

The Essence of Restorative Justice Against Violence in Domestic Violence

Nurhayati*, Sufirman Rahman**, Said Sampara**, Baharuddin Badaru**

**Student of the Law Doctoral Program, Postgraduate of the Muslim University of Indonesia*

***Lecturer of the Faculty of Law, Muslim University of Indonesia*

Corresponding Author: Nurhayati

Abstract: This research conducted with the aim of 1) To analyze and understand the nature of restorative justice for domestic violence; 2) To analyze and find factors that influence restoration justice towards domestic violence; and 3) To understand and find the application of a restorative justice approach to domestic violence. Based on the basic problems outlined in this research proposal which emphasizes: whether with the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, this type of research is included in the type of empirical research, with an approach to justice and legal certainty analyzing social phenomena from point of view of restorative justice.

Keywords: Restorative Justice, Domestic Violence.

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I. INTRODUCTION

Domestic violence is a form of global violence that is a crime or not, depending on the positive law of a country either from its form or formulation so that perceptions can differ from time to time or between one country and another. Domestic violence has long been considered a serious problem that has a long history, but more serious attention has only occurred in recent years. In Indonesia, the problem of domestic violence is termed domestic violence can be said to be a concern in line with the development of the Indonesian nation itself, because even before the enactment of Law Number 23 Year 2004 concerning the Elimination of Domestic Violence, actual forms of violence are categorized as acts which includes forms of domestic violence have been regulated in various forms of law such as the Criminal Code (KUHP) and several other legal regulations.

Based on data obtained from a number of police stations in South Sulawesi after conducting a pre-study, data were obtained that domestic violence during the last three years from 2016 to 2018 in Makassar Polrestabes were 79 cases, Pare-Pare Police were 72 cases, Polres Bone as many as 26 cases, Palopo police as many as 43 cases and 136 Bulukumba police cases with violence in the form of physical, psychological, sexual violence and neglect of the household. In fact it still happens so that adequate prevention and prevention efforts are needed to eliminate domestic violence, namely legal reform in favor of vulnerable groups of victims, especially women and children is very necessary in connection with the many cases of violence, especially within the scope of the household.

A restorative justice approach can be expected in criminal law enforcement in the field of domestic violence. Cases of domestic violence are one part of criminal law whose character and resolution is different from general criminal law. The approach and handling of cases of domestic violence if carried out using ordinary criminal procedure law cannot achieve the ultimate goal of justice seekers to solve the problems they face and even tends to give birth to injustice.

Based on the above, it is necessary to apply restorative justice in the resolution of cases of domestic violence committed by members of the police because it is not resolved so that it can interfere with his daily duties as law enforcement. Criminalization is the last road that can be taken if it is no longer possible to hold a settlement by deliberation.

II. STATEMENT OF THE PROBLEM

1. What is the nature of restorative justice against domestic violence?
2. What factors influence the restorative justice of domestic violence?
3. What is the application of the restorative justice approach to domestic violence?

III. THEORETICAL FRAMEWORK

A. Theoretical basis

1. Justice Theory

Theoretically, legal justice (legal justice or justice according to law) can be considered as a form of justice that has been formulated by law in the form of rights and obligations. But there is still another understanding of legal justice, namely legal justice which is more social justice, which is a constant decision from citizens to give the state the right of the state with the aim of adjusting each individual's actions to the common interests of the state. Or conversely, every action and/or act of a state administration (government) official that does not violate the law so that it is not subject to a lawsuit in the state administrative court.

Thus, the meanings and meanings contained in the use of the term legal justice are more oriented to the values of social justice by prioritizing the public interest rather than personal, group and group interests. This is in synergy with the principle of social justice according to the teachings of Pancasila, that the public interest above rather than personal, group and group interests. Or at least social justice, relies more on choices, especially choices in realizing legal goals.

2. Legal Function Theory

To achieve the desired legal goals, it is not identical with the legal function, it can be seen that Achmad Ali's¹ opinion distinguishes the legal function as follows:

- a. The legal function as a tool of social control
- b. The function of law as a tool of social engineering
- c. The function of law as a symbol
- d. The function of law as a political instrument
- e. Legal functions as an integrator

The five legal functions that are very popular in relation to achieving legal objectives are the legal function as a tool of social control and a tool of social engineering. The function of a tool of social control is a passive function that is as a social control tool to determine the position of an attitude and behavior towards a rule of law. While the legal function as a tool of social engineering is a renewal in society in order to achieve these legal objectives.

In connection with legal awareness, there are four indicators according to Soerjono Soekanto², namely:

- a. Knowledge of regulations
- b. Knowledge of the contents of legal regulations
- c. Public attitudes towards law
- d. Pattern of legal behavior

3. Legal Protection Theory.

There are several views that need to be expressed about legal protection, among others:

a. Philipus M. Hadjon³ (1987: 20) argues that "there are two kinds of legal protection for the people, namely preventive legal protection and repressive legal protection". Legal protection that is preventive to the people is given the opportunity to file an objection, meaning that this protection aims to prevent disputes, while the protection of a repressive nature aims to resolve disputes that have already occurred.

b. Bambang Poernomo (Hambali Thalib)⁴ stated that "there are two legal protections in criminal law, namely primary legal protection and secondary legal protection". Primary legal protection is the protection of society and individuals from criminal interference and secondary legal protection is the legal protection given to society and individuals from unfair treatment by the authorities.

c. De Haan (Abdul Agis)⁵ states that there are four elements that are characteristic of the rule of law in protecting the community, namely: (1) the law is used as the basis for providing special social protection, because it is the source of all laws and regulations; (2) requires the government to provide all the needs of the people in a variety of rights that are really real in accordance with the ideals in the objectives of the law or the

¹Ali, Achmad. *Menguak Tabir Hukum*. 2 ed. Bogor: Ghalia Indonesia, 2008, p. 97.

²Soekanto, Soerjono. *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: PT. Raja Grafindo Persada, 2005, p. 35.

³Hadjon, Philipus M. *Perlindungan Hukum bagi Rakyat di Indonesia: Sebuah Studi tentang Prinsip-Prinsipnya, Penanganannya oleh Peradilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara*. Surabaya: PT. Bina Ilmu, 1987, p. 20.

⁴Thalib, Hambali. *Sanksi Pemidanaan dalam Konflik Pertanahan, Kebijakan Alternatif Penyelesaian Sengketa Pertanahan di Luar Kodifikasi Hukum Pidana*. Jakarta: Kencana Prenada Media Group, 2009, p. 33.

⁵Agis, Abdul. "Perlindungan Hukum terhadap Korban Tindak Pidana Perdagangan Orang." *Disertasi*, Universitas Muslim Indonesia, 2012, p. 118.

Constitution; (3) The law must encourage or generate the provision of new social types to encourage the empowerment of people's rights; (4) in a variety of rights that do not conflict with the constitution.

d. Sudikno Mertokusumo⁶, stated that "the law functions as a human protector so that human interests are protected". For this reason law must be implemented because every legal subject whose rights have been violated must have legal protection.

B. Restorative Justice

The concept of restorative justice is a development of human thought based on the judicial traditions of the civilizations of nations in solving problems including the resolution of criminal acts.

According to Tony.F.Marshall⁷ "Restorative Justice is a concept of resolving a criminal case involving all parties concerned to then jointly seek solutions and at the same time find a solution in dealing with crime after the occurrence of the crime and find ways to deal with it in the future.

C. Principles of Restorative Justice

According to Bagir Manan⁸ Restorative Justice, contains the following ideas and principles:

First, building joint participation between perpetrators, victims and community groups in resolving an event or crime. Placing the perpetrators, victims and the community as collaborators and directly trying to find a solution that is considered fair for all parties (win win solutions)

Second; encourage perpetrators to be responsible for victims for events or criminal acts that have caused injury, or harm to victims. Furthermore, building responsibility does not repeat the criminal actions that he has committed.

Third, placing the event or crime is not as a form of violation of the law, but as a punishment by someone (a group of people) against the perpetrator directed at the responsibility of the victim rather than the legal responsibility.

Fourth; encouraging the completion of an event or a criminal offense in ways that are more informal and personal than the settlement by means of formal (rigid) and impersonal law.

D. Domestic violence

1. Definition of Household

In general, the notion of a household is the smallest organization in a society formed because of a marriage bond. In Indonesian society a household where a household is not only inhabited by a husband, wife and children, but there are also other relatives who also live in a household such as parents, siblings/stepparents, children and other families from both parties. and includes domestic helpers who live together in a house.

In Law Number 23 of 2004 concerning the Elimination of Domestic Violence does not provide a limit to the degree of kinship and to what degree it only requires "blood relations and marital relations". In Article 2 of Law Number 23 Year 2004 concerning the Elimination of Domestic Violence only requires the qualifications of people who are considered to live permanently in a household.

2. Definition of Domestic Violence

According to Jack D. Douglas & Frances ChaputWaksler in Thomas Santoso⁹ shows many levels of violence that have been developed and the problems that arise in an effort to explain various forms of violence ". Furthermore, it states the form of collective violence, namely acts of violence committed by group members together as in war, riots and panic, or in broad terms collective violence is carried out by a mob of people (mob) and groups of people (crowd) in a narrow sense carried out by gang and for collective violence and individual violence remain violence in the form of attacks by beating, killing and rape and suicide. In various literatures there are uses of the term violence, with the terms Violence, Assault and Batter.

Based on the understanding of the term violence and family, it can be formulated regarding the definition of violence in the household. Abdul Wahid and Muhammad Irfan¹⁰ provide a definition of domestic violence as "all forms of behavior carried out by elements (members) of the family towards other elements (members) of the family, which give rise to feelings of discomfort and even fear" whereas according to Kyriacou in Budi Sampurna¹¹, that violence in the household (family) is defined as "a pattern of behavior that is attacking or

⁶Mertokusumo, Sudikno. *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Liberty, 1986, p. 53.

⁷Marshall, Tony F. *Restorative Justice: An Overview*. London: Home Office Research, Development and Statistics Directorate, 1990, p. 5.

⁸Manan, Bagir. "Restorative Justice (Suatu Perkenalan)." *Majalah Hukum Varia Peradilan*, Juni 2006.

⁹Santoso, Thomas. *Teori-Teori Kekerasan*. Jakarta: Ghalia Indonesia, 2002, p. 9.

¹⁰Wahid, Abdul, and Muhammad Irfan. *Perlindungan Terhadap Kekerasan Seksual: Advokasi atas Hak Asasi Perempuan*. Bandung: Refika Aditama, 2001, p. 20.

¹¹Sampurna, Budi. *Pembuktian dan Penatalaksanaan Kekerasan dalam Rumah Tangga dan Forensik*. Jakarta: PT. Raja Grafindo Persada, 2005, p. 10.

coercive that creates threats or physically injures committed by their spouse or ex-spouse” or more broadly can be referred to as “abuse of power or violence by one family member to other family members, who violate individual/civil rights. “

3. Forms of Domestic Violence

Kristi Poerwandari, in her paper entitled *Violence Against Women: Feministic Review*, said that all forms of violence, whoever the perpetrators and victims can be grouped in a large classification, include the following:

- 1) Violence in the domestic area/personal internal relations; various forms of violence where the perpetrators and victims have family relations.
- 2) Another close relationship. This includes abuse of wives, abuse of girlfriends, ex-wives, fiancées, biological children and stepchildren, mistreatment of parents, sexual assault or rape by family members.
- 3) Violence in the public sphere: various forms of violence that occur outside of family relationships or other personal relationships. Can be meant here, various forms of violence that are very broad in scope, both that occur at work (in all workplaces including for domestic work, such as baby sisters, domestic helpers, sick nurses), in public places (buses and public transportation, in markets, restaurants, other public places, in educational institutions, in the form of publications or economic products and practices that expand distribution (eg pornography, trafficking in women, forced prostitution, etc.) and other forms.
- 4) Violence committed by/within the scope of the state: physical, sexual and/or psychological violence that is committed, justified, or allowed/allowed to occur by the State wherever it occurs. This section includes violations of women’s human rights in inter-group conflict, in situations of armed conflict, relating to, among others, murder, rape (systematic), sexual slavery and forced pregnancy.

The above has been described at length on the forms and violence in household, but to be able to draw conclusions, it must always refer to and be based on the legal provisions that govern it, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence, related to the topic of discussion in this sub-section concerning forms of domestic violence, is mentioned in Article 5 which reads: “Everyone is prohibited from carrying out violence in the household there are people in the scope of his household, by way of; a) Physical violence. b) Psychic violence c) Sexual violence; d) Neglect of the household.

E. Domestic Violence in a Legal Perspective

1. Criminal Legal Aspects (KUHP)

The clarification of Law Number 23 Year 2004 concerning the Elimination of Domestic Violence states that legal reform in favor of vulnerable or subordinated groups, especially women, is indispensable in connection with the many cases of violence, especially in households. The renewal of the law is needed because the existing laws are inadequate and no longer in accordance with the development of community law. Therefore, it is necessary to regulate criminal acts of domestic violence separately and have a specificity. Although in general in the Criminal Code has been regulated regarding the persecution and decency and neglect of people who need to be given a living and life.

The law on the elimination of domestic violence is closely related to several other laws and regulations that have been in force before. In addition to regulating the issue of prevention and protection and recovery of victims of domestic violence, the Act also specifically regulates violence that occurs in households with elements of criminal activity that are different from the criminal acts of persecution set out in the Criminal Code.

Besides that, Law Number 23 Year 2004 concerning the Elimination of Domestic Violence also regulates obligations for law enforcement officers, health workers, volunteer assistants or spiritual mentors. It is hoped that they will be more sensitive to the interests of households, which from the beginning were directed at the integrity and harmony of the household.

2. Aspects of Law Number 23 Year 2004

If examined further about the criminal provisions in law Number 23 of 2004 concerning the Elimination of Domestic Violence there are different things when compared with the provisions in the Criminal Code, namely in the offenses that it regulates.

a. Complaints offenses

Most of the provisions in the Criminal Code regulate ordinary offenses and complaints offenses. General offenses (ordinary) related to various types of criminal acts, such as Article 362 of the Criminal Code, Article 351 of the Criminal Code and so on. The complaint offense is only found in certain articles, including Article 284 of the Criminal Code, Article 287 of the Criminal Code. This means that both regular and general offenses are contained in different articles. For example Article 362 of the Criminal Code concerning theft is classified as ordinary offense (general) and Article 367 of the Criminal Code concerning theft in families includes complaint offenses. So it is regulated not in one article. Then Article 284 of the Criminal Code concerning adultery, is an

absolute complaint offense, while Article 367 of the Criminal Code is a relative offense complaint. So each one is located in a different article.

b. Locus Delicti

If examined further there are still some differences between the offenses regulated in the Criminal Code with the offenses contained in Law Number 23 of 2004. The difference lies in the locus delicti (the place where the crime took place). In offenses that are regulated by the Criminal Code locus delicti can be anywhere, inside the house or outside the house, in an open or closed place and even on a vehicle that is running. For example pickpocketing happens on a city bus or a bus between cities between propnsi and on a train. As for cases of violence in the home stairs, the locus deliktinya is located in the house where the perpetrators and victims reside.

c. Proof System

Proof in cases involving the household, what crime (crime) in the household is sometimes very difficult, unless the crime has been known by many people, other than members of the household. That can happen because these crimes are often covered up by victims, as well as other household (family) members.

Crimes that occur in the household, the easiest evidence available is "witness testimony". However, regarding the person who is a witness in this crime, in general it is a blood relatives or a marriage in the straight line, sibling, husband, or wife. In the case of these people according to Article 168 of the Criminal Procedure Code, they cannot be heard and can resign as witnesses.

F. Victims of Domestic Violence

Many cases of domestic violence occur in the midst of the community. Falling victims can also come from various walks of life, artists, celebrities, state officials, the lower classes and even the educated people. Domestic violence can afflict a wife, husband, children or even people who live in the family environment, including domestic helpers.

One obstacle in the elimination of domestic violence is that there is still an assumption in the community that considers domestic violence a disgrace so they cover it up. In addition, there is no gender equality between husband and wife. The wife's assumption must always be obedient, respectful, not argue, and so on so that a gap arises.

Cases of domestic violence are increasingly increasing, in order to prevent and overcome domestic violence, a more accommodating legal instrument is needed, this was responded by the government by issuing Law Number 23 Year 2004 concerning the Elimination of Domestic Violence passed on September 14, 2004.

With the Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it is hoped that solutions can be made to prevent and overcome acts of domestic violence in law enforcement efforts. In accordance with the principles stipulated in Article 3, namely respect for human rights; gender justice and equality; non-discrimination; and victim protection.

Violent crimes, according to Arif Gosita¹², are acts that are against the law, which are carried out intentionally by someone against others for their own or others' interests, and which cause mental, physical and social suffering.

Regarding the limitations of the definition of domestic violence is formulated in Article 1 number 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, namely "Domestic violence is any act committed against a person, especially women, which results in physical, sexual misery or suffering, psychological, and/or neglect of the household, including threats to carry out acts, coercion or deprivation of liberty unlawfully within the scope of the household".

The implementation of the Domestic Violence Act is a solution to prevent and deal with domestic violence as a law enforcement effort. But in its implementation it still requires good cooperation between the government and the community and victims of violence itself.

G. Factors Causing Domestic Violence

Karim Nasution in NiniekWidiyanti and Panji Anoraga¹³ believes that the causes of crime are various. Although it is clearly not possible to provide a theory that has been identified, which more or less correlates with the frequency of occurrence of crimes such as domestic violence. These factors can be roughly classified in three categories, although the demarcation of the three is not always clear, namely:

1. Social conditions that cause things that are detrimental to human life. Widespread poverty and unemployment, equity of wealth that has not yet been successfully implemented, the provision of inadequate

¹²Gosita, Arif. *Masalah Korban Kejahatan*. Jakarta: Akademika Pressindo, 1998, p. 44.

¹³Widiyanti, Ninik, and Panji Anoraga. *Perkembangan Kejahatan dan Masalahnya: Ditinjau dari Segi Kriminologi dan Sosial*. Jakarta: PT. Pradnya Paramita, 1987, p. 64.

compensation to people whose lands have been taken by the government, lack of educational facilities and others.

2. Conditions caused by urbanization and industrialization.

3. Environmental conditions that make it easier for people to commit crimes such as domestic violence.

Furthermore Karim Nasution argued that as long as the three social categories of humanity were the main factors in the occurrence of many crimes now, the efforts to prevent crime were carried out widely and not enough by relying on the criminal justice system.

H. Law and Public Order

Law and society are closely related, like the old adage where there is a community there is law. But among the members of the community there are different interests so that there needs to be an order of rules that can accommodate each of the interests of community members.

Some experts give an understanding of society, including Linton in MastraLiba¹⁴, an anthropologist argues, the community is: "Every group of people who have lived and cooperated long enough, so that they can organize themselves and think about themselves as a social entity with boundaries certain limits.

While J.L.Billin and J.P.Billin in Rena Yulia¹⁵ argued that "Society is the largest group of people who have the same habits, traditions, attitudes and feelings of unity.

In a sociological sense, society is not only seen as a collection of individuals physically or the The Amount addition of humans statistically, but must be seen as a social association of human life following a generally accepted pattern of relationships. In other words, the community is a system formed from human life together which is commonly called the social system.

IV. DISCUSSION

A. The Nature of Restorative Justice Against Criminal Acts in Domestic Violence

1. Overview of Domestic Violence

Domestic violence has long been considered a serious problem that has a long history, but more serious attention has only occurred in recent years. In Indonesia, the problem of domestic violence is termed domestic violence can be said to be a concern, along with the development of the Indonesian people themselves, because even before the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Empirically domestic violence that occurred in South Sulawesi is quite a lot based on the results of research from several regions such as Makassar, Pare-Pare, Palopo, Bone and Bulukumba, the data can be presented as in the following table:

Table 1. Number of Domestic Violence in South Sulawesi from 2016 to 2018

Places	Frequency	Percentage
Makassar	90,00	24,52
Pare-Pare	72,00	19,62
Palopo	43,00	11,72
Bone	26,00	7,08
Bulukumba	136,00	37,06
The Amount	367,00	100,00

Data source for each municipal/regency police in 2019

The figures above may not reflect the real situation, considering the problem of domestic violence is still considered taboo to be disclosed. Many wives do not report acts of domestic violence as experienced by a wife, and even tend to cover up this problem, for fear of being ridiculed by the community or the family itself. Besides that the attitude of silencing acts of violence in the household is an effort to protect the good name of the family. Women are forced to act quietly because of the culture that has been etched for centuries that the wife must be obedient, serve and submit to her husband.

Furthermore, the authors will describe cases of domestic violence in the last three years taken from five districts and cities as follows:

¹⁴Liba, Mastra. *14 Kendala Penegakan Hukum: Mahasiswa dan Pemuda sebagai Pilar Reformasi Tegaknya Hukum & HAM*. Jakarta: Yayasan Annisa, 2002, p. 17.

¹⁵Yulia, Rena. *Viktimologi: Perlindungan Hukum terhadap Korban Kejahatan*. Yogyakarta: Graha Ilmu, 2010, p. 70.

Table 2. Number of domestic violence cases in the last three years from 2016 to 2018 in South Sulawesi

Years	Frequency	Percentage
2016	120,00	32,70
2017	130,00	35,42
2018	117,00	31,88
The Amount	367,00	100,00

Data source for each municipal/regency police in 2019

The data shows that domestic violence in the last three years occurred because of many cases that were not reported to the authorities because of shame known by the public. According to a South Sulawesi Regional Police investigator that many cases of domestic violence occurred, although they were not equal in every district and city. There is an increase in the number of cases of domestic violence every year, for example in the Municipality of Parepare and some that decrease each year such as Palopo and Makassar. Decrease and increase in domestic violence occur, of course many things have an effect, causing it not to be reported to the police, for example because they are ashamed to be known by others or do not know about domestic violence and so on. But overall, it can be said that the number of domestic violence cases in South Sulawesi tends to decrease every year.

Table 3. Cases of domestic violence that occurred in Palopo City in the last three years From 2016 to 2018

Years	Frequency	Percentage
2016	24,00	51,81
2017	10,00	23,26
2018	9,00	20,93
The Amount	43,00	100,00

Data source Palopo District Police 2019

The data above illustrates that not all victims of domestic violence report their cases to the police but there are those who report to the neighborhood (RT) and the Neighborhood Association (RW) as a protection but there are also those who report directly to the police and all of them before proceeding to proceed then the law is held first of all deliberations between families, because it is a family matter so the settlement must be resolved as a family as well.

For more details, the authors will describe the data on the resolution of cases of violence in the household through settlement outside the legal process both through ADR and through NGOs and others in South Sulawesi.

Table 4. Number of cases of domestic violence whose settlement is outside the legal process from 2016 to 2018

Years	Frequency	Percentage
2016	62,00	31,63
2017	66,00	33,67
2018	68,00	34,70
The Amount	196,00	100,00

Data source for each police station used as sample in 2019

Based on the table above, it illustrates that the number of cases which have been resolved outside the legal process are 196 cases over the past three years. And every year there is an increase as in 2016 as many as 62 cases or 31.63%, in 2017 as many as 66 cases or 33.67% and in 2018 as many as 68 cases or 34.70%, thus from all cases of domestic violence in Sulawesi South 55% settled outside the legal process.

2. Forms of Domestic Violence

An overview of the forms of domestic violence experienced by victims and which have been reported to the police in the location of research have been observed until the end of 2016 until 2018 can be seen in the following tabs:

Table 5. Reported violence observed last year from 2016 to 2018

Forms of Violence	Research Sites					
	Makassar	Parepare	Palopo	Bone	Bulukumba	The Amount
Physical abuse	85	69	39	24	130	347
Psychic violence	3	2	1	-	2	8
Sexual Violence	2	1	3	2	3	11
Household Neglect	-	-	-	-	1	1
The Amount	90	72	43	26	136	367

Data Source: Polres, Research Location, 2019

The data above shows that physical violence is the most dominant form of violence compared to other forms of violence. The data shows that 367 cases of household in the household, violence reached 347 cases, violence only resulted in 8 cases, sexual violence as many as 11 cases and reasoning of households only 1 case. Based on Law Number 23 Year 2004 concerning the Elimination of Violence in Households, it is formulated that forms of violence are included in the sphere of abuse in households, physical violence, physical violence, sexual violence, and sexual violence.

3. Factors Causing the Occurrence of Domestic Violence

To find out the factors that cause the occurrence of domestic violence, the first thing to look at is the description of what is in the table as follows:

Table 6. Factors Causing Domestic Violence from 2016 to 2018

Causative factor	Frequency	Percentage
Economy	49,00	44,55
Cheating/Jealousy	46,00	41,82
Behavior/Social Culture	15,00	13,63
The Amount	110,00	100,00

Primary Data Sources Processed in 2019

Based on these data, it can be explained that there are four factors that cause domestic violence, namely the economy, cheating/jealousy, bad behavior habits of saying harsh and rude (ringantang) and the neighborhood. Furthermore, to assess and analyze the factors causing the disasters in the household can be said as follows:

a. Economic Factors

Economic problems in general can be said as one of the factors that can trigger quarrels that lead to domestic violence. Economic problems used as indicators are income of husband and wife or income both by looking at the work of the perpetrators and victims. To see an overview of the income of the perpetrators and victims, see the work of the perpetrators and victims as follows:

Table 7. Occupations of Domestic Violent Actors

Job offender	Frequency	Percentage
Civil Servants	20,00	25,64
Private sector	35,00	44,87
Labor	10,00	12,82
Part time worker	13,00	16,67
The Amount	78,00	100,00

Data Sources for Each Polres Research Place in 2019

The data shows that the work of the most dominant perpetrators in domestic violence can be seen that from 78 cases there were 35 or 44.87% of their jobs in the private sector namely working in private companies and own businesses such as trade and then 20 cases or 25.64% their jobs are civil servants (PNS), 13 cases or 16.67% of their jobs are not permanent and 10 cases or 12.82% of their jobs are laborers.

If you look at the data above the work that has to do with income even though the perpetrators who do a lot of violence in household are working in the private sector but it cannot be said that this factor influences the occurrence of violence in the household, because the size is not due to income or lack of income but depends on how the husband and wife understand each other between themselves.

Then the description of the victim's work related to the family's economic problems is presented as follows:

Table 8. Work Victims of domestic violence

Victim's Work	Frequency	Percentage
Civil Servants	8,00	10,26
Private sector	12,00	15,38
Part time worker	19,00	24,36
Housewife	39,00	50,00
The Amount	78,00	100,00

Data Sources for Each Polres Research Place in 2019

The data shows that the most victims were those who did not work or were housewives, of which 78 cases accounted for 50%, which generally did not work. It means that only a housewife so that all household needs are met by her husband, thus they have an economic dependency on their husband, while the other victims are working but not fixed as much as 24.36% means having a regular income is only helping the cost of household needs, in the sense of not too economically dependent on the husband's income. Furthermore, there are victims of work who are private in this case selling and are the backbone of the family because her husband does not have a permanent job and always wants to be followed even though there is no permanent job, which means sometimes work sometimes does not work. Next 10.26% of employees civilian countries victims of domestic violence.

To support the statement above, the researcher has circulated the questionnaire to respondents who have been determined in the research method then based on the results of economic research as one of the factors causing domestic violence. This can be seen in the following table:

Table 9. Opinion of Respondents regarding the Economic Effects of Domestic Violence

Indicator	Frequency	Percentage
Influential	39,00	39,00
Less Influential	48,00	48,00
Do not know	13,00	13,00
The Amount	100,00	100,00

Primary Data Sources Processed in 2019

Respondents' opinions in the table above show that those who answered affected 39%, while those who answered less affected 48%, thus the economic factors on domestic violence were less Influential. However, if observed in daily life sometimes that triggers quarrels between husband and wife economic problems in this case spending money which leads to domestic violence, especially physical violence against wives and children.

b. Infidelity Factor

The affair factor is one that can cause domestic violence. Various reasons are generally stated that due to an affair committed by a husband or wife can be a trigger for domestic violence in the form of physical, psychological and neglect of household.

In this regard, the following is the opinion of respondents regarding the extent of the influence of adultery on domestic violence. This can be seen in the table exposure as follows:

Table 10. Respondents' Responses Regarding the Effects of Infidelity on Domestic Violence

Indicator	Frequency	Percentage
Influential	60,00	60,00
Less Influential	27,00	27,00
Do not know	13,00	13,00
The Amount	100,00	100,00

Primary Data Sources Processed in 2019

c. Behavior and Victim Behavior Factors

Someone's behavior factor can cause domestic violence both from the perpetrator and from the victim. To find out to what extent a person's behavior factor can cause domestic violence, then the respondent's opinion can be stated as follows:

Table 11. Respondents' Responses Regarding the Effect of Perpetrators/Victims Behavior on Domestic Violence

Indicator	Frequency	Percentage
Influential	58,00	58,00
Less Influential	26,00	26,00
Do not know	16,00	16,00
The Amount	100,00	100,00

Primary Data Sources Processed in 2019

The table above shows that a person's behavior factor is very Influential on the occurrence of domestic violence because it appears from 100 (one hundred) respondents and the respondent influences the behavior of both perpetrators and victims as much as 58% and those who respond less influence as much as 26% and those who answer don't know as much as 16%. Thus, if seen from the percentage, most of those who answered have an effect, then the behavioral factor here is meant to be a bad habit that belongs to someone, both the perpetrator and the victim. Is meant bad behavior such as irritability, drinkers (drunk), jealous, selfish, miserly, easily offended, likes to hurt others, do not get along with their surroundings and so on.

B. Factors Affecting Restorative Justice Against Domestic Violence.

1. Legal Substance Factor

Settlement of cases of domestic violence through a restorative justice approach does not yet have rules governing Indonesian criminal law policies. The new restorative justice approach applies in the settlement of cases of criminal acts of children dealing with the law through Law Number 11 of 2012 concerning the Juvenile Justice System.

The Law on the Elimination of Domestic Violence also provides recognition of the rights possessed by victims or witnesses in criminal acts of domestic violence such as protection of personal security from physical and psychological threats from others relating to testimonies that will, are or have been he gave on a case concerning domestic violence. Furthermore victims of domestic violence are entitled to get restitution from the perpetrators, in the form of compensation for the suffering of victims as a result of domestic violence. Therefore, the legal substance also influences restorative justice towards domestic violence as follows:

Table 12. Respondents' responses regarding the effect of the legal substance in the restorative justice approach to domestic violence

Indicator	Frequency	Percentage
Influential	51,00	51,00
Less Influential	30,00	30,00
Do not know	19,00	19,00
The Amount	100,00	100,00

Primary Data Sources Processed in 2019

Since the promulgation of the Law on the Elimination of Domestic Violence, the existence of the provision of criminal provisions in cases of domestic violence is regulated specifically in the law, although criminal provisions that are still related to criminal acts in domestic violence are regulated in the Criminal Code as in the articles concerning persecution.

2. Legal Structure

The component of the legal structure in the legal system includes various institutions with various roles, functions and authorities. One such institution is the police. The effective task of the police in carrying out its role related to the exercise of authority and functions of law enforcement towards restorative justice in domestic violence is highly dependent on law enforcers starting from the police, prosecutors and courts. If law enforcers are used as one of the factors that influence restorative justice towards domestic violence, then it can be seen in the following table:

Table 13. Respondents' Responses regarding the Effect of Legal Structures on the Restorative Approach to domestic violence

Indicator	Frequency	Percentage
Influential	59,00	59,00
Less Influential	25,00	25,00
Do not know	16,00	16,00
The Amount	100,00	100,00

Primary Data Sources Processed in 2019

Based on the description, the success or failure of the law enforcement process is greatly influenced by the quality of investigators and investigators as law enforcers, whether professional or not. In accordance with Ahmad Ali's¹⁶ view that the operation of a legal system, two things are determined namely; (a) professionalism which is a person ability and skill element of a law enforcement figure; (b) leadership is also a personal ability and skill element of the main law enforcement figures among investigators.

When cooperation is needed, personal quality and quantity are still confronted with obstacles and obstacles in the organization especially in the area of eliminating domestic violence in the Police such as the Women's and Child Protection Unit (UPPA). Based on the results of the study showed that the quantity of Women and Child Protection Unit officers at each Polres can be seen in the following table:

Table 14. Number of Personnel in the Protection Unit for Women and Children in Each Polres being sampled

Research Place	Frequency	Percentage
Makassar	11,00	28,95
Pare-pare	7,00	18,42
Palopo	7,00	18,42
Bone	7,00	18,42
Bulukumba	6,00	15,79
The Amount	38,00	100,00

Primary Data Sources Processed in 2019

Based on the above table, the personnel in each of the natural police units of the Women and Children Protection Unit are somewhat lacking so that more personnel need to be added especially as cases of domestic violence in each police station increase annually as in table one. This is where the role of the leader is needed in directing the handling of a case, especially the crime of domestic violence.

3. Cultural Factors

The culture of the community that supports the national system that is based on the Pancasila and the 1945 Constitution of the Republic of Indonesia has an important meaning because the functioning of the legal system is not only determined by the legal structure but also is determined by the culture of the people who uphold the values of justice and truth in the sense broad, both concerning legal justice and social justice, as well as respecting and respecting human rights, the principles of equality before the law, discipline, respect and obeying the law. Thus, the legal culture is very influential on the resolution of cases of domestic violence. The description in above, it is necessary to explain the results of research that legal culture influences the resolution of domestic violence.

Table 15. Respondents' responses regarding the influence of culture on the restorative justice approach in domestic violence

Indicator	Frequency	Percentage
Influential	63,00	63,00
Less Influential	21,00	21,00
Do not know	16,00	16,00
The Amount	100,00	100,00

Primary Data Sources Processed in 2019

Based on the table above shows that the influence of culture is very influential on the resolution of domestic violence with a restorative justice approach. Thus, the culture in South Sulawesi is still maintained so that the settlement of family cases is still maintained such as domestic violence.

C. Restorative Justice Approach in Settling Cases of Domestic Violence

1. Active participation of victims and perpetrators

Active participation of victims and perpetrators is to find the form and method of resolution that is best for them, because they are the ones who know the factors that cause the conflict and the desired solution to resolve the conflict. Actually they are the owners of conflicts and conflict resolution, but they need help from other parties, in this case the police, family and community.

¹⁶Ali, Achmad. *Keterpurukan Hukum di Indonesia (Penyebab dan Solusinya)*. Jakarta: Ghalia Indonesia, 2005, p. 204.

2. The Principle of Recovery is the way it was

Recovery is carried out by finding solutions to resolve conflicts in full consultation with a family atmosphere, encouraging the active participation of the victims and perpetrators to reach an agreement supported by the police and the community. Efforts to recover victims of domestic violence must be regulated in the law the elimination of violence in the household, so that it can include recovery in terms of physical, psychological and economic. If it does not immediately get recovery, it will have a negative impact on victims of domestic violence.

There are several factors that are considered by both the victims and perpetrators to choose not to continue domestic violence cases to legal proceedings. Consideration of the selected action can be seen in the following table:

Table 16. Considerations Respondents Choose the Settlement of Peace Against Domestic Violence

Indicator	Frequency	Percentage
Kinship	65,00	65,00
Mediation	25,00	25,00
Legal proceedings	10,00	10,00
The Amount	100,00	100,00

Primary Data Sources Processed in 2019

Based on the data above shows that the settlement of cases of domestic violence prefers to be with family, it reaches 65% and those who choose mediation as much as 25% and only choose the legal process 10%. Thus the settlement of domestic violence is mostly resolved by consensus agreement, so that the restorative justice approach is widely used in the resolution of cases of domestic violence.

3. Forms of Liability for Domestic Violence

To determine whether a person can be held liable for criminal liability, attention must be paid to the relationship between thoughts and feelings and actions as eleman is important in determining mistakes and making legal decisions for those mistakes. This assumption actually confirms that there are two important criteria for claiming legal responsibility, namely mensrea (guilty of mind) and actusreus (guilty act). The first criterion is mensrea, saying that the subject is called committing a crime and therefore it is appropriate to be liable if a person knows and understands what he is doing. In other words, the subject is in a mental capacity that deserves legal responsibility. Knowledge and understanding are not enough to determine a person commits a crime, it must be proven that the subject committed or actually committed the crime alleged on him. The second criterion is actusreus, important because it becomes the clearest evidence that the suspect not only understands, but also has the ability to do the alleged action.

A restorative justice approach to solving domestic violence cases will cause victims and perpetrators to reconcile, so that they can continue the household. Children will get love and care from both parents. Relationships with extended families and surrounding communities will also be maintained and harmonious, because households that are tinged with violence will also affect the condition of the extended family of both parties and also the community.

Restorative justice exists as an alternative solution to criminal acts including cases of domestic violence. The restorative are basically in accordance with local wisdom, customary law and in accordance with religious teachings. Restorative justice provides an alternative solution to cases of domestic violence by giving the parties the opportunity to participate and overcome the consequences.

Restorative justice is also supported by law enforcement officers, especially the police. Police officers can think and act progressively by not applying the rules textually but also need to break through the rules because a fair law is a law for humans and not vice versa.

V.CONCLUSION

1. The essence of restorative justice towards domestic violence is the diversion of the resolution of cases of domestic violence from the process of criminal prosecution outside of fair criminal justice with an emphasis on restoration to its original state.
2. Factors that influence restorative justice against domestic violence are the legal substance, legal structure and legal culture.
3. The restorative justice approach in the resolution of domestic violence is the active participation of victims and perpetrators as well as the principles of recovery as in the original situation and the accountability for cases of domestic violence.

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