

The Implementation Of The Position Equation Principles In Law For The Handling Of The Household Problem

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Abstract : The research on the application of equality before the law for handling the problem of domestic violence aims to describe and analyze more deeply the principles of legal balance, the nature of legal equality in handling cases of domestic violence, implementation of equality before the law, and models fair legal protection for perpetrators and victims of violence. In addition, this study also aims to find out and examine the proper legal service procedures as well as legal protection for victims and perpetrators of criminal acts of domestic violence. On the other hand there is a collaborative effort to recover victims of domestic violence based on Ministerial Regulation No.4 of 2006 concerning the implementation and collaboration of victims of domestic violence recovery as a legal policy that is expected to have an impact on the psychology of the perpetrators and victims for recovery and socialization in the community . The most important essence in eradicating criminal acts of domestic violence is to make the parties involved in conflict aware of the integrity of the household which also affects children and those around the family. The method used in this study is empirical juridical research with the nature of descriptive research that uses primary and secondary data sources with library research techniques using primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials are legal materials whose contents are related to government regulations or other institutions that have authority. Secondary legal sources are materials in the form of books and other printed materials, as well as software, which are the needs of this research. The results of the study found that handling cases of domestic violence in Indonesia required the existence of appropriate legal policies from the government and the legislature on this issue, by formulating an Integrated Criminal Justice System for Handling Cases of Violence Against Women (SPPT-PKKTP), an integrated system that show the process of linkages between agencies / authorities that handle cases of violence against women and access to services that are easy and affordable for women (justice seekers). Integrated criminal justice, intended to be a Special Court of one-stop service for resolving marital and family cases and dimensions of violence experienced. This institution is also expected to carry out recovery for victims and / or mediate in resolving cases with the principle of protection and non-discrimination. There needs to be an alternative way to realize a Special Court in Indonesia, with its own characteristics, namely; first, a merger of civil and criminal cases is carried out to be dealt with in one assembly; second, one-stop settlement of civil and criminal cases in the General Court; third, the establishment of special courts in the Religious Courts; and fourth, special procedural law for the integration of handling civil and criminal cases in the General and Religious Courts. This concept, of course, is oriented on human values with a humanistic approach in providing criminal sanctions to offenders, building legal awareness of the perpetrators and victims, with the aim of achieving the implementation of the principle of equality before all people.

Keywords : equality, legal balance, basic justice

1. INTRODUCTION

All citizens in their nature have the same rights and obligations. It is expressly regulated in Article 27 paragraph 1 of the 1945 Constitution of the Republic of Indonesia, that: "All citizens together in the law and government and are obliged to uphold the law and the government without exception". Article 27 paragraph 2 while affirming that each citizen, between men and women has the same position before the law, article 27 paragraph 3 affirms that every citizen has the right and obligation to participate in the defense of the State.[Article 1 Government Regulation of the Republic of Indonesia Number 18 of 2011]

Domestic violence is one of the many forms of crime that occur and that have been identified in the international community Article 1 Government Regulation of the Republic of Indonesia Number 18 of 2011]. Domestic violence is a phenomenon which until now is a cruelty that is very difficult to monitor. This is because there are still erroneous views from some people that domestic violence (domestic violence) is a family problem and is very personal so that outsiders have no right to mix it [Anonymous, 1999]. Violence often occurs in people who are closely related, such as husband and wife, prospective husband and wife, family members or housemaids. Policy for establishing Law No. 23 of 2004 concerning the Elimination of

Domestic Violence departs from the principle that "every citizen has the right to get a sense of security and freedom from all forms of violence," in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia.[Aroma Elmona Martha,2007]. This view is also based on Article 28 of the 1945 Constitution of the Republic of Indonesia Chapter X A concerning Human Rights and its amendments. Article 28 G Paragraph (1) The 1945 Constitution of 1945 stipulates that "Everyone has the right to personal, family, honor, dignity and property protection under his authority, and has the right to security and protection from the threat of fear of doing or not doing something that is a human right".[Majelis Permusyawaratan Rakyat, Republik Indonesia, 2013]. Article 28 H paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that "Every person has the right to receive facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice".[People's Consultative Assembly, Republic of Indonesia, 2013]

Conflicts in a household often occur not only due to physical violence, but also due to psychological factors, from a wife to a husband. Therefore, the violence that occurs in a household should not only be seen from its physical aspect, but must also be seen from its psychological aspect and also seen from the cause of the violence that occurs, then concludes the truth for a legal event and serves as the basis for our thinking. establish a person is found guilty, logically a legal event or the occurrence of a criminal act can occur because there is a reason for the cause.[Aroma Elmina Martha,2007]. For this reason, domestic violence should be seen as not the end of an act of violence and coordinated by an authentic husband with violence, but the cause must also be seen as the reason for violence against a wife. Likewise the violence that is usually carried out by a wife towards her husband is mostly physis, as stated by Arif Rohman that; Based on its shape, violence can be classified into physical, psychological, and structural violence which includes: Since the issuance of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, the government has dared to take over jurisdictions which previously belonged to the domestic domain now become the public domain. So far there has been a view that acts of violence against women, wives, and children are seen as natural and that this is treated as mere domestic conflict. This view is exacerbated by the existence of myths which demean the dignity of wives, women and children, whereas the husband / father who is dominant towards family members in the household with excessive attitudes as unequal relations between women and men takes place inside household, even accepted as something that really perpetuates domestic violence. From there the PKDRT Act was born which was the implementation of Law Number 7 of 1984 concerning Ratification of the Convention concerning the Elimination of All Forms of Discrimination Against Women. Violence against women and children and forms of discrimination is a global issue as well as violations of human rights that must be resolved by the State and the wider community. The problem of violence (violence against women, gender based violence, female violence) is not only an individual problem or a national problem, but is already a global problem, because it is related to the global issue of human rights, which is interpreted as a set of rights inherent in the nature and freedom of human beings as creatures of God Almighty and is a gift that must be respected, upheld and protected by the state, law, government and everyone for the honor and protection of human dignity (Article 1 number 1 number 39 of 1999 concerning Human Rights).

At the international level, violence has been seen as a frame of crime against basic rights and freedoms and the destruction and revocation of their freedom of rights inherent in them. This is a challenge in achieving equal rights, development and peace that is recognized in the Nairobi Forward-looking Strategic for Advancement of Women, which recommends a set of actions to combat violence against women. The recommendation is borne by the Government as a legal and moral obligation to eliminate domestic violence through a combination of various serious steps. Domestic violence is a problem that has deep roots and occurs in all countries of the world. In this case, the international community has created legal standards that are effective and specifically give attention to domestic violence. Actions to beat women, for example, have been included in international and regional human rights conventions that have a binding legal nature to the state that has ratified them. The International Human Rights Documents include the Universal Declaration of Human Rights ("UDHR"), the International Covenant on Civil and Political Rights ("ICCPR"), and the International Covenant on Economic, Social and Cultural Rights ("ICESCR") which is the standard general information on Human Rights, where victims of domestic violence can sue their respective countries.

Various analyzes and exposures of the above thoughts become the world's attention to the existence of a wife / woman who is considered a victim of a husband's violent act. It is common for a country based on law. However, the law was created not solely for unilaterally intended, but requires the existence of harmony, balance in its application, the law is held for all people without discriminating on certain statuses and sexes. On the other hand, legal formulations that are enforced properly do not involve legal protection for certain types of sex, but it is appropriate for the common benefit of both, also general welfare as a common interest namely equality in legal treatment or equality before the law. In the Amendment to the 1945 Constitution, the concept of equality before the law included in Article 27 paragraph (1) which became the basis of protection for citizens to be treated equally before law and government. This means that all people are treated equally before the law. Equality before the law in the simple sense that everyone is equal before the law. Equality before the law or equality before the law is one of the most important principles in modern law. This principle is one of the joint doctrines of the Rule of Law.

Men (husbands) generally seem to be the actors who do the most violence in the household but it does not mean that domestic violence has never been carried out by women (wives) against other family members, especially against husbands. The community considers that the wife's violence against her husband in the household sphere is a natural thing where it is part of the dynamics of ordinary household life, and considers that the husband will be able to deal with and overcome it. As concrete evidence, a wife committed physical violence against her husband, as was the case with Amar Decision.[Anonomous, 2014]. Number.271/Pid.Sus-KDRT / 2015 / PT.BDG, by the West Java High Court judge Against Defendant Yeni Haryani Binti H. Harun Al Rasyid who bit the chest of witness Cecep Maulana (husband). As a result of the defendant's actions, witness Cecep Maulana suffered abrasions and bruises + 2 x 2 cm in the right chest area according to the Visum Et Repertum issued by RSUD R. Syamsudin, SH, Sukabumi City Number: 445/921 / RS-RSU / 2014 dated 14 October 2014 which signed by Dr. Martin Kurniawan was the examiner with the conclusion of abrasions and bruises in the right chest area. Defendant's actions as regulated and threatened with criminal violation of Article 44 paragraph (4) of Republic of Indonesia Law No. 23 of 2004 concerning the

Elimination of Domestic Violence; based on the demands of the Public Prosecutor No. Reg. Perk: PDM-57 / SMI / 05/2015, July 28, 2015, which basically demands that the Panel of Judges of the Garut District Court decide: (1) Declare Defendant Yeni Haryani Binti H. Harun Al Rasyid guilty of a criminal act of Domestic Violence namely violating Article 44 Paragraph (4) of the Law of the Republic of Indonesia Number 23 Year 2004 concerning the Elimination of Domestic Violence; (2) Imposing the sentence of imprisonment of YENI HARYANI Binti's defendant H. HARUN AL RASYID for 2 (two) months; So far, the Law that was formed has provided more legal protection for women (wives) who are victims of domestic violence, while often there is also discrimination of wives against husbands in terms of obtaining legal protection, because in reality husbands are also victims of domestic violence ladder carried out by a wife, as quoted by a court ruling on the case above.

The research on the application of equality before the law for handling the problem of domestic violence aims to describe and analyze more deeply the principles of legal balance, the nature of legal equality in handling cases of domestic violence, implementation of equality before the law, and models fair legal protection for perpetrators and victims of violence. In addition, this study also aims to find out and examine the proper legal service procedures as well as legal protection for victims and perpetrators of criminal acts of domestic violence.

2. RESEARCH METHODS

The method used in this study is empirical juridical research with the nature of descriptive research that uses primary and secondary data sources with library research techniques using primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials are legal materials whose contents are related to government regulations or other institutions that have authority. Secondary legal sources are materials in the form of books and other printed materials, as well as software, which are the needs of this research.

3. RESULTS AND DISCUSSION

1. The nature of equality before the law according to international and national legal instruments

The first international instrument that mentions equality of rights between men and women is the Charter of the United Nations (UN). In the preamble it was stated that the United Nations was determined to strengthen trust in human rights, human dignity, equality between men and women. On December 10, 1948 the United Nations General Assembly adopted resolution 217A fnl on the Universal Declaration of Human Rights (UOHR). The UDHR is recognized as the basis for the exercise of rights and principles regarding equality, security, integrity and dignity of all human persons without discrimination. but violations of women's rights have never diminished. On December 18, 1979, the United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention on the Elimination of Forms Discrimination). CEDAW is one of the instruments of international law that aims to protect women's human rights, which in fact is not guaranteed the rights of humanity. CEDAW is designed to combat all forms of discrimination against women that continue throughout the lives of women. CEDAW emphasizes equality and justice between men and women, namely equal rights and opportunities and equal treatment in all fields and all activities. The main principle of CEDAW is substantive equality, non-discrimination and state obligations, which is a framework for formulating strategies to advance women's rights. Indonesia has ratified CEDAW through Law No. 7 of 1984, so that it is bound by the obligation to implement and make CEDAW a national regulation. Various legal and policy instruments to ensure equality and justice for women and men are already owned by Indonesia, but in reality the implementation of CEDAW's basic principles in Indonesia is not optimal, moreover the culture is still very patriarchal so that issues of violence and discrimination against women continue to occur. The level of gender based violence tends to increase every year. This is because Indonesia does not have sufficient legal products to ensnare the perpetrators. The law gives rights to victims of domestic violence to obtain: a). protection from the family, police, prosecutors, courts, lawyers, social institutions, or other parties both temporarily and based on the stipulation of court protection orders; b). Health services according to medical needs; c) special handling relating to the confidentiality of the victim; d). assistance by social workers and legal assistance at each level of the inspection process in accordance with the provisions of legislation; dane). spiritual guidance service. Law Number 23 of 2004 concerning the Elimination of Domestic Violence also regulates temporary protection, namely protection provided directly by the police and / or social institutions or other parties, before the issuance of the stipulation of court protection orders [Republic of Indonesia, Law Number 23 Year 2004].

The establishment of Law No.23 of 2004 concerning Domestic Violence, which contains criminalization of acts of violence against women and children, is an effort that has been pioneered for a long time to realize a comfortable and happy social environment, free from violence. Idealism is certainly not something that is excessive in the midst of 21st century life that has been very advanced, felt as an oddity in which the environment that should be able to give a feeling of fully humanized turned out to be an environment filled with violence. It also sits in law enforcement institutions as part of the community. Law is very closely related to the culture in which the law is located, if the law has been made, then various problems in the community regarding what is regulated in the law, can be overcome or even considered completed. They highly uphold the value of objectivity and neutrality in the law, believing that objective and neutral law will provide justice for every citizen. Law is interpreted as limited to the Acts made by the State. State law is an entity that clearly limits, superior position.

Frederich von Savigny cannot accept the truth of the notion of the enactment of positive law which was once established in force all the time and place. According to Savigny, the community is an organizational unit that has a common unity of belief, which he calls the soul of the people or the soul of the nation or *volksgeist*, which is the same understanding and belief in something. So according to this flow, the source of law is the soul of the community and its contents are rules about people's

habits of life. Law cannot be formed but grows and develops along with people's lives. The law was formed only to regulate public relations with the will of the people through the state, that with the stipulation of various acts as criminal acts (categorized as complaint offenses) in the PKDRT Act, conceptually, complaints of offenses are offenses or criminal acts whose prosecution is the court depends on the initiative of the victims. Consider whether the new event experienced will be reported to the authorities to request a settlement according to the provisions of criminal law. Qualifying an act that is prohibited and threatened by criminal acts as an offense, this provision indicates the establishment of lawmakers in Indonesia, the protected interest is more personal than the public.

The logical consequence of the formulation of acts of domestic violence as an offense in the complaint in the PKDRT Law, makes law enforcement officials only be passive, and do not have the authority to intervene or intervene in the affairs of citizens, which is legally stated as domestic problems, and enforcement of the provisions in this Act depends more on the independence of each person who is the target of legal protection from this law. With such conditions, it is seen in terms of legal sociology, the chance of success in law enforcement based on this law is very difficult to achieve optimally.

Referring to Friedman's system theory, that the factor of difficulties in law enforcement is actually derived from its own component of legal substance, the cultural value contained in society is related to that household life. With the formulation of criminal acts of domestic violence with all the complexity of the problem as a criminal offense, making the actions that lead to criminal prosecution of the perpetrators will lead to the emergence of counter-productive impacts on the basic objectives of establishing the PKDRT Law itself.

The problem lies not only in the scarcity of the rule of law, but also the view of the community that domestic violence is a disgrace or a very personal matter that encompasses the perspective of law enforcers, whose practical perspective is very patriarchal. Sensitivity to domestic violence issues including gender sensitivity to the victim has not been lived out proportionally, so that the victim's hopes become vanished and must bear considerable disappointment when the reported cases do not get legal certainty in the process, only because law enforcement officials believe that domestic violence is not a public problem but as a family internal problem. Law No.23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), which is expected to be used as an adequate legal tool, to regulate prevention, protection of victims, and prosecution of perpetrators of domestic violence, in the hope of maintaining integrity and harmony family. Thus, the issue of domestic violence is no longer something that is considered private but has become a public issue, in which the handling is expected to be carried out proportionally as an effort to protect victims and perpetrators. This protection has also been guaranteed in our constitution, namely, the 1945 Constitution of the Republic of Indonesia.

2. Human Rights Act

In third world countries, including Indonesia, culture and ideology are still very thick and coloring various aspects of life and the structure of society and creating gender inequalities. Culture and ideology are not one thing that descends from the sky, but is formed by humans and socialized from one generation to the next. Cultural value is a mental factor that determines one's actions or society. In our culture, patriarchal culture is still very thick. In social, political, economic, and moreover in culture, the conditions of inequality, asymmetry and subordination towards women are very clear. In conditions like that is the process of marginalization of women, in turn women lose autonomy over themselves. Exploitation and violence occur against women or vice versa against husbands, both in domestic and public areas. In such situations, differences, discrimination and gender inequality thrive. This is ironic because formally, in the Constitution of NRI, the rights of men and women are not differentiated (equal), but at the empirical level it is very different. For traditional society, patriarchy is seen as something that does not need to be disputed, because it is always associated with undisputed nature and power. The belief that God has established differences in men and women, the differences in human life are also governed by these differences. Religious factors have also been used to strengthen the position of men. Biological determinase has also strengthened this view, because biologically women and men are different, social functions in society are created differently. Education, which is a very important process for one's reasoning, is also very patriarchal. A family usually gives more priority to boys because he is the successor of the family while girls will move and enter into other families. Education in the family also socializes that the father is central, so that he will unconsciously play down the role of women in the family. Girls are rarely involved in family policy discussions so that socialization of such norms will have an impact on the formation of criminal acts of domestic violence, especially acts of violence against wives in the family, generally occurring because many people still believe and are dominated by patriarchal culture.

Literally patriarchy means a system that places a father (male) as the ruler of the family. This term is then used to explain to a society where men have power over women and children, this can mean that men are superior and women are inferior so men can be justified in controlling and controlling women and their position . The embodiment of patriarchy as a system of cultural values is promoted in various institutions of community life, both in the fields of economy, politics and in family institutions. According to Kate Minet in her book Sexual Politics, as quoted by Suparno, patriarchy initially developed and developed well in family life where basically the family is a major part of the structure of community power which directly or indirectly contributes to preserving patriarchal power. Based on a number of opinions stated above, according to the author in certain contexts or domains domestic violence can be said to violate human rights (HAM) and include crimes against human dignity and forms of discrimination that must be removed, even though in traditional societies that are indeed with their culture places the position of women under men (unbalanced / subordinate), such conditions are not said to be human rights violations. Basically in the context of fellow human beings, Allah SWT has placed the position of women as equal to men, the only difference being their devotion. In the context of male households it is indeed a priest according to Islamic role models. However, it does not mean that men want to treat women as they wish.

3. The concept of criminal acts and crimes against domestic violence

The term criminal act is a translation of the structure of a crime, in the Criminal Code (KUHP) there is no explanation of what is meant by the structure of the law itself. Usually the crime is synonymous with delik, which comes from the Latin word delictum. "Delik is an act that can be subject to punishment because it is a violation of the law (criminal act)."[Sudarsono,2007]. Also uses the term criminal event or criminal act or criminal act.[Amir Ilyas,2012]. Based on the existing formula, delik (strafbaar feit) contains several elements, namely: a). A human act; b). The act is prohibited and threatened with punishment under the Law; c). This action is carried out by someone who can be justified. The action intended here is a mistake made by someone in the sense of law against the law including: a) Deliberately, According to Van Hattum, opzet (intentionally) in the language of science only means oogmerk (intent), in the sense of purpose and will according to the term Law, opzettelijk (intentionally) replaced with winens en wetens (wants and knows) [Andi Hamzah,1994]. Traditionally known as three types intentionally: 1) intentionally as a mean (opzet alsoogmerk) 2). Deliberately with an awareness of certainty (opzet met bewutheid van zekerheid of noodzakelijkheid) 3). Intentionally with awareness is very likely to occur (opzetmet waarschijnlijkheids bewustzijn) b), Negligence (culpa), the Act does not give a definition of negligence, only an explanation memory say that negligence (culpa) lies between intentional and accidental.

In the memory of the answer, the Government said that whoever commits a crime intentionally means using one of his abilities while who is due to his wrongdoing (culpa) means not using the ability he must use. Van Hamel divided the culpas into two types: 1). You don't need to look ahead. 2). Less caution is necessary. c) Errors and Criminal Liability, In the sense of criminal law can be called the characteristics or elements of error in the broadest sense, namely: 1) Maker can be accounted for. 2). There is a psychological connection between the creator and the act, namely the existence of intentional or error in the sense of narrow (culpa). 3). There is no basis for the elimination of criminal acts which can be accounted for by an act to the maker [Andi Hamzah,1994].

An offense to recognize Formil and Material Delicts, an act is considered a criminal offense if there are elements of criminal offenses consisting of 1) Subjective Element: that is, a criminal act exists because: 1) There is intentional or accidental (dolus or culpa). 2) there is an experiment or pging as referred to in Article 53 paragraph 1 of the Criminal Code, 3) Types of intent or oogmerk such as those found for example in crimes of theft, fraud, extortion, forgery, etc. 4) Plan ahead or voorbedachte raad as for example those contained in the crime of murder according to Article 340 of the Criminal Code. 5) Feelings of fear or vress such as among others are contained in the formulation of criminal acts according to Article 308 of the Criminal Code. 2) Objective Elements; Objective elements consist of 1) Elements that are outside the actor. 2) Elements that have to do with the situation, namely in circumstances where the actions of the perpetrator must be carried out. The objective elements of a criminal act are: a) The nature of violating the law or wederrechtelijkheid. b) Quality of the offender, for example "the state of a civil servant" in a position crime according to Article 415 of the Criminal Code or "the condition as a board of commissioners of a limited liability company" in crime according to Article 398 of the Criminal Code, c) Causality, namely the relationship between something action as a cause with something reality as a result [Lamintang,1996].

According to the type grouped into two major groups, namely crime and violation groups, but there is no explanation of what is called crime and violations. the crime is offenses that violate legal interests and also endanger them concretely and the violation is a wets delict or an offense that only harmes abstracto [Andi Hamzah,1994].

Regarding the type of criminal, there is no fundamental difference between crime and violation. Only violations are never threatened with imprisonment. In the criminal law, there are formal delic materials. Formal offense is a criminal act that is formulated in such a way as to give the meaning that the core of the formulated prohibition is to commit a certain act. In formal offenses, referred to only as a certain act as can be convicted for example Article 160, 209, 242, 263, 362 of the Criminal Code. On the contrary, in material offenses, it is stated that there are certain consequences with or without mentioning certain actions. Therefore, those who cause prohibited consequences are accounted for and punished [Andi Hamzah,1994].

Delik Dolus and Delik Culpa Delik Dolus are delicts that contain intentional elements. The delic culpa in the formula contains the element of neglect. Delik Commissionis and Delik Omissionis Delik Commissionis are offenses committed by deeds. This can be in the form of offenses formulated materially or formally. Here people do active actions by violating prohibitions. Student release is done by leaving or ignoring. Differentiated between pure and impure omission. Pure omission is to let something be ordered. This is always about formally formulated offenses, for example Article 164, 224, 522, 511 KUHP. Delik Omisi which is not pure called delicto commissionis per Omissionem. This offense occurs if the law does not require an effect (which consequently can be caused by an abandonment. For example Article 338 of the Criminal Code which is done by not feeding. Article 194 of the Criminal Code by way of not attracting a Wissel train [Andi Hamzah,1994].

Ordinary Delik and Delik (Not Complaint), Complaints Delict (klachtdelict) is a criminal act that can be carried out by criminal prosecution if there is a complaint by the right to file a complaint, namely the victim or his representative, or certain family in certain matters or people who given special authorization for complaints by the rightful person. Ordinary offenses (not complaints) are criminal acts whose prosecution of perpetrators is not required for complaints from those entitled. Seeing the explanation above, criminal acts of domestic violence can be categorized as complaint offenses, Delik complaints are offenses that can only be prosecuted, if they are complained by people who feel harmed. The complaint is personal / private, which has a condition, namely that there must be a complaint from the aggrieved party. In addition, what is meant by complaint offense is a limitation on the initiative of the prosecutor to prosecute. The presence or absence of claims against this offense depends on the approval of the injured / victim / person determined by law. This Delik talks about the interests of the victim.

Complaint complaints consist of: 1). Absolute complaint (absolute klacht delict), is an offense that is prosecuted if there is a complaint from the aggrieved party. And the nature of the complaint is only the act or the crime. In this case the deed and the person who commits the act are considered to be one entity which continues to lead to the crime committed. Therefore the

absolute complaint offense has legal consequences in the matter of prosecution should not be separated / onsplitbaar. Example: A and B are husband and wife. B commits adultery with C and D. And A only complains that B has committed an act of adultery. However, because it cannot be separated / onsplitbaar then not only B is considered as the perpetrator, but every person involved in an act or crime concerned, namely C and D automatically (according to the results of the investigation) must also be complained by A. At least adultery offenses are not can only be submitted to the dader / mededader, but it must be both and other parties involved.

The absolute complaint offense contained in the Criminal Code is: Article 284 of the Criminal Code, about adultery, Article 287 of the Criminal Code, having intercourse with a woman under fifteen years of age or not yet married, Article 293-294 of the Criminal Code, about obscene acts, Article 310-319 of the Criminal Code (except article 316), concerning insult, Article 320-321 of the Criminal Code, insulting people who have died, Article 322-323 of the Criminal Code, acts of secrecy, Article 332 of the Criminal Code, escaping women, Article 335 paragraph (1) point 2, concerning threats to individual freedom, and Article 485 of the Criminal Code, concerning press offenses. 2). Relatieve klacht delict, which is an offense that initially is an ordinary offense, but because there is a special relationship / family that is very close between the victim and the perpetrator or the helper of the perpetrator of the crime, then his character becomes delict complaint or can only be prosecuted if reported by the victim.

In this offense, only the person complained, so that the person sued was limited to the person who was complained even though some other people were involved in the case. And so that other people can be sued too, there must be a complaint again. Delict complaints are relatively splits. Example: A is a parent. B is his child. And C is his niece. B and C work together to steal money in cupboard A. In this case if A only complains with C then only C is sued, while B is not. From the above case it can be seen that the relative complaint of offense seems to be able to choose who to complain to the police. A because of parents from B, so he did not want his son B to be sentenced to criminal penalties, he only chose C to complain, because C was not his child. But if we compare this with the example of an absolute complaint offense, in the case of adultery, even though the A is only annoyed with one of the adulterers, he cannot just complain about that person, because whatever the consequences, the other parties involved are also considered perpetrators .

The relative complaint offense contained in the Criminal Code which is included in the Relative Complaints Delegation, as follows: Article 367 paragraph (2) of the Criminal Code, about family theft, Article 370 of the Criminal Code, about extortion and family threats, Article 376 of the Criminal Code, about embezzlement in the family , Article 394 of the Criminal Code, concerning family fraud, Article 411 of the Criminal Code, concerning damage to goods in the family. Provisions in the Criminal Code in the Criminal Code, regarding complaints offenses are regulated in articles 72-75 of the Criminal Code. And the things set out in this Criminal Code are, as follows: 1). Regarding who has the right to make a complaint against the injured party / victim who is under the age of sixteen and not yet mature.2). Regarding who has the right to make a complaint, if the injured party / victim has died. 3). Determination of time in filing complaint complaints. 4). Whether or not a complaint can be withdrawn.

The issuance of the PKDRT Law which is an offense of complaint means limiting other people to participate in handling it, even though the purpose of this bill requires the existence of "criminal balance" with the aim of maintaining the integrity of the household. As an offense for complaints, criminal sanctions are the last resort (ultimum remedium); if there is peace, the case will be revoked and the family's integrity will be maintained. Criminal law in Indonesia adheres to the principle of delic aduan (klachtdelict) is a criminal offense that can be carried out by criminal prosecution if there is a complaint by the right to file a complaint, namely the victim or his representative, or a certain family in certain cases or people who are specifically authorized to complain by the person entitled to file a complaint. Seeing the nature of the complaint offense itself, it shows that there is a weakness in resolving criminal acts of domestic violence in Indonesia, because it indicates that it does not provide enough space for parties or husband and wife and people in their environment including law enforcement to do action. And as long as nothing is reported, it cannot be processed legally. This impression indicates that if a crime is not reported to the police, it cannot be processed legally.

4. Integrated legal policy for handling criminal acts of domestic violence

The current conditions for implementing Law No.23 of 2004 concerning the Elimination of Domestic Violence, especially concerning legal protection of victims is very different from the perpetrators, as the cases stated, when the victim was questioned as a witness at the level of investigation or trial, victims were often found must come alone without adequate security or escort from security forces. This condition does not only occur in small cases, but in the big cases that are of public concern as well, such as murder cases, terrorism cases, crimes / human rights violations, victims often come to court themselves. While the potential for violence against witnesses (victims) is very high, especially if the perpetrators are sentenced to a maximum sentence by the court, for example subject to 12 years imprisonment, or life imprisonment, or death sentence. At the time the victim was asked for information in the court, impressing the victim was only used as a tool to strengthen what was charged by the Public Prosecutor (JPU). After the victim gives testimony there is no effort to protect the victim as a witness, and the victim is left home without obtaining legal protection: (all forms of efforts to protect human dignity and recognition of human rights in the legal field, prioritize recognition and respect for human dignity).

Preventive and repressive legal protection facilities from law enforcement officials against victims, in some cases, the form of legal protection is only limited to material aspects, for example victims are given the right to claim compensation to the perpetrators. The hope, after compensation is given, the suffering suffered by the victims will be completed, while the suffering experienced by victims as a result of crime (violence) is very complex, not only material losses, but also physical and psychological losses. On the other hand, the arrest and detention of perpetrators suspected of committing a criminal offense should be without waiting for the investigator's warrant, but there must be an initiative of the victim or his representative or

family in certain cases or the person given special authority or the person entitled to file a complaint, reporting to the investigator only criminal prosecution can be carried out. Thus it became the basis of the investigator to issue a detention warrant.

This action was taken to avoid further violence from my guard against the victim. The attitude of waiting for an arrest warrant and detention from an investigator is a mechanism that is influenced by the procedure for handling criminal acts stipulated in Indonesian Criminal Procedure Code that crimes that occur in a family scope are categorized as complaint offenses, can be processed if there are complaints or reports of criminal acts / victims, Examples of complaints such as adultery (Article 284 of the Criminal Code), defamation (Article 310 of the Criminal Code), unpleasant acts (Article 335 of the Criminal Code), and embezzlement / theft in the family (Article 367 of the Criminal Code). Furthermore, according to Article 75 of the Criminal Code, the person submitting the complaint has the right to withdraw within three months after the complaint is filed.

The logical consequence of the formulation of acts of domestic violence as an offense in the complaint in this Law, weakens the role of law enforcement officials because it can only be passive, and does not have the authority to intervene or intervene in matters of citizenship that are legally stated as a domestic problem, and enforcement of the provisions in this Act depends more on the independence of each person who is the target of legal protection. With such conditions, it is seen in terms of legal sociology, the chance of success in law enforcement based on this Law is very difficult to achieve optimally. Therefore, referring to the legal system theory by Friedman, the factor in the difficulty of law enforcement is actually derived from its own component of legal substance.

On this basis the authors tend to agree with Gustav Radbruch that, [Gustav Radbruch, 2018] the purpose of the law is; legal justice, justice. In justice there are philosophical aspects namely legal norms, values, justice, morals, and ethics. Law as the bearer of the value of justice, the value of justice is also the basis of the law as law. Justice has a normative and constitutive nature for the law. Justice is a legal moral basis and at the same time a benchmark of a positive legal system and without justice, an inappropriate rule becomes law, normative legal certainty is when a regulation is made and promulgated must regulate clearly and logically. Obviously in the sense that it does not cause doubt (multi-interpretation) and logically in the sense of being a norm system with other norms so that it does not clash or cause conflict of norms), the benefits of the law (meaning victim protection is not only intended to achieve benefits (both material and spiritual) for victims of crime, but also the benefit of the community at large, especially in an effort to reduce the number of criminal acts of domestic violence and create public order) and legal justice (justice in an effort to protect victims of crime is not absolute because this is also limited by a sense of justice on criminals) [Achmad Ali., 2002]. To achieve the objectives of the law, legal instruments are required in the legislation that are right on target and can touch the substance of the problem, so that the legal treatment regulated for a problem can be relevant and can touch the sense of human justice.

The legal instrument I mean is the handling of cases of domestic violence should use the concept of restorative justice as a solution, although the Criminal Procedure Code and Criminal Justice System in Indonesia do not adhere to a system of deliberation in the process, but to achieve the objectives of the law itself, the restorative concept justice should be used as a legal policy model for the Indonesian Criminal Justice System. The application of restorative justice is reflected in the purpose of addressing criminal acts in several stages: [McCold and Wachtel, 2003] first, identifying and taking steps to repair harm (identifying and taking steps to correct loss / damage); second, involving all stakeholders (involving all interested parties) and; third, transforming the traditional relationship between communities and their governments in responding to crime. Transforming the traditional relationship is a transformation from a pattern where the community and the state face the perpetrators with the imposition of criminal sanctions into a pattern of cooperative relations between actors on the one hand and the community/victims in solving problems caused by crime.

Besides that there is a need for a Special Court that handles criminal acts of domestic violence is an idea of the Integrated Criminal Justice System or Handling Cases of Violence Against Women (SPPT-PKKTP) to provide justice to victims of domestic violence, especially women. With the complexity of the problems related to domestic violence, the need for this institution was formed. Law No. 23 of 2004 concerning the Elimination of Violence Against Households generally can back up women in obtaining their legal rights, but in its implementation it actually criminalizes women victims of violence, especially because law enforcement officials do not consider the relationship between husband, wife and children, in implementing this law. As a result, women victims of violence do not get their rights. The violence tends to be hidden (hidden crime) because either the perpetrator or the victim tries to keep the act confidential from the public view. In reality, it is very difficult to measure precisely the extent of violence against women, because this problem enters the sensitive areas of women's lives, where women themselves are reluctant to talk about it [Moerti Hadiati Soeroso, 2011].

Related services as stipulated in the Law on the Elimination of Domestic Violence and Government Regulation Number 4 of 2006 concerning the Implementation and Cooperation of the Recovery of Victims of Domestic Violence. The National Commission on Violence Against Women according to annual records in 2013, up to 2012 reached 216,156 cases reported and handled by service provider partner institutions consisting of 329 Religion Religions, 87 District Courts and Military Courts and 2 UPPA supplemented with cases handled by 225 service provider partner institutions that respond to KP forms with time and can be processed and analyzed for data. The number of KTP numbers has almost doubled from the previous year's figure [KOMNAS Perempuan, 2013].

Chair of the Azriana Women's National Commission (Komnas) at the launch of the record in 2018, at the Central Jakarta Komnas Perempuan office (7 March 2018), recording 348,446 cases of violence against women occurred in Indonesia both reported and handled throughout 2017. "Case data this is a complication of real case data handled by service institutions for women victims of violence both managed by the state and at the initiative of the community including law enforcement agencies [Anonymous, 2017] As follows:

As many as 335,062 cases were sourced from case data handled by the Religious Court (PA), 13,384 cases were handled by 237 service procurement partner institutions spread in 34 provinces. Komnas Perempuan sent 751 forms to service provider

partners throughout Indonesia with a response rate of up to 32% or 237 forms. Besides that in Catahu, female violence is divided into three domains, namely personal / private domains, public / community domains, and state domains. In 2017, the highest violence occurred in the private / personal sphere. PA data shows that there were 335,062 cases of violence against wives which led to divorce. While 13,384 cases came from service procurement partner institutions, with violence occurring in the private/ personal domain as much as 71% or 9,609 cases. The public / community domain is 3,528 or 26% of cases and 247 or (1.8%) in the state domain. Likewise, the data on complaints directly to the National Commission on Forestry also shows the same trend, the private / personal sphere occupies the most cases in the mix, namely 932 cases (80%) of the total entered. In the 2018 private / personal realm of Catahu shows new things. Based on reports of violence received by service provider partners, there was an increase in the number of violence against girls, which was quite large at 2,227 cases. While the number of violence against wives, still ranked first, namely 5,167 cases. In addition, courtship violence, followed by cases of violence against children was 1,873 cases. Private / personal land is a high percentage of physical violence 3,982 cases (41%). Sexual violence 2,979 cases (31%), psychological violence 1,404 cases (15%) and economic violence 1,244 cases (13%). Here, Komnas Perempuan mentions there is something surprising that is for sexual violence in private / personal, Incest (perpetrators of closest people those who still have family relationships) are the most reported cases of 1,210 cases. Furthermore, rape cases were 619 cases, then sexual intercourse / exploitation were 555 cases. Of the total 1,210 incest cases, 266 cases (22%) were reported to the police and 160 cases were included in the court process (13.2%), then the highest number of perpetrators of sexual violence in this area were 1,528 people. Followed by his father 425 people, the rest uncle as many as 322 people.

The number of abusers and uncles is in line with the increasing cases of incest. The total cases that occurred in the public domain/community reached 3,528 cases (26%). Physical violence 466 cases (13%), psychological violence 198 cases (6%) and special trafficking categories as many as 191 cases (5%) and 3 cases of migrant workers. The three most types of violence in sexual violence in the community sphere were 911 sexual abuse, 708 sexual harassment cases and 669 rape cases. A total of 247 cases of criminalization in conflicts over Natural Resources, including among them evictions in Bali and West Java. This type of case is included in the State domain.

The enactment of Law No. 23 of 2004 concerning the Elimination of Violence Against Households which is expected to generally be able to back up women in obtaining their legal rights, and should protect parties in the environment in the household, namely; women and children. However, in its implementation it turned out that the law actually criminalized them, especially law enforcement officers who did not consider the relationship between husband, wife and children, in implementing this law. Efforts of victims to seek justice faced various obstacles. Law enforcement officials also have not been able to provide optimal protection and assistance for victims in implementing this Law. Safe houses and legal assistance are still scarce and most victims are still difficult to access. The handling unit of women and children who are victims of violence is not equipped with adequate infrastructure. Komnas Perempuan also received reports where law enforcement officers mediated perpetrators and victims without a mission breaking the cycle of violence and giving a deterrent effect to the perpetrators. A number of law enforcement officials also ignore the victim's right to complete information about the legal process to be undertaken and its legal consequences. This situation caused victims to feel intimidated and as a result, a number of victims revoked their reports or asked law enforcement officials to stop the case process for the violence experienced [Anonymous,2017].

The application of Government Regulation Number 4 of 2006 concerning the Implementation and Collaboration of the Recovery of Victims of Domestic Violence must be followed by a model of the handling process, so the concept intended is handling domestic violence should use the media restorative justice approach manifested in dialogue between related parties, among Indonesian people better known as "deliberation for consensus" [Mochtar Kusumaatmadja,1995]. Deliberation is a form of customary values that live within the body of the Indonesian people, as part of the noble values of the Pancasila as the basis of the state. Pancasila is a reflection of the habits that exist in society, which are then poured in a basic form of state. Likewise with the habits of the Indonesian people from various tribes, deliberation seems to be the way to resolve all disputes between them. Considering culturally, deliberation has become a common practice among Indonesians, deliberations should be included in the part of the Indonesian Criminal Justice System, especially in resolving domestic violence cases.

In theory, there are various forms of deliberation that can be applied, including negotiation, mediation and consolidation. Of the three forms of deliberation, it seems that negotiation is the best way, viewed from the side of internal family settlement, because cases of domestic violence will certainly open up opportunities to reveal things that are considered disgrace in the family. Even culturally in Indonesian society, things that are considered disgrace by the family are still taboo to be presented in public. This model puts forward negotiations between the public prosecutors and their defendants or defendants. The main motivation for negotiations is intended to accelerate the process of handling criminal cases. Whereas the nature of the negotiations must be based on the volunteerism of the accused to admit his mistake and the willingness of the public prosecutor to give the threat of punishment desired by the accused or defendant in order to clarify the legal sanctions, both relating to criminal and civil acts related to civil losses.

During this time the Indonesian people viewed the Religious Court (PA) and the District Court (PN) which decided the case of marriage / family disputes as a "family court". The fact proves that the two courts have not been able to resolve thoroughly the problems related to marriage and family as experienced by women and children. The limited alternative sanctions in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, only provide criminal sanctions to prisoners of violence. Providing its own dilemma for women because not all women choose the criminal path to settle their cases. Not infrequently they still hope their marriage can be saved, the wife only reports her husband to the authorities so that the husband is deterred, another phenomenon occurs, the revocation of the domestic violence report in the police is often also complained by the police [R. Valentina Sagala dan Ellin Rozana2018].

Special Marriage and Family Courts are expected to be a solution to answer the need for access to justice for women facing the law in marriage and family matters. This concept needs to be considered as a solution for resolving domestic violence

cases. the concept of the Special Court, departing from the background of the problems of criminal acts of Domestic Violence (KDRT) which are often hidden behind divorce. Therefore, the Special Court is needed as a court mechanism that is capable of serving one-stop settlement of marriage and family cases and dimensions of violence experienced [Ema Mukarramah,2013]. This institution is also expected to carry out recovery for victims and / or mediate in resolving cases with the principle of protection and non-discrimination. There needs to be an alternative way to realize a Special Court in Indonesia, the alternative has its own characteristics namely; first, the settlement of domestic violence cases is carried out through the incorporation of civil and criminal cases to be handled by one assembly; second, one-stop settlement of civil and criminal cases in the General Court; third, the establishment of special courts in the Religious Courts; and fourth, special procedural law for the integration of handling civil and criminal cases in the General and Religious Courts [Ema Mukarramah,2013].

Integrated Criminal Justice System for Handling Cases of Violence Against Women (SPPT-PKKTP) is an integrated system that shows the process of linkages between agencies / authorities that handle cases of violence against women and access to easy and affordable services for women in every case of violence against women.

The Integrated Criminal Justice System with gender justice in handling cases of violence against women is an integrated system that shows the process of linkages between agencies / authorities who handle cases of violence against women and access to easy and affordable services for women in every case of violence against women.

IV. CONCLUSION

1. The nature of equality before the law becomes a basic principle of human rights that is generally accepted, and must be guaranteed by the state. The state must form a legal policy that is oriented on humanitarian values with a humanistic approach to the principle of deliberation to reach consensus and should use the concept of restorative justice against domestic violence crimes in order to find the application of criminal sanctions to violators, rehabilitated, and socialize in the community, and achieved legal protection for victims to raise awareness, to take responsibility for public order. For this reason, it is suggested that law enforcers in handling cases of domestic violence should prioritize principles or attitudes that are oriented towards human values with a humanistic approach to the perpetrators and victims, so that they raise their awareness to obey the prevailing laws and become law-abiding community.
2. Implementation of the principle of equality before the law against criminal acts of domestic violence is with the right legal policy efforts, emphasizing using the concept of restorative justice used for handling domestic violence by law enforcers in this case the police along with the prosecutor's office, court, advocate, social institutions, or other competent parties, including health workers, social workers, escort volunteers and spiritual guides to assist victims, followed by an inspection process in accordance with the provisions of the applicable legislation. Therefore, it is suggested that the principle of equality before the law is not limited to being understood as a legal basis contained in every law, but must be applied in the form of concrete actions by law enforcers and all components involved in resolving a legal case. This expectation is desirable, perhaps contributing to the parties seeking legal justice.
3. A fair and balanced model of legal protection towards the handling of domestic violence is the concept of restorative justice and the establishment of an Integrated Criminal Justice System for Handling Cases of Violence Against Women (SPPT-PKKTP), an integrated system intended to process the linkages between institutions / authorized parties to handle cases of violence and access to easy and affordable services for justice seekers and established integrated criminal justice, intended to be Special Courts of one-stop services for resolving marital and family cases and dimensions of violence experienced. This institution is also expected to carry out recovery for victims and / or mediate settlement of cases with the principle of protection and non-discrimination. There needs to be an alternative way to realize a Special Court in Indonesia, with its own characteristics, namely; the first alternative is to combine civil and criminal cases to be dealt with in one assembly; second, the settlement of one-roof civil and criminal cases in the General Court; third, the establishment of special courts in the Religious Courts; and fourth, special procedural law for the integration of handling civil and criminal cases in the General and Religious Courts. This concept, of course, is oriented on human values with a humanistic approach with the principle of deliberation to reach consensus to find the application of criminal sanctions to offenders, build legal awareness of perpetrators and victims, with the aim of achieving the principle of equality before all people. Thus it is recommended that law enforcers build legal awareness of the perpetrators and victims, by involving spiritual advisers as assistants to victims in their legal processes, and to parties with the same interests to help improve or prepare adequate supporting facilities for law enforcement officials and parties. others involved in the law enforcement process, as well as preparing law enforcement resources that are flexible supported by adequate legal knowledge.

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