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## **Disparity in judicial decisions in cases of violence against unregistered wives**

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### **ABSTRACT**

Domestic violence can affect anyone; however, wives remain particularly vulnerable to abuse by their husbands. Although Article 2(1)(a) of Law No. 23 of 2004 on the Elimination of Domestic Violence includes husbands, wives, and children within the scope of a household, not all acts of violence against wives are prosecuted under this law. Many legal practitioners still adhere strictly to Article 2 of the 1974 Marriage Law, which considers a marriage valid only if it is conducted according to religious norms and officially registered. This results in perpetrators of violence against unregistered wives being prosecuted under general assault provisions in the Criminal Code rather than under the Domestic Violence Law. This divergence leads to disparities in judicial decisions, arising from differing interpretations of applicable legal provisions, varied judicial reasoning, and the ambiguous legal status of unregistered marriages, complicating consistent legal application. Consequently, similar cases of violence in unregistered marriages can produce inconsistent or even contradictory court rulings. This study highlights several decisions in which courts have applied the Domestic Violence Law to cases involving unregistered wives, with judges determining that the requirement of being within a "household scope" was fulfilled because the parties were married according to religious or customary norms and lived together as husband and wife. This research underscores the importance of recognizing unregistered wives within the household scope, as excluding them results in the denial of essential rights and protections afforded to victims of domestic violence, including access to legal assistance, health services, shelters, and other forms of support.

**Keywords:** unregistered wife; domestic violence; household scope

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## 1. INTRODUCTION

Domestic violence remains one of the most persistent and structurally embedded social problems in contemporary Indonesian society today. Despite progressive legal frameworks and institutional reforms, violence within intimate relationships continues to occur across social classes, educational backgrounds, and geographical settings, disproportionately affecting women, particularly wives, as the primary victims (Suhariyanto, 2015; Rahmawati, 2025). Empirical studies demonstrate that domestic violence is not merely a private or familial issue but constitutes a systemic social pathology linked to gender inequality, patriarchal power structures, economic dependency, and the sociocultural normalization of male dominance within household relations (Nugroho, 2019; Sari, 2021).

Marriage, as the foundational legal and social institution forming the household unit, occupies a central position in determining access to legal protection from domestic violence. Article 1 of Law No. 1 of 1974 defines marriage as a spiritual and physical bond between a man and a woman aimed at forming a happy and enduring family based on belief in God (BPK, n.d.). Furthermore, Article 2 of the same law establishes two cumulative requirements for legal validity: conformity with religious norms and official state registration of the marriage. This dual requirement has significant legal consequences for marriages conducted solely through religious or customary rites without civil registration (nikah siri), rendering them administratively invisible within the state legal system (Arifin, 2018; Widodo, 2020).

Simultaneously, Law No. 23 of 2004 on the Elimination of Domestic Violence (UUPKDRT) adopts a protection-oriented paradigm by conceptualizing domestic violence as any act resulting in physical, psychological, or sexual suffering or household neglect occurring within the household sphere (UU PKDRT, 2004). Article 2 of the UUPKDRT broadly defines the household scope to include husband, wife, children, relatives, and persons residing within the household. Normatively, this formulation reflects a victim-centered approach aimed at substantive protection rather than formal marital legality (Pratama, 2024).

However, a structural legal tension emerges at the intersection of marriage and domestic violence laws. While the UUPKDRT prioritizes the material reality of domestic relations, judicial practice frequently reverts to the formal legality doctrine of marriage registration under Law No. 1 of 1974. This normative conflict becomes particularly visible in cases of violence against unregistered wives (istri siri), where courts diverge in determining whether such victims fall within the legally protected household sphere (Nur, 2020; Juwenilisa, 2024).

Empirical judicial practice demonstrates deep inconsistencies. In several court decisions, judges have excluded unregistered wives from the household category, thereby prosecuting perpetrators under the general assault provisions of the Criminal Code (Article 351 KUHP), rather than under the Domestic Violence Law (Rofiana, 2023). Conversely, other judicial panels adopt a substantive approach, recognizing unregistered wives as household members based on cohabitation, shared domestic life, and socio-religious marital legitimacy, thus applying Article 44 of the UUPKDRT. This divergence generates legal uncertainty, unequal protection, and inconsistent victim access to legal remedies, healthcare services, shelters, and state-supported recovery mechanisms (Suharto, 2018).

Recent socio-legal studies confirm that unregistered marriages remain prevalent in various regions of Indonesia, driven by economic constraints, religious interpretations, administrative barriers, and cultural traditions (Wahyuni, 2017). Consequently, a significant segment of women lives in de facto marital relationships without de jure legal recognition, placing them in a structurally vulnerable position when subjected to domestic violence (Mahmud, 2016). This condition creates a paradox: women who are socially and religiously recognized as wives remain legally marginalized in accessing state protection mechanisms.

Existing scholarship has predominantly focused on normative analysis of legal texts, doctrinal debates on marriage validity, or isolated case commentaries (Rofiana, 2023). However, there remains a critical research gap in the form of a systematic comparative analysis of judicial reasoning (ratio decidendi) across multiple court decisions that apply different legal regimes (KUHP versus UUPKDRT) to structurally similar cases of violence against unregistered wives. This gap reflects a methodological gap

(limited comparative jurisprudential analysis), a theoretical gap (lack of integration between substantive justice theory and domestic violence adjudication), and a contextual gap (insufficient empirical grounding in contemporary judicial practice).

This study aims to fill this gap by analyzing judicial reasoning patterns in court decisions involving violence against unregistered wives, focusing on how judges construct legal interpretations of the household concept, marital status, and victim protection. This research contributes theoretically by integrating substantive justice theory and victim-oriented legal protection models into domestic violence jurisprudence (Rahardjo, 2006). Empirically, it contributes to a structured mapping of judicial approaches across multiple cases, revealing interpretive patterns, doctrinal tensions, and normative inconsistencies. Practically, this study offers policy-relevant insights for harmonizing the application of the Marriage Law and Domestic Violence Law to ensure equal protection for all victims, regardless of administrative marital status.

Accordingly, this study addresses two central questions: (1) How do judges construct legal reasoning in cases of violence against unregistered wives when applying the general assault provisions of the Criminal Code? (2) How do judges interpret and apply the physical violence provisions of the Domestic Violence Law in cases involving unregistered marriage?

By answering these questions, this study aims to strengthen doctrinal coherence, enhance victim protection frameworks, and contribute to the development of a more substantively just and socially responsive domestic violence legal regime in Indonesia.

## 2. METHOD

This study adopts a normative juridical research method, which focuses on examining legal norms, principles, and doctrines as they are formulated and applied within the positive law system. Normative legal research is particularly appropriate for this study because the primary issue concerns the interpretation and application of statutory provisions governing domestic violence and marital status rather than the measurement of social behavior or empirical attitudes (Soekanto, 2014). Accordingly, the analysis relies predominantly on secondary legal materials as the main source of data, including legislation, court decisions, and scholarly legal writings.

This study employs both statutory and case approaches. The statutory approach involved a systematic review of all relevant laws and regulations governing domestic violence and marriage in Indonesia. These include, most notably, the Indonesian Penal Code (KUHP), Law Number 23 of 2004 on the Elimination of Domestic Violence (UUPKDRT), and Law Number 1 of 1974 on Marriage (UU Perkawinan). This approach aims to identify the normative framework that determines whether an unregistered marriage (nikah siri) can be recognized as falling within the legal concept of a household for the purpose of criminal liability and victim protection (Marzuki, 2017). Through this examination, this study clarifies the normative boundaries and potential tensions between formal marital legality and the substantive protection of victims.

In addition to the statutory approach, a case approach is used to analyze judicial practice in handling cases of violence against unregistered wives (istri siri). This approach involves examining court decisions that have obtained permanent legal force and are directly relevant to the issue being studied. The unit of analysis is the judicial decision itself, with particular emphasis on the *ratio decidendi*, namely, the legal reasoning and considerations that form the basis of the judges' rulings. In normative legal scholarship, *ratio decidendi* occupies a central position because it reflects how judges interpret legal norms and apply them to concrete cases, thereby shaping the development of law in practice (Soekanto, 2014).

The selection of court decisions is carried out purposively, based on specific criteria: first, the case concerns acts of physical or other forms of violence committed against a woman identified as an unregistered wife; second, the indictment involves either the provisions of the Indonesian Penal Code or the UUPKDRT; and third, the judges explicitly address the issue of marital status and its legal implications in their reasoning. This purposive selection allows the study to capture judicial patterns and variations in

reasoning, particularly regarding whether judges prioritise formal legality under marriage law or adopt a more substantive and contextual interpretation of the domestic sphere.

The data analysis is conducted using a qualitative juridical analysis method. Legal materials are analysed descriptively and analytically by interpreting statutory provisions and judicial reasoning in a systematic and coherent manner. The analysis proceeds through several stages. First, the court decisions are classified based on the legal basis applied by the judges, namely whether the conviction is grounded in the KUHP or the UUPKDRT. Second, the judges' legal reasoning concerning the status of unregistered wives and the definition of household relationships is examined in depth. Third, these findings are compared with prevailing legal doctrines and scholarly opinions to assess whether the judicial decisions reflect consistency, legal uncertainty, or a legal breakthrough in the protection of victims of domestic violence (Marzuki, 2017).

To ensure the validity and reliability of the research, a normative triangulation is applied by comparing statutory provisions, judicial decisions, and academic legal literature. This approach enables the study to avoid purely textual interpretation and instead situate judicial reasoning within broader legal debates and normative objectives, particularly the protection of women's rights and access to justice. By maintaining analytical consistency across all examined materials, the study seeks to produce conclusions that are not merely case-specific but contribute to a broader understanding of the legal position of unregistered wives within Indonesian criminal law.

### **3. RESULT AND DISCUSSION**

#### **3.1. The Panel of Judges' Consideration in Cases of Violence Against an Unregistered Wife Applying the Assault Article in the Indonesian Criminal Code**

In several criminal cases involving violence against an unregistered wife (*istri siri*), public prosecutors commonly formulate alternative indictments, placing Article 44 paragraph (1) of Law Number 23 of 2004 on the Elimination of Domestic Violence (*Undang-Undang Penghapusan Kekerasan Dalam Rumah Tangga/UUPKDRT*) as the primary charge, while Article 351 paragraph (1) of the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana/KUHP*) concerning assault is positioned as the subsidiary charge. This prosecutorial practice indicates an institutional recognition that violence committed within an unregistered marital relationship may fall within the scope of domestic violence as regulated by the UUPKDRT. However, judicial decisions frequently diverge from this approach, as panels of judges often decline to apply the Domestic Violence Law and instead impose criminal liability solely under the general assault provisions of the Criminal Code.

The primary legal reasoning underlying this judicial approach is rooted in Article 2 paragraphs (1) and (2) of Law Number 1 of 1974 on Marriage, which stipulates that a marriage is considered valid if conducted in accordance with the religious laws of the parties (*ayat (1)*) and must subsequently be registered in accordance with prevailing statutory regulations (*ayat (2)*). Judges adhering to a strict positivist interpretation regard marriage registration as a constitutive requirement for legal recognition. Consequently, an unregistered marriage (*nikah siri*) is deemed incapable of generating legal consequences, including the recognition of a household relationship under Article 2 letter (a) of the UUPKDRT (Bachtiar, 2010).

This formalistic interpretation has been consistently reflected in several court decisions. One illustrative example is Decision Number 307/Pid.Sus/2020/PN Tjb, where the defendant committed acts of physical violence against a woman with whom he had cohabited for eight years in an unregistered marriage and had two children. Despite the existence of factual marital life and shared domestic responsibilities, the panel of judges concluded that the absence of official marriage registration rendered the relationship legally invalid. As a result, the court rejected the application of Article 44 paragraph (1) of the UUPKDRT and convicted the defendant under Article 351 paragraph (1) of the KUHP, sentencing him to one year of imprisonment.

A similar pattern is evident in Decision Number 30/Pid.Sus/2023/PN Mbn, in which the defendant inflicted severe physical violence on the victim, including stabbing her with a broken glass

bottle, within the context of an unregistered marital relationship. Although the public prosecutor again submitted alternative indictments under the UUPKDRT and the KUHP, the panel of judges ruled that the absence of a legally recognised marriage precluded the application of domestic violence provisions. The defendant was therefore convicted of assault under Article 351 paragraph (1) of the KUHP and sentenced to two years and six months of imprisonment. These decisions demonstrate a consistent judicial tendency to prioritise formal legal status over the material reality of domestic life.

From a doctrinal perspective, this judicial stance aligns with the view expressed by Rofiana (2023), who argues that under Indonesian positive law, the absence of authentic evidence of marriage—such as a marriage certificate or marriage book—prevents the application of the UUPKDRT. According to this view, legal protection under the Domestic Violence Law is contingent upon formal marital recognition, thereby excluding unregistered wives from its scope. However, such an interpretation has been widely criticised for undermining the protective purpose (*ratio legis*) of the UUPKDRT, which is designed to safeguard vulnerable individuals within domestic relationships, rather than to regulate marital legality (Sari, 2022).

The practical consequence of applying the Criminal Code's assault provisions to cases involving unregistered wives is the significant narrowing of victim protection. Article 351 of the KUHP addresses only physical violence, thereby excluding psychological violence, sexual violence, and household neglect—forms of abuse that are explicitly criminalised under Articles 7, 8, and 9 of the UUPKDRT. As a result, unregistered wives who experience non-physical forms of domestic abuse are left without adequate legal remedies, reinforcing structural vulnerability and gender-based inequality.

From a broader socio-legal perspective, the continued reliance on assault provisions in such cases reflects a tension between legal certainty and substantive justice. While judges may seek to uphold the principle of legality by adhering strictly to statutory requirements, this approach risks negating the constitutional mandate to protect human dignity and ensure equality before the law. Moreover, it stands in contrast to the evolving jurisprudence that emphasises victim-centred justice and the substantive realities of domestic relationships (Aulia, 2018).

In light of these considerations, the application of Article 351 of the KUHP in cases of violence against unregistered wives reveals a structural limitation within Indonesian criminal justice practice. By prioritising formal marital legality over factual domestic relations, courts effectively exclude a significant category of victims from the protective framework of the UUPKDRT. This judicial approach not only produces inconsistent legal outcomes but also undermines the broader objectives of domestic violence legislation, which seeks to address power imbalances, protect vulnerable individuals, and promote substantive justice within the household sphere.

### 3.2. Considerations of the Panel of Judges in Cases of Violence Against an Unregistered Wife Applying the Physical Violence Provision under the Domestic Violence Law

Judicial considerations in cases of violence against an unregistered wife (*istri tidak tercatat*) reveal a complex interaction between positive law, evidentiary assessment, and socio-legal realities. Panels of judges generally begin by affirming that Law No. 23 of 2004 on the Elimination of Domestic Violence (PKDRT Law) is fundamentally designed to protect individuals from violence occurring within domestic relationships. Article 1 and Article 2 of the PKDRT Law define the household sphere broadly, encompassing not only legally married spouses but also individuals who live together and maintain domestic relations. This interpretation reflects a purposive reading of the statute, prioritising victim protection over strict formalism in marital status determination (Law No. 23 of 2004), (Butt, 2014).

In assessing the applicability of Article 44 paragraph (1) of the PKDRT Law—which criminalises physical violence within the household—judges typically examine whether the factual relationship between the perpetrator and the victim fulfils the substantive elements of a domestic relationship. Although an unregistered marriage is not administratively recognised under Article 2 of Law No. 1 of 1974 on Marriage, judicial reasoning increasingly emphasises material indicators such as cohabitation, economic dependence, emotional bonds, and the performance of marital roles in daily life. These considerations demonstrate a shift from formal marital status toward recognition of social realities, consistent with socio-legal

scholarship on legal pluralism in Indonesia ([Vel, 2021](#)).

This approach is evident in several district court decisions where panels of judges applied Article 44(1) of the PKDRT Law to cases involving unregistered wives. In these cases, judges explicitly rejected defence arguments based solely on the absence of marriage registration and instead relied on evidence showing that the parties lived together as husband and wife. Such reasoning confirms that the household concept under the PKDRT Law is interpreted substantively, allowing unregistered wives to be recognised as victims entitled to legal protection. Another salient aspect of judicial consideration concerns the relationship between the PKDRT Law and general provisions of the Indonesian Criminal Code (KUHP). Judges often articulate that the PKDRT Law constitutes *lex specialis*, taking precedence over general assault provisions when the violence occurs within a domestic sphere. This doctrinal reasoning reinforces legal certainty and ensures the specialised protective regime of the PKDRT Law is effectively implemented ([Pompe, 2005](#)). The preference for *lex specialis* also reflects a broader judicial commitment to aligning statutory interpretation with legislative intent.

Judges also pay close attention to the constituent elements of physical violence as defined under Article 6 of the PKDRT Law, which includes acts causing pain, illness, or serious injury. Judicial consideration in this respect focuses heavily on evidentiary assessment, including medical reports (*visum et repertum*), witness testimony, and the consistency of the victim's account. These forms of evidence are evaluated in accordance with Article 184 of the Indonesian Criminal Procedure Code, which governs lawful means of proof. Through this evidentiary framework, judges establish both the *actus reus* and *mens rea* of the offence, ensuring that criminal liability is grounded in procedural legality as well as substantive justice ([Lindsey, 2018](#)).

Another central aspect of judicial reasoning concerns the relationship between the PKDRT Law and the general assault provisions of the Indonesian Criminal Code (KUHP). Panels of judges frequently articulate that the PKDRT Law constitutes *lex specialis*, which takes precedence over general criminal provisions when violence occurs within a domestic sphere. This reasoning is grounded in Article 63 paragraph (2) of the KUHP and reinforces legal certainty by ensuring that domestic violence cases are addressed within the specialised protective framework intended by the legislature.

Nevertheless, judicial practice also reveals ongoing tensions, particularly regarding the absence of formal marital documentation in cases involving unregistered wives. Some panels express caution in extending PKDRT protection where documentary proof of marriage is lacking. To address this issue, judges increasingly invoke a human rights-based approach, emphasising the state's obligation to protect individuals from violence and discrimination, especially women in vulnerable domestic relationships. This perspective aligns with Indonesia's commitments under international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), particularly General Recommendation No. 19 on violence against women ([Otto, 2017](#)).

Sentencing considerations further illustrate judicial sensitivity to the victim's position. Judges often regard repeated acts of violence, power imbalances within the relationship, and the psychological impact on the victim as aggravating factors. While mitigating factors such as the defendant's remorse may be considered, they are weighed cautiously so as not to undermine the protective objectives of the PKDRT Law. This proportional sentencing approach reflects an effort to balance retribution, deterrence, and victim protection within domestic violence adjudication ([Robinson, 2013](#)).

Overall, the application of the physical violence provision of the PKDRT Law to cases involving unregistered wives demonstrates an increasingly progressive judicial trend. By prioritising substantive justice and victim protection over formal marital status, panels of judges contribute to the development of a more inclusive domestic violence jurisprudence in Indonesia. This approach not only strengthens legal protection for women in non-formal marriages but also highlights the adaptive capacity of Indonesian courts in responding to evolving social realities ([Lev, 2002](#)).

#### 4. CONCLUSION

Before drawing the final conclusions of this study, it is important to restate the core findings that illuminate how Indonesian courts have addressed cases of violence against unregistered wives (*istri sir*) under both the Indonesian Criminal Code (KUHP) and the Law on the Elimination of Domestic Violence (UUPKDRT).

First, judicial decisions that apply the assault provisions of the Indonesian Criminal Code to cases involving violence against unregistered wives are predominantly grounded in a formalistic interpretation of Article 2 of Law Number 1 of 1974 on Marriage. Under this approach, a marriage is considered legally valid only if it is conducted in accordance with religious norms and formally registered with the competent state authority. As a consequence, courts adhering to this interpretation conclude that unregistered marriages do not meet the legal requirements necessary to constitute a “household” within the meaning of the UUPKDRT, thereby excluding unregistered wives from its protective scope. Notably, however, the indictments submitted by public prosecutors in all cases examined in this study consistently placed the UUPKDRT as the primary charge, with the KUHP assault provision as an alternative. This prosecutorial practice demonstrates an institutional recognition that, in substance, husbands and wives in unregistered marriages fall within the domestic sphere contemplated by the domestic violence regime, even though such recognition is not always adopted by the judiciary.

Second, judicial decisions that apply the physical violence provisions of the UUPKDRT to cases involving unregistered wives represent a significant legal breakthrough. In these cases, panels of judges moved beyond strict formal legality and instead prioritised material truth by examining the factual realities of the relationship. By focusing on cohabitation, the performance of marital roles, emotional and economic interdependence, and the existence of a shared domestic life, the judges concluded that couples living together as husband and wife—despite the absence of formal marriage registration—constitute a household as regulated under Article 2 of the UUPKDRT. This interpretive shift has far-reaching implications, as it enables unregistered wives to access the full spectrum of legal protection provided by the Domestic Violence Law, including protection against physical, psychological, and sexual violence, as well as domestic neglect, along with access to victim support mechanisms.

Overall, this study demonstrates that divergent judicial approaches to cases of violence against unregistered wives stem from differing interpretations of the relationship between marriage law formalities and the protective objectives of the UUPKDRT. While some courts continue to prioritise formal legal status, others adopt a more substantive and victim-oriented interpretation that aligns domestic violence adjudication with social realities and principles of substantive justice. These findings underscore the need for greater doctrinal coherence and interpretive consistency in the application of domestic violence law, particularly to ensure that women in vulnerable domestic relationships are not denied legal protection solely due to administrative deficiencies in marital registration.

#### Ethical Approval

Not Applicable

#### Informed Consent Statement

Not Applicable

#### Authors' Contributions

Not Applicable.

#### Disclosure Statement

The Authors declare that they have no conflict of interest

## Data Availability Statement

The data presented in this study are available upon request from the corresponding author for privacy.

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## Notes on Contributors

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