

Legal Study on the Application of Restorative Justice in Cases of Domestic Violence

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Abstract

The application of restorative justice in handling cases of Domestic Violence (DV) focuses on legal aspects, victim protection, and the limits of its application within the criminal justice system. Restorative justice essentially aims to restore relationships and resolve conflicts peacefully, but its application in DV cases cannot be done simply due to power relations, economic dependency, and victim vulnerability. This study uses a normative juridical approach by examining statutory provisions, victimology principles, and empirical case management practices. The study results indicate that positive laws, such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence and Regulation of the Chief of Police Number 08 of 2021, provide space for the limited application of restorative justice, particularly in cases that do not result in serious injuries and do not involve sexual violence. However, this application can only be carried out with conditions including risk assessment, victim support, voluntary consent, and guaranteed protection before and after the recovery process. This study emphasizes that restorative justice should not be used as an excuse to ignore law enforcement or allow perpetrators to have impunity. Therefore, the application of restorative justice in domestic violence cases must always prioritize the safety and rights of victims to ensure that the recovery mechanism functions fairly.

Keywords: Implementation, Restorative Justice, and Domestic Violence

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Introduction

Domestic violence (DV) is a form of human rights violation that occurs within the domestic sphere and is often overlooked because it is considered a private matter. Domestic violence impacts not only the physical but also the psychological, social, and economic well-being of victims. Therefore, the state is obliged to provide protection for victims, as stipulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. This regulation emphasizes that the state must not allow domestic violence to occur without adequate legal action.

In recent years, the concept of restorative justice has begun to be considered as an alternative way to resolve cases, including domestic violence cases. Restorative justice is an approach that emphasizes relationship restoration, dialogue, and mutual agreement between the perpetrator, victim, and community. However, its application to domestic violence cases has sparked debate, as the unequal power relationship between the perpetrator and victim can lead to an unfair recovery process.[1]

Restorative justice is a resolution process carried out outside the criminal justice system, involving the victim, the perpetrator, the victim's family, the perpetrator, the community, and other parties with a stake in the crime, all working together to reach an agreement and resolution. Restorative justice is a fair resolution involving the perpetrator, the victim, their family, and other non-criminal parties, working together to resolve the crime and its consequences, prioritizing restoration over retribution.[2]

Normatively, the law provides space for restorative justice, particularly through National Police Regulation Number 08 of 2021, which regulates the resolution of criminal acts through restoration. However, this regulation still imposes limitations to ensure that the application of restorative justice does not neglect victim protection. This is crucial given that domestic violence cases often involve economic dependence, emotional distress, and the risk of recurrence.

In many cases, victims of domestic violence often refuse to pursue legal proceedings due to economic reasons, fear, or the desire to maintain the integrity of their household. This situation demonstrates that retributive legal processes sometimes do not fully provide the protection victims need. Restorative justice is considered to provide a space for dialogue to create a resolution more suited to the victim's needs, as long as the process is conducted safely and without pressure.[3]

However, the application of restorative justice in domestic violence cases cannot be treated the same as other crimes. The unequal power relationship between the victim and the perpetrator often prevents victims from having full freedom to make choices. Many cases demonstrate that reconciliation can lead to recurrence of violence if not accompanied by oversight. This underscores the need for regulations to prevent the misuse of reparation mechanisms.

From a victimology perspective, victim protection must be a top priority in every domestic violence resolution process. Victims need a safe space, psychological support, legal assistance, and mechanisms to ensure they are not pressured into reconciliation. The principles of victimology emphasize the importance of the victim's safety and well-being as the basis for determining whether restorative justice is appropriate.[4]

The application of restorative justice in domestic violence also needs to be viewed from a law enforcement perspective. On the one hand, restorative mechanisms provide a more flexible and responsive alternative to victims' needs. On the other hand, there are concerns that these mechanisms could be misused to avoid formal legal proceedings, especially if law enforcement officials lack oversight.

Another emerging issue is the public's lack of understanding of the rights of domestic violence victims. Many victims feel obligated to forgive their perpetrators due to family or cultural pressures. In this regard, restorative justice has the potential to become a tool of

compromise that harms victims if not implemented with proper supervision. Therefore, strengthening education and support is a crucial factor in implementing a restorative approach.[5]

Furthermore, women's and children's service institutions have a role to play in ensuring that restorative justice is not forced upon victims. Collaboration between local governments, law enforcement officials, psychologists, and support institutions can help ensure that every decision made is truly based on the needs and safety of victims.[6]

Given the problematic nature of domestic relations, a legal study of the application of restorative justice in domestic violence cases is crucial to ensure that existing policies and practices do not conflict with the principle of victim protection. This study is necessary to examine the extent to which positive law provides space for recovery without neglecting law enforcement against perpetrators of violence.

Therefore, the background of this study is based on the need to understand the relationship between restorative justice, victim protection, and the effectiveness of the legal system in handling domestic violence cases. This study seeks to provide an overview of the legal basis, challenges, and limitations necessary to ensure that the application of restorative justice through deliberation truly provides comprehensive justice for victims without undermining law enforcement efforts.

Based on this background, the further discussion will be a Legal Study on the Application of Restorative Justice in Domestic Violence Cases.

Research Methodology

This study utilizes normative legal research, focusing on the assessment of norms, principles, and legal regulations governing the application of restorative justice in cases of domestic violence (DV). This normative legal research examines primary legal materials such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence, the Criminal Code, and Regulation of the Chief of Police Number 08 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. This research also utilizes secondary legal materials in the form of legal journals, scholarly books, court decisions, and expert doctrines. The purpose of the normative approach is to describe the legal framework underlying the application of restorative justice and to assess its compliance with the principles of victim protection in the criminal justice system.[7]

This research is descriptive-analytical, systematically describing applicable legal provisions and then analyzing how these norms are applied in the practice of resolving domestic violence cases through restorative justice mechanisms. The descriptive approach is used to comprehensively outline the legal regulations, while the analysis is conducted to assess their effectiveness, limitations, and challenges in their implementation, particularly regarding the protection of victims' rights.[8]

Data analysis was conducted using normative qualitative analysis, a data processing method that does not use numbers but rather interprets data based on legal logic, legal principles, and relevant theories. Data was collected from primary, secondary, and tertiary legal materials, then classified and interpreted to identify the relationship between restorative justice norms and the protection of domestic violence victims. The analysis was conducted through systematic and grammatical interpretation to understand the legal objectives governing restorative justice resolution in domestic violence cases. The results of the analysis are presented in the form of structured legal arguments that illustrate the alignment between theory and norms.[9]

Results

Legal Study on the Application of Restorative Justice in Domestic Violence Cases

From a social science perspective, crime is defined as a social phenomenon arising from structural injustice or a manifestation of the diversity of human behavior, which is a reaction to

the socioeconomic class conditions of an individual or social group. Regardless of origin, people who are economically disadvantaged and face pressing needs, coupled with a lack of faith, tend to think short-sightedly. They will arguably justify any means to meet their needs.[10]

In criminal law, criminalization is a component of criminal policy. Criminal policy is the state's efforts to combat crime, essentially an integral part of community protection efforts aimed at achieving social well-being.[11]

The Indonesian criminal law system is entering 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 reparation and restoration after an incident and the criminal justice process. This is known as restorative justice, which differs from retributive justice (which emphasizes retribution) and retributive justice (which emphasizes compensation).[12]

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.[13]

In this regard, restorative justice in cases of domestic violence (KDRT) creates legal dynamics because it involves two equally important interests: restoring family relationships and protecting victims. This demonstrates that Indonesia has normatively recognized the concept of restorative justice through various regulations, including National Police Chief Regulation Number 08 of 2021 concerning Handling Criminal Acts Based on Restorative Justice. However, its application remains limited to ensure that victims are not placed in a dangerous situation.

Law Number 23 of 2004 concerning the Elimination of Domestic Violence provides the legal basis that the state is obligated to protect victims, so any form of resolution through restorative justice must not diminish the victim's rights. Resolution through restorative justice in cases of domestic violence can only be undertaken if there are no elements of serious violence, sexual violence, or other serious threats.[14] This limitation aims to prevent restorative justice from becoming an instrument to avoid legal accountability.

From a victimological perspective, victims of domestic violence often find themselves in an unequal power relationship with their perpetrators, so the decision to reconcile can be influenced by emotional pressure, economic pressure, or fear. The victim's psychological well-being significantly impacts their ability to make informed decisions during the healing process. Therefore, the implementation of restorative justice must be carried out with intensive support.[15]

The restorative justice process must also ensure the victim's consent is truly voluntary. Victims often sign peace agreements due to family pressure or a desire to maintain their marriage, rather than out of free will.

The reasons and need 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, grounds 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's or perpetrator's inner state.[16]

The reason for parties to resolve their disputes through deliberation or non-litigation is because it is a means or alternative to reaching consensus or deliberation, which is considered effective and efficient and produces 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.[17]

In addition to the victim's consent, legal and psychological assistance are crucial in the recovery process. The assistance ensures that victims understand their rights, understand the consequences of reconciliation, and receive emotional support during the restorative justice process. Assistance services from the Center for the Protection of Victims of Violence Against Women (P2TP2A), the Witness and Victim Protection Agency (LPSK), or professional counselors are crucial in protecting victims' interests during the recovery process.[18]

In practice, there are examples of domestic violence cases successfully resolved through restorative justice mechanisms. For example, a minor domestic violence case in Malang in 2022 was resolved on the condition that the perpetrator undergo counseling and report for six months. This step ensures that reconciliation does not end with a written agreement but is accompanied by a monitoring mechanism to minimize the potential for recurrence of violence.

Similarly, with 53 reports of domestic violence in Malang City throughout September 2025, almost all cases were successfully resolved through mediation without resorting to legal proceedings with the police, according to data provided by the Social Services Agency for Women's Empowerment, Child Protection, Population Control, and Family Planning (Dinsos P3AP2KB).

While there are examples of success, there are also cases that demonstrate the weaknesses of implementing restorative justice in domestic violence. The domestic violence case at the East Sabu Police Station in 2025 demonstrated that unsupervised reconciliation can lead to recurrence of violence and increase the risk to victims. To resolve this case, a monitoring element is needed in the reconciliation agreement, requiring the perpetrator to report regularly to the East Sabu Police Station as part of the coaching process. This emphasizes that restorative justice cannot be applied haphazardly and must be supported by an adequate oversight system throughout the reconciliation process.

The role of law enforcement officers is crucial in determining the effectiveness of restorative justice. Law enforcement officers must act professionally, refrain from encouraging victims to reconcile for the sake of efficiency, and prevent restorative justice from becoming an instrument of impunity. Law enforcement officers have a moral and legal responsibility to ensure that any reparation mechanism remains aligned with the goal of victim protection.[19]

The implementation of restorative justice must also consider and coordinate with women's and children's protection agencies. The National Commission on Violence Against Women (Komnas Perempuan) notes that the restorative approach can only be used in certain cases and must be conducted in a safe, open, and controlled environment. Without protective mechanisms, restorative justice can exacerbate victims' vulnerabilities.[20]

From an international legal perspective, various countries implement restorative justice in domestic violence cases with strict protocols that include the involvement of psychologists, professional assessments, and perpetrator rehabilitation programs. This aligns with Julie Stubbs's view that restorative justice can only produce positive results if implemented within a framework of strict supervision and the presence of competent experts.[21]

Restorative justice can be an alternative mechanism for resolving domestic violence cases, but only if implemented with due consideration of the principles of victim protection, assistance, supervision, and clear limitations on the types of cases that can be processed. Implementation without clear standards has the potential to weaken legal protection and increase the risk of recurrence of violence. Therefore, restorative justice should be positioned as a conditional recovery mechanism, not a shortcut in resolving cases.

Conclusion

Legal studies on the application of restorative justice in cases of Domestic Violence (DV) indicate that recovery-based resolution mechanisms can only be implemented on a limited basis and with agreed-upon conditions. Normatively, positive law, through Law Number 23 of 2004 concerning the Elimination of Domestic Violence and Regulation of the Chief of Police Number 08 of 2021, does open up space for restorative justice, but does not make it the primary alternative in handling domestic violence. Restorative justice is only permitted for cases that do not result in serious injuries, do not involve sexual violence, and do not pose a risk of recurrence.

The analysis also shows that the implementation of restorative justice must always prioritize victim protection as a fundamental principle. The recovery process can only be implemented if the victim is safe, has legal and psychological assistance, has given voluntary consent, and is not in a situation of oppressive power relations. Therefore, restorative justice is not a mechanism to weaken law enforcement against perpetrators of domestic violence, but rather a restorative approach that can only be used when it truly aligns with the needs and safety of the victim.

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