



# The Paradigm of Criminal Offences Becoming Ordinary Criminal Offences in Cases of Sexual Harassment Within the Family as a Form of Criminal Law Reform in Indonesia

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*Article history: Received December 14, 2025; Revised January 25, 2026; Accepted February 28, 2026*

## ABSTRACT

*The purpose of this study is to find the ideal concept of regulating complaint offences into ordinary offences against the enforcement of sexual harassment cases in the household as a form of legal reform in Indonesia, using empirical juridical research methods. The research method uses an approach that examines the applicable legal rules in the social, political, economic, and cultural contexts, as well as to understand how the law works in everyday reality. This research is essentially normative legal research but is also supported by empirical research. There are many cases of sexual abuse in Indonesia, but it is still very difficult to enforce the law because sexual abuse within the household is still considered a complaint offence. so that law enforcement officials cannot prosecute and punish perpetrators if there is no report or complaint from the victim, or even if there is a complaint and report, the victim usually reconciles with the perpetrator and the legal process is terminated because it cannot be continued. Therefore, it is necessary to reclassify offences from complaint-based offences to ordinary offences in cases of sexual abuse within the household as a form of criminal law reform in Indonesia.*

**Keywords:** *Complaint Offences, Ordinary Offences, Sexual Harassment Cases.*

## INTRODUCTION

Every human being has a sacred privilege, namely, a special freedom guaranteed by law. The state has a commitment to guarantee the fundamental rights fundamental rights of every citizen, including women, particularly wives, who are often victims of sexual abuse by their husbands. The 1945 Constitution of the Republic of Indonesia, in Article 28G paragraph

(1) which reads:

"Every person shall have the right to protection of themselves, their family, their honour, their dignity and their property under their control, as well as to a sense of security and protection from the threat of fear of doing or not doing something that is a fundamental right".

Article 28G, Paragraph 1, of the 1945 Constitution of the Republic of Indonesia provides legal protection for oneself, one's family, honor, dignity, and property under one's control, as well as human rights themselves.

The prevalence of domestic violence has prompted the government to enact a law that provides protection and security to the public, namely Law No. 23 of 2004 on the Elimination of Domestic Violence, which came into effect on September 22, 2004. This law serves as a form of law enforcement against criminal acts of physical, psychological, sexual violence, and economic neglect within the household. In addition, the Indonesian government has established a special law regulating sexual violence, Law No. 12 of 2022, concerning Criminal Acts of Sexual Violence. This law regulates the prevention of all forms of sexual violence, the handling, protection, and restoration of victims' rights, and coordination between the central and local governments.

International cooperation in the prevention and handling of sexual violence victims can be carried out effectively. Women are the group most frequently victimized by sexual violence, particularly sexual harassment, both inside and outside the home. In many cases, women or wives are considered sexual objects or weaker parties who are at greater risk of becoming victims of sexual violence. Several factors contribute to women in Indonesia being victims of sexual violence (Fachria Octaviani, 2021)

1. Patriarchal Culture and Gender Inequality: The culture that places men in a more dominant or superior position compared to women is still strong resulting in unequal power relationships. This often places women as sexual objects and limits their autonomy.
2. Parenting Patterns and Community Views: Inappropriate parenting patterns within families and community views that tend to blame the victim, such as normalizing violence or blaming the victim's clothing, make perpetrators feel safe and victims afraid to report.
3. Weak Law Enforcement and Stigma: Although there is already a Law on Sexual Violence Crimes, its implementation in the field still faces challenges. Victims' fear of social stigma, shame, or threats of retaliation often leads to underreporting of cases.
4. Impact of the Internet and Social Media: The unwise use of gadgets and easy access to pornographic content on the Internet often triggers sexual violence, especially among teenagers.
5. Economic Dependency and Low Education: Economic factors, such as poverty and financial dependency on a partner or family, make it difficult for women to escape situations of violence.
6. Lack of Sexual Education: A lack of comprehensive understanding of sexuality, human rights, and bodily boundaries from an early age facilitates abuse.
7. Psychological and Environmental Factors: Alcohol/drug abuse, a history of childhood trauma, and a dysfunctional environment can trigger aggressive behavior or sexual deviance in perpetrators.

Some examples of cases of sexual abuse committed by husbands against their wives that were not prosecuted, recorded from 2022 to mid-2025 in North Sulawesi, are as follows (Wanda Musu, 2025)

1. From 2022 to mid-2025, 49 cases of sexual abuse by husbands against their wives in the Sangihe Islands Regency were not prosecuted.
2. In Tomohon City, from 2022 to mid-2025, 23 cases of sexual abuse by husbands against their wives were reported to the police and the PPPA Office but were not prosecuted.
3. In North Minahasa Regency, from 2022 to mid-2025, 38 cases of sexual abuse of wives by husbands were reported, but the reports were later withdrawn.

Indonesian law regulates cases of sexual abuse of wives by husbands as sexual violence crimes, including complaints. This is regulated in Article 7 of Law Number 12 of 2022, paragraph (1), which reads:

"Non-physical sexual abuse and physical sexual abuse as referred to in Article 6 letter a are complaint offences." Cases of sexual abuse by husbands against their wives are classified as complaint offences. Complaint offences have various weaknesses, namely dependence on the victim's courage to report the crime, abuse of power by husbands against their wives, slow case handling, obstruction of legal proceedings, and a lack of proactive action by the state to address domestic violence. (Rochmat Wahab, 2019) Many cases of sexual abuse occur within the household, but only a few are prosecuted, and some are not prosecuted at all. This is because sexual abuse is a complaint-based offence, so if it is not reported or there is no complaint from the wife as the victim, law enforcement officials cannot prosecute the husband. Additionally, there are cases that have been reported to the police, but ultimately the victim withdraws the report because they have reconciled with the perpetrator; thus, the police cannot continue with the

legal process. (Personal Communication, 24 October 2025)

Based on the background of the issue, the problem is as follows:

1. What are the implications of changing the paradigm from a complaint-based offence to a regular offence for the legal protection of victims of sexual abuse and sexual violence within the household?
2. How does the ideal concept of regulating complaint-based offences as ordinary offences affect the enforcement of laws in cases of sexual abuse within the household as a form of legal reform in Indonesia?

## RESEARCH METHOD

In compiling this paper, the author used an empirical legal research method. This approach is used to examine the law in the context of social, political, economic, and legal issues. Cultural contexts, as well as understanding how the law works in everyday reality. This research is essentially normative legal research but is also supported by empirical research and analysis. The normative legal approach is used to analyze legal materials with reference to legal norms as stipulated in legislation, while empirical research is conducted directly with sources or directly at the research location. (Irwansyah, 2022)

## RESULTS AND DISCUSSION

### **Implications of the Paradigm Shift from Complaint-Based Offences to Regular Offences on the Legal Protection of Victims of Sexual Harassment and Sexual Violence in the Household**

Indonesia is a democratic country that respects human rights. In a democracy, the recognition and protection of human rights are indicators of a government's success. Domestic violence is a form of human rights violation as it is related to crimes against humanity. Law No. 26 of 2000 on Human Rights Courts, Article 34, explains that "Every victim and witness of gross human rights violations is entitled to physical and mental protection from all forms of threats, harassment, terror and violence from any party."

Protection for victims of domestic sexual violence is not only the responsibility of the police but must be carried out by various parties. Several institutions are involved in protecting victims of domestic sexual violence, including the police, health workers, social workers, volunteer companions, and advocates. (Trihastuti, A., & Nuqul, F. L. 2020).

When a victim experiences sexual abuse within a household, the first legal step is to report it to law enforcement officials. Things to consider before reporting include ensuring the victim is safe from the perpetrator. If they are still in danger, they should immediately find a safe place (e.g., a neighbor's house, family, or safe house/shelter). Contact the authorities, such as the police (110) or other emergency services. You can also contact support organizations such as the National Commission on Violence Against Women (021-3903963) or the Witness and Victim Protection Agency (LPSK). Victims in a state of distress accompanied by an official companion (family, community organization, or legal representative) can go directly to the nearest police station or contact a special unit, such as the Women and Children Protection Unit (PPA) at the police station. This is where the formal mechanism is implemented: receiving reports, recording the chronology of events and initiating formal legal proceedings. Victims may also authorize another party to file a report on their behalf to facilitate access, especially when emotional or security conditions make it difficult for them to attend in person. (Zahlevi, Rully, 2020).

After reporting the incident, the police are obliged to provide temporary protection to the victim for seven days to avoid terror or intimidation from the perpetrator. Victims are also required to request written protection orders from the court. A protection order can be submitted by another person with the victim's consent. This protection order can be valid for up to one year and can be extended according to the court's order. Victims must record the chronology of events and collect *medical* evidence and witness statements. Victims must recount the chronology of events honestly and openly. Victims may be accompanied by legal counsel, family members, or NGOs when they report. The role of the companion is very important in providing psychological support so that victims can get through the legal process of resolving the case. (Ministry of Women's Empowerment and Child Protection, 2024). Officers prepare an Investigation Report (BAP). Officers may direct victims to undergo formal medical examinations to obtain evidence of sexual violence. After the police report is filed, a medical examination is

conducted. The next step is to collect evidence of violence; therefore, documentation is very important for the legal process. If the evidence is complete and the victim does not withdraw the report, the legal process is transferred to the prosecutor's office and then to the court. However, if there is reconciliation between the victim and the perpetrator, and the victim withdraws the report, the legal process cannot be continued and will be terminated. (Rosania Paradias and Eko Soponyono, 2022).

Paradigm Shift in Criminal Law: Complaint offences place the legal process at the discretion of the victim, while ordinary offences place the state as the active party in law enforcement. (Gema Justicia. 2023). Several implications of this paradigm shift

This is:

### 1. Implications for Victims' Rights.

- Right to Access Justice for Complaints:

Victims must have the courage to report crimes, as many cases are not pursued because of economic dependence, family pressure, and threats from perpetrators.

Regular offences:

The state can prosecute without a complaint from the victim, thereby reducing the victim's psychological burden.

Implications:

Victims' rights to justice become more effective and realistic.

- Right to Protection Change to a common offence:

It enables early protection (temporary protection, detention of perpetrators) and prevents revictimisation due to coercion to withdraw reports.

Implications:

The state actively guarantees the safety of victims rather than waiting for victims to take the initiative.

- Right to Dignity and Recovery

Complaint: Victims are often forced to "make peace" because sexual violence is considered a family disgrace.

Common: The focus shifts to victim recovery, medical and psychological services, restitution, and compensation.

Implications:

Victims are positioned as legal subjects, not merely as evidence.

### 2. Implications for Law Enforcement Officials

This paradigm shift has impacted the active obligations of the police and prosecutors. Reports should not be rejected.

Implications:

Officials are no longer passively neutral, but guarantors of victims' rights.

### 3. Social and Cultural Implications

Shifting the stigma from the victim to the perpetrator. Breaking the culture of "as long as they are still living under the same roof, there is no need to take it to court," encouraging reporting and preventing recurrence.

Implications:

The law functions as a tool for social change (*social engineering*).

## **The Ideal Concept of Regulating Complaint Offences as Regular Offences in the Enforcement of Law on Domestic Sexual Abuse as a Form of Legal Reform in Indonesia**

Sexual abuse in marital relationships is a serious issue often hidden behind the privatization of domestic life. In the practice of positive criminal law in Indonesia, this crime is still classified as a complaint. This means that legal action against sexual abuse by a husband against his wife can only be taken if there is a complaint from the victim, namely, the wife (Khaleed, Badriyah, 2015).

However, in the context of power relations within the household, especially in patriarchal societies such as Indonesia, the complaint mechanism is a major obstacle for victims in obtaining justice. Victims face not only psychological and emotional barriers but also social, cultural, and economic pressures that make them reluctant or

even unable to file a complaint. In such circumstances, the law no longer serves as a protective tool but as a barrier that prevents victims from obtaining their rights.

Conceptually, sexual abuse violates a person's dignity, bodily integrity, and sexual autonomy. In marital relationships, the principles of equality and reciprocity should form the basis of the interaction between husband and wife, including in sexual relations. However, in many cases, this relationship is characterized by domination and unilateral control, where wives are obliged to serve their husbands' sexual needs without regard for their wishes and consent. (Yudhianto, Kresna Agung, 2023).

Articles in legal regulations that still categorize sexual abuse in the household as a complaint offence, especially within a legal framework that relies on the

Law No. 23 of 2004 on the Elimination of Domestic Violence (PKDRT) indirectly reflects the view that such acts are still private matters. This contradicts the basic principles of human rights protection, as stated in the 1945 Constitution.

The conceptual and legal basis for the urgency of changing the status of complaint offences to ordinary offences in cases of sexual abuse of wives by husbands is a fundamental aspect of the discourse on criminal law reform in Indonesia. This change does not only concern the technical aspects of the classification of offences, but also touches on the essence of the criminal law system itself: to protect human dignity, guarantee justice, and create effective legal protection for vulnerable groups, especially women in the institution of marriage. Therefore, the argument for this urgency must be viewed from two complementary dimensions: the conceptual and legal dimensions. (Asshiddiqie Jimly, Ali Safa'at M, 2014)

Conceptually, the urgency of this reformulation is based on the principles of human rights, substantive justice, and developments in modern criminal law thinking that emphasize *a victim-oriented criminal justice system*. In the classical approach, criminal law was heavily influenced by positivistic and patriarchal thinking, which viewed the relationship between husband and wife as a private matter that was not worthy of state intervention. Within this framework, sexual relations within marriage were considered a wife's obligation to her husband, which implicitly negated the need for consent in sexual relations. This view is normatively outdated and no longer aligns with the principles of equality and respect for the integrity of an individual's body.

Modern criminal law thinking has undergone a paradigm shift from merely punishing perpetrators to protecting victims and preventing crime. (Rustamaji, Muhamad, 2020) Within this framework, the body of every individual, including within the institution of marriage, remains under their own authority (Rustamaji & Muhamad, 2020). Marriage does not abolish a person's right to bodily autonomy, including the right to refuse sexual relations. Thus, sexual abuse, namely, any form of coercion into sexual activity without valid consent, remains a form of violence that violates the law, regardless of the underlying marital relationship. Therefore, maintaining spousal sexual abuse against is a form of legal tolerance for violence hidden behind the institution of the family.

From a legal perspective, the basis for the urgency of this change can be traced to various national and international legal sources. Nationally, Law No. 23 of 2004 on the Elimination of Domestic Violence (PKDRT Law) has become an important milestone in recognizing domestic violence, including sexual violence, as a serious legal violation. This law defines sexual violence as a form of domestic violence that can occur between a husband and wife. However, its implementation still has weaknesses because some forms of sexual violence are still positioned as complaint offences. (Mayor, George, 2015). This creates legal uncertainty and makes it difficult for law enforcement officials to intervene early, so that victims often do not receive adequate protection.

Furthermore, in the context of the recent revision of the Criminal Code (KUHP), efforts have been made to expand the scope of sexual violence offences and strengthen protection for victims. However, not all provisions in the new Criminal Code have completely eliminated the complaint-based approach to sexual violence in the domestic sphere. Therefore, legally, changing the status of this offence must be prioritized in the process of harmonizing and implementing national criminal law to align it with existing legal frameworks, such as the PKDRT Law and the Sexual Violence Criminal Law (TPKS Law) passed in 2022. The TPKS Law explicitly recognizes sexual violence as a crime against the body and dignity of the victim, which should not be treated as a private matter.

Within the framework of criminal law reform in Indonesia, this reformulation is not merely a change in the

classification of offences but part of a broader shift in the criminal law paradigm towards a more just, inclusive, and humanistic system. Criminal law that is responsive to victims, especially in the context of gender-based violence, shows that the state is present to guarantee the constitutional rights of its citizens, including the right to security, freedom from torture, and protection of personal integrity. This also reflects Indonesia's commitment to developing a national legal system. This is in line with global standards for the protection of human rights. (Sulaeman, Munandar, 2019).

Thus, both conceptually and juridically, there is a strong and indisputable basis for the urgency of changing the status of complaint offences to ordinary offences in cases of sexual abuse of wives by their husbands. This reformulation is not only in line with the mandate of the Constitution and national legislation, but also embodies Indonesia's international commitments and the principles of social justice and humanity that form the basis of Indonesia's future criminal law philosophy.

Domestic abuse, which is generally related to psychological and sexual violence, was initially viewed as a private matter that should not be overly interfered with by the state. Therefore, some forms of criminal acts that occur within the domestic sphere tend to be categorized as complaint offences, meaning that law enforcement can only proceed if the victim reports the incident to the authorities first. On the one hand, this is considered to respect family autonomy, but on the other hand, it creates a legal protection deadlock for victims who often experience pressure, economic dependence, or fear of the perpetrator, who is in fact their spouse or close family member. (Eko Nurisman, 2022).

However, in recent years, Indonesia's criminal law has undergone a paradigm shift, including the state's perspective on and response to domestic crimes. This shift did not happen suddenly but was the result of accumulated social pressure, advocacy by civil society groups, and changes in legal policy based on a more progressive understanding of human rights and the principle of gender equality.

This process of change has also been supported by progressive interpretations by judicial institutions, including the Constitutional Court and the Supreme Court, in several rulings that emphasize the importance of protecting victims of domestic violence (Hamuni, 2019). These institutions have gradually expanded the scope of interpretation of criminal law provisions to be more favorable to victims, especially women and children, who are often the most vulnerable parties in domestic power relations.

Normatively, the shift from complaint-based offences to ordinary offences in the context of domestic abuse is the result of changes in the legal structure, including regulations.

Legislation, as well as changes in social structures, where society has begun to reject the normalization of domestic violence. This shift is an important step in the process of criminalizing domestic violence to protect citizens' basic rights. However, this shift also poses new challenges for law enforcement. For example, although the PKDRT Law stipulates that reports can come from anyone, law enforcement officials often still treat certain cases as if they still require a personal complaint. (Rakhmawati Dessy, Evalina Alissa, and Nelli Herlina., 2023)

This shows that the normative shift has not been fully internalized in the legal bureaucracy and law enforcement practices. Therefore, this transformation must be accompanied by training, changes in legal culture, and strengthening victim protection systems to ensure effective implementation.

Thus, it can be asserted that the shift from complaint-based offences to ordinary offences in cases of domestic abuse in Indonesia occurred through a combination of changes in positive legal norms (the PKDRT Law), civil society demands, and the dynamics of legal interpretation by law enforcement officials and judicial institutions. This shift reflects a new paradigm in Indonesian criminal law that is more inclined towards victim protection and treats domestic violence as a public issue that must be dealt with seriously by the state. (August Arrafii, et al., 2022).

In this context, scientific contributions are crucial for dismantling conservative legal constructs and offering new frameworks based on a progressive approach to criminal law. This approach does not view criminal law merely as a rigid normative-formal instrument but as a means of social transformation and the fulfilment of human rights, particularly the rights of victims.

Progressive criminal law in the context of domestic violence, particularly in cases of sexual abuse by husbands against wives, demands a change in perspective on the husband-wife relationship. This relationship can no longer be considered a private space closed to legal accountability. On the contrary, it is a social space that must

be subject to the principles of justice and respect for human dignity, including sexuality. Therefore, any form of sexual violence, including that committed by a husband against his wife, must be treated as a serious criminal offence and requires the state to be present to protect victims. (Prameswari, V., & Khoirunnisa, R. N., 2020).

The scientific contribution of this framework lies primarily in the conceptual reconstruction of the meaning of sexual violence in the household. Within the framework of progressive criminal law, sexual violence is not limited to physical rape; it also includes sexual harassment, psychological coercion, emotional manipulation, and other forms of sexual domination that eliminate women's bodily autonomy in marital relationships. Progressive criminal law encourages viewing domestic violence as a structural phenomenon rather than merely an incidental occurrence. This means that sexual abuse by a husband against his wife is not only understood as an individual crime but also as a manifestation of unequal power relations legitimized by patriarchal legal and cultural structures.

Scientific contributions are also present through criticism of existing positive law, which still shows resistance to recognizing sexual abuse in the home as a crime. Until recently, marital rape was not recognized as a crime in many legal systems, including Indonesia's. This criticism has prompted legal reforms so that the criminal justice system recognizes that no marriage can take away a person's right to bodily integrity and dignity. (Santoso, Agus, 2015). Progressive criminal law affirms that marriage is not a contract that takes away a woman's right to say no, including in sexual relationships.

This is where the responsibility of the state becomes crucial. In a progressive approach, the state cannot hide behind the excuse of privatizing domestic relations. The state must be present through legal policies that are responsive to victims, including establishing criminal laws that explicitly regulate sexual abuse in the household as a crime that can be prosecuted without waiting for a report from the victim to prevent impunity. The state also has the responsibility to build a holistic protection system for victims, ranging from the provision of legal assistance, psychological rehabilitation, guarantees of protection from threats by perpetrators, and social recovery.

Furthermore, scientific contributions through a progressive criminal law approach contribute to the formation of a more equitable normative framework. This is done by offering alternative criminal law formulations that can capture the complexity of domestic sexual violence without being trapped in standards of proof that make it difficult for victims. For example, by accepting psychological evidence and records of violence as valid evidence and developing examination mechanisms that are sensitive to the traumatic conditions of victims.

## CONCLUSION

The handling of sexual abuse cases in the context of positive law in Indonesia has been regulated by several laws and regulations, but it still does not fully reflect substantive justice for victims, especially in the realm of private relationships, because it is still classified as a complaint offence. The shift from a complaint-based offence to a regular offence reflects the paradigm that sexual abuse in the household is not merely a private matter but a public crime or social problem.

The reformulation of sexual abuse by husbands against wives from a complaint-based offence to a regular offence is a fundamental step in the reform of Indonesian criminal law to become gender-just and human rights-based. The legal consequences of this reformulation include strengthening the role of the state in protecting victims, changing the criminal law paradigm from being repressive towards perpetrators to being protective towards victims, and increasing the integration of international norms into the national legal system. Although it poses challenges in its implementation, this reformulation reflects the state's commitment to upholding substantive justice and eliminating all forms of violence against women, including that which occurs within marriage. This reform is not merely a technical change in criminal law but a fundamental normative transformation in the relationship between law, the state, and society.

## RECOMMENDATIONS

The government and legislators need to revise policies by reclassifying offences to promote a more just and humane system by changing sexual abuse offences within the household from complaint-based offences to ordinary ones.

Law enforcement authorities must expand their role to be more proactive in enforcing the law without having to wait for reports from victims, especially if there is strong evidence or complaints from third parties.

To the Community and Victims: Awareness and legal knowledge must be increased, and victims must have the courage to report criminal acts that occur within the household so that they can cooperate with the law enforcement.

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