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### RESEARCH ARTICLE

#### RECONSTRUCTION OF PENAL LAW IN DEALING WITH DOMESTIC VIOLENCE IN JUSTICE-BASED JUDICIAL PROCESSES

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#### Abstract

Violence against women that occurs in households in Indonesia until now is still quite high and therefore needs attention. Seeing from the problem presented above, the writer is interested in studying it more deeply in this article and formulating the main problem discussed in this article with the main problem studied to Why is it that the enforcement against domestic violence in Indonesia isn't effective and what is the reconstruction of Domestic Violence law enforcement in Indonesia based on justice? The study was studied using the constructivism paradigm and the type of research is a qualitative study with a socio-legal approach. Research shows the law enforcement of Domestic Violence is not optimal because of gender-based violence, increasing, both the number and form and mode of operation are increasingly diverse. Factors causing the occurrence of gender-based violence, are very complex and are interrelated. These factors include legal instruments that have not been able to provide protection to victims, the concept that women belong to the family (assets), media that do not support reporting on violence against women and children, public services that have not been optimal, and customs that sometimes legalizing violence, poverty problems, wrong interpretation of religious teachings, all of which are wrapped up in patriarchal culture. Therefore, it is necessary to do a legal reconstruction in which not only the substance (written law) but also the structure (enforcement institutions) and the culture of its people.

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#### Introduction:-

The condition of violence against women is already a universal phenomenon, from Jane Robert Chafman's research report it was found that from every country that she studied, she always found violence that occurred in the family (family violence), and in that case the most frequent acts that are done was violence against women.

Violence Against Women is one form of discrimination that occurs in women, even though violence does not only occur mainly to women, but also to children, men and women regardless of age. Violence is "...the threat, attempt, or use of physical force by one or more persons that result in physical or non physical harm to one or more other person". This violence is a form of physical action which results in injury, disability or suffering to others.

Domestic Violence, is an act that results in misery and suffering to women physically, psychologically and sexually, including the threat of certain actions, coercion or deprivation of liberty arbitrarily whether that occurs in public or

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in the private life environment. The form of rape on behalf of marital ties or in the position of an offender who forces with violence or threat of violence against the victim to have sexual relations at which time the victim does not want it is one form of sexual violence in the household.

Acts of Domestic Violence according to Indonesia's Law number 23 of 2004 are filed and processed in the District Court as a complaint offense, where this offense is only a legal action if there is a complaint from the victim or the offense whose prosecution is based on a request from the victim or the sufferer and if the suspect has been reported to the legal apparatus, then the complainant or complainant changes his mind, then he can retract the report.

The most prominent violence against women occurs in the personal domain. The realm of personal means that the offender is a person who has a blood relationship (father, brother, sister, uncle, grandfather), kinship, marriage (husband) or intimate relationship (dating) with the victim. Based on the number of cases totaling of 321,752 cases, the most prominent type of violence against women as in the previous year was 305,535 occurred in familial environment. While from 16,217 cases that came from national commission of women's partner service institutions, RP (personal domain) recorded 69% or 11,207 cases, 60% or 6,725 cases of violence against wives, 24% or 2,734 cases of dating violence, and 8% or 930 cases are violence against underaged girls.

With the inclusion of Domestic Violence in the offense of complaint, the activist of justice (victims) is demanded to complain against the perpetrators to the legal apparatus, while on the other hand the victim wants to divorce from the perpetrator and the victim must sue through the Religious Court, so the victim must litigate in two Courts that each has a procedural law even though the legal subject is one, but according to the law the object must be distinguished and processed in two courts.

The necessity of litigating in two Courts according to the author's scrutiny results in the failure of one of the important principles of the Judiciary, namely the principle of simple, fast and low cost justice, even though this principle is mandated by Law number 7 of 1989 which is regulated in article 57 paragraph 3 which is basically this principle it comes down to the provisions of article 4 paragraph 2 of Law Number 14 of 1970.

Factors that hamper the implementation of the rights of women victims of domestic violence, for example, one that occurred in Yogyakarta is the non-disclosure of victims of domestic violence to the problem of violence that occurs to victims, and the lack of communication between victims of domestic violence and law enforcement officials. existing and prefer to be silent about cases of violence experienced by victims of domestic violence, as well as lack of good coordination between existing law enforcement officers and existing legal aid institutions so that cases of domestic violence are not uncommon in the case of inquiries from parties the police in handling cases of domestic violence.

**Seeing from the problem presented above, the writer are interested to study it more deeper in this article and formulate main problem discussed in this article with the main problems studied, as follows:**

1. How is the implementation of Penal law enforcement on domestic violence in Indonesia currently ?
2. What the Reconstruction of Domestic Violence in Indonesia based on justice should be ?

### **Method of Research:-**

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge. Paradigm also looked at the science of social as an analysis of systematic against Socially Meaningful Action through observation directly and in detail to the actors social are concerned in dealing with domestic violence.

The research approach used in writing this article is a qualitative research in which the Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach ( approach ) the research is to use the approach of Socio-Legal , which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation .

**As for the source of research used in this study are :**

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: primary Legal Materials obtained in the field and secondary legal material from existing rues and literatures.

In this study , researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

**Research Result and Discussion:-****Implementation Of Penal Law Enforcement On Domestic Violence In Indonesia Currently**

**According to Article 5 of the Indonesia's Law on the Elimination of Domestic Violence, the definition of domestic violence are divided into:**

1. Physical abuse
2. Mental violence
3. Sexual Violence
4. Household neglect

Physical violence according to Article 6 of the Domestic Violence Act is: "An Acts that result in pain, illness, or serious injury."

Then, what psychological violence means according to Article 7 of the Law on domestic violence is " An Acts that cause fear, loss of self-confidence, loss of ability to act, feelings of helplessness, and / or severe psychological suffering."

**Furthermore, what is meant by sexual violence according to Article 8 of the Law on the Elimination of Domestic Violence is:**

1. Forced sexual act that are carried out on people who live in the household environment.
2. Forced sexual relations with one person in the scope of his household with another person for commercial purposes and / or certain purposes.

**Next is The household neglection, according to Article 9 of the Law on the Elimination of Domestic Violence, what Household Neglection means is:**

1. Every person is prohibited from neglecting a person within the scope of his household, even though according to the law in force for him or because of an approval or agreement he is obliged to provide life, care, or care for the person.
2. Negligence as mentioned in paragraph (1) also applies to everyone who causes economic dependence by limiting and / or prohibiting decent work inside or outside the house so that the victim is under the person's control.

Based on the writer's observation, the factors that support and hinder the resolution of cases of domestic violence through criminal law are as follows :The main supporting factor for bringing and resolving cases of domestic violence through criminal law is from the victim herself. Victims who have realized that domestic violence befalls them is not true. Such violence essentially insults the dignity and status of women so that victims have the right to change the situation.

In addition, the awareness of the victim that domestic violence is an act that is against the law and violates human rights will make it easier for the victim to report the violence to the authorities, such as the head of the neighborhood association, superiors, or the police.

It is easier for victims to report to the authorities if they are supported by their close family (for example, father, mother, or sister) and the community, both individually and in institutions. The support can be in the form of

suggestions for requesting protection from law enforcement officers, neighborhood association heads or her husband's superiors, and suggestions for consulting institutions dealing with domestic violence in the community. So, victims here have the right to leave a terrible environment and get help, both from institutions and law enforcement agencies.

If there is a quick intervention by family members and friends it seems to be able to reduce the possibility of continuing violence against the wife. Conversely, if the family sees this as something "private" and not a public matter, the rate of violence against the wife will be much higher.

In addition, if women have rights or authority and power outside the family, the level of violence by their partners becomes lower. Such victims' rights are also guaranteed in the Law on the Elimination of Domestic Violence regulated in Article 10 which stipulates that victims are entitled to protection from family, police, prosecutors, courts, advocates, social institutions, or other parties, both temporarily and based on the stipulation of a protection order from the court. However, for its implementation it must still be monitored whether the Law on the Elimination of Domestic Violence actually runs or whether it is only a written rule.

In addition, the act of taking the victim to the hospital or escorting the police, helping to summon the perpetrators to find a solution, providing financial support to ease the burden of living, assistance during the legal process at the police, prosecutors, and in the court really helps victims who report their cases to the law enforcement apparatus or resolve the case through criminal justice.

Then, the inhibiting factor can also come from the victim herself, for various reasons, such as not being able to see her husband detained, no longer making a living, keeping the name of her husband / family, or protecting the feelings of children. In addition, also from the community who often blame the victim as the cause of the violence and accuse the victim who has the heart to report her own husband to the police. These unsupportive conditions often cause the victim to later retract his report.

Furthermore, factors of law enforcement officials such as the police who are considered less serious pay attention to cases with female victims. Police officers often have perceptions that tend to blame the victim when a case of violence befalls a woman, for example a rape case.

Such a perception also occurs in cases of domestic violence, women are more often blamed as the cause of the husband's violence. Although every report related to cases of domestic violence is made, the handling is slower compared to other criminal cases, such as drugs, ordinary persecution, murder, or theft. However, in its current development, there is progress from the police. to be more active in handling victims of violence, for example by visiting victims to make news of their events. In addition, the existence of a special service room (RPK) and Integrated Service Center (PPT) at the National Police Hospital shows the government's concern in handling and serving victims of gender based violence.

Other law enforcement officials who are seen as less supportive of resolving domestic violence are public prosecutors and judges who still view that the abuses perpetrated by husbands against wives are "different" from those committed by people against others who are not related to husband and wife.

The difference is meant because the public prosecutor and judge see that between the husband and wife there is still a sense of affection that raises the assumption that the violence committed by the husband against his wife is not seriously committed, in contrast to the persecution by people against others that are truly based hatred and desire to hurt or kill.

This view actually shows the lack of understanding of the public prosecutor and judge regarding the problem of domestic violence, especially those related to the theory of violence circles. As a result, prosecutors only prosecute the perpetrators of domestic violence for a jail time in months and judges often decide lighter than what the prosecutors demand. The author hopes that law enforcement in Indonesia has sensitivity and is able to realize more quickly that domestic violence is a crime so that the Law on the Elimination of Domestic Violence can be immediately applied without reasoning because the implementing regulations do not yet exist, so the Law on the Elimination of Domestic Violence cannot be applied .

Then, the indirect inhibiting factor is inadequate provisions governing the problem of violence in the Criminal Code because the violence referred to in the Criminal Code is only directed at physical violence, as formulated in Article 89 and Article 90 of the Criminal Code. The Criminal Code also does not recognize the term domestic violence and the formulation or provisions of the articles have not yet reached forms of violence other than physical violence, such as emotional / psychological, economic, and sexual. As a result, the articles used are also limited. The term domestic violence is not known in the Criminal Code because the community always instills harmony in the family so that it does not take seriously the violence in the household which results in domestic violence being seen as a domestic or private problem.

The provisions of Article 351 paragraph (1), paragraph (2), and paragraph (3) as well as Article 356 of the Criminal Code are provisions that are often used to ensnare perpetrators of domestic violence, but are only limited to physical violence. The provisions stipulate sentences of two to twelve years imprisonment for perpetrators of maltreatment.

However, in reality perpetrators of violence are often sentenced to very low. So, the absence of a minimum sentence results in a lighter sentence. Then, the provisions of Article 285-Article 296 which regulate rape and obscene acts have not included forms of sexual violence, such as removing a wife as a rape victim because rape of a wife (marital rape) is considered impossible between husband and wife. Other forms of rape have also not been accommodated by the Criminal Code, such as intercourse without penile penetration because in many cases rape often does not use the penis of the perpetrator, but uses objects or tools.

The term sexual harassment is also not known in the Criminal Code, but obscene acts that are interpreted as violations of decency or decency, but are not interpreted as violations of the integrity of a person's body. In many ways, sexual harassment often befalls women in various forms, such as physical contact and seduction, showing pornographic images and sex demands, both with words and actions. Such sexual harassment is actually an insult and can be a security, health issue, and is a discriminatory act against women especially when women have reason to object that such acts will not benefit them.

Then, Article 442 of the Criminal Code determines penalties for those who according to the law must be given a living, cared for and maintained. However, this provision is only one aspect of economic violence of varying types, for example acts that intentionally cause economic dependence, by taking the wife's income, exploit the wife, and so on.

Article 465 of the Criminal Code concerning hostage-taking and Article 470 of the Criminal Code concerning deprivation of liberty of a person is considered insufficient to accommodate the psychological violence often experienced by victims of domestic violence because psychological violence does not only cover these two things, but also all acts or words that have a psychological effect on someone for example, fear, being helpless, insecure, loss of ability to act, and depression.

The absence of a legal system that guarantees protection of victims of domestic violence is recognized by the legislators of the Elimination of Domestic Violence, so that it is expected that with the existing laws of our country, the actions of perpetrators of domestic violence are truly very detrimental to victims can be punished accordingly. Thus, victims can obtain the expected justice because this law does not merely regulate corporal punishment to the perpetrators, but also provides fines, additional penalties in the form of counseling, restrictions on the movements of the perpetrators from the victim, and so on.

#### **Reconstruction of Domestic Violence in Indonesia based on justice:**

The culture that is possessed by the dominant Indonesian customs that men as holders of power (family heads) who adheres to patriarchalistic and narrow religious understandings states that men are leaders especially in the household so the Victim believes that the violence they experience is fate Because the victim believes that a wife must be obedient to her husband, despite being treated harshly and often subjected to violence and the wife should correct herself the reasons men forcing their needs rather than their husband (perpetrators) must be cheating which can result in the fulfillment of daily life days in the growth and development of children.

In order to reduce the crime of domestic violence which is very difficult to publicly disclose in law enforcement, the community needs to be encouraged in education about human rights and women's empowerment; disseminating information and promoting the principles of healthy living, anti-violence against women and children and rejecting

violence as a way to solve problems; conduct counseling to prevent violence; promoting gender equality; promoting the attitude of not blaming victims through the media. As for the perpetrators and victims of violence themselves, it is better to seek help from psychologists to restore their psychological condition.

The husband as a perpetrator of domestic violence, should raise his awareness through the socialization of the importance of assistance by psychologists so that the root causes of violence can be revealed and learn to empathize with therapy. Because without a change in the mindset of a husband in accepting himself and his wife, violence will re-occur. Meanwhile, wives who experience violence also need to undergo therapy to restore their self-confidence, security and can ask for help from NGOs working on cases of violence against women to receive protection.(1) Husband and wife also need to be involved in group therapy where each can share so as to foster the belief that a healthy marriage relationship is not based on violence but based on mutual empathy. In addition, husband and wife need to learn how to be assertive and manage emotions so that if there are differences of opinion there is no need to use violence because potentially children will imitate the violent behavior.

Therefore, children need to be taught how to be empathetic and manage emotions as early as possible, but all of that must start from parents. The Concept of Renewing Law Number 23 Year 2004 in Resolving Cases of Domestic Violence in the Legal Area of the City of Jambi The cases of domestic violence that continue to increase in the legal territory of the city of Jambi are very difficult to publicly disclose and more revealed as a reason for divorce in advance The Jambi Religious Court will need the concept of renewal starting from the community, promoting education on human rights and empowering women; disseminating information and promoting the principles of healthy living, anti-violence against women and children and rejecting violence as a way to solve problems; conduct counseling to prevent violence; promoting gender equality; promoting the attitude of not blaming victims through the media. As for the perpetrators and victims of violence themselves, it is better to seek help from psychologists to restore their psychological condition. The husband as perpetrators of Domestic Violence, should be raised awareness through the socialization of the importance of assistance by psychologists so that the root causes that cause violence can be revealed and learn to empathize by undergoing therapy. Because without a change in the mindset of the husband in accepting himself and his wife, sexual violence will re-occur. Meanwhile, wives who experience violence also need to undergo therapy to restore their self-confidence, security and can ask for help from NGOs working on cases of violence against women to receive protection.

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Furthermore, there are research findings of weaknesses in Law No. 23/2004 which has been implemented in enforcing domestic violence for 13 years as explained in section above, then the renewal concept is to amend (amend) Law Number 23 of 2004 concerning the Elimination of Domestic Violence by observing the relationship between the role and responsibility of the State in dealing with domestic violence between husband and wife in Indonesia and the interests of the people around the victim especially children who are the result of marriage and continue to accommodate differences in religious laws that apply to each adherent and social cultural values of the community. As the principle adhered to by customary law, the purpose of imposing a limit is not only to give a deterrent effect to the perpetrators, but to restore the balance of law that has been disturbed in the community. Required perspective (perspective) of the victim in solving domestic violence problems. The victim perspective is also a prerequisite in the implementation of justice, which indeed is the time to be built as a way out of the late completion of domestic violence in the community.

The importance of victim protection can be achieved by putting the perspective of the victim both as one of the prerequisites in the making of legislation as well as the function of strengthening the law so that the victim is placed as the main actor rather than as a complement that is only acknowledged. As a subject he has the right to be heard, to obtain information on ongoing legal efforts, to consider the sense of justice he wishes to obtain and to recover his situation from the deprivation of his rights and the malignancy he experienced and the involvement of the victim himself is the cause of the effort to restore the victim's life and prevent from repeatedly that violates human rights and dignity. This can be done through the dissemination and dissemination of victims' rights. The importance of protection for victims. Besides that, it is also supported by structural alignment in each criminal justice system

subsystem, namely the Police, Prosecutors, Courts and Corrections Institutions as well as integrated functional relations. The combination of law enforcement oriented to the sovereignty of legal power will be less harmonious communication and lack of coordination between law enforcement, so that it will bring positive energy in the process of law enforcement and close the opportunity for the emergence of subjective interests and sectoral / institutional egos that can harm justice and legal certainty and counterproductive to law enforcement and strengthening human rights.

The needs and interests of victims by referring to gender fair values become the basis of efforts to foster gender justice systems. Thus this concept starts from the perspective of the victim who places the victim at the center of the functioning of the justice system. More clearly the parties related to the Criminal Justice System that are gender equitable are volunteer assistants, psychologists, lawyers / advocates, hospitals, providers of safe houses, police agencies or Women's and Children's Services Units, Attorney Agencies, Court Agencies and Home Agencies State prisoners whose concept of work rests on the Protection and Strengthening of Human Rights, Equality and gender justice, Protection of Victims, the Principle of Non-Discrimination.

Amendment (amendment) of the Law Against Domestic Violence must be supported by the workings of sub-systems in an integrated criminal justice system that is gender equitable is expected to be not only directed towards crime prevention purposes, but also directed at controlling the effectiveness of crime within acceptable limits of tolerance and restoring public confidence in doubt the function of law and law enforcement officers in law enforcement especially domestic violence.

To optimize the integrated criminal justice system, it is needed first: an increase in the number of law enforcers starting from the police, prosecutors, judges, lawyers who have the principles of gender justice as well as in correctional Institutions in fostering perpetrators in Correctional Institutions. Second: improving the quality of law enforcement through gender-based seminars, gender-based exercises, both national and international scale specifically for police investigators, prosecutors, judges, experts or volunteers should have legal expertise, psychology in order to understand, the logic of thinking to face victims of domestic violence so as to get the expected impression of law enforcement through the criminal justice system as a means to obtain justice and legal certainty.

The Law against domestic violence conceptually looks ideal in suppressing the number of domestic violence, but in its implementation there is an opportunity for misperception among the actors who handle it, so it is necessary to clarify several articles which are less detailed in explaining the definition of violence in household and the handling of victims. Therefore, it is necessary to do a legal reconstruction where what is reconstructed is not only the substance (the Written Law) but also the structure (the enforcement agency) and the culture of the people. So what must be done by institutions / agencies that have a focus in handling acts of domestic violence, are as follows:

1. Legal education to the community, especially regarding the elimination of Domestic violence.
2. The socialization of the Law against domestic violence and regional programs is not limited to government institutions & formal institutions but to the wider community. Besides that, the form and media of socialization adapt to the target group.
3. The Region House Representative must legislate on local regulations on handling domestic violence & budget allocation for handling domestic violence victims.
4. There must be a revision of the law on the elimination of violence in household which are currently less strict.

**Conclusion:-**

Criminal law enforcement in domestic violence has not been optimal because of gender-based violence, increasing, both the number and form and mode of operation are increasingly diverse. Factors causing the occurrence of gender-based violence, are very complex and are interrelated. These factors include legal instruments that have not been able to provide protection to victims, the concept that women belong to the family (assets), media that do not support reporting on violence against women and children, public services that are not optimal, and customs that sometimes legalizing violence, poverty issues, wrong interpretation of religious teachings, all of which are wrapped up in patriarchal culture.

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