

# A Restorative-Justice Approach On The Criminal Cases Of Domestic Violence

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**Abstract:** This study aims to identify and understand the policy of the Indonesian criminal law on the settlement of criminal cases of domestic violence, the implementation of restorative justice on the settlement of criminal cases of domestic violence and the concept of settlement of criminal cases of domestic violence that ideal through a restorative justice approach. Overall the study population was associated with the implementation of restorative justice approaches on the settlement of criminal cases of domestic violence that the perpetrators and victims of domestic violence. Moreover chosen informant from investigators at PPA Police Unit Bone, Gowa, Tator and Majene. Samples were purposively selected. Data collection techniques used were interviews, questionnaires and documentation. Data were analyzed qualitatively. The results showed that the policy of the Indonesian criminal law on the settlement of criminal cases of domestic violence did not reflect the restorative justice approach. The application of restorative justice approach towards the settlement of criminal cases of domestic violence carried out by police investigators to reconcile victims and perpetrators and implement diversion. Concept completion criminal cases of domestic violence that ideal through a restorative justice approach is to involve the active participation of victims, offenders, families, law enforcement officers and the public, loss recovery of victims and the perpetrators.

**Index Terms:** Criminal Law, Domestic Violence, Restorative Justice

## 1 INTRODUCTION

The decrease of crime is an indicator of performance effectiveness assessment of the criminal justice system, and otherwise the increase of crime intensity showed the ineffectiveness of the criminal justice system. Substantially, the enforcement of criminal law in Indonesia provides an opportunity to conduct legal proceedings in accordance with the values of local wisdom. Article 5 paragraph (1) of Act No. 48 of 2009 concern Judicial Power, which provide an obligation for judges and constitutional judges to explore, to follow, and to understand the legal values and sense of justice in the people. The provisions of this article can be interpreted that a judge can give a judgment based on *the living law* is not-written or not-regulated in the written-statutory provisions as intended by the principle of legality. At this time, the development of criminal law showed some concepts of justice to resolve a crime in the criminal justice system are *retributive justice*, *restitutive justice* and *restorative justice*. The pluralism of approach to resolve a crime is caused by at least three main factors, i.e. the Development of Human Rights; Changes of people's opinions of both crime and criminals itself. The changes of people's opinion on crime, after punishment before by emphasis on retaliation (*retribution*) understanding, then shifts into a prison which is considered as a form of modern punishment because it provides the opportunity for people to improve themselves, with emphasis on improvement (*re-socialization*) understanding.

And then, the development of imprisonment is considered to produce stigma and sorrow as other consequences that negatively affect a person's criminal, as well as burden with states financial, so that later emerge a fined, although it is also doubtful and extremely depending on person's economy level. However, the imposition of fine are also reap injustice. Fines imposed on offenders into the state treasury and the fate of victims neglected. Victims who should get the recovery did not even get his rights, even the household will likely falter. An appropriate approach to overcome the crisis of law as described above is Restorative-Justice Approach. This approach to solving a criminal case is considered as a new method, although the patterns used are mostly rooted in the values of local wisdom of primitive societies. The concept of Restorative-Justice Approach is an approach that focuses on the creation of justice and balance to the criminal and the victim. The mechanisms of procedure and criminal justice program that focuses on imprisonment changed into a process of dialogue and mediation to create an agreement to resolve the criminal cases are more fair and equitable for the victim and the perpetrator. Criminal cases involving members of household is a part of a criminal law which character and its resolving is differ contrast to the general criminal law, in regard the individual involved in it, so the approach and handling cases like this, when conducted by using the ordinary Procedure of Criminal judicial is cannot achieve the ultimate goal for justice seeker to resolve problems faced even tend to reveal an injustice. The criminal in the domestic sphere are dimensional, in the sense that correlates with the aspects of judicial, sociological, psychological, cultural, economic, and so forth. The characteristics of dimensional makes criminal cases of domestic violence (hereinafter referred to as *domestic violence*) requires law enforcement mightily through other approaches as well as the establishment of a special institution that has broad authority in handling domestic cases, the implementation is done optimally, effectively, professionally and continuously. At present, the development shows that in fact the violence of physical, psychological, sexual and neglect of household often occurs. Based on data from the Ministry of Women's Empowerment and Child Protection record data on cases of domestic violence in 2009 amounted to 143.586 cases, in 2010 by 105.103 cases, and in 2011 by 119.107. The domestic violence that is handled by the

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Service Partner Institution in Indonesia during 2012 amounted to 8.315 cases. Of these, psychological violence is the highest form of domestic violence (46%), physical violence is 28%, sexual violence is 17%, and economic violence is 8%. The application of restorative-justice approach is considered appropriate for the resolving of domestic violence case. As a manifestation of criminal law policy, Act No. 23 of 2004 concern the Elimination of Domestic Violence (hereinafter referred to as UU PKDRT) contains the criminal sanctions that are alternatives that imprisonment or fine. So for a defendant, the judge is free to choose between the two kinds of criminal threats. In fact, more cases of domestic violence are subjected to imprisonment rather than the fines. Data in Balikpapan's prison showed from 500 inhabitants as much 30 percent as immoral crime and domestic violence is 132. If imprisonment is applied it against the prisoner will be placed into the Penitentiary with the aim of making the prisoner becomes better, but life in the Penitentiary in Indonesia have not succeeded in fostering inmates to become better, given the conditions in Penitentiary mostly *overcapacity*. Data Directorate General of Penitentiary, from 33 Regional Office of Province, 28 of them experienced *over capacity* of prisoners. Even *overcapacity* in the prisons there were nearly 500%. To overcome this need to change the paradigm. Imprisonment which was originally as a penal facility in the prevention of domestic violence crime need to be examined its existence especially against domestic violence cases that are not so severe, by empowers the overcoming through the implementation of restorative justice. The regulation of restorative-justice application in cases of domestic violence has not been set explicitly in the legislation, especially in UU PKDRT. The absence of regulation led to the lack of standardization of cases that can be resolved through a restorative-justice approach. Standardization of domestic violence cases that can be resolved through a restorative-justice approach should be formulated precisely because not all cases can be resolved through a restorative-justice approach. Domestic violence cases were classified as severe certainly cannot be resolved through this approach. One example of domestic violence cases were classified as severe happened in Dusun Cilame, Desa Cibentang, Kuningan on 1 May 2014. A wife (Leni) and a biological child is still a baby and his mother is victims of domestic violence of her husband (Endang Wijaya) so severely injured. Persecuted victim with sharp weapons. Leni injured in the leg, her muscles and bones are broken so it had to be amputated. The violence was for the fourth. This phenomenon, it is suspected that criminal law does not meet the public's sense of justice; it is suspected there are growing and developing laws together with the people, it is suspected that public calls for the reconstruction of the concept of justice in a national criminal law as law in the community. Based on this condition, there are indications that the application of restorative justice in resolving a domestic violence cases have not yet found ideally. The need for standardization of the forms of domestic violence can be resolved through a restorative-justice approach. In addition, there are many law enforcement officials, especially the police who have yet to implement restorative-justice approach in resolving domestic violence cases due to various constraints.

## 2 IDENTIFICATION OF THE ISSUE

Having observed the developments as described in the above, then the problem to be researched are: How the

implementation of restorative-justice approaches to resolve the criminal cases of domestic violence?

## 3 METHOD OF RESEARCH

This type of research is descriptive research by legal research method. In addition to normative legal research, also used socio legal research to assess the reality and implications of law and view the law as a social institution in real related to the social phenomena that are empirically and as independent variable that give rise to influence and due to the various aspects of social life. This research was conducted in the jurisdiction of the Regional Police of South- and West Sulawesi. Site of the research are: Office of Police in Makassar, Bantaeng, and Tana Toraja. In accordance with the problems to be answered and the objectives to be achieved in this research, the data collected both primary and secondary data were analyzed qualitatively, hereinafter described to address problems in this research.

## 4 ANALYSIS AND DISCUSSION

### 4.1 Data on Criminal Case of Domestic Violence

The observation of study sites obtained a description that domestic violence cases are handled separately in the case of general crimes. In each Police have available at any particular room named Women and Children Service Unit (PPA Unit). Before discussing the resolving of domestic violence case at the police level, there will be described data on domestic violence case reported in Police PPA unit of Bone, Gowa, Tana Toraja and Majene as the site of research.

#### a) Police of Bone, South Sulawesi, Indonesia.

*Table 1. Cases of Domestic Violence in 2010-2014*

No.	Type of Violence	2010	2011	2012	2013	2014	Total
1.	Physical	20	16	18	15	15	84
2.	Psychological	1	1	2	1	-	5
3.	Neglect	7	9	7	7	6	36
4.	Sexual	-	-	-	-	-	-
	Amount	28	26	27	23	21	125

*Source: PPA Unit of Bone Police, 2015*

Domestic violence cases were reported in the PPA Unit of Bone Police in 2010 to 2014 as many 125 cases, which consists of physical violence (beatings) 84 cases, psychological violence as many 5 cases, economic neglect as many 36 cases. There is no reported sexual violence in the PPA Unit of Bone Police. Details of cases reported from 2010 to 2014 are as follows: In 2010 reportedly as many 28 cases, in 2011 decreased to as many 26 cases. In 2012 a total of 27 cases reported to the PPA Unit of Bone Police. In 2013 as many 23 cases and in 2014 as many 21 cases. A case report of domestic violence reported by wife as victim as many 123 cases and husband as victim as many 2 cases.

#### b) Police of Gowa, South Sulawesi, Indonesia.

Domestic violence were reported in Service Center of Gowa Police consists of the wife as many 236 cases as victim and the husband as victim as many 17 cases. For details, the reported case of domestic violence can be seen in Table 2 as follows:

**Table 2. Domestic Violence Cases Reported in 2010-2014**

No.	Types of Violence	2010	2011	2012	2013	2014	Total
1.	Physical	36	37	46	58	32	209
2.	Psychological	-	-	1	1	-	2
3.	Neglect	15	10	12	4	1	42
4.	Sexual	-	-	-	-	-	-
	Amount	51	47	59	63	33	253

**Source:** PPA Unit of Gowa Police, 2015

Domestic violence cases were reported in PPA Unit of Gowa Police from 2010 to 2014 as many 253 cases, which consist of physical violence (beatings) as many 209 cases, psychological violence as many 2 case, economic neglect as many 42 cases. There is no reported sexual violence in PPA Unit of Gowa Police. Details of cases reported from 2010 to 2014 are as follows: In 2010 reportedly as many 51 cases, in 2011 decreased to as many 47 cases. In 2012 as many 59 cases were reported to the PPA Unit. Most cases of domestic violence reported in 2013 as many 63 cases and decreased in 2014 to as many 33 cases.

#### c) Police of Tana Toraja, South Sulawesi, Indonesia.

**Table 3. Domestic Violence Cases Reported in 2010-2014**

No.	Types of Violence	2010	2011	2012	2013	2014	Total
1.	Physical	5	3	2	6	6	22
2.	Psychological	-	-	-	-	-	-
3.	Neglect	-	-	-	-	-	-
4.	Sexual	-	-	-	-	-	-
	Amount	5	3	2	6	6	22

**Source:** PPA Unit of Tator Police, 2015

Domestic violence cases reported to the Service Center of Tator Police since 2010 to 2014 as many 22 cases and all were physical violence. In 2010 was reported as many 5 cases, in 2011 as many 3 cases, in 2012 decreased to as many 2 cases and in 2013 to 2014 as many 6 cases, respectively. Domestic violence cases involving the husband as the perpetrator were 21 cases and wife as perpetrator 1 case.

#### d) Police of Majene, South Sulawesi, Indonesia.

**Table 4. Domestic Violence Cases Reported in 2010-2014**

No.	Types of Violence	2010	2011	2012	2013	2014	Total
1.	Physical	2	5	7	6	5	25
2.	Psychological	-	-	-	-	-	-
3.	Neglect	-	-	-	-	-	-
4.	Sexual	-	1	1	-	1	3
	Amount	2	6	8	6	6	28

**Source:** PPA Unit of Majene Police, 2015

Domestic violence cases reported to the Service Center of Majene Police since 2010 to 2014 as many 28 cases consist of 25 cases as physical violence and 3 cases as economic neglect. In 2010 two cases were reported, in 2011 as many 6 cases, in 2012 as many 8 cases and 2013 to 2014 as many 6 cases, respectively. For all domestic violence cases reported by the wife as a victim.

## 4.2 The Resolving form of Crime Cases of Domestic Violence through Restorative-Justice Approaches

Based on the measures taken by the investigator on the PPA Unit of Bone, Gowa, Tator and Majene Polices, it can be known that of all cases reported, the majority of cases revoked by the complainant/victim. The reasons for revocation of report as follows:

- The victim was unable to confront the stages of process and resolving of cases through the legal process (after hearing testimony from investigators).
- The victims feel confident the perpetrators will realize his mistake and turned into a better person. Violence is believed to be due to stress and economic pressure because basically the perpetrator is a good person daily.
- The victims want to maintain the household, because if the case continued and led to the imprisonment of her husband, then most likely there will be a divorce.
- The victim is worry if the husband is imprisoned; the family will be difficult to meet household needs and children's education, while the victim did not have a job (only as housewife).
- The victims feel unable to care for their own children when the husband is imprisoned. Victim's confidence that children can grow normally when raised by complete parents.
- The victims feel worried when her husband was imprisoned, then the children will be labeled as criminal's child because it spread in the community that people are imprisoned or have been imprisoned are criminals (*labeling*).

The resolving of domestic violence case by the police especially investigator on PPA Unit does not fully follow the provisions of criminal law applicable to the resolving of domestic violence cases. Most domestic violence cases resolved by emphasize deliberation and kinship values as well as expediency consideration. The emphasis of deliberation and kinship values in the resolving of domestic violence case as a form of responsive law enforcement by the investigator. The investigators assume that the problem of domestic violence is a family matter that can still be pursued peace in order to maintain household's continuity and for the sake of the child. This is a *moral justice* of the investigator. Peace efforts taken by the investigator is also through the legal justice that the crime were classified as mild and moderate, so it can still be pursued peace between the parties. Incorporating peace efforts in law enforcement process will cause a reduction in the cases in the judiciary. Reviewed from the accumulation of case in the court, then the peace efforts is the right solution to reduce them. Early stage the investigator will ask chronological any reported cases (including domestic violence case). Furthermore, investigators will perform categorization of crime reported, if the case is light, the investigator will make peace between the complainant/victim with the perpetrator. Peace efforts taken by the investigating authorities to involve the family, Bayangkara Bimbingan Keamanan dan Ketertiban Masyarakat (Bhabimkamtibmas) and community leaders. If has been reached a peace then the parties will sign a peace agreement and will not continue the case. Domestic violence cases which have not been issued reports will be easier its resolving through peace compared with domestic violence cases which have been issued reports. The domestic violence case have been issued reports have to

go through the withdrawal of report, and then the investigator must conduct a case hold. Case hold is an effort in the form of case process holding conducted by investigators in order to deal with certain crime thoroughly before being presented to the public prosecutor. The purpose of case hold is to prevent the occurrence of a pre-trial hearing, to establish the determination of the article elements alleged, as a forum for communication between law enforcement and to achieve efficiency and completion in case handling. A stages/execution of case hold is before stopping the investigation. It is to be more accountable and transparent that the stopping has met the judicial requirement and procedures. The stopping of investigation of domestic violence cases will cause the victim and perpetrator makes peace, so that they can continue households. Children will receive affection and care of their parent. Relation with families and the surrounding communities will also be maintained and harmony, because the households were marred by violence will also affect the condition of a large family of both parties and also the community. The condition is a *social justice* of investigators to continue to seek peace.

#### **4.3 The Ideal Concept to Resolve Crime Cases of Domestic Violence Through Restorative Justice Approaches**

In general, people consider that any problems that occur in the household should be resolved by the family itself. It is highly influenced by religious teachings and customs/traditions prevailing in Indonesia that teaches us to not spread the disgrace in the family. The criminal case of domestic violence, including problems that often occur in the domestic, yet not much has been reported as keeping disgrace. The results showed that of all the reports to the service centers of police, the majority of domestic violence cases resolved at the investigation stage. This shows that the parties prefer to take the way path of peace rather than continue to the criminal justice process. As above, the resolving of domestic violence cases has a great opportunity to be resolved through a restorative justice approach. The resolving of domestic violence through restorative justice approach starts with guilt by the perpetrator who regretted his actions. And then, victim is willing to provide an opportunity for perpetrator to engage in dialogue and deliberation are looking for the best solution. When there was an agreement for deliberation, then it is necessary to divert the domestic violence cases come out from the formal way or diversion. A fundamental reason for the implementation of diversion in the resolving of domestic violence are as follows: a) To prevent the occurrence of detention which can lead to a negative stigma to the perpetrators, further exacerbate their personality; b) To maintain the survival/harmonization of marriage; c) Ultimately to maintain mental development, growth and the future of children. The implementation of diversion is a thing to do if you want to produce a good resolving in domestic violence case, because it is very difficult to realize the objectives of UU PKDRT to maintain harmony and continuity of households if taken is the imprisonment of the perpetrators. Some basic concepts of restorative justice approaches that can be used as the basis of the resolving of domestic violence is active participation of victims and perpetrators and their families as well as community empowerment. The active participation of victims and perpetrator is to seek the best ways to resolve for them, because they know factors that led to the conflict and

the desired solution to resolve the conflict. Indeed they are the owners of conflict and conflict resolution, but they need the assistance of others, in this case the police, family and community. The resolving of domestic violence through restorative justice approach requires the parties to participate actively in solving the problem and placed the state as the party that gave support to the parties and the people who want to solve the problem well. Domestic violence is understood as criminal acts that harm the individual as a victim and the community, not harm the state, so the victims have the right to be involved in the process of resolving domestic violence. Its logical consequence that was unfair then the state took over the resolving of domestic violence and imprison perpetrator. The understanding of meaning and definition of criminal act that are not always addressed as a burden on the state to resolve crimes to be very basic in restorative-justice approach. State must be a sample that constructive-resolving is the right way to resolve the conflict, and the party is given the authority to resolve its own contradictions them and the state only serves to make sure there has been a recovery process that is fair and comprehensive so the authority of the prosecution or the trial held by the state will only take place if the perpetrator cannot provide an adequate indemnity. The basic concept of community empowerment for victims of domestic violence as a hallmark and the main foundation for restorative justice approach to resolve domestic violence case. The resolving of domestic violence through restorative justice approach is to provide space for victims, perpetrator, families and communities to reveal the cause of domestic violence, victim's expectations, perpetrator's remorse and willingness to take responsibility and how to recover. The circle of resolving is conducted through peaceful discussion and dialogue resulting in joint agreement on the best solution. At the practical level, the form of agreement to peace in the investigation process in police pursued in two ways. *First*, after the investigators explain consequences when the case continued, the parties choose to resolve their own problems, assisted by the family and then report the results to the investigator as well perform report revocation. *Second*, the investigator has a role to be the party to lead and to help find solutions to these problems. If observed, then the first practice has similarities with *Conferencing* model that applied in Wagga-Wagga in the State of New South Wales. Initially, the resolving of case under the coordination of police. Police act as a single gate keeper then determine and conduct the selection of cases that can be resolved through *conferencing* models. In the State of South Australia, it is known as the model of "*family conferencing*". The second resolving practices have similarities with *mediation* model. The peace efforts for both parties are known as *penal mediation*. Mediation pursued by investigators was limited to bring together victims and perpetrators, provide information about the conditions faced when domestic violence cases continued to the litigation and advise both parties to make peace. When an agreement to make peace, the perpetrator will make a statement that will not repeat the violence against to the victim. In some cases, the perpetrator who has made a statement of fact returns to violence. Consensus approach and mediation in accordance with one of objectives the UU PKDRT to maintain a harmonious family. An approach to resolve a domestic violence through deliberation and consensus will involve the mediator of the investigating authorities and the community, represented by the Head of District/ Village, Community Leaders, Religious, Educators.

Involving community representatives from various backgrounds will provide strong consciousness for the perpetrator not to repeat the violence and give confidence to the victims that she will not experience domestic violence again.

## 5 CONCLUSION

The application of restorative-justice approach towards the resolving of criminal cases of domestic violence carried out by police investigators to reconcile both victims and perpetrators and implement diversion. An ideal concept to resolve the criminal cases of domestic violence through a restorative-justice approach is to involve the active participation of victims, perpetrator, families, law enforcement officers and the communities, victim's loss recovery and perpetrator's responsibility. The policy of Indonesian criminal law on the resolving of criminal cases of domestic violence must include provisions regarding the involvement of victim, family and community participation actively, as well as to formulate the criminal sanctions that more oriented toward the perpetrators responsibility and victim's loss recovery so that marriage remains intact and harmonious. Reorientation and reevaluation of the criminal and imprisonment as a something that is required in accordance to the development of society and the increasing desire to resolve domestic violence cases peacefully.

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