

# Restorative Justice Of Adjudication On The Household Violence

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**Abstract:** The essence of restorative justice in the settlement of household violence is very important as bridge for peace of the parties, to restoring good relations between the perpetrator and victim, both the direct and indirect victim (the family of victim). The type of research is socio-legal research with the normative law method (doctrinal research). The results shows that the implementation of restorative justice of adjudication on household violence cases can be applied, although there is no legal arrangement. The judge may apply in its judgment based on the fact that the judge cannot refuse a case because of a law that does not exist or it is unclear. Judges are required to explore the values that live within society to discover the law. It can be concluded that restorative justice has been acknowledged by its existence in the adjudication as the purpose of punishment. Similar perceptions are required for law enforcers concern the concept of restorative justice as the purpose of punishment.

**Index Terms:** Criminal Law, Household, Legal Policy, Restorative Justice

## 1 INTRODUCTION

Law enforcement system through litigation in Indonesia places the law as the last castle, so the judge' role in its judicial functions is crucial. Indonesia as a legal state, in order to realize a just society life order, the lofty ideals of justice must be implemented firmly by the State. One of the guarantees of the realization of the implementation of judiciary in Indonesia is the establishment of an inde-pendent judiciary and the influence and interference of other governmental power bodies. The freedom of the judicial powers, which are handed over to judicial bodies for its implementation is a special characteristic of a '*Rechtstaat*'. Essentially, this freedom is the innate character of every judiciary. The freedom of judicial power is the duty of the judge to uphold law and justice based on Pancasila by interpreting the law by searching the legal basis and the principles upon which it is based, through the case confronted with it, so that its decisions reflect the sense of justice for nation and people. In substantial, criminal law enforcement in Indonesia provides an opportunity to conduct legal process in accordance with the sense of justice of local wisdom values in the community (article 5 Paragraph (1) of UUKK). The provisions of this article may be interpreted that judges may give consideration based on the living law which is not written or has not been regulated in the provisions of written legislation as intended by the principle of legality. Even in the provisions of Article 10 Paragraph (1) of UUKK that "the court is prohibited from refusing to examine, hear, and decide upon a case filed by the reason that the law is absent or unclear, but obligatory to examine and prosecute it." The adjudication is an important and necessary aspect to resolve a criminal case. Thus, it can be further concluded that the "adjudication" on the one hand is useful to the defendant obtaining legal certainty about his "status" and at the same time preparing the next step against the decision, in the sense that it can be accept the verdict, make *verzet* legal remedies, appeals or cassations, amnesty and so on.

On the other hand, when examined through the judges' vision that judging the case, the adjudication is the "crown" and the "peak" reflection of the values of justice, true validity, human rights, legal control or factual and ethic visual, mentality and morality of the judge in question. In the case of household violence, although Act No. 23 of 2004 on the Elimination of Household Violence (PKDRT) has been ratified but the existence of the law cannot stand alone, the law must be implemented by good law enforcement officers, because in the process of imple-menting and enforcing the law does not necessarily only with the law itself, there are other components that can support the implementation and enforcement of the law. The component of law according to Robert B Seidmen includes 3 (three) interrelated elements; *law making processes*, *law implementing processes*, and *role occupants*. Based on data of Women's National Commission in 2013 that there are at least 8.315 cases in a year, this number has increased in 2014 reached 11.719 cases or increase 3.404 cases from the previous year. Many cases of household violence are decided by the court in the form of imprisonment rather than fine penalty. The sentence imposed by the judge should be questioned whether the imprisonment can cause deterrent effect on the convicted person, as many cases of household violence by husband against his wife with reasonable to educate his wife to obey and obedient to her husband. According to Poerwandari, this type of violence is very difficult to be revealed because in general people consider that violence against the wife is a common thing. In addition, husband-to-wife violence is considered an internal problem, both by outside or inside the family itself. Not to mention where the perpetrators and victims to cover up the event with a variety of reasons. In addition to violence against wives, violence in other household life that is also rarely revealed is violence against children. Even if there are publications, the published cases are usually cases that cause death to the victim or at least the case of the victim suffered so great that it attracted the publics' attention. Penalty of fines also reap injustice, due to fines imposed on the perpetrators entering the state treasury and the fate of the neglected victims. Victims who should get a recovery do not get their rights. So that there is no justice and good balance for the perpetrators of criminal acts and their victims. The regulations on the application of restorative justice in household violence cases have not been explicitly regulated in the law especially the household violence. The absence of regulation results in the absence of standardized cases that can be resolved

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through a restorative justice approach. In Indonesia for various regions, the women and children violence is still common. In Malang, Siti Nurjazilah or better known by the name of Lisa, was forced to undergo her days by confining her at home. Her face was damaged by the hard water by her own husband. Her very jealous husband did the sprinkling so that the beautiful-looking Lisa could no longer connect with other men. After sprinkling with hard water, Lisa is not allowed to leave the house. This is due to her husband for fear of his actions against Lisa is known by the peoples in his neighborhood. The phenomenon, allegedly applicable criminal law is not enough to meet the sense of community justice, allegedly there is a law that grows and develops with the community, allegedly people want a reconstruction of the concept of justice in national criminal law according to law living in the community. In the case of household violence, the victim's recovery becomes very important, because the use of criminal law with the basis of retributive views to solve these cases often just an unpleasant effect or cause suffering for the victim who is also a person who has a very close relationship with the perpetrators. Not infrequently the daily life of the household becomes more severe because one of his family members must languish behind the prison to account for his violent acts against other family members. The application of restorative justice in solving household violence cases can be done at every stage in the criminal justice system, namely police, prosecutors and courts. In fact, the implementation of restorative justice in the settlement of household violence cases at the stage of the court is not easy to be implemented because in every settlement of household violence is faced on two sides of the conflicting interests of juridical interests on the one hand and the interests of humanity on the other side. Therefore, the community and especially victims of household violence always pay great attention to the judicial system that is taking place in Indonesia. Under these conditions, there is an indication that the settlement of household violence cases is not in accordance with what is expected in international and national legal instruments. The implementation of restorative justice in the settlement of domestic violence has not found the ideal form so that the standardization of how to solve household violence through restorative justice approaches. In addition, the concept of sanction and the application of restorative justice have not found the ideal form that can be a solution for the parties who conflict so it needs to be done more study.

## 2 METHOD OF RESEARCH

The type of research is socio-legal research (*descriptive research*) with the normative law method (*legal research*). The approach used in this research is philosophical, statute, and conceptual. This research was conducted at District Court of Class IB of Bone and District Court of Makassar as well as in Supreme Court of Republic of Indonesia with consideration that since 2011 - 2015 the rate of development of household violence that handled by the judiciary tends to increase both in terms of quantity and quality.

## 3 ANALYSIS AND DISCUSSION

### 3.1 The Essence of Restorative Justice in Household Violence

Justice is the ultimate goal to be achieved in law enforcement. It is defined as "*the constant and perpetual disposition to*

*render every man his due.*" This definition illustrates that justice is a process of giving or protecting the rights of individuals and the public in a constant and sustainable way. Justice in this sense is seen as a concrete action of law enforcement officers, especially judges to not only give what the rights of individual and public, but also to restore a situation to the proper conditions in order to create a balance of rights and duties. The settlement of household violence cases in Indonesia should be based on the realization of justice between the interests of perpetrators, community, State and public. According to Muladi, a realistic model that takes into account the various interests that must be protected by the criminal law is the interest of State and public, individual, perpetrators and also victims. This model is based on the concept of *daad-daader- strafrecht* and it I call *interest balance model*. By starting point of the balance model, then criminal sanctions must reflect harmonization between individual and public interests (principle of mono-dualistic), or through Herbet L Peker's perspective and criminal sanctions can be *compensation, regulation, punishment* and *treatment*. Then the settlement of criminal acts of household violence is not solely based on the existing laws and regulations. Given the beginning of the marriage are very strong rules about customary, religious laws and customs of local communities. Therefore, in addition to the applicable laws and regulations, it should also consider other legal sources. Concerning this can be confirmed by Ter Haar that the marriage is linked with the affairs of kinship, family, community, dignity and personal. Currently, the sanctions contained in UU PKDRT are only imprisonment or fines, whereas most victims of household violence want a change from their husbands. So that if the victim cannot survive for violence they experienced then the victim prefers to divorce only. This was done because the victim did not want to imprison her husband. If there are other sanctions that can change her husband to not engage in violence other than prison, then the victims of household violence will more process the criminal case. For imprisonment in household violence is not unusable, it is expected that prisons will be the most recent sanction for household violence for victims who suffer severe physical violence or are threatened with the safety of their souls. Currently, the criminal sanctions in Act No. 23 of 2003 for all levels of household violence both light and hard are imprisonment or fines. This affects the occurrence of impunity in the problem of household violence so that the problem of in the family becomes more accumulate and the deterrent effect desired by UU PKDRT not reached. The further consequence is the shattering of the joints of the people and the State. The welfare of family who became the ideal since the beginning of the marriage agreement did not realize. Basically, the punishment developed within the RKUHP is oriented and focuses on the idea that criminal is essentially a tool for achieving goals, then punishment is aimed at considering the consequences of various aspects of interest. Whether the interests of perpetrator, community and victim. For the return loss, it is very far away to be done. When considered in PKDRT Act, no compensation for victims of household violence. Fines in PKDRT Act, no compensation for victims, it is for the perpetrator to pay some money to the State. In fact, victims of household violence often treat their own violence. The victim tried to follow counseling and therapy because her soul was shaken. Act No. 23 of 2004 on PKDRT does not impose sanction of indemnification from the perpetrator to the victim.

PKDRT Act is only imposes fines, and fines are ultimately paid off the offender and handed over to the State not to the victim. The implementation of basic idea of restorative justice in the formulation of formal criminal law policy according to the provisions of the Criminal Procedure Code, settlement of household violence according to the criminal law will basically face the perpetrators against law enforcement officers, while the victim will only serve as a witness. In other words, the parties actively involved in the criminal settlement process under the Criminal Procedure Code are law enforcement and perpetrators, while victims are given a passive role. Under the Criminal Procedure Code, which is essentially still imbued with such retributive thinking, also applies to household violence. In contrast to the retributive settlement process, the process to settle the cases of household violence based on the idea of restorative justice is an active settlement of cases involving victims. Nevertheless, according to the author, the involvement of the victim in the settlement of household violence cases is not done for all cases, but only for certain cases of household violence, namely household violence that results in light physical or psychic suffering, sexual violence between husbands and wives, and neglect of households. Essentially, restorative justice focuses on crime that challenges individuals and society rather than the State. Victims play an important role and can receive restitution from the perpetrators of crime. The perpetrator of the crime is required to provide indemnification for the victims proportionally. To achieve restorative justice in the settlement of cases can be done penal mediation in both litigation and non-litigation process. While, in the dispute of civil, civil mediation as a form of restorative justice has been able to resolve the disputes in a fast and light cost (*contante justitie*). Thus, the principle of simple, quick and light cost justice is essentially an implementation of restorative justice. A process of law enforcement oriented towards restorative justice can be seen that local wisdom becomes a legalistic legal form applied through restorative justice so that it not only provides legal justice, but also provides social justice and juridical satisfaction. This is inseparable from the concept of restorative justice which is seen as a concept of justice in the settlement of household violence cases that prioritizes the recovery of victims rather than simply giving suffering to the perpetrators given the close relationship between the perpetrator and the victim. This concept emphasizes what needs to be done to restore the right relationship between the perpetrator, the victim and the community so as to create tranquility and peace in the life of the community. Law enforcement that is oriented towards retributive justice, which emphasizes punishment of perpetrators is often unable to solve the problems that arise in the case of household violence, although the perpetrator has been sentenced, the victim is often still unable to forgive, so the seeds of conflict between the perpetrator, the victim and the victims' family every time can reappear. However, if law enforcement processes take into account the interests of the victims, it is hoped that such matters will not occur and between the perpetrators and the victims can coexist peacefully as before the crime. The realization of law enforcement process through restorative justice is essentially the realization of law enforcement process in the broad sense, for the establishment of justice not just the establishment of written legal norms. What is meant by "justice" in this case is justice oriented to the recovery of losses suffered by victims and restoration in the original state, not just justice intended

only to punish the perpetrator (*retributive justice*) or justice that is only oriented to the recovery of the suffering of the victim (*restitutive justice*). Recovery of conditions in the original state is expected to provide benefits for the creation of peace and tranquility in society, because the law also aims to ensure the benefits and peace. The implementation of restorative justice also contains other values of justice, such as retributive justice, distributive justice, communicative justice and corrective justice. Retributive justice exists in restorative justice mechanisms because these mechanisms still provide sanctions for perpetrators of crime. But sanctions are not the only goal of restorative justice. Distributive justice contained in restorative justice can be seen from the form of "punishment" (the settlement of case) which has been mutually agreed upon. Because if the "punishment" contained in the collective agreement is not proportional, then certainly in the negotiations will never be reached agreement. And also with commutative justice that is reflected from the "punishment" that has been agreed, for example with the achievement of the perpetrator in the form of indemnification as desired by the victim, then the victim must provide counter-achievement in the form of forgiveness. While, restitutive justice can be seen in the mechanism of a restorative justice approach that seeks to alert the perpetrator to his mistakes it makes for the perpetrator to voluntarily pay indemnification to the victim. Even the victim is involved to determine the sanction and indemnification to be paid by the perpetrator. Essentially, the mechanism of restorative justice is not just trying to bring different types of justice as has been mentioned before, but the main thing is trying to restore relations between both parties. Therefore, in the settlement process of household violence by using restorative justice approach, the perpetrator, the victim, the victims' family, the perpetrator's family and the related party (community) need to be together to seek a fair solution by emphasizing the restoration of the original state, not just focus on retaliation effort against the perpetrator and indemnification to the victim. Through a restorative approach that oriented to the system of punishment and places victim as the most important part of punishment is the settlement process of domestic violence that are expected to be beneficial to all parties (*win-win solution*). The restorative justice approach in the settlement of criminal cases is conducted with the aim of restoring the authorization of the settlement of criminal cases, especially the case of household violence from the judiciary as the representative of the State to the community. The main focus is the effort to transform the mistakes committed by the perpetrators with improvement efforts, including efforts to improve relations between the related-parties with the event. Restorative justice is an approach that focuses on the conditions of creating justice and balance for both perpetrator and victims. The criminal justice process focused on punishment was transformed into a process of dialogue and mediation to create an agreement on a fairer and more equitable criminal justice settlement for both victims and perpetrators. Restorative justice not only focuses on providing compensation or indemnification for the victims, but has a broad meaning, including the restoration of relationships between victims and per-petrators. Recovery of relationships may be based on mutual agreement between the parties, the party may report the harm suffered and the perpetrator shall be given an opportunity to redeem it through agreed mechanisms such as compensation, peace, or other agreements. This is important because conventional

punishment mechanisms do not provide space to litigants and parties involved in this case perpetrators and victims to actively participate in the settlement of their cases. Restorative justice is trying to restore the settlement of household violence to the parties concerned, i.e. victims, perpetrators and people who feel affected by the case of household violence. The distinctive feature of restorative justice in the settlement of household violence is that domestic violence is viewed as an act that harms people and damages social relations. In contrast to the conventional settlement of household violence cases that attracts household violence cases as a state problem. So only the State is entitled to punish, although indigenous communities may provide social sanctions. Such mechanisms emphasize the conditions of justice and the certainty and balance for the perpetrators of household violence and their victims. The fact that household violence occurs among people with special relationships is generally considered very close, either because of marriage or blood relations. The existence of special relations that are generally considered very close can be seen from the formulation of Article 1 point 1 *jo* Article 2 of UUPKDRT. Article 1 point 1 UUPKDRT formulates that household violence is any act against a person, especially a woman, resulting in physical, sexual, psychological suffers, and/or neglect of a household including threats to commit act, coercion or deprivation of liberty by contempt of court within the scope of household. The implementation of a restorative-based criminal system is expected to bring benefits to the parties, victims, perpetrators, and communities. The benefit for the victim is that the victim can express her interest, especially to demand indemnification for her loss and suffering, so that the suffering and victim's loss can be reduced and even recoverable. For the perpetrator, with the payment of indemnification, the victim has been forgiven and the household violence is considered never happened. With the forgiveness of the victim, it can free the guilt that is in the person concerned. As for the community, the peace between the two parties, then the social problems that are feared arise due to the occurrence of criminal acts, such as revenge and so forth is expected will not arise in the future. This context illustrates that the legal settlement of household violence cases has not fully provided wide space and is responsible for fulfilling the principles of women's rights, so it can be concluded that the household violence crime is multi-dimensional in terms of juridical, sociological, psychological, economic, culture aspects and so forth. Through the aspect of criminal law policy, the laws and regulations in Indonesia have regulated the household violence crime. For that reason, it is necessary to enforce legal law enforcement methods through the establishment of a special institution which has wide authority in handling domestic cases whose implementation is done optimally, intensively, effectively, proportionally and continuously. The special institution in question is a special family court, because its specificity, it is necessary to have special legal procedures and judges, court apparatus, special facilities and infrastructure as well as other legal officers of service institutions who have special education and special expertise in the field of family law, household violence and other gender-based issues of discrimination and violence. If we look closely, a country whose people have individualistic views such as the United States, Canada and Australia have a Family Court. While, in Indonesia whose has a strong, strongly religious and strong communal kinship system, does not have a family criminal court. Indonesia with its kinship, communal

and religious style has the opportunity to form a family court. Recently, the existing judiciary in deciding against the perpetrators of household violence, whether imprisonment or fines does not mean the problems in the household to be completed. In this case, one of the most comprehensive steps that can be done in the Indonesian criminal justice system is through a relatively adequate settlement system that requires specificity in the application of law and examination. Progressivity of judges in searching material truth and exploring the core issues of the problem to solve the problems that occur in the household with various problems, so that the household life does not always end up with divorce that can create a new grudge that can destroy the harmonization in married life, children, and other family members.

### 3.2 Restorative Justice of Adjudication on the Household Violence

The punishment system in Indonesia cannot be separated from the written rules originating from the Dutch colonial legacy law; even the official text of the Indonesian Penal Code currently in force is still in Dutch. Given these weaknesses, arise idea of a punishment system that is oriented towards the recovery of victims' loss and suffering is known as the restorative approach to restore the loss and suffering experienced by crime victims. The restorative approach accommodates the interests of the parties, including crime victims and the community, as victims and communities are involved in the determination of sanctions for perpetrators in conflict settlement. Through a restorative justice approach to conflict settlement, we can look to local wisdom. Actually, local wisdom talks about the values that live in society and become the culture of the local community. According to Plato, law as a protective instrument of society is manifested from the legislation, law enforcement and legal culture. Then, it can be said that the legal protection for victims is not only obtained from the legislation and law enforcement agencies but also the legal culture of the local community is also a tool for the realization of legal protection. In essence, restorative justice in line with the values that grows and develops in the life of community in all regions of Indonesia. Communal Indonesian society and put forward the value and spirit of mutual cooperation are always trying to create harmonization in social system. Efforts to resolve disputes that occur in the life of the community are always strived to maintain peace and balance. This is also reflected in the dimension of local customary law wisdom that seeks to realize peace and harmony in social life in Indonesia. The judge as core actor is functionally exercises judicial powers. As the law enforcers and justice, the judge has the main duty in the field of judicial, which is receiving, examining, deciding and resolving the case submitted to it. The position of judges in the judicial institution in Indonesia is placed as inventor, and law creator and justice, not just implement the law and decide cases. In performing its duties, the judge shall formulate the findings based on the values that live in the community into positive law, so that the resulting judgment is in accordance with the sense and value of justice living in the community. The arrangement of "*social engineering*" by law requires the interests to be balanced in rational and consistent ways. Roscoe Pound, a sociologist in the United States, the law as a social institution, is designed to fulfill the wishes of society, this theory known as "*The Theory of Interest*" which involves a classification of "*demands*", *desires* and *expectations*, which must be guaranteed by law.

The theory of interest by Roscoe Pound is outlined that it is based on a belief in legal needs, which demands a classification, securing and protection against various interests. One of the objectives of legal science according to Roscoe Pound is understanding of the appropriate mechanisms, to achieve a balance between the security of society and the life of every individual (*jurisprudence is an understanding of the mechanisms appropriate to achieving a balance of the security of society and of each individual's life*). Laws and legislation must attempt to satisfy, reconcile and harmonize conflicting claims and demands so that the interests that weigh most in society are given an appropriate prominence. For this purpose, a balancing process becomes necessary, which will involve a detailed reference of precepts, principles (starting points for legal reasoning), conceptions (categorization of causes and situations) situations) as well as standards (makers for the limits of permissible attitudes), referred to as "social engineering." Roscoe Pound defines interests as demands or desires, which individually or in groups are endeavored to fulfill and which must be considered in the control of social relations. The theory of interest recognizes the existence of individual, social and public interests, defining the boundaries in which those interests must be recognized and given effect by law, and emphasizing the need to secure them. From the inventory and classification of interests, decisions about the recognition of it and the means of ensuring security, a key task for jurists and legislators will arise, which is to create a balance between the various interests. Indonesian society is societies that uphold harmony among people. With such a type of society, if there is a more dominant community conflict to settle it through the peace with mediation as a mediator of community leaders who can provide solutions. The choice of such conflict settlement, because the litigation has a social effect that is the breaking of friendship (brotherly or social relationship). Peace becomes a means to re-reconcile the families in conflict. When used is a litigation (judicial process), it can bring widespread social effects to a wider kinship relationship. This can happen because a case is not only interest and "esteem", but can spread to relatives. A case of household violence not only hurts the litigants but also relatives as well as community in its environment. Through deliberation, these things can be avoided, so the cracked friendship relationship can be glued together. The implementation of restorative justice is very much in line with the social interaction of the Indonesian people who prioritizes the basic of kinship, and mutual cooperation. These foundations have established tolerant behavior, easy-to-forgive, and prioritized communal attitudes, and are good instruments to settle household violence in order to secure kinship, and social relations. All the rules of law are made with the aim that social life can run in an orderly manner, this means a rule of law will definitely bring implications for the society where the law applies. In relation to the concept of restorative justice in cases of household violence by judges on adjudication, of course it also has implications for society whether it is society in the narrow sense that often interact directly with the perpetrator or victim, or society in the broadest sense. It is the duty of judges to develop law in practice in courts to decide cases of household violence by using laws that are in accordance with the values that live in community. The concept of restorative justice that is in line with the dynamics of society is by applying the "Circles" model which is a discussion conducted by the parties concerned to

reach agreement and settlement, either in the form of giving or payment of restitution or compensation, or other sanctions, or it may be without any sanction, but certainly there must be a forgiveness by victims and the community to the perpetrator. Based on the findings in the field, the following is a description of the number of cases of household violence that was decided by the District Court of Watampone, District Court of Makassar and the Supreme Court of the Republic of Indonesia (Table 1). The table 1 shows the number of domestic violence cases handled by the District Court of Class IB Watampone that is 59 for the last five years. The case of household violence that was decided by the District Court of Class 1B Watampone continues to increase. The increase in the number of cases can have an impact on the adjudication on the type of other cases pursued by the target in the settlement of the case so as not to consider the quality of the decision. Such as in the District Court of Makassar, the increase of household violence in last 5 (five) years is 132 cases, and of 132 cases are dominated by physical violence and followed by neglect in the family, and sexual. While, the number of cases of household violence to cassation level (Supreme Court) in last 5 (five) year as many as 599 cases. The amount is quite high considering that the amount should not be that much if the settlement of household violence cases is settled by using restorative justice approach.

**Table 1.** Data on household violence has been decided by the District Court and the Supreme Court

No	Year	District Court of Watampone		District Court of Makassar		Supreme Court	
		Men	Women	Man	Women	Men	Women
1	2011	10	2	30	1	63	25
2	2012	8	1	29	2	70	17
3	2013	11	1	22	1	101	26
4	2014	10	1	17	1	100	14
5	2015	12	3	26	3	114	29
Amount		51	8	124	8	448	111

**Data source:** Primary data, 2016

The high cases of household violence to the cassation level (Supreme Court), according to Poki Panjaitan that the accumulation of the case was caused by law enforcement to throwing the case up. For example, a judge in a region is easily to decide and thinks there will be appeals. Similarly, at the high court level. This problem may have implications for the quality of case handling and decisions, including the management of cases by the judge. This caused the judge to no longer be considered in a professional manner. The more cases that can be settled through mediation will reduce the pressure on the number of cases that go to the court. This will affect the possibility of delinquency or "pending" in the settlement of case. Judge has the opportunity to deeply deepen each case, which will improve the quality of decision, both for the benefit of legal development and the interests of conflicting parties. Judicial institutions represented by judges in commit their duties must have a good level of legal understanding. This is necessary because the adjudication will reflect the level of the judges' ability, and irony if not reflect his/her intellectual ability as an indicator to know the judges' ability is seen in the legal considerations in his/her decision, since legal considerations are the heart of every judgment. Indonesian law enforcement can be said "*communis opinio doctorum*", it is expressed by Bagir Mannam which means that

law enforcement is now considered to have failed in achieving goal that is implied by the Act. Therefore, alternative law enforcement is allowed, namely the Restorative Justice System, where the approach used is a socio-cultural approach and not a normative approach. In many countries, discontent and frustration with the formal justice system or regenerate interests in conserving and strengthening traditional law and traditional justice practices have led to calls for an alternative response to crime and social disorder. Many of these alternatives provide the parties involved, and often the surrounding community, opportunity to participate in resolving conflicts and overcoming the consequences. The restorative justice program is based on the belief that the parties to the conflict must be actively involved in resolving and reducing the negative consequences. They are also based, in some cases, on the will to return to decision-making buildings and local communities. These approaches are also seen as a means to foster peaceful expressions of conflict, to promote tolerance and inclusiveness, to build respect for diversity and promote responsible community practices. The restorative justice known as the "*reparative justice*" is a justice approach that focuses on the needs of victims, perpetrators, and also involves community participation, and does not merely comply with legal requirements or criminal penalties. In this case, victims are also involved in the process, while perpetrator are also encouraged to account for their actions by correcting their mistakes by apologizing, and promising them not to repeat, or by doing community service. This is in line with the concept of restorative justice as expressed by Tony F. Marshall, in his article "*Restorative Justice an Overview*" says that the concept of restorative justice is a process whereby concerned parties in a certain violence meet together to solve the problem simultaneously, how to solve impact of violation, it means that after the occurrence of household violence the relationship between the perpetrator and the victim as well as social relations can be restored. Thus, it can be understood that what is meant by restorative justice is the approach to solve problem, in its various forms, involving victims, perpetrators, their social networks, judicial bodies and communities. The restorative justice program is based on the basic principle that criminal behavior not only violates the law, but also hurts victims and society. This is best done when the parties together consciously meet to decide how to resolve the conflict. This can lead to the transformation of the social relations of the parties. In the development of theoretical discourse as well as the development of criminal law reform in various countries, there is a strong tendency to use penal mediation as an alternative to solve problem in the field of criminal law. This is in line with the opinion of Detlev Frehsee, the increasing use of restitution in criminal proceedings indicates that the difference between civil and criminal law is not so great and the differences become non-functioning. The phenomenon of restorative justice is an anticlimax to the destruction of the existing punishment system. Prison system as a substitute for the imprisonment system has proved totally ineffective in suppressing the high number of crimes. The concept of restorative justice views criminalization differently from the point of view of the fulfillment of the loss suffered by the victim, and at the same time is expected to restore the religious magic and social relation in the community of the perpetrator, so that peace becomes the ultimate goal of this concept. The existence of the concept of restorative justice appears in the implementation of prosecution, resolving

conflicts that are caused by criminal acts, restoring balance and bringing peace to the community. Explicitly, the concept of restorative justice puts forward the existence of the restoration of a state shaken by the crime committed by the perpetrator. The strategy used in the improvement process is the strategic socialization or restoration of community relations (reintegrate perpetrators with victims and the community). The communities of each party are represented by community leaders from each party, involved to formulate an agreement in order to make improvements to restore the social relations of the parties after crime.

#### 4 CONCLUSION

The essence of restorative justice in the settlement of household violence is very important as bridge for peace of the parties, to restoring good relations between the perpetrator and victim, both the direct and indirect victim (the family of victim). The implementation of restorative justice of adjudication on household violence cases can be applied, although there is no legal arrangement. The judge may apply in its judgment based on the fact that the judge cannot refuse a case because of a law that does not exist or it is unclear. Judges are required to explore the values that live within society to discover the law. It can be concluded that restorative justice has been acknowledged by its existence in the adjudication as the purpose of punishment. Similar perceptions are required for law enforcers concern the concept of restorative justice as the purpose of punishment. Although this study is restricted to restorative justice in the adjudication, where the judge is determiner, it is easier to achieve restorative justice as a purpose of punishment if law enforcers also share the same ideology. Ideology about the purpose of punishment that resolves conflict between the perpetrator, the victim and the community, so that justice is perceived as beneficial by all.

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