

# Islam and Domestic Violence between Husbands and Wives: Indonesian Social and Cultural Perceptions

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## Abstract

The problem of domestic violence between husband and wife is a concern to various parties both nationally and internationally. This is because the nature of the problem is overly complex after all the parties involved (perpetrators and victims) already having a sacred legal relationship bound by the Marriage Institution. The existence of Law No. 23 of 2004 concerning the Elimination of Domestic Violence (*UUPKDRT*), as a legal umbrella for preventing and resolving problems of domestic violence (*KDRT*) turns out that its effectiveness up to now still faces obstacles, both in the legal process and after the Judicial Decision. By serving qualitative data, several cases and legal systems of domestic violence were presented by collecting information from global and Indonesian social and cultural perception and responses of the key informants regarding to this issue. Focus group discussions and the secondary data consist of primary, secondary, and tertiary legal sources were performed. Data were analyzed descriptively to reveal the domestic violence cases between based on global and Indonesian social and cultural perception. In litigation victims, especially women, have not found the sense of justice. The substance of the *UUPKDRT* was found to have multiple interpretations and was entirely taken from the results of the *CEDAW* convention without fully upholding the socio-cultural values of the Indonesian people that are inherent in the pattern of kinship systems. Furthermore, the role of the state through its organizations in looking at domestic violence problems lies in individualistic and collectivistic perceptions that are united. The role of the State should be expected to be able to treat both according to their functions and raise wise cultural values during people's lives in solving domestic violence problems.

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## **Introduction**

Domestic violence is a unique crime in that it occurs between intimate partners rather than strangers and victims may not involve the justice system out of fear of more abuse. It also has a ripple effect that extends well beyond just the victim and the perpetrator. Not only does it affect families, children, and communities, but also it affects justice professionals tasked with responding to, intervening in, and making decisions about domestic violence episodes. In this case, domestic violence between husband and wife is categorized into a crime in *gender* frame due to the legal relationship with *gender relation* (Fakih, 1996). It is relation between women and men and the ways in which relationships are built and supported by the community. Ironically, the Marriage Institution in Indonesia bond perpetrators and victims subject to the State Law Number 1 of 1974 concerning marriage, religious law, and customary law. Therefore, an analysis of domestic violence between husband and wife cannot be separated from the State legal provisions, religious law, and customary law.

Empirical data on domestic violence between husband and wife were gathered by various resources including the result of the survey of the last 12 months of 2016 conducted by National Women's Life Experience Survey in Ministry of Women Empowerment and Children Protection. The survey revealed that 18,3% of married women between 15-64 years old has experienced domestic violence in various forms. Physical violence dominates at 12,3%, sexual violence at 10,6%, emotional/ psychological violence at 20,5%, and economic violence at 24,5 % (National Women's Life Experience Survey, 2016). Another set of data gathered from Religious Court Office in Indonesia showed that there were 352.070 divorce cases in Religious Court in 2015 including filing for divorce at 252.587 cases, declaring for divorce 98.808, and requesting for polygamous marriage at 675. All such cases led to domestic violence. The Indonesian Women's Association for Legal Ai noted, from the total of 648 report, 308 of them were about domestic violence between husband and wife about 47,53% higher than other cases.

The data from Women and Children Services in Police Department in Padang, West Sumatera revealed that there were one hundred cases of

husband-and-wife domestic violence cases through January-July in 2011. Among the 100 cases, the domestic violence was not always committed by husbands to wives but also by wives to husbands. Meanwhile the domestic violence cases of husband and wife in North Sumatera according to Indonesian Heritage Foundation in the First Quarter (January-April 2012) has reached 29 cases. Four of these were directly handled by Indonesian Heritage Foundation. The violence experienced by the victims are mostly in the form of abuse from the husbands. The data from Medan Police Department in 2011 showed that there were 278 spouse domestic violence cases. Another data from Assistance Department of Women Crisis Center (WCC) in South Sumatera in 2018 have revealed that they assisted 133 cases. Among those, the 79 were rape and sexual assault cases, the rest were domestic violence in which majority of victims were women (Women Crisis Center, South Sumatera, 2018).

Many parties have conducted various efforts to decrease the number of spouse domestic violence including with the help of Law Enforcement, the related Ministry, or Non-governmental Institutions through various means such as socialization, advocacy, and victim assistance. Domestic violence keeps occurring in the society, while the Law number 23 of 2004 concerning the Elimination of Domestic Violence as a legal umbrella in the prevention and resolution of domestic violence problems still faces barriers. It was found that legal decisions related to acts of domestic violence were not convicted based on criminal offences stipulated in Law number 23 of 2004 (Judicial Body's Decision Regarding Domestic Violence). They were still convicted based on Articles in the Criminal Law Code. They were also discovered gaps of understanding caused by the ambiguos, and confusing stipulation in Law No.23 of 2004 concerning the Elimination of Domestic Violence. Therefore, the Law number 23 of 2004 to this date has not provided an answer to all the legal problems related to spouse domestic violence. As a result, the purpose of this law to prevent and protect victims in gender perspective (the wives in particular) in favor of the vulnerable or subordinated groups cannot be realized.

The term “violence against women” is based on the UN declaration that was launched in 1993 by the General Assembly entitled "The Declaration on the Elimination of Violence against Women" (DVAW 2003). Since the launching of the declaration, violence against women perpetrated by an intimate partner within domestic life has become one of the most internationally highlighted topics within the field of violence against

women. To date, diverse terms are used to name this type of violence such as wife assault/abuse, domestic assault/abuse/ violence, women/wife battering, female partner abuse, and intimate partner abuse/violence depending on the type of intimate relationship such as current or former spouse, married or cohabitating couples, and heterosexual or same-sex couples. The term “domestic violence” is still used in many countries, including Indonesia, and in the UN bodies to refer to violence against women perpetrated by an intimate male spouse. Because “domestic violence” is the official term used in Indonesia, and since this study focuses on violence within marriage life, I use the terms “domestic violence” and “wife abuse” interchangeably in this study.

Therefore, examining the vulnerability to domestic violence among married women in Indonesia is still a critical issue which can be measured by their acceptance of domestic violence justification perpetrated by the husband. To our knowledge, while some published literature showed determinants of violence among women in Indonesia, there is a paucity of scholarly research that attempts to assess women’s approval of being beaten by husbands in Indonesia. Thus, this study aims to describe the current situation of domestic violence among married women in Indonesia by conducting Focus Group Discussions (FGDs) with selected informants to explore their individual experiences and knowledge of a certain topic for capturing experiences, opinions, and normative systems.

## **Methods**

To answer the main research question of this study, a qualitative research design with a case study approach was conducted to generate data and insights about the issue of this study. In detail, this was a normative juridical study and aided with field data (primary data sources) from key informants (two male participants) selected by purposive sampling. Focus Group Discussions (FGDs) was chosen as the data collection method. The advantage of using FGDs is their explicit utilization of group interactions to generate data and insights that would be less accessible without the interaction of people within a group (Dahlgren, Emmelin, & Winkvist, 2004). In relation to legal research, several approaches were used such as philosophical approach, statute approach, conceptual approach, comparative approach, legal sociology approach, and legal psychology approach. The secondary data consist of primary, secondary, and tertiary legal sources. The technique of collecting the legal sources was carried out

by research, collection, and documents both conventionally and by using information technology (internet and informants). The collected legal sources were then classified systematically according to the problems and purpose of the study. The normative-perspective legal sources were analyzed by structuring, describing, and systematizing steps. Empirical-descriptive social facts were processed by classification, conducted by looking for similar characters, categorization (classifying legal materials), and systemization. The analysis of legal resources was conducted by descriptive qualitative, deductive, and inductive methods of the descriptive information obtained.

### **Trustworthiness**

To increase the trustworthiness of the study, the first author often visited the study site as part of a prolonged engagement with the local population. Regular peer debriefing sessions were also held within the research group to discuss the theoretical and conceptual basis used and to broaden the perspectives of the study. During data analysis, triangulation in terms of researchers was performed to discuss the interpretation of the analyzed data. The discussion rounds were stopped once the research team achieved agreement on the final interpretation of the data analysis.

### **Literature Reviews**

For analysis, the discussion in this paper used several legal theories. The legal theory of justice as the grand theory, the theory of state purpose and function and feminism and gender theory as the middle range theory. Moreover, the theory of triangular concept of legal pluralism are used as applied theory and theory of legal system. In the discussion, the theories are interconnected with one another. The first, the Justice Theory initiated by the leader, Friedrich Carl von Savigny (1779-1861), who followed the history school of thought stated that legal justice was not created but grew and disappeared in the society. This opinion uses the Volkgeist basis (people's souls) which varies according to time and place. According to this theory, happiness does not need to be made but allowed to grow by itself based on the people's soul or the Volkgeist. From the theory of *justice as fairness* proposed by John Rawls (1921) in his book "A *theory of Justice*", states that "reasonably expected to be to everyone's advantage". The principle raised by Rawl implies that every individual has equal rights for freedom if he does not hurt others. From this principle, it means that

every individual, both male and female, has equal rights but it does not mean they have the same rights in all aspects of life or in conditions of freedom. This principle is written in Article 1 paragraph 3 and paragraph 4 of the Republic of Indonesia Minister of Home Affairs Regulation Number 67 of 2011 concerning Amendments to the Regulation of the Minister of Home Affairs Number 15 of 2008 concerning General Guidelines for the Implementation of Gender Mainstreaming in Regions referred to as Gender Equality and Equity

From the Islamic point of view, the concept of justice springs from the Qur'an. Everything that is taught in the Qur'an focuses on social and cultural contexts. Justice is sought through a careful and in-depth study of not only the study of facts that is not only confined to equality, but also of equality. For example, there are certain aspects that may not be equally applicable to men and women, so it can be said that gender equality is not gender equality. This is especially evident when it comes to the rights and obligations of men and women. In Al-Qur'an the Surah Al-Baqarah verse 2 states "and women have equal rights (proportionally) with their obligations in a way that is familiar". Moreover, it is also written in Surah Al-Hujurat verse 13 that in principle explains: As a further consequence of his creation Allah does not differentiate between men and women. Both men and women are created in the same degree, value, and dignity. Even if there are natural differences, the differences are complementary. The rules in the Qur'an are the main signs for humans to express an understanding of equality and justice between men and women. It was also emphasized by Umar (2001) that the Qur'an was so explicit in raising the idea of gender.

Another view of justice is Jeremy Bentham (1748-1832), supporters of social philosophy better known by his thoughts / understanding of utilitarianism, which considers that people should judge something in terms of real benefits. The Utility Philosophy considers the purpose of law solely to provide maximum benefit or happiness for as many citizens as possible. Thus, a new law can be accepted as law if it aims to achieve the intended legal aims. Theory of Feminism and Gender Law raises feminism, women's movement to reject everything that is marginalized, subordinated, and denigrated by the dominant culture, both in the political and economic sphere and social life in general. In relation to law, there is a notion of Feminist Legal Theory (FLT) or Feminist Jurisprudence (feminist perspective of legal theory). The basic assumptions of FLT thinking come from the ideas of Brenda Cossman (2018), saying, law is informed by men,

aimed at strengthening patriarchal social relations (norms, experience, male authority) and considers good law as neutral and objective law. In this case, they ignore the experiences of women, the poor, marginalized groups, and invisible minorities. Based on the results of finding gender elements in relation to the law, it is said that the resulting law is a legal bias and contributes to the occurrence of injustice for women, and will legitimize gender inequality, sexual orientation, ethnicity, taste, and class in society. Feminists also stressed that the biological elements that make men and women different / categorized based on certain sex are only socially engineered. Based on the history of the development of the Feminism movement divided into several types which are grouped in 3 waves. The first wave sparked a type of liberal feminism, radical feminism and maxis or social feminism. The second wave sparked types of existential feminism and gynocentric feminism, and the third wave sparked a type of post-modern feminism, multicultural feminism, global feminism, and ecofeminism.

The rationale for this study then uses the theory of the Triangular Concept of Legal Pluralism, introduced since 2000 and then modified in 2006 by Werner Menski. The theory of the triangular concept of legal pluralism (the concept of a triangle facing legal pluralism in the globalization era of the world) basically strengthens Friedman's concept of the third element of the legal system, the legal culture. Triangular concept of legal pluralism uses a legal approach: 1) Normative (positivistic), 2). Empiric (sociological, anthropological, psychological and others) and 3) Value and moral (philosophical) approaches (Rifai, 2010)

Theory of Kinship Systems, Hadikusuma (2003) explained that the kinship system is one of the important aspects in the life and association of humankind which was increasingly proliferating so that genealogies were not chaotic. The kinship system implies a complex network of relationships based on blood relations or marriage, to produce offspring and can be used to describe the social structure of the society concerned (Hazairin. 1974). In the structure of Indonesian traditional society, there are three kinds of large kinship systems which then give a pattern to their individual roles (Hadikusuma, 2007). Patrilineal kinship system (a system that refers to the notion that offspring are based on male or father lines), matrilineal system (based on the line of women or mothers) and the Parental kinship system (implies that offspring are based on two lines, the male side, and the female side). Every kinship has socio-cultural values that are reflected in

customary law. Each kinship places women (wives) and men (husbands) following the values upheld in the kinship.

The theory of Legal System used in this paper was taken from the thoughts of Kees Schuitin his book *“Recht en Samenleving*, quoted by Bruggink (Schuyt, 1983), which states that there are three elements in legal system: first, Idiil Element (*het ideeële element*). This element is formed by the meaning system of the law itself consisting of rules and principles of law in terms of philosophical aspects. Second, operational elements (*het operationele element*). This element consists of all organizations and institutions established in a legal system. Third, actual elements (*het actuele element*). This element includes the whole of decisions and concrete actions related to the system of legal meaning. Therefore, it can be said this is the output of the legal system. Furthermore, the legal system will also relate to legal propositions in society, which according to Donald Black (2010) in his book ‘The Behavior of Law’ said, the quantity of law varies by five variables: stratification, morphology, culture, organization, and social control.

## **Findings and Discussions**

### **1. Domestic Violence between Husband and Wife as Global Perceptions**

The movement of feminism in development in Indonesia is very closely related to emancipation. Starting from the movement by R. A. Kartini who has given her own color to the meaning of feminism in Indonesia, which was then passed on by other Indonesian women. The spirit that is called for by the feminists in the future in Indonesia to bring equal rights between men and women, and eliminate discrimination directed at women both in the domestic sphere and in the public sphere that adheres to religious teachings and local wisdom values in customary law continue to be upheld. This is also an effort to protect human rights.

The discussion of women's human rights as human rights continues to roll from time to time both at the national and international level. The most comprehensive achievement in terms of equality in the field of law (Legal Equality) is the existence of the Convention on the Elimination of all Forms of Discrimination against Women (Woman Convention) abbreviated as CEDAW. This convention is the first comprehensive international agreement on the rights of women which requires legal



obligations (leg obligation) for governments that sign it to ratify it and incorporate it in local national law approved by the UN General Assembly in 1979 (Rifai, 2010). Based on this gesture through Law No.7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination against Women, Indonesia ratified the results of the CEDAW convention which then continued to color several other laws in Indonesia, including Law Number 23 of 2004 concerning the Elimination of Violence in Households promulgated in the State Gazette of the Republic of Indonesia No. 95, which is then abbreviated as UUPKDRT. In general, the UUPKDRT can be said to be based on the following facts (Martha, 2012).

- Increased statistics on domestic violence cases in various forms.
- The Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) have not been able to touch the issue of cases of domestic violence including domestic violence between husband and wife and protect victims.
- The existence of various obstacles make it difficult for victims of domestic violence to gain legal access.
- The UUPKDRT Bill was notified and distributed to all members of the DPR RI through the Plenary Meeting chaired by the Deputy Speaker of the DPR RI on January 27, 2003.
- The response of the factions at the plenary meeting which also became the majority of the opinion of members of the Indonesian House of Representatives was of the view that the RUUKDRT should be realized and ratified into law considering that Indonesia had issued Law Number 7 of 1984 concerning the Elimination of all forms of discrimination, as commitment from the ratification of the results of the CEDAW decision.

The substance of the UUPKDRT has explicitly sought to spell out the values of protection of human rights and human dignity as well as the prohibition of various forms of discrimination especially against women. In the UUPKDRT the forms of domestic violence are explained, namely physical violence, psychological violence, sexual violence, and neglect household (Article 5, UUPKDRT). These forms of violence are gender-based violence and cannot be categorized as ordinary violence and are prohibited things as expressly stated in the fourth paragraph of the General Explanation of UUPKDRT: "..... the state holds that all forms of violence,

especially domestic violence, are violations of human rights and crimes against human dignity and forms of discrimination".

If examined more deeply on the substance of the UUPKDRT, there are many things to be questioned. For instance, Article 6 of the UUPKDRT regulates the prohibition of physical violence in the scope of the household, including between husband and wife. However, the UUPKDRT did not provide further explanation when and what kind of violence was declared prohibited. Especially if it is associated with the provisions of Islamic law in which there is legitimacy for the treatment of "beating" by a husband to a '*nusyus* = *nushūz*' wife in certain ways which purpose is to educate. Likewise, is the case with rape / sexual violence in the household. When the provisions are applied between husband and wife, then for Muslim families the principle is not known. Therefore, the formulation of the substance / content of Article 6 of the UUPKDRT seems to have ambiguous multiple interpretations.

Then if examined from a judicial standpoint, the working system of law enforcement officials including the police and judges in their work only implements the article of the UUPKDRT. This proves that the legal positivistic view still holds the judge to enforce existing laws and regulations textually. Other problems that have yet to be resolved include the marital status of the perpetrators and victims and who is responsible for the financing of their children's lives when the husband who committed domestic violence must spend a long time in prison. Such judicial conditions create new legal problems. For this reason, the researcher considers from the global perception of individualistic principles, protection of women's human rights, dignity (gender perspective) and the prohibition of discriminatory treatment for women through the UUPKDRT have not yet been realized properly. In relation to John Rawal's view, those conditions do not yet reflect the fairest justice. In other words, they do not provide benefits to individuals, or groups as from the view of Utilitarianism.

## **2. Acts of Domestic Violence between Husband and Wife: Indonesian Social and Cultural Perception**

Not every human or society can be separated from the law. Various legal arrangements namely state law, religious law and customary law have governed the life of Indonesian people. The legal order regulates various

kinds of human legal relations including regulating legal relations in marriage, marital disputes and even those leading to domestic violence. As it is known, Law Number 1 of 1974 is a state law governing marriages in Indonesia. Article 1 of the Law defines marriage as a means of forming a family in to have an orderly life as a means of humans to fulfill their natural needs as a man and a woman based on religious law. In response to this, the position of Law Number 1 of 1974 should be utterly agreed upon, obeyed, and positioned as an autonomous law. It should be understood by every citizen since the Law reflects the principles of equality and gender justice based on great universal values and following the scriptures. This can be seen from the meaning of the family as an inner bond between men and women to form a family based on three ontological natures: nature, natural structure, and natural position. Furthermore, Ghofur said that marriage and family life are a medium to have an orderly life and at the same time a means for humans to fulfill their ontological nature. The balance of rights and obligations between husband and wife as stated in Article 31 of Law Number 1 of 1974 has regulated those spouses should love one another, be respectful, be faithful, and give one another's spiritual and physical assistance. The husband is given the obligation as the head of the household and the wife is given the obligation as the governor of household matters. The responsibility of the wife to manage the household is not a standardization of the role of the wife/ woman in the domestic domain and men / husband in the public domain which connotes subordination. As religious people, the family is an independent institution that has absolute authority that regulates the household. If the husband neglects his obligations and acts violently then the wife can file a lawsuit in court and not prosecute the spouse in court for being blamed for committing a criminal act (Martha, 2012).

To provide answers to the question why the UUPKDRT still encounters many obstacles in its validity, I give answers based on a study of the marriage values that exist in the kinship system of the Indonesian people. From the study, it was found that marriages in the patrilineal kinship system, especially the *Batak* community in terms of marital ontology, upheld the teachings of the *Hula-Hula* or *Tondong*, the group of people whose position was "above", which is the family clan of the wife. The relationship is called *Somba-Marhula Hula*, which means having to respect the wife's family. "Hula-hula" is the parent of a woman married to a man, but this "hula" can be interpreted broadly. All sisters on the part of the woman married to a man can be called "hula-hula". "Marsomba tu hula-

hula" means a man must respect his wife's family. The main basis of this philosophy is from the surname of a wife that a person receives a "blessing" which is highly dominated by the role of a wife in the family. From the epistemological aspect, the marriage of patriarchal indigenous peoples logically, ethically, and aesthetically is to grow the number of offspring (especially men) (*hagabeon*), respect for power, honor, or prestige (*hasangapon*) and preserve wealth (*hamoraon*). While for the *Komeri* indigenous people, the essence of marriage is to form a family based on religion. The epistemology applied demands both partners, especially women (wives), to always maintain their husband's offspring. Therefore, women should stay in the husband's environment so they can always learn to understand the pattern of kinship. Furthermore, from the axiological aspect, the husband's offspring should be able to be supported and continue to develop through male offspring.

In the matrimonial system of civilization both in West Sumatra and in the traditional societies of South Sumatra, the essence of marriage is to adjust the life of a new relationship between the parties (spouses and families) to legally form a family based on religious teachings. While from the epistemological point of view, marriage is a way of preserving the existence of "kinship" and avoiding extinction from the threat of the previous family group especially on communal property. Further, the axiom of marriage is the family which means the good and the preservation of the communal wealth. Marriage in a parental community system positions husband and wife independent of parents' responsibilities. It is true for the Javanese community and some people of South Sumatra, especially in Palembang. Marriage to people who adhere to a parental kinship system called free marriage (independent) (Kontjaringrat, 1990). The husband or wife's relatives do not intervene much in the family of the husband-and-wife household. In a parental community, a spouse can be free to keep relationship with their family as their mothers and fathers are. A solid kinship is usually interwoven in the ancestry of one ancestor to the third generation. However, the quality of nuclear family and extended family relationships varies from one family circle to another, depending on the condition of each family. Furthermore, on the position of women in patrilineal families, I and other experts believe that,

- Married women uphold and acknowledge the principle of monogamy does not apply absolutely.

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- Married women acknowledge and accept the authority of the marriage function to change their clan membership status.
- The bargaining power for women who do not have sons is low.
- Economically the function of women's wealth has shifted.
- In general, women as wives have greater control over the domestic sphere, while husbands have more control over the household as the person responsible for providing the wife and as the head of household.
- Patriarchal women highly uphold cultural values.
- Socially, the act of submitting truly means that women have a position of honor (Kontjaraningrat, 1990).

In the matrilineal society, the women/ wives have a special place in the custom because they have been given the right to manage the household as a place of residence and the farmland as a source of life. Thus, the female matrilineal (wife's) kinship system has gained strong legitimacy when it comes to obtaining personal ownership, authority over economic assets and freedom of movement under the supervision of mothers/ relatives or maternal uncle. In the parental society, husbands and wives have a common position in the household according to the religious teachings they believe.

In patrilineal society, the position of the husband is not to be the most powerful and arbitrary person in the family but requires the man (husband) to be the person who is fully responsible for the lives of his wife, children, and family. Meanwhile, patrilineal women obey their functions in the household with no sense of coercion or violence so that the family is harmonious. It is an appreciation when women can be received in the husband's kinship system and bear the husband's title/ clan to their children. The patrilineal tribe of the woman will not be lost, but it will be transferred to her niece or uncle.

Furthermore, in matrilineal culture, women are not powerful in all household matters. The husband is still the head of the household and as a breadwinner for the family. The communal property held by the wife does not mean that she can freely sell, provide or in whatever form her rights transferred. He and the treasure are under the supervision of his mother's brother or mother's brother, because these people hold real power. Likewise, the pattern of parental kinship system does not have the opportunity for domestic violence between husband and wife, bearing in

mind that their kinship with each other has entered the customary environment that is greater in number because it is accepted by the 4 "pancers" which are 2 from mothers and 2 from fathers (grandparents) as equals.

The general view that has surfaced is that the pattern of the community kinship system, especially the patrilineal kinship system, is prone for domestic violence between husband and wife. However, the researcher discovered that this is not true because the philosophical aspects revealed that if the pattern of the kinship system of Indonesian society (patrilineal, matrilineal, and parental) is carried out properly there is no chance for domestic violence between husband and wife because these values reflect the principles of equality and justice. The principle of gender equality in the kinship system of Indonesian society is an equal principle enriched by the recognition of nature based on logical, ethical, and aesthetic values. Logic means teaching what is right and what is wrong. Ethics teaches good and bad, while aesthetics is an effort to make conditions harmonious. While equality comes from global perceptions, in particular the spirit of CEDAW is equal to that opposed to nature. Even nature is said to be the cause of gender inequality in life, while nature is something that gives God to humans, both men and women, fairly and equally viewed from its function. Furthermore, the nature of the wife in the Indonesian indigenous community has been perfectly regulated in their respective customary laws that are manifested in the rights and obligations of the wife. Meanwhile, according to global perception, nature can be set aside or even discarded. For example, the wife does not want to conceive, the wife does not want to breastfeed and the acknowledgement of same-sex marriages that will bring many legal consequences. In the implementation, many things erode the socio-cultural values, so they are not accommodated in the UUPKDRT.

Then from the results of the study, the researcher also found the cause of domestic violence between husband and wife in a family basically due to the character of the husband or wife. The character of every person has spiritual potential, physical potential, feeling potential, intellectual potential and social potential. When the potential inherent in a person is not well built, humans can commit crime when there is an opportunity for it. Thus, it rationally can be said that domestic violence is a deviant act. Another factor that is no less important is the emergence of people's desire to form a family with the concept of nuclear family, which is far from protecting the family and is prone for domestic violence.

### **3. The Role of the State Against the Problem of Domestic Violence Specifically Between Husbands and Wives: Individualistic and Collectivistic Global Perceptions**

As explained in the earlier section, that domestic violence between husband and wife cannot be separated from the state law, religious law, and customary law. The executor of the law in question is a state organization following its role. The state's role in domestic violence issues is none other than competence in the defense / protection of human rights. Regarding the defense / protection of citizens' human rights, Bahar (Informant 1) said:

“The role of the state is to protect, advance, fulfill and respect human rights. In realizing this, the state should be seen as a means of a group to realize shared prosperity. This vision embraces the conviction that the state is merely a means of bringing prosperity to its people in the sense of facilitating how the people can realize prosperity. Even as far as possible the country is working hard to allow prosperity to be realized. The power that exists however large is not a goal, but merely a means to reach a goal. The power of the state is used optimally for the common good.”

In the UUPKDRT explanation, the biggest role of the state on domestic violence problems conducted by state organizations (institutions / institutions / agencies / agencies and others) is in the protection function and service function. The role of the state in realizing gender equality and justice in the family has been regulated in Law No. 1 of 1974 concerning Marriage. Ghofur (Informant 2) said that the position of Law Number 1 of 1974 should be agreed upon, obeyed, and positioned as an autonomous region that should be understood by every citizen because it contains great and universal values and is in accordance with the scriptures. He emphasized two major points and they can be described as follows. He pointed,

“First, family is defined as a mental bond between men and women to form a family based on the three natures of ontological nature: nature, natural structure, and position of nature. Thus, marriage and family life is a medium to an orderly life and at the same time is a means for humans to fulfill their ontological nature.

Second, the point is about balance of rights and obligations between husband and wife. From the provisions of Article 31 of Law Number 1 of 1974, it has been regulated that husband and wife should love one another, respect each other, be loyal, give assistance for one another to be born and mentally. The husband is given the obligation as the head of the household and the wife is given the obligation as the governor of household matters. The responsibility of the wife to manage the household is not a standardization of the role of the wife / woman in the domestic domain and men / husband in the public domain (public domain) which connotes subordination. As religious people, with the belief that recognizing the family is an independent institution, it has absolute authority that regulates household wheel travel. If the husband neglects his obligations and acts violently then the wife can file a lawsuit in court and not prosecute the husband or wife in court because they are blamed for committing criminal acts.”

With the Law No. 1 of 1974 and the UUPKDRT, the state has played its role in regulating public order that is one of the aspects in the field of marriage. On the other hand, Indonesian society is in a system of kinship patterns, having its own institutions whose existence has existed to regulate creating social control in religious life based on religion. Besides, the state as the organizer of the government also can exercise social control following existing regulations (in relation to domestic violence between husband and wife now) breathing western thoughts because of the ratification of CEDAW. In this situation, there is intense competition between the state as the organizer of the government and the people with all their existence to conduct social control. Responding to this, inter-state and community must build mutual strength together with the strength of the community.

Public dissatisfaction with the UUPKDRT becomes the duty of the state to at once implement regulations. Rules resulting from regulations are expected to provide solutions that can organize heterogeneous people's lives, towards a harmonious and gender equitable order. In conducting regulations on the rules on domestic violence between husband and wife, it is necessary to first find the concept of weakness of the UUPKDRT. Based on the legal system theory, the weakness of the UUPKDRT is due to,

- Actual element (*het actuele element*). Some of the contents of articles in Law Number 23 Year 2004 as abstract rules or methods have



multiple interpretations. Therefore, in its implementation (at the level of concreteness) it is difficult to run well, even causing unfamiliar problems, which in the end the victim does not get justice.

- The Idiil Element (*het ideeële element*) it is known that the UUPKDRT does not breathe the values of socio-cultural philosophy that grows in Indonesian society in viewing domestic violence, especially between husband and wife. The values contained in the Law are only the crystallization of values contained in CEDAW decisions which are based on individualistic principles. So that it is not possible to apply it in Indonesia with a religious communal principle.
- 3.Operational elements (*het operationele element*), where law enforcement officials in working to solve domestic violence problems between husband and wife are subject to the justice system regulated by the Criminal Procedure Code through Penal channels. Law enforcement officers in their work only hold fast to the contents of the articles of legislation and display socio-cultural and cultural elements.

To realize a state law that is gender responsive to the issue of domestic violence between husband and wife in Indonesia, the reconstruction action against the UUPKDRT is urgent. However, not all parts of the UUPKDRT need to be at once reconstructed. The reconstruction needs to be done immediately including,

- In the preamble section of the UUPKDRT, the main consideration is only the defense of individual human rights as the spirit of the perception of individualistic globalization, while the perception of collective human rights defense is not visible. Given the problem of domestic violence victims do not rule out the possibility of more than one person.
- In the preamble section about "Consideration", the UUPKDRT is only oriented to the spirit of Article 20, Article 21, Article 28A, Article 28B, Article 28D paragraph 1 and paragraph 2, Article 28E, Article 28G, Article 28H, Article 28I, Article 28J and Article 28J 29 of the 1945 Constitution of the Republic of Indonesia. This section does not include Article 18B paragraph 2 which explains: "the state recognizes and respects the customary law community units along with their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic Indonesia, which is regulated by law ". If Article 18B paragraph 2 is included as a basis for consideration, then later it will

be able to provide a place for inclusion of socio-cultural values in the religious communal UUPKDRT.

- Articles that have multiple interpretations and articles relating to the role of the state are more dominant in an individualistic perception than a collectivist with a nuance of local wisdom.

The role and responsibility of the state in dealing with domestic violence between husbands and wives in Indonesia should be in two perspectives; the perspective of individuality and the socio-cultural perception of religious collectives with a global spirit recognizing the prohibition of discrimination or violation of the dignity of women/ wife (results of the CEDAW convention which will be followed by reservation actions). Meanwhile, from the perceptions of religious collectivistic, it is to create harmony in family life and if there are disputes in the family, efforts should be made according to the model set in the life of the community that accommodates the differentiation of religious law that applies to each adherent and the socio-cultural values of the community. Thus, the leading role of the state to create a just and prosperous society as stated in the contents of the opening of the 1945 Constitution of Indonesia as the ideals of the Indonesian nation's law can be realized.

## **Conclusion**

From the results of the discussion in the previous parts, it can be said that the Regulation of Domestic Violence Issues between husband and wife in Indonesia according to Law Number 23 Year 2004 concerning the Elimination of Domestic Violence (UUPKDRT) from the global perceptions of individualistic and socio-cultural Indonesian collectivistic has not reflect the value of justice. That is because; a) the substance of the UUPKDRT is very multifunctional because it is not based on the socio-cultural philosophical values of the Indonesian people and religion inherent in the pattern of indigenous peoples' diversity systems in looking at domestic violence issues between husband and wife. b) The substance of the UUPKDRT originates from the absorption of the results of the liberal individualistic CEDAW Convention within the framework of feminism and equal thinking that overrides nature. Ratified by the Government of Indonesia through the Law No. 7 of 1984, UUPKDRT is not doing a reservation. While based on a study on aspects of the marriage philosophy in Indonesian indigenous people (patrilineal, matrilineal, and parental), human dignity both as husband and wife are equal and fair by giving

positions, roles, responsibilities, and benefits to the parties (husband/ wife) in the household and has no chance of domestic violence occurring between husband and wife. Moreover, the position of Indonesia in dealing with domestic violence between husband and wife now tends to prioritize the concept of individualistic global thinking and put aside the concept of thought from collectivistic, given the UUPKDRT requirements with the results of the CEDAW convention. Therefore, in the future, the role of the state should be able to harmonize both perceptions or views, namely between individualistic global perceptions and collectivistic perceptions and the values contained in the Pancasila points must be used as filter controls.

At the academic level, I consider that it is necessary to develop a concept of thought to solve the problem of domestic violence between husband and wife by raising the concept of law: "Gender Responsive Law Linkages to Family Conflicts". This concept teaches a legal problem linked to more than one legal system related to the position, roles, functions and responsibilities between women and men. On that basis, all the problems in question should be resolved with laws that depart from the legal values that apply to their own communities linked to laws and thoughts that develop in other parts of the world. Thus, the law is expected to be able to provide a sense of justice and gender equality according to the needs of women or men.

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