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## Differentiation of Criminal Sanctions in Cases of Violence Against Children

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**Abstract:** Violence against children continues to be a pervasive problem in Indonesia, encompassing both physical and psychological dimensions. However, current legislation, including Law No. 35 of 2014 on Child Protection, lacks clarity in distinguishing between these two forms of violence. This normative legal research explores the urgency of distinguishing physical and psychological violence from a legal perspective. By analyzing existing Indonesian laws, relevant jurisprudence, and international legal frameworks, this paper argues that a legal distinction is necessary to ensure effective legal protection, proportional criminal sanctions, and adequate law enforcement responses. The study recommends legislative reform to explicitly recognize and address psychological violence as a distinct offense, ensuring parity in the legal treatment of all forms of child abuse.

**Keyword:** Child Protection Law, Physical and Psychological Violence, Criminal Sanctions.

### INTRODUCTION

Violence, within the legal context in Indonesia whether physical or psychological remains a pressing issue that demands serious attention, particularly in terms of protecting victims and ensuring justice through the existing legal system. To date, Indonesian law has predominantly focused on physical violence, which is visibly evident through injuries or wounds inflicted upon the victim. Meanwhile, other equally damaging forms of violence, such as psychological abuse, are often neglected. Psychological violence is inherently more difficult to prove as it leaves no physical traces that can be presented as evidence in court. Nevertheless, its impact may be deeper and more enduring, significantly affecting the victim's mental and emotional condition.

Therefore, distinguishing between physical and psychological violence within Indonesian legal provisions is of paramount importance to provide more effective protection for victims and ensure proportionate punishment for perpetrators. Physical violence refers to acts that cause bodily harm, such as beatings, torture, or other physical acts that leave bruises or injuries.

This type of violence is more easily identified and proven through medical examinations, making the prosecution process more straightforward. Conversely, psychological violence often

manifests in the form of insults, threats, emotional manipulation, or controlling behavior aimed at degrading dignity, damaging self-esteem, or causing mental trauma. Although it does not result in visible physical harm, psychological violence may have long-lasting and more challenging consequences for recovery, ultimately affecting the victim's overall quality of life (Malik & Rahmat, 2025).

In many cases, psychological violence tends to receive insufficient attention within the Indonesian legal system. One of the primary reasons for this is the evidentiary difficulty associated with proving psychological abuse. Evidence is often indirect and relies on victim testimony, witness statements, or supporting materials such as recorded communications or expert psychological assessments.

This is in stark contrast to physical violence, where tangible evidence such as bodily injuries can be more readily presented. The lack of clarity in legal provisions related to psychological violence creates procedural challenges and potentially diminishes the level of legal protection available to victims of such abuse. Although several statutes, such as Law No. 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT) and Law No. 35 of 2014 on Child Protection, have begun to incorporate various forms of violence, psychological violence remains insufficiently regulated or explicitly distinguished from physical violence.

In practice, this results in confusion during law enforcement procedures, as there is no clear demarcation in terms of regulation, investigation, or prosecution of these two forms of abuse. Psychological violence is frequently treated merely as a consequence of physical abuse and not independently prosecuted. Differentiating between physical and psychological violence in legislation is crucial to ensuring more effective legal protection for victims.

Physical violence benefits from more accessible evidence, such as visible injuries or medical records, which facilitate legal proceedings. On the other hand, psychological violence necessitates specific regulatory mechanisms to ensure that victims receive the same level of legal protection as those suffering physical abuse. Such differentiation also provides clarity regarding evidentiary requirements, as proof of psychological violence often involves

expert testimony or other indirect evidence, which must be supported by more detailed legal procedures. In the international context, psychological violence is already recognized as equivalent to physical violence. For instance, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and various international child rights instruments state that violence against women and children includes not only physical but also psychological and emotional abuse.

This global recognition underscores the importance of distinguishing types of violence as part of upholding fundamental human rights. In Indonesia, although legal provisions have begun to acknowledge the significance of protecting victims of psychological violence, their practical implementation remains limited (Andini, 2024). The lack of understanding of psychological violence within the Indonesian judicial system poses a major barrier to effectively handling such cases. Many law enforcement officials including investigators, prosecutors, and judges do not fully comprehend the forms of psychological abuse and the methods for proving it in court.

Additionally, the absence of clear regulations concerning acceptable evidence, such as psychological reports or recordings of communication, prevents many cases of psychological violence from being legally processed. Consequently, legislative reform is urgently needed to ensure that psychological abuse is afforded equal legal recognition and protection as physical abuse. This study aims to further explore the urgency of differentiating physical and psychological violence in Indonesian legislation.

A clear and explicit distinction will provide a legal basis for victims of psychological abuse to receive adequate protection. Furthermore, this differentiation will ensure that perpetrators of psychological violence can be held legally accountable through appropriate

criminal sanctions, thereby contributing to a reduction in the prevalence of psychological violence, which often remains invisible to the law. In doing so, this study seeks to contribute to the reform of Indonesia's legal system in handling violence cases and in strengthening protection for victims of all forms of abuse (Rakia & Hidayat, 2022).

## METHOD

This study uses a normative juridical method by examining statutory regulations, legal doctrines, and case law. A comparative approach is also employed to analyze how other legal systems differentiate physical and psychological abuse in their child protection laws. (Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2016))

The primary legal materials include Indonesian laws, international conventions, and relevant court decisions, supported by secondary literature from legal scholars and child rights institutions.

## RESULTS AND DISCUSSION

### Criteria of Physical and Psychological Violence Against Children According to Indonesian Legislation

Within the Indonesian legal system, violence against children is considered a serious legal violation. This form of violence is classified into several types, notably physical and psychological violence. Although both forms are equally harmful, they possess distinct characteristics in terms of form, impact, and evidentiary mechanisms. Physical violence is generally easier to identify due to the visible traces left on the victim's body. In contrast, psychological violence is non-physical, more challenging to prove, and yet can yield equally serious long-term consequences.

Physical violence against children encompasses various acts that cause pain or injury to the child's body. Such actions include hitting, kicking, pinching, burning with cigarettes, or even violently shaking a child, all of which are prevalent both in domestic and institutional settings. In legal practice, physical violence is more easily prosecuted due to the existence of physical evidence, such as wounds, bruises, or forensic medical reports. This is supported by Marlina's view that the Indonesian criminal justice system still heavily relies on material evidence, and physical injuries are perceived as strong proof in court proceedings (Marlina, 2009).

Conversely, psychological or emotional violence constitutes an assault on the child's mental and emotional well-being. It may take the form of insults, mockery, threats, degrading treatment, emotional neglect, or manipulative behaviors that consistently erode the child's self-esteem and confidence. This form of violence leaves no physical scars, yet it can severely impair the child's psychological development. Soedjono Dirdjosisworo states that psychological violence has a deeper destructive capacity because it targets the victim's identity and inner structure, often occurring repeatedly and systematically over time (Dirdjosisworo, 1999).

The difficulty in proving psychological violence remains the primary obstacle in its legal enforcement. Law enforcement officers often struggle to establish psychological violence due to the absence of objective indicators that can serve as direct evidence. In this context, expert witnesses such as psychologists are essential. As R. Soesilo explains, non-visible violence must be proven through psychological assessments, which can be formally presented in court as legal documentation (Soesilo, 1996).

However, to date, the Indonesian legal system has not fully optimized the role of expert witnesses in psychological violence cases. This highlights a normative gap that urgently requires regulatory implementation or derivative norms with more technical and operational detail. Satjipto Rahardjo emphasizes that the law must not be rigid but should transform in accordance with social developments and the needs of society, including the need to accommodate invisible forms of violence such as psychological abuse (Rahardjo, 1980).

The lack of clarity in distinguishing physical and psychological violence also results in biased legal protection for child victims. In many instances, psychological violence is treated merely as a complement to physical abuse, rather than as an independent form of violence. According to Sudikno Mertokusumo, a sound legal system must ensure equal justice without discrimination toward different forms of victim suffering (Mertokusumo, 1999).

Psychological violence thus deserves equal consideration in terms of legal protection and the imposition of sanctions on perpetrators. A reformulation of legal policy is required, through the clear separation of physical and psychological violence both in legal definitions and in law enforcement approaches. As suggested by Muladi and Barda Nawawi Arief, criminal law serves a social protection function that must continuously adapt to evolving forms of crime and victimization, including new manifestations of violence that have yet to be adequately addressed (Muladi & Arief, 1992).

### **The Influence of Violence Criteria on Legal Sanctions for Perpetrators**

The criteria of violence applied during the judicial process play a decisive role in determining the type and severity of criminal sanctions imposed on perpetrators. When the violence falls within the physical category and is supported by forensic reports or eyewitness testimony, perpetrators are more likely to be prosecuted.

In contrast, when the violence is psychological and cannot be directly evidenced, perpetrators often escape criminal liability. Barda Nawawi Arief notes that the Indonesian criminal justice system tends to be materialistic, thereby rendering non-physical evidence as juridically weak (Arief, 2008). From a victimological perspective, the psychological impact of emotional abuse on children may in fact be more detrimental in the long term than physical violence.

Children subjected to prolonged psychological pressure are prone to personality disorders, trauma, and a tendency to become abusers themselves in adulthood. In this regard, Maria Farida Indrati stresses the need for a legal orientation focused on the protection and recovery of victims, rather than merely on the punishment of offenders (Indrati, 2007).

Unfortunately, there is currently no standardized guideline in the Indonesian criminal justice system for assessing the extent of psychological damage suffered by victims. As a result, judges often impose light sentences or even acquit perpetrators of psychological abuse due to perceived insufficiency of criminal elements.

Peter Mahmud Marzuki asserts that the absence of objective standards in evaluating psychological harm causes judicial decisions to be biased and inconsistent (Marzuki, 2005). Consequently, derivative regulations are needed to outline the indicators of psychological violence and the types of admissible evidence. Forensic psychological reports should be formally recognized as legitimate evidence in juvenile criminal procedure. Abdul Wahid also emphasizes the need for a reformation in law enforcement that is grounded in victim rights protection, especially for victims of psychological violence who have long been marginalized (Wahid, 2001).

Thus, the system of criminal sanctions for perpetrators of violence against children must not rely solely on the classification of violence based on physical forms. A more progressive and responsive legal approach is required. As Hans Kelsen posits, a legal system must ensure substantive justice and not merely adhere to procedural formalities (Kelsen, 1945). Protecting children—whether from physical or psychological abuse—must be a top priority in the national legal framework to uphold their rights in a comprehensive and holistic manner.

### **CONCLUSION**

Violence against children, both physical and psychological, constitutes a violation of children's human rights that is explicitly prohibited and regulated under Indonesian law, particularly in Law Number 35 of 2014 concerning Child Protection. Physical

violence encompasses all forms of actions that cause injury or harm to a child's body, such as hitting, kicking, or other acts of physical abuse. In contrast, psychological violence includes acts that degrade the dignity, self-worth, or emotional stability of the child, such as humiliation, threats, emotional neglect, and repeated verbal abuse.

Although these two forms of violence differ in manifestation, they both have serious consequences for the child's growth and development, in both the short and long term. Under Indonesian positive law, the criteria for violence against children consist of the elements of action, perpetrator, consequence, as well as the intention or motive behind the act. The severity of physical injury or psychological disturbance serves as a key determinant in the imposition of sanctions against perpetrators, which may include imprisonment and/or fines, along with mandatory rehabilitation or counseling.

While the state has established a sufficient legal framework to protect children from violence, significant challenges remain in the areas of implementation and oversight. Many cases of child abuse occur within domestic settings and are perpetrated by individuals closest to the child, which often hinders case disclosure due to power relations and the child's limited access to report such incidents.

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