

Non-Penal Efforts in Achieving Restorative Justice For The Prevention of Violent Crimes For Children Who Are in Conflict With The Law As Victims of Domestic Violence

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Abstract

Domestic violence often results in children as victims. Home should be the safest and most comfortable place for a child but it is the opposite where children often experience violence from their families. The research that has been conducted is a normative legal research that focuses on norms and also legal objects as the main data. The formulation in this research is What are the non-penal efforts in achieving restorative justice in dealing with violent crimes against children in conflict with the law as victims of domestic violence, factors that influence the occurrence of violent crimes against children, and how to implement non-penal efforts in achieving restorative justice in dealing with violent crimes against children in conflict with the law as victims of domestic violence.

The results of this study are non-penal efforts in achieving restorative justice in dealing with criminal acts of violence against children as victims of domestic violence in the form of prioritizing restorative justice, factors that influence the occurrence of violence are usually due to economic factors, and the implementation of these non-penal efforts can be carried out preemptively and preventively.

It is hoped that socialization of efforts to address child victims of domestic violence will be carried out so that children can defend their rights and receive protection from society.

I. Introduction

Children are the most vulnerable part of society, and they have an inalienable right to live in a safe, compassionate, and violence-free environment. However, the reality is that there are still many children who are victims of domestic violence, which often happens behind walls that should be a safe place for them. Domestic violence is a form of violence that has its own characteristics, namely it occurs in the home, the perpetrator and the victim are family members, and strangely this domestic violence is often not considered a form of violent crime. People think that domestic violence is commonplace, considering it as a domestic ordeal so they get used to it.

In an effort to protect children from domestic violence, many countries have passed laws aimed at providing strong legal protection for victims. In Indonesia, the regulations that regulate this ha are contained in Law Number 23 of 2004 concerning the Protection of Victims of Domestic Violence. This law is specifically designed to provide protection to individuals who are victims of domestic violence, including children who are victims of violence.

The law is still not widely known to the general public, so in its implementation and its effectiveness in protecting children from violence is still a major concern. Many factors can hinder the effective implementation of these laws, including a lack of public awareness of children's rights, weaknesses in the law enforcement system, and a culture that obscures the stigma against victims of violence.

In Samarinda City, there are many domestic violence crimes in which the victims in this crime are children, as data from the Samarinda City Women's Empowerment and Child Protection Office reveals how high the intensity of domestic violence has been occurring, namely in 2020 there were 154 cases with a total of 161 victims with details of 65 men and 96 women, In 2021 there were 133 cases with a total of 146 victims with 35 male and 111 female victims, in 2022 there were 182 cases with a total of 188 victims with 63 male and 125 female victims, and in 2023 there were 189 cases with a total of 230 victims with details of 93 men and 137 women.

Domestic violence is a type of criminal offense that is a complaint as outlined

in Article 51 and Article 52 of the Law on the Protection of Domestic Violence. As a delicacy complaint, criminal sanctions are a last resort (*ultimatum remedium*), if there is peace, the case will be withdrawn. Article 1 Paragraph (25) of Law Number 8 of 1981 concerning the Criminal Code, explains that, Complaint is a notification accompanied by a request by an interested party to the authorized official to take legal action against a person who has committed a criminal act of complaint that is detrimental to him. A complaint is a complaint that can only be prosecuted because of a complaint from the aggrieved party, so that it can be revoked or resolved out of court.

The restorative justice system is one of the approaches used to resolve cases of domestic violence. The concept of a restorative justice system is a model approach in efforts to resolve violations of the law that occur by bringing the interests of the victim and the perpetrator together to sit in a meeting to jointly talk in the process of resolving criminal cases. The restorative justice approach is assumed to be a model and mechanism that works outside the criminal justice system to deal with problems in the criminal justice system itself as well as criminal cases at this time (Amin, 2010).

In this context, research on non-penal efforts in achieving restorative justice for children victims of domestic violence is very important. This research aims to identify countermeasures (Ismaidar & Rahmayanti, 2023). factors that affect the incidence of violence against children in the household as well as the implementation of non-penal efforts in crime prevention, as well as providing concrete recommendations to improve legal protection for children affected by violence. Thus, this research is expected to make a significant contribution to efforts to safeguard children's rights and create a safe and empowered environment for them to grow and develop. In this paper, the author discusses what are the non-penal efforts in achieving restorative justice for the prevention of violent crimes for children facing the law as victims of domestic violence, the factors that affect the occurrence of violent crimes against children, and how the implementation of non-penal efforts in achieving restorative justice for the prevention of violent crimes against children facing the law as victims of domestic violence.

2. Research Method

This study uses a qualitative approach to gain a deeper understanding of the

experiences and perceptions of children who are victims of domestic violence, as well as the factors that affect the implementation of the law from a perspective. This qualitative approach will involve a thorough and thorough literature study to gather information on cases, psychological violence against children in the household (Benuf & Azhar, 2020).

The data sources for this qualitative approach will come from various literature studies relevant to the research theme, including scientific journals, books, research reports, and other related documents. The data obtained from the literature study will be used to analyze various aspects related to violence, legal protection of children, and factors affecting the implementation of the law in this context. Secondary data in this study are sourced from:

- a. Primary Legal Materials, which are positive legal materials that are binding and consist of laws and regulations:
 - 1) The 1945 Constitution of the Republic of Indonesia;
 - 2) Law no. 35 of 2014 concerning child protection which has been amended by Law no. 23 of 2002 concerning the second amendment to Law no. 17 of 2016 concerning Child Protection.
 - 3) Law Number 23 of 2004 concerning the Elimination of Domestic Violence
- b. Secondary Legal Materials, which are materials used to provide explanations about primary legal materials and consist of literature containing legal opinions.

The data obtained from the literature study will be analyzed qualitatively using a legal approach, a case approach, and a conceptual approach. The analysis will be carried out by identifying general patterns, key findings, and perspectives that emerge from the reviewed literature (Benuf & Azhar, 2020). The information obtained will be used to understand more deeply the issues related to the legal protection of children as victims of psychological violence in the domestic community, as well as to develop more concrete recommendations that can be implemented by the government and other stakeholders.

3. Results and Discussion

A. Non-Penal Efforts in Achieving Restorative Justice Against Overcoming Violent Crimes for Children Facing the Law as Victims of Domestic Violence

Children in conflict with the law is a term used to refer to children or adolescents under the age of 18 who are involved in the legal process, either as perpetrators, victims, or witnesses of a crime. Children become victims of domestic violence until

they finally commit a crime, this situation becomes complex because the child is in the position of both victim and perpetrator. This requires a special approach that considers the background of trauma due to domestic violence experienced by the child. Violence that occurs in the home environment often creates great mental and emotional stress, which can affect the child's behavior and trigger criminal acts.

Non-penal efforts in achieving restorative justice towards overcoming violent crimes for children who are in conflict with the law as victims of domestic violence is an approach that focuses more on recovery and conflict resolution than punishment. Diversion in overcoming domestic violence cases for children who are in conflict with the law as victims is one approach to achieving restorative justice.

Diversion aims to divert case handling from the formal justice system to out-of-court settlement, so that it is more child-friendly and pays attention to the recovery of their psychological and emotional conditions. The following are forms of diversion efforts in this case:

1) Mediation and Restorative Dialogue

Involving the victim, the perpetrator, and relevant parties such as family or social workers in an open dialogue facilitated by a mediator. The purpose of mediation is to provide an opportunity for the victim to voice his or her feelings and to make the perpetrator aware of the negative impacts of his or her actions, as well as to encourage the perpetrator to take responsibility.

2) Psychological and social recovery

Diversion also includes rehabilitation programs for victims to restore their mental and emotional condition. Psychological counseling and social support can help children overcome trauma and prevent long-term effects of violence. This recovery can also be supported by a safe and positive family and social environment.

In implementing diversion, pay attention to the best interests of the child and ensure that the out-of-court settlement process does not harm or set aside the rights of the victim. Diversion in the context of domestic violence for children aims to create safer recovery, while preventing additional trauma that can occur in the formal justice system.

Restorative Justice itself The Law on the Juvenile Criminal Justice System is the settlement of criminal cases by involving the perpetrator, the victim, the family of the perpetrator/victim, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, not retaliation. Closely related to Restorative justice, Muladi revealed in detail the characteristics of Restorative justice

as follows:

- a) Crime is formulated as a person's transgression against another person and is seen as a conflict.
- b) Focus attention on solving accountability and liability problems for the future.
- c) The normative nature is built on the basis of dialogue and negotiation.
- d) Restitution as a means of the parties, reconciliation and restoration are the main goals.
- e) Justice is formulated as a relationship between rights, assessed on the basis of results.
- f) The focus of attention is directed to repairing social wounds due to crime.
- g) The community is a facilitator in the restorative process.
- h) The role of victims and perpetrators is recognized, both in determining problems and resolving victims' rights and needs. It is necessary to be encouraged to be responsible.
- i) The accountability of the perpetrator is formulated as an impact of understanding his actions and directed to participate in making the best decision.
- j) Criminal acts are understood in a comprehensive, moral, social and economic context.
- k) Stigma can be removed through restorative

Restorative justice is an alternative or other way of criminal justice by prioritizing the integration of perpetrators and victims or society as a unit to find solutions and return to a pattern of good relationships between perpetrators of criminal acts. Restorative justice emphasizes improving the relationship between the perpetrator and the victim and the community that has been damaged by the criminal act committed by the perpetrator.¹¹ Fundamentally, restorative justice changes the role of the victim in the criminal justice system (SPP) process, namely by empowering it so that the victim has the personal right to participate in the criminal case settlement process.

We can know that before the existence of the PKDRT Law in Indonesia, domestic violence was only categorized as the scope of physical violence or persecution. With this breakthrough, victims of domestic violence who have been subjected to legal discrimination can seek justice as they expect for the various forms of violence that have indeed befallen them. However, in fact, there are still many obstacles in the legal process. The development of Criminal Law is also manifested in the Crime of Domestic Violence (KDRT), which is a development of the Criminal Code (KUHP).

In principle, restorative justice can be used at every stage of the criminal justice system

and will be able to be implemented properly, if it meets the requirements, namely; first, the perpetrator must confess or declare guilty; second, the victim must agree that the criminal act is resolved outside the criminal justice system; third, the police or the prosecutor's office as an institution that has discretionary authority must approve the implementation of restorative justice; and fourth, the implementation of settlements outside the criminal justice system must be supported by the local community (Syarifuddin & Rahmadani, 2023)

B. Factors Affecting the Occurrence of Crimes of Violence Against Children

Economic conditions in a family are often a serious problem because economic factors are something very urgent and even very essential in the survival of the family, so this is often one of the factors that cause violence against children. Economic conditions that are weak, unstable and always experiencing shortages in achieving daily living needs, then this will be a subject of debate that even leads to fights between the two parents (Azhawara & Tarigan, 2024). Conditions like this sometimes make children feel disturbed so that often children do not think long about doing deviant deeds and without having to think about the risks of their actions.

Economic pressure is mostly what can cause violence against children. The depressed family condition caused by economic squeeze is a factor that causes many violence against children. But it is not necessarily that people with low economies have the heart to commit physical violence against children, other things that trigger violence against children include the inheritance of violence between generations, then social stress, such as unemployment, disease, housing and poor environment, besides that most of the violence against children comes from poor families. We will find that the perpetrators and victims of child violence mostly come from low socioeconomic groups. Poverty, which is certainly another social problem resulting from oppressive economic and political structures, has given birth to a violent subculture. Due to economic pressure, parents experience prolonged stress. He became very sensitive. He is irritable. Physical fatigue does not give him a chance to joke with children. Emotional violence occurred. At certain times, fathers can become inflamed and yell at their children in front of many people. There was verbal violence.

The factors that cause violence in children are caused by stress in the family. Stress in the family can come from children, parents (husband or wife), or certain situations. Stress comes from children, for example, children with physical, mental, and behavioral conditions that look different from children in general. Stress that comes from a husband or wife, for example, with mental disorders (psychosis or neurosa), parents as victims of violence in the past, parents who are too perfect with high

expectations for children, parents who are used to discipline. Stress comes from certain situations, for example, being hit by a husband/wife being laid off (termination of employment) or unemployed, moving environments, and families often fighting. Other main causes are poverty, problems with social relations either within the family or community, deviations in social behavior (psychosocial problems). The weakness of primary social control of society and law and the influence of social and cultural values in certain social environments.

C. Implementation of Non-Penal Efforts in Achieving Restorative Justice Against the Prevention of Violent Crimes for Children Facing the Law as Victims of Domestic Violence

Prevention of psychological violence against children in the household can be carried out in a Preemptive and Preventive manner which in its implementation involves various related departments and agencies as well as Non-Governmental Organizations (NGOs) as follows:

- 1) Preemptive, is to carry out prevention early, through educational activities with the goal of influencing the causative factors, drivers and opportunity factors commonly referred to as the correlation factor of the occurrence of violence to create awareness and vigilance as well as deterrence, in order to foster behavioral conditions and living norms free from the treatment of violence against children in the family.

For communities, families, or parents, consistent and continuous policies, services, resources, and training on child violence prevention are needed. This prevention strategy includes:

- a) Prevention for all parents in an effort to improve parenting skills and prevent mistreatment or abuse from occurring, including adequate child care and services, supportive workplace policies, and life skills training for children. What is meant by life skills training includes non-violent conflict resolution, stress management skills, resource management, effective decision-making, effective interpersonal communication, guidance and child development.
 - b) Prevention is aimed at high-risk communities in an effort to improve parenting skills, including training and victim services to prevent mistreatment from happening to the next generation
- 2) Preventive, i.e. that prevention is better than eradication. Therefore, supervision and control both by the police and families, the community, teachers, and religious leaders can be carried out to prevent psychological violence in the household, by doing the following:
 - a) Socialization of Law Number 23 of 2003 concerning Child Protection and Law

Number 23 of 2004 concerning the Elimination of Domestic Violence, especially against parents, so that parents understand that children have a set of rights that must be protected, especially by their own parents.

- b) Environmental supervision to reduce or eliminate the opportunity for psychological violence against children in the household.
- c) Coaching or guidance for active community participation to avoid psychological violence against children by filling in positive activities.
- d) Reduce violent images in the mass media and build collective awareness in society to reject any form of violence.
- e) Anti-violence campaigns carried out jointly by the government and the community, continuously through various ways and methods, including by organizing seminars or discussions.
- f) Prevention of psychological violence against children is carried out by identifying high-risk families. Every institution that handles children must remain guided by the Law and must not violate children's rights, thus every handling and service provided to children must be oriented to the basic rights of children and in the best interests of children.
- g) Penal Efforts Penal efforts are efforts made by law enforcement to protect victims of psychological violence in the domestic after the victim has
- h) experienced psychological violence in the household (Mughni, 2023).

Restorative Justice can be applied in resolving cases of domestic violence (KDRT) of children as victims:

- 1) Restorative Justice is a justice approach that focuses on the needs of victims, perpetrators, and society.
- 2) Restorative justice can be carried out through mediation, reconciliation, and dialogue between the parties involved.
- 3) Restorative Justice aims to achieve justice that is as fair as possible for all parties involved.
- 4) Restorative justice can be done without going through a litigation process.
- 5) Restorative justice can be done with or without compensation.

Restorative justice can help restore good relations between perpetrators and victims, so that there is no more grudge. The victim and the perpetrator will play an active role in the criminal justice process.

4. Conclusion

The implementation of legal protection for children as victims of domestic violence can be done by non-penal Non-penal efforts are carried out in a preemptive manner is to carry out prevention early, through educational activities with the

goal of influencing the causative factors, drivers and opportunity factors which are commonly referred to as the correlation factors of the occurrence of violence to create awareness and vigilance as well as deterrence, in order to foster behavioral conditions and living norms free from the treatment of violence against children in the family and preventive methods, namely that prevention is better than eradication. The human resource factor also affects the occurrence of this crime. The lack of resources allocated for child protection, the limited access of victims' children to assistance and rehabilitation services, and obstacles in the law enforcement system lead to slow case handling and low levels of justice for victims. In addition, stigma and cultural norms that obscure domestic violence are also serious obstacles in providing effective protection for children who are victims of psychological violence.

SUGGESTION

Law enforcement agencies need to socialize Law Number 23 of 2002 concerning Child Protection and Law Number 23 of 2004 concerning Domestic Violence to the public. Counseling and socialization needs to be carried out to the public by Non-Governmental Organizations (NGOs) or government agencies regarding children's psychological problems, so that parents can educate their children well and not commit psychological violence against children in the household. It is necessary to increase public awareness to report to the authorities cases of psychological violence in the household that occur in the community. Children as victims of psychological violence in the household need to be given special attention so that they do not close themselves off and are open to the police if their statements are needed by either the police or the Child Protection Agency.

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