

 <https://doi.org/10.47353/lawpass.v2i6.55>

Application of Restorative Justice in Criminal Offences of Domestic Violence Domestic Violence in Indonesia

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Abstract

This research examines the application of Restorative Justice in the settlement of criminal acts of Domestic Violence (DV) in Indonesia using a normative legal approach. The focus of the research lies on analyzing laws and regulations related to the application of restorative justice in handling domestic violence cases. Restorative Justice is proposed as a more humane alternative to the dominant retributive justice system, with the aim of improving relationships between victims and perpetrators and providing space for healing. This research concludes that although the application of Restorative Justice faces significant challenges, such as social norms that discourage victims from reporting and the unpreparedness of law enforcement officials in applying the principles, this approach has the potential to offer a more effective solution in reducing domestic violence. Through an analysis of existing legal policies, this research provides recommendations to strengthen the implementation of Restorative Justice in Indonesia by involving more parties, including law enforcement officials, social institutions, and communities.

Keywords: restorative justice, criminal offences, domestic violence.

Introduction

The criminal justice system in Indonesia plays an important role in crime prevention through institutions such as the police, prosecutors, courts, and correctional institutions. One criminal offense that often occurs in the community is domestic violence, which often involves various forms of violence between husband and wife, parents and children, or even employers and domestic helpers (Wibowo, 2021; Nasrudiansyah & Alijaya, 2023; Darwis, Saputra, & Kiramang, 2023; Rabiylul, 2024). Domestic violence is a serious problem that involves social, cultural, and economic dimensions of domestic life. Although Indonesia has Law No. 23/2004 on the Elimination of Domestic Violence, the rate of domestic violence remains high, reflecting that protection of victims is still not optimal.

The main problem faced in handling domestic violence is that the traditional criminal law system, which is formal and adversarial, has not been able to provide adequate solutions for victims and perpetrators. Many victims of domestic violence feel unprotected by the legal system, and often seek recourse through divorce. In this case, there is a gap between victims' expectations



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Received: Nov 5, 2025 | Revised: Nov 18, 2025 | Accepted: Dec 23, 2025 | Publication: Feb 16, 2026

of legal protection and the reality of the implementation of the applicable law. This suggests that conventional court settlements are not always the best solution for every case.

As an alternative, the *Restorative Justice* approach has been introduced as a solution that focuses more on restoring relationships and balance between victims and offenders, as well as repairing the social damage caused. Restorative justice does not only emphasize punishment for the offender, but also promotes dialogue and participation from all parties involved, including victims, offenders, and the community. In this approach, the main focus is the restoration of relationships damaged by criminal offenses, which is considered more in line with the social and cultural values of Indonesian society.

The application of the concept of restorative justice in Indonesia has begun to be applied in several policies issued by judicial institutions, such as the Police, the Attorney General's Office, and the Supreme Court. For example, in 2018, the National Police Chief issued Circular Letter Number SE/8/VII/2018 on the Application of Restorative Justice in Criminal Case Resolution, which aims to provide guidelines for investigators and prosecutors in using restorative justice approaches in handling criminal cases. In addition, the Attorney General's Office of the Republic of Indonesia also issued Regulation No. 15/2020 regarding the termination of prosecution based on restorative justice, which allows the termination of criminal cases with the condition of restoring the original situation through this approach. At the Supreme Court level, there is a Decree of the Director General of the General Courts Agency No. 1691/DJU/SK/PS.00/12/2020 which encourages the application of restorative justice in the courts.

However, despite these policies, the application of restorative justice in the Indonesian criminal justice system still faces significant challenges. There are discrepancies in the implementation of these policies across different judicial institutions, indicating barriers to harmonization and uniform application across the legal system. In addition, awareness and understanding of the concept of restorative justice among law enforcement officials still varies, which has an impact on the effectiveness of its application in cases such as domestic violence.

Based on these issues, this research aims to examine and analyze the application of restorative justice in the resolution of domestic violence crimes in Indonesia. This research will explore the extent to which the policies that have been issued can be effectively applied in domestic violence cases, as well as identify the challenges faced in its implementation. Thus, this research is expected to contribute to evaluating the potential of restorative justice as a more humane and effective alternative in handling domestic violence cases, as well as providing recommendations for improvements in the criminal justice system in Indonesia.

This research aims to review and analyze the application of *Restorative Justice* in the settlement of domestic violence crimes in Indonesia. This research will explore the application of restorative justice principles from various aspects of laws and regulations, including policies stipulated in laws, government regulations, as well as guidelines from judicial institutions and law enforcement officials. In addition, this research also aims to identify the challenges faced in the implementation of restorative justice in the context of domestic violence, as well as provide



recommendations for the improvement of a fairer and more effective legal system in providing protection to victims.

Based on a review of the application of *Restorative Justice* in the settlement of criminal cases in Indonesia, the hypothesis proposed in this study is that although restorative justice policies have been implemented by judicial institutions in Indonesia, there are discrepancies in their implementation and application, especially in cases of Domestic Violence (DV). This research assumes that this discrepancy factor can be caused by a lack of uniform understanding of restorative justice principles, as well as structural and cultural barriers in law enforcement that involve victims and perpetrators in restorative dialogue.

This research is expected to make a significant contribution to the development of the theory and practice of *Restorative Justice* in the Indonesian criminal justice system, particularly in the handling of domestic violence cases. By analyzing the implementation of existing policies, this research can provide new insights into the challenges faced in implementing restorative justice and offer practical solutions to improve its effectiveness. In addition, this research also has the potential to suggest improvements to legal policies that are more humane and based on the principle of restoring relationships between victims and offenders.

The conceptual framework of this research focuses on the concept of *Restorative Justice* as an alternative approach to crime resolution, which emphasizes the restoration of social, emotional and relationship damage caused by crime. In the context of domestic violence, this conceptual framework links restorative justice theory with law enforcement practices that involve the active participation of victims, perpetrators, and communities in the recovery process. This framework will also identify inhibiting factors that affect the effectiveness of restorative justice implementation in domestic violence cases, as well as explore the relationship between existing legal policies and the reality of implementation in the field.

Literature Review

The concept of *restorative justice* focuses on efforts to repair the damage caused by criminal offenses, with the aim of healing victims, returning offenders to the right path, and repairing damaged social relations. In general, *restorative justice* emphasizes recovery rather than punishment, with attention to the physical and psychological recovery of victims and the reintegration of offenders into society. According to Bazemore and Walgrave, this concept emphasizes repairing the harm caused by crime, rather than focusing solely on punishing the offender (Walgrave, 2023). In the *common law* tradition, this approach involves compensation or a form of punishment that allows the offender to continue to play a role in society.

Tony F. Marshall (in Alhasni, 2023) defines *restorative justice* as a process in which the parties associated with an offense—including the offender and the victim—attempt together to find a solution to the impact of the crime and prevent future adverse effects. In this case, all affected parties, including victims, offenders, and the community, are actively involved. Susan Sharpe (2020) developed her view by proposing five main principles in *restorative justice*: first, full participation of all parties; second, efforts to heal the damage caused by the crime; third, the



implementation of direct accountability by the perpetrator; fourth, reconciliation between the parties involved; and fifth, strengthening the community to prevent future crimes.

The main objectives of *restorative justice* are to fulfill the needs of victims (Kusumawardhani, 2023; Hasibuan, et al., 2024), including material, emotional, and social needs; reintegrate offenders into society; and build communities that support rehabilitation and crime prevention. This approach aims to avoid legal escalation that can lead to high costs and delays in the legal process. In Indonesia, the concept of resolving cases through deliberation or mediation is well known in customary law and is in line with the principles of *restorative justice*, which prioritizes resolving cases outside formal judicial channels.

The *restorative justice* approach views crime not only as a violation of the law, but also as social damage that must be repaired. In a criminal justice system based on punishment (retributive), the focus is more on sanctions against the offender, without considering the impact on the victim and society. In contrast, *restorative justice* prioritizes dialogue and reconciliation between offenders and victims, with the aim of repairing damaged relationships and preventing the recurrence of criminal acts.

Method

This research uses a normative legal approach with a focus on the study of literature and laws and regulations related to the application of *restorative justice* in resolving criminal acts of domestic violence (KDRT) in Indonesia. The approach used includes analysis of legal norms in legislation and the concept of *restorative justice* as a solution in resolving domestic violence cases. Secondary data is obtained through literature review and related documents, which are then analyzed qualitatively with descriptive methods to describe existing phenomena, as well as prescriptive methods to provide recommendations regarding the application of *restorative justice* in legal practice. By using this analysis, the research aims to examine how *restorative justice* can be applied effectively in the Indonesian legal system, as well as to contribute to the development of legal policies that are more oriented towards recovery and justice for victims and perpetrators.

Application of Restorative Justice in Criminal Offences of Domestic Violence Domestic Violence in Indonesia

Domestic violence in Indonesia is regulated in Law No. 23/2004 on the Elimination of Domestic Violence (PKDRT Law), which is an important milestone in efforts to protect victims of violence within the family, especially women and children as vulnerable groups. This law not only provides protection to victims, but also establishes preventive measures to avoid further violence and provides strict sanctions against perpetrators. Passed in 2004, the PKDRT Law is the result of a long struggle by women's groups in Indonesia, which aims to protect women from domestic violence. In the general provisions of the PKDRT Law, it is stated that legal reforms that favor vulnerable groups, especially women, are urgently needed given the many cases of domestic violence that continue to occur. Article 5 of the PKDRT Law classifies domestic violence into four types: economic, physical, psychological, and sexual violence. Each type of



violence is clearly defined, ranging from the restriction of economic rights against the wife, physical abuse, acts that damage the victim's psychology, to sexual harassment and coercion against the wife.

Furthermore, the PKDRT Law also regulates the rights of victims who must receive legal protection, both from the family, law enforcement officials, courts, and social institutions. On the other hand, for perpetrators of domestic violence, this law stipulates criminal sanctions in the form of imprisonment and fines, as well as additional penalties which include restrictions on the movement of the perpetrator and the obligation to participate in counseling programs under the supervision of certain institutions. Article 51 to Article 53 of the PKDRT Law stipulates that not all acts of domestic violence can be revoked by the victim, but there are several criminal offenses that are complaint offenses, which require further legal proceedings. In addition, the PKDRT Law provides additional criminal options that aim to provide recovery for both victims and perpetrators.

However, the application of a justice system that only prioritizes punishment of the perpetrator, known as the retributive justice system, is often inadequate in meeting the needs of victims. This system focuses more on punishing the perpetrator without considering the broader social and psychological context. In this regard, restorative justice offers an alternative approach that is more inclusive and recovery-based. Restorative justice emphasizes the importance of dialogue between victims and perpetrators to achieve mutual understanding and healing, rather than simply imposing punishment. In Indonesia, the application of restorative justice in domestic violence cases can be a more humane and effective alternative, prioritizing the rehabilitation of perpetrators and providing greater support to victims (Ludfi et al., 2018; Abdurrachman, 2017).

Previous studies have shown that the application of restorative justice in domestic violence cases can lead to more positive outcomes, such as a decrease in reoffending rates and increased victim satisfaction with the legal process (Nettleton & Strang, 2018; Ptacek, 2017). For example, through restorative justice conferences, victims have the opportunity to express their experiences, while perpetrators can realize the impact of their actions, which in turn increases perpetrators' sense of responsibility and empathy towards victims (Decker et al., 2020; Ptacek, 2017). This is particularly relevant in the Indonesian context, where cultural norms often stigmatize victims of domestic violence and deter them from seeking justice through conventional legal channels (Arsawati, 2022; Lamanuzzi, 2024).

However, the application of restorative justice in domestic violence cases in Indonesia faces a number of challenges. One of them is the attitude of the community that often trivializes domestic violence, as well as the limited knowledge of law enforcement officials regarding the principles of restorative justice. In addition, the successful implementation of restorative justice also relies heavily on the involvement of various parties, such as social workers, social institutions, and community leaders, who can strengthen the mediation process and provide more holistic support to victims. Therefore, training for law enforcement officials on the principles of restorative justice is necessary to ensure they can properly manage and support the process (Hapsari, 2023; Citizen, 2022). In addition, broader awareness programs are also needed to change the perceptions of the community and law enforcement regarding the importance of



restorative justice in resolving domestic violence cases (Hamdi et al., 2021; Jülich & Thorburn, 2017).

Thus, although there are major challenges in implementing restorative justice in resolving domestic violence cases in Indonesia, this approach has significant potential to improve the existing legal system. Restorative justice can not only provide a more humane solution for victims, but also encourage greater accountability from perpetrators. To achieve this goal, a concerted effort is needed from various parties, including law enforcement officials, social institutions, and the wider community, so that the application of restorative justice can be carried out effectively and sustainably. Only then can the Indonesian legal system move towards a more just and comprehensive remedy in the face of domestic violence.

Closing

Conclusion

This research shows that the application of Restorative Justice in domestic violence cases in Indonesia has great potential to improve the existing justice system, by prioritizing recovery for victims and rehabilitation of perpetrators. Although the PKDRT Law provides sufficient protection for victims, the dominant retributive justice system focuses more on punishing perpetrators without considering the deeper social and psychological context. Restorative Justice approaches offer an alternative by providing space for dialogue between victims and perpetrators, which can accelerate recovery and reduce the risk of repeated violence. Although the implementation of Restorative Justice in Indonesia faces a number of challenges, especially in terms of understanding and acceptance by the community and law enforcement officials, this approach has the potential to be an effective solution in addressing domestic violence. Therefore, systematic efforts are needed to integrate the principles of Restorative Justice in Indonesia's legal policies and practices.

Suggestion and Recommendation

Based on the results of the research, it is recommended that legal policies related to domestic violence in Indonesia begin to integrate the principles of Restorative Justice to create a more humane and effective solution. The government needs to develop regulations that support the application of Restorative Justice in handling domestic violence, including by strengthening training for law enforcement officials so that they can properly carry out mediation between victims and perpetrators. In addition, collaboration with social institutions and communities must be strengthened to support the recovery of victims and the rehabilitation of perpetrators, as well as to change public perceptions about the importance of Restorative Justice as an alternative in resolving domestic violence. These efforts are expected to accelerate recovery and prevent recurrent violence, as well as create a justice system that is more based on recovery and reconciliation.



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