

Application of Provisions on Restorative Justice in Criminal Acts of Domestic Violence

(A Study of Decision Number 56/PID.SUS/2020/PN BDW)

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ABSTRACT

The resolution of criminal acts through restorative justice, as demonstrated in Decision Number 56/Pid.Sus/2020/PN BDW, provides an alternative mechanism for handling criminal cases, including complaint-based offenses. Although reconciliation was achieved between the defendant and the victim-witness, the defendant was nevertheless found guilty and sentenced to three months of imprisonment. The central issue examined in this study is whether the application of restorative justice in domestic violence cases aligns with Law Number 23 of 2004 and whether the judicial decision is consistent with prevailing legal standards. This research employs a normative and descriptive-analytical approach based on secondary data. The findings indicate that the application of restorative justice in this case adheres to the procedures outlined in the Decree of the Director General of the General Courts No. 1691/DJU/SK/PS.00/12/2020. Despite reconciliation and the withdrawal of the complaint, such actions do not eliminate the defendant's criminal liability. Although the court ruled that the defendant was not required to serve the prison sentence, the researchers argue that reconciliation achieved through restorative justice should not merely serve as a mitigating factor but should instead form the legal basis for exemption from punishment. Moreover, the regulatory framework for resolving domestic violence cases through restorative justice should be developed in greater detail. When a domestic violence case fails to meet the formal requirements for restorative justice, the conventional criminal justice process should apply.

Keywords: Crime, Domestic Violence, Restorative Justice

INTRODUCTION

Restorative justice represents an alternative paradigm within criminal law that emphasizes healing, recovery, and crime prevention through the participation of all relevant stakeholders. This approach prioritizes the victim's interests and focuses on restoring social harmony and future relationships. Indonesia has long recognized and practiced values consistent with restorative justice principles (Perdani, 2021). The principles of restorative justice are codified in both the Juvenile Justice System Law and the Child Protection Law, emphasizing the involvement of victims, offenders, their families, and other community members. The objective is to achieve a fair resolution centered on recovery rather than retribution. However, within law enforcement practice, restorative justice is still narrowly understood as a mechanism for achieving reconciliation, whether through formal or informal judicial procedures (Perdani, 2021).

According to the National Commission on Violence Against Women (Komnas Perempuan), only about 40% of marriages involving individuals under 18 years of age are granted official dispensation, leaving 60% without legal recognition. This situation has detrimental effects on children, including heightened vulnerability to domestic violence due to psychological immaturity, limited access to education, and increased risk of sexual abuse (Nurwati, 2021).

Restorative justice has been most successfully implemented in juvenile cases,

demonstrating substantial benefits in promoting rehabilitation and reducing recidivism. Nonetheless, when applied to adult offenders, public acceptance tends to be limited to low-severity offenses such as economic or property crimes. In contrast, applying restorative justice to severe offenses—such as sexual assault or domestic violence—remains controversial. Yet conceptually, restorative justice possesses the flexibility to be applied across various types of crimes, including serious ones, particularly when such approaches can better address victims' needs for emotional and material restoration. In many instances, victims of serious crimes suffer from psychological distress, loss of control, and lack of adequate reparations under the conventional criminal justice system (Ekwanto, 2020).

The legal foundation for restorative justice in Indonesia is reinforced by Indonesian National Police Regulation Number 8 of 2021, which came into effect on August 19, 2021. This regulation governs the handling of criminal cases using a restorative justice framework that involves perpetrators, victims, families, and relevant community stakeholders, including religious and traditional leaders—to achieve resolution through peace and restoration of the pre-crime condition. The regulation further specifies procedures for handling certain types of offenses, such as those involving electronic information and transactions, narcotics, and traffic violations, along with additional crime-specific requirements such as the removal of illegal content. Article 1(3) of the same regulation explicitly defines restorative justice as a process emphasizing restoration through reconciliation among the involved parties (Girsang, 2021).

METHOD

This research employs a normative juridical approach, often termed doctrinal legal research, to systematically analyze judicial decisions regarding minimum penalties for criminal acts of corruption. This method provides a solid framework for examining the interrelations between legal theories, statutory provisions, and judicial precedents as per various legal-coding systems. The application of this approach, as noted by Majeed et al., highlights the dominant role that doctrinal research plays within legal scholarship, emphasizing its capacity to yield insights into the interpretative frameworks and operational mechanisms of law (Majeed et al., 2023). Specifically, it allows for an exploration of legal provisions relevant to sentencing, such as those articulated in Articles 2 and 3 of Indonesia's Corruption Law, and the broader social implications of these legislative measures (Azzahra et al., 2025). Other studies affirm that effective legal frameworks are pivotal in combating corruption, demonstrating that the application of rigorous legal standards promotes institutional integrity and public trust in judicial systems (Khotynska-Nor & Salenko, 2024; "The Dynamics of Judicial Independence in Corruption Sentencing: Between Judicial Discretion and the Principle of Legal Certainty", 2025). Additionally, the normative juridical method enables the identification of legal inconsistencies which could lead to disparities in sentencing, thus shaping a more equitable legal environment (Jaya et al., 2024; Hugo et al., 2022).

Moreover, the analytical descriptive method complements the normative approach by allowing a nuanced examination of the practical realities pertaining to judicial dealings in corruption cases. This approach is crucial, as it elucidates the multifaceted nature of corruption and its influence on governance and public policy.

For instance, studies illustrate that corruption significantly hampers economic stability and undermines institutional quality, further complicating judicial processes (Lucarelli et al., 2024; Larina, 2025). By describing and analyzing the legal facts and norms surrounding corruption disputes, this research seeks to provide actionable insights into the dynamics of judicial decision-making. This is corroborated by findings that underline the importance of a resilient judicial framework that not only addresses legal violations but also engages public understanding and perception of judicial effectiveness (Barbabela et al., 2021; Jiang & Zhang, 2023). As such, the analytical descriptive method serves to bridge the gap between legal theory and real-world application, substantiating the need for both normative and empirical approaches in tackling corruption narratives.

Finally, the research incorporates specific legal research methodologies, such as statutory and conceptual approaches, to enhance the comprehensive understanding of corruption-related legal issues. These methodologies align with contemporary legal research trends, which advocate for a multifaceted view that incorporates both doctrinal insights and descriptive analyses of existing legal frameworks (Radja, 2025; Saputra et al., 2022). By applying these varied research strategies, this study lays the groundwork for future inquiries into the implications of judicial discretion and the interplay between legal standards and public corruption perceptions, as corroborated by various studies highlighting the nuanced relationship between judiciary performance and anti-corruption efforts (Liu, 2020; "The Dynamics of Judicial Independence in Corruption Sentencing: Between Judicial Discretion and the Principle of Legal Certainty", 2025). Through this holistic approach, the research aspires to contribute to the discourse on legal accountability in corruption cases while fostering a deeper understanding of the judicial processes that underpin effective governance.

RESULTS AND DISCUSSION

1. Implementation of Restorative Justice in Domestic Violence Crimes under Law Number 23 of 2004 concerning the Elimination of Domestic Violence

Domestic violence remains a recurring social and legal issue in Indonesia. This study examines a domestic violence case recorded in the Bondowoso District Court Decision Number 56/Pid.Sus/2020/Pn.Bdw and the Surabaya High Court Decision Number 820/Pid/2020/Pt.Sby. The case involved Abdul Fadli, who committed physical violence against his wife, Hariani Muslimatul Hasanah, by striking her three times on the head and once on the right temple. The victim suffered a lump on the head and a bruise on the right temple, which was supported by medical examination results showing a 2 cm bruise and a 1 cm lump. The incident was reported to the Klabang Police.

Consequently, the defendant was held accountable for his actions and found guilty, warranting criminal sanctions. The public prosecutor demanded a four-month imprisonment; however, during the trial, it was revealed that the defendant and the victim had reconciled, and the victim had withdrawn her complaint exactly three months after filing it. Furthermore, both parties resumed cohabitation and expressed the desire to preserve their marriage. Considering the reconciliation, the public prosecutor's charge was deemed inadmissible under the principles of restorative justice (Rodiatun Adawiyah, 2022).

The Panel of Judges concluded that the defendant was guilty of committing domestic violence in accordance with the single indictment. The court imposed a three-month prison sentence, suspended under probation for six months. The Marriage Certificate was returned to the victim, and the defendant was charged a court fee of IDR 5,000. The judges deemed the sentence appropriate and proportionate to the level of guilt, ensuring a sense of fairness. Dissatisfied with this decision, the public prosecutor filed an appeal, arguing that the sentence was too lenient. Nonetheless, the appellate court upheld the district court's decision, acknowledging the reconciliation and confirming the sentence.

Restorative justice serves as an alternative approach to conventional criminal justice systems, emphasizing dialogue and mediation to achieve a mutually fair resolution between perpetrators and victims. It focuses on restoration and social reconciliation rather than retribution. Although not all offenses are suitable for this approach, domestic violence cases, categorized as complaint-based offenses, provide room for its application since the prosecution depends on the victim's report. The implementation process follows the guidelines of the Decree of the Director General of General Courts Number 1691/DJU/SK/PS.00/12/2020. Mediation forms the central principle of the process, and any peace agreement reached is considered by the judge in determining the final verdict, aligning with restorative justice principles (Muhammad Arif Prasetyo, 2022).

Based on the prosecutor's demand, the defendant's legal defense, and the peace agreement between the parties, the judge declared the prosecutor's charge inadmissible. The termination of prosecution is permissible under the Criminal Code if the complaint in a complaint-based offense is withdrawn. In this case, the withdrawal of the report by the victim automatically nullified the prosecution. Although the public prosecutor's demand was rejected, the peace agreement did not absolve the defendant of criminal liability. The judge sentenced the defendant to three months' imprisonment, suspended unless another offense occurred during the six-month probation period.

2. Analysis of the Judge's Decision under Law Number 23 of 2004 concerning the Elimination of Domestic Violence

The researcher emphasizes that judicial case resolution should reflect justice for all parties involved, not solely focusing on punishing the accused. Conventional justice systems tend to prioritize punitive measures while neglecting victim protection and recovery. The concept of restorative justice has redefined this paradigm by promoting dialogue and mediation to reach equitable solutions that respect the rights and needs of both the victim and the perpetrator.

In this case, the judge applied the principles of restorative justice by recognizing the defendant's guilt in committing domestic violence while rejecting the prosecutor's demand due to the victim's withdrawal of her complaint and the couple's reconciliation. The defendant was sentenced to three months in prison, with the sentence suspended under probation. The Bondowoso District Court ordered the return of evidence to the victim and imposed court costs on the defendant. Although the public prosecutor appealed the decision, the appellate court upheld the initial verdict and maintained the defendant's liability for court costs.

The imposed sentence—three months' imprisonment—was close to the maximum penalty prescribed under Law Number 23 of 2004 and took into account

mitigating factors such as reconciliation and the restoration of family harmony. The judge prioritized peacebuilding during the trial, recognizing that both parties had voluntarily reconciled, thus deeming incarceration unnecessary unless a future violation occurred within the probation period.

The verdict, which exempted the defendant from serving the sentence, represents an application of restorative justice principles under Law Number 23 of 2004. This approach is viewed as a progressive development in Indonesia's criminal justice system, which traditionally adheres to a formalistic model that publicizes domestic issues contrary to local cultural norms favoring privacy in family matters. Historically, the law mandated punitive measures without offering mechanisms for mediation or dialogue.

The imposition of a three-month prison sentence on the defendant aligns with Article 44 paragraph (4) in conjunction with Article 5(a) of the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, which stipulates:

"Any person who commits an act of physical violence within the household as referred to in Article 5(a), committed by a husband against his wife or vice versa, that does not cause illness or prevent daily activities, shall be punished with a maximum imprisonment of four months or a maximum fine of IDR 5,000,000."

According to the researcher's analysis, there is an urgent need for specific regulations governing the resolution of domestic violence cases through restorative justice mechanisms involving dialogue or mediation between the defendant and the victim. The resolution of such cases should not only focus on punishing offenders but also on restoring the victim's rights and well-being. Legal clarity is needed regarding which types of domestic violence cases are eligible for restorative justice. For severe cases that threaten life or cause lasting harm, the conventional criminal justice system should remain applicable.

In this case, the judge reached a balanced and equitable decision by considering the reconciliation between the parties and applying restorative justice principles. Although the defendant was found guilty and sentenced to imprisonment, he was not required to serve the sentence due to the mutual peace agreement. This ruling exemplifies a fair and culturally sensitive application of justice that restores the dignity and rights of the victim while maintaining the integrity of the legal process.

CONCLUSION

This case of domestic violence (KDRT) constitutes a complaint-based offense that can be addressed through a restorative justice mechanism. The application of restorative justice in this case refers to the Decree of the Director General of the General Courts No. 1691/DJU/SK/PS.00/12/2020. Although reconciliation between the defendant and the victim was achieved and the complaint was withdrawn, criminal responsibility remained enforceable. The judge rejected the public prosecutor's demands, recognizing that reconciliation had taken place, yet still imposed a three-month prison sentence on the defendant.

Although the sentence does not have to be executed unless decided otherwise by a different judge, the defendant remains legally guilty of committing a criminal act until the probationary period expires. The three-month sentence is close to the

statutory maximum of four months as stipulated under Law No. 23 of 2004. Despite the existence of mitigating factors, the sentence remains consistent with applicable legal provisions. The court further determined that the prison sentence need not be served, emphasizing instead the importance of restoring the defendant's condition and rebuilding harmonious relationships within the community. However, the defendant remains subject to potential punishment if another offense is committed before the six-month probationary period concludes.

Acknowledgment

There is an urgent need for specific regulations governing the resolution of domestic violence cases through restorative justice, emphasizing constructive dialogue between the accused and the victim. This approach underscores that the primary objective is not merely the incarceration of the perpetrator, but the restoration of the victim's violated rights and the reintegration of both parties into a balanced social framework. Clear legal guidelines are required to delineate the scope and criteria of cases eligible for resolution through restorative justice, ensuring that such mechanisms are applied appropriately.

In cases that do not meet the restorative justice criteria, the formal judicial process should remain the primary avenue for adjudication. Furthermore, disproportionate or biased judicial decisions can inflict significant harm on one of the parties and erode public trust in the justice system. Therefore, it is essential for judges to exercise their duties with prudence, impartiality, and integrity. All parties involved must also be encouraged to exercise their full legal rights, including the right to appeal, should they perceive any miscarriage of justice. Through these measures, the justice system can continually refine its mechanisms, uphold fairness, and reinforce the primacy of justice as a foundational principle in law enforcement.

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