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Restorative Justice: An Alternative Approach to Addressing Domestic Violence in Indonesia

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Abstrak

Studi ini mengkaji efektivitas penanganan Kekerasan Dalam Rumah Tangga (KDRT) di Indonesia, mengidentifikasi hambatan dalam sistem hukum konvensional, dan mengevaluasi potensi penerapan restorative justice. Melalui analisis yuridis normatif, penelitian ini menemukan bahwa kekurangan dalam pelaksanaan hukum dan persepsi sosial yang keliru sering menghambat proses keadilan bagi korban. Temuan menunjukkan bahwa restorative justice menawarkan pendekatan alternatif yang lebih manusiawi dan inklusif, berpotensi memperbaiki sistem penanganan KDRT. Kajian ini merekomendasikan reformasi legislatif yang signifikan, peningkatan kapasitas dan sensitivitas penegak hukum, serta promosi pendidikan dan kesadaran masyarakat untuk mengatasi KDRT secara efektif.

Kata Kunci: *KDRT, Sistem Hukum, Restorative Justice, Reformasi Hukum, Perlindungan Korban, Pendidikan Masyarakat, Indonesia*

Abstract

This study examines the effectiveness of domestic violence (DV) management in Indonesia, identifies barriers in the conventional legal system, and evaluates the potential for restorative justice. Through normative legal analysis, the study finds that shortcomings in legal implementation and erroneous social perceptions often hinder the justice process for victims. The findings suggest that restorative justice offers an alternative approach that is more humane and inclusive, potentially improving the DV management system. The study recommends significant legislative reform, increased capacity and sensitivity of law enforcement, and promotion of public education and awareness to effectively address DV.

Keywords: *Domestic Violence, Legal System, Restorative Justice, Legal Reform, Victim Protection, Public Education, Indonesia*

INTRODUCTION

Domestic violence is one of the social issues that continues to be a serious challenge in Indonesia. Domestic violence includes various forms of violations, such as physical, psychological, economic, and sexual violence, which have a negative impact on the physical and mental condition of the victim. In the legal reality in Indonesia, although there are regulations governing domestic violence through Law No. 23 of 2004, its implementation still faces various obstacles. Many victims do not report their cases due to fear of social stigma, threats from the perpetrator, or distrust of the legal system.

The regulations in place often do not provide optimal results to provide protection to victims. In the law enforcement process, obstacles such as the lack of understanding of law enforcement officials of the substance of Law No. 23/2004 and the slow process of investigation are significant problems. This causes many domestic violence cases to end without adequate resolution, both for the victim and the perpetrator. On the other hand, a legal approach that focuses more on criminal punishment for perpetrators often ignores the need for victim recovery.

The Criminal Code (KUHP) also has limitations in dealing with domestic violence cases. The Criminal Code tends to view acts of violence as general offenses without considering the specific relational aspects that occur within the household. As a result, many domestic violence cases do not receive appropriate attention, causing victims to lose their right to justice and protection. The inability of the legal system to respond appropriately to the needs of victims and the complexity of domestic violence cases further exacerbates the situation (Pane, 2023).

Social and cultural factors also exacerbate the situation of domestic violence in Indonesia. In many cases, people still consider domestic violence as a private or internal family matter that does not require legal intervention. This perspective often leads to victims being reluctant to report the violence they experience so that the perpetrators are free from legal consequences. This reflects a significant gap between existing regulations and the reality on the ground.

The weakness of the legal system to address domestic violence is also influenced by the lack of facilities and resources to support the law enforcement process. Many courts and legal institutions do not have adequate facilities to handle domestic violence cases sensitively. The lack of specialized training for law enforcement officers to handle these cases often leads to inappropriate handling of victims' needs.

Victims of domestic violence often face social stigma that hinders their recovery process. This stigma comes from the general public and from institutions such as educational institutions and workplaces. As a result, victims experience prolonged social exclusion, which exacerbates the psychological and social impact of the violence they have experienced. This condition shows that the handling of domestic violence cases requires more serious attention from various parties.

Conventional punishment-based approaches often do not provide long-term solutions. Legal processes that focus on punishing perpetrators often ignore aspects of relationship restoration between victims and perpetrators, and do not provide space for dialogue that can prevent the recurrence of violence in the future. This suggests the need for a more humanist approach to handling domestic violence cases (Latumaerissa et al., 2024).

Restorative justice offers an alternative approach that can be used to handle domestic violence cases. However, the implementation of this approach in Indonesia still faces many challenges, including the lack of supporting regulations and the low understanding of this concept among the community and legal apparatus. This highlights the need to evaluate the existing legal system to ensure better protection for victims of domestic violence.

The inability of the legal system to provide justice and protection for victims of domestic violence points to the need for more effective reforms. Such efforts involve adjusting regulations, improving legal understanding among the public, and strengthening the capacity of law enforcement officials. Without these measures, domestic

violence cases will continue to be an intractable problem, with widespread impacts on victims and society as a whole.

This study aims to identify the obstacles to resolving domestic violence cases through conventional approaches as set out in the Criminal Code and Law No. 23 of 2004. This study also aims to explore how the prescriptive concept based on restorative justice can be applied to resolve domestic violence crimes. By analyzing the obstacles in the conventional legal system and the potential of restorative approaches, this study is expected to provide an understanding of legal protection efforts for victims of domestic violence and steps to create more humane justice.

RESEARCH METHOD

In this research, the method used is a normative juridical approach. This approach involves the examination and interpretation of theoretical aspects related to the principles and conceptions of applicable law, particularly those related to the handling of domestic violence cases and the implementation of the concept of restorative justice. This research aims to gain an understanding of how the principles of law and restorative justice can be applied to address domestic violence issues related to Indonesian law.

The qualitative method was chosen because it allows researchers to explore and interpret social and legal phenomena in depth. Through this method, researchers will describe and analyze data in narrative form that reveals the experiences of research subjects-in this case, victims, perpetrators, and parties involved in domestic violence law enforcement. This approach also facilitates an understanding of how legal norms and rules are applied or may be ineffective in certain social and cultural perspectives.

This research collected data through document studies that included laws and regulations. Data analysis was conducted systematically to identify key themes, patterns and relationships between concepts. This enabled the researcher to build a coherent narrative about the legal reality and practice of resolving domestic violence. Through this analysis, the research seeks to produce valid conclusions regarding the effectiveness of restorative justice approaches and provide an overview of the dynamics of law and justice related to domestic violence in Indonesia.

RESULT AND DISCUSSION

Violence against women, particularly domestic violence, is a significant impediment to social and economic development. It has a direct impact on the victim, and has

complex cumulative consequences, such as a decline in women's self-confidence, inhibition of their participation in various aspects of life, and impairment of physical and mental health. Domestic violence can also reduce women's autonomy in the economic, political, social and cultural spheres, ultimately hindering the progress of society as a whole.

As a country that has ratified several international conventions on women's rights, Indonesia is committed to eliminating all forms of discrimination against women. One of the important instruments in this regard is the CEDAW Convention (Convention on the Elimination of All Forms of Discrimination Against Women). This commitment is in line with the provisions of Article 28 G Paragraph (1) of the second amendment of the 1945 Constitution, which affirms the right of every person to obtain protection of self, family, honor, dignity, and property, as well as the right to security and protection from threats. This provision reflects the state's responsibility to provide guarantees of protection for individuals and communities, which must be realized through the development and reform of appropriate laws.

From a criminal law perspective, the development of public law reflects actions that harm the interests of others, followed by retaliation. This retaliation becomes the obligation of the aggrieved individual, and extends to the responsibility of the family, relatives and society. This shows that domestic violence is a personal problem, and a social issue that requires collective attention. Domestic violence is one form of criminal law development that is regulated outside the Criminal Code (KUHP), and has its own characteristics that distinguish it from other criminal offenses.

Domestic violence is regulated in a special regulation that recognizes that the perpetrator and victim are within the same household. Criminal acts regulated in special regulations outside the Criminal Code can be interpreted as special criminal law. In this case, the legal subject of domestic violence consists of individuals who have intimate relationships in the household so that this problem requires a different approach compared to other criminal offenses. Therefore, the government has the responsibility to prevent domestic violence and protect the rights of individuals and families.

The right to protection from domestic violence is guaranteed by the state, as stipulated in Law No. 23/2004 on the Elimination of Domestic Violence. This law has a broader meaning, namely preventing all forms of domestic violence, protecting victims, taking action against perpetrators, and maintaining the integrity of harmonious

households. These objectives reflect the principles of equal rights and respect for human dignity, which form the basis for efforts to eliminate domestic violence.

Thus, the regulation of domestic violence in this law focuses on repressive aspects, and on preventive and protective aspects. This shows that a comprehensive approach is required to effectively address the issue of domestic violence. Therefore, it is important for all parties, including the government, community, and related institutions, to collaborate to create a safe and supportive environment for women and families.

Efforts to eliminate domestic violence must involve a change in the existing social and cultural paradigm. Awareness of women's rights and the need for protection from violence must be instilled in society. Thus, it is hoped that existing laws and policies can be implemented effectively so that the goal of creating a society free from violence can be achieved.

Domestic violence has unique characteristics compared to other forms of violence against women, mainly due to the power relationship between the victim and the perpetrator. This relationship creates complex dynamics, where victims often experience heavy psychological burdens. The dependence and trust established in the relationship can cause victims to feel trapped in an adverse situation so they tend to feel afraid, reluctant, and embarrassed to report acts of violence to the authorities. This shows that domestic violence is just a physical problem, and involves deep emotional and psychological aspects.

Violence is often complementary to the crime itself, and the widespread frequency of violent crime reinforces society's belief in the seriousness of the problem. Societal perceptions of domestic violence have formed as cases have increased, creating certain stigmas and views that can influence the way these cases are handled. For example, bribery can be analogized to domestic violence, where both simple and more complex acts of bribery have detrimental effects on society.

There are several contributing factors to domestic violence that need to be considered. These include individual factors, such as past history of violence and psychological deviance; family factors, such as poor parenting and marital conflict; community factors, such as poverty and high crime rates; and social environmental factors, such as economic inequality and a culture that supports violence. To address this problem, an integrated and sustainable criminal policy is needed, which can cover all aspects of the causes of domestic violence. However, in practice, the conventional approach through penal means faces various obstacles. First, the domestic violence offense formulated in the

Law on the Elimination of Domestic Violence (UU P-KDRT) is often considered "half-hearted," so that many forms of domestic violence are considered as complaint offenses and do not receive sufficient attention. Secondly, there is a perception bias among law enforcers who consider domestic violence as a private matter so that it receives less priority in handling. Third, law enforcers tend to focus attention on physical violence, while the psychological and emotional impact of domestic violence is often ignored.

Another obstacle faced in law enforcement is the lack of common perception among law enforcers regarding the protections stipulated in the Domestic Violence Law. The criminal law paradigm that only focuses on the act and the perpetrator, without considering the position of the victim, causes the rights of victims to be neglected. In the criminal justice process, there are a number of problems that hinder the handling of domestic violence cases against women. Difficulties in obtaining witness testimony, limited understanding of law enforcement, and lack of involvement of social workers in handling cases are some examples of these obstacles.

The challenges in handling domestic violence point to the need for reform in the existing criminal justice system. A more sensitive approach to the needs of victims, as well as improved understanding and skills of law enforcement to handle cases of violence against women, is urgently needed. By doing so, it is hoped that the rights of victims can be better observed and protected, and efforts to prevent domestic violence can be carried out more effectively.

The restorative justice approach offers a solution to overcome various problems in the criminal justice system by emphasizing the fulfillment of the rights and wishes of victims (Soesilo & Indrawati, 2021). This approach focuses on punishing the perpetrator, and seeks to proactively involve social workers in a resolution process that is based on recovery. The main goal of restorative justice is to achieve fair justice for all parties involved, including victims, offenders, and the community. As such, this approach seeks to create a more inclusive and supportive atmosphere for all parties.

The implementation of restorative justice in the criminal justice system is in line with the 2000 UN Declaration on the Core Principles for the Use of Restorative Justice Programs in Criminal Matters. This declaration advocates the wider utilization of restorative justice concepts in the criminal justice system. This is also reinforced by the Vienna Declaration on Crime and Justice, which emphasizes the importance of facing the challenges of justice in the 21st century. The restorative punishment model was introduced

as a response to the problems posed by the current criminal justice and sentencing system.

The current prison system often focuses on deterrence, revenge, and the infliction of suffering as a consequence of the offender's actions. The success of punishment is measured by the extent to which the prisoner complies with prison regulations, which leads to a security approach. However, this system affects the offender, has consequences for the family of the prisoner and does not provide relief or healing for the victim. The lengthy legal process is also an obstacle to achieving justice.

In contrast, the restorative justice model emphasizes conflict resolution and involves victims, families and other parties in problem solving. This approach encourages offenders to take responsibility for the harm caused by their actions. However, implementing restorative justice is not easy. If it is only applied in correctional institutions, the results will not be maximized. Therefore, the restorative model must start from the early stages, namely in the police during case investigation, and continue in the prosecutor's office and court.

One major challenge in implementing restorative justice is to restore the physical and psychological suffering of victims. This recovery process requires special attention and adequate support from law enforcement agencies and the community. Thus, to effectively achieve the goals of restorative justice, close collaboration between various parties is required, including government agencies, non-governmental organizations, and local communities. This will ensure that all aspects of restorative justice can be realized and provide maximum benefits for victims, offenders, and society as a whole (Rosalin & Usman, 2023).

The settlement of domestic violence cases in Indonesia involves two types of regulations, namely *lex generalis* and *lex specialis* regulations. Prior to the enactment of Law No. 23/2004 on the Elimination of Domestic Violence, the settlement of domestic violence cases mostly referred to *lex generalis* provisions, such as Article 351 Paragraph (1) and Article 356-1 of the Criminal Code (KUHP). However, this approach is inadequate, as domestic violence includes physical violence, and psychological, sexual, and economic violence. Thus, the existing arrangements in the Criminal Code are unable to resolve the more complex issues related to domestic violence.

To overcome the weaknesses in the *lex generalis* regulation, Law No. 23/2004 was born which specifically regulates violence within the scope of the household. This law provides clearer boundaries for perpetrators of domestic violence and recognizes that

domestic violence is a violation of human rights and a crime against human dignity. Based on this, the law seeks to provide better protection for victims, especially women, who are often the main targets in cases of domestic violence. The general elucidation of this law emphasizes the importance of legal reforms that favor vulnerable groups, especially women, in line with the increasing cases of domestic violence.

Law No. 23/2004 is considered a legal reform of the Criminal Code that regulates specifically within the scope of the household. Domestic violence has its own characteristics and peculiarities that require more specific arrangements. Thus, any acts of violence that occur in domestic life can be resolved through this law.

Domestic violence, in simple terms, can be defined as the discomfort experienced by someone within the scope of the household, and is mostly experienced by women and children (Aminah & Rafsanjani, 2023). This is reflected in the definition which states that any act that harms someone, especially women, should be regulated. The philosophical rationale behind prioritizing protection for women relates to the accumulated social, cultural and religious impacts that have limited women's roles for centuries. The emerging wave of feminism seeks to place the recognition of women's roles in various fields, including in relation to legal protection

However, Indonesia's rigid criminal justice system for domestic violence cases can hinder the achievement of the consolidative goals of Law No. 23/2004. Therefore, legal reforms are needed that amend the law, and modify the existing criminal justice system. One approach that can be applied is restorative justice, which focuses on restoring justice for both victims and perpetrators. This approach involves a systematic resolution process, in which offenders and victims actively participate in dialog to reach an agreement (Sopacua, 2024).

Restorative justice can be realized in the form of deliberation, which is a cultural value that already exists in Indonesian society. Deliberation for consensus is an effective way to resolve disputes, including in cases of domestic violence. Given that deliberation has become part of people's habits, this approach should be integrated into the criminal justice system, especially in resolving domestic violence cases that require a private perspective. There are various forms of deliberation that can be applied, such as negotiation, mediation, and consolidation, where negotiation is considered the best way to resolve internal family problems (Januar et al., 2023).

To determine the appropriate restorative justice model in the Indonesian criminal justice system, it can emphasize order and regularity in the context of legal reform. Law

must function as a regulatory tool that regulates the behavior of society, and as a means to achieve the desired reform. Restorative justice can be integrated into the criminal justice system to create an approach that is more responsive to the needs of the community, especially for handling domestic violence cases.

Thus, although the criminal procedure law and criminal justice system in Indonesia do not explicitly adopt a deliberative system, the implementation of restorative justice mechanisms can be an important step towards achieving broader legal objectives (Usman et al., 2022). This will provide justice for victims, and provide an opportunity for offenders to correct their mistakes and contribute back to society. Therefore, it is important to develop an appropriate model for the resolution of domestic violence cases, which can accommodate the cultural and social values of Indonesian society.

Overall, the resolution of domestic violence cases in Indonesia requires a more comprehensive and adaptive approach. By integrating the principles of restorative justice into the criminal justice system, it is hoped that a fairer and more humane legal environment can be created. This will provide better protection for victims, especially women, and encourage perpetrators to take responsibility for their actions. Thus, the ultimate goal of legal reform is to create a system that punishes, and restores and repairs relationships in society.

There is thus a need for adaptation and innovation in the legal system to deal with domestic violence more effectively. Incorporating restorative justice principles can provide a more effective and humane means to promote justice, respect the rights of victims, and at the same time, assist in the rehabilitation of perpetrators. These measures are expected to change the way society and the legal system respond to domestic violence, towards more progressive and empathetic practices.

CONCLUSION

This research reveals that addressing domestic violence in Indonesia is hampered by many factors, including weaknesses in the existing legal system, lack of facilities and training for law enforcement, and social stigma that often discourages victims from reporting. Domestic violence threatens the safety and well-being of victims, and challenges the integrity of the legal system that is supposed to protect every citizen. The study also highlighted that while supportive laws exist, their implementation has not been effective in providing adequate protection or justice for victims.

Comprehensive reforms in the legal approach to domestic violence are needed,

including increased resources, better training for law enforcement, and policy adjustments that enable faster and more sensitive interventions to victims' needs. Integrating restorative justice approaches can be an important part of the solution, offering opportunities for more effective healing for victims as well as social reconciliation. Increased public awareness and education are also important to reduce stigma and encourage more victims to come forward.

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