

## **Criminal Liability for the Homicide of an Abusive Husband by a Wife as a Domestic Violence Victim: Normative Ambiguity of Self-Defense and a Victim-Sensitive Interpretation in Indonesian Criminal Law**

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### **ABSTRACT**

This article examines the criminal liability of a wife who kills her husband after prolonged domestic violence, focusing on the normative ambiguity of self-defense and excessive self-defense under Indonesian criminal law. The study is motivated by a recurring doctrinal problem: homicide provisions formally apply to every person who unlawfully takes another person's life, whereas the factual background of domestic violence often involves cumulative abuse, psychological domination, fear, and survival-based decision-making. The article applies normative legal research using statutory, conceptual, and systematic interpretive approaches. Primary legal materials include Law Number 1 of 2023 on the Criminal Code and Law Number 23 of 2004 on the Elimination of Domestic Violence, while secondary materials include criminal law doctrine, victimology, gender-based violence scholarship, and selected comparative literature on battered women who kill abusive partners. The analysis finds that Article 43 of the 2023 Criminal Code, which recognizes excessive self-defense caused by severe mental disturbance resulting from an unlawful attack or threat of attack, remains insufficiently determinate when applied to domestic violence because it does not define clear criteria for severe mental disturbance or adequately address continuous and cumulative violence. Law Number 23 of 2004 can function as a systematic interpretive instrument because it legally recognizes physical, psychological, sexual, and economic/neglect-based violence within the household. Accordingly, the article proposes a victim-sensitive framework for judicial assessment that integrates the pattern of prior violence, causal connection between abuse and the lethal act, psychological evidence, the survivor's perception of imminent danger, proportionality, and available safe alternatives. Such an approach is necessary to reconcile legality, culpability, legal certainty, and substantive justice in cases where a domestic violence victim becomes a homicide defendant.

**Keywords:** criminal liability; domestic violence; homicide; noodweer exces; self-defense; victim-sensitive adjudication; Indonesian criminal law

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### **INTRODUCTION**

Domestic violence is not merely a private family conflict; it is a serious human rights violation, a public health problem, and a challenge for criminal justice systems. The World Health Organization estimates that approximately one in three women globally has experienced physical and/or sexual intimate partner violence or non-partner sexual violence during her lifetime, and that intimate partner violence may produce fatal outcomes, including homicide and suicide (World Health Organization [WHO], 2024). In Indonesian positive law, domestic violence is expressly regulated through Law Number 23 of 2004 on the Elimination of Domestic Violence, which recognizes violence within the household as conduct capable of producing physical,

sexual, psychological, and domestic neglect-related harm (Republic of Indonesia, 2004).

The problem becomes more complex when a wife who has been repeatedly victimized by her husband later kills him. At the level of criminal law formalism, the act may satisfy the elements of homicide. Article 458 of Law Number 1 of 2023 on the Criminal Code criminalizes the intentional deprivation of another person's life (Republic of Indonesia, 2023). Yet criminal liability is not exhausted by actus reus and mens rea. The law must also consider whether the act was committed in a legally relevant situation of defense, psychological coercion, emergency, excuse, or diminished culpability. This issue is particularly salient in domestic violence cases because repeated abuse can alter the victim's perception of danger, reduce realistic avenues for escape, and create a cumulative state of fear and psychological distress (Schneider, 2000; Stark, 2007; Walker, 2017).

The Indonesian Criminal Code recognizes self-defense and excessive self-defense through provisions on forced defense and noodweer exces. The difficulty lies in their application to domestic violence. Conventional self-defense doctrine often assumes a discrete, immediate, and unlawful attack, followed by a defensive response. Domestic violence, however, frequently occurs as a pattern: violence may be repeated, cyclical, escalating, and embedded in coercive control (Stark, 2007). The violence suffered by a wife may not be captured adequately if the court focuses only on the moment of the killing and ignores the history of abuse that produced fear, trauma, and a perception that danger was ongoing.

This article therefore revises the doctrinal question from "Did the wife kill her husband?" to a more legally precise inquiry: "How should criminal liability be assessed when the homicide was committed by a wife who was previously a victim of repeated domestic violence by the deceased?" This formulation does not deny the seriousness of homicide. Rather, it situates homicide within the broader structure of culpability, excuse, mitigation, and substantive justice. Criminal law should avoid two opposite errors: automatically exempting all lethal acts committed by domestic violence victims, and mechanically punishing them as ordinary murder without considering the legal significance of prior victimization.

Previous Indonesian legal studies have discussed the protection of wives as victims of domestic violence (Sugianti, 2024), criminal liability of wives who commit domestic violence against husbands (Wibawa & Isnawati, 2023), and the application of excessive self-defense in homicide cases (Susanti & Maduri, 2023; Tombokan et al., 2023). This article contributes more specifically by examining the normative ambiguity that arises when the wife is both a prior victim of domestic violence and the subsequent perpetrator of homicide against the abusive husband. The article argues that Law Number 23 of 2004 should not be treated merely as a separate victim-protection statute, but as an interpretive instrument for assessing culpability under the Criminal Code.

The research questions are as follows: (a) How does Indonesian criminal law regulate homicide committed by a wife who was previously a victim of domestic violence by her husband?; (b) How can Law Number 23 of 2004 on the Elimination of Domestic Violence be used as a legal consideration in determining the wife's criminal liability?

The article proceeds in five parts. After the introduction, the second part develops the conceptual framework on domestic violence, criminal liability, self-defense, and victim-sensitive adjudication. The third part explains the research method. The fourth part presents and discusses the legal findings, including the ambiguity of Article 43 of the Criminal Code and the interpretive role of the Domestic Violence Law. The final part provides conclusions and recommendations for lawmakers, judges, prosecutors, investigators, and future researchers.

### **Conceptual and Theoretical Framework**

#### **1. Domestic violence as cumulative victimization and coercive control**

Law Number 23 of 2004 defines domestic violence broadly and acknowledges that harm within the household may be physical, sexual, psychological, or related to neglect (Republic of Indonesia, 2004). This statutory breadth is important because domestic violence is frequently misunderstood when it is reduced to visible physical injury. Psychological abuse, intimidation, threats, isolation, economic dependence, and control over movement may be as central to the victim's vulnerability as physical assault (WHO, 2024).

Modern scholarship increasingly uses the concept of coercive control to explain domestic abuse as a continuing pattern of domination rather than as a series of isolated incidents. Stark (2007) describes coercive control as a pattern through which the perpetrator entraps the victim in everyday life by combining violence, intimidation, isolation, and regulation of autonomy. This framework is useful for criminal adjudication because it explains why a victim may remain in an abusive relationship, delay reporting, recant complaints, appear emotionally ambivalent, or use defensive violence only after a long period of abuse.

The older concept of battered woman syndrome also influenced legal doctrine by explaining the psychological effects of prolonged abuse. Walker (2017) emphasizes that repeated victimization may produce fear, hypervigilance, traumatic responses, and a perception that danger is unavoidable. Although the term has been criticized for pathologizing survivors and for implying that all victims respond uniformly, it remains relevant as historical and doctrinal background. Contemporary approaches should avoid treating the survivor as irrational; instead, courts should examine whether her perception of danger was understandable in light of her lived history of abuse (Maguigan, 1991; Schneider, 2000; Sheehy, 2014).

#### **2. Criminal liability, culpability, justification, and excuse**

Criminal liability requires more than the external commission of a prohibited act. It also involves culpability, blameworthiness, and the absence of legally recognized grounds of justification or excuse (Dressler, 2018; Fletcher, 1978). A justification, such as lawful self-defense, indicates that the act was legally permitted under the circumstances. An excuse, by contrast, accepts that the act was wrongful but reduces or eliminates blameworthiness because the actor's capacity for lawful choice was severely impaired by the situation.

Excessive self-defense occupies a difficult doctrinal position between justification and excuse. In many civil law-influenced systems, *noodweer excès* recognizes that a person may exceed the limits of lawful defense because of intense psychological disturbance caused by an unlawful attack. In such cases, the legal system may treat the excess as excused or not punishable, not because killing is ordinarily permitted,

but because the defendant's blameworthiness is substantially diminished by the attack-induced mental state (Horder, 1992; Robinson, 1984).

For domestic violence cases, the doctrinal challenge is determining whether the "attack" and the "mental disturbance" must be assessed narrowly at the final moment of violence or more broadly in relation to cumulative abuse. A purely momentary approach risks excluding victims whose fear was formed by a pattern of prior violence. Conversely, an overly broad approach may weaken legal certainty. A victim-sensitive approach therefore requires identifiable criteria rather than mere sympathy.

### **3. Noodweer and noodweer exces in Indonesian criminal law**

Indonesian criminal law has long recognized forced defense and excessive forced defense. The doctrinal roots are connected to the Dutch concepts of *noodweer* and *noodweer exces*. In the context of Law Number 1 of 2023, the key provisions discussed in this article are the homicide provision in Article 458 and the defense-related provisions, particularly Article 43 on excessive forced defense caused by severe mental disturbance resulting from an unlawful attack or threat of attack (Republic of Indonesia, 2023).

The central ambiguity concerns two legal elements. First, the phrase "severe mental disturbance" is not accompanied by operational criteria for judicial assessment. Second, the requirement of an immediate attack or threat of attack tends to fit street violence or single-event confrontation more easily than the relational and repetitive structure of domestic violence. R. Soesilo's classical commentary on the previous Criminal Code emphasized compulsion, proportionality, protected interests, and the requirement that the attack be unlawful and immediate (Soesilo, 1993). Those criteria remain doctrinally influential, but they require careful adaptation in domestic violence cases because the danger may be continuous even when the final act does not occur during a visible physical assault.

The article does not argue that the immediacy requirement should be abolished. Rather, it argues that immediacy must be interpreted contextually. In domestic violence, the threat may be temporally extended, recurring, and credible because it is grounded in a history of abuse. The legal issue is therefore whether the defendant reasonably perceived the danger as continuing, not merely whether the deceased was physically striking her at the precise second of the lethal act.

### **4. Victim-sensitive adjudication and substantive justice**

Victim-sensitive adjudication does not mean abandoning legality or the presumption of innocence. It means interpreting legal elements with adequate attention to the social, psychological, and evidentiary realities of victimization. In domestic violence cases, the defendant's prior victimization may be relevant to *mens rea*, motive, necessity, proportionality, excuse, mitigation, sentencing, and the evaluation of expert testimony.

Substantive justice requires a balance between legal certainty, utility, and justice. Indonesian scholarship often refers to these values as *kepastian hukum*, *kemanfaatan*, and *keadilan* (Susanti & Maduri, 2023). A court that only applies the homicide provision without considering the Domestic Violence Law may achieve formal certainty but fail to reach substantive justice. Conversely, a decision that relies merely on compassion without doctrinal criteria may undermine legal certainty.

The task is to build a structured interpretive framework that can discipline judicial discretion.

## METHOD

This study uses normative legal research, also known as doctrinal legal research. The object of analysis is not an empirical population but legal norms, principles, doctrines, and interpretive relationships among statutes. Normative legal research is appropriate because the main issue is the ambiguity of legal norms governing criminal liability when a domestic violence victim commits homicide against the abusive spouse (Marzuki, 2005; Muhammad, 2015).

The study applies three approaches. First, the statutory approach examines Law Number 1 of 2023 on the Criminal Code and Law Number 23 of 2004 on the Elimination of Domestic Violence. Second, the conceptual approach analyzes criminal liability, self-defense, excessive self-defense, culpability, coercive control, and victim-sensitive adjudication. Third, the systematic interpretive approach reads the Criminal Code in harmony with the Domestic Violence Law so that domestic violence is not treated as an irrelevant background fact.

The legal materials consist of primary and secondary sources. Primary legal materials include statutes and legal provisions concerning homicide, self-defense, excessive self-defense, domestic violence, victim protection, and the rights of victims. Secondary legal materials include Indonesian criminal law scholarship, doctrinal commentaries, international literature on domestic violence and self-defense, and studies on battered women who kill abusive partners. The analysis is descriptive-qualitative and interpretive. It identifies the relevant legal norms, examines ambiguities in those norms, compares them with domestic violence realities described in legal and interdisciplinary scholarship, and formulates a structured interpretive framework for judicial assessment.

The study has two limitations. First, it does not conduct empirical interviews with judges, prosecutors, police officers, or survivors. Second, it does not attempt to generalize the psychological condition of all domestic violence victims. Instead, it proposes legal criteria that courts can use while still requiring case-specific evidence, including medical records, psychological assessment, witness testimony, prior police reports, and other relevant proof.

## RESULTS AND DISCUSSION

### 4.1 Regulation of homicide committed by a wife who is a domestic violence victim

#### 4.1.1 Homicide under Article 458 of the 2023 Criminal Code

Under Indonesian positive law, the starting point for a case in which a wife kills her husband is the homicide provision. Article 458 of Law Number 1 of 2023 provides the basis for punishing a person who intentionally takes another person's life (Republic of Indonesia, 2023). The provision is gender-neutral. Therefore, a wife who kills her husband may formally satisfy the elements of homicide: a subject capable of criminal responsibility, an intentional act, the deprivation of life, and the existence of another human victim.

However, identifying the elements of homicide is only the beginning of liability analysis. Criminal law must also examine whether there are grounds that justify,

excuse, eliminate, or reduce criminal responsibility. In domestic violence cases, this second stage is decisive. If courts stop at Article 458, the wife's prior status as a domestic violence victim becomes legally invisible. Such invisibility would be inconsistent with Law Number 23 of 2004, which expressly recognizes domestic violence as a serious legal wrong and provides a victim-protection framework (Republic of Indonesia, 2004).

This article therefore distinguishes between formal fulfillment of the homicide elements and final attribution of criminal liability. A domestic violence victim who kills an abusive spouse may still have committed the external act of homicide. Yet her legal blameworthiness must be assessed in light of the circumstances under which the act occurred, including whether the violence suffered produced a condition relevant to self-defense, excessive self-defense, excuse, or mitigation.

#### **4.1.2 Self-defense and excessive self-defense**

Self-defense doctrine is based on the principle that a person need not passively endure unlawful aggression. Where an unlawful attack threatens protected interests, defensive action may be lawful if it is necessary and proportionate. Excessive self-defense goes further by addressing situations where the defensive act exceeds lawful limits because the actor is under a severe mental disturbance caused by the attack. The Indonesian provision on excessive forced defense is therefore highly relevant to wives who kill abusive husbands after repeated domestic violence.

The difficulty is that domestic violence does not always resemble the paradigmatic case imagined by traditional self-defense doctrine. In many doctrinal accounts, the attacker begins an immediate physical assault, the defender responds at once, and the court assesses proportionality in that immediate confrontation. Domestic violence may involve a different structure: the abuse may be repeated over years, the victim may be isolated from support, threats may be credible because of past conduct, and danger may remain even during intervals between physical assaults (Stark, 2007; Walker, 2017).

Consequently, Article 43 should not be interpreted solely through the lens of one-time violence. When a wife kills a husband who has repeatedly abused her, courts should examine whether the final act was causally connected to a continuous pattern of violence and whether the wife's mental state was shaped by cumulative victimization. The proper inquiry is not whether every domestic violence victim may claim excessive self-defense, but whether this particular defendant can prove the relevant elements through reliable evidence.

#### **4.1.3 Normative ambiguity in Article 43: "severe mental disturbance" and "immediate attack"**

The first ambiguity concerns "severe mental disturbance." The phrase has strong normative significance because it determines whether the excess in defense can be excused. Yet the Criminal Code does not provide detailed criteria for assessing this condition. Without criteria, the application of Article 43 depends heavily on judicial intuition. One judge may consider prolonged fear, panic, dissociation, hypervigilance, or trauma to be severe mental disturbance; another may treat the same evidence as ordinary emotion insufficient to affect culpability.

The second ambiguity concerns the meaning of an attack or threat of attack. Domestic violence often involves continuing danger rather than a single instantaneous event. The victim's fear may be based on prior beatings, threats to kill,

sexual violence, strangulation, weapon use, economic dependence, and the perpetrator’s repeated control over the household. If immediacy is interpreted rigidly, the law may fail to recognize the reality that domestic abuse can create an ongoing emergency, especially when the victim reasonably believes that seeking help or leaving will trigger more severe violence.

These ambiguities generate legal uncertainty. Similar cases may produce different outcomes depending on how judges understand psychological evidence and the temporal structure of domestic violence. Such inconsistency is problematic from the perspective of legal certainty. At the same time, rigid application of Article 458 without interpretive integration with the Domestic Violence Law is problematic from the perspective of substantive justice.

**Table 1. Normative interface between homicide, excessive self-defense, and domestic violence law**

Legal instrument	Key norm	Legal function	Relevance to the present issue
Law No. 1 of 2023 on the Criminal Code, Article 458	Homicide: intentional deprivation of another person’s life	Basis for charging the wife as homicide defendant	Establishes formal elements of the offence, but does not resolve culpability or defenses.
Law No. 1 of 2023 on the Criminal Code, Article 43	Excessive forced defense caused by severe mental disturbance following an unlawful attack or threat	Possible excuse or non-punishment where defense exceeds lawful limits	Creates ambiguity in domestic violence cases because “severe mental disturbance” and “immediate attack” lack clear criteria.
Law No. 23 of 2004 on Elimination of Domestic Violence	Recognition of physical, psychological, sexual, and neglect-based domestic violence	Victim-protection and interpretive framework	Provides legal basis to assess prior victimization, psychological harm, and cumulative abuse as relevant to liability.

**4.2 Why conventional immediacy is inadequate for repeated domestic violence**

A central problem in applying self-defense doctrine to domestic violence is the conventional assumption of immediacy. In ordinary confrontational violence, the boundary between attack and defense is easier to locate. In domestic violence, however, the boundary is often blurred by repetition, threats, coercive control, and the victim’s limited ability to escape. The relationship itself may become the site of continuing danger.

Comparative scholarship on battered women who kill abusive partners has repeatedly shown that traditional self-defense doctrine can be gendered in effect because it is built around a stereotypically male confrontation: sudden attack, comparable physical strength, and immediate reciprocal force (Maguigan, 1991; Schneider, 2000; Sheehy, 2014). Women who experience prolonged domestic abuse may not be able to defend themselves successfully during direct assault. They may act at a later moment because the danger remains credible, because escape has failed, or because prior threats indicate that future violence is unavoidable.

The Indonesian legal system should not automatically import foreign doctrines. Nevertheless, comparative literature is useful because it identifies a shared problem across jurisdictions: the law often struggles to fit cumulative abuse into defensive-force categories designed for isolated attacks. This comparative insight supports the need to interpret Article 43 systematically with Law Number 23 of 2004. The Domestic Violence Law confirms that psychological and non-physical violence are legally relevant harms, not merely background emotions.

A contextual interpretation of immediacy should consider whether the threat was continuous and credible. Evidence may include prior police reports, medical

examinations, witness statements, protection orders, records of psychological treatment, digital threats, injuries, testimony from family or neighbors, and expert assessment. The question is not whether the deceased was actively assaulting the wife at the exact instant of the homicide, but whether the wife's perception of danger was legally understandable within a continuing pattern of domestic violence.

#### **4.3 The role of Law Number 23 of 2004 in determining criminal liability**

##### **4.3.1 Recognition of psychological violence and domestic neglect**

Law Number 23 of 2004 is crucial because it legally recognizes forms of domestic violence that are often invisible in homicide adjudication. Article 7, for example, recognizes psychological violence as conduct that may cause fear, loss of self-confidence, loss of ability to act, helplessness, or severe psychological suffering. This recognition is directly relevant to Article 43 of the Criminal Code because the concept of severe mental disturbance cannot be interpreted without considering legally recognized psychological harm within domestic violence.

When a wife kills an abusive husband, the court should therefore assess whether the defendant's psychological state was produced by domestic violence recognized under Law Number 23 of 2004. The Domestic Violence Law can help transform what might otherwise be seen as a merely subjective emotional claim into a legally structured inquiry. It offers a statutory basis for considering physical, sexual, psychological, and neglect-based abuse as part of the causal background of the homicide.

##### **4.3.2 Domestic violence as evidence of culpability, excuse, or mitigation**

The Domestic Violence Law may operate at several points in criminal liability analysis. First, it may be relevant to the interpretation of necessity and proportionality. A victim who has repeatedly suffered violence may have fewer realistic safe alternatives than a stranger attacked in a public place. Second, it may be relevant to the defendant's mental state. Repeated abuse may produce fear, panic, trauma, and impaired capacity for calm judgment. Third, it may be relevant to excuse or mitigation even if complete exculpation is not available.

This approach preserves the distinction between complete defense and mitigation. Some cases may satisfy the conditions of excessive self-defense and lead to non-punishment. Other cases may not satisfy those conditions but may justify a reduction in sentence because prior victimization substantially diminishes culpability. In either case, the law should require evidence and reasoning. The defendant's status as a domestic violence victim should not function as an automatic defense, but it should also not be ignored.

##### **4.3.3 Evidentiary implications: the need for expert and contextual evidence**

A victim-sensitive interpretation requires reliable evidence. Courts should not rely solely on the defendant's assertion that she was abused, but neither should they require impossible levels of proof. Domestic violence is often underreported, and victims may delay reporting because of fear, dependence, stigma, threats, or lack of institutional support (Goodmark, 2018; WHO, 2024). Therefore, the evidentiary inquiry should be plural and contextual.

Relevant evidence may include medical records, photographs of injuries, reports to police or local authorities, witness testimony, prior complaints to family members, digital messages, financial control, sexual violence evidence, psychological assessment, and expert testimony on domestic violence dynamics. Expert evidence

is especially important for helping courts understand why a victim may not leave, why she may return to the abuser, why she may appear calm after the event, and why danger may be perceived as continuing even outside a visible physical assault.

The purpose of expert testimony is not to replace judicial judgment. Rather, it helps judges evaluate the facts through an informed framework. In this sense, Law Number 23 of 2004 and psychological evidence should work together: the statute establishes the legal relevance of domestic violence, while expert testimony assists in determining whether the violence caused severe mental disturbance or diminished culpability in the particular case.

#### 4.4 A proposed victim-sensitive doctrinal framework

To reduce normative ambiguity and judicial inconsistency, this article proposes the following framework for assessing cases in which a wife kills her husband after repeated domestic violence. The framework does not create a new defense. It operationalizes existing Indonesian legal norms by reading the Criminal Code systematically with the Domestic Violence Law.

**Table 2. Proposed judicial parameters for assessing excessive self-defense in domestic violence homicide cases**

Assessment parameter	Guiding question	Examples of relevant evidence
Pattern of prior violence	Was there repeated physical, psychological, sexual, or neglect-based violence within the household?	Medical records, photographs, witness testimony, police reports, messages, protection orders, prior complaints.
Continuity and credibility of threat	Could the danger reasonably be perceived as continuing in light of the history of abuse?	Threats to kill, use of weapons, strangulation, escalation, stalking, confinement, economic control, prior failed attempts to leave.
Causal connection	Was the lethal act causally connected to the accumulated violence rather than to unrelated motives?	Timeline of abuse, immediate antecedent events, defendant's statements, expert evaluation, witness accounts.
Severe mental disturbance	Did the abuse produce fear, panic, trauma, or impaired capacity for rational control relevant to Article 43?	Psychological/psychiatric assessment, trauma symptoms, history of coercive control, clinical records.
Necessity and safe alternatives	Were realistic and safe alternatives available to the defendant at the relevant time?	Access to shelters, family support, police response history, geographic isolation, threats if leaving.
Proportionality and excess	If the response exceeded lawful defense, was the excess explainable by attack-induced mental disturbance?	Nature of force used, injuries, weapon availability, prior violence severity, expert testimony.

The first parameter is the pattern of prior violence. Courts should determine whether the defendant experienced repeated domestic violence recognized by Law Number 23 of 2004. A single minor conflict should not be equated with prolonged abuse. The law should distinguish ordinary marital conflict from legally relevant domestic violence.

The second parameter is continuity and credibility of threat. The court should ask whether the deceased's past conduct made the threat of future violence credible. Prior strangulation, weapon use, death threats, sexual violence, and severe control over movement may indicate that the danger was not confined to a single moment.

The third parameter is causal connection. The defendant's lethal act must be connected to the violence suffered. If the homicide was motivated by unrelated financial gain, jealousy, revenge unrelated to survival, or pre-existing criminal intent, the domestic violence background may have less relevance. Conversely, if the

evidence shows that the act was the culmination of fear and survival pressure, Article 43 becomes more relevant.

The fourth parameter is severe mental disturbance. This element should be assessed using both legal reasoning and expert evidence. Courts should avoid equating severe mental disturbance with ordinary anger. It should refer to a serious psychological condition, produced by unlawful violence or threat, that substantially affects the defendant's capacity for calm and rational self-control.

The fifth parameter is necessity and safe alternatives. Domestic violence victims may appear to have alternatives in theory but not in practice. Leaving may be dangerous, reporting may be ineffective, shelters may be inaccessible, and family support may be absent. Courts should examine realistic safe alternatives, not abstract possibilities.

The sixth parameter is proportionality and excess. Where the defensive act exceeds what would normally be proportionate, the court must decide whether the excess was caused by severe mental disturbance resulting from the abusive attack or threat. This preserves the structure of Article 43 while adapting it to domestic violence realities.

#### **4.5 Implications for law reform and criminal justice practice**

The analysis has implications for both legislation and adjudication. For lawmakers, Article 43 should be clarified through statutory explanation or implementing guidelines. The law should state that in assessing excessive self-defense, courts may consider repeated domestic violence, psychological violence, coercive control, prior threats, and expert testimony. Such clarification would reduce inconsistency and provide a clearer doctrinal basis for judicial reasoning.

For judges, the key task is to provide structured reasoning. Decisions should explain how the court evaluates the pattern of domestic violence, the defendant's psychological condition, the credibility of the threat, the causal connection, and the proportionality of the response. Courts should avoid conclusory statements that simply accept or reject self-defense without engaging with the domestic violence background.

For investigators and prosecutors, early identification of domestic violence history is essential. Police should document prior abuse, collect medical and digital evidence, interview relevant witnesses, and consider psychological examination. Prosecutors should frame indictments and sentencing submissions in a way that acknowledges both the seriousness of homicide and the legal relevance of prior victimization.

For defense counsel, the Domestic Violence Law should be used systematically, not merely rhetorically. Counsel should present evidence showing how the statutory forms of domestic violence are connected to the defendant's mental state and conduct. Expert testimony should be prepared carefully to explain trauma, fear, coercive control, and the realistic limitations on escape.

For future research, empirical study of Indonesian court decisions is needed. Such research should examine whether judges already consider prior domestic violence in homicide cases, how Article 43 is interpreted, and whether outcomes differ depending on the availability of expert evidence. Comparative research with jurisdictions that have reformed self-defense or provocation doctrines in domestic violence contexts may also assist Indonesian legal reform.

## CONCLUSION

A wife who kills her husband after prolonged domestic violence presents one of the most difficult questions in criminal law: how should the legal system respond when a victim becomes a perpetrator? Indonesian criminal law formally regulates homicide through Article 458 of Law Number 1 of 2023. A wife who intentionally takes her husband's life may satisfy the elements of homicide. However, criminal liability must also consider defenses, excuses, and mitigation, particularly when the defendant was previously subjected to domestic violence by the deceased.

Article 43 of the 2023 Criminal Code provides a doctrinal basis for considering excessive self-defense caused by severe mental disturbance resulting from an unlawful attack or threat. Nevertheless, the provision remains ambiguous when applied to domestic violence because it does not define the criteria for severe mental disturbance and tends to assume an immediate attack. Domestic violence is frequently repeated, cumulative, and psychologically coercive. A rigid interpretation of immediacy risks excluding victims whose fear and defensive response were shaped by prolonged abuse.

Law Number 23 of 2004 on the Elimination of Domestic Violence plays an important interpretive role. It recognizes physical, psychological, sexual, and neglect-based violence within the household and therefore provides a statutory foundation for considering the defendant's victimization, psychological condition, and diminished culpability. The integrated application of the Criminal Code and the Domestic Violence Law can help courts move beyond formalistic homicide analysis toward a more substantively just assessment of criminal responsibility.

This article proposes a victim-sensitive doctrinal framework based on six parameters: pattern of prior violence, continuity and credibility of threat, causal connection, severe mental disturbance, realistic safe alternatives, and proportionality or excess. The framework does not excuse homicide automatically. It requires evidence, structured reasoning, and careful distinction between justification, excuse, and mitigation. Its purpose is to preserve legal certainty while ensuring that the realities of domestic violence are not rendered invisible in criminal adjudication.

## Recommendations

### 1. For lawmakers

The legislature should clarify the meaning of severe mental disturbance and the assessment of immediate or continuing threat in Article 43 of the Criminal Code. The statutory explanation should expressly allow courts to consider repeated domestic violence, psychological violence, coercive control, expert testimony, and the availability of realistic safe alternatives. This clarification would improve legal certainty and reduce inconsistent judicial interpretation.

### 2. For judges and prosecutors

Judges and prosecutors should assess homicide committed by a domestic violence victim through a structured framework that integrates the Criminal Code and Law Number 23 of 2004. Judicial decisions should explicitly analyze the history of abuse, the defendant's mental condition, the credibility of the threat, and the relationship between the violence suffered and the lethal act. Expert psychological evidence should be considered where relevant.

### 3. For investigators and victim-support institutions

Investigators should document domestic violence history from the earliest stage of the criminal process, including medical evidence, psychological evidence, digital threats, prior complaints, and witness testimony. Victim-support institutions should coordinate with law enforcement to ensure that evidence of prior victimization is available when the survivor later becomes a defendant.

### 4. For future research

Future research should examine Indonesian court decisions involving domestic violence victims who commit homicide or serious assault against abusive spouses. Empirical doctrinal mapping would help identify patterns in judicial reasoning, evidentiary challenges, and the practical use of Article 43 and Law Number 23 of 2004.

### Declarations

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