

# Reconstruction of Settlement Models of Violence Against Women through Development of Restorative Justice

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## Abstract

The objective of this research is to explain changes in the criminal justice system in resolving violence against women by using a restorative justice model. The measure of the success of law enforcement which has so far only been marked by the conviction of a criminal, is no longer relevant to the growing age. The main thing is how law enforcement can accommodate the values of justice that develop in the community, especially for women as victims. This research is a normative study using a legal and conceptual approach. Data obtained by literature study on matters relating to the subject matter of the study. The results of the study show that cases of violence against women always increase every year. This is not balanced with ideal protection, because the criminal justice system still aims to obtain procedural justice, without regard to justice for victims. The need for restorative justice is intended so that women as victims can obtain justice because the settlement of cases is carried out through mediation, so that an agreement arises that can restore the situation of the victim.

**Keywords:** Law Enforcement, Violence against Women, Restorative Justice, Globalization.

## I. INTRODUCTION

The National Commission on Violence Against Women (Komnas Perempuan) shows that violence against women in 2018 is still high. The number of reports of violence reached 406,178 cases. Most are sexual violence, such as rape, sexual abuse, sexual exploitation, and rape in marriage. Even violence against wives is the main cause of around 392,610 applications for divorce in the Religious Court [1]. In many of the same cases in the world, Rebecca L. Adams said, "... domestic violence is a pervasive and an insidious social problem that affects millions of women each year". [2].

Efforts to protect women as victims are always carried out in court. The judicial process that depends on the judge's decision, often forgetting the rights of the victim. The justice system tends to focus on the process of proving the prosecutor's charges against the defendant, but does not pay attention to the condition of the victim. Kimberly D. Bailey

said: "a criminal justice solution is simply not the best choice for all victims", because justice does not create better access for victims of violence [3]. The position of such victims by the victimist is called "forgotten person, the invisible, a second class citizen, a second victimization dan double victimization" [4].

The success of a judge's decision in addition must be in accordance with the rules or procedures, it should also be able to restore the victim's condition, both material and immaterial. The judge's decision only stated that the defendant had been guilty and convicted, but had forgotten the existence and fate of the victim. The interests of victims who must be prioritized can only be realized through the renewal of the law enforcement of violence against women.

In this era of globalization and increasingly rapid social change, the discourse on the application of restorative justice as a system that can protect women as victims needs to be

reviewed. This is to avoid “social unrest and social tension”, that the law is accused of being outdated and does not fulfill a sense of justice. This condition occurs because “actual enforcement” tends to be far from “total enforcement and full enforcement”. In other words, law enforcement does not work, resulting in many women victims not getting justice.

## II. RESEARCH METHODS

The type of research that the researcher used was normative legal research that aims to find and describe the conceptual framework in positive law. This research was prescriptive by using a statutory approach and a conceptual approach. The data used were secondary data, namely primary legal material and secondary legal material which broadly looks at the phenomenon that develops in the community regarding violence against women, and how restorative justice can provide justice in the law enforcement process. Data collection techniques were conducted by doing library research (documents) which were then analyzed by syllogism.

## III. RESULTS

### A. Violence Against Women in Regulation and Practice

Modern society that is built on the principles of rationality, democracy, and humanism, should be able to suppress acts of violence, but precisely violence is increasingly becoming a phenomenon that leads to a systemic culture. Actions of domestic violence in particular, is a phenomenon that is often reported by the media. This violence is a serious problem, as stated by Elizabeth L. MacDowell, that “Domestic violence is a serious social problem that is frequently unrecognized, minimized, or ignored because of stereotypes about who is at risk and from whom”. [5].

The issue of violence against women has always been associated with many problems, such as cultural issues, interpretations of religion, psychology, and relations between genders, which makes this issue very complex. Even in cases involving women as victims, the public unconsciously joins the victim in another perspective. We might join in building what Dianne Herman (in Cheryl Anderson) calls “the rape culture” [6], which is a term used to describe a society that seems to underestimate acts of sexual violence in particular, and even tends to victim blaming.

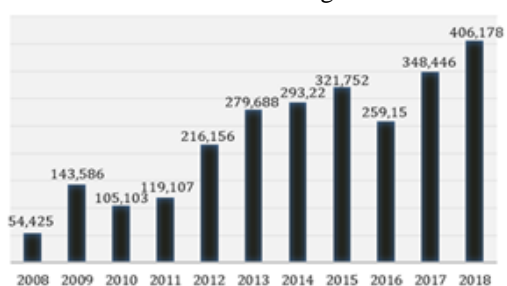


Figure 1. Violence Against Women in Indonesia (2008-2018)

Based on the figure above, Indonesia has a high number of cases of violence against women. This figure was obtained in addition to the increasing number of reports, but also the many new motives of violence that emerged. This data shows that the state must have instruments that can enforce the law and provide protection to women who are victims of violence.

In the construction of criminal law which is built on retributive views, the suffering or loss of the victim has been abstracted and compensated by the threat of criminal sanctions that can be imposed on the perpetrator. With this conception, the state, whose legal rules have been violated by criminal offenders, places themselves as victims and thus also has the right, through its law enforcement officers, to prosecute and impose sanctions on the perpetrators. Whereas the system of law enforcement works only to carry out the Indonesian Penal Code sound.

The principle and philosophy of punishment that is only oriented to the perpetrator and the neglect of the existence and interests of victims in resolving cases of violence against women indirectly shows that criminal acts are understood as conflicts between perpetrators and the state (no longer a conflict between perpetrators and victims). The perpetrators are considered to have violated the morality of common life which the state has determined and set forth in the rules of law. In this context, the suffering or loss experienced by the victim is considered to have been represented in criminal sanctions threatened by the perpetrator.

So far the idea has been that when the perpetrators of crimes have been sentenced, the legal protection of victims is deemed to have been fully granted. As a result, when the victim then demands that compensation be given, this is considered excessive. This was felt to be unfair for women as victims of violence. The meaning of justice previously formulated based on tradition and legal texts must at least be changed by using an approach to what the victims feel and think about.

### B. Restorative Justice as Settlement Models of Violence Against Women

It has been regulated in the Nation Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power that every country must pay attention to victims of crime by providing fair services in the judicial process. However, the justice felt through the courts is formally very difficult to achieve, so that efforts to obtain justice arise through informal means called restorative justice. Crime is understood as something that is forbidden for individuals and society, and not only abstract violations of the law against the state. Therefore, rather than focusing on the punishment of the offender, the recovery of emotional and material losses resulting from crime is far more important [7].

The measure of justice must be flexible to respond to important facts, personal needs, and solutions in each case. The mechanism of accountability of the perpetrators must be carried out by providing opportunities to the parties, which are victims; perpetrator; and the community, to identify and determine their interests related to the consequences of crime, seek solutions aimed at healing, repairing and reintegrating, and preventing future suffering [8].

The consideration of the interests of the victims in the settlement of criminal acts is not only related to the process of resolving the case, but also related to the recovery of victims' suffering, especially with compensation as stated in the 2002 ECOSOC resolution: "*Restorative outcomes include responses and programmes such as reparation, restitution, and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender*"[9].

Various laws governing violence against women, such as Law No. 35 of 2014 concerning Child Protection and Law No. 23 of 2004 concerning the Elimination of Domestic Violence, in principle it has accommodated the idea of restorative justice. However, this idea is not placed on the settlement of criminal acts by using criminal law or criminal law policy. Whereas the criminal law policy on violence against women in the Criminal Code and Criminal Procedure Code (Law No. 8 of 1981), apparently has not reflected restorative justice. So this restorative justice needs to be reconstructed as a real model of resolving violence against women.

The need for restorative justice is also caused by the growing development of global changes which also influence new patterns and motives in violence against women. Globalization is "a maverick", which appears mysteriously and is not easily detected. Anthony Giddens mentions that globalization has made the world lose control, including forming new characteristics, most of which can threaten stability [10]. Therefore, the state is present to provide protection specifically for women as victims, from the negative effects of globalization.

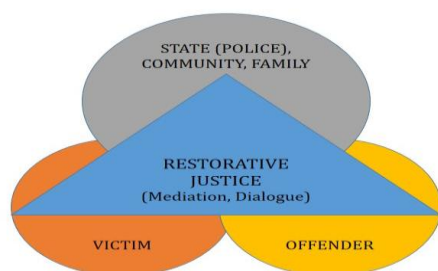


Figure 2. Settlement Models of Violence Against Women with Restorative Justice

The implementation of restorative justice is to repair social damage caused by the perpetrator. So that there is a willingness from the perpetrators to correct the losses that

have been caused as a form of sense of responsibility, there is a willingness from the community to be involved in settlement of cases, and the activeness of law enforcement officers to uphold the law fairly.

Finally, restorative justice offers something different because the criminal justice mechanism that is focused on proving criminal cases is transformed into a process of dialogue and mediation. The researcher considers that mediation does not only involve the perpetrators and victims, or the police as mediators, but also involves close relatives of the perpetrators and victims as well as respected community or religious leaders by the parties. This type of mediation is basically similar to family group conferencing programs. Through restorative justice, procedural and substantial justice for women as victims can be realized to the fullest.

#### IV. CONCLUSION

With the increasing variety of types and numbers of violence against women due to growing globalization, a change in the criminal system of criminals is needed, by not relying on judges' decisions in court, but through efforts to achieve justice, which is restorative justice. In principle, this model is an approach to systematically respond to criminal acts that occur with the main focus to repair the damage/recover the suffering caused by these criminal acts without leaving balanced attention between the interests of victims, perpetrators and society.

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Gayatri Dyah Suprobowati, was born in Wonosobo, September 18, 1981. He holds a Bachelor of Laws degree (2003) and a Masters in Law (2005) from Sebelas Maret University (UNS). Currently pursuing a PhD at the Universiti Teknikal Malaysia Melaka (UteM). Since 2005, She has worked as a lecturer at the Faculty of Law (UNS). She has abilities in the fields of legal sociology, customary law, gender law, and law & society. In addition to teaching, She also actively participates in training, research and community service. The research that has been followed is: “Antipornography and Antipornographic Regulatory Policy in the Gender Perspective” (2006), “Facilitation of regional legislation in order to harmonize poverty reduction policies” (2012), “Implementation of Disabled Local Government Regulations as an effort to Increase Social Security (2013)”, Disability Policy on Service Air as an Effort to Increase National Resilience” (2014), and “the Construction of the Law for the Application of Justice Principles in Legislation and Judicial Decisions in Cases of Domestic Violence” (2017).



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