

# PEACEFUL AND HUMANISTIC RESOLUTION OF DOMESTIC VIOLENCE CASES (RESTORATIVE JUSTICE AND CRIMINAL APPROACHES)

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**Abstract** — The implementation of restorative justice in solving domestic violence cases from a criminal law perspective has several continuities. The restorative justice approach prioritizes recovery and reconciliation, involves the active participation of all parties involved, and can prevent cycles of violence from recurring. However, it is important to consider that restorative justice is not always suitable for all cases of domestic violence and punishment which is classified as a serious violation and must be applied with caution. This paper will cover a statutory review (statute approach) regarding the prevention of domestic violence using a formal juridical perspective that applies in Indonesia. It will also discuss from the point of view of victims, perpetrators, and law enforcement officials regarding the restorative justice system and the legal relationship between the concept of preventing acts of violence, from within the applicable criminal law whether it is sufficient to protect victims when using a restorative justice system. This study will analyze the prevention of domestic violence with a restorative justice approach, the pattern of relationships between the victims and the perpetrators. The ultimate goal of this research is to see the application of restorative justice from criminal law and to determine the most effective restorative justice method in a peaceful and humane way. Using a normative method with a descriptive approach, then the method used for drawing conclusions from normative research, using a deductive method.

**Keywords** — Domestic Violence, Restorative Justice, criminal perspective

## I. INTRODUCTION

In development case Act Criminal Violence In House Stairs (domestic violence), occurs progress laws that go beyond the Criminal Code ( KUHP ). Act criminal This arranged in Constitution Number 23 of 2004 concerning Removal Violence In House Stairs , which work For prevent violence in House stairs ( aspect prevention ), protecting victims of violence ( aspect protection ), take action perpetrator violence ( aspect enforcement law ), and maintaining wholeness and harmony House stairs ( aspect recovery and consolidation ). Objective Constitution This is For ensure equality rights and respect dignity man .

Violence in House ladder is A issue Serious in public . This matter can bother harmony and stability family . Instead , home the stairs should be become place protection and security for member family , be source torture . By individual , impact violence to the victim can impact period long on aspect psychological . When the victim matures and forms family themselves , they Possible consider violence as something reasonable \_ Because they has experienced the trauma . They tend repeat pattern Same behavior , though \_ they realize that That is wrong behavior . Besides that is , a victim of violence can involved in behavior crime in society , with trend that One action violence can trigger and persuade violence other .

Violence in House ladder is a phenomenon spread throughout \_ cultural and not something new \_ in any society . Form violence This No can considered as part from mark culture specific place \_ or time certain . Therefore \_ that 's violence in House ladder No can recognized or considered as normal thing . In face violating behavior \_ this , State and society must participate active in handle problem this and set norms about How member family must behave For build healthy relationships within \_ \_ family . Second matter This must become attention Serious for society and State.

## II. METHOD

Type research used \_ use approach normative ( Normative Legal Research). Study This use method approach statute approach which refers to statutory regulations and all \_ \_ related regulations \_ with moderate issue \_ researched , With characteristic study descriptive and method data collection in the form of studies document . some of the data used ie material primary law uses Constitution Number 23 of 2004. About Removal Violence

In House Ladder , Then to material law secondary use source form book , results research and literature others as appropriate with object discussion , and finally use material law tertiary which is obtained from source form news or the like .

To suit with characteristic study normative , then method used \_ For analyzing nature data qualitative ie with do interpretation to material the law has processed . Then the method used For withdrawal conclusion from study normative , then use nature method \_ deductive , that is withdrawal nature of conclusions special from statements general .

When it's interesting conclusion related business statute approach , important For conclude in -depth analysis about implications study . This is also important For see How results from study Can used For objective practical , also included application to system future law . \_

### III.DISCUSSION

#### **Application of Restorative Justice in Finishing Conflict Crime in Indonesia .**

Based on guide Restorative Justice and Domestic Violence: A Guide for Practitioners 2016, European Union countries implementing restorative justice in case violence in House ladder or violence by a partner intimate (intimate partner violence/IPV). Victim Offender Mediation (VOM) is frequent used in solution case violence partner intimate in several European countries . VOM proponents argue \_ that the restorative justice approach provides chance for victims to participate and express experience they . In this process , the victim is listened to by the perpetrator through mediator assistance . This matter empower victims with ensure that they No responsible answer on incident the . Besides that , restorative justice practices create chance for perpetrator For confess not quite enough answer on his actions without blaming the victim or other factors such as unemployment or abuse alcohol .

There is debate about is protection towards the victim really guaranteed in implementation of restorative justice. UN documents in general Specific against use of restorative justice in case violence partner intimate (IPV). The Council of Europe also took up action For protect the interests of the victim with forbid mediation must (mandatory mediation ) in restorative justice cases through Istanbul Convention .

The European Commission has develop minimum standards \_ technical For prevent victimization reset and ensure a safe and competent recovery process in case violence in connection intimate . There is three principle basic must \_ always note : first , the mediator must own knowledge about complexity violence in connection intimate and different pattern behavior , esp between violence in connection in a way general and " intimate terrorism " . Second , the mediator must with firm confirm that violence is action criminals and perpetrators responsible answer on behavior aggressive . Third , preparation implementation justice restorative must involve meeting stare advance between the victim and the perpetrator in a way separated . Preparation This important For evaluate needs and interests of victims, risks revictimization , as well problem victim safety . Although conference Can used , the most common restorative justice approach in case violence in connection intimate is through Crime Action Mediation ( Victim Offender Mediation/ VOM).

In level internationally , UNODC has adopt the concept of restorative justice in Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women . Although Thus , instruments This give restrictions on considered cases \_ risky tall without specific explanation \_ about follow which crimes are included in category the . Identifying decisions case risky tall submitted to police force required For in a way critical do identification and exchange information with institution other . Instrument this also emphasizes importance empowering victims within implementation of restorative justice programs and ensuring the victim's prior consent implementing the program. In Indonesia, a restorative justice approach has been implemented applied in a way special in follow crime involved \_ child , however matter This No means that No There is applicable restorative justice approach For cases involving adults . \_ \_

In in practice , the restorative justice approach has applied to action crime , esp violence in House stairs , through Constitution Number 23 of 2004 concerning Removal Violence in House Ladder (PKDRT Law). The PKDRT Law regulates prohibition to violence in House stairs and covers various aspect like procedure law , sanctions criminal for perpetrator , as well rights of domestic violence victims and mechanisms fulfillment . Regulated victims' rights in Constitution This covers protection , service health , confidentiality , assistance and guidance spiritual . The PKDRT Law also stipulates responsible parties \_ answer in fulfil rights that and how its implementation . Besides There is also a section that regulates it recovery of victims in context health . About sanctions , the Domestic Violence Law introduces criminal addition form restrictions motion perpetrator to stay away from the victim, as well obligation perpetrator For attend a counseling program . Aspects that have been mentioned show that the principles of restorative justice are very seen in arrangement follow criminal violence in House stairs , though the focus No fully on recovery connection between victims, perpetrators and society . Great attention \_ given to the interests of victims, incl security and recovery himself , inside Constitution the . The only one existing opportunities \_ For reach reintegration between perpetrators , victims and society in

Constitution Victim and Witness Protection is through penalty criminal addition in the form of a counseling program for perpetrator . However , no There is mechanism or other space available become track For restore connection or situation between all parties involved . \_

Based on discussion about limitations follow possible punishment \_ resolved through restorative justice approach , good in practice in various countries and in instrument law international , as well see How the concept of restorative justice is implemented in Constitution criminal law in Indonesia, it can be seen that expand use of outside restorative justice programs involving cases \_ children is possible . Approach This even can applied to action serious crime , because \_ considered more capable fulfil justice and victims ' rights . A number of example follow possible punishment \_ resolved through approach This is violence in House household (domestic violence) and cases violence to women , as long as done with agreement and agreement volunteer from victims without exists coercion .

However , it's important For remembered that determination follow possible punishment \_ resolved with restorative justice approach through the law in a country is very depending on the number factors , incl characteristics society , context culture , and the nature of the desired restorative justice program applied .

Use of restorative justice programs in case violence in House stairs and violence sexual often reap controversy and rejection from public . Therefore \_ that is necessary strategy proper communication \_ For identify and overcome reason as well as base rejection to use this restorative justice approach . Influencing factors \_ rejection the need noticed with OK , so that the provisions are there No contradictory with desired goal \_ achieved through use of restorative justice.

In dealing with domestic violence in the system Justice In Indonesia , there are subject Domestic violence law is binding on provisions the . That matter is a person and subordinates who are located in space and time certain . Actually government responsible answer in effort prevention of domestic violence. Right get protection individual and family guaranteed by the state as fill explanation Provision General Constitution Number 23 of 2004 about Removal Violence In House Ladder . Meaning actually Removal violence in House ladder in Constitution This is prevent all form violence in House stairs ( goal preventive ), protect victims of violence in House stairs ( goal protective ), take action perpetrator violence in House stairs ( goal repressive ), and nurturing wholeness House harmonious and prosperous ladder ( goal \_ consolidative ) which is embodiment principle equality rights and rewards to dignity man . In connection with characteristics domestic violence cases , according to Harkristuti Harkrisnowo . Domestic violence or in Indonesia it is known with Crime “ Violence In House Stairs (Domestic Violence)” has specificity compared to with other forms of violence to women because \_ exists related relationship \_ with power ( power relationship ) between the victim and the perpetrator . Psychological burden experienced \_ women are very much victims of domestic violence tall Because connection power always contain element beliefs and also elements dependencies up to the level certain . Besides feel exists abuse of power by the owner power these , victims also in general experience fear , reluctance , and also shame For report to the authorities .

Factors This must dealt with with policy integrated and sustainable crime . \_ In practice approach conventional through penal means experienced a number of obstacles namely :

1. Formulated domestic violence offense in the P-Domestic Violence Law " half heart ” so in implementation almost all a form of domestic violence is considered offense complaints and “ stuck ” as violence that is not give rise to consequences ( ex physique );
2. There is a perception bias enforcer law since stage beginning against domestic violence so that domestic violence often occurs considered as problem private and less get priority ;
3. Enforcer law Alone tend seeing domestic violence is violence physique so that proof to impact violence only seen visible eye just even though domestic violence always happens give rise to impact other ;
4. Protection formulated law \_ in the P-Domestic Violence Law in its implementation hampered Because in a way technical Not yet There is equality perception between enforcer law ;
5. Paradigm law moving crime \_ only between deeds and people and yet touching the victim resulted victim's position inside system Justice criminal Still Not yet noticed .

Impact more area caused by p \_ the is best victims' rights . In line with That's it , Harkristuti evaluate there is a number constraint in the judicial process criminal on action violence domestic to Woman among other things because in the judicial process criminal there is a number problem like :

- a. Difficulty For get information witness , because his reluctance For involved in the judicial process ;
- b. Limited understanding and expertise enforcer law in handle case follow violence against women ;
- c. Paradigm proof that is based on principles unus testis nullus testis ( one witness No witness ) except in the violence that occurred in scope House ladder confirmed by 1 witness However must be equipped with confession si perpetrator ;
- d. Lack of involvement of workers social in a way intensive in handling case follow violence to Woman .

With thereby so restorative justice approach addresses a number of problem That with strive fulfillment the rights and wishes of victims as well more pro- active involve worker social in solution based recovery the .

Objective main from restorative justice Alone is achievement justice that is as fair as possible especially for all parties involved in it , no \_ just put forward punishment . Punishment model restorative introduced Because system Justice current crimes and sentences \_ applies give rise to problem .

In system imprisonment Now objective giving punishment is deterrence , retribution revenge , and giving suffering as consequence his actions . Indicator punishment be measured from the extent to which prisoners ( prisoners ) are subject to regulations prison . So, the approach more to security (security approach). Besides imprisonment that brings consequence for family prisoners , the system in place Now assessed No a relief or heal the victim . Moreover , the legal process eat long time . In contrast , the restorative model is emphasized in resolution conflict . Sentencing restorative involving victims, families and other parties in finish problem . Beside that , makes perpetrator follow criminal responsible answer For repair losses incurred \_ his actions . its implementation No easy . If only applied in the environment Prison , the result No will maximum . So, restorative model must started from police , time first time thing investigated . The same applies to prosecutors and courts . One thing another difficult one is restore the victim's suffering , fine physique nor psychic .

### **Completion Violence In House Ladders (KDRT) Using Restorative Justice**

#### **Restorative Justice in practice judiciary in Indonesia**

Update law criminal mature This No Again use retributive approach instead develop towards restorative where We know that solution case criminal through formal legal channels are considered Not yet give significant influence \_ to decreasing amount crimes that occur inside \_ society , still many follow crime that occurred inside \_ the community being dealt with through formal legal channels bring huge impact \_ wide No only cause the occurrence of overcapacity in the institution correctional will but also impactful to state finances , no Can denied that occurrence of overcapacity in institutions correctional the need costs are not A little . So that required another way in respond follow crimes that occur , remediation crime No only can done with just penal way will but also can done with non-penal measures , no only with action repressive but also action preventive in cope crime .

Orientation system Justice criminal focused on action crime ( crime, strafbaarfeit ) and the perpetrator follow criminal ( criminal, dader ). Mindset of each component system Justice criminal tend based on formal rules or nature positivistic without Want to caring expediency and a sense of justice which constitute spirit from enforcement law criminal . Judicial process criminal more reflect justice between state interests against interest perpetrator . With reason legality , respectively component system Justice criminal No Want to take risk , so handling case the has harms the sense of justice public .

According to Barda Nawawi Arif , effectiveness law criminal can seen from two aspect principal objective from punishment , that is aspect protection society and aspects repair behavior from si the perpetrator in question with aspect protection public covers objective from prevent , reduce or control follow criminal and recover balance society ( including resolving \_ conflict , bring a sense of security , improve loss or damage , remove stains , strengthening return the values that live within public ). Aspect repair si perpetrator covers various goals , including doing \_ rehabilitation and socialization return si perpetrator and protect him from treatment arbitrary outside \_ law .

Restorative justice approach in solution case violence in House ladder give ample opportunities \_ for all parties involved \_ in case For in a way active role in finish the problem . For victims of crime violence in House stairs , approach This give room For disclose desires and demands to the perpetrator , the deep one system Justice conventional often No can accommodated with either by the prosecutor prosecutor general . Besides that , approach this also delivers chance for perpetrator For in a way responsible answer convey his opinion , realize and regret his actions , as well willing replace losses resulting from the act criminal offenses that have been did it .

For support implementation of restorative justice and providing certainty law for those who search justice , as well as guidelines for apparatus enforcer law specifically in stage investigation , Police The Republic of Indonesia ( Kapolri ) issues a Circular Letter Police chief Number 8 of 2018 concerning Application Justice Restorative in solution case criminal . Besides There are also regulations \_ Police chief Number 6 of 2019 regulates about Investigation Act Criminal . Temporary that , deep stage Prosecution , the Attorney General's Office published Regulation attorney Number 15 of 2020 concerning Termination Prosecution Based on Restorative Justice for support implementation justice restorative .

### **Implementation of Restorative Justice as Alternative Completion of criminal actions Violence In House Stairs (Domestic Violence).**

Understanding violence in a way juridical can found in Article 89 of the Criminal Code , which interprets that do violence including in action makes people faint or No Empower . Faint refers to conditions lost memory or No conscious , meanwhile No Empower refers to deficiencies strength or power so that No capable do resistance . Although somebody No helpless , he Still can realize what happened to him . \_ In context this , understanding violence the can considered as persecution .

Whereas understanding Violence In House Ladders (KDRT) according to Article 1 Law no. 23 of 2004 concerning Removal Violence In House Ladder is :

" Every deed to somebody especially the woman who had the effect emergence misery or suffering in a way physical , sexual , psychological , and/ or neglect House ladder including threat For do act , coercion , or plunder independence in a way oppose law in scope House ladder . "

The law has role important in guard order society , complete dispute with an orderly and fair manner , as well aim For reach peace in public . One of existing concept \_ known in Indonesian law since the 1960s were Justice Restorative (Restorative Justice), which is stages in system Justice criminal conventional . Initially , the concept Justice Restorative used by society custom in Indonesia as method solution case without involve state apparatus . According to Miriam Liebman, Restorative justice can defined as :

"Restorative Justice has become the term generally used for an approach to criminal justice (and other justice systems such as a school discipline system) that emphasizes restoring the victim and community rather than punishing the offender " can interpreted that (restorative justice is frequent terms \_ used in approach emphasized punishment \_ draft restore victims and their environment to circumstances beginning than punish perpetrator follow criminal . In approach Here , pay attention given to restoration and reconciliation , with objective return balance and improve losses incurred \_ consequence follow criminal . This matter different with approach more traditional \_ focus on punishment and retribution to perpetrator .).

The concept of Restorative justice emphasizes justice based on peace , which is resolution case the No based on reply feud or punishment to perpetrator . Application draft This is development in system Justice more criminal \_ put forward involvement between perpetrators and victims in solution case , which is not general found in criminal procedural law conventional moment This . As quoted by Mudzakkir , Van Ness illustrates Justice Restorative with a number of principle base . Certain :

1. Crime is conflict between individual who causes it losses to victims, society and perpetrators That Alone .
2. A must goal achieved from the judicial process criminal is do reconciliation between parties while repair losses caused by crime . \_
3. Judicial process criminal must can facilitate participation active victims, offenders and society . No should Justice criminal dominated by countries with leaving aside everything else .

Restorative justice in solution follow criminal give opportunity for all parties involved , esp \_ perpetrators and victims, for active involved in solution matter . Approach This possible happen change role between perpetrator and victim, where in criminal procedural law conventional , perpetrator and victim only works as witness in solution things carried out by the authorities enforcer law . In matter this , restorative justice has presenting innovation in solution case , which admits that give punishment criminal to the alleged perpetrator guilty No always fulfil the interests of the victim or not always give effect expected deterrence . \_ However , through discussion between perpetrators and victims in restorative justice, second split party can reach solution fulfilling things \_ interest each party . Emphasis on responsibility answer perpetrator on his actions made basis so that the perpetrator has cause loss to others get what is appropriate obtained .

Principle Justice Restorative (Restorative Justice) basically endeavor reach peace outside \_ court between perpetrator follow crime and victims, as well involve family perpetrator . In Justice Restorative , completion problem law between perpetrators and victims can achieved through agreement or agreement between all parties involved . \_ Approach This give chance for perpetrator For responsible answer on his actions with replace losses incurred \_ consequence follow crime committed . \_

One of change in investigation follow criminal is with its publication Regulation Police chief Number 6 of 2019 concerning Investigation Act Criminal . Regulation This is refinement and adjustment related rules \_ with a Notification Letter Commencement Investigation (SPDP) after decision Court Constitution Number 130/PUUXIII/2015. Regulation this also replaces Perkap 14 of 2012 concerning Management Investigation Act Criminal , which has been revoked based on Regulation National Police Number 06 of 2019 concerning Revocation Regulation Police chief Number 14 of 2012 Concerning Management Investigation Act Criminal . Revocation case by party Police can done If case has resolved in a way peace between second split party . Agreement the including request Sorry from doer and promise For No repeat the same action .

Completion case violence in House ladder often done \_ with based Constitution Number 23 of 2004 concerning deletion violence in House ladder as rule especially what's in it has arrange problem the . However , in practice , solution case violence in House ladder more focus on punishment , so objective prevention , protection , and reconciliation No achieved completely . Case violence in House ladder involve dimensions complex civil and criminal matters , so required something mechanism solution in system the law can handle solution The case in question is one of them is through Restorative Justice approach .

Certainty law is the essence of a sense of justice That myself , because justice and law each other related . However , implementation Restorative Justice policy as alternative solution follow domestic violence crime still face a number of obstacles , including : \_

- a. Lack of understanding and recognition to the settlement process through mediation among \_ enforcer law and society in a way general . This matter result apparatus enforcer law reluctant For use discretion in do solution through mediation.
- b. No exists base strong law \_ For solution through mediation cause apparatus enforcer law feel No brave or No Certain For use approach This in the practice .
- c. System Justice criminal has a process that goes through stages investigation , prosecution and trial . If the suspect Already detained in the investigation process , then No There is other options than continue to the next process , namely prosecution and trial . This matter hinder implementation mediation in solution domestic violence cases .
- d. For victims, especially a wife , maybe reluctant For do mediation , esp If Already There is party third in connection the . In situation the decision \_ criminal can make the divorce process easier .
- e. Impact bad from follow domestic violence crime is possible very severe , so the victim is possible No Can forgive doer and feel that mediation process No Enough adequate For overcome the trauma and violence experienced .
- f. No exists obedience from all party to decision mediation is constraint in implementation Restorative Justice. For example , if defendant return do follow the same crime after undergo mediation previously .
- g. Distrust public to apparatus enforcer the law also becomes obstacles , so If apparatus enforcer law Act as a mediator, society Possible own perception negative and suspicious that are not reasoned towards the mediation process .

In overcome obstacles above , is required more effort \_ wide in increase understanding and awareness public about Restorative Justice as well strengthening base more laws \_ strong . Engagement active all party related , incl enforcer law , victims, perpetrators , and society in a way overall , is also important For create supportive environment \_ implementation of Restorative Justice as solution in solution domestic violence cases .

#### IV. CONCLUSION

From the discussion on can concluded , that For restorative justice cases in development paradigm thinking and patterns behavior public in perspective law criminal . restorative justice in solution Domestic violence cases also provide interesting alternative . \_ System law criminal tend focuses on punishment to perpetrator , while restorative justice emphasizes not quite enough answer perpetrator For repair the impact it causes and provides chance for victims to convey needs and feelings . Approach This can help avoid stigmatization experienced by victims, as well give chance to perpetrator For change and improve his behavior .

Application of restorative justice in case violence in House ladder can give opportunity for victims and perpetrators For role active in finish case they in a way peaceful and humanist . Victim of violence in House ladder given chance For convey desires and demands they to perpetrator , temporary perpetrator faced with not quite enough responsibility and awareness will his actions as well as obligation For replace losses incurred . \_

Although restorative justice has adopted in several countries, there is also debate about effectiveness and protection towards internal victims its implementation . A number of party emphasize importance consider factors risk and ensure victim safety in the restorative justice process.

However , it's important For confess that restorative justice does not always suitable For all domestic violence cases and must used with Be careful . Involving cases \_ extreme violence \_ or perpetrators who do not cooperative Possible requires a more formal legal process to protect interests of victims and society in a way whole .

In Conclusion , restorative justice approach in solution case violence in House ladder can give more alternatives \_ peaceful and humanist . However , it is necessary exists appropriate policies , adequate protection , as well \_ strong understanding and support \_ from society and authorities enforcer law For ensure success its implementation .

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