

Resolution of Crimes of Domestic Violence Stairs Based on Restorative Justice in Polrestabes Semarang



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ABSTRACT: In Article 5 of Law of the Republic of Indonesia Number 23 of 2004 CHAPTER III concerning the prohibition of domestic violence, there is a prohibition on acts of domestic violence. In Indonesia, the practice of resolving crimes with restorative justice has been carried out, especially for resolving offenses which are included in minor offenses. The research method using a normative legal approach is a way of working for scientists, one of which is characterized by the use of methods. Restorative justice is a concept that is experiencing rapid development and plays an important role in legal reform in various countries. Criminal Acts Based on Restorative Justice. Cases of domestic violence based on restorative justice at the Semarang Police, mostly occur in the form of physical, psychological and neglect perpetrated by husbands to wives, husbands to children or even husbands to their wives and children.

KEYWORDS: Restorative Justice, Domestic Violence, Mediation.

I. INTRODUCTION

The Unitary State of the Republic of Indonesia is a country based on Belief in the Almighty God, which is regulated in Article 29 Paragraph (1) of the Law – Law of the Republic of Indonesia of 1945. This means that everyone must live always involving Almighty God. This includes running a household in the smallest unit in society, namely the family. Based on worship of Almighty God. The family is composed of father, mother and children who are of the same blood in a straight line up or down to the third degree. The formation of a legal family is after marriage or matrimony in accordance with religious and legal teachings.

It turns out that violence can occur in the home, which should be a place of sharing and protection, but instead becomes a source of suffering. So this can be called domestic violence (KDRT). The most common form of violence against women is husband's abuse of wife, or more specifically, abuse of women in intimate relationships that lead to power and control, where the torturer attempts to use physical, emotional, sexual, or other psychological abuse on the family or intimate partner.

In Article 5 of Law of the Republic of Indonesia Number 23 of 2004 CHAPTER III concerning the prohibition of domestic violence, there is a prohibition on acts of domestic violence, namely that every person is prohibited from committing violence against people within the scope of their household, by means of physical violence, psychological violence, sexual violence. or household neglect. In fact, domestic violence is a violation of human rights. Where human rights crimes themselves have been prohibited in Indonesia, not only in Indonesia, but also crimes involving human rights are prohibited abroad. Regarding prohibitions or regulations regarding human rights crimes in Indonesia, they are regulated in Law Number 39 of 1999 concerning Human Rights. Meanwhile, international rules regarding human rights violations are contained in the Universal Declaration of Human Rights, which is generally agreed to be the basis of international human rights law.

Restorative justice provides the concept of apologies, and acknowledgment of mistakes that have been made and efforts to restore the perpetrator to society by giving the perpetrator the opportunity to improve themselves. The form of *restorative justice* includes repairing, restoring, reconciling, and reuniting with each other. Criminal cases are not always resolved through the litigation process considering that the administrative process is complicated and takes a long time, the costs of criminal cases are not cheap and a sense of justice is sometimes not visible, so for minor crimes it is best to do it through mediation.

In Indonesia, the practice of resolving crimes with restorative justice has been carried out, especially for resolving offenses which are included in minor offenses. In its development, Restorative Justice began to receive a legal framework through National Police Chief Regulation Number 8 of 2021 concerning Handling Criminal Acts based on *restorative justice* and Law Number 2 of 2002 of the Indonesian National Police concerning mediation.

Resolution of Crimes of Domestic Violence Stairs Based on Restorative Justice in Polrestabes Semarang

Theoretical Framework

In essence, one of the characteristics of a rule of law is the principle of equality before the law. According to R. Soeroro, SH, law is a set of regulations made by the authorities with the aim of regulating society's life, with the characteristics of commanding, prohibiting, and having a coercive nature by imposing punitive sanctions for those who violate them.

Based on Law of the Republic of Indonesia number 23 of 2004 concerning the elimination of domestic violence, Article 1 states that domestic violence is any act against someone, especially women, which results in physical, sexual, psychological and/or physical misery or suffering. Domestic neglect includes threats to commit unlawful acts, coercion or deprivation of liberty within the household.

In CHAPTER III the PKDRT Law regulates the imposition of criminal penalties for anyone who violates the prohibition on committing domestic violence as described in Article 5.

Gap Analysis And Problems

Domestic violence, especially against women, increased precisely after the enactment of the Law on the Elimination of Domestic Violence (UU PKDRT) Number 23 of 2004 (Ilyas, 2006). In response to this, there are at least three assumptions that can be put forward. The first assumption is that women's awareness and courage has emerged to report their problems to the authorities. The second assumption is that the PKDRT Law Number 23 of 2004 has not yet become public, so in general family heads do not know the legal impact of the acts of violence they commit. The third assumption, as a result of uncertain economic conditions, where the prices of all basic commodities are increasing, education and health costs are also increasing and job opportunities are becoming narrower, affecting the peace of mind of the head of the family/household.

State Of The Art (Newness Of Research Results)

Restorative justice is a concept that is experiencing rapid development and plays an important role in legal reform in various countries. One of them is because the concept of restorative justice has long been deeply rooted, in various names and terms, in the philosophy of dispute resolution that has developed in society. The existence of restorative justice can be seen from various conferences and circles as two main efforts in modern restorative justice which actually, if examined again, originate from informal restorative practices (practices) of the Māori tribe in New Zealand and first nations in North America.

Theories of the purpose of punishment which see the purpose of punishment as preventing future crime are sometimes referred to as utilitarian theories because they originate from Utilitarian political-moral philosophy; or consequentialist because it justifies punishment in order to prevent future consequences; or reductionist because it aims to reduce crime.

Indonesia can study several mechanisms for implementing restorative justice in Australia. First, related to the implementation of restorative justice in Australia which shows the existence of referral mechanisms at various levels. This is important for Indonesia to pay attention to, so that restorative justice efforts truly aim to restore the condition and relationship between the victim and the perpetrator.

By opening up opportunities for dialogue between victims and perpetrators at every stage or process, it shows that the *restorative justice approach* as found in Australia is clearer and is not aimed at just *dropping cases*.

II. RESEARCH METHODS

The legal research method is a process of discovering legal rules, legal principles, and legal doctrines in order to answer the legal issues faced. The research method using a normative legal approach is a way of working for scientists, one of which is characterized by the use of methods. Literally, method is defined as a path that must be taken for investigation or research to take place according to a certain plan. The legal research method is a systematic way of conducting research.

III. RESULTS AND DISCUSSION

1. Implementation of Resolving Crimes of Domestic Violence Based on Restorative Justice at Semarang Police.

Domestic Violence is an act that is initially resolved through *the Criminal Justice System* or adheres to the principles of *Retributive Justice*. In the construction of criminal law which is based on a retributive view, the victim's suffering or loss has been abstracted and compensated by the threat of criminal sanctions that can be imposed on the perpetrator. The resolution of criminal acts that occur is entirely within the authority of law enforcement officials. The abstraction of the loss or suffering of victims and the authority to resolve criminal acts within legal channels which only belong to law enforcement officers is inseparable from the definition of criminal acts which according to the retributive view are conceptualized as acts that violate state law. With this conception, the state, whose legal rules have been violated by the perpetrator of a criminal act, positions itself as a victim and thus also has the right, through its law enforcement officials, to prosecute and impose sanctions on the perpetrator.

In the retributive view, the construction of resolving criminal acts will confront the perpetrator, as the party who violated the rule of law, against the state, as the party whose rule of law has been violated. In such a construction of criminal law, all the wishes of the victim relating to the resolution of the criminal act that befell him are less or even not accommodated.

Resolution of Crimes of Domestic Violence Stairs Based on Restorative Justice in Polrestabes Semarang

In contrast to the retributive view which focuses more on punishing the perpetrator as retaliation or compensation for the mistakes he has committed, the restorative justice view places more emphasis or focus on repairing or restoring the victim's suffering as a form of responsibility for the perpetrator without ignoring the interests of rehabilitation of the Perpetrator and the interest of creating peace. Maintain public order. The restorative justice view also provides victims with the opportunity to be actively involved in the process of resolving their case.

The main goal of restorative justice itself is to achieve justice that is as fair as possible, especially for all party Which involved inside it ,And not just put forward punishment. The implementation of restorative justice in the Criminal Justice System is in line with the 2000 UN Declaration on Basic Principles regarding the Use of Restorative Justice Programs in Criminal Problems . This is also confirmed by the Vienna Declaration on Crime and Justice. The *restorative* punishment model was introduced because the current criminal justice and punishment system is causing problems .

The current high number of domestic violence cases shows that household harmony has decreased. Thus, it is important to encourage the community's obligation to increase understanding of domestic violence and also about household relations which are a bond of commitment between both parties to form a family that respects each other and does not contain violence.

The main regulations for forms of violence that can be carried out in the household are contained in Article 5 of Law no. 23 of 2004 which determines that every person is prohibited from committing domestic violence against people within their household, by:

- a. Physical abuse;
- b. Psychological violence;
- c. Sexual violence;
- d. Household neglect.

Where domestic violence is a violation of human rights and a crime against human dignity and is a form of discrimination. Domestic violence or *domestic violence* is gender-based violence that occurs in the personal realm. All forms of violence, especially domestic violence, are violations of human rights and crimes against human dignity as well as forms of discrimination that must be eradicated from the face of the earth. Moreover, violence against women (wives) is considered a violation of human rights and was agreed upon at the World Conference on Human Rights in Vienna in 1993.

Restorative Development Justice Based on Law NO. 23/2004 Concerning Deletion Domestic Violence Before the enactment of Law number 23 of 2004, the resolution of domestic violence cases was more using the provisions of the *lex generalis*, for example the use of Article 351 paragraph (1) and Article 356 1 of the Criminal Code .

Article 1 point (1) states that: "*Domestic violence is any act against someone, especially women, which results in physical, sexual, psychological misery or suffering, and domestic neglect, including threats to commit acts, coercion or deprivation of liberty. Unlawfully within the household sphere*".

In National Police Chief Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on *Restorative Justice*. In the event of cases of domestic violence, investigators can resolve them through *restorative justice* or the abolition of punishment by using alternative case resolution through consensus mediation between the reporting party and the reported parties as regulated in Law Number 2 of 2002 of the National Police of the Republic of Indonesia concerning Mediation.

The resolution of criminal acts of domestic violence based on *restorative justice* at the Semarang Police has implemented a restorative approach in handling domestic violence cases which are handled by police officers as investigators and investigators.

The resolution of criminal acts of domestic violence based on *restorative justice* at the Semarang Police has a legal basis based on National Police Chief Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on *Restorative Justice*. Cases of domestic violence based on *restorative justice* at the Semarang Police, mostly occur in the form of physical, psychological and neglect perpetrated by husbands to wives, husbands to children or even husbands to their wives and children. There are several types of violence that can occur, namely:¹

A. Physical violence includes acts that resulting in pain, illness or serious injury .

Physical violence experienced by the victim will be examined when there is a definite report from the victim or someone close to them that the victim has experienced physical violence by taking a post mortem to confirm the physical evidence of the victim.²

B. Psychological or what can be called emotional violence includes :

- a. Actions that cause fear
- b. Loss of self-confidence
- c. Loss of ability to act
- d. Feelings of helplessness, or other psychological suffering.

¹Daniel W. Van Ness and Karen Heetderks Strong, *Restorative Justice: An Introduction to Restorative Justice*, fourth edition, Matthew Bender & Company, Inc., a member of the LexisNexis Group, New Providence, NJ, 2010, p. 41.

²R. Wiyono, *Juvenile Criminal Justice System in Indonesia*, Print 1, Sinar Graphics, Jakarta, 2016, p. 38.

Resolution of Crimes of Domestic Violence Stairs Based on Restorative Justice in Polrestabes Semarang

Psychological violence was confirmed by a psychological examination by the victim. With the emergence of threats, ridicule and insults. For example, forcing a wife to sexually abuse her husband and wife and arbitrarily not giving her shopping money. Over time, it will make the wife's psychological or mental condition very unstable and even lead to depression and self-harm.

C. Neglect

- a. Life to family Care for family .
 - b. Care for the wife as well Forgetting legal regulations regarding the husband's duties to the family or vice versa
- Psychological or what can be called emotional violence includes:

- a. Actions Which causes fear
- b. Loss of self-confidence
- c. Loss of ability to act
- d. Feelings of helplessness, or other psychological suffering.

In its general explanation, this law conveys that legal reform which favors vulnerable or subordinate groups, especially women, is very necessary due to the large number of cases of violence, especially in the household.

In its general explanation, this law conveys that legal reform which favors vulnerable or subordinate groups, especially women, is very necessary due to the large number of cases of violence, especially in the household. In this way, this law considers itself to be a legal update of the Criminal Code which specifically regulates the domestic sphere.

The reason used here is that domestic violence has its own characteristics and therefore needs to be regulated specifically. Thus, every action that is intended to be within the scope of the household can be resolved using this Law.

2. The stage of resolving criminal acts of domestic violence based on *restorative justice* at the Semarang Police starts from reporting to termination

Stages of efforts to eliminate domestic violence are certainly an important agenda for the country. The state's obligation to protect citizens is stated in the preamble to the 1945 Constitution of the Republic of Indonesia, paragraph 4. Furthermore, the protection of women against domestic violence is described in the constitution into several articles, namely article 28 letter G paragraph (1), article 28 letter I paragraph (2), article 28 letter H paragraph (1), article 28 letter G paragraph (2), article 28 letter A, article 27 paragraph (1), article 28 letter D paragraph (1).³

In line with this, the Domestic Violence Law states several objectives for eliminating domestic violence, namely:

- a. Prevent all forms of domestic violence (goal preventive);
- b. Protecting victims of domestic violence (goal protective);
- c. Taking action against perpetrators of domestic violence (goal repression f);
- d. Maintaining the integrity of the household harmonious and S prosperous (consolidation purposes).

In accommodating this, the PKDRT Law has brought domestic violence cases from the private domain of husband and wife to the public domain. The scope of the household is not only husband and wife but is further expanded according to article 2 of the Domestic Violence Law, namely not only physical violence, but also includes psychological violence, domestic neglect and sexual violence.⁴

Acts of domestic violence can be resolved by applying the principles of restorative justice, which is a type of problem resolution outside of court. In fact, not all criminal cases are resolved through formal justice channels, restorative justice provides an alternative for resolution using a justice approach by considering justice for victims, which is called a *restorative justice approach* .

Restorative justice is a principle applied in the juvenile justice process. Article 1 point (6) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) states that restorative justice is a resolution process that involves the perpetrator, victim, family and opposing parties involved in a criminal act, jointly seeking a solution. towards the criminal act and its implications by emphasizing recovery and not retaliation. However, it is not impossible to apply it in cases of domestic violence because Article 4 letter (d) of the PKDRT Law states that the establishment of the PKDRT Law is to take action against perpetrators of domestic violence; and at the same time maintain the integrity of a harmonious and prosperous household .⁵

Restorative justice is a concept of punishment with the aim of finding a way to enforce a punishment system that is more just and balanced. Restorative justice is also an alternative or other method of criminal justice by prioritizing an integrated approach between perpetrators on the one hand and victims or society on the other hand as one unit to find solutions and return to good relations in society.

Restorative justice contains basic principles which include the following:

- a. Striving for peace outside of court by the perpetrator of the crime (his family) towards the victim of the crime (his family);

³Anas Yusuf, Implementation of Restorative Justice in Law Enforcement by the National Police to Achieve Substantive Justice, Jakarta: Tri Sakti University Publishers, 2016, p. 48.

⁴Ibid., p. 240.

⁵Kuat Puji Prayitno, Restorative Justice for the Judiciary in Indonesia (Philosophical Juridical Perspective in Law Enforcement In Concreto), Journal of Legal Dynamics, Vol. 12 No. 3 September 2012, p. 409.

Resolution of Crimes of Domestic Violence Stairs Based on Restorative Justice in Polrestabes Semarang

- b. Providing opportunities for perpetrators of criminal acts (their families) to take responsibility for making amends for their mistakes by compensating for losses resulting from the criminal acts they have committed;
- c. Resolving criminal law problems that occur between perpetrators of criminal acts and victims of criminal acts if agreement and agreement is reached between the parties.⁶

To measure whether the implementation of mediation carried out by the Semarang City Police in order to resolve criminal acts of domestic violence has fulfilled the concepts and principles of restorative justice, the implementation of mediation will be described using the benchmarks of restorative justice principles.

The principles of restorative justice according to Bagir Manan are as follows:

- a. Building joint participation between perpetrators, victims and community groups to resolve an incident or criminal act. Placing perpetrators, victims and the community as stakeholders who work together and immediately try to find a solution that is considered fair for all parties (win win solutions).
- b. Encourage the perpetrator to take responsibility for the victim or the event or criminal act that has caused injury or loss to the victim. Next, build responsibility not to repeat criminal acts that have been committed.
- c. Placing an incident or criminal act not primarily as a form of legal violation, but rather as a violation by someone (a group of people) against someone (a group of people). Thus, the perpetrator should be directed towards accountability towards the victim, not prioritizing legal accountability
- d. Encourage resolving an incident or criminal act in more informal and personal ways rather than resolving it using formal (rigid) and impersonal methods.

Report from the reporter, investigator as mediator. Investigations are carried out when there are allegations of criminal acts and complaints from the reporter and the reported party. This stage is carried out by the police as law enforcement officers on the basis that law enforcement officers carry out case resolution activities due to the occurrence of a criminal act or a criminal act of domestic violence. In the Domestic Violence (KDRT) Law, if there is violence in one house or under one roof, it can be called the domestic violence category. But in reality, when investigators at the Semarang Police carried out an investigation, violence that could be categorized as domestic violence had to be confirmed by the presence of a family card (KK). If violence occurs in one house without one family card (KK), investigators still cannot follow up. Whether the family includes in-laws, household assistants (ART) or ex-husband's ex-wife.

Counseling carried out by investigators . Investigators provide counseling regarding what type of domestic violence was reported. Investigators listen to information from the reporter and the reported party separately and after obtaining information from both parties to the case and formulate a follow-up plan for the case.⁷

The report was received , after the report was received that the complainant experienced domestic violence, the investigator asked the complainant to collect several requirements including marriage certificate, family card (KK), identity card (KTP) as proof that the violence was real violence experienced. from the household and not cousins, in-laws and others. If the investigator receives a report from the complainant that the complainant is experiencing domestic violence, that is physical violence, the reporter will be taken to a free hospital, namely Tugu Hospital, Bayangkara Hospital or RSWN Semarang. Then the report is received and the investigator makes a clarification report which will later be carried out by the victim, reporter and witnesses regarding the truth of the report.

If in a case of domestic violence it is physical violence, investigators will take the results of a post-mortem from the reporter to prove the condition of physical violence against the victim through statements from the victim and witnesses.

- a. Investigators provide direction and advice and act as mediators. Investigators provide a negotiation stage regarding domestic violence issues by giving the reporter and the reported party 3 days to 1 week to consider reconciliation, which is expected to use a mediation or *restorative justice process* . At the stage of the restorative justice method, the main thing is that the perpetrator and victim are asked first whether they want to resolve the case using *restorative justice* or not. If the victim does not want to carry out *restorative justice* and wants retribution against the perpetrator, then this *restorative justice* cannot be implemented.
- b. If both parties have the desire to reconcile using the *restorative justice process*, then the reporting party withdraws its report and the reported party makes a statement stating that the reporting party has forgiven the mistakes that have been made by the reported party which has been resolved amicably between the reporting party and the reported party. Then the reporter withdrew his report because the case had been resolved through mediation.
- c. After receiving the peace application from both parties (reporter and reported party) which is signed on a stamp.

Peace agreements between the reporter and the reported person often have to meet the requirements so that violence does not happen again or with the reported party's ability to fulfill other agreements from the reporter which are also stated in the stamped application letter.

⁶Setyo Utomo, Penalty System in Criminal Law Based on Restorative Justice, Mimbar Justitia, Faculty of Law, Suryakencana University, Cianjur, Vol. V No. 01, p. 86.

⁷Rodliyah and Salim HS, Law..., Op.Cit., p. 240

Resolution of Crimes of Domestic Violence Stairs Based on Restorative Justice in Polrestabes Semarang

There are several stages in the application process, namely the application for peace, after the formal requirements have been met, will be submitted to the investigator's superior. After the application is approved by the superior investigator (Kabareskrim/Kapolda/Kapolres), then a time is set for signing the peace statement. Implementation of agreement negotiations that result in an agreement signed by all parties involved. Make an official memorandum to the investigating supervisor for the purpose of requesting a case termination. Carrying out special case proceedings with the reporting participants, and/or the reporting family, the reported party and/or the reported family members and representatives of community figures appointed by the investigator. Prepare administrative completeness and special case title documents as well as case report results. Issuing an Order to Stop the Investigation/Investigation and a Decree to Stop the Investigation/Investigation for reasons of *restorative justice*. For cases at the investigation stage, investigators issue an Investigation Cessation Order and Investigation Cessation Decree signed by the leadership of the Semarang Police.

The application of restorative justice in resolving criminal acts of domestic violence in Semarang City is carried out by bringing together both parties, namely the victim and the perpetrator, by Semarang City Police investigators located at the police station to carry out peace efforts. In this case, the investigator is a mediator whose job is to facilitate both parties to make peace, with the aim of obtaining a good agreement between the two parties.

When viewed from the definition of *restorative justice*, this process meets the requirements of the definition of restorative justice. The police have implemented the concept of punishment or alternative or other methods of criminal justice by prioritizing an integrated approach to the perpetrator on the one hand and the victim/community on the other as one unit to find solutions to the problem of domestic violence faced by both parties, namely the perpetrator and the victim. However, in the process of resolving criminal acts of domestic violence in the police, it only involves the victim and the perpetrator, the police through investigators only facilitate both parties to mediate to reach an agreement.⁸

The existence of the National Police Chief's Circular Letter Pol Number: B/3022/XII/2009/SDEOPS provides an opportunity for investigators to make legal breakthroughs in resolving criminal acts of domestic violence with the concept of Restorative Justice. In this Circular, investigators can only carry out Restorative Justice efforts if both parties request reconciliation. However, the Semarang Police investigator, with his discretionary authority, offered Restorative Justice efforts as a resolution to the criminal case of domestic violence and restrained the SPDP from being sent to the public prosecutor.

Investigators see that cases of domestic violence perpetrated by husbands against wives are still in the category of mild violence so that it does not cause the victim to be disabled, or does not cause the victim to suffer from an illness that prevents him from carrying out daily activities and the reason for the investigator to carry out mediation is based on the desire of the victim and the perpetrator to mediate. , avoid lengthy legal processes, minimize costs incurred in the legal process that has been undertaken, provide a direct apology accompanied by a feeling of regret from the perpetrator for his actions and will not repeat the mistakes or actions he committed against his wife.

IV. CONCLUSION

That basically the Semarang City Police have attempted to resolve Domestic Violence cases using the Penal Mediation method with a Restorative Justice approach, as evidenced by the 132 cases complained by the public. Apart from that, the level of awareness of the people of Semarang City who do not really understand domestic violence and mediation is an important factor in the implementation of penal mediation using the Restorative Justice approach.

That the concept of restorative justice does not only present the perpetrator in the criminal justice system but also involves the role of the victim and the community. It is possible to apply such a process in resolving cases of domestic violence. The perpetrator is restored through the criminal justice system, thereby encouraging peace between the victim and the perpetrator. Peace is carried out through mediation, meetings, economic improvement programs and honesty education. In the peace process that is carried out, the victim can provide input about what kind of justice they want to get. Likewise, the perpetrator can do the opposite, for example he can pay compensation for the suffering experienced by the victim.

V. SUGGESTION

Based on the results of the description of the discussion above, suggestions that can be given in implementing a restorative justice system as an effort to resolve criminal acts of domestic violence in Semarang City are as follows. 1. The government should make regulations regarding penal mediation in the criminal procedural law which integrally regulates what types of criminal acts can be resolved through penal mediation at the Police level and regarding the procedures for implementing penal mediation at the Police level so that the practice of implementing it in the field has a clear legal basis.

The Republic of Indonesia Police should facilitate training regarding discretionary authority through a restorative justice system for police officers, especially officials who have authority as investigators, in order to increase competence and professionalism so that the process is more effective and the goals of the restorative justice system are achieved.

⁸Ibid. h. 239.

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