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Application of Restorative Justice to the Crime of Sexual Violence against Women

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Abstract: This study focuses on the background of Indonesia as a state of law, where state power is regulated by law to achieve legal discipline. However, the implementation of laws to protect women from violence is still weak and affects the sense of justice and impunity for offenders. As an alternative solution, the Restorative Justice approach is proposed to resolve acts of sexual violence by involving victims and offenders in dialogue and joint recovery following the principle of consensus. This study uses a normative juridical method by analyzing relevant regulations and literature and conducting interviews with Teluk Bitung Regency Police. It found that the Restorative Justice approach can be a more inclusive and restorative alternative for victims and offenders of sexual violence. However, to implement it effectively, certain conditions need to be met, including admission of guilt, consent of the victim and offender, and support from the police or prosecutor's office. The results show that this approach has the potential to provide a fairer resolution and have a positive impact on efforts to prevent and respond to violence against women in Indonesia.

Keywords : Restorative Justice; Sexual Violence; Crime; Women's Protection

Abstrak: Penelitian ini menyoroti latar belakang Indonesia sebagai negara hukum, di mana kekuasaan negara diatur oleh hukum untuk mencapai ketertiban hukum. Namun, implementasi hukum untuk melindungi perempuan dari kekerasan masih menimbulkan kelemahan yang mempengaruhi rasa keadilan dan impunitas bagi pelaku. Sebagai solusi alternatif, pendekatan Restorative Justice diusulkan untuk menyelesaikan tindak kekerasan seksual dengan melibatkan korban dan pelaku dalam dialog dan pemulihan bersama, sesuai dengan prinsip musyawarah mufakat. Penelitian ini menggunakan metode yuridis normatif dengan menganalisis peraturan dan literatur yang relevan serta melakukan wawancara di Polres Kabupaten Teluk Bitung. Ditemukan bahwa pendekatan Restorative Justice dapat menjadi alternatif yang lebih inklusif dan pemulihan bagi korban dan pelaku tindak kekerasan seksual. Namun, untuk melaksanakannya secara efektif, perlu memenuhi syarat-syarat tertentu, termasuk pengakuan kesalahan, persetujuan korban dan pelaku, serta dukungan dari kepolisian atau kejaksaan. Hasilnya menunjukkan bahwa pendekatan ini memiliki potensi untuk memberikan penyelesaian yang lebih adil dan membawa dampak positif dalam upaya pencegahan dan penanggulangan kekerasan terhadap perempuan di Indonesia.

Kata Kunci : Restorative Justice; Kekerasan Seksual; Tindak Pidana; Perlindungan Perempuan

INTRODUCTION

Indonesia is a state of law. Thus, law has a major role in people's lives, and all state policies must be in line with the law.¹ The concept of a rule of law is related to the term nomocracy or legal sovereignty, where law has a central role in regulating power. In a state based on law, the government must exercise its power based on the rule of law, which aims to realize legal discipline.²

As a state of law, Indonesia is based on the belief that state power must be exercised based on fair and proper law.³ The rule of law requires that every state action must aim to uphold legal certainty, be conducted equally, be an element that legitimizes democracy, and meet the demands of common sense.⁴ In a state of law, there is no absolute freedom for citizens, state administrators, or state institutions to carry out their lives. A state with good and right laws will regulate how people should act as citizens who obey the law and how the government should carry out its duties and responsibilities.⁵

Indonesia, as a dynamic legal state, requires its national law to be accommodative, adaptive, and progressive. Accommodative means that the law must be able to absorb and accommodate the aspirations of a dynamic society, showing its role as a protector of society.⁶ Adaptive means the law must be able to adjust to the times so that it remains relevant. Progressive means the law must always be progress-oriented and have a future perspective. Such a law shows its ability to overcome the rigidity of dogmatics so that it can create a fair truth for every member of society.⁷

The approach to the rule of law includes two important aspects, namely the formal approach and the substantive approach.⁸ In the formal approach, the law is developed as a formally legalized tool of government action (prospective legal norms that contain the principle of certainty), then becomes democracy and legality (agreement in determining the

¹ Silfy Maidianti, "Peranan Politik Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia, Sebagai Sarana Mewujudkan Tujuan Negara," *Journal of Social and Economics Research* 4, no. 2 (2023): 191–97, <https://doi.org/10.54783/jser.v4i2.56>.

² Fatma Ulfatun Najicha, "Peranan Hukum Pajak Sebagai Sumber Keuangan Negara Pada Pembangunan Nasional Dalam Upaya Mewujudkan Kesejahteraan Rakyat," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 6, no. 1 (2022): 169, <https://doi.org/10.35308/jic.v6i1.4568>.

³ Murtiningsih Kartini and Adi Kusyandi, "Eksistensi Ptun Sebagai Wujud Perlindungan Hukum Kepada Warga Negara Dari Sikap Tindak Administrasi Negara," *Yustitia* 7, no. 2 (2021): 236–48, <https://doi.org/10.31943/yustitia.v7i2.144>.

⁴ Gunawan Santoso et al., "Kajian Penegakan Hukum Di Indonesia Untuk Untuk Perdamaian Dunia Di Abad 21," *Jurnal Pendidikan Transformatif (Jupetra)* 02, no. 01 (2023): 210–23.

⁵ Fatma Ulfatun Najicha Safira Kanaya Iffat Husnaa, "Pancasila Dan Hubungannya Dengan Hak Asasi Manusia Di Indonesia," *Penguatan Nilai Masyarakat Bugis Macca Na Lempu Dalam Perspektif Pendidikan Karakter* 6, no. 2 (2023): 104–12.

⁶ Hariyanto Hariyanto, "Pembangunan Hukum Nasional Berdasarkan Nilai-Nilai Pancasila," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 1, no. 1 (2018): 53–63, <https://doi.org/10.24090/volkgeist.v1i1.1731>.

⁷ Aristo Evandy A.Barlian and Annisa D. Permata Herista, "Pembangunan Sistem Hukum Indonesia Berdasarkan Nilai-Nilai Pancasila Sebagai Ideologi Politik Bangsa," *Jurnal Lemhannas RI* 9, no. 1 (2021): 88–98, <https://doi.org/10.55960/jlri.v9i1.379>.

⁸ Dheny Wahyudhi and Herry Liyus, "Pendekatan Restorative Justice Dalam Penyelesaian Tindak Pidana Kekerasan Dalam Rumah Tangga," *Jurnal Sains Sosio Humaniora* 4, no. 2 (2020): 495–509, <https://doi.org/10.22437/jssh.v4i2.10997>.

substance of the law).⁹ The substantive approach, on the other hand, starts from individual freedom and justice (individual autonomy, privacy, and contract), which then develops into a welfare state (equality, community continuity, and welfare).

Based on this concept, all kinds of violence against vulnerable groups, including women, are unlawful. To prevent and overcome violence, the state must be present to protect citizens by the constitution's mandate.¹⁰ Article 28G Paragraph (2) of the 1945 Constitution states that "Everyone has the right to be free from torture or degrading treatment and has the right to political asylum and others." The implementation of this article is that every citizen has the right to be free from violence, the right to protection, and the right to justice, including in handling cases of sexual violence.

In the context of Indonesian law, offenders of sexual violence must be sentenced to criminal penalties, either in the form of fines or imprisonment. In contrast, victims of violence must receive legal protection. It is a strategic part of the legal consequences that apply in Indonesia and demonstrates the government's support for gender equality following the United Nations Declaration of Human Rights.¹¹ However, the philosophical foundation of the law has shifted from retributive justice, where a person deserves to be punished for their offense, to restorative justice.¹² In a restorative approach, criminal law aims to restore justice and society to its former state through mediation between victims and offenders, family deliberation, and community recovery services that benefit both victims and offenders.¹³

Furthermore, legal protection efforts to respond to violence against women have been well implemented in Indonesia. Several provisions in positive law, such as the Criminal Code (KUHP), Law No. 23 of 2004 on the Elimination of Domestic Violence, Law No. 21 of 2007 on the Eradication of Trafficking in Persons, and Law No. 35 of 2014 on Child Protection, are steps that have been taken.¹⁴ However, these provisions are still not comprehensive and are considered to have failed in preventing impunity for offenders and not fulfilling a sense of Justice for victims of sexual violence.

Restorative Justice is an approach to Justice that focuses on the needs of victims and offenders and involves community participation.¹⁵ This approach does not solely aim to

⁹ Putu Eva Ditayani Antari, "Pemenuhan Hak Anak Yang Mengalami Kekerasan Seksual Berbasis Restorative Justice Pada Masyarakat Tenganan Pegringsingan , Karangasem , Bali (Fulfillment of Children Rights as Sexual Violence Victim Based on Restorative Justice on Tenganan Pegringsingan C," *Jurnal HAM* 12, no. 1 (2021): 1–20.

¹⁰ Asit Defi Indriyani, "Pendekatan Restorative Justice Dalam Melindungi Korban Kekerasan Seksual," *IJouGS: Indonesian Journal of Gender Studies* 2, no. 2 (2021): 44–56, <https://doi.org/10.21154/ijougs.v2i2.3284>.

¹¹ Aristo Evandy A.Barlian and Annisa D. Permata Herista, "Pembangunan Sistem Hukum Indonesia Berdasarkan Nilai-Nilai Pancasila Sebagai Ideologi Politik Bangsa."

¹² Wahyudhi and Liyus, "Pendekatan Restorative Justice Dalam Penyelesaian Tindak Pidana Kekerasan Dalam Rumah Tangga."

¹³ Indriyani, "Pendekatan Restorative Justice Dalam Melindungi Korban Kekerasan Seksual."

¹⁴ Elista Simanjuntak, "Restorative Justice Dalam Penyelesaian Kasus Kekerasan Seksual Anak: Suatu Kajian Pengambilan Keputusan Etis," *Integritas: Jurnal Teologi* 4, no. 2 (2022): 116–26, <https://doi.org/10.47628/ijt.v4i2.131>.

¹⁵ Gerson Sem Buinei et al., "Restorative Justice Approach in Dealing with Crimes at Police Level (A Study at Polresta and Polres Sorong)" 2, no. 1 (2024): 1–12.

punish the offender at the judge's discretion but also seeks to restore relationships damaged by the crime, reconcile the victim and offender, and improve the community affected by the incident.¹⁶

The principles of Restorative Justice emphasize resolving wrongful acts by bringing victims and offenders together. This approach focuses on the needs of victims and offenders and involves the communities involved. The goal is not simply to carry out the principle of punishing the offender but rather to restore damaged relationships, reconcile victims and offenders, and repair the affected community.¹⁷

In short, this study will critique the existence and implementation of laws that aimed at protecting women from violence, such as the Law on the Elimination of Domestic Violence and the Law on the Eradication of Trafficking in Persons. The study will identify weaknesses in existing laws and propose recommendations for more comprehensive and fair improvements to victims.

METHOD

A normative juridical study method used in examining literature materials to obtain theories, concepts, legal principles, and legal regulations related to the subject matter. The study was conducted at Polres of Teluk Bitung Regency with approach includes conceptual and statutory regulations. Data collection was carried out through documentation and interview, with data analysis using a qualitative approach to compile data systematically, logically, and rationally and produce conclusions that are general to the problems and research objectives.¹⁸

DISCUSSION

Restorative Justice Approach in the Resolution of Violent Crimes.

Restorative Justice aims for legal resolution to create an agreement on the resolution of criminal cases¹⁹. Restorative Justice is a law enforcement principle in case resolution that can be used as an instrument of recovery. The Supreme Court has carried it out in the form of policy treatment, but its implementation in the criminal justice system in Indonesia has not been optimal.²⁰

¹⁶ Wahab Aznul Hidayat, Riza Maulani Putri, and Muhammad Ali, "Restorative Justice Dalam Penyelesaian Tindak Pidana Di Kota Sorong Papua Barat Daya" 3, no. 2 (2024): 79–94.

¹⁷ Wahab Aznul Hidayat, "The Role of Witness and Victim Protection Agency for Imekko Tribe in Criminal Justice System in Sorong" 8, no. 2 (2023): 176–91, <https://doi.org/10.23917/laj.v8i2.2363>.

¹⁸ and M. S. Sh Diantha, I. Made Pasek, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Prenada Media, 2016).

¹⁹ Iklimah Dinda Indiyani Adiesta, "Penerapan Restorative Justice Sebagai Inovasi Penyelesaian Kasus Tindak Pidana Ringan," *Interdisciplinary Journal on Law, Social Sciences and Humanities* 2, no. 2 (2021): 143, <https://doi.org/10.19184/idj.v2i2.25842>.

²⁰ Arianto Arianto, Mustamam Mustamam, and Marlina Marlina, "PERLINDUNGAN HUKUM TERHADAP ANAK

Also, restorative justice is an alternative to criminal case resolution in which the criminal justice procedure focuses on punishment, which is changed to a dialogue and mediation process involving the offender, victim, family of the offender/victim and other related parties.²¹ It aims to jointly create an agreement on the resolution of criminal cases that is fair and balanced for both victims and offenders. It prioritizes recovery to its original state and restores good relations in the community.

In addition, restorative justice can be used against women who conflict with the law as victims of criminal acts based on the principle of compensation to victims by prioritizing victim protection.²² The development of criminal law has now shifted from a retributive approach to a restorative approach.²³ It is because resolving criminal cases through the formal legal system is considered ineffective in reducing crime in society. The large number of criminal cases handled through formal legal channels causes overcapacity in correctional institutions and significantly impacts state finances. Therefore, a new approach is needed in responding to crime, where handling is penalized and preventive efforts are involved.²⁴

The basic concept of restorative justice is a deliberative process to resolve legal conflicts arising from a crime, where all parties are fully aware of and voluntarily resolve their legal problems through the deliberative process. It means that either the victim and his/her family, the offender and his/her family, or an independent third party trusted by each party come together to resolve the legal issues.

In principle, restorative justice can be applied at any stage in the criminal justice system and will be successful if it meets several conditions,²⁵ ²⁶ such as: first, the offender must admit or state his guilt; second, the victim must agree to resolve the crime outside the criminal justice system; third, the police office, as an institution with discretionary authority, must agree to implement restorative justice; and fourth, the resolution outside the criminal justice system must be supported by the local community.

Furthermore, the basic concept of restorative justice is a process of consensus to resolve legal issues arising from a criminal act, in which all parties voluntarily and fully realize

KORBAN TINDAK PIDANA PELECEHAN SEKSUAL (Studi Di Kepolisian Resor Subulussalam)," *Jurnal Meta Hukum* 2, no. 3 (2023): 18–33, <https://doi.org/10.47652/jmh.v2i3.446>.

²¹ Yasser Arafat, "Penyelesaian Perkara Delik Aduan Dengan Perspektif Restorative Justice," *Borneo Law Review* 1, no. 2 (2017): 134, <http://jurnal.borneo.ac.id/index.php/bolrev/article/view/714>.

²² Wahab Aznul Hidayat, "Penerapan Diversi Dalam Sistem Peradilan Pidana Anak," *Justisi* 5, no. 2 (2019): 84–96, <https://doi.org/10.33506/js.v5i2.543>.

²³ Sri Endah Wahyuningsih Annis Nurwianti, Gunarto, "Implementasi Restoratif / Restorative Justice Dalam Penyelesaian Tindak Pidana Kecelakaan Lalu Lintas Yang Dilakukan Oleh Anak Di Polres Rembang," *Jurnal Hukum Khaira Ummah* 12, no. 4 (2017): 705–16.

²⁴ Eka Fitri Andriyanti, "Urgensitas Implementasi Restorative Justice Dalam Hukum Pidana Indonesia," *Jurnal Education and Development* 8, no. 4 (2020): 326–31, <https://garuda.kemdikbud.go.id/documents/detail/2042447>.

²⁵ Syaqui Mahendra, Nahdhah Nahdhah, and Adwin Tista, "Mediasi Penal Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Korban Jiwa Berdasarkan Keadilan Restoratif," *Jurnal Penegakan Hukum Indonesia* 2, no. 3 (2022): 459–84, <https://doi.org/10.51749/jphi.v2i3.51>.

²⁶ Ilham Saputra Machmud, Dian Ekawaty Ismail, and Jufryanto Pulu Hulawa, "Efektivitas Konsep Restorative Justice Dalam Penanganan Kasus Penganiayaan Oleh Kejaksaan Negeri Bone Bolango," *Hakim* 2, no. 1 (2024): 157–85.

their involvement in the event.^{27 28} It means that both victims and their families, offenders and their families, and third parties who are independent and trusted by all parties will discuss together to resolve the legal issues faced.²⁹

The restorative justice approach to resolving sexual violence cases provides a wide opportunity for all parties involved to be active in resolving the case in a balanced way.³⁰ For victims of domestic violence, this approach provides an opportunity to express their wishes and demands to the offender. Previously, in conventional legal proceedings, public defenders often ignored the victim's wishes and tended to depend solely on testimony and evidence. On the other hand, this approach allows offenders to express their opinions responsibly, realize their mistakes, and be willing to compensate for the harm caused by their criminal acts.

By giving equal standing to all parties involved, including the families of victims and offenders and other trusted parties, the restorative justice approach creates equal opportunities for all parties to participate in the resolution process. This approach aims to reach the best agreement in resolving the case at hand through deliberation and joint solution-seeking. By accommodating the opinions and wishes of each party, the aim is to restore relationships and resolve conflicts so that the situation can return to normal.³¹

Based on the consideration of the regulation of the Indonesian National Police No. 8 of 2021 on the handling of criminal offences based on restorative justice as follows: a) The Indonesian National Police needs to realize the resolution of criminal acts by prioritizing restorative justice, which emphasizes restoring to its original state and balancing the protection and interests of victims and offenders of criminal acts that are not oriented towards punishment, which is a legal need of society; b) The Indonesian National Police to answer the development legal needs of the community that meet the sense of justice of all parties is given the authority following Article 16 and Article 18 of Law Number 2 of 2002 the Indonesian National Police, it is necessary to formulate a new concept in criminal law enforcement that accommodates the norms and values prevailing in society as a solution while providing legal certainty, especially the benefits and sense of justice of the community.

²⁷ Donny Irawan, Herlyanty Bawole, and Ronald Rorie, "Tinjauan Hukum Atas Keadilan Restoratif Sebagai Perlindungan Hukum Bagi Korban Tindak Pidana Di Indonesia," *Lex Administratum* 10, no. 5 (2022): 32, <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/42975>, Diakses Pada Kamis 29 Februari 2024, Pukul 09:55.

²⁸ Reynaldi Sinyo. Wakkary, Jolly Ken Pongoh, and Rompas D. Deizen, "Implementasi Prinsip Restorative Justice Dalam Sistem Penuntutan Berdasarkan Peraturan Kejaksaan Nomor 15 Tahun 2020," *Jurnal Lex Crimen* 10, no. 9 (2021): 122.

²⁹ Tofik Yanuar Chandra, "Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Anak Di Indonesia," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, no. 11 (2023): 179–90, <https://doi.org/10.30868/am.v11i01.3827>.

³⁰ Ridwan Mansyur, "Tindak Pidana Kekerasan Dalam Rumah Tangga Menurut Sistem Peradilan Pidana Dalam Perspektif Restorative Justice," *Jurnal Hukum Dan Peradilan* 5, no. 3 (2016): 431, <https://doi.org/10.25216/jhp.5.3.2016.431-446>.

³¹ Putri Silvah et al., "Keadilan Restoratif (Restorative Justice)," *Jurnal Ilmu Hukum Dan Sosial* 1, no. 3 (2023): 204–24, <https://doi.org/10.51903/hakim.v1i3.1248>.

In terms of resolving cases using the Restorative Justice approach carried out by the Police based on the regulation of the Indonesian National Police Number 8 of 2021 on handling criminal acts based on restorative justice, it must fulfil the material elements based on Article 5, namely: a) Does not cause unrest and or rejection from the community; b) Does not have an impact on social complications; c) Does not have the potential to divide the nation; d) Not radicalism and separatism; e) Not a repeat offender of a criminal offence based on a court decision; and f) Not a criminal offence of terrorism, a criminal offence against state security, a criminal offence of corruption, or a criminal offence against a person's life.

The case of persecution was a case of sexual violence that led the victim to report the incident to the Teluk Bintuni Resort Police. Based on maltreatment, there was an act of violence involving the victim and the offender. Then, the police issued a police report, namely Police Report Number: LP / B / 52 / IV / 2022 / West Papua / Res Teluk Bintuni / SPKT, dated April 11, 2022. In addition, the police issued a letter from Teluk Bintuni Police Chief Number: B / 14.4a / IV / RES.1 / 2022 / Sat Reskrim, dated April 25, 2022, regarding the Notice of Commencement of Investigation into Crimes Against Decency (obscene), which occurred on Monday, April 11, 2022 at approximately 12.00 Wit in the Bintuni BPBD Head Room. On that basis, the police charged the offender, namely MELIANUS NAA, S.H., with article 284 of the Criminal Code: "The offender shall be punished with a maximum imprisonment of 9 months. 1) A married man who commits an affair/gendak (overspel), knowing that article 27 BW applies to him; 2) a married woman who commits an affair/gendak (overspel), knowing that article 27 of the Civil Code applies to her; a) a man who is a co-offender of the act, knowing that the co-offender is married; b) a married woman who participates in the act, knowing that the co-accused is married and that Article 27 of the Civil Code applies to her. No prosecution shall be instituted except upon complaint of the defiled spouse and, if article 27 of the Civil Code applies to them, within three months, followed by a request for divorce or separation from bed and board for that very reason. Articles 72, 73 and 75 do not apply to this complaint. The complaint may be withdrawn if the court examination has not yet begun. If article 27 of the Civil Code applies to husband and wife, the complaint shall be disregarded as long as the marriage has not been dissolved by divorce or before the verdict declaring the separation of table and bed has become final.

In a short time, the victim was reunited with the offender. After mediation, the resolution of this case was agreed upon through Restorative Justice mechanisms with a joint statement agreed by both parties. The reasons for resolving this case through restorative justice were (1) The victim forgave the wrongdoing of the offender (suspect), agreed not to continue with the legal process and was willing to reconcile unconditionally; (2) This case was the first time the suspect had committed a crime; (3) The punishment did not exceed five years; (4) The suspect apologized and promised not to repeat his mistake; (5) Community leaders and the families of the parties witnessed the peace.

CONCLUSION

To sum up, the restorative justice approach in resolving violent crimes highlights efforts to reach an agreement in a legal resolution that is fair and balanced for all parties involved. In this context, Restorative Justice becomes an important instrument in achieving this goal. Although it has been recognized as one of the principles in law enforcement by the Supreme Court, its implementation in the Indonesian criminal justice system is still not optimal. The Restorative Justice approach offers an alternative that focuses on dialogue and mediation processes involving all relevant parties, such as the offender, victim, family of the offender/victim, and other related parties. The aim is to create a fair and balanced agreement by restoring relationships and patterns of community life.

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