

Legal Analysis of The Implementation of Restorative Justice in Domestic Violence Cases

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Abstract

This study aims to analyze the implementation of restorative justice in domestic violence (DV) cases from a positive legal perspective. The approach used is normative juridical, examining legislation, doctrine, and cases. Restorative justice, as an alternative to resolving criminal cases, emphasizes restoring relationships between perpetrators, victims, and the community without neglecting substantive justice. In cases of domestic violence, its implementation faces a dilemma between social recovery and protecting the rights of victims, particularly women and children. The analysis shows that the implementation of restorative justice in DV cases can only be carried out with caution, while still observing the principle of non-discrimination and the victim's right to a sense of security. The effectiveness of restorative justice in DV cases depends heavily on oversight of its implementation.

Keywords: Domestic Violence, Restorative Justice, Victim

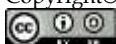
Abstrak

Studi ini bertujuan untuk menganalisis implementasi keadilan restoratif dalam kasus kekerasan dalam rumah tangga (KDRT) dari perspektif hukum positif. Pendekatan yang digunakan adalah yuridis normatif, dengan meneliti undang-undang, doktrin, dan kasus-kasus. Keadilan restoratif, sebagai alternatif penyelesaian kasus pidana, menekankan pemulihan hubungan antara pelaku, korban, dan masyarakat tanpa mengabaikan keadilan substantif. Dalam kasus kekerasan dalam rumah tangga, implementasinya menghadapi dilema antara pemulihan sosial dan perlindungan hak-hak korban, khususnya perempuan dan anak-anak. Analisis menunjukkan bahwa implementasi keadilan restoratif dalam kasus KDRT hanya dapat dilakukan dengan hati-hati, sambil tetap memperhatikan prinsip non-diskriminasi dan hak korban atas rasa aman. Efektivitas keadilan restoratif dalam kasus KDRT sangat bergantung pada pengawasan implementasinya.

Kata kunci: Keadilan Restoratif, Kekerasan dalam Rumah Tangga, Korban

Introduction

Domestic violence remains a dark shadow that haunts many families. Although Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) has been in effect for two decades, the number of domestic violence cases continues to trend upwards year after year. The National Commission on Violence Against Women (Komnas Perempuan) report notes that relationship-based violence, including domestic violence, still dominates the cases of violence against women received each year. This situation indicates that law



enforcement through a retributive approach has not fully reduced the problem of domestic violence in society (Lestari: 2022).

From a social science perspective, crime is defined as a social phenomenon born of structural injustice or a manifestation of the diversity of human behavior, which is a reaction to the socioeconomic class conditions of an individual or group. Regardless of origin, people in poor economic conditions and pressed for basic necessities, coupled with a lack of faith, tend to think short-term. They might even justify any means to meet their needs (Rahmayanti: 2023, 292).

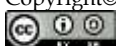
In criminal law, criminalization is a part of criminal policy. Criminal policy is an effort made by the state to combat crime which is essentially an integral part of efforts to protect society which aims to achieve welfare in society (Ismaidar, et.al: 2017). In a space crowded with emotional conflict and unequal power relations, restorative justice is beginning to be seen as an alternative path that provides more space for victim recovery. Restorative justice essentially places the perpetrator, victim, and community in a resolution forum that prioritizes dialogue, accountability, and recovery, rather than solely punishment. This approach is considered relevant when domestic violence cases involve relationships that are sought to be maintained, especially when victims desire a swift, safe resolution and restoration of family relationships.

Restorative justice is a resolution process conducted outside the criminal justice system, involving the victim, perpetrator, the victim's family, the perpetrator, the community, and other parties with a stake in the crime to reach an agreement and resolution. Restorative justice is a fair resolution involving perpetrators, victims, their families, and other non-criminal parties, working together to resolve the crime and its consequences, prioritizing restoration rather than retribution (Rahul, et.al: 2022).

However, the application of restorative justice in domestic violence cases is not without debate. Some academics and women's activists warn that the approach can become a dangerous compromise if implemented without oversight, as perpetrators can avoid due process. This concern stems from the often-recurrent nature of domestic violence and its structural roots, such as gender power imbalances. Therefore, the practice of restorative justice in domestic violence cases is crucial to ensure that the approach does not violate the principle of victim protection (Pranoto: 2023). Certain cases illustrate this issue. For example, in a domestic violence case in Surabaya in 2022, a husband who abused his wife was successfully resolved through restorative justice because the victim expressed a desire to reconcile for the sake of the children. Conversely, in a case in Tangerang in 2023, restorative justice efforts were rejected by the police because the victim's injuries were severe and potentially endangered her safety if the perpetrator was not prosecuted.

On the other hand, there was a case in Yogyakarta in 2021, where the implementation of restorative justice was effective after the perpetrator admitted his guilt, provided compensation, and agreed to participate in a family counseling program. In this case, the victim stated that she received psychological recovery and felt safe after the village officials' commitment to monitoring. This example demonstrates that restorative justice can provide solutions in certain situations, as long as the procedures are followed fairly.

These diverse realities on the ground are interesting to examine in more depth. Research on restorative justice practices in domestic violence cases can explain how legal, social, and cultural dynamics work to determine the effectiveness of case resolution. It can also reveal the extent to which law enforcement officials understand the normative



boundaries of restorative justice and how these mechanisms impact the psychological well-being and safety of victims (Rahmawati: 2021).

Law enforcement officers have been provided with guidelines through Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice. However, this regulation still leaves room for interpretation, particularly in determining whether a domestic violence case can be categorized as a crime that can be resolved through restorative justice. Meanwhile, the Domestic Violence Law firmly emphasizes victim protection and efforts to stop violence as top priorities. Both require harmonization to avoid conflicts of interest between relationship restoration and law enforcement. Another problem arises when observing the behavioral patterns of victims, who often experience psychological pressure, economic dependence, and even threats from perpetrators. Many domestic violence victims seek peace not because the situation is secure, but because of social pressure or fear of public stigma. In such circumstances, the use of restorative justice must be ensured not to perpetuate systematic violence. This is an important tool for testing whether the restorative justice process is truly free from coercion and carried out on a legitimate voluntary basis (Wibisana: 2021).

The reasons for parties to resolve their disputes through deliberation or non-litigation are considered effective and efficient, as an alternative to reaching consensus or deliberation, resulting in a win-win solution for all parties. Whereas litigation or court resolution involves both winners and losers, resulting in unsatisfactory decisions for the losing party (Abdul Rahman, et.al: 2023). The reasons and necessity for implementing alternative dispute resolution include guilt and remorse on the part of the perpetrator, followed by an agreement to reach a settlement between the perpetrator and the victim. Therefore, reasons for expungement of criminal penalties can generally be divided into two types: justification, which relates to the act, and forgiveness, which relates to the individual or perpetrator's mental state (Muhammad Arif: 2022, 308).

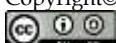
Therefore, the application of restorative justice is questionable, whether it aligns with the principles of due process of law, the rights of victims, and the goal of family protection. Furthermore, this discussion can guide the development of more measured recommendations regarding the requirements, limitations, and procedures for restorative justice in domestic violence cases. Thus, this discussion will not only be theoretical but will also provide practical benefits in efforts to improve the implementation of restorative justice in handling domestic violence.

Based on the background of the problem described above, the following issues will be discussed in this research:

1. What are the legal regulations regarding the implementation of restorative justice in cases of domestic violence?
2. What efforts are made to ensure that the implementation of restorative justice does not neglect the protection of the rights of victims of domestic violence?

Methods Research

The type of research used in this discussion is normative legal research, which focuses on the study of applicable positive legal norms and the legal principles governing the implementation of restorative justice in cases of domestic violence (KDRT). This research does not examine community behavior or empirical data, but rather focuses on primary legal materials such as statutory regulations, the Criminal Code (KUHP), Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and case studies. Additionally, secondary



legal materials are used in the form of literature, scientific journals, and the opinions of legal experts related to this research topic. The approaches used include a statute approach and a conceptual approach to understand the basic principles of the application of restorative justice in the criminal justice system (Peter Mahmud Marzuki: 2017, 35).

Data analysis in this normative legal research was conducted using qualitative analysis methods. Data obtained from primary, secondary, and tertiary legal materials were inventoried, classified, and systematically described, then interpreted according to legal principles and theories. The results of this analysis were used to answer the research questions by providing logical legal arguments. The researcher interpreted laws and regulations related to restorative justice and domestic violence, taking into account the principles of victim protection, justice, and conformity with prevailing legal values in society (Soerjono: 2019, 14).

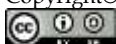
Results and Discussion

Legal Regulations Concerning the Implementation of Restorative Justice in Domestic Violence Cases

The Indonesian Criminal Law System has entered a new phase in its development. One form of reform within Indonesian criminal law is the regulation of criminal law from the perspective of achieving justice, focusing on the improvement and restoration of conditions after an incident and the criminal justice process. This is known as restorative justice, which differs from retributive justice (which emphasizes justice in retribution) and retributive justice (which emphasizes justice in compensation) (Nugraha: 2024).

The form of the Criminal Code Bill represents a material reform of criminal law, this reform is an effort to realize the ideals of law, so it can be said that the Criminal Code Bill is a manifestation of the Indonesian personality. The orientation of legal reform is not only to improve the law, but to replace it with a better law, so that the Criminal Code Bill does not only make changes deemed necessary to free itself from the legal paradigm of colonial heritage. Legal reform can be used as a basis for determining the direction of national character formation, the form of legal reform is a real condition towards an ideal condition, so that the Criminal Code Bill is a method for carrying out social and cultural transformation of society in a planned manner. The principle of restorative justice accommodated in the Criminal Code Bill can be seen in the provisions of several articles including Article 2, Article 12, Article 54 and Article 55 (Gilang: 2024, 7370).

The implementation of restorative justice in cases of domestic violence (KDRT) falls within a sensitive legal framework, as domestic violence is a crime that touches the private sphere but has public repercussions. Law Number 23 of 2004 concerning the Elimination of Domestic Violence emphasizes that the state protects victims through criminal mechanisms. However, practice shows that non-litigation resolution through restorative justice often emerges as an option for resolving family conflicts, perceived as more reassuring and restoring relationships between the parties. In many cases, law enforcement officials attempt to integrate the principle of restorative justice without eliminating the state's obligation to prosecute the perpetrator (Nurhadi: 2020). The concept of restorative justice itself places the victim, perpetrator, and community in a dialogue to seek a resolution that restores, rather than simply punishes. In domestic violence, this model is unique because economic dependence, emotional ties, and relationships often lead victims to prefer a peaceful resolution over a lengthy judicial process. However, the vulnerable position of victims is a reason to consider that restorative justice is not always appropriate in domestic violence cases.



The Indonesian National Police (Polri) has opened the door through National Police Chief Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice. However, the Regulation still stipulates limitations such as voluntary consent from the victim, the absence of serious threats, and a guarantee that reconciliation is not achieved under pressure from any party. In this case, the state provides space to protect victims. One example is a domestic violence case in Malang Regency in 2022, in which a husband beat his wife, resulting in minor injuries. The victim initially reported the case, but later filed for reconciliation due to financial needs and pressures. The police ultimately prioritized restorative justice, with the condition that family guarantees and ongoing counseling be provided. This case demonstrates that economic reasons are a strong factor in resolving domestic violence.

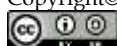
Furthermore, a domestic violence case in Makassar in 2023 demonstrated the dangers of implementing restorative justice without thorough analysis. In that case, the victim, who reconciled with the perpetrator, ultimately experienced repeated violence after the police facilitated the reconciliation process. Cases like this emphasize the importance of caution before pursuing a peaceful resolution. Legally, restorative justice in domestic violence cases is also linked to Article 51 of the Domestic Violence Law, which allows for restorative justice to protect families as long as it does not result in serious injury, sexual violence, or death. This article often serves as the basis for stating that even mild domestic violence can still lead to recovery, although a risk assessment for the victim is still required.

From a victimology perspective, resolution through restorative justice provides space for victims to express their feelings, needs, and desired boundaries within the family relationship. Restorative justice allows victims to demand behavioral changes, a commitment to rehabilitation, or counseling as a condition for reconciliation. However, this mechanism is only effective if the victim is safe and free from intimidation (Lestari: 2022).

The implementation of restorative justice must also consider the principle of non-derogable rights, particularly the victim's right to be free from violence and the right to state protection. Problems arise when law enforcement officials push for reconciliation for the sake of efficiency, rather than the victim's needs. When this occurs, restorative justice becomes a tool of compromise that weakens legal protection. The implementation of restorative justice in domestic violence cases can be effective if it involves counsel, is vigilant about power relations, and carries out risk assessments. Ultimately, the law serves not only as a deterrent but also as a healing space for families who genuinely desire to repair their relationships without compromising the safety of the victim. The relationship between formal legal norms and recovery policies is crucial in strengthening the protection of victims' rights while maintaining family integrity that can still be maintained.

Efforts to Ensure the Implementation of Restorative Justice Does Not Neglect the Protection of the Rights of Victims of Domestic Violence

Efforts to ensure that the implementation of restorative justice does not neglect the protection of the rights of victims of domestic violence (KDRT) require an approach that combines legal, psychological, and social aspects. Law Number 23 of 2004 emphasizes that victims are protected by the state, therefore, every recovery process must adhere to the principle of victim protection as a primary principle (Pratiwi: 2022). This means that restorative justice should not be used as a shortcut to resolving cases, but rather as a mechanism that ensures the physical and psychological safety of victims before recovery begins.



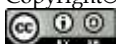
Furthermore, the next step is to ensure that the victim's consent is truly voluntary, without pressure from family, economic resources, or authorities. In many cases of domestic violence, victims find themselves in unequal power relationships, so peace agreements are often not free decisions, but rather survival strategies (Sari: 2020). Therefore, authorities are obliged to ensure that victims understand their rights and are not under duress. This aligns with the principle of victimology, which positions victims as subjects with free will, not objects directed by investigators.

The reason for the parties to resolve disputes through deliberation or non-litigation is as a means or alternative to reaching consensus or deliberation, which is considered effective and efficient and results in a win-win solution for all parties. Whereas resolution through litigation or courts has both winners and losers, resulting in unsatisfactory decisions for the losing party (Abdul Rahman: 2023). The presence of a victim's advocate is also a key requirement in ensuring the protection of rights. The advocate can be from the Witness and Victim Protection Agency (LPSK), a psychologist, a paralegal, or a women's organization such as P2TIP2A. In a domestic violence case in West Surabaya in July 2025, the restorative justice process was only initiated after the victim was accompanied by a psychologist to assess her emotional stability and ability to engage in dialogue with the perpetrator. Without such assistance, the recovery process has the potential to become intimidating for the victim.

A domestic violence case experienced by a resident in West Surabaya was resolved through restorative justice mechanisms. The issue arose after a resident identified as NH committed domestic violence against his wife identified as IN. The victim in this case, the suspect's wife, mother of three children and grandmother of two grandchildren, received legal and psychological assistance throughout the legal and psychological processes. In this case, the resolution was not a compromise regarding the violence, but rather a result of the victim's long-standing unequal relationship. Restorative justice is not intended to erase the perpetrator's guilt; it aims to restore the victim and prevent similar incidents from recurring. In this case, legal assistance was facilitated by the Surabaya Regional Representative Council (DPD Perindo), the Surabaya Police Women and Children Protection Unit (PPA), and the Surabaya City Women's Empowerment, Child Protection, and Family Planning Agency (DP3APPKB).

In this case, assistance was provided to ensure the victim receives both physical and psychological recovery. The case in Surabaya demonstrates serious attention to the psychological well-being of domestic violence victims before taking further legal action, including the potential for restorative justice to ensure the victim is truly prepared and recovers, rather than simply being forced into a negotiation. Furthermore, law enforcement officials must ensure that reconciliation does not deprive the victim of their right to legal protection, including access to safe housing, medical assistance, and legal aid. National Police Regulation Number 08 of 2021 stipulates that every application of restorative justice must prioritize victim recovery, not simply dismiss the case.

Another concrete effort is to facilitate mandatory counseling for both perpetrators and victims. This counseling aims to address the root causes of violence, such as emotional control, jealousy, or psychological instability in perpetrators. Another strengthening effort is to establish a post-reconciliation monitoring mechanism, especially for victims who return to the same household as the perpetrator. This monitoring can be carried out by village officials, social workers, or women's service institutions (Deni: 2021). The next step is to ensure clear boundaries exist for the types of domestic violence that can be referred to restorative justice. Serious violence, sexual violence, and abuse resulting in serious injuries cannot be mediated.



This limitation aims to prevent the misuse of restorative justice as a mechanism for impunity. With clear boundaries, officials will not easily resolve cases that should be brought to the formal justice system.

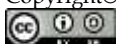
In addition to strengthening law enforcement, public education is also crucial. Many victims of domestic violence do not understand their rights or are afraid to report them due to cultural norms and family pressure. Educational programs through legal counseling, social media, and community organizations can raise awareness among victims so they don't feel obligated to forgive the perpetrator. With proper education, victims can play an active role in determining whether restorative justice is a genuine need or a threat to their safety (Ayu: 2019). All of the efforts outlined demonstrate that restorative justice can only be implemented safely if victim protection is prioritized throughout all stages. Restorative justice must be understood as a healing mechanism, not simply a deliberation that weakens law enforcement. By balancing sensitivity to family dynamics and a commitment to victims' human rights, the implementation of restorative justice in domestic violence cases can be more humane without neglecting the protection mandated by the state.

Conclusion

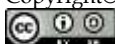
1. Legal regulations regarding the implementation of restorative justice in domestic violence cases fundamentally emphasize the principle of victim protection. Although legal regulations, such as Law Number 23 of 2004, National Police Regulation Number 08 of 2021, and judicial practice, provide space for resolving the issue through restoration, this mechanism can only be implemented in a limited and conditional manner. Restorative justice is not intended to replace criminal proceedings, but rather serves as an alternative for domestic violence cases that do not result in serious injury, do not involve sexual violence, and where family relationships allow for a safe healing dialogue process. Thus, the legal regulations recognize restorative justice as a means of restoration, but emphasize that the continuity of victim protection is a key boundary that must not be overlooked.
2. Efforts to ensure that the implementation of restorative justice does not neglect the protection of the rights of victims of domestic violence require a measurable mechanism. Law enforcement officials are obliged to carry out and ensure that consent is truly voluntary, provide psychological and legal assistance, and guarantee the availability of protection services for victims. Furthermore, the peace process must be limited to certain categories of domestic violence, accompanied by mandatory counseling, post-peace monitoring, and the involvement of women's service institutions. Case studies in various regions demonstrate that restorative justice can only be effective if implemented with a cautious approach, to prevent recurrence of violence and avoid the pressure of power relations within the household. With this commitment, restorative justice can function as a humane recovery mechanism without diminishing the state's responsibility to protect victims.

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