

APPLICATION OF RESTORATIVE JUSTICE TO FAMILY VIOLENCE CRIMES

Sumarno¹

Syahrannuddin²

^{1,2}University of Pembangunan Pancabudi, Indonesia
(e-mail: sumarno@dosen.pancabudi.ac.id)

Abstract: The application of restorative justice in efforts to resolve criminal acts of violence in the family is an effort in law enforcement solutions and can act as a mediator in bridging victims and perpetrators to reach solutions in unraveling problems that occur in domestic life. The application of the law through criminal proceedings is carried out if no agreement is reached between the parties as victims and perpetrators. Restorative justice has not been specifically regulated in the provisions of the law, but is an alternative way to solve problems, especially the resolution of domestic violence. The Law on the Elimination of Domestic Violence in reality is a hope in solving the occurrence of domestic violence which in its resolution is very complex and involves various parties in solving social problems and their diversity that occur in community life. It is expected that the government will be more assertive in terms of carrying out its duties and authorities in accordance with the law and indiscriminately in decision-making, firm action in solving problems that occur within the household is a natural thing in providing services to the community in determining the final choice in solving problems faced by each individual.

Keywords: Applicability, Restorative Justice, Violent Crimes, Family

Introduction

According to UNODC, restorative justice is "an approach to solving problems, in its various forms, involving victims, perpetrators, their social networks, judicial bodies and communities". (Dandurand & Griffiths, 2006). Restorative Justice is a new effort to look at the criminal law enforcement process that focuses on how to repair the harm caused to victims and relationships with rule-breaking perpetrators. Restorative justice began to emerge since the 1970s starting from mediation between victims and perpetrators (Rosadi & Satria, 2022)

Efforts to resolve cases through the judicial system that lead to court verdicts are a law enforcement in the slow lane. This is because law enforcement is through a long distance, through various levels ranging from the Police, Prosecutor's Office, District Court, High Court and even to the Supreme Court. In the end, it has an impact on the accumulation of cases that are not small in court. (Rahardjo, 2003)

For this reason, the thought arises of resolving legal problems outside the court or non-litigation. Restorative Justice has come to the attention of legal observers and practitioners. A British criminologist, Tony Marshall gave a definition Restorative Justice as a process that involves all parties who have an interest in the problem, all parties who have an interest in a particular violation issue to come together to collectively resolve how to respond and resolve the consequences of the violation and its implications for the future. (Rahawarin et al., 2021)

Restorative justice can be a policy choice for law enforcement officials. Restorative justice efforts are carried out before entering law enforcement. One form is through mediation between the victim and the perpetrator. Law enforcement officials can act as mediators to bridge victims

and perpetrators to reach solutions to problems. Law enforcement through criminal proceedings is carried out if a meeting point is not reached between the victim and the perpetrator. At this time, restorative justice has not been specifically regulated in statutory provisions. Law enforcement institutions, such as the Indonesian National Police (Polri) and the Attorney General's Office (Kecorn) still interpret themselves regarding the implementation of restorative justice.

That thus, in resolving conflicts that are highlighted not affirming the imposition of criminal sanctions, but the active role of conflict parties through mediation or compensation for material and immaterial losses in the form of restitution or compensation and restoration of harmony in humanitarian relations between the parties (humanization).

Crime is a conflict between individuals that results in harm to the victim, society, and the perpetrator himself. The goal to be achieved from the criminal justice process is to reconcile the parties while mutually remediating the harm caused by the crime. The criminal justice process should facilitate the active participation of victims, offenders, and the public; criminal justice should not be dominated by the state to the exclusion of others.

Basically, restorative justice prioritizes the meaning of meetings between interested parties in crimes and the period after. As stated by Achmad Ali who quoted the opinion of Howard Zher, a pioneer of restorative justice in the United States, interpreting restorative justice is "a process that involves interested parties of a specific breach and jointly identifies losses and fulfills obligations and needs and places change as an acceptable right". (Rahawarin et al., 2021)

Literature Review

Law enforcement is a problem faced by every society. The word law enforcement has the connotation of enforcing, implementing provisions in society, so that in a broader context law enforcement is a process of realizing abstract concepts into reality. The law enforcement process in reality culminates in its implementation by the law enforcement officials themselves. (Ishaq, 2022)

The law cannot be carried out by itself, meaning that the law is unable to realize its own promises and wills contained in the legal regulations. That promise and will, for example, is to give protection to someone, to bring a crime against someone who has committed a criminal offence. In order to implement the law it is not only seen as a set of static regulations, but as a process.

In order to implement the application of law, law application organizations are compiled, such as police, prosecutors, courts. Without that organization, the law cannot be enforced in society. Every organization works within a specific social context (subculture). Each person or organization in question carries out certain policies or activities that are perceived to be more profitable. In other words, in such organizations there is always a tendency to replace official objectives as stipulated in legal regulations with everyday policies or actions. Perceived policies can maximally increase the benefits to be achieved, by suppressing to a minimum obstacles to the work of the organization.

The police agency was given the task of dealing with violations of the law, the prosecutor's office was prepared with the aim of preparing for the examination of cases before the court; and so on with every organization in the framework of law administration. The court as a dispute resolution institution used by the community begins by accepting delegation from the public prosecutor, then continues with examining and ends with deciding cases based on the principle of free, honest, and impartial according to the manner regulated by law. (Ishaq, 2022)

The implementation of the criminal justice system (as a tool for combating a crime) is carried out by submitting criminals to justice so as to cause a deterrent effect to the perpetrators of crimes and make potential criminals think twice before committing a crime.(Waskito, 2018)

Legal culture is inherent in anyone, both state administrators, law enforcers, law implementers and the wider community. Because judges are part of law enforcement who play a role in making decisions that are expected to provide a sense of justice for the community, of course, the legal culture of judges in law must also be reformed in accordance with their functions and roles as determinants of the rule of law.(Dewi, 2010)

On the victim side, restorative justice gives the power to give the perpetrator the opportunity to express remorse to the victim and is better if facilitated to meet in a meeting that is carried out professionally. This restorative justice perspective is as a result of a legal shift from *lex talionis* or retributive justice by emphasizing restorative efforts. In an effort to recover victims when with a more retributive and legalistic approach option it is difficult to treat the victim's injuries. Restorative justice, then, seeks to emphasize the perpetrator's responsibility for his or her behavior that causes harm to others.(Sunarso et al., 2022)

Method

Method as a way or technical in research is very important for a researcher to know in order to know what method is appropriate to use in order to realize his research. This research is directed to normative legal research. Normative legal research is also called doctrinal legal research. This type of legal research conceptualizes law as what is written in laws and regulations (law in books) or law is conceptualized as rules or norms that are a benchmark for human behavior that is considered appropriate.

Data collection and collection is carried out by means of library research or also called document studies covering primary, secondary and tertiary legal materials. The literature method is used when prospective researchers look for answers to problem formulations in reading sources (references), such as book literature, papers, journals, internal, and so on. Study the literature and systematically analyze materials that are mainly related to illegal acts including other materials that are related and discussed. The data in this study leads to secondary data consisting of primary, sukender, and tertiary legal materials

Result and Discussion

Law enforcement is the center of all life activities, law starting from legal planning, law formation, law formation and legal evaluation. Law enforcement is essentially an interaction between various human behaviors, representing different interests within the framework of mutually agreed rules. Therefore, law enforcement cannot be regarded solely as a process of applying the law as legalistic people argue. However, the process of law enforcement has a broader dimension than this opinion, because law enforcement will involve the dimension of human behavior.

With this understanding, we can know that legal problems that will always stand out are "law in action" problems. The law enforcement process, in Soerjono Soekanto's view, is influenced by 5 factors:(NIM, n.d.) 1. Legal or regulatory factors. 2. Factors of law enforcement officials, namely parties involved in the process of making and implementing the law. Which has to do with mentality problems. 3. Factors of facilities or facilities that support the law enforcement process.. 4. Community factors, namely the social environment in which the law

applies or is applied, are related to legal awareness and compliance that reflects in community behavior. 5. Cultural factors, namely the results of work, creation and taste based on human charities in the association of daily life.

The negative influence of domestic violence is also diverse and not only family relationships, but also on members in the family in it. In terms of serious physical and psychological injuries directly suffered by female victims, the survival and endemic nature of domestic violence ultimately limits women's opportunities to obtain equal legal, social, political and economic rights in the midst of society. Apart from the victimization of women, domestic violence also results in fractured family relationships and children which then become a source of social problems.

In general, most of the time children are in the family. Therefore, it is not impossible if a naughty child is caused by the influence of his family situation, especially if the family condition is abnormal. Abnormal families can be families that experience divisions or often referred to as broken homes. Family breakups (broken homes) often result in children getting less love and attention from father and mother or even both. Then Sudarsono said that "both parents are still intact, but because each family member (father and mother) has a busy life so that both of them do not have time to pay attention to the child's education.(NIM, n.d.)

The definition of restitution and compensation is a term that in its use is often interchangeable. According to Stephen Schafer, the difference between the two terms is that compensation arises from the request of the victim, and is paid by the community or is a form of community or state responsibility (the responsibility of the society), (*the responsibility of the society*), (the responsibility of the society), while restitution is more criminal, arising from the decision of the criminal court and paid by the convicted or is a form of responsibility of the offender. (Surach Winarni, 2017)

In general, gender bias also puts women in a weak position, thus making men more dominant in the family system and society, this is very detrimental to women, so women experience violence more often. Domestic violence is often called hidden crime. It is so called because both the perpetrator and the victim try to keep the act a secret from public view. It is also sometimes referred to as domestic violence because it occurs in the domestic sphere.(Soeroso, 2010)

One of the things done by the government in order to provide protection for women is the ratification of the convention on the elimination of all acts of discrimination committed against women, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Haryanti, 2016) which has been ratified by Indonesia through Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.

In the development of criminal case settlement, certain cases are no longer resolved through formal channels but are resolved by making peace between the perpetrators and victims known as penal mediation, settlement by means of peace or better known in Indonesian society through consensus deliberation with customary institution mechanisms, the resolution of criminal cases in the criminal justice system is carried out through the discretion of the police. In addition, extrajudicial settlements are also found in cases of children whose settlement is outside the court through a diversion mechanism by taking into account the type of crime and the form of action committed. (Liyus & Wahyudi, 2020)

The purpose of restorative justice in the context of criminal law is to empower victims, perpetrators, families and communities to improve the consequences of a criminal act that has been committed, by using awareness and awareness as a basis for improving community life (the

concept of viewing justice not from one side, but looking at various parties, both for the benefit of victims, perpetrators and society).

Penal mediation as an instrument of restorative justice is known by a variety of different terms. The earliest known terminology is the Victim-Offender Reconciliation Program. This term is rarely used because many experts consider the use of the term reconciliation inappropriate because it is too religious and does not describe the peace process. The next more widely used term is Victim-Offender Mediation. One of the world's leading experts on penal mediation, Mark Umbreit, uses the term humanistic mediation.

The term mediation is not only used in the realm of civil law but also used in the realm of criminal law, the use of the term penal mediation is used to reconcile those who are criminal litigants if in the Netherlands it is known as strafbemiddeling while in France this term is known as de mediation penale.(Salim, 2013)

Legal protection is a form of protection given to the community against the arbitrariness of other parties, be it rulers, entrepreneurs, or people who have a better economy from the victim. In principle, legal protection of the weak is always associated with the protection of the rights of the weak or the victim.(Salim, 2013)

The word legal protection linguistically has similar elements, namely (1) elements of protective measures, (2) elements of parties who protect, (3) elements of ways of protecting. That way, the word protection means an act of protection or action to protect certain parties intended for certain parties using certain methods.(Parvez et al., 2022) Law is universal, one of the characteristics of law, meaning that the law applies everywhere, every country in the world has a law.(Erwin, 2011) Legal relationship is a relationship between two or more people, both parties have their own rights and obligations. (Nasution & Lubis, 2016)

The definition of victim that has something to do with in a criminal act is also referred to as victim, which by an expert Abdussalam gives the definition of victim is a person who has received physical suffering or mental suffering, loss of property or resulted in death for acts or attempts of minor offenses committed by a criminal act and others. (Bambang, 2014)

Pompe argues that the words strafbaar feit can theoretically be formulated as "a violation of norms (interference with the rule of law) intentionally or unintentionally committed by an offender, where the punishment of the offender is necessary for the maintenance of legal order and the security of the public interest.(WARUWU, 2022) Crime contains various purposes, including retaliation, preventing the repetition of criminal acts, preventing others from committing the same act, having the function of maintaining peace and conflict resolution.(Sambas, 2010)

Criminal acts are actions that are prohibited by the rule of law and threatened with crime, where the definition of actions here in addition to active actions is also passive actions (not doing something that is actually required by law). (Pratama, 2021) Simons defines strafbaar feit as an unlawful act that has been done intentionally or unintentionally by a person who can be held accountable for his actions and by law has been declared a punishable act.(AGUSTIAWAN, 2022)

Restorative justice is a foreign terminology that has only been known in Indonesia since the era of the 1960s with the term Restorative Justice. In some developed countries, restorative justice is not just a discourse by academics of criminal law or criminology. North America, Australia and several countries in Europe Restorative justice has been applied in the conventional stages of the criminal justice process, starting from the investigation, prosecution, adjudication and execution stages (Wahid, 2010)

According to Eva Achjani Zulfa, restorative justice is a concept of thought that responds to the development of the criminal justice system by emphasizing the need for community

involvement and victims who are felt to be excluded by mechanisms that work in the current criminal justice system.(Maulana & Agusta, 2021)

On the victim side, restorative justice gives the power to give the perpetrator the opportunity to express remorse to the victim and is better if facilitated to meet in a meeting that is carried out professionally. This restorative justice perspective is as a result of a legal shift from *lex talionis* or retributive justice by emphasizing restorative efforts. In an effort to recover victims when with a more retributive and legalistic approach option it is difficult to treat the victim's injuries. Restorative justice, then, seeks to emphasize the perpetrator's responsibility for his or her behavior that causes harm to others.(Sunarso et al., 2022)

This marriage is also recommended and regulated in Islam because it has a noble purpose, and establishing a home life should be filled with affection between husband and wife and mutual help between the two for mutual benefit in order to build the integrity of the household.(Ragiliani, 2014)

The state recognizes equal rights and standing between women and men. As stated in one of the natural precepts of Pancasila, namely the precepts of Just and Civilized Humanity. It is said that man is recognized and treated according to his dignity and dignity as a creature of God Almighty, who is equal in degree. Their basic rights and obligations, without distinction of ethnicity, descent, religion, and belief, gender, social grievances, skin color, and so on.(Soeroso, 2010)

To realize this wholeness and harmony, it depends on everyone in the household, especially the level of quality of behavior and self-control of each person in the household. Low self-control control over a problem can result in an outlet for anger in the household. This will certainly cause insecurity to people who are within the scope of the household to ultimately lead to domestic violence.

Family and violence are paradoxical at first glance. Violence is destructive, dangerous and frightening, while on the other hand, the family is defined as the environment of human life, feeling shelter, rest, and comfort received by family members. The loss of victims of violence in the family, not only material, but also immaterial, including emotional and psychological shocks, which will directly or indirectly affect their lives.(Gultom, 2012)

Violence is a terminology that is loaded with the meaning and meaning of "suffering", both studied from a psychological and legal perspective, that it contains human behavior (a person/group of people) that can cause suffering to others, (individuals/groups). (Pasalbessy, 2010)

In the Human Rights Law (HAM) it is stated that what is meant by human rights violations is: "Any act of a person or group of people, including state officials, whether intentional or unintentional or negligence that unlawfully reduces, obstructs, obstruct, restrict or deprive a person or group of people of their human rights guaranteed by law, and do not obtain or fear that they will not obtain a fair and correct solution based on applicable legal mechanisms".(Sopacua, 2016)

Conclusion

The conclusions of this lecture are:

1. Domestic violence that occurs can cause victims due to physical, psychological, sexual and neglect violence. So efforts are needed to protect victims, including physical and psychological health recovery. For perpetrators of domestic violence, law enforcement efforts are needed in solving cases of this violence through the judicial process
2. Domestic violence can generally be classified into 2 (two) types, namely internal factors and internal factors. Internal factors include the personality of the person who commits

violence which causes the perpetrator to very easily commit acts of violence When the perpetrator is facing a situation that causes frustration or anger. Then external factors, among others, are factors outside the personality of the perpetrator, acts of violence such as economic difficulties, misappropriation of husband or wife (cheating), and so on.

3. An obstacle in the implementation of the principle of restorative justice in efforts to resolve criminal acts of violence in the family is the need for legal protection for victims in cases of Domestic Violence (KDRT) as stipulated in the Law on the Elimination of Domestic Violence at the empirical level is very far from expectations because the causes of domestic violence are very complex involving social problems and their diversity.

References

- AGUSTIAWAN, M. (2022). *PERLINDUNGAN HUKUM TERHADAP KORBAN TINDAK PIDANA MANIPULASI DATA PRIBADI SECARA ELEKTRONIK (Studi Putusan Nomor 105/Pid. Sus/2019/PN Pbr)*.
- Bambang, W. (2014). *Viktimologi Perlindungan Korban Dan Saksi*. Jakarta: Sinar Grafika.
- Dandurand, Y., & Griffiths, C. T. (2006). *Handbook on restorative justice programmes*. UN.
- Dewi, E. (2010). Peranan hakim dalam penegakan hukum pidana Indonesia. *Pranata Hukum*, 5(2).
- Erwin, M. (2011). *Filsafat Hukum Refleksi Kritis Terhadap Hukum*, Jakarta, PT. Raja Grafindo Persada.
- Gultom, M. (2012). *Perlindungan hukum terhadap anak dan perempuan: kumpulan makalah-makalah seminar*. PT. Refika Aditama.
- Haryanti, S. R. I. (2016). Dualisme Kewenangan Pengawasan Hakim Oleh Mahkamah Agung Dan Komisi Yudisial Dalam Sistem Peradilan Di Indonesia. *Jurnal Hukum Prodi Ilmu Hukum Fakultas Hukum Untan (Jurnal Mahasiswa S1 Fakultas Hukum) Universitas Tanjungpura*, 4(3).
- Ishaq, H. (2022). *Dasar-dasar Ilmu Hukum: Edisi Revisi*. Sinar Grafika.
- Liyus, H., & Wahyudi, D. (2020). Pendekatan Restorative Justice Dalam Penyelesaian Tindak Pidana Kekerasan Dalam Rumah Tangga. *Jurnal Sains Sosio Humaniora LPPM Universitas Jambi*, 4(2), 495–509.
- Maulana, I., & Agusta, M. (2021). Konsep dan Implementasi Restorative Justice di Indonesia. *Datin Law Jurnal*, 2(11), 46–70.
- Nasution, M. S. A., & Lubis, Z. P. (2016). *Hukum dalam Pendekatan Filsafat*. Kencana, Jakarta.
- NIM, S. (n.d.). PENEGAKAN HUKUM PIDANA YANG DILAKUKAN STASIUN PENGAWASAN SUMBER DAYA KELAUTAN DAN PERIKANAN PONTIANAK TERHADAP KAPAL PENANGKAP DI WILAYAH PENGELOLAAN DAN PERIKANAN NEGARA REPUBLIK INDONESIA 711 (WPPNRI 711) LAUT NATUNA. *Jurnal Fatwa Hukum*, 5(4).
- Parvez, A., Superani, A. V., & Juaningsih, I. N. (2022). Rekonstruksi RUU PPRT Sebagai Upaya Perlindungan Hukum Dalam Penanggulangan Kekerasan Terhadap PRT Perempuan dan Anak. *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal*, 2(2), 232–250.
- Pasalbessy, J. D. (2010). Dampak tindak kekerasan terhadap perempuan dan anak serta solusinya. *Sasi*, 16(3), 8–13.
- Pratama, R. (2021). *PERTIMBANGAN HAKIM PENGADILAN NEGERI LAMPUNG TENGAH DALAM PERKARA POLISI SEBAGAI PELAKU TINDAK PIDANA*. Universitas Muhammadiyah Metro.

- Ragiliani, S. (2014). Kesetaraan Gender dalam Paradigma Fiqh (Studi Pemikiran Husein Muhammad). *Skripsi Pascasarjan, Fakultas Ushuluddin Dan Pemikiran Islam, UIN Sunan Kalijaga Yogyakarta*.
- Rahardjo, S. (2003). *Sisi-sisi lain dari Hukum di Indonesia*. Penerbit Buku Kompas.
- Rahawarin, A. R., Ahmad, I., & Uty, L. (2021). KAJIAN YURIDIS TERHADAP JENIS SANKSI HUKUM PIDANA PEMILU LEGISLATIF DI INDONESIA. *Legal Pluralism, 11*(1), 386–394.
- Rosadi, O., & Satria, A. (2022). Implikasi Yuridis Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif Terhadap Tersangka Tindak Pidana. *UNES Law Review, 5*(1), 99–109.
- Salim, H. S. (2013). *Penerapan teori hukum pada penelitian tesis dan disertasi*.
- Sambas, N. (2010). *Pembaruan Sistem Pidanaan Anak di Indonesia*. Graha Ilmu.
- Soeroso, M. H. (2010). *Kekerasan dalam rumah tangga dalam perspektif yuridis-viktimologis*. Sinar Grafika.
- Sopacua, M. G. (2016). Perlindungan Hukum Terhadap Hak Perempuan Sebagai Korban Kekerasan Dalam Rumah Tangga (Kajian Perspektif Hak Asasi Manusia). *Sasi, 22*(1), 74–84.
- Sunarso, H. S., SH, M. H., & Kn, M. (2022). *Viktimologi dalam sistem peradilan pidana*. Sinar Grafika.
- Surach Winarni, S. H. (2017). *Perlindungan Hukum bagi Nasabah dan Tanggung Jawab Bank terhadap Nasabah yang Mengalami Kerugian (Studi Kasus Pencurian Dana Simpanan Nasabah dengan Modus Card Skimming)*.
- Wahid, E. (2010). Keadilan restoratif dan peradilan konvensional dalam hukum pidana. *Buku Dosen-2009*.
- WARUWU, S. (2022). *PENERAPAN HUKUM PIDANA TERHADAP GURU SEBAGAI PELAKU TINDAK PIDANA KEKERASAN TERHADAP ANAK DI BAWAH UMUR*.
- Waskito, A. B. (2018). Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi. *Jurnal Daulat Hukum, 1*(1).