

## DIALECTIC OF RESTORATIVE JUSTICE IN DOMESTIC VIOLENCE CASES: A REVIEW OF THE LEGAL PHILOSOPHY OF PANCASILA

**Novi Asih Muharam**

Lecturer at the Faculty of Law, University of Muhammadiyah Metro

Email: [Novighezhaa@gmail.com](mailto:Novighezhaa@gmail.com)

### Abstract

Domestic Violence is a serious problem that is still emerging in Indonesia, where conventional criminal law approaches are often considered incapable of providing substantive justice for victims. This study aims to analyze the dialectic of the application of restorative justice in handling domestic violence cases reviewed through the perspective of the legal philosophy of Pancasila. The method used is normative legal research with three approaches, namely the statute *approach*, the theoretical approach, and the *philosophie approach*. The results of the study show that there is a dialectical tension between the dominant retributive paradigm in Indonesia's positive legal system and the values of restorative justice inherent in the Pancasila philosophy. The synthesis of these tensions can be found through the reinterpretation of the values of Godliness, Humanity, Unity, Peoplehood, and Social Justice as the normative foundation for the application of restorative justice that does not sacrifice the protection of victims. This article offers an integrative conceptual framework between restorative justice and the philosophy of Pancasila as a solution to reform the law on handling domestic violence in Indonesia.

**Keywords:** Domestic Violence, Restorative Justice, Pancasila Legal Philosophy, Legal Dialectics, Legal Reform

## A. BACKGROUND

Domestic Violence (KDRT) is one of the most hidden but most destructive forms of human rights violations in the social order of life. In the realm of Indonesian law, this phenomenon has received a normative response through Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law). However, after almost two decades of the law being in force, the reality on the ground shows a gaping gap between *das sollen* (what should happen according to the law) and *das sein* (the reality that actually happens).<sup>1</sup> Komnas Perempuan data in 2023 recorded that there were 401,975 reported cases of violence against women, with domestic violence dominating more than 79% of the total cases. This figure is believed to be just *the tip of the iceberg*, considering the high *number of dark cases* of domestic violence that go unreported due to various factors, ranging from the economic dependence of the victim, social stigma, to the threat of the perpetrator.<sup>2</sup> More concerningly, the rate of case settlement through conventional criminal justice mechanisms often leaves victims in conditions that are not much better psychologically and socially than before reporting.<sup>3</sup>

The retributive approach that has dominated the Indonesian criminal law system places domestic violence solely as a problem between the state and the perpetrator, so that the interests of victims are often marginalized in the judicial process. Victims often experience *victimization* in the legal process, namely trauma that is re-experienced due to examination procedures that are not friendly to the victim. This condition strengthens the argument that the conventional criminal law system is not always the right solution, especially in the context of crimes that occur in intimate relationships

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<sup>1</sup> Arifin, Ridwan. "Restorative Justice in the Perspective of Indonesian Criminal Law." *Journal of Law and Justice*, Vol. 8, No. 1 (2019): 67–84.

<sup>2</sup> Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 2007), p. 9. The concepts of *das sollen* and *das sein* were first popularized by Hans Kelsen in the tradition of legal positivism, but later adapted in the context of Indonesian legal sociology.

<sup>3</sup> Komnas Perempuan, *Annual Notes (CATAHU) 2023: Violence against Women in Indonesia* (Jakarta: Komnas Perempuan, 2023), pp. 14–15.

such as domestic violence.<sup>4</sup> On the other hand, the idea of *restorative justice* exists as an alternative paradigm that offers a more holistic approach to criminal case resolution. Restorative justice, as conceptualized by Howard Zehr, views crime not merely as a violation of the state, but as a violation of human relations that must be restored. This paradigm, implicitly, has a strong resonance with the values contained in the basic philosophy of the Indonesian state, namely Pancasila.<sup>5</sup>

However, the application of restorative justice in domestic violence cases does not run smoothly. The first problem is the concern that restorative mechanisms, if not carefully designed, can actually be a tool to pressure victims to forgive the perpetrator and retract the report without any real change in the perpetrator's behavior or unequal power relations. Second, there is no regulation that comprehensively and systematically regulates a specific restorative justice mechanism for domestic violence cases, so its implementation is still highly dependent on the discretion of law enforcement officials and vulnerable to irregularities. The gap between *das sollen* and *das sein* demands a *fundamental review* of the paradigm of domestic violence law enforcement in Indonesia. The legal philosophy of Pancasila, as the epistemological and axiological foundation of the national legal system, offers a unique perspective that can be a *turning point* in this dialectic. The precepts of Pancasila contain the values of Godliness, Humanity, Unity, Deliberation, and Social Justice which can synergistically become a normative basis for the application of restorative justice that is just, humane, and still protects victims of domestic violence with dignity.<sup>6</sup>

Indonesia's current positive legal system has provided a fairly comprehensive normative framework in handling domestic violence. Law Number 23 of 2004 concerning PKDRT criminalizes various

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<sup>4</sup> Fitri Wahyuni, 'The Elimination of Domestic Violence: Between das Sollen and das Sein,' *Journal of Law and Development*, Vol. 50, No. 2 (2020), p. 250.

<sup>5</sup> Howard Zehr, *The Little Book of Restorative Justice* (Intercourse: Good Books, 2002), p. 37.

<sup>6</sup> Mudzakkir, *The Development of Restorative Justice in Indonesia* (Jakarta: BPHN, 2020), pp. 89–91.

forms of violence within the domestic sphere, including physical violence (Article 44), psychological violence (Article 45), sexual violence (Articles 46-48), and domestic neglect (Article 49). This law also mandates the state's obligation to provide protection, services, and recovery for victims.<sup>7</sup> Procedurally, the criminal procedure law system that applies through the Criminal Procedure Code provides a mechanism for reporting, investigation, investigation, prosecution, and criminalization. Law enforcement has the authority to detain perpetrators, secure victims, and process cases *ex officio* without having to wait for the revocation of victim reports in certain cases. At the implementation level, the National Police of the Republic of Indonesia has established a Women and Children Service Unit (UPPA) in each regional unit as an integrated service for victims of domestic violence.<sup>7</sup>

At the policy level, the Supreme Court has issued Supreme Court Regulation (PERMA) Number 1 of 2024 concerning Guidelines for Prosecuting Sexual Violence Cases which strengthens the perspective of victims in the judicial process. In addition, Police Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice provides space for police officers to apply a restorative approach in handling certain cases. This is the normative condition (*das sollen*) that became the initial thesis of handling domestic violence law in Indonesia. Faced with the normative thesis above, the field reality (*das sein*) presents a much different face and becomes a sharp antithesis. The first problem is the retributive orientation which still dominates. The existing penal system still relies on prison sentences as the main form of response to domestic violence, while relationship recovery, psychological recovery of victims, and rehabilitation of perpetrators are often ruled out. As a result, after the perpetrator serves a criminal term, repeated domestic violence cases (*recidivism*) often occur because the root of the problem of power relations is never resolved.

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<sup>7</sup> M.S. Kaelan, *The Philosophy of Pancasila: The Life View of the Indonesian Nation* (Yogyakarta: Paradigm, 2009), p. 245.

The second problem is the high rate of withdrawal by victims of domestic violence. This phenomenon does not solely reflect the victim's sincere desire to forgive the perpetrator and maintain the household, but is often a response to economic pressure, socio-cultural pressure, threats from the perpetrator, or precisely as a result of legal procedures that actually increase the burden on the victim. The existing legal system has not been able to distinguish carefully between *genuine reconciliation* and *coerced withdrawal*. The third problem concerns the absence of standard standards for the application of restorative justice in domestic violence cases. Although Perpol Number 8 of 2021 opens up space for a restorative approach, the regulation has not explicitly excluded or provided special guidance for domestic violence cases that have unique characteristics, namely the existence of an unequal power relationship between the perpetrator and the victim. As a result, its application is highly variable and vulnerable to abuse for the sole benefit of the perpetrator.<sup>11</sup> The fourth problem is the incompatibility between the values of the Pancasila philosophy and the legal practice that occurs. The precepts of a just and civilized humanity, for example, should demand dignified treatment of victims during the legal process. But in reality, the repeated examination process, the questions that corner the victim, and the absence of a safe space during the trial, actually reproduce the violence itself in a different format. This is a fundamental contradiction between the basic values of Pancasila and the reality of domestic violence legal practice.

The synthesis of the dialectical tension between the thesis and the antithesis above lies in the development of a paradigm of restorative justice that is not separate from, but based on, the philosophical values of Pancasila. This synthesis is not just a pragmatic compromise between retributivism and restoratism, but an ontological reinterpretation of the nature of justice in the context of Indonesian legal culture. Pancasila-based restorative justice must be interpreted as a domestic violence case settlement system that: (1) places the restoration of the dignity and safety of victims as the top priority (Precept I); (2) considering the spiritual dimension and moral responsibility of the perpetrator (Precept I); (3) strengthening family and community cohesion without sacrificing individual justice

(Precept III); (4) involving the active participation of the parties in the equal deliberation process (Precept IV); and (5) correcting structural inequities that are the background of violence (Precept V). Concrete solutions from this synthesis include: improving regulations through the revision of the PKDRT Law that integrates standardized restorative mechanisms; the development of integrated handling protocols that put the victim's perspective at the center; training of law enforcement officers based on Pancasila values; and the establishment of a domestic violence mediation forum that is supervised by the state and standardized nationally. Thus, restorative justice is no longer understood as a threat to the protection of victims, but as an instrument that actually strengthens that protection through a more humane and comprehensive approach.

## B. RESEARCH METHODS

This research uses the *normative legal research method*, which is research that examines legal norms, principles, and principles contained in primary and secondary legal materials. This method was chosen because the object of study of this article is legal norms and philosophical foundations related to restorative justice and domestic violence in the context of Indonesian law. Three approaches are used synergistically in this study. First, *the Statute Approach*. Second, *Theoretical Approach*: This approach is used to analyze problems based on relevant legal theories, especially restorative justice theory (Howard Zehr, John Braithwaite), justice theory (John Rawls), feminist legal theory, and legal system theory (Lawrence Friedman). The use of this multitheory allows for a comprehensive analysis of the phenomenon of domestic violence from various legal scientific perspectives.<sup>8</sup> Third, *Philosophie Approach*: This approach is the main differentiator of this article from ordinary legal studies. Through this approach, the values of Pancasila are studied as *Grundnorm* and at the same time as *rechtsidee* (legal ideals) which are a measure of the validity and legitimacy of legal norms. Philosophical analysis is carried out using Hegel's dialectical method

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<sup>8</sup> Soerjono Soekanto and Sri Mamudji, *Normative Law Research: A Brief Review* (Jakarta: Rajawali Pers, 2011), pp. 12–14.

as an analysis knife for the tension between the retributive and restorative paradigms in handling domestic violence.<sup>9</sup>

## **C. RESULTS AND DISCUSSION**

### **1. Normative Landscape of Handling Domestic Violence in Indonesia**

Law Number 23 of 2004 concerning the Elimination of Domestic Violence was born as a significant legislative breakthrough in the history of Indonesian law. This law for the first time expressly stipulates that domestic violence is not just a private family affair, but a public problem that is the responsibility of the state. Article 1 number 1 defines domestic violence as an act against a person, especially a woman, which results in the occurrence of physical, sexual, psychological, and/or domestic neglect or suffering, including threats to commit unlawful acts, coercion, or deprivation of independence within the scope of the household. The scope of the subject of protection under the PKDRT Law as stipulated in Article 2 includes husband, wife, and children; people who have family relationships due to blood relations, marriage, breastfeeding, parenting, and guardianship; and people who work to help the household and settle in the household. However, this normative construction poses its own problems in practice, especially when violence occurs in relationships outside of formal marriage or in households with non-traditional structures.

Criminal threats in the PKDRT Law use a cumulative system, which is a combination of imprisonment and fines. Article 44 paragraph (1), for example, threatens imprisonment for a maximum of 5 (five) years or a maximum fine of Rp 15,000,000 (fifteen million rupiah) for physical violence within the scope of the household. However, in practice, the application of these sanctions is often inconsistent and tends to be mild, especially for the first cases that law enforcement officials consider less severe a subjective assessment loaded with gender bias. The victim protection side in the PKDRT Law is regulated through provisions on the state's obligation

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<sup>9</sup> Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana Prenada Media Group, 2011), p. 35.

to provide temporary protection (Article 16), health services (Article 39), spiritual guidance (Article 39), and repatriation and social reintegration (Article 42). In addition, Article 35 introduces the concept of a *protection order* that can be issued by the court. In the implementation level, the Integrated Service Center for Women's and Children's Empowerment (P2TP2A) was established as an institution responsible for victim recovery services. However, the effectiveness of this institution varies greatly between regions and is often constrained by budget constraints.

## 2. The Restorative Justice Paradigm: Theoretical Foundations

Restorative justice as an alternative paradigm in criminal law has undergone significant conceptual development since the 1970s. Howard Zehr, often referred to as the *grandfather of restorative justice*, defines restorative justice as a process that involves, to the maximum extent possible, those who have an interest in a particular offense to collectively identify and address the dangers, needs, and obligations, with the goal of healing and making things as good as possible. John Braithwaite developed the concept of *reintegrative shaming* as one of the most influential mechanisms of restorative justice. In contrast to *stigmatizing shaming* that is applied in the retributive system and that tends to permanently marginalize the perpetrator, *reintegrative shaming* aims to internalize the perpetrator's moral awareness of the impact of his actions, while still paving the way for the perpetrator's reintegration into the community after he has fulfilled his responsibilities to the victim.<sup>10</sup>

In the context of domestic violence, the application of restorative justice has its own complexities that are not found in ordinary crimes. The unequal power *dynamics* between perpetrators and victims, as well as the potential manipulation of the restorative process by more dominant perpetrators, are the main concerns of legal feminists. Kathleen Daly, one of the leading scholars in this field, warns that restorative justice should not be applied

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<sup>10</sup> Kathleen Daly, 'Restorative Justice: The Real Story,' *Punishment and Society*, Vol. 4, No. 1 (2002), p. 62.

mechanically in cases of gender-based crimes, but rather should be accompanied by security guarantees, standardized procedures, and adequate state oversight.<sup>23</sup> In Indonesia, the normative framework of restorative justice has begun to take shape, although it is still partial.<sup>11</sup> Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, Perpol Number 8 of 2021, and various PERMAs are the first steps that should be appreciated. However, as noted by Mudzakkir, these regulations have not been integrated into one coherent system and still leave large gaps, especially for cases of power-related crimes such as domestic violence.<sup>12</sup> Georg Wilhelm Friedrich Hegel's dialectical method offers a very relevant analytical framework for understanding the tension between the retributive and restorative paradigms in the handling of domestic violence. In Hegelian logic, every social reality develops through a thesis-antithesis-synthesis process, in which a statement (thesis) is confronted with its negation (antithesis), and from the confrontation of the two arises a new, higher reality (synthesis).<sup>13</sup>

In the context of this study, the thesis is the dominance of the retributive paradigm in Indonesian criminal law which views domestic violence as a crime that must be answered by criminalizing the perpetrator. This paradigm originated from the Western criminal law tradition adopted through colonial codification, and is still very influential in criminal justice practice in Indonesia to this day. The antithesis is the realization that the retributive paradigm has fundamental limitations in addressing domestic violence: it does not heal the wounds of the victim, does not repair damaged relationships, and does not effectively prevent the repetition of violence.<sup>14</sup> The synthesis of this dialectic does not mean the elimination of criminal sanctions, but rather a paradigm transformation about the purpose

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<sup>11</sup> I Kadek Destriyatna, 'The Application of Restorative Justice in Domestic Violence Case Resolution,' *Kertha Patrika Journal*, Vol. 43, No. 2 (2021), p. 130.

<sup>12</sup> Mudzakkir, *op.cit.*, pp. 95–98.

<sup>13</sup> G.W.F. Hegel, *Phenomenology of Spirit*, trans. A.V. Miller (Oxford: Oxford University Press, 1977), p. 51. Translation of Hegel's dialectic in the context of Indonesian legal philosophy by Kaelan, *op.cit.*, p. 210.

<sup>14</sup> Arifin, *op.cit.*, p. 75

and how the criminal law system works. The Hegelian synthesis in this context is a paradigm of domestic violence law that integrates the positive elements of retributivism (legal certainty, deterrence, community protection) with the positive elements of restoratism (victim recovery, perpetrator rehabilitation, reconstruction of social relations), all within the framework of the values of Pancasila which became *the Grundnorm* Indonesian legal system. Reiner Krolls, in his study of modern legal dialectics, reminds that synthesis in legal dialectics is never final and static. It is always the starting point for a new dialectic at a higher level. Similarly, the integration of Pancasila-based restorative justice in handling domestic violence is only one phase in the dialectical development of Indonesian criminal law towards a more just system.<sup>15</sup>

### **3. The Legal Philosophy of Pancasila as the Foundation of Restorative Justice**

Pancasila as the legal philosophy of the Indonesian state is not just a political ideology, but a value system that has profound implications for the way the Indonesian legal system should operate. Notonagoro, a prominent Pancasila philosopher, explained that Pancasila contains basic *values*, instrumental values, and praxic values that together form the *weltanschauung* of the Indonesian nation about justice, humanity, and community life.<sup>16</sup> The First Precept, the One Godhead, gives a transcendental dimension to the concept of justice in Indonesian law. In the context of domestic violence, this precept means that violence is not only a violation of positive law, but also a violation of the moral order that comes from divine values believed by Indonesian society. The accountability of domestic violence perpetrators therefore has a moral-spiritual dimension that cannot be fully reduced to a formal criminal count. Restorative justice, through a process of mediation and reconciliation, provides space for this dimension of moral-spiritual accountability to be expressed and processed.<sup>17</sup>

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<sup>15</sup> Prasetyo, op.cit., p. 35.

<sup>16</sup> Notonagoro, op.cit., p. 43.

<sup>17</sup> Kaelan, op.cit., p. 130.

The Second Precept, A Just and Civilized Humanity, is the most direct foundation for a restorative approach to domestic violence. This principle demands that every human being be treated according to his dignity and dignity as a human being, without exception, included in the context of legal proceedings. Victims of domestic violence have the right to receive dignified treatment, be heard, be trusted, and protected during the legal process. On the other hand, perpetrators also have the right to a fair process and the opportunity to repent, change, and be reintegrated into society instead of being exiled for life in the stigma of crime. The Third Precept, Indonesian Unity, has relevance to the communal dimension of restorative justice. Crime, including domestic violence, not only damages the individual relationship between perpetrator and victim, but also tears apart broader social networks: families, communities, and even communities. Restorative justice, with its communal and inclusive approach, has the potential to not only restore individual relationships, but also to reinvigorate damaged social networks, a goal that is very much in line with the value of unity in Pancasila.<sup>18</sup>

The Fourth Precept, Leadership Led by Wisdom in Deliberation/Representation, contains the principle of deliberation as a method of decision-making that is unique to Indonesia. These values directly resonate with the core mechanism of restorative justice, which is a forum that engages the parties to jointly formulate acceptable settlements. *Family group conferencing*, *victim-offender mediation*, and various other restorative models are basically modern institutionalizations of the value of deliberation that has long been rooted in local Indonesian traditions.<sup>19</sup> The fifth precept, Social Justice for All Indonesian People, emphasizes that justice is not only an individual affair, but has a structural and social dimension. In the context of domestic violence, social justice means that the legal system must also deal with structural factors that create the conditions for domestic violence: gender inequality, poverty, lack of access to education for women, and so on. True restorative justice

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<sup>18</sup> Notonagoro, op.cit., pp. 55–58.

<sup>19</sup> Julie Stubbs, 'Restorative Justice, Gendered Violence and Indigenous Women,' in *Restorative Justice and Violence Against Women*, ed. James Ptacek (Oxford: Oxford University Press, 2010), p. 111.

does not focus only on a single incident of violence, but also on the transformation of the social structure that perpetuates the violence.

#### **4. Reconstruction of the Restorative Justice Model in Handling Domestic Violence**

Based on the dialectical and philosophical analysis above, a comprehensive restorative justice model for handling domestic violence in Indonesia can be formulated. This model is built on four main pillars that reflect the values of Pancasila. The first pillar is Ensuring Safety and Autonomy of Victims. Before any restorative mechanism can begin, the physical and psychological safety of the victim must be fully ensured. This means temporary separation of the perpetrator from the victim (if necessary), the victim's access to shelter, counselling, and independent legal support. The victim's participation in the restorative process must be completely voluntary, not the result of pressure from any party, including from the family or the law apparatus itself.<sup>20</sup> The second pillar is Meaningful Perpetrator Accountability. Restorative justice is not a way to avoid accountability. Instead, he demands deeper and more authentic accountability from the perpetrators not just to serve a prison sentence, but to fully acknowledge the impact of his actions, commit to change, and take concrete steps to recover the losses caused. Domestic violence rehabilitation programs (*batterer intervention programs*) must be a mandatory component in every restorative mechanism.

The Third Pillar is Strict State Supervision. Given the typical vulnerability of domestic violence cases to manipulation, the restorative process must be under adequate state supervision. Mediators must be professionals who are specially trained in the dynamics of gender-based violence, not just community leaders or religious leaders without adequate provisions. The state must ensure that the restorative process does not become a mechanism of impunity for the perpetrators.<sup>21</sup> The Fourth Pillar is Structural

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<sup>20</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes* (New York: United Nations, 2020), p. 29.

<sup>21</sup> UNODC, *op.cit.*, p. 47.

Transformation. A true restorative model must be accompanied by structural transformation efforts that address the root causes of domestic violence. This includes women's economic empowerment programs, public education on gender equality, legal culture reform among law enforcement officials, and strengthening domestic violence victim service institutions throughout Indonesia. The application of the Pancasila-based restorative justice model in domestic violence cases has a number of significant potentials. First, it has the potential to increase access to justice for victims who have been reluctant to report because they are afraid of the impact of criminal law on perpetrators who still have an emotional and economic relationship with the victim. Second, by focusing on relationship recovery and behavior change, this approach has the potential to be more effective in preventing the recurrence of violence than just criminalization.<sup>22</sup>

Third, from the perspective of social costs, the resolution of domestic violence cases through standardized restorative mechanisms has the potential to reduce the burden on the already overburdened criminal justice system, while providing faster and more relevant resolution for the victims' real lives. Fourth, this model is in line with the global trend of criminal justice reform which increasingly recognizes the limitations of a punitive approach alone. On the other hand, there are serious limitations that must be honestly acknowledged. Empirical research shows that restorative justice can be harmful when applied in contexts where there is an extreme power imbalance between perpetrators and victims, as is common in domestic violence cases. A study conducted by Stubbs in Australia shows that without strong safety guarantees and strict procedures, the mediation process in domestic violence cases can legitimize the perpetrator's control over the victim and reinforce the existing dynamics of violence.<sup>23</sup> Another limitation stems from the reality of Indonesia's institutional capacity. The implementation of a comprehensive restorative model requires specially trained human resources, adequate victim service infrastructure, and an effective

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<sup>22</sup> Destriyatna, op.cit., p. 136.

<sup>23</sup> Stubbs, op.cit., pp. 115–117.

surveillance system for uneven conditions throughout Indonesia, especially in remote areas. Therefore, the necessary legal reform is not only normative-regulative, but must also be accompanied by real investment in institutional capacity.

The dialectic between restorative justice and the philosophy of Pancasila in the context of domestic violence has a number of concrete implications for Indonesia's legal reform agenda. First, a comprehensive revision of Law No. 23 of 2004 concerning PKDRT is needed to integrate a standardized restorative mechanism while maintaining and strengthening victim protection. This revision must be carried out by meaningfully involving the representation of victims of domestic violence, women's organizations, and gender-responsive criminal law experts.<sup>24</sup> Second, it is necessary to establish a special regulation (*lex specialis*) that regulates the restorative justice mechanism in domestic violence cases comprehensively, including the requirements for implementation, procedures, mediator competency standards, supervision mechanisms, and special protection for victims during and after the restorative process. This regulation must explicitly prohibit the application of mediation that threatens the safety of the victim or that is carried out without the free and informed consent of the victim.

Third, there is a need for legal culture reform among law enforcement officials through systematic education and training on gender perspectives, domestic violence dynamics, and trauma-informed approaches in handling cases. Without this reform of the legal culture, any normative change risks becoming *a law in the books* that has never been a *law in action*.<sup>25</sup> Fourth, Indonesia needs to develop a contextual restorative justice model based on local *wisdom*, not just adopting Western models. The various customary practices and traditions of conflict resolution that exist in various regions of Indonesia, which are essentially restorative, can be a rich

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<sup>24</sup> Wahyuni, op.cit., p. 261.

<sup>25</sup> Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), p. 15. Friedman distinguishes between law in the books and law in action.

resource for the development of an authentic Indonesian restorative model. However, this process must be done critically, ensuring that the values of local wisdom adopted do not perpetuate patriarchy or place social harmony above individual justice for the victim.

## **E. CONCLUSION**

The dialectic of restorative justice in domestic violence cases through a review of the legal philosophy of Pancasila has resulted in a number of important conclusions. First, there is a real tension between the dominant retributive paradigm in Indonesia's positive legal system and the substantive needs of victims of domestic violence and with the values contained in the philosophy of Pancasila. This tension is dialectical and productive, in the sense that it encourages the evolution of the legal paradigm towards a more comprehensive model. Second, restorative justice has a deep resonance with the values of Pancasila. The Divine Precept provides a moral-spiritual dimension to the accountability of the perpetrator; The Humanitarian Precept demands dignified treatment for victims and perpetrators; The precept of the Union wants the restoration of damaged social networks; The People's Precept mandates a participatory deliberation process; and the Precepts of Social Justice demand structural transformation that addresses the root causes of violence.

Third, the synthesis of the thesis-antithesis dialectic in handling domestic violence is a Pancasila-based restorative justice model based on four pillars: ensuring safety and victim's autonomy; meaningful accountability of perpetrators; strict state surveillance; and structural transformation. This model is not a compromise between justice and injustice, but an approach that has the potential to realize more substantive justice than what has been offered by the retributive approach alone. Fourth, the normative implications of this conclusion are the need for comprehensive legal reform, including the revision of the Law on Domestic Violence and Domestic Violence, the establishment of special regulations on restorative mechanisms for domestic violence, the reform of the legal culture of law enforcement officials, and the development of a contextual

restorative model based on local Indonesian wisdom. This legal reform must be carried out with a firm commitment to the principle of victim protection as a top priority, in line with the constitutional mandate of Article 28G of the 1945 Constitution on the right of everyone to personal protection from various forms of violence.

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