

The Criminal System on Criminal Acts of Violence in Household of Indonesia

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Abstract. *The purpose of the research in this research is to examine and analyze the criminal system for crimes of domestic violence in the law on the elimination of domestic violence, to examine and analyze the weaknesses and solutions faced in the criminal system for crimes of domestic violence in the law. -The law on the elimination of domestic violence. The problems in this research are: 1) What is the criminal justice system for domestic violence in Indonesia, 2) What is the legal analysis of judge decisions in cases of domestic violence in Indonesia, 3) What are the constraints and solutions to the criminal justice system for criminal acts? crime of domestic violence in Indonesia. This study uses a normative juridical approach, with an analytical descriptive research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problems were analyzed using the theory of legal effectiveness, the theory of legal purposes, and the theory of Islamic justice. The results of the study concluded that: 1) The criminal system in the Criminal Code with Law Number 23 of 2004 concerning the Elimination of Domestic Violence recognizes the imposition of imprisonment and fines, only the length of imprisonment and the amount of fines are not the same. With regard to legal subjects and regulatory systems both in the Criminal Code and in Law Number 23 of 2004 concerning the Elimination of Domestic Violence are the same, namely using individual legal subjects and a single track system, 2). Legal analysis of judges' decisions in cases of crimes of domestic violence in Indonesia that imprisonment is the choice of judges to apply in violations of Article 44 of Law Number 23 of 2004, 3) Obstacles faced in punishing perpetrators of domestic violence, namely: Legal factors Alone,*

Factor law enforcement officers, Factor facilities and facilities. Efforts to overcome obstacles are as follows: a). Revise laws and regulations related to domestic violence so that any kind of domestic violence case can be prosecuted, b) The police, prosecutors and judiciary coordinate and help each other to deal with obstacles that arise in handling cases of criminal acts of physical violence in the household. c). Complete the facilities and means needed in the process of sentencing the perpetrators of domestic violence.

Keywords: *Criminal; Domestic; Violence*

1. Introduction

The family is the first social environment known to humans. The family is a social institution that functions to improve all the abilities that exist in each individual. Even so, it is not uncommon for families to experience various cases of irregularities or illegal activities that cause misery or suffering and are carried out by members of one family against other family members such as: abuse, rape, and even lead to murder. This situation is commonly referred to as Domestic Violence or more commonly shortened to Domestic Violence.

The integrity and harmony of the household can be disrupted if the quality and self-control cannot be controlled, which in turn can lead to domestic violence resulting in insecurity or injustice to people within the scope of the household. To prevent, protect victims, and take action against perpetrators of domestic violence, the state and society are obliged to carry out prevention, protection and prosecution of perpetrators in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia.¹

Legal development is not only limited to the formation of regulations, norms or norms, but legal development that is systematic and holistic, always covering various aspects, namely proper legal planning, formation of new laws, which adhere to the principles of Pancasila and the 1990 Constitution of the Republic of Indonesia. 1945, good application and service of law, effective and efficient law enforcement but still humane. In essence, the reform of criminal law must be a manifestation of changes and updates to various aspects and the underlying policies.² Based on this, it is necessary to develop a planned and systematic law

¹Prosecutor Formation Education and Training, 2019, Module for the Elimination of Domestic Violence, Team for Developing the Module for the Prosecutor's Training Agency of the Republic of Indonesia, Jakarta, p.1.

²Sri Endah Wahyuningsih, 2014, The Urgency of Reforming Indonesian Material Criminal Law Based on the Values of the One and Only God, Journal of Legal Renewal, I(1).p.17

to accelerate the renewal and establishment of the national legal system in all its aspects.³

Domestic Violence (KDRT) has been regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, hereinafter referred to as the PKDRT Law, which is expected to become a legal instrument that regulates prevention, protection of victims, and prosecution of perpetrators of domestic violence, while maintaining family integrity and harmony.

In particular, the PKDRT Law explains that every citizen has the right to feel safe and free from all forms of violence in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia. What this Act really wants to achieve is to eliminate criminal acts. Domestic violence also creates equal equality between men and women. An equal position between husband and wife, children and parents, as well as an equal position between the nuclear family and those who are directly or indirectly part of the family are the key points to prevent victims from criminal acts of domestic violence.

Current developments, empirical reality states that acts of physical, psychological, sexual violence and neglect of the household in fact occur a lot. This can be known directly or through mass media, both print and electronic media. These empirical facts illustrate that there is a gap between law in books & law in action, which needs attention from all parties as a problem that needs solving (problem solving) through scientific research.

Law Number 23 of 2004 concerning the Elimination of Domestic Violence, states that to protect the rights of victims, as regulated in Article 10, victims are entitled to:

- a. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on a stipulation of a protection order from the court;
 - b. Health services according to medical needs;
 - c. Handling specifically related to victim confidentiality;
 - d. Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of laws and regulations;
- And

³Sri Endah Wahyuningsih, 2013. Principles of Individualization of Criminal in Islamic Criminal Law, Publishing Agency of Diponegoro University, Semarang, p. 23.

e. Spiritual guidance service.

In particular, the PKDRT Law explains that every citizen has the right to feel safe and free from all forms of violence in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia. What this Act really wants to achieve is to eliminate the crime of domestic violence as well as achieve equality between men and women. An equal position between husband and wife, children and parents, as well as an equal position between the nuclear family and those who are directly or indirectly part of the family are the key points to prevent victims from criminal acts of domestic violence.

Current developments, empirical reality states that acts of physical, psychological, sexual violence and neglect of the household in fact occur a lot. This can be known directly or through mass media, both print and electronic media. These empirical facts illustrate that there is a gap between law in books & law in action, which needs attention from all parties as a problem that needs solving (problem solving) through scientific research.

In Indonesia, the reporting of cases of domestic violence continues to increase from year to year. The National Commission on Violence Against Women (Komnas Perempuan) noted that during 2015-2021, there were 36,367 cases of domestic violence and 10,669 cases in the personal sphere. According to the 2019 Komnas Perempuan Annual Records (CATAHU), throughout 2018 there were 8,626 cases of violence against women in the personal sphere with details of 59% or 5,102 cases in the form of violence against wives, 021% or 1,748 cases of dating violence, 10% or 843 cases of violence against girls, while the 2017 Komnas Perempuan CATAHU stated that there was an increase from the previous year of 60% or 6,725 cases of all cases of violence against women in the form of violence against wives, 24% or 2,734 cases of dating violence,⁴.

The Central Statistics Agency (BPS) reports that in 2019, Central Java ranks 6th as the province with the most reported cases of domestic violence in Indonesia. Semarang as the capital city of Central Java has the highest number of reported cases of domestic violence. Based on data reported at the Seruni Integrated

⁴National Commission on Violence Against Women; 2019 Komnas Perempuan Annual Record Fact Sheet (CATAHU); Jakarta, March 7 2019, p. 1; Look:<http://www.komnasperempuan.go.id/wp-content/uploads/2019/03/Lembar-Fact-Catahu2019.pdf>

Service Center (PPT) in Semarang City, in 2018 there were 161 reports of cases of domestic violence. This figure has increased in 2019 to 179 case reports⁵.

One example of a domestic violence case is the decision of the Sleman District Court Number 180/Pid.Sus/2018/PN.Smn which stated that the defendants NKS and MFR were legally and convincingly proven to have jointly committed the crime of physical violence within the household sphere, and violated Article 44 paragraph (1) of the PKDRT Law. Because of these actions, the defendants were subject to imprisonment for 8 (eight) months. Another case is the case with the decision of the Semarang District Court Number 630/Pid.Sus/2018/PN.Smg which stated that the defendant AM was legally and convincingly proven to have jointly committed the crime of physical violence within the household sphere, and violated Article 44 paragraph (1) The PKDRT Law. Because of their actions, the defendants were subject to imprisonment for 10 (ten) months.

The peaceful effort chosen between the victim and the perpetrator of the crime of domestic violence is a separate weakness in the midst of efforts to minimize the crime of domestic violence. In fact, mediation efforts are an indication that the state's protection for victims of domestic violence is inadequate. This is due to the application of sanctions against perpetrators to be inappropriate and does not create a deterrent effect due to the light imprisonment sanctions received by perpetrators of crimes of domestic violence.

There were 10 (ten) cases of domestic violence that were processed up to the trial stage and have permanent legal force. Of the 10 cases, there was a tendency for the public prosecutor to charge the defendant with imprisonment and the judge also sentenced him to imprisonment. For example, in the public prosecutor's claim letter, the case register number is PDM-11/Ep.3/03/2013, which charges the defendant Mawardi Called Didit who works as a casual daily labourer. The defendant was charged with violating Article 44 Paragraph 1 of the PKDRT Law.

Seeing the considerations of the Public Prosecutor, the defendant did not have any aggravating circumstances while in terms of mitigating circumstances the defendant acknowledged and regretted his actions, the defendant was polite in court and the defendant had never been convicted, the defendant is the

⁵Central Jakarta Statistics Agency, 2019, 2019 Social Protection Program Data Collection, Central Statistics Agency, Central Jakarta, p.49.

backbone of a family which has five children and the victim's final considerations have been pardoned the defendant's actions and requested that the defendant be acquitted. Based on his considerations, the public prosecutor demanded that the defendant be imprisoned for six months and in his decision the judge handed down a sentence in accordance with the demands of the public prosecutor. Seeing this, of course we think whether the application of such a crime will provide benefits to victims of domestic violence and their families or will it even cause more poverty in their household.

One of the efforts to overcome the high number of victims of domestic violence is in empowering women, namely participating in the Ministry of Women's Empowerment and Child Protection (KP2PA) program, namely: 1) improving the quality of life of women and protecting children, 2) strengthening gender mainstreaming institutions, 3) harmonizing policies to increase quality of children and women, 4) increasing participation and gender equality in development.⁶

Based on the problems above, this writing is intended to analyze the formulation of criminal law policies in the context of overcoming the crime of domestic violence. Determining the purpose of punishment can be the basis for determining the methods, means or actions to be used in the context of overcoming the crime of domestic violence. On the basis of the explanation above, the authors examine the "Criminal System for Crimes of Domestic Violence in Indonesia".

This study aims to: 1) To analyze the criminal justice system for domestic violence in Indonesia. 2) To analyze the legal decisions of judges in cases of criminal acts of domestic violence in Indonesia. 3) To analyze the constraints and solutions to the criminal justice system for domestic violence in Indonesia.

2. Research Methods

This study uses a sociological juridical approach. The type of research used in completing this thesis is a qualitative descriptive research method. The data used are primary and secondary data which will be analyzed qualitatively. Research problems are analyzed using the theory of legal objectives, the theory of legal certainty.

3. Results and Discussion

⁶Sri Kusriyah, "Local Government Policy in Empowering Women in Demak District", Journal of Legal Renewal, Vol. IV No.1, January-April 2017, p. 120

3.1. Criminal System for Crimes of Domestic Violence in Indonesia.

The case of domestic violence that had attracted attention was the case with the decision of the Sleman District Court Number 180/Pid.Sus/2018/PN.Smn which stated that the defendants NKS and MFR were legally and convincingly proven to have jointly committed the crime of physical violence within the household sphere, and violates Article 44 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Because of these actions, the defendants were subject to imprisonment for 8 (eight) months. Another case is the case with the decision of the Semarang District Court Number 630/Pid.Sus/2018/PN.Smg which stated that the defendant AM was legally and convincingly proven to have jointly committed the crime of physical violence within the household sphere, and violated Article 44 paragraph (1) Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

The peaceful effort chosen between the victim and the perpetrator of the crime of domestic violence is a separate weakness in the midst of efforts to minimize the crime of domestic violence. In fact, mediation efforts are an indication that the state's protection for victims of domestic violence is inadequate. This is due to the application of sanctions against perpetrators to be inappropriate and does not create a deterrent effect due to the light imprisonment sanctions received by perpetrators of crimes of domestic violence.

Several weaknesses are found in Law no. 23 of 2004 concerning the Elimination of Domestic Violence. The existence of an alternative sanction system listed in the law above can lead to misinterpretation, namely those (perpetrators) who commit crimes of domestic violence can choose alternative imposition of sanctions by paying criminal fines so that they are free from legal bondage. In addition, the inclusion of only the maximum sanction without including the minimum limit can lead to legal uncertainty. The perpetrator may only be given the minimum and lightest punishment which is disproportionate to the actions he has committed.

Domestic Violence (KDRT) tends to be perpetrated by men in the age group who are young, not working, not in legal marriage ties, likely to have witnessed domestic violence in childhood, as well as having psychiatric problems varying from depression to substance abuse . Several other conditions that need attention regarding the possibility of domestic violence are problems related to

drugs and alcohol, situations related to stress and depression. Many perpetrators of domestic violence commit violence under the influence of alcohol. However, perpetrators who commit violence in a conscious condition take a larger proportion. Perpetrators of domestic violence can be divided into three types:

a. *cyclically emotional volatile accusers*, perpetrators of this type of domestic violence have dependence on the existence of their partners. He has developed a pattern of heightened emotions followed by aggressive actions towards partners. If the perpetrator starts with psychological violence, the violence can progress to serious physical violence.

b. *overcontrolled accusers*, this type of perpetrator is a group that has formed a pattern of control that leads to psychological control rather than physical violence.

c. *psychopathic perpetrators*, perpetrators who themselves do not form emotional relationships or feelings of remorse, and tend to also be involved in violence between men and other criminal behavior.⁷

In general, in every act between the perpetrator and the victim, they often do not know each other and even seem strangers. Indeed, there are several criminal acts committed by people who already know each other (friends, friends, neighbours), as well as people who are related by blood. In fact, the forms of acts of violence that occur in the household are also the same as other forms of criminal acts in general, for example abuse regulated in Article 351 of the Criminal Code, murder (Article 338 of the Criminal Code), rape (Article 285 of the Criminal Code), and humiliation (Article 310 of the Criminal Code). Adultery (Article 284 of the Criminal Code) and other acts that can be categorized as criminal acts regulated in the Criminal Code. However, domestic violence has special characteristics and characteristics which lie in the relationship between the perpetrator and the victim, as well as the ways of solving it.

Formulation of norms or rules in Law no. 23 of 2004 concerning the Elimination of Domestic Violence is stated in Articles 5 to 9. In Article 5 of Law no. 23 of 2004 stated, everyone is prohibited from committing domestic violence against people within the scope of their household by: (a). physical abuse; (b). psychic violence; (c). sexual violence; or (d). household abandonment.

⁷ ?Core Group, 2008, Counseling Module for Actors of Domestic Violence, Jakarta: Women's Partners Workshop, p.7.

In Article 6 it is stated that, physical violence as referred to in Article 5 letter a is a change that results in pain, falling ill, or serious injury. Another correlation that domestic violence is a form of gender-based violence and also a form of discrimination, is as stated in the fourth paragraph of the General Explanation of the PKDRT Law, which confirms: "...The state views that all forms of violence, especially domestic violence, are violations of human rights. and crimes against human dignity and forms of discrimination". The statement on the views of the state is as mandated in the provisions of Article 28 of the 1945 Constitution of the Republic of Indonesia and its amendments, and the mandate of Article 28G paragraph (1) stipulates that: "Everyone has the right to protection for himself/herself, family, honor, dignity, and property under his control, and is entitled to a sense of security and protection from threats of fear to do or not do something which is a human right". Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that "Every person has the right to receive special facilities and treatment to obtain equal opportunities and benefits in order to achieve equality and justice".

Furthermore, Article 7 contains a statement that psychological violence as referred to in Article 5 letter b is an act that results in fear, loss of self-confidence, loss of ability to act, feeling of helplessness, and/or severe psychological suffering to a person. Meanwhile, Article 8 states that sexual violence as referred to in Article 5 letter c includes:

- (a) coercion of sexual intercourse committed against a person determined within the scope of the household,
- (b) coercion of sexual relations with another person within the scope of the household for commercial purposes and/or specific purposes.

Then in Article 9 it is stated, (1) Everyone is prohibited from abandoning people within the scope of his household, even though according to the law that applies to him or because of an agreement or agreement he is obliged to provide life, care, or care for that person; (2) Neglect as referred to in paragraph (1) also applies to anyone who causes economic dependence by limiting and/or prohibiting proper work inside or outside so that the victim is under the control of that person. This law also states that the crime of physical violence as referred to in Article 44 paragraph (4) constitutes a complaint offense (Article 51).

Likewise, the crime of psychological violence as referred to in Article 45 paragraph (2) is a complaint offense (Article 52). Likewise,

Every crime that occurs will result in victims. What is meant by victims of crime are: "Those who suffer physically and spiritually as a result of the actions of other people who seek to fulfill their own or other people's interests that conflict with the interests and human rights of those who suffer."⁸.

According to the Criminal Code (KUHP), not everyone has the right to submit a complaint about a crime they see, because there is a crime that occurs, an investigation can only be carried out if there is a complaint from the victim (in the case of a complaint). In complaint offenses, the above circumstances are important for investigators, namely so that the complaint can be used as a legal basis for carrying out investigations, and to prevent investigators from being blamed for conducting investigations that are not based on the law. Complaint offenses (*klacht delict*) in essence also contain elements that are commonly owned by each offense. Complaint offenses have special characteristics and that specificity lies in the "prosecution". Usually, every offense arises, requires prosecution from the public prosecutor, without any express request from the person who is the victim or those who are harmed. In complaint offenses, complaints from the victim or the aggrieved party are the main conditions for exercising the right to sue by the Public Prosecutor.

Fulfilling the interests of recovering victims who experience physical violence, victims are entitled to receive services from health workers in the form of treatment and health restoration in accordance with professional standards, standard operating procedures, and the victim's medical needs. Health recovery services can be carried out at primary health facilities, government or private referral health facilities.

In efforts to provide recovery services to victims, there are several steps taken by social workers, namely:

- (a). Exploring the victim's problems to help solve the problem;
- (b). Recovering victims from traumatic conditions through psychosocial therapy;

⁸Gosita, Arief, Op. Cit, p. 41.

(c). Make referrals to hospitals or safe houses or service centers or other alternative places according to the needs of victims;

(d). Accompanying victims in recovery efforts through counseling assistance; and/or

(e). Conduct resocialization so that victims can return to carrying out their social functions in society.

In addition to the steps mentioned above to make it easier to process the implementation of victim recovery services, assistance is also carried out, namely as follows:

(a). Build an equal relationship with victims so that they are willing to open up in expressing their problems;

(b). Empathize and not blame the victim regarding or related to the problem;

(c). Convince the victim that no one is allowed to commit acts of violence;

(d). Ask what you want to do and what help is needed;

(e). Provide information and connect with institutions or individuals who can help overcome the problem; and/or

(f). Help provide information about legal consulting services.

The recovery of women victims of violence must be interpreted in a broad way, not only interventions carried out medically, legally, and psychosocially, but also creating situations where women victims of violence can return to their full shape, so they are able to make decisions in their lives and can return to their roles. in society as women and citizens. This action not only requires the seriousness of the state as bearer of responsibility, but also requires support and involvement from the community and family.

3.2. Legal analysis of judge's decisions in cases of criminal acts of domestic violence in Indonesia

The scope of domestic violence is an act against someone, especially a woman, which results in physical, sexual, psychological misery or suffering, and/or

neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty within the household sphere. Most of the victims of domestic violence are women (wives) and the perpetrators are husbands, although there are also victims on the contrary, or people who are subordinated in the household. Perpetrators or victims of domestic violence are people who have blood relations, marriage, breastfeeding, parenting, guardianship with husbands, and children and even household helpers who live in a household. Not all acts of domestic violence can be handled thoroughly because victims often cover up them on the grounds of ties to cultural structures, religion, and do not understand the legal system in force. Even though protection by the state and society aims to provide a sense of security for victims and take action against perpetrators. Meanwhile, what is meant by recovery for victims of domestic violence are all efforts to strengthen victims of domestic violence so that they are more empowered, both physically and psychologically.

The following is an example of a judge's ruling on domestic violence:

Table 1. Judge's Decision Regarding the Crime of Domestic Violence

Number	Legislation	Verdict Rule
decision		
Number 716/Pid.Sus/2018 /PN. Smg	Article 44 paragraph 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence	<ol style="list-style-type: none"> <li data-bbox="927 1357 1453 1547">1. Declare the defendant: LUNAR JULIWIARSO Bin WALIDI proven legally and convincingly guilty of committing the crime of "Violence within the scope of the household" <li data-bbox="927 1592 1453 1704">2. Sentenced against the defendant with imprisonment for: 1 (one) year and 2 (two) months; <li data-bbox="927 1749 1453 1895">3. Determine that the period of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed; <li data-bbox="927 1939 1453 1968">4. Determine the Defendant remains in

		custody;
		5. Charged the defendant to pay court fees of Rp. 2,000 , - (Two thousand rupiah) .

Number: 610/Pid.Sus/2018 /PN. Smg	Article 44 paragraph 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence	<p>1. Declare the defendant: LASKAR MUJAHIDIN Bin MUSTOFA KAMAL proven legally and convincingly guilty of committing the crime of "committing acts of physical violence within the scope of the household"</p> <p>2. Sentenced against the defendant with imprisonment for: 1 (one) year;</p> <p>3. Determine that the period of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed;</p> <p>4. Determine the Defendant remains in custody;</p> <p>5. Determine the evidence in the form of: 1 (one) white T-shirt; 1 (one) copy of the wife's marriage book was returned to witness Hanna; 1 (one) husband's marriage book was returned to the accused Laskar</p> <p>6. Charged the defendant to pay court fees of Rp. 2,000 , - (two thousand rupiah)</p>
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Number 594/Pid.Sus/2018 /PN Smg	1. Article 44 paragraph (1) Law Number 23 of 2004 concerning the Elimination of Domestic Violence,	<p>1. Declare the Defendant EKO SRI PRABOWO Alias GENTONG Bin ROHMAN mentioned above, legally and convincingly proven guilty of committing the crime of "domestic violence".</p>
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|---|---|
| 2. Law No. 8 of 1981 concerning the Criminal Procedure Code | 2. Sentenced a sentence against the Defendant EKO SRI PRABOWO Alias GENTONG Bin ROHMAN for that reason with imprisonment for 5 (five) months; |
| | 3. Determine the detention period that has been served by the Defendant wholly deducted from the sentence imposed; |
| | 4. Determine that the Defendant remains detained; |
| | 5. Charged the Defendant to pay court fees in the amount of Rp. 2,000.00 (two thousand rupiahs). |
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From the three cases above it is clear that imprisonment is the choice of judges to apply in violations of Article 44 of Law Number 23 of 2004.

In accordance with what was said by Barda Nawawi Arief: that the purpose of sentencing policy is to determine a crime is inseparable from the goals of criminal politics. In its overall meaning, namely the protection of society to achieve prosperity. Therefore to answer and know the purpose and function of punishment, it cannot be separated from existing theories about punishment. Barda Nawawi stated that if the statutory rules are limited to the substantive criminal law contained in the Criminal Code, it can be said that all provisions in the Criminal Code, both in the form of general rules and specific rules regarding the formulation of criminal acts, are essentially a unified system. The entire statutory rules in the field of substantive criminal law consist of general rules and special rules. General rules are contained in the Criminal Code (Book I), and specific rules are contained in Books II and III of the Criminal Code, as well as in special laws outside the Criminal Code. These special rules generally contain the formulation of certain criminal acts, but may also contain special rules that deviate from general rules. Barda Nawawi views punishment as a system of view that is very different from the understanding previously explained. Barda Nawawi believes that punishment does not only talk about the sanctions

imposed but also about the procedures for imposing sanctions along with the laws that govern both materially and formally in this regard.

Gustav Radbruch said that law is the bearer of the value of justice, justice has both normative and constitutive characteristics for law. It is normative because it is to justice that positive law originates. It is constitutive because justice must be an absolute element of law, without justice, a rule does not deserve to become law.⁹

This also pays attention to the priority principle put forward by Gustav Radbruch that in order to apply the law appropriately and fairly to fulfill the objectives of the law, what is prioritized is justice, then benefits, followed by legal certainty.¹⁰

Gustav Radbruch put forward 4 (four) fundamental things related to the meaning of legal certainty, namely: First, that law is positive, meaning that positive law is legislation. Second, that law is based on facts, meaning that it is based on reality. Third, that facts must be formulated in a clear way so as to avoid misunderstandings in meaning, besides being easy to implement. Fourth, positive law should not be easily changed. Gustav Radbruch's opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically of legislation. Based on this opinion, according to Gustav Radbruch,¹¹

3.3. Obstacles and Solutions to the Penal System for Crimes of Domestic Violence in Indonesia

Environmental factors also greatly influence the occurrence of domestic violence such as disruption of interactions between family members or interactions that are too excessive can also lead to acts of deviation such as violence. For example, a husband who rarely comes home and has problems outside, because of the lack of interaction, other family members may not know about it and their ignorance of the problem results in attitudes that actually make the situation

⁹Bernard L Tanya et al, 2013, *Legal Theory: Human Orderly Strategies across Space and Generations*, Yogyakarta: Genta Publishing, page 117

¹⁰Satjipto Rahardjo, 2012, *Legal Studies*, Editor Awaludin Marwan, Bandung: PT Citra Aditya Bakti, p. 20

¹¹Dominikus Rato, 2010, *Searching for Legal Philosophy: Understanding and Understanding Law*, Yogyakarta: Laksbang Pressindo, p.59

worse, such as fussy children and wives who ask a lot, so emotions the husband peaked and even triggered him to commit acts of violence.

This change in thinking seems to form a view that marriage is not a sacred thing so there is no need to fight for its integrity if there are differences. Marriage which states that "marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on Belief in the One and Only God, from this explanation it will be known that the hope of marriage is the formation of a happy and eternal marriage forever.

Changes in thinking among women today have made divorce a major way that indirectly makes an opinion that if violence occurs, only divorce can end it. Because indeed the use of peaceful means is still felt to be ineffective and does not break the chain of violence that occurs in society. This is proven by the many cases that were settled out of court, but within a period of several months the perpetrators committed their actions again.

It is this failure to save the household out of court that creates an alarming reality of life with the increasing number of divorces continuing every year. Even though this out-of-court settlement has given little hope that the situation will recover after the occurrence of domestic violence. However, it cannot be denied that out-of-court settlements do not provide a definite guarantee to victims that the perpetrators will not repeat acts of domestic violence, this is what has made many parties witness its success.

The position of women is indeed very unstable in situations like this. If she decides to remain silent then it is certain that her suffering will not end. Women as victims of domestic violence cannot be blamed if they choose to escape their suffering because it is a form of reaction against the violence they experience. As with the process of resolving cases of domestic violence, cases of domestic violence still occur because they are caused by the same factors, namely internal and external factors.

In this case, the victims were mostly the wives. For this reason, in the settlement process, namely through mediation, the mediation referred to in this study is the process of resolving disputes outside the court by way of deliberation to reach a consensus by asking for help from a third party (mediator) as an adviser to reconcile the two parties to the dispute, because mediation is one part of the

alternative dispute resolution outside the court. A settlement system like this is a culture that has been passed down from generation to generation. The settlement process like this has been proven to solve many problems in the Tumpak Village community so that it is still used today, besides not costing a lot it also requires a short time.

The factors that influence the weakness of the criminal justice system for domestic violence cases are:

1. The legal factor itself

There is a slight problem in this matter, because it turns out that in Law Number 23 of 2004 concerning the Elimination of Domestic Violence there is no juridical definition of pain, falling ill or serious injury, even though this understanding is most important to determine and prove the type of action committed by perpetrators/suspects/defendants, therefore these definitions must be sought in the Criminal Code and Jurisprudence. This crime of physical violence is a complaint offense. So cases of physical violence can be tried in court if there is a complaint beforehand. In addition, Article 44 paragraph (4) of the PKDRT Law allows for a complaint offense to be revoked.

2. Factor law enforcement officers

There are still many law enforcement officers (police, prosecutors, judges) who are gender biased, often even using victim blaming and victim participating approaches in responding to cases of violence. Victims of violence have doubts, worries and fears about reporting what happened. Victims are afraid of the legal process that will be followed. Gender awareness and sensitivity among law enforcers is still lacking, so that sometimes victims become objects. The Integrated Criminal Justice System that is Gender Equitable in Handling Cases of Violence Against Women (SPPTPKKTP) is an integrated system that shows the process of linkages between agencies/parties authorized to handle cases of violence against women and access to easy and affordable services for victims in every judicial process of cases of violence against women. Woman. (SPPT-PKKTP) demands law enforcers who have a vision of gender equality and are not gender biased. Domestic violence cases are sometimes difficult to process. Usually experience difficulties in terms of proof (witnesses are usually not available), the case is withdrawn by the victim himself (because of love / because of a living matter).

The Police Agency found a lack of preparation in dealing with cases of domestic violence with the Special Service Room (RPK). Ideally cases of domestic violence are handled by female police. However, currently the number of policewomen is still very limited.

The Prosecutor's Office, which carries out its duties as a public prosecutor, based on Law Number 16 of 2004. The Prosecutor's Office has a very important role in the process of enforcing criminal law, because whether or not criminal cases, in this case acts of physical violence in the household go to court, depends entirely on by the Public Prosecutor.

Judges have a big role in protecting victims of domestic violence. Judges have the right to decide cases, so that with the punishment imposed on the perpetrators they can provide protection and prevent acts of physical violence in the household. The judge is free to impose a sentence on the offender. In criminal justice practice, even though the judge is free, he remains bound by what the public prosecutor charges. The judge may not decide what is not indicted by the Public Prosecutor.

3. Facilities and facilities factor.

These facilities or facilities include, among others, educated and skilled human resources, good organization, adequate equipment, adequate finances and so on.

Efforts to overcome obstacles are as follows:

1. Revise laws and regulations related to domestic violence so that any kind of domestic violence case can be prosecuted.
2. Police, Prosecutors and Judiciary together with the police coordinate and help each other to deal with obstacles that arise in handling cases of crime of physical violence in the household.
3. Completing the facilities and means needed in the process of sentencing the perpetrators of domestic violence.

4. Conclusion

The punishment system in the Criminal Code with Law Number 23 of 2004 concerning the Elimination of Domestic Violence recognizes imprisonment and fines, but the length of the prison sentence and the amount of the fine are not the same. With regard to legal subjects and regulatory systems, both in the Criminal Code and in Law Number 23 of 2004 concerning the Elimination of Domestic Violence are the same, namely using individual legal subjects and a single track system. Regarding the criminal sanctions imposed, in the Criminal Code, the sanctions imposed only mention the maximum sentence without mentioning the minimum sentence, whereas in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, especially Articles 47 and Article 48, the minimum sentence imposed is stated. In Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

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