



Restorative Justice for the Survivor of Sexual Violence

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Abstract

One type of gender-based violence is sexual violence. Instances of sexual violence manifest in diverse spheres of existence, encompassing both private and communal spheres. The perpetrators escaped punishment. However, the victims were not provided with adequate assistance. This study seeks to offer a comprehensive analysis of the implementation of restorative justice, specifically focusing on its positive impact on the physical and psychological rehabilitation of victims of sexual violence. This study employs normative legal research methodology, focusing on statutory regulations and utilizing a conceptual approach. Various sources such as statutory regulations, journals, books, reports, and similar references are consulted. This study finds that achieving justice for survivors of sexual abuse is contingent upon the involvement of knowledgeable and trained individuals who possess expertise in the power dynamics and control mechanisms inherent in sexual violence, as well as a profound comprehension of the effects of trauma. In addition to that, the following factors must take precedence when implementing restorative justice for victims of sexual violence: Ensuring the protection of the victim, preventing the offender from manipulating the process, ensuring the victim is not under any pressure, avoiding conflicts of loyalties, providing services that benefit the public, and maintaining a balance of power.

Keywords: restorative justice, sexual violence, UU TPKS

Abstrak

Kasus kekerasan seksual sudah menjadi salah satu bentuk kekerasan berbasis gender yang sangat sering menimpa kaum perempuan. Kasus kekerasan seksual terjadi di berbagai lini kehidupan, baik ranah domestik maupun ranah publik. Acapkali pelaku yang seharusnya dijerat hukum dan korban yang harusnya mendapat pelayanan tidak terlaksana dengan baik. Penelitian ini bertujuan untuk memberikan gambaran penerapan restorative justice yang pro terhadap pemulihan fisik dan psikologis korban penyintas kekerasan seksual. Penelitian ini menggunakan penelitian hukum normatif



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yang bersifat statuta dan pendekatan konseptual dari berbagai referensi peraturan perundang-undangan, jurnal, buku, laporan, dan sejenisnya. Penelitian ini menyimpulkan bahwa keadilan terhadap korban penyintas kekerasan seksual dapat diterapkan jika berbagai pihak yang menangani adalah tenaga ahli yang telah ditraining terkait dinamika kekuasaan dan mekanisme kontrol yang terlibat dalam kekerasan seksual, serta pemahaman mendalam tentang dampak trauma. Selain itu, aspek-aspek berikut harus menjadi prioritas ketika menerapkan keadilan restoratif bagi korban kekerasan seksual: Menjamin keselamatan korban, menjamin pelaku tidak memanipulasi proses, korban tidak dalam tekanan, tidak adanya konflik kesetiaan, ketersediaan pelayanan terhadap kepentingan publik, dan keseimbangan kekuasaan.

Kata kunci: *restorative justice, kekerasan seksual, UU TPKS*

Introduction

The awareness of restorative justice in Indonesia needs to be stronger. The statements are already thoroughly recognised and have even been implemented by law enforcement agents. Legislation enforcement professionals prioritise the criminalisation of offenders and the resolution of criminal cases through the employment of criminal legislation. The victim's anguish or deprivation is disregarded. Victims are not empowered to determine the resolution of the disagreement actively. The attitudes and actions of law enforcement agents involved in criminal procedures frequently lead to secondary victimisation of other individuals affected by the initial crime (Ridwan & Maryanto, 2019).

Restorative Justice is a concept that addresses the shortcomings of the current criminal justice system by prioritising public order and meeting the needs of victims who feel marginalised. It also offers a new framework for developing tools that law enforcement can use to address crimes (Zahrah & Taun, 2023). The specific details of these regulations are clearly outlined in the Republic of Indonesia State Police Regulation number 8 of 2021, which pertains to the procedures for addressing criminal offences through restorative justice. Article 1, paragraph 3 states that restorative justice involves resolving criminal acts by engaging the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders, or stakeholders. The goal is to collaboratively seek a fair resolution through peaceful means, with an emphasis on restoration. (Peraturan Kapolri Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif, 2021).

The regulatory policies governing the implementation of restorative justice, particularly in criminal cases, are the primary focus of the application of restorative justice in law enforcement in Indonesia. The following regulatory policies are at issue: Initially, restorative justice applied to trivial offences. Second, restorative justice in cases involving minors. Third, the application of restorative justice to situations involving female offenders. Restorative justice in narcotics cases is the fourth point (Satria, 2018). Additionally, the Decree Number 1691/DJU/SK/PS.00/12/2020 of the Director General of General Justice of the Supreme Court of the Republic of Indonesia pertains to the Implementation of Guidelines for the Implementation of Restorative Justice. This decree specifies that restorative justice is applied to women involved in legal disputes, including those who are parties, victims, or witnesses. (Keputusan Direktur Jenderal Badan Peradilan Umum Mahkamah Agung Republik Indonesia, 2020).

Based on data provided by the Ministry of Women's and Children's Empowerment, the domestic sphere experiences the highest incidence of sexual violence, with a total of 3,182 instances and 3,423 victims reported in 2024. Women exert dominance over the majority of victims. It is evident that

there is a significant prevalence of women involved in conflicts with the Law, particularly as victims.

There is a contradiction between the National Police Chief's Regulation Number 8 of 2021 on the handling of criminal acts based on restorative justice and the Decree of the Director General of the General Justice Agency of the Supreme Court of the Republic of Indonesia, as well as the provisions in Law number 12 of 2022 on crimes of sexual violence. According to Article 23 of the Law on Criminal Sexual Violence, cases of sexual violence cannot be settled beyond the court process, except for child perpetrators as specified in the Law.

Research on handling restorative justice in criminal acts of sexual violence has been conducted by Simanjuntak (2022), Indriyani (2021), Caesari & Subekti (2022), Mcglynn & Westmarland (2018), Zahrah & Taun (2023), Rudijanto et al., (2023), Aminah & Rafsanjani (2023), Koto et al., (2023), Ed-dyono (2021), Ridwan & Maryanto, (2019). This research introduces an alternative strategy by connecting the idea of restorative justice with the enforcement of the Sexual Violence Crime Law.

Findings and Discussion

What is specific about sexual violence?

According to The World Health Organization on article entitled "Understanding and Addressing Violence Against Women" (2012), Sexual assault involves a wide range of activities, including verbal harassment, forced penetration, and various forms of compulsion, such as social pressure, intimidation, and physical force. Sexual violence encompasses various forms of non-consensual sexual acts, including but not limited to: marital or dating rape, rape committed by strangers or acquaintances, unwelcome sexual advances or harassment (in educational or professional settings), organised rape or sexual enslavement prevalent in armed conflicts (such as coerced impregnation), sexual exploitation of mentally or physically disabled individuals, rape and sexual abuse of minors, and customary practices of sexual violence like forced marriage, cohabitation, and wife inheritance. (Sugitanata et al., 2023) (Ainunnisa Rezky et al., 2020) (Ainunnisa Rezky et al., 2020; Dewi Deybi Santi, 2020).

According to National Commission on Violence Against Women (2023b), sexual violence is defined as any action that degrades or attacks a person's body, sexual desire, or reproductive function. This is done by exploiting the person's vulnerability, inequality, or dependency based on their gender, and may also involve other social factors. The consequences of sexual violence can include physical, psychological, and sexual suffering, as well as economic, social, cultural, and political losses.

According to Law number 23 of 2004 on the Eradication of Domestic Violence, sexual violence is described as the act of coercing someone within their household to engage in sexual activities with another person for financial gain and/or specific intentions (Undang-Undang Nomer 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga, 2004).

Sexual assault can be categorised into two distinct classifications: Familial abuse, namely incest, refers to acts of sexual violence committed by individuals who are biologically related or part of the immediate family, including surrogate parents or romantic partners. Intrafamilial incest, which is often accompanied by child abuse, refers to sexual actions perpetrated within the family with the intention of sexually gratifying the perpetrator. On the other hand, extrafamilial abuse refers to sexual violence performed by individuals who are not part of the family (Aminah et al., 2022) (Zahirah et al., 2019).

The majority of sexual violence is perpetrated by someone who is familiar to the victim, and instances of rape predominantly take place inside close personal connections. Unsurprisingly, when we distinguish between sexual violence committed by intimate partners and sexual violence committed by non-intimate partners, we observe a greater prevalence rate. However, non-partner rape is prevalent, albeit with differing frequencies in different contexts. This perpetrator group comprises individuals who may be a family member, stranger, or someone recognised by sight or familiarity.

The comparability of estimates might be challenging due to variations in the inclusion of rape and attempted rape. Some estimates encompass both completed and attempted rape, while others solely concentrate on completed rape (Dartnall & Jewkes, 2023).

According to General Recommendation 19 of the Convention on the Elimination of All Forms of Discrimination against Women (GR CEDAW 19/92), sexual violence is categorised as a type of gender-based violence that arises from gender discrimination. Sexual violence encompasses several forms and might be linked to cultural customs, interpersonal violence, human trafficking, or pornography. The Sexual Violence Crime Law, specifically in article 4 paragraph (1), categorises sexual violence into various types, including non-physical sexual harassment, physical sexual abuse, forced contraception, forced sterilisation, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. Additionally, paragraph (2) of the TPKS Law includes various other forms of sexual violence, such as: a. rape; b. obscene acts; c. sexual intercourse with children, obscene acts against children, and/or sexual exploitation of children; d. acts that violate the victim's decency against their will; e. child pornography or pornography containing explicit violence and sexual exploitation; f. forced prostitution; g. trafficking in persons for sexual exploitation; h. sexual violence within domestic settings; i. money laundering related to the original crime of sexual violence (Undang-Undang Republik Indonesia Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual, 2022).

According to the Annual Records report of the National Commission on Violence Against Women (2023) stated that due to the swift advancement of information and communication technology, acts of sexual violence are no longer confined to offline settings where the victim and offender physically interact. They now also occur in online spaces or through internet media. The predominant grievances in cases of electronic-based sexual assault involve the dissemination of sexually explicit photos/videos featuring the victim and the unsolicited transmission of pornographic material against the victim's wishes. The offender utilizes the sexual content as a method of exerting control over the victim, so subjugating them.

According to the Annual Records report of the National Commission on Violence Against Women (2023), a total of 339,782 incidences of violence against women have been recorded to the Commission. According to the data, sexual violence is the most prevalent type of violence against women, accounting for 2,228 cases or 38.21% of the total. It is followed by psychological violence, which accounts for 2,083 cases or 35.72%. Meanwhile, the data from service institutions is primarily characterized by a prevalence of physical violence, accounting for 6,001 cases or 38.8% of the total. This data is followed by sexual violence, which accounts for 4,102 cases or 26.52%. Upon closer examination of the data regarding complaints made to the National Commission on Violence Against Women, it is evident that sexual violence consistently ranks as the most prevalent form of violence, with a total of 1,127 reported instances. In the personal sphere, psychological violence emerges as the most common, with a total of 1,494 reported cases.

According to the data provided, there is a significant prevalence of sexual violence among women. Whereas, sexual violence is a significant health issue that has heightened the likelihood of experiencing a range of sexual and reproductive health complications, as well as negative effects on both physical and mental well-being (Borumandnia et al., 2020) (Tarzia, 2021). The victim encountered the detrimental effects of rape myths and faced blame from friends, family, and professionals, both initially and with increased severity during this widely publicized political event (Anderson & Overby, 2021).

The Implementation of Restorative Justice Toward Survivor of Sexual Violence

While the criminal justice system frequently falls short in delivering justice to victims of sexual violence, it is important to acknowledge that certain survivors may opt not to pursue resolution via this avenue. These survivors hold the belief that justice cannot be achieved by reporting to law en-

forcement or engaging in the criminal judicial system. Alternatively, they define justice as outcomes that lie outside the purview of the legal system. A compelling illustration is a 2019 research endeavor that aimed to comprehend the viewpoints of individuals who have experienced sexual abuse regarding the concept of justice (Mcglynn & Westmarland, 2018) (Cawley et al., 2023).

These rules align with the anticipated standards for implementing restorative justice. Due of its emphasis on the restoration of victims' rights. (Rado, Rudini Hasyim; Badilla, 2020) (Flora, 2018; Mcchargue & Ph, 2020). Restorative justice should not be seen as a replacement for the criminal justice system, but rather as a valuable addition that addresses the shortcomings of the system in protecting the rights of victims. Restorative justice does not nullify or eliminate the current criminal legislation due to this rationale (Wahyuni, 2022) ("Restorative Justice Standards for Sexual Offending Cases," 2013). This aligns with the regulations stated in article 23 of Law number 12 of 2022, which explicitly restricts the handling of sexual violence cases that occur outside of the court system (Undang-Undang Republik Indonesia Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual, 2022).

Moreover, article 30 of the Sexual Violence Crime Law elucidates the requirement to furnish compensation and assistance to individuals who have suffered from sexual violence. The restitution and services provided include: a. compensation for financial or income loss; b. compensation for losses resulting from direct suffering caused by sexual violence; c. reimbursement for medical and/or psychological treatment expenses; and/or d. compensation for other losses experienced by the victim due to the Crime of Sexual Violence (Undang-Undang Republik Indonesia Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual, 2022).

Colorado Coalition Against Sexual Assault (CCASA) (*Restorative Justice Practices and Sexual Assault Response A Resource for Victim Advocates, n.d.*) recommend are as follows: a. When a survivor of sexual assault decides to take part in a victim-offender conference, it is considered the most effective approach for the facilitator to possess extensive expertise in sexual assault dynamics, perpetrator conduct, victim support, crisis intervention, and trauma recovery (*Burns & Sinko, 2023*). b. Special consideration should be given to juvenile victims whose cases have been processed by the criminal court system, as their cases frequently arise from a compulsory report. They can perceive that their range of options and choices has already been restricted or that decisions have been taken without their involvement or perhaps entirely beyond their influence. It is crucial to notify individuals that participation in a restorative justice program is voluntary and that they have the right to be educated about the procedure and any consequences. Victims participating in a restorative justice program must also develop safety plans to ensure their mental well-being after any encounters they may have with the perpetrator. It is important to exercise caution in order to guarantee that restorative justice programs in your community are not implemented in a uniform and standardized manner. It is important for them to demonstrate cultural sensitivity and inclusivity towards survivors of sexual abuse, taking into account the various forms of oppression they may encounter due to intersecting factors. Restorative justice ultimately aims to provide victims with an opportunity for healing and empowerment. With the assistance of knowledgeable victim advocates, survivors can assess whether this is a decision that aligns with their specific needs in their personal journey of recovery after experiencing a sexual offense (*Firdaus, 2019; Prayitno, Kuat, 2012; Setyowati, 2020; Sriwiyanti et al., 2021; Wirawan & Komuna, 2023*).

Although the involvement of both parties in the restorative justice process is required to be voluntary, the extent of cooperation expected from a survivor may differ. Occasionally, a victim may choose to have a surrogate replace them in certain aspects of the restorative justice process. For instance, the survivor may like to have one-on-one sessions with the facilitator before the guided discussion. However, they may prefer to have a substitute attend a meeting where the person who inflicted abuse will be present. The surrogate can be chosen by the survivor, such as a friend or family

member, or selected by the facilitator, such as a survivor of sexual assault by a different perpetrator or someone who regularly works with survivors and can provide a survivor's perspective during the conversation (*Restorative Justice for Sexual Assault Survivors A Tip Sheet for Office on Violence Against Women-Funded Lawyers, 2022*).

Nevertheless, while applying restorative justice to support survivors of sexual abuse, it is crucial to take into account various factors to avoid exacerbating the victim's psychological state. These factors include: Ensuring the safety of victims - There are worries that the less structured nature of restorative justice, in comparison to the more formal criminal justice systems, may expose victims to the risk of being victimized again. Additionally, unaddressed power imbalances may continue to exist, thereby reinforcing patterns of abuse. Offenders may use the restorative justice process in order to downplay their culpability for the offense, trivialize the abuse, or shift the blame onto the victim. Victims who have specific vulnerabilities or are minors may not be able to effectively advocate for themselves, which can lead to their interests being downplayed or ignored. This puts pressure on victims to accept certain outcomes, such as an insincere apology, forgiveness, or even allowing the offender back into their home. Conflicting loyalties can arise in cases of intra-familial sexual abuse, where parents, siblings, and other family members and friends may have ambiguous and contradictory loyalties. This can make victims susceptible to manipulation. Restorative justice, particularly when employed as a diversion, has been portrayed as conflicting with the enduring objective of women's rights advocates to shift violence against women from the private to the public domain and classify it as a public offense. This undermines the interests of the general public. Power imbalances are frequently cited as a deterrent to implementing restorative justice in cases of sexual abuse. This is because in such instances, the perpetrator has exerted complete dominance over the victim-survivor, resulting in an unequal distribution of power (Daly, 2015) (Azhar, 2019; Marsh & Wager, 2015; United Nations Office on Drugs and Crime, 2006).

The possible drawbacks and advantages of restorative justice mostly revolve around the dynamics of personal interactions between victims and offenders, as well as the limitations of a court's adversarial procedure in providing justice and validation for victims (Daly, 2015). Alternatively, if a victim does not choose to meet the offender in person, a substitute victim can be employed. This can be done through a victim empathy session, when a victim who has experienced a similar crime speaks to the offender about the profound effects of the crime on their life (Burns & Sinko, 2023).

The implementation of the Sexual Violence Crime Law has enabled victims to present their cases in court and simultaneously serve as witnesses, thereby providing them with the chance to have their voices heard. The information may be found in article 48, specifically in paragraph (2), which specifies that the evidence of witnesses and/or victims, as mentioned in paragraph (1), is considered equivalent to the testimony of witnesses given in a court of law (Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual Pasal 4 Ayat (1), 2022). Thus, the implementation of restorative justice is not intended to prevent perpetrators from being caught in the law but is solely aimed at restoring the physical and psychological condition of victims of sexual violence.

Conclusion

The adoption of restorative justice in the management of sexual violence situations continues to generate controversy. A common belief is that restorative justice often leads to injustice against victims. Conversely, there are individuals who believe that the utilization of restorative justice by mediators/facilitators who possess expertise in the power dynamics and control mechanisms involved in sexual violence, as well as a deep understanding of the impact of trauma. They have received specialized training in conducting restorative justice encounters specifically tailored to handle these

intricate instances. This will facilitate the process of victims' recovery and enable them to assert their rights more effectively. In addition, the following aspects should be given priority when implementing restorative justice for victims of sexual violence: Ensuring the protection of victims, preventing perpetrators from manipulating the process, protecting victims from coercion, avoiding conflicts of loyalties, providing services in the public's best interest, and maintaining a balance of power. Fundamentally, restorative justice should not be regarded as a substitute for the criminal justice system, but rather as a beneficial supplement that solves the deficiencies of the system in safeguarding the rights of victims. Restorative justice does not invalidate or abolish the existing criminal statute based on this reasoning.

Implication

The implication of the study is for law enforcement officials, police, government, non-governmental organizations, counselors, victim assistants, and women's organization in handling cases of sexual violence against women. This aims to realize the recovery and welfare of women victims of sexual violence. Therefore, restorative justice is no longer considered as avoiding the perpetrator from criminal punishment but is oriented for the circumstance of the victim.

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