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## **Restraining Order as an Idea of Monodualistic Balance Between Perpetrators and Victims of Domestic Violence**

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**Abstract.** *A Restraining Order is an order issued by the Court to provide protection to the victim. This order is aimed at keeping the perpetrator of violence away from the victim for a certain distance and time as well as limiting certain rights of the perpetrator. This is necessary because the victim needs time to recover from the trauma she has suffered while the judicial process against the perpetrator continues. Restraining Order is already regulated in existing laws and regulations in Indonesia and meets the idea of balancing individualization of punishment and protection of victims. However, this effort is unknown and rarely submitted by victims of domestic violence.*

**Keywords:** *Restraining Order; Victim.*

### **1. Introduction**

The insight of criminal law reform was reflected in the National Law Seminar on March 11, 1963. The resolution stated that the new Criminal Code is a general part that contains fundamental principles, among others, the principle of legality should be prepared progressively in accordance with the personality of Indonesia and the development of the

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revolution, after studying the general criminal rules in the Criminal Code in other countries.<sup>1</sup> The resolution produced in the Seminar is an insight or national legal thinking that develops in the framework of criminal law reform that reflects the independence of the Indonesian nation.

The new paradigm of national criminal law reform is not just about replacing technical criminal norms. The main thing is to reflect what the Indonesian nation aspires to as an independent, just and prosperous country. National criminal law reform is based on the vision and mission surrounding the Draft Criminal Code.<sup>2</sup> The vision of the Draft Criminal Code, which has just been passed by the Government and the House of Representatives on December 6, 2022 and then enacted into Law Number 1 Year 2023 on the Criminal Code, must contain structural, substantive and cultural excellence. Muladi described the vision as a future goal in realizing a national criminal law based on Pancasila, the Constitution, human rights and general legal principles recognized by civilized society. In addition, the main mission of Law Number 1 Year 2023 on the Criminal Code is the decolonialization process through systematic open recodification. That is, it is not done in a fragmentary way or intended to be patchy.<sup>3</sup>

Barda Nawawi Arief argues the same thing, that Law Number 1 Year 2023 on the Criminal Code is a design of the Indonesian criminal law system which is intended to build and update a new system. The meaning of renewal here cannot be minimized just to be trapped in the discussion of the formulation of article by article alone. This renewal is essentially updating the concept or main idea, not just a matter of replacing the patchwork of articles textually.<sup>4</sup> To be able to be called a science that can capture and follow changes and not ignore the values in the 'public space', criminal law must reflect the 'general will', and the 'value system' which is in the criteria of the idea of balance. The idea or principle of balance includes :<sup>5</sup>

a. The idea of a monodualistic balance between societal interests and individual interests

<sup>1</sup> Barda Nawawi Arief, 2011. *Kumpulan Hasil Seminar Hukum Nasional Ke I s/d VIII Dan Konvensi Hukum Nasional 2008 Tentang Undang-Undang Dasar 1945 Sebagai Landasan Konstitusional Grand Design Sistem Dan Politik Hukum Nasional*, Badan Penerbit Universitas Diponegoro, Semarang, 2011. hal. 6

<sup>2</sup> Faisal dan Muhammad Rustamaji, *Pembaruan Pilar Hukum Pidana Dalam RUU KUHP*, Jurnal Magister Hukum Udayana (Udayana Master Law Journal), Vol. 10 No. 2 Juli 2021, hal. 292

<sup>3</sup> Muladi and Diah Sulistyani, 2020. *Catatan Empat Dekade Perjuangan Turut Mengawal Terwujudnya KUHP Nasional (Bagian I, 1980-2020)*, Universitas Semarang, Semarang, hal. 31&37

<sup>4</sup> Barda Nawawi Arief, 2012. *RUU KUHP Baru Sebuah Restrukturisasi / Rekonstruksi Sistem Hukum Pidana Indonesia* Badan Penerbit Universitas Diponegoro, Semarang, hal. 33

<sup>5</sup> Barda Nawawi Arief, 2012. *Perkembangan Asas-Asas Hukum Pidana Indonesia (Perspektif Perbandingan Hukum Pidana)*, ed. Badan Penerbit Universitas Diponegoro, Semarang, hal. 24

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- b. The idea of balance between "*social welfare*" and "*social defense*"
- c. The idea of *offender-oriented* balance (individualization of punishment) and *victim-oriented* balance.

The idea of monodualistic balance requires a balance that criminal law on the one hand protects the public interest (society) and on the other hand also protects individual interests. Thus, the presence of criminal law through Law Number 1 Year 20023 on the Criminal Code provides *social defense* by providing sanctions and prohibitions so that there is social order that has the potential to achieve *social welfare*. Prosecution of *offenders* is still needed by considering the position of the *victim* (*victim*) to pay attention to the recovery of victims such as victims of domestic violence (KDRT).

Data from the Ministry of Women and Child Protection as of May 1, 2024, the number of cases of violence that occurred in Indonesia was 7,053 cases with 6,179 female victims and 1,489 male victims.<sup>6</sup> The data shows that victims of domestic violence (KDRT) often get repeated violence and are in dire need of protection. Therefore, one way to realize the principle of balance between perpetrators and victims of domestic violence is through a *Restraining Order*. *Restraining Order* is a court order for the perpetrator of violence to distance himself from the victim within a certain distance and time. Based on this, the problem formulations in this study include: (1) How are the regulations governing Restraining Order in Indonesia? and, whether Restraining Order can realize the principle of monodualistic balance between perpetrators and victims of domestic violence?

## 2. Research Methods

This type of research is doctrinal research, namely research that provides a systematic explanation of the rules governing a particular legal category, analyzes the relationship between regulations, and may predict future legal development.<sup>7</sup> The approach method is a normative approach, which focuses on analyzing primary and secondary legal materials such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. From all the data collected, the author

<sup>6</sup> Kementerian Perempuan dan Perlindungan Anak, diakses dari <https://kekerasan.kemenpppa.go.id/ringkasan> pada tanggal 7 Mei 2024.

<sup>7</sup> Dyah Octarina dan A'an Efendi, 2018. *Penelitian Hukum*, Jakarta: Sinar Grafika, hal. 11.

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will analyze it qualitatively with an interactive approach.<sup>8</sup>

### **3. Results and Discussion**

#### **3.1. Regulation on Restraining Order in Indonesia**

In Indonesia, the term Restraining Order is known as a Protection Order. According to Article 1 point 6 of Law Number 23 Year 2004 on the Elimination of Domestic Violence, a Protection Order is a stipulation issued by the Court to provide protection to the victim. Protection Order is the right of victims of domestic violence as stipulated in Article 10 letter a and in cases of domestic violence, the Judge may impose additional criminal sanctions in the form of restrictions on the movement of the perpetrator either aimed at keeping the perpetrator away from the victim within a certain distance and time, or restrictions on certain rights of the perpetrator.

Those who can apply for a protection order include the victim, or the victim's family, friends of the victim, the police, volunteer assistants, or spiritual advisors with the victim's consent. An application can also be submitted without the victim's consent in certain circumstances. Then, the mechanism according to Law Number 23 Year 2004 on the Elimination of Domestic Violence is as follows:

1. The victim makes a report to the Police regarding the alleged domestic violence she has experienced and within 1x24 hours, the Police are obliged to provide temporary protection. (Article 16 paragraph (1)).
2. The temporary protection is based on a temporary protection order with a maximum period of 7 (seven) days from the time the Victim is handled. (Article 16 paragraph (2)).
3. Furthermore, the police shall submit a request to the Court in the form of a Determination Letter of Protection Order and the President of the Court within 7 (seven) days from the receipt of the request shall issue a determination letter containing a protection order for the victim and other family members, unless there is a proper reason. (Article 28).
4. An application for a protection order may be made orally or in writing. If the application is submitted orally, the clerk of the local district court shall record the application. (Article 30 paragraph (2)).

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<sup>8</sup> Matthew B Miles, A. M. Huberman, & Johnny Saldana. 2014. *Qualitative Data Analysis: A Methods Sourcebook*. 3rd. California : Sage Publications. : Sage. page. 14

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5. A protection order may be granted for a maximum period of 1 (one) year and may be renewed 7 (seven) days before its expiration. (Article 32 paragraphs (1) and (3)).

6. Furthermore, if the perpetrator is suspected of violating a court order, the Police have the right to arrest and detain the perpetrator within 1x24 hours even without an arrest warrant. (Article 35 paragraph (1)).

7. Furthermore, if the court is aware that the perpetrator has violated the protection order and is suspected of committing further violations, the court may require the perpetrator to make a written statement in which the perpetrator agrees to comply with the protection order. And, if the perpetrator still does not heed the affidavit, the President of the Court may issue a detention order to detain the perpetrator for a maximum of 30 days. (Article 38 paragraphs (1), (2) and (3)).

The term violence is used to describe behavior, either *overt*, or *covert*, either *offensive* or *defensive*, which is accompanied by the use of force against another person.<sup>9</sup> Article 1 point 1 of Law No. 23/2004 on the Elimination of Domestic Violence defines domestic violence as any act against a person, especially women, which results in physical, sexual, psychological, and/or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty within the scope of the household.

This law describes the types of domestic violence set out in Article 5 including :

1. Physical Violence, which is an act that causes pain, illness, or serious injury. Physical violence can be exemplified by kicking, slapping, hitting, bumping, biting and so on. Actions that cause pain must receive medical treatment according to the violence experienced.

2. Psychological Violence, which is an act that causes fear, loss of self-confidence, loss of ability to act, helplessness, and/or severe psychological suffering to a person. Examples include threatening behavior, intimidating, berating/insulting, *bullying* and so on. If this psychological violence occurs in children, it will certainly have an impact on the development and psychology of children, so they tend to experience prolonged trauma. This can also happen to women.

3. Sexual Violence, namely any act in the form of coercion of sexual intercourse, coercion of sexual intercourse in an unnatural and/or unwelcome manner, coercion of sexual intercourse

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<sup>9</sup> Yeni Huriyani, *Kekerasan Dalam Rumah Tangga (KDRT): Persoalan Privat Yang Jadi Persoalan Publik*, Jurnal Legislasi Indonesia, Vol. 5 No. 3, 2008. hal. 76

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with another person for commercial purposes and/or certain purposes, which includes: (a) coercion of sexual intercourse committed against a person who resides within the scope of the household; (b) coercion of sexual intercourse against one of the persons within the scope of the household with another person for commercial purposes and/or certain purposes. This form of sexual violence is what usually happens to women, because women are vulnerable.<sup>10</sup>

According to Yeni Huriyani, when power relations are unbalanced, violence and injustice become a very big possibility. But in certain cases, the reality can be reversed, and it is men who become victims.<sup>11</sup> The definition of a victim according to Article 1 Point 3 of Law No. 23/2004 on the Elimination of Domestic Violence is a person who experiences violence and/or threats of violence within the scope of the household. Then according to Article 1 point 3 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, a Victim is a person who experiences physical, mental, and/or economic loss as a result of a criminal offense. Furthermore, according to Article 1 point 4 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, a Victim is a person who experiences physical suffering, mental, economic loss, and or social loss caused by Criminal Acts of Sexual Violence. Based on the above provisions, it can be concluded that a victim is a person who experiences violence and/or threats of violence, who suffers physical, mental, and/or economic losses, social losses caused by a criminal offense.

Although data from the Ministry of Women and Child Protection is updated every month, the author believes that there are still many victims of domestic violence who do not report their cases. This can be caused by :

1. That the violence experienced is something that is commonplace, even considered as an educational process carried out by husbands against wives, or parents against children. This assumption is linked to the belief that the husband is the leader of the family, and therefore has the right to control (if necessary with violence) his family members.

2. Hope that the violence will stop.

Acts of violence have a deceptive "cycle of violence". It is wrapped up as love and commitment to the partner, but it keeps repeating itself.

3. Economic dependency.

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<sup>10</sup> Agung Budi Santoso, *Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Perempuan: Perspektif Pekerjaan Sosial*, Jurnal Komunitas : Jurnal Pengembangan Masyarakat Islam, Vol. 10 No. 1, Juni 2019. hal. 45

<sup>11</sup> Yeni Huriyani, *Op.cit*, hal. 78

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If women have economic independence and have rights/authority and power outside the family, the level of violence by their partners is lower.<sup>12</sup>

Based on the description above, the efforts that can be made by victims of domestic violence so that they do not become victims continuously is the Restraining Order mechanism. *Restraining Order* is often referred to as *Protection Order / Protective Order / Order Of Protection*. This mechanism is widely adopted by Common Law Countries such as the United States, especially in the States of California, New York, Los Angeles and the Netherlands and other European Union countries.<sup>13</sup> A Restraining Order is an order for the abuser to distance themselves from the victim within a certain distance and time. There are 4 (four) types of Restraining Order in the United States, namely:

1. *Emergency Protective Order (EPO)*

The EPO is an emergency *restraining order* filed by the Police when they consider that the victim of domestic violence is in danger and needs immediate protection. The Police can contact the Magistrate immediately after receiving the victim's Report and the Magistrate should always be prepared to issue an EPO on the spot.

2. *Temporary Restraining Order (TRO)*

A TRO can be imposed for up to seven days and within this period, the Judge can order the perpetrator to leave the house and stay away from the victim and her children. Within this period, the victim can also apply for a longer protection period of between 20-25 days.

3. *Permanent Restraining Order*

A Permanent Restraining Order is usually enforced for a maximum of five years and once it expires, the victim can apply for it again.

4. *Criminal Protective Order or "Stay-Away" Order*

A protection order filed when the victim has reported the case to the police. The court can set a protection order for a period from the time the case is processed up to three years after the

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<sup>12</sup> Adriana Venny, 2001. *Penguasa dan Politik Tubuh, Spirit Revolusi Kaum Feminis Radikal*. Jurnal Perempuan, Edisi 15, hal. 29

<sup>13</sup> Wulan Kusuma Wardhani, 'Restraining Order' untuk Lindungi Korban KDRT: Sebuah Pembelajaran, diakses dari <https://magdalene.co/story/restraining-order-untuk-lindungi-korban-kdrt-sebuah-pembelajaran>

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defendant is found guilty.

The Netherlands also recognizes *Restraining Orders in the form of Civil Protection Orders and Short Term Barring*. A *Short Term Barring Order* requires the perpetrator to stay away from the residence where the spouse and children live for a period of 10 days to 28 days. While a *Civil Protection Order* is enforced for one to two years, but there are still those issued without an expiration date. The purpose of a Restraining Order is to restrict or prevent the perpetrator from committing certain acts, for example :

- a. To stop harassing the victim and her family members.
- b. Stay away from where the victim and their family live, go to school, or work.
- c. Stop contacting the victim and their family members, including by phone, text message, social media, e-mail, sending gifts, flowers, food or contacting the victim through others, as well as
- d. Confiscate firearms and prohibit the purchase of firearms.

In some countries, *protection orders* are only valid in the country where they are issued. This means that if the victim moves to another country, there is a possibility that the perpetrator may follow her and may repeat the offense. Therefore, the European Union adopted two legal instruments to protect victims who move or travel to other countries within the European Union, namely *Directive 2011/99/EU on European Protection Orders and Regulation 606/2013 on Mutual Recognition of Protection Measures in Civil Matters (EPM)*. With these two legal instruments, *protection orders* obtained in an EU member state will be valid in other EU countries.

The provisions regarding Restraining Orders are also regulated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence in Article 42 paragraph (3) and Article 45 paragraph (1) which states that the Police and Judges are authorized to limit the movement of the perpetrator, which aims to keep the perpetrator away from the Victim within a certain distance and time as well as limiting certain rights of the perpetrator. However, what distinguishes the Restraining Order in this law from the Domestic Violence Law is the period of temporary protection provided by the Police for 14 days, while in the Domestic Violence Law for 7 days. The next difference is that in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, the protection order by the Judge can be given for a maximum period of 6 (six) months and can be extended 1 (one) time for a maximum period of the following 6 (six) months, while in the Domestic Violence Law the protection period is 1 (one) year.

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Based on the discussion above, it can be concluded that the *Restraining Order* has been regulated in the legislation, but the shortcoming is that this Law does not determine the distance for the perpetrator to stay away from the victim or other family members.

### **3.2. Monodualistic Balance Principle Through Restraining Order**

Sri Endah Wahyuningsih argues that based on existing facts, the Criminal Code as a legacy product of the Dutch colonial era is still used as a basis for law enforcement officials in resolving criminal cases in our country. Even though it is realized that the legal product of the Dutch colonial era is no longer in accordance with the conditions of Indonesian society which has a background of different life values with the values that underlie and provide content for the normative and substantive content of the Criminal Code currently in force in Indonesia. Therefore, the development in the field of legal substance / material which until now continues to be carried out is an effort to renew the Indonesian material criminal law (KUHP).<sup>14</sup>

Furthermore, Barda Nawawi Arief stated that criminal law reform essentially implies an effort to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society that underlie social policy, criminal policy and law enforcement policy in Indonesia. So the central problem from the point of view of criminal law policy actually lies in the problem of value concepts (views/ideologies) of power/rights relations between the state and citizens. Thus, criminal law reform must be pursued with a policy-oriented approach and at the same time a value-oriented approach.<sup>15</sup> Sudarto also added that the comprehensive criminal law reform should include the reform of material criminal law, formal criminal law and criminal execution law.

Sri Endah Wahyuningsih argues that the implementation of the idea of balance can be realized on the purpose of punishment, on the principles and conditions of punishment, on the issue of legal sources (the principle of legality), on the issue of the applicability of criminal law, on the *principle of guilt-strict liability-rechterlijk pardon-the principle of culpa in causa* and on the orientation of punishment: protection of society-victims-perpetrators.<sup>16</sup> In Law No. 1/2003 on the Criminal Code, the balance between the protection of victims' interests and the idea of

<sup>14</sup> Sri Endah Wahyuningsih, *Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai-Nilai Ketuhanan Yang Maha Esa*, Jurnal Pembaharuan Hukum, Volume I No.1 Januari –April 2014. hal. 20

<sup>15</sup> Barda Nawawi Arief (III), 2005. *Pembaharuan Hukum Pidana Dalam Perspektif Kajian Perbandingan*, Citra Aditya Bakti, Bandung, hal. 3-4.

<sup>16</sup> Sri Endah Wahyuningsih, 2022. *Bahan Kuliah PDIH (S3) Fakultas Hukum UNISSULA*, Semarang : hal. 1.

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individualization of punishment is reflected in the regulation of punishment and punishment. Individualization of punishment is that the punishment must be oriented to the "person" factor (the perpetrator of the crime). The idea of individualization of punishment is not regulated in the old Criminal Code. With the individualization of punishment, it is expected that the punishment imposed will support the correctional process, and prevent the stigma of convicts as victims of an unfair criminal justice system.<sup>17</sup> The idea of "individualization of punishment" is seen in, among others :

- a) The formulation of the fundamental principle of "no punishment without guilt".
- b) The formulation of "sentencing guidelines" in which the judge is obliged to consider several factors, among others: the motive, mental attitude and guilt of the perpetrator, the era in which the perpetrator committed the crime, his/her life history and socio-economic situation and how the punishment will affect the future of the perpetrator.
- c) In the guidelines for the granting of a pardon by the judge, the personal circumstances of the offender and humanitarian considerations are also taken into account.

The other side of the idea of "individualization of punishment" as outlined in Law Number 1 Year 2023 on the Criminal Code is the provision of "review of a final decision of conviction" based on the consideration of "improvement in the convict himself". Thus, the notion of "individualization of punishment" does not only mean that the punishment to be imposed must be adjusted / oriented to individual considerations, but also the punishment that has been imposed must always be changed / adjusted to the changes and development of the individual (the convict) concerned. Another aspect of "individualization of punishment" is the discretion for judges in choosing and determining criminal sanctions / actions that are appropriate for the individual / criminal offender concerned. Thus, there is a need for "flexibility or elasticity of punishment", although still within the limits of freedom according to the law.

While the idea of *victim-oriented* balance is found in the types of sanctions in the form of "payment of compensation" and "fulfillment of customary obligations" as regulated in Article 66 paragraph (1), Article 94 paragraph (1) and (2) of Law Number 1 Year 2023 concerning the Criminal Code. The definition of victims according to Arif Gosita is those who suffer physically and mentally as a result of the actions of others, who seek the fulfillment of their own or

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<sup>17</sup> Marcus Priyo Gunarto, *Asas Keseimbangan Dalam Konsep Rancangan Undang-undang Kitab Undang-Undang Hukum Pidana*, Jurnal Mimbar Hukum, Volume 24, Nomor 1, Februari 2012. hal. 92

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others' interests, which are contrary to the interests and human rights of those who suffer.<sup>18</sup> Then, Muladi explained that victims are people who both individually and collectively have suffered losses, including physical or mental, emotional, economic losses, or substantial interference with their fundamental rights, through acts or commissions that violate criminal law in each country, including abuse of power<sup>19</sup>.

Referring to the provisions of Article 149 of Law Number 1 Year 20023 on the Criminal Code, a victim is a person who experiences physical and mental suffering and/or economic loss caused by a criminal offense. In general, the factors that cause perpetrators to commit domestic violence can be classified into two factors, namely external factors and internal factors. External factors are factors that come from outside the perpetrator of violence. A perpetrator who is initially normal or does not have aggressive behavior and attitudes may be able to commit acts of violence if faced with situations under pressure (stress), such as prolonged economic difficulties or infidelity or abandonment by a partner or other events. Meanwhile, internal factors are factors that originate in the personality of the perpetrator himself which causes him to be easily provoked to commit acts of violence, even though the problems he faces are relatively small.<sup>20</sup>

The two factors above can have a negative effect not only on perpetrators and victims who experience physical or verbal violence. Some research results show that children who are indirect victims of violent events also have a vulnerability to experiencing psychological trauma so that in the end the child has the possibility of being involved or imitating to do the same thing in their adulthood, in other words, victims of domestic violence, both direct and indirect victims, have the same traumatic effects depending on age and gender.

Trauma is abnormal psyche or behavior due to mental stress or physical injury due to experiencing a very imprinting event that cannot be forgotten. Trauma can occur in children who have witnessed, experienced and felt first-hand terrible or life-threatening events, such as collisions, natural disasters, fires, someone's death, physical or sexual violence and violent parental arguments.<sup>21</sup> Children who witness family violence can also experience trauma in the form of physical, mental and emotional disturbances. The experience of witnessing domestic

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<sup>18</sup> Siswanto Sunarso, 2012. *Viktimologi dalam Sistem Peradilan Pidana*, Sinar Grafika, Jakarta. hal. 31

<sup>19</sup> Dikdik M.Arif Mansur & Elisatris Gultom, 2008. *Urgensi Perlindungan Korban Kejahatan Antara Norma dan Realita*, Raja Grafindo Persada, Jakarta, hal. 47.

<sup>20</sup> Isyatul Mardiaty, *Dampak Trauma Kekerasan Dalam Rumah Tangga Terhadap Perkembangan Psikis Anak*, Jurnal Raheema : Jurnal Studi Gender dan Anak, Vol. 2 No. 1 Tahun 2015. hal. 27

<sup>21</sup> Agus Sutiyono, 2010. *Dahsyatnya Hypnoparenting*. Penebar Plus, Jakarta. hal. 104

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violence in children can cause various problems both in the short and long term.

In the short term, such as: threats to the safety of children's lives, damage to the family structure, the emergence of various mental disorders. Meanwhile, in the long term, it raises the potential for children to be involved in violent and abusive behavior in the future, both as perpetrators and victims. The experience of witnessing and experiencing domestic violence is a traumatic event because violence is committed by the people closest to the child, the family who should provide a sense of security, instead displaying and providing violence that creates fear and anger. The traumatic experience of witnessing and experiencing domestic violence is often found to be a predictor of future psychological problems, such as neglect and physical and psychological abuse in children. In the long run, these problems will also show their effects in adulthood, namely the inability to develop effective coping skills. Many of these children will become adults prone to depression and traumatic symptoms, putting them at risk of perpetrating the same crimes as adults.

Then, the impact of violence on wives includes: experiencing physical pain, mental distress, decreased self-confidence and self-esteem, experiencing a sense of helplessness, experiencing dependence on husbands who have abused themselves, experiencing post-traumatic stress, experiencing depression, and suicidal ideation.<sup>22</sup> The impact of domestic violence on children and wives is extensive and tends to recur. Therefore, the author proposes the idea of a *Restraining Order* or Court Order in order to strike a balance between criminal sanctions against perpetrators and protection of victims. A court order is intended to keep the abuser away from the victim for a certain distance and time. This is needed because victims need time to recover from the trauma they have suffered while the judicial process against the perpetrator continues.

According to the author, the Restraining Order is in line with the national objective of community protection or *social defense*. This objective is related to 4 (four) aspects of community protection, namely: (1). Society needs protection against anti-social acts that harm and endanger society. Starting from this, the purpose of punishment is to prevent and overcome crime. This goal is often used with various terms such as *repression of crime*, *reduction of crime*, *prevention of crime*, *control of crime*, (2). Society needs protection against the dangerous nature of the person (the perpetrator). Therefore, the purpose of punishment is to correct the perpetrator or try to change and influence behavior so that he/she will obey the law and become a good and useful member of society. Terms that are often used include

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<sup>22</sup> Emi Sutrisminah, *Dampak Kekerasan Pada Istri Dalam Rumah Tangga Terhadap Kesehatan Reproduksi*, Majalah Ilmiah Sultan Agung, Semarang: UNISSULA, Vol. 50 No. 127, 2012. hal. 8



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rehabilitation, reformation, *treatment of offenders*, reeducation, social readaptation, resocialization, (3). Society needs protection against abuse of power in using criminal sanctions or reactions to criminal offenders. Therefore, it is natural that the purpose of punishment must prevent arbitrary treatment or actions outside the law, and (4). Society needs protection against the balance or harmony of various interests and values that are disturbed as a result of crime. Therefore, it is reasonable that criminal law enforcement must be able to resolve conflicts arising from criminal offenses, restore balance and bring a sense of peace in society.<sup>23</sup>

#### 4. Conclusion

Based on the discussion in the description above, the author can conclude several things as follows: 1. Restraining Orders are regulated in the existing laws and regulations in Indonesia, but based on the author's observations, this effort is unknown and rarely filed by victims of domestic violence. 2. Restraining Order fulfills the idea of balancing individualization of punishment and protection of victims. This is because the victim needs distance and time to recover the trauma she has suffered while the judicial process against the perpetrator continues. Unfortunately, Law No. 1/2003 on the Criminal Code does not include provisions on Restraining Orders. 1. To obtain legal protection, victims of domestic violence must immediately apply for a Protection Order / Restraining Order. 2. The House of Representatives needs to revise Law No. 23/2004 on the Elimination of Domestic Violence by adding provisions on the distance for perpetrators to stay away from victims and other family members and needs to revise Article 66 paragraph (1) of Law No. 1/2003 on the Criminal Code by including additional criminal sanctions in the form of Protection Orders / Restraining Orders.

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<sup>23</sup> Barda Nawawi arief, 1994. *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, CV. Ananta, Semarang. hal. 93 – 95.

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