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Restorative Justice Approach as A Legal Protection Against Women Victims of Domestic Violence

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Abstract

The goal of this study is to examine the application of the restorative justice method as a protection effort for women victims of domestic violence in Indonesia's criminal justice system and to accomplish protection for women victims of domestic abuse. This study is part of a normative legal research project using the Statute Approach, which examines all laws and regulations relevant to the matter at hand. Secondary data is used, and it is analyzed using a qualitative analytical method before being presented in a descriptive format. By apologizing, the restorative justice strategy can reach a beneficial arrangement for all parties, restore past conditions, and maintain family bonds. A judge must also consider the rights of women who have been victims of crime, such as restitution and compensation. Restorative justice in criminal case settlement has been regulated in order to promote the best possible implementation of restorative justice and improve the criminal justice system, which likes to impose incarceration.

Keywords: *Domestic, justice, restorative, violence, women*

Introduction

The year 2020 was the most difficult for people all around the world, especially in Indonesia. People all across the world have been affected by the Covid-19 pandemic. It has had an impact on a variety of areas, including health, economics, politics, and socio-cultural issues. The Indonesian government has made some measures to combat the spread of Covid-19 and to aid people in dealing with the economic consequences. Working and studying online from home is one of the government's initiatives for preventing its spread, as is limiting the operating hours of economic centers. (Triwanto and Aryani 2020)

The National Commission on Violence against Women noted that Covid-19 pandemic makes women more vulnerable to be violence victims. National Commission on Violence against Women has received 892 direct complaints until May 2020. It is equivalent to 63% of number of complaints in 2019. Most of reports were received in April or in the second month of large-scale social restriction (PSBB) has been implemented in several regions in Indonesia. It reached 232 reports that was larger than previous month, 181 reports. Moreover, there were 207 reports in May. The most domain of violence case which has been reported is Domestic Violence/ Private Domain. Its percentage reached 69 % of number cases during January-May 2020. (Nuryanto 2019)

In addition, there were violences in community domain (30%) and state domain (1%). The high number of Domestic Violence or Private Domain emerges in psychic violence (398 reports). Afterward, violence upon wives has been the most violence type occurred (170 reports). (Prasetyo et al. 2020) The commissioner of Komnas Perempuan revealed that large-scale social restriction and economic decline has heightened tension of relationship between husband and wife. Domestic abuse is one of the most common forms of violence against women. In general, the United Nations Declaration on the Elimination of Violence Against Women, adopted in 1993, defines violence against women in Article 1. It is described as any form of gender-based violence that resulted in or may result in physical, sexual, or psychological torment or suffering. Coercion or arbitrary deprivation of liberty, whether in public (within society) or private life, is also included. (Putri, Handayani, and Novianto 2019)

When it comes to domestic abuse, women are the most susceptible. Their misery is divided into three categories: material, bodily, and psychological. At any given time, a large number of victims are suffering. As a result, they require protection under Law No. 23/2004 of the Republic of Indonesia on the Elimination of Violence Against Women. Article 10 stipulates that victim of domestic violences have the right to obtain 1) temporary or permanent protection from their family, attorney general's office, police office, court, advocate, social institutions, or other parties, 2) health care based on their needs, 3) special treatment, particularly on victim's secrecy, and 4) support from social workers. (Ahmadi, Handayani, and Karjoko 2019)

At the moment, victims' protection is limited to procedural justice rather than substantive justice. Victims play just a witness role in the criminal justice system. The victims' interests do not have place yet in

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criminal justice system. "If we see this attentively, either substantial or procedural criminal settlement through criminal law process that has implemented today almost does not give any impact upon victim healing process. At least, there are two reasons for this: first, the imprisonment is heavily orientated towards offender (*offender oriented*), thus victim's suffering and loss will be neglected.; second, the procedures of criminal settlement through criminal law process that has implemented today do not give any chance for victims to determine how conflict will be solved. What is more, attitudes and actions of law enforcement officers who excute procedures of criminal settlement frequently cause other sufferings for victims (*secondary victimization*)."(Soediro, Handayani, ¹⁶ Karjoko 2020)

The Restorative Justice Approach is a type of justice that focuses on the needs of victims and offenders through public engagement rather than enforcing punishment principles against offenders with the judge's approval. This viewpoint considers violence not just as a criminal act, but also as an act that causes harm to victims. As a result, victims' interests should be addressed when dealing with crime. As a result, it is vital to do study into the implementation of restorative justice as a protection strategy for women victims of domestic violence, as well as the efforts made in Indonesia's criminal justice system to achieve protection for women victims of domestic violence.(Erina and Yanis 2020)

¹⁵ Discussion

Domestic violence is defined by the Law of the Republic of Indonesia No. 23/2004 Article 1 Point 1 concerning the Elimination of Violence Against Women as any action directed at someone, particularly a woman, that results in torture or suffering in physical, sexual, or psychological ways, and/or marital abandonment (desertion), and includes intimidation, coercion, and deprivation of liberty. Domestic realm includes: a) husband, wife, and children, b) those who live at home and have a relationship with those in column a, such as blood, marriage, breast-feeding, nurture, and guardianship, and/or c) house maids who assist with household chores and live within the domestic domain.(Suhartini et al. 2019)

In Indonesia, a main problem that many women encountered is violence. Problem looks like a pyramid. It is small on the top but big on the bottom since the accurate number is difficult to be found. Moreover, if violence occurs in domestic domain, it is still taboo to be revealed and viewed as family problem that can be solved through discussion. It has shown that there are many women victims of domestic violence who shut their mouths and keep it for themselves. According to Muladi, violence against women (KDRT) is a barrier to development since it can have devastating consequences. Women's confidence will erode, they will participate in fewer activities, their health will be jeopardized, and their autonomy in the economic, political, and socio-cultural sectors would be harmed. (Yuliandri et al. 2018)

Many factors contribute to women who are victims of domestic violence failing to disclose their cases, including a) a family or marital link between the offender and the victim. Victims are hesitant to come forward, making the case difficult to solve. Furthermore, because both victims and perpetrators use the same space, there are certain concerns. They believe that if they meet, the offender will act worse; b) their reluctance to report the case is due to their own mindset that whatever happens in their family, including such violence, is entirely their personal business and that reporting it would be embarrassing; c) people do not completely trust the legal system in Indonesia because victims have no assurance that they will be free of the offender; and d) people do not completely trust the legal system in Indonesia because victims have no certainty that they will be free of the off.(Karjoko, Winarno, et al. 2020)

Restorative justice, according to Bagir Manan, is the realignment of a more equitable criminal system for offenders, victims, and society. Law has offered a concept which is certainly able to solve uneven equity within society. This concept of thought has improved criminal justice system that put more attention to the necessary in entailing society and isolated victims under the mechanisms which are working today. Then, it is eventually known as restorative justice." Van Ness, quoted by Mudzakkir in G Widiartana stated that restorative justice could be identified by several prepositions as follows:(Handayani, Karjoko, and Jaelani 2019)

- a. Violence is a conflict between individuals which results some loss against victims, society, and offender itself.
- b. The criminal justice process is executed to achieve reconciliation between parties besides repairing the loss that offender made.
- c. The criminal justice process must facilitate active participations of victims, offender, and society. The criminal justice should not be dominated by state by putting others aside.

¹ Tony Marshall who proposed restorative justice concept, quoted by Ahmad Faizal Azhar, stated that "Restorative Justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future" Restorative justice, according to Mardjono, is a method of establishing a caring criminal judicial system for victims' cases. He believes that restorative justice is important for victims' cases because it is a response to Indonesia's criminal

justice system, which he believes tends to be retributive (emphasizing retribution) and ignores the victims' role in the case process. In Indonesia, the development of both the legal system and the means of enforcing it has shown a proclivity to follow existing trends, particularly the rise of restorative justice ideas. To satisfy a sense of justice, restorative justice requires the offender to own his or her error, apologize, and rectify the damage and loss that victims have endured. (Suartha 2020)

Domestic abuse cases can be settled using a restorative justice strategy at any step of the criminal justice process. With reference to the Circular Letter of the Indonesian National Police No. SE/8/VII/2018 on Implementation of Restorative Justice in Case Settlement, investigators can adopt a restorative justice strategy in their investigations. The following are the criminal guidelines for case settlement using a restorative justice method: (Jainah and Handayani 2019)

1. Completing material requirements, such as:
 - a. Not raising public anxiety and no rejection among society.
 - b. No social conflict emerges.
 - c. There is a statement from all parties that there is no objection and they would relinquish their constitutional rights before the law.
 - d. Limiting principles:
 - (1) Upon offender: offender's offense is not too substantial, it may become a deliberate offense (*mens rea*), especially deliberateness as purpose and the offender is not a recidivist.
 - (2) Upon offense in a process: initial investigation and full investigation before the Notification Letter to Begin an Investigation is sent to public prosecutor.
2. Completing formal requirements as follows:
 - a. A letter to request conciliation of two parties (whistleblower dan respondent)
 - b. Deed of Peace and settlement of conflict among several parties (whistleblower and/or family of whistleblower, and representatives of community leaders) was noticed by the chief of investigator.
 - c. The additional Investigation and Interrogation Report of litigant after case settlement has been undertaken through restorative justice.
 - d. Recommendation for special case title that agrees the restorative justice as settlement.
 - e. Offender has no objection to her/his responsibilities, compensations, or his/her voluntary aids.
 - f. Restorative justice can be implemented against common violences that do not emerge human victims.

Referring to the Attorney General of the Republic of Indonesia Regulation No. 15/2020 concerning Prosecution Termination based on Restorative Justice, a case can be closed for legal purpose if the defendant passed away, crime prosecution is outdated, *ne bis in idem* reason, complaint revoked or has been a case settlement out of judicial process (*afdoening buiten process*). Case settlement out of judicial process is executed by regarding a) fine penalty for certain offense is voluntarily paid in accordance with the provisions of legislation or, b) there is a restoration by using restorative justice approach. Case settlement by implementing this restorative justice approach might terminate prosecution. (Karjoko et al. 2021)

For instance, a case in Demak Regency where Mrs. S (36 years old) has reported by his son, A (19 years old) to Police Station of Demak due to suspicion offense in domestic violence. Case settlement by implementing restorative justice approach was executed by meeting all parties in Demak District Prosecutor Office. District Prosecutor Office of Demak Regency executed mediation to implement restorative justice upon the case (case settlement out of court). Restorative justice was executed in Agesti's case (birth children) with Sumiyatun (birth mother) as a suspect in a domestic violence case (torture), and the Nusantara Knight or commonly known as *BKN (Barisan Kesatrian Nusantara)* as represented by M. Rofli Muhlis took an action as mediator. (Sudarwanto et al. 2021)

Restorative justice could result a settlement which focuses on both offender and victim interests. By implementing this approach, the settlement of domestic violence case can be achieved with their sustained relationship in family. Moreover, it could restore the former situation in which both offender and victim could be back as family and would apologize each other. According to Zainal Abidin, this approach could change the concept of merely punish and isolate the offender. He explained that this approach has a role as healing justice, a method in approaching a crime with a purpose to reduce damages holistically, to honor all parties, to repair the damages and make a change. (Karjoko, Gunawan, et al. 2020)

Supreme Court also has encouraged implementation of restorative justice approach at hearing stage at court to adjudicate a case. Supreme Court has issued Regulation of Supreme Court of the Republic of Indonesia Number 3/2017 concerning Guidelines of Adjudicating Women Case against Governing Law followed by Summary of Decision of The Director General of General Judicial Board Number No. 1691/DJU/SK/PS.00/12/2020 Concerning Guidelines of Case Settlement Using Restorative Justice Approach in

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General Judicial circle. Goal of this technical instructions is to encourage the implementation of restorative justice when judge or panel of judges is taking a verdict.(Santaularia, Larson, and Uggen 2021)

The settlement of women victim before the law is completely arranged within. In adjudicating women as victims before the law, judge is obligated to consider legal facts and its implication in the future through restorative justice approach. The judge also should consider victim losses, impacts of case, and necessities for victim healing. On the other hand, judge is obligated to explain the restitution and compensation rights of victims as set forth in Article 98 of Criminal Procedure Code and other provisions. The court should provide professional social workers list by coordinating with social service office therein. The interests of women victims of domestic violence will be accommodated through this restorative justice approach. Moreover, by considering losses and necessities of victim healing, judge will be able to pronounce verdict that protects women as victims.(Crouch 2012)

Conclusion

Restorative justice approach can be implemented at all hearing stages of criminal case. By confronting the offender, victim, and victim's family, it can restore the former situation and sustain the relationship of family members by apology. The judges also have a responsibility to consider interests of women as victim of crime at hearing stage, including restitution and compensation rights. Regulation of restorative justice in criminal case settlement has been regarded as an effort to encourage the optimum implementation of restorative justice approach and to reform the criminal justice system which prefers to impose an imprisonment.

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