to guide law enforcement in ensuring more proportional punishment and/or measures.

This point is of significance because the sanctions stated in the UU PKDRT are relatively lenient, and in some cases, alternative sanctions other than imprisonment may be more appropriate. Article 65 of the 2023 KUHP elaborates that the new KUHP is not merely focused on imprisonment or fines, and this signifies a shift toward a new paradigm in criminal justice. In addition, Article 54 of the 2023 KUHP also states that several factors must be considered in sentencing, namely: the nature of the offender's guilt; the motive and purpose of committing the crime; the offender's mental attitude; the premeditation status; the manner in which the crime was committed; the offender's attitude and actions after committing the crime; the offender's personal history, social conditions, and economic situation; the impact of the punishment on the offender's future; and the impact of the crime on the victim or the victim's family.

There are important implications for sentencing in cases of psychological violence that need to be considered. Although punishment is intended to hold the offender accountable and discourage future acts of violence, it can also have detrimental effects on the offender's life and home environment as well. In certain

situations, imprisonment may result in stigmatization and isolation from society, which makes behavioral change harder to achieve. Furthermore, it can be extremely difficult for former inmates to find new jobs or re-enter the workforce.<sup>60</sup>

The original intent of the UU PKDRT must also be taken into account when imposing sanctions on those who commit domestic violence. According to its general explanation, the law fundamentally aims to preserve the unity and harmony of the household. The realization of this unity depends heavily on each individual's behavior and self-control within the family. When this self-control is lacking, it can threaten the integrity of the household and lead to violence that disrupts comfort, fairness, and harmony.<sup>61</sup> Therefore, although the law is designed to protect victims of domestic violence, attention should also be given to the offender—ensuring equal treatment under the law and upholding justice. Punishment should not worsen the condition of the victim or the family as a whole.

On the other hand, although the new paradigm has been implemented, its effectiveness largely depends on judicial decisions. Judges play a key role in tailoring sanctions to the concrete circumstances of each case, ensuring that sentencing is not merely a legal formality. Therefore, judges must consider alternative forms of punishment beyond imprisonment, as stipulated in the UU PKDRT.<sup>62</sup> However, if imprisonment cannot be avoided, judges should impose custodial sentences that provide a deterrent effect for the perpetrator. In many cases, such a verdict is then used by the victim as the basis for filing for divorce. Akmal Adi Cahya, a judge at the Religious Court in Batulicin, South Kalimantan, states that he would grant divorce petitions on the grounds of psychological violence if a court ruling has previously validated the acts. He argues that psychological violence can lead to a broken marriage, which is characterized by disharmony, lack of peace, and loss of emotional connection. This type of violence not only affects the quality of life within the household, but it also influences productivity both at home and in society, especially the character development of the children involved.<sup>63</sup> Point C(1) of the Supreme Court Circular (SEMA) No. 3 of 2023 states, “*Divorce cases on the grounds of ongoing disputes and quarrels may be granted if it can be proven that such disputes and quarrels have occurred continuously and there is no hope for reconciliation, accompanied by the couple living separately for at least six (6) months—except where there is legal evidence of domestic violence committed by*

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<sup>60</sup>Amy Sheppard and Rosemary Ricciardelli, “Employment after Prison: Navigating Conditions of Precarity and Stigma,” *European Journal of Probation* 12, no. 1 (2020). Sheppard and Ricciardelli.

<sup>61</sup>General explanations of the UU PKDRT

<sup>62</sup>Lýdia Lešková, Lenka Haburajová Ilavská, and José García Martín, “Alternative Punishment as a Suitable Alternative to Imprisonment,” *Journal of Education Culture and Society* 13, no. 2 (2022).

<sup>63</sup>Interview with Akmal Adi Cahya, Judge of the Religious Court in Klungkung, Bali, March 22, 2025.

*either party.*” From this provision, it follows that judges should approve divorce petitions if there is evidence of domestic violence, including psychological abuse.

In relation to utilitarian theory, SEMA No. 3 of 2023 emphasizes the importance of promoting well-being for all parties involved: protecting the victim’s mental health, encouraging reflection and reform on the part of the perpetrator, and supporting the healthy development of children, so that they are not frequently exposed to domestic violence. Children who are regularly exposed to violence, whether directly or indirectly, may suffer from depression and psychological trauma.<sup>64</sup>

In many cases, psychological violence is not reported as a criminal act, but rather cited as grounds for divorce due to continuous conflict and disputes. This was noted by MS. Hidayat, a judge at the Religious Court in Klungkung, Bali. According to Judge Hidayat, in divorce cases involving domestic violence—including psychological abuse mediation is often a viable option. This mediation may address the core issue of the divorce itself, or peripheral matters such as child custody, child support, spousal obligations following divorce, and division of marital property, among others.<sup>65</sup> In numerous instances, mediation has produced more favorable outcomes than litigation. A study by Holtzworth-Munroe et al. found that mediation not only reduces the level of conflict between partners but also improves both parties’ satisfaction with the final resolution, compared to outcomes achieved through court litigation.<sup>66</sup>

## Conclusion

The 2023 KUHP has altered the way sentences are administered in Indonesia, including how to deal with psychological violence in domestic domains. By expressing clear objectives of punishment, Indonesia’s criminal law has shifted toward a more restorative approach that puts emphasis on conflict resolution, restoring balance, and protecting victims. This approach is in line with utilitarian theory, which intends to maximize social benefits through crime prevention and offender rehabilitation. By applying proportional sanctions rooted in restorative justice, the sentencing system under the 2023 KUHP is expected to deliver a deterrent impact, prevent the recurrence of psychological violence, and foster a more harmonious household and societal context. The effectiveness of this new paradigm largely depends on the consistency and commitment of law enforcement officials, particularly prosecutors and judges. Thus, it is recommended that law enforcement

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<sup>64</sup>Alireza Doroudchi et al., “Psychological Complications of the Children Exposed to Domestic Violence: A Systematic Review,” *Egyptian Journal of Forensic Sciences*, 2023.

<sup>65</sup>Interview with MS. Hidayat, Judge of the Religious Court in Klungkung, Bali, March 22, 2025.

<sup>66</sup>Amy Holtzworth-Munroe et al., “Intimate Partner Violence and Family Dispute Resolution: 1-Year Follow-up Findings from a Randomized Controlled Trial Comparing Shuttle Mediation, Videoconferencing Mediation, and Litigation,” *Psychology, Public Policy, and Law* 27, no. 4 (2021).

officers adjust the sentencing system under the UU PKDRT, which is primarily focused on imprisonment, to align with the sentencing framework of the 2023 KUHP in cases involving psychological violence, by taking into account the benefits for all parties involved. This new system emphasizes a sentencing model that is more open, concrete, clear, and adaptable to specific case conditions. For academics, this study may serve as a reference for future research regarding how the new sentencing framework under the 2023 KUHP is being implemented, especially in terms of psychological domestic violence.

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### **Interviews**

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Interview with Delta Tamtama, Judge of the Pekanbaru District Court, Riau, March 22, 2025.

Interview with Akmal Adi Cahya, Judge of the Religious Court in Klungkung, Bali, March 22, 2025.