



RESTORATIVE JUSTICE IN RESOLVING CRIMES OF DOMESTIC VIOLENCE IN COURT

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Article history:	Abstract:
<p>Received 14th December 2023 Accepted: 10th January 2024 Published: 20th February 2024</p>	<p>Domestic Violence (KDRT) is a form of family violence within the household, consisting of relatives, relatives and household servants who work for the family. This can be caused by economic factors, social environmental factors or gender equality factors. In the domestic sphere, this includes physical violence, psychological violence, sexual violence and domestic neglect. In terms of law enforcement and resolving domestic violence in court, it refers to Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (KDRT).</p> <p>The research method used in this writing is normative legal research, namely research carried out on regulations, laws and legal literature as well as doctrine related to the object of research regarding restorative justice in resolving criminal acts of domestic violence in court.</p> <p>Based on the results of this research, it shows that the resolution of criminal acts of domestic violence in court in the series refers to the Criminal Procedure Code and the sanctions refer to Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (KDRT). The application of Restorative Justice in Domestic Violence cases in Court is very different from resolving criminal acts of minors and one of which is that the judge seeks diversion within 7 days after it is determined and a maximum of 30 days. Resolving domestic violence in court goes through a series of trials as usual in criminal cases. It would be good if the resolution of domestic violence criminal cases is carried out in the same way as the settlement of civil cases, arbitration and child criminal cases, where the parties are given the opportunity to resolve by deliberation and consensus. The Supreme Court should issue or make a legal breakthrough, especially regulating procedures for resolving domestic violence crimes by deliberation/consensus in court.</p>

Keywords: Restorative Justice, Domestic Violence, Courts

INTRODUCTION

Domestic Violence or commonly known to the general public, namely "KDRT" is a form of violence that can be committed by anyone within the family within the household and can also consist of relatives/relatives and household servants who work for the family concerned. Domestic violence can be caused by economic factors, social environmental factors or gender equality factors.

In the domestic sphere, this includes physical violence, psychological violence, sexual violence and domestic neglect. According to the World Health Organization (WHO), domestic violence is identified as any behavior in a relationship that causes physical, psychological or sexual harm.

According to Harkristuti Harkrisnowo, domestic violence is unique compared to other forms of violence against women because of the relationship of power between the victim and the perpetrator.

The results of a World Health Organization (WHO) study show that women are more likely to be victims. Ironically, marital violence is more likely to be a form of violence against women because of the number of women as victims. The proportion of women who have suffered physical violence ranges from 13% to 61%, and sexual violence ranges from 6% to 59% perpetrated by a male partner.

This was also done by the National Commission on Violence Against Women (Komnas Perempuan) in its Annual Record Study (CATAHU) that in 2018 the number of cases of violence against women was 406,178, this number increased compared to the previous year of 348,466. The most prominent type of violence against women, the same

as the previous year, was domestic violence/RP (personal domain) which reached 71% (9,637). The personal domain is the most frequently reported and quite a few of them experience sexual violence. Second place is violence against women in the community/public sphere with a percentage of 28% (3,915) and last is violence against women in the state sphere with a percentage of 0.1% (16). In the realm of domestic violence/RP, the most prominent violence was physical violence with 3,927 cases (41%), ranked first, followed by sexual violence with 2,988 cases (31%), psychological violence with 1,658 (17%) and economic violence with 1,064 cases (11%).

The series of domestic violence is so disturbing and worrying that the government issued a policy by establishing Law Number 23 of 2004 concerning the Elimination of Domestic Violence to regulate criminal acts against perpetrators of domestic violence and protect victims. This refers or refers to the convention regarding the elimination of all forms of discrimination against women, namely the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which has been ratified by Indonesia with Law Number 7 of 1984 concerning Ratification of the Convention Concerning the Elimination of All Forms of Discrimination Against Women. Woman.

The aim of eliminating discrimination against women is to create a conducive atmosphere that supports the existence of women in their capacity as members of society who carry out their roles and in obtaining the same rights and legal protection as men as members of society. The Declaration on the Elimination of Discrimination Against Women contains the principles and efforts that must be made by participating countries to make the necessary regulations in order to eliminate discrimination against women in all its forms and manifestations. In this way, the commitment of the Indonesian people is to have the will to carry out what is mandated by the convention through statutory regulations, including:

1. Law Number 5 of 1998 concerning Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment); which contains a statement recognizing the validity of the International Convention approved by the United Nations General Assembly on 10 December 1984, as well as a commitment to implementing it in Indonesian laws and regulations. Previously, Indonesia had given approval and signed the Convention on October 23 1985.
2. Presidential Decree Number 181 of 1998 concerning the National Commission on Anti-Violence Against Women; contains a statement on the formation of the National Commission Against Violence against Women. The formation of this national Commission was carried out in the context of preventing and overcoming the problem of violence against women and eliminating all forms of acts of violence committed against women.
3. Law Number 39 of 1999 concerning Human Rights; which contains recognition of various human rights in general, specifically also includes recognition and guarantees for the protection of various women's rights contained in Articles 45 to Article 51.
4. Law Number 23 of 2004 concerning the Elimination of Domestic Violence; which includes criminalization of various acts categorized as domestic violence.
5. Based on the 2011 Draft Criminal Code, Part Three "Domestic Violence" Paragraph 1, Article 587.

In this way, the laws and regulations mentioned above really emphasize concretely and firmly as stated in Chapter III Prohibition of Domestic Violence, Article 5 of Law no. 23 of 2004 concerning the Elimination of Domestic Violence which states:

"Every person is prohibited from committing domestic violence against people within their household, by: a. physical abuse; b. psychological violence; c. sexual violence; or d. domestic neglect"

Then related to criminal provisions regulated in Chapter VIII Criminal Provisions Article 44 which states:

- (1) Every person who commits an act of physical violence within the household as referred to in Article 5 letter a shall be punished with imprisonment for a maximum of 5 (five) years or a fine of a maximum of IDR 15,000,000.00 (fifteen million rupiah).
- (2) In the event that the act as intended in paragraph (1) results in the victim becoming ill or seriously injured, he shall be punished with imprisonment for a maximum of 10 (ten) years or a fine of a maximum of IDR 30,000,000.00 (thirty million rupiah).
- (3) In the event that the act as intended in paragraph (2) results in the death of the victim, he shall be punished with imprisonment for a maximum of 15 (fifteen) years or a fine of a maximum of Rp. 45,000,000.00 (forty-five million rupiah).
- (4) In the event that the act as referred to in paragraph (1) is committed by the husband against the wife or vice versa which does not cause illness or obstacles to carrying out official work or livelihood or daily activities, he shall be punished with imprisonment for a maximum of 4 (four) months. or a maximum fine of Rp. 5,000,000.00 (five million rupiah).

The provisions of Article 5 and Article 44 of the Domestic Violence Law are very clear with the aim of eliminating domestic violence. However, the crime of domestic violence is a complaint offense that must be reported by the victim and can be done through mediation between the perpetrator and the victim to be resolved through deliberation or what is called "restorative justice."

One of the foundations for implementing restorative justice by the Supreme Court is proven by the

implementation of policies through Supreme Court Regulations and Supreme Court Circular Letters. Guidelines for restorative justice in general justice are regulated in the Decree of the General of the General Court which was issued on 22 December 2020. Apart from that, the Attorney General's Office also issued Attorney General Regulation (PERJA) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and Circular Letter from the Chief of Police Number: SE/8/VII/2018 concerning Guidelines for Handling Case Settlements Using a Restorative Justice Approach, Perpol No. 8 of 2021.

Even though various provisions or guidelines as well as Supreme Court Regulations and the Supreme Court Circular Letter concerning Restorative Justice Guidelines are regulated in this way, in reality, the process of resolving restorative justice in court is still going through a trial process. This can be seen in related court decisions, including, 1. Decision Number XX/Pid.Sus/2023/PN Kfm ", 2. Decision Number 107/Pid.Sus/2023/PN Ban, 3. Decision Number XX/Pid. Sus/2023/PN Bar and 4. Decision Number 166/Pid.Sus/2022/PN Trg. Among these decisions, it turns out that the handling of case resolution using a restorative justice approach in court is still resolved through punishment.

Regarding the application of restorative justice provisions, the author refers to previous research to make it easier for the author in preparing this thesis, namely:

1. The first research conducted by Wawan Aolawi, Dani Durahman regarding the Implementation of Restorative Justice in Domestic Violence Cases in the Investigation Stage at the Bandung Police. From the results of his research, the role of the Bandung Police in resolving cases of Domestic Violence uses two approaches, namely:
 - 1.1 Implementation of Restorative Justice in Domestic Violence Cases Linked to Law Number 23 of 2004 in conjunction with the National Police Chief's Decree Number 6 of 2019 concerning Investigation of Criminal Acts. The resolution of domestic violence cases is in fact resolved through Law Number 23 of 2004 concerning elimination domestic violence as *lex specialis*.
 - 1.2 Obstacles and Efforts to Implement Restorative Justice in Domestic Violence Cases Linked to Law Number 23 of 2004 in conjunction with the National Police Chief's Decree Number 6 of 2019 concerning Criminal Investigation, deliberation is one of the instruments of the concept of restorative justice. It is the parties who determine the value of justice they want, not the judiciary.
2. The second research was conducted by Dino Febriansyah Sitorus, Andi Maysarah regarding Resolving Domestic Violence (KDRT) through Restorative Justice at the Investigation Level. In the presentation of this research, Restorative justice in Indonesia currently does not have its own law. The implementation of restorative justice as an alternative for resolving cases only refers to the Chief of Police Circular No. SE/08/VII/2018 concerning the Implementation of Restorative Justice. In Resolving Criminal Cases. Regarding the limitations on what types of criminal acts can be resolved using restorative justice based on Article 1 Number (27) of National Police Chief Regulation No. 6 of 2019 concerning Criminal Investigation. The police as investigators in this case play an important role in helping the parties to reconcile through penal mediation which uses a restorative justice approach. Investigators made offers three times within a period of seven days for the parties to agree whether to resolve the case through restorative justice or continue the litigation legal process.
3. The third research by Anwar Rabbani, Master of Laws at Singaperbangsa University Karawang on Resolving Crimes of Domestic Violence from a Restorative Justice Perspective. The presentation of this research is that the legal subjects of domestic violence in these provisions are persons and subordinates who reside in a certain time and space. In fact, the government is responsible for preventing domestic violence. The right to individual and family protection is guaranteed by the state as stated in the explanation of the General Provisions of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Based on the description of the problem and previous research as described above, the author has an interest in conducting research whose results are written in the form of a thesis with the title "RESTORATIVE JUSTICE IN SETTLEMENT OF CRIMES OF DOMESTIC VIOLENCE IN THE COURTS". .

METHOD

1. Approach Method

In this research plan, the author uses a type of normative research, namely legal research carried out by examining library materials or secondary data. Meanwhile, according to Abdulkadir, normative legal research is research that examines the factual implementation of positive legal provisions (legislation) and contracts for each specific legal event that occurs in society in order to achieve predetermined goals.

Normative legal research or literature includes the following: (a) Research on legal principles; (b) Research on legal systematics; (c) Research on the level of vertical and horizontal synchronization; (d) Comparative law; and (e) Legal history.

Related to the classification above, in its relevance to the research plan, this research is normative juridical, namely, it concerns research on the level of vertical synchronization of a legal regulation which is classified as primary legal material, and is carried out by analyzing theories, concepts and legislation. invitations relating to domestic violence as stated in Law Number 24 of 2004 concerning the Elimination of Domestic Violence and the Criminal Code.

2. Type of Research

This research can be classified into a type of descriptive research, namely a type of research that is formulated to provide data that is as accurate as possible about people, conditions or other symptoms. This research intends to obtain as much data as possible and as thorough as possible regarding the problems that occur in domestic violence mediation .

RESULTS AND DISCUSSION

A. Settlement of Domestic Violence Crimes in Court

Currently, the system for resolving criminal cases of domestic violence in court always ends in a judge's decision which has permanent legal force "Inkracht Van Gewijsde". Including resolving criminal acts of domestic violence in court, the process of resolving criminal acts of domestic violence in court, practically goes through long stages. These include the reading of the Public Prosecutor's (JPU) Indictment Letter, the Defendant's Legal Counsel's Exception Note, Exception Response, Interim Decision, Interim Decision, Prosecutor's Evidence, Prosecutor's Charges, Legal Counsel's Defense, Prosecutor's Response or Replies and the final decision of the panel of judges.

This is a series of processes for resolving criminal acts, including crimes of domestic violence, in court. This series of resolutions for criminal acts has been regulated in the Criminal Procedure Code (KUHP). Resolution of Domestic Violence in Court refers to Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (KDRT).

Thus, the occurrence of criminal acts of domestic violence can be resolved criminally, namely, perpetrators of criminal acts of Domestic Violence are given sanctions in accordance with the provisions of Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (KDRT).

With these provisions, the court, through a panel of judges, applies the Domestic Violence Law through its decisions. This can be seen in several court decisions, including:

1. Decision Number XX/Pid.Sus/2023/PN Kfm"

In this decision, the Panel of Judges in their considerations stated "that criminal law essentially aims to achieve prosperity and harmony in social life, in this case the Defendant is the head of the household and the victim is the wife of the Defendant who currently has not forgiven the Defendant's actions. The Judge is of the opinion that the crime committed by the Defendant must be punished in accordance with the purpose of the punishment, where the purpose of the punishment is not merely an act of retaliation or revenge or deterrence, but rather the punishment of the Defendant as a preventive and repressive effort so that the Defendant can reflect on his next actions in the future, the punishment is more stringent. This sentence was not imposed to lower the Defendant's status as a human being, but was more educational and motivational so that the Defendant would not repeat this act again. Apart from that, the punishment of the Defendant is in line with the correctional system where this punishment is an effort to make the prisoner aware to regret his actions and return him to being a good member of society, obeying the law, upholding moral, social and religious values, so as to achieve a safe social life, orderly and peaceful."

2. Decision Number 107/Pid.Sus/2023/PN Ban

In the consideration of the Panel of Judges "not finding anything that can eliminate criminal responsibility, either as a justification or excuse, then the Defendant must be held responsible for his actions, because the Defendant is capable of responsibility, he must be declared guilty and sentenced to a crime, in order to impose a crime on the Defendant. , it is necessary to first consider the aggravating and mitigating circumstances of the Defendant; The aggravating circumstances of the Defendant's actions have not been forgiven by the Victim Witness."

3. Decision Number XX/Pid.Sus/2023/PN Bar

In the trial in this case, the Panel's consideration "The judge did not find anything that could eliminate criminal responsibility either as a justification or excuse, so the defendant must be held accountable for his actions, taking into account the purpose of the punishment against the defendant, which is intended to educate the defendant to become a citizen." people who obey the law and respect the rights of others and will not commit criminal acts again in the future, then the Defendant must be sentenced to imprisonment commensurate with his actions and to impose a crime on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant. Aggravating circumstances: The defendant has previously committed a criminal act."

4. Decision Number 166/Pid.Sus/2022/PN Trg

The consideration of the Panel of Judges in this case, "because during the trial no excuses or justifications were found for the Defendant's actions, it means that the Defendant is a person who is capable of taking responsibility for his actions, therefore he can be blamed and must be sentenced to appropriate imprisonment. with his actions, in order to impose a crime against the Defendant, it is necessary to first consider the aggravating and mitigating circumstances. The aggravating circumstance is that the Defendant's actions disturbed the community. "punishment is not intended as a form of revenge but rather aims to rebuild a pattern of control for the Defendant so that he can return to living a normal life in society, therefore the punishment that will be imposed on the Defendant should be

considered appropriate and fair."

Based on the description of the judge's considerations above, according to the author, it is very interesting the judge's legal considerations in resolving the crime of Domestic Violence in court. The essence of criminal law is welfare and harmony and is not merely to take revenge but the real aim of punishment is as a preventive and repressive effort so that perpetrators of crimes of domestic violence can reflect and realize their actions.

According to the author, the basis and consideration for the sentence is that the judge uses the classical school of thought of indeterminism in which humans emphasize that the actions of the perpetrator of the crime are determined by the criminal law. In principle, the classical school adheres to a trace system in the form of a single sanction, namely criminal law. This school is also retributive and repressive towards criminal acts, because in this doctrine the punishment must be in accordance with the crime. Consequently, the law must be formulated clearly and not provide the possibility for judges to make interpretations.

Referring to the theory of retribution (Vergeldings Theoryen) according to Zainal Abidin, he views that punishment is retaliation for mistakes committed. This theory puts forward that sanctions in criminal law are imposed solely for committing a crime which is an absolute consequence that must exist as retribution to the person who committed the crime with the aim of satisfying the demands of justice. Andi Hamza's opinion is also the same, according to him, crime is an absolute demand, not just something that is avoided but is a necessity.

Apart from that, in the process of resolving criminal acts including domestic violence in court, the facts of the trial are to determine whether someone is capable of taking responsibility for their actions and whether the perpetrator committed a criminal act but was not punished. Judging from the consideration of the decision above which sentenced the perpetrator of domestic violence, according to the panel of judges, they did not find any justifying or forgiving reasons.

Thus, in the author's opinion, the judge's consideration in imposing a criminal sentence on the perpetrator of Domestic Violence is because he does not find a justification, a forgiving reason and a reason for dismissing the charges because this really determines whether or not someone can impose a crime on someone. If these reasons are not found then the resolution of Domestic Violence in court, the panel of judges imposes a prison sentence on the perpetrator of Domestic Violence with the aim of re-establishing a pattern of self-control for the Defendant so that it is hoped that he can return to living a normal life in society, by Therefore, the punishment that will be imposed on the defendant should be considered appropriate and fair.

However, this is not in accordance with the concept of restorative justice in the criminal law system in Indonesia, which is a mandate for the implementation of the principle stated in criminal law that the application of the Criminal Code and Criminal Procedure Code is the last resort or ultimum remedium. Moreover, if this is placed within the framework of the Pancasila philosophy, in the understanding adopted regarding the purpose of punishment based on Pancasila which is oriented towards the principles of recognizing humans (Indonesia) as creatures of the Almighty God, the concept of punishment must be directed at awakening the faith of criminals, so that The form of punishment will not conflict with any religious beliefs held by Indonesian society.

According to Dwidja Pryatno, adapted from JE Sahetapi and M. Solahudin, the aim of punishment according to the Pancasila concept must function to develop mentally and at the same time transform the perpetrator into a religious person. Punishment that cannot injure human rights and degrade human dignity, as well as fostering national solidarity where the perpetrator must be directed to increase tolerance with other people and instill a sense of love for the nation, foster maturity to be able to control oneself and foster awareness of the obligations for every citizen to uphold justice together with other people in the community.

By looking at this explanation, there are several positive impacts that a restorative justice approach can offer to the criminal justice system, including the following :

- 1) The restorative justice approach will provide alternatives for handling criminal acts by providing space for reaching a resolution outside of court.
- 2) Being able to eliminate the prosecution and trial process which will take a long time will really help reduce the backlog of cases and will also reduce the huge cost burden.
- 3) Can avoid the imposition of prison sentences which often have a negative impact that is greater than the desired positive thing.
- 4) Can avoid the burden of overcrowding on prison capacity.
- 5) Achieved savings in the State financial budget so that it can be used for other important needs.

B. Resolving Crimes of Domestic Violence in Court Using Restorative Justice

Restorative Justice in resolving Domestic Violence in Court refers to the Decree General of the General Judicial Body of the Supreme Court Number: 1691 / DJU / SK / PS.00 / 12 / 2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice.

The concept of regulation regarding the resolution of Domestic Violence in Court through the Decree of the General of the General Judicial Body of the Supreme Court Number: 1691 / DJU / SK / PS.00 / 12 / 2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice, which was issued on December 22 2020. The purpose of these technical instructions is to encourage optimization of the implementation of Supreme

Court Regulations, Supreme Court Circulars which regulate the implementation of restorative justice in courts and reform the criminal justice system which still prioritizes prison law. The development of the criminal system no longer relies on the perpetrator but has led to the alignment of the interests of the victim's recovery and the accountability of the perpetrator of the crime.

Supreme Court Circular which regulates the implementation of restorative justice in courts and reforming the criminal justice system which still prioritizes prison law. The development of the criminal system no longer relies on the perpetrator but has led to the alignment of the interests of the victim's recovery and the accountability of the perpetrator of the crime.

The purpose of this technical guidance is:

1. Make it easier for courts in the general justice environment to understand and implement the Supreme Court Regulations, Supreme Court Circular Letters and Supreme Court Decisions which regulate the implementation of restorative justice.
2. Encourage increased implementation of restorative justice as regulated by the Supreme Court in decisions made by the panel/judges.
3. Fulfillment of the principles of justice that is fast, simple and low cost with balanced justice.

The scope of these guidelines applies and must be guided by all district courts in Indonesia in terms of resolving cases through restorative justice in minor crimes, cases of women in conflict with the law, children and narcotics cases.

Referring to letter C which regulates restorative justice in cases involving women as stated in the Supreme Court Guidelines, the legal basis is:

1. CEDAW Convention (The Convention on the Elimination of All Against Women) which has been ratified by Law of the Republic of Indonesia Number 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women;
2. ICCPR Convention (International Covenant on Civil and Political Rights) which has been ratified by Law of the Republic of Indonesia Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights);
3. Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (KDRT);
4. Law of the Republic of Indonesia Number 31 of 2014 concerning Protection of Witnesses and Victims;
5. Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection;
6. Republic of Indonesia Regulation Number 43 of 2017;
7. Government Regulation Number 7 of 2018 concerning Providing Compensation, Restitution and Legal Assistance to Witnesses and Victims;
8. Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 concerning Guidelines for Trying Women's Cases in Conflict with the Law.

Related to the legal basis for implementing the concept of Restorative Justice in resolving domestic violence in court, one of which refers to Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (KDRT). However, the resolution process in the concept of Restorative Justice in court is very different from minor crimes, juvenile and narcotics cases.

Based on Chapter II, the contents of guideline letter (C) regarding Restorative Justice in cases of women who are in conflict with the law, the application of which is as follows :

- a. In examining cases, judges should consider gender equality and non-discrimination, by identifying the facts of the trial:
 - i. Inequality of social status between the litigants;
 - ii. Inequality of legal protection that impacts access to justice;
 - iii. Discrimination;
 - iv. Psychological impact experienced by the victim;
 - v. Victim's physical and psychological helplessness;
 - vi. Power relations that result in victims/witnesses being powerless; And
 - vii. History of violence from the perpetrator towards the victim/witness.
- b. When examining women in conflict with the law, judges are prohibited from doing 4 (four) things as stated in article 5 of the Republic of Indonesia Supreme Court Regulation Number 3 of 2017 concerning guidelines for adjudicating cases of women in conflict with the law as follows :
 - i. Showing attitudes or making statements that demean, blame and/or intimidate women in conflict with the law;
 - ii. Justify the occurrence of discrimination against women by using culture, customary rules and other traditional practices or using expert interpretations that differentiate gender;

- iii. Asking and/or considering the victim's sexual experience or background as a basis for releasing the perpetrator or reducing the perpetrator's sentence; And
- c. Judges in adjudicating women's cases in conflict with the law based on Article 6 of the Republic of Indonesia Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Trying Women's Cases in conflict with the law, are obliged to:
 - i. Considering gender equality and gender stereotypes in statutory regulations and unwritten laws;
 - ii. Interpreting statutory regulations and/or unwritten laws that can guarantee gender equality;
 - iii. Exploring legal values, local wisdom and the sense of justice that lives in society to ensure gender equality, equal protection and non-discrimination; And
 - iv. Consider the implementation of international conventions and agreements related to gender equality that have been ratified.
- d. During the course of the trial, the judge must prevent and/or reprimand parties, legal advisors, public prosecutors who belittle, blame, intimidate and/or use the experience or sexual background of women in conflict with the law.
- e. Handling women in conflict with the law:
 - i. Handling of women in conflict with the law as perpetrators;
 - Judges in adjudicating cases of women in conflict with the law as perpetrators are obliged to consider legal facts using a restorative justice approach.
 - The judge's decision explores legal values, local wisdom and the sense of justice that lives in society to ensure gender equality.
 - ii. Handling of women in conflict with the law as victims;
 - Judges in trying women's cases deal with legal facts and future implications using a restorative justice approach.
 - In examining and deciding cases of women facing the law as victims, the judge must consider the losses experienced by the victim and the impact of the case as well as the need for recovery for the victim.
 - The judge is obliged to inform the victim about his rights regarding restitution and compensation as regulated in Article 98 of the Criminal Procedure Code (KUHAP) and other provisions.
 - The court is obliged to provide a list of perkos (professional social workers) in coordination with local social services.
- f. Women facing the law who experience physical and psychological obstacles and therefore need assistance:
 - i. The judge must order the presence of a companion.
 - ii. The court is obliged to provide a list of companions for women in conflict with the law that suit their needs based on expert opinions (psychiatrists, doctors, psychologists and family) by filling out a personal assessment form provided at the one-stop integrated service desk (PTSP).
- g. Judges when examining cases of women in conflict with the law can order their statements to be heard through examination using long-distance audio-visual communication at the local court or elsewhere based on Article 10 of the Republic of Indonesia Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Trying Women's Cases in Conflict with the Law.

Based on this explanation, according to the author, it is a legal breakthrough to apply the concept of Restorative Justice in resolving Domestic Violence in Court in accordance with the principles of restorative justice. This is "one of the principles of law enforcement in the case resolution process which can be used as an instrument. And it is an alternative resolution of criminal cases which in the judicial mechanisms and procedures focuses on punishment which is transformed into a dialogue and mediation process involving the perpetrator, the victim, the family of the perpetrator/victim, and other related parties to jointly create an agreement on the resolution of the criminal case. which is fair and balanced for victims and perpetrators by prioritizing restoration to their original condition, and restoring patterns of good relations in society."

The basic principle of restorative justice is that there is restoration for victims who suffer as a result of crime by providing compensation to the victim, peace, the perpetrator carrying out social work or other agreements. Fair laws in restorative justice are certainly not one-sided, impartial, not arbitrary, and only side with the truth in accordance with applicable laws and regulations and take into account equal rights to compensation and balance in every aspect of life.

Referring to the Republic of Indonesia Supreme Court Regulation Number 3 of 2017 concerning guidelines for adjudicating women's cases in conflict with the law, the letter C in Roman numerals (iii) is understood as the basis for resolving criminal cases in court based on legal values, local wisdom and the sense of justice that lives in society. This is in accordance with Soejono Soekanto's thoughts, customary law is part of living law and part of national law, a goal to be achieved, because living law applies juridically, sociologically and philosophically.

Likewise, Indonesia has the basic state philosophy (weltanschauung) Pancasila which is the core philosophy,

therefore it is the source of value for the existence of a legal system. in the 4th principle of Pancasila: "The people are led by the wisdom of deliberation/representation, so the meaning contained prioritizes deliberation/deliberation in making decisions for the common good.

In the context of resolving criminal disputes or known as penal mediation. According to Lilik Mulyadi, the existence of penal mediation can be studied from a philosophical, sociological and juridical perspective, in essence it is oriented towards Indonesian society whose cultural roots are oriented towards family cultural values, prioritizing the principle of deliberation and consensus to resolve disputes in a social system. Strictly speaking, aspects and dimensions of local wisdom of customary law.

Thus, the concept of resolving criminal acts in the concept of restorative justice has long been applied in Indonesia, this is applied in customary law as in:

1. Lampung, the most common punishment problem is violent crime, so the appropriate way to resolve it is for the disputing parties to come to the local traditional elders as intermediaries in the resolution, offering an apology, even though the party concerned is not the guilty party.
2. Minangkabau, in the event of a dispute in society, justice seekers take the case to a special center within a federation (several nagari), where people ask for justice. Because consensus is the highest king, the trial of the heads of the people is the highest peak of the court in the nagari, at the lowest level the court that acts as judge is the assembly of the local headmen. The judge's obligations in resolving cases are: 1. Reconciling those who are in dispute, 2. Bringing together both parties, 3. Investigating witnesses, 4. Determining and pronouncing a decision, 5. Fearing Allah, 6. Deciding based on justice, 7. Decision making by consensus.
3. Aceh, there are four patterns of conflict resolution in the traditions of gampong communities in Aceh, namely: di'et, sayam, suloh, and peumat jareo. This pattern is a conflict resolution pattern that uses a customary and sharia framework.
4. Ambon, a minor criminal case, abuse can be resolved informally by the local community, the King or Village Head has a central position and has a big role and influence in helping resolve various problems and cases in the community. The king is known as the final decision in cases or disputes that are difficult to handle. The hamlet head also acts as a mediator. The aim of informal dispute resolution is to maintain harmony and restore relations between the community and so that resolving the case can save costs and time for the parties.

Conflict resolution between perpetrators of criminal acts and victims of criminal acts in indigenous communities also exists in other areas, for example Flores, East Nusa Tenggara, Lombok, Papua and other areas. This shows the similarity in form, namely, the existence of peace efforts and ending the conflict by involving third parties, which is a form of criminal mediation approach known as Traditional village or tribal moots. Traditional village or tribal moots. Settlement of customary law through peace efforts can become the basis for modern mediation programs, including criminal mediation which can be stated in statutory regulations.

However, the practice of resolving criminal cases using the concept of Restorative Justice in resolving domestic violence is very different in the Police, Prosecutor's Office and in the courts. In court criminal mediation, there are no statutory provisions, Supreme Court Regulations or Supreme Court Circulars that strictly and comprehensively regulate procedures for mediation between perpetrators and victims. Because there are no provisions, whether statutory regulations or related regulations, which comprehensively regulate the resolution of criminal acts of domestic violence (KDRT), it is necessary to regulate them in such a way so that the courts can implement provisions specifically for resolving criminal acts of domestic violence (KDRT) . .

CONCLUSION

1. The current pattern for resolving criminal acts of domestic violence still refers to Law Number 23 of 2004 concerning the Elimination of Domestic Violence (KDRT). However, the resolution is through a series of trials and court decisions solely because the individual concerned has committed a crime and this does not reflect the concept of fast, simple and low-cost justice.
2. Implementation of Restorative Justice as an alternative resolution of criminal cases which in the criminal justice procedure mechanism focuses on punishment which is transformed into a dialogue and mediation process involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly create an agreement on resolving criminal cases in a fair and balanced manner for both victims and perpetrators by prioritizing restoration to their original condition and restoring patterns of good relations in society.

REFERENCE

Books :

1. Afandi Dedi, et al., 2017, Prevalence and pattern of domestic violence at the Center for Forensic Medical Services in Pekanbaru, Indonesia. Medical Journal of Indonesia.
2. Arif Nawawi Barda, 2003, Kapita Selekta Criminal Law, PT. Cita Aditya Bakti, Bandung.
3. Burhanudin, 2022, Changing the Justice Paradigm, Restorative Justice Steps for the Prosecutor's Office, Marja, Bandung.
4. C Moreno García-, Jansen HA, Ellsberg M, Heise L, Watts C. 2005, WHO Multi-Country Study on Women's Health and Domestic Violence against Women Initial results on prevalence, health outcomes and women's responses Full Report. WorldHealth.
5. Hamzah Abu and Al-Ghamidi Latif Abdul, 2010, Stop Domestic Violence, Domestic Violence, Imam Asy-Syafi'i, Jakarta.
6. Huda Chairul, 2008, "From No Crime Without Fault To 'No Criminal Responsibility Without Fault' Critical Review of the Theory of Separation of Crime and Criminal Responsibility, Third Printing, Kencana Prenada Media Group Publisher, Jakarta.
7. National Commission on Violence Against Women. Victims Speak, Data Speak, Pass the Bill on the Elimination of Sexual Violence as a Form of State Commitment. Annual Notes on Violence Against Women. Jakarta. 2019.
8. Liebmann Marian, 2007, Restorative Justice, How it Works, Jessica Kingsley Publishers, London and Philadelphia.
9. Maramis Frans, 2012, General and Written Criminal Law in Indonesia, PT. Raja Grafindo Persada, Jakarta.
10. Makaro Taufik Mohammad, et al, 2014, Child Protection Law and Elimination of Domestic Violence, Rineka Cipta Publishers, Jakarta.
11. M Abdulkadir., 2004, Law and Legal Research. Citra Aditya Bakti, Bandung.
12. Muladi and Arif Nawawi Barda, 1984, Criminal Theories and Policies, Alumni, Bandung.
13. Mulyadi Lilik, 2010, Compilation of Criminal Law in Theoretical Perspective and Judicial Practice, Protection of Crime Victims, Justice System and Criminal Policy, Philosophy of Sentencing and Legal Efforts for Judicial Review by Crime Victims, CV Publisher. Mandar Maju, Bandung.
14. Rahayu Ninik, 2021, Legal Politics of Eliminating Sexual Violence in Indonesia, Gramedia Group, Jakarta.
15. R. Sugiharto, 2012, Indonesian Criminal Justice System and Overview of the Criminal Justice System in Several Countries, Unissula Press, Semarang.
16. Sarmadi Sukris HA, 2009, Litigation Advocate, Non Litigation Court, Becomes an Indonesian Advocate Now, CV Publisher. Mandar Maju, Bandung.
17. Soekanto Soerjono, 2000, Legal Research Methods, UI Prees, Jakarta.
18. ----- and Mamudji Sri, 2011, Normative Legal Research. Rajawali Press, Jakarta.
19. Simanjuntak Nikolas, 2012, Indonesian Criminal Procedure in the Legal Circus, Ghalia Indonesia, Bogor.
20. Surbakti Natangsa, 2015, Restorative Justice Within the Frame of Empri, Theory and Virtue, Genta Publishing, Yogyakarta.
21. Sriwidodo Joko H., 2014, Implementation of Mediation for Crimes of Domestic Violence Based on Restorative Justice in the Indonesian Criminal Justice System, Kepel Pres Publishers, Yogyakarta.
22. Yusup Anas, 2016, Implementation of Restorative Justice in Law Enforcement by the National Police to Achieve Substantive Justice, Trisakti University Publishers, Jakarta.

Laws/Regulations

1. Law Number 23 of 2004 concerning the Elimination of Domestic Violence.
2. Republic of Indonesia Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Trying Women's Cases in Conflict with the Law.
3. General Decree of the General Judicial Body of the Supreme Court Number: 1691 / DJU / SK / PS.00 / 12 / 2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice, which was issued on December 22 2020.
4. Guidelines for Implementing Restorative Justice in the General Court Environment, 22 December 2020.

Journal

- AD Timoera, 2014, Restorative Justice and its Prospects in the Criminal Justice System, Child Crime in Indonesia. Pulpit Democracy Scientific Journal.
- Barama Michael, Model of the Criminal Justice System in Development, Journal of Legal Studies Vol.III/No.8.
- Dewi Sulastri Diah, 2017, Penal Mediation in the Juvenile Criminal Justice System in Indonesia (Penal Mediation On Juvenile Criminal Justice System in Indonesia), Dissertation of the Doctoral Program in Law, Jayabaya University.
- Durahman Wawan Aolawi Dani Wawan Alowani, 2022, Implementation of Restorative Justice in Domestic Violence Cases in the Investigation Stage, Faculty of Law, Langlangbuana University, Wacana Paramarta Journal of Legal Studies Vol 21 No 1.
- Failin, 2017, Criminal and Sentencing Systems in the Reform of Indonesian Criminal Law, Putri Maharaja

Payakumbuh College of Law, Canduang Koto Laweh, Canduang District, Agam Regency, West Sumatra, Jurnal Cendikia Hukum, 10 September.

Hasaziduhu Moho, 2019, Law Enforcement in Indonesia According to the Aspects of Legal Certainty, Justice and Benefits, Journal Warta Edition: 59, January, ISSN: 1829-7463, Dharmawangsa University.

Hadi Kusuma Akbar Naufal, 2022, Law Enforcement in Indonesia Seen from a Legal Sociology Perspective, Journal of Law and Economic Development, Volume 10, Number 2.

Herlina Apong et al, 2004, Protection of Children in Conflict with the Law, PT. Raja Grafindo Persada, Jakarta.

Kristanto Andri, 2022, Study of Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Lex Renaissance No. 1 Vol. January 7.

Langgeng Setyo, 2018, The Role of Advocates as Law Enforcers in Supporting the Realization of an Integrated Criminal Justice System in Law Enforcement in Indonesia, Journal of Sovereign Law, Volume 1 No. March 1st.

Mulyadi Lilik, 2013, Penal Mediation in the Indonesian Criminal Justice System, Study of Principles, Norms, Theory and Practice, Yustisia, Vol.2 No. January 1-April.

MA Agustina,. 2017, Women's Rights in Mainstreaming the Ratification of Cedaw and Maqāṣid Asy-Syarī 'Ah. Al-Ahwal: Journal of Islamic Family Law.

Rabbani Anwar, Resolving Crimes of Domestic Violence in the Perspective of Restorative Justice, 2020, Master of Laws, Singaperbangsa University Karawang, Al'Adl Law Journal , , Volume 12 Number 2, July.

Rahman Gazali M. and Tomayahu Sahlan, 2020, Law Enforcement in Indonesia, Al-Himayah Journal Volume 4 Number 1 March, Univ. IAIN Sultan Amai Gorontalo.

Rahayu Ninik, 2008, Law Number 23 of 2004 concerning the Elimination of Domestic Violence and Efforts to Fulfill Victims' Rights, Indonesian Legislation Journal Vol.5 No.3-September.

Satria Hariman, 2018, Restorative Justice: A New Paradigm for Criminal Justice, Legal Media Journal, VOL.25 NO.1 / JUNE.

Sanyoto, 2008, Law Enforcement in Indonesia, Journal of Legal Dynamics, Vol.8 No. September 3, Faculty of Jenderal Soedirman University, Purwokerto.

Sitorus Febriansyah Dino Maysarah, Andi, 2023, Resolving Domestic Violence (KDRT) through Restorative Justice at the Investigation Level, Law Study Program, Faculty of Law, Dharmawangsa University, Indonesia, Volume 17, Number 1:9-17 January.

Surbakti Eden Farrel and Abdilah Ali, 2020, Comparison of the Position and Authority of the Police in the Constitution that Has Been in Force in Indonesia, Journal of Law & Development, Vol. 51 :n No. 1 Article 9 University of Indonesia.

Widiarta Ketut I, Djatmika Prija, Sugiri Bambang, Settlement of Domestic Violence Cases Through Penal Mediation at the Investigation Level at Kapuas Police.

Internet :

1. <https://nasional.kompas.com/read/2022/02/15/12443411/restorative-justice>. Retrieved June 26, 2023.
2. kbbi.web.id/koncept. Accessed September 9, 2023, at 15:51
3. <https://123dok.com/article/theori-penegakan-Hukum-kerangka-penegakan-both-kebisingan-getaran> Accessed on September 9 2023, at 17.34. <https://hng.co.id/en/restorative-justice-antara-theory-dan-politik/>. Accessed August 27, 2023, at 23:58
4. <https://investor.id/opini/229076/penerapan-princi-restorative-justice-dalam-detik-penegakan-Hukum-pidana>. Accessed August 28, 2023, 00.22 hours
5. <https://nasional.kompas.com/read/2021/03/01/09271601/apa-itu-restorative-justice-yang-hindaran-kerap-buat-kapolri>. Accessed August 28, 2023, at 00.35
6. <https://hng.co.id/en/restorative-justice-antara-theory-dan-politik/>. Accessed August 28, 2023, at 00.35
7. <https://www.menurut.id/pengertian-kdrt-menurut-para-ahli>. Accessed October 17, 2023, at 14:58
8. <https://zilbest.com/relationship/histori-kdrt/>. Accessed October 17, 2023, at 19:19
9. [Corner Hukum.com/2015/07/latar-back-lahirnya-uu-No-23-tahun.html](https://corner.hukum.com/2015/07/latar-back-lahirnya-uu-No-23-tahun.html). accessed on 23 October 2023, at 17.50
10. [Hukumonline.com/berita/a/kdrt](https://hukumonline.com/berita/a/kdrt). Accessed October 25, 2023, at 18.08
11. <https://www.situsjudi.com/2020/09/>. Accessed 25 October 2023.
12. <https://123dok.com/article/anggaran-pekerjaan-pengertian-kompan-dan-kerja>. Retrieved November 14, 2023, at 14:36
13. <https://kumparan.com/muhammad-tariqh-al-qisthi/peran-anggaran-pekerjaan-dalam>. Retrieved November 14, 2023, at 14:27
14. <https://www.biem.co/read/2023/06/25/96899/asal-mula-term-restorative-justice/>. Accessed November 26, 2023, at 01.08
15. <https://nuraminsaleh.blogspot.com/2016/02/histori-perkembangan-restorative-justice.html>) Accessed December 5, 2023, at 16.20
16. <https://musashiachmadputra1.blogspot.com/2013/04/histori-restorative-justice-cepat.html>. Accessed December 5, 2023. At 16.59
17. <https://ilawsociety.com/article/mengenal-restorative-justice/>. Accessed December 5, 2023. At 18.37
18. <https://projustice.id/phase-produk-mediati-menurut-peraturan-mahkamah-agung-nomor-1-tahun-2016/>.

