

RESTORATIVE JUSTICE: A NEW APPROACH TO RESOLVING DOMESTIC VIOLENCE

M. Aaz Jidatul Haz¹, Lalu Muhammad Nurul Wathoni¹, Zulkarnain¹, Muhammad Maghfurrahman¹, Fathul Baldan Haramin²

¹Postgraduate Program of Universitas Islam Negeri Mataram, Indonesia

²Al-Azhar University Cairo, Egypt

*Corresponding Author: M. Aaz Jidatul Haz (21200011078@student.uin-suka.ac.id)

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Werner Menski*

ABSTRACT

Domestic Violence (a.k.a KDRT) has been identified as a form of crime that falls into the category of "hidden crime". Handling through the conventional criminal justice system often faces serious obstacles, especially because victims often experience deep trauma. In addition, when these cases are presented in court, the justice obtained is often unsatisfactory for both the perpetrator and the victim. As an alternative, the Restorative Justice approach emerged as an attempt to provide a more holistic solution. Restorative justice focuses on returning losses to victims, improving the perpetrator's behavior, and providing opportunities for perpetrators to reintegrate into society without experiencing stereotypes. In the Indonesian context, this research aims to explore more deeply the implementation of restorative justice, including its legal basis, procedures, and carry out analysis using the concept of legal pluralism proposed by Werner Menski. This research is normative juridical in nature, with data collection carried out through documentation studies and interviews. Research findings show that the implementation of restorative justice in Indonesia is supported by a strong legal foundation. However, there are still obstacles in accommodating the three elements of legal pluralism proposed by Menski. In other words, even though restorative justice has been formally recognized, its implementation still needs to be improved to more effectively achieve the desired restorative goals.

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INTRODUCTION

The crime of domestic violence is a case that generally uses the offense of complaints¹. This means that domestic violence can only be processed legally by the police and other law enforcers if there is a complaint from the victim of domestic violence themselves. This creates a few obstacles, especially as victims of domestic violence often have a huge burden of trauma and fear. Law enforcers are often misguided in responding to domestic violence cases, often these cases are considered cases that do not need to be resolved through the police or court.²

Based on this, minor domestic violence cases are often not resolved through court. Today, resolution of domestic violence in several law enforcement agencies such as the Indonesian National Police and the Prosecutor's Office more often uses restorative justice³. Restorative justice is not a new face in law enforcement, it's just that in Indonesia we are not yet familiar with restorative justice as an approach to law enforcement⁴. Domestic Violence (a.k.a KDRT), is a thin veil between private law (civil) and public law (criminal)⁵. It is called civil because it occurs in private household relations. Meanwhile, it is called criminal because in this incident there was a deprivation of the rights and interests of citizens which must be protected by the state through criminal law⁶. The application of the principles of restorative justice depends on what legal system a country adheres to⁷. If the legal system rejects it, restorative justice cannot be imposed. Therefore, it can be concluded that restorative justice is an optional approach in shaping a nation's legal framework.

Even if a country does not adhere to it, it does not rule out the possibility of applying the principles of restorative justice to provide justice, certainty and legal benefits. In the Indonesian context, restorative justice has only been implemented on a limited basis with a legal umbrella in the form of the National Police Chief's Letter No. Pol: B/3022/XII/ 2009/SDEOPS dated 14 December 2009 concerning Handling Cases Through Alternative Dispute Resolution (ADR) which emphasizes resolving criminal cases using ADR as long as it is agreed by the parties

¹ Rizky Amalia, Hafrida Hafrida, and Elizabeth Siregar, "Comparison of Regulations on Domestic Violence Crimes in Indonesian Criminal Law and Malaysian Criminal Law," *PAMPAS: Journal of Criminal Law* 2, no. 2 (2021): 1-14, <https://doi.org/10.22437/pampas.v2i2.13334>.

² Dewi Asri Yustia Fihra Rizqi Novia Ridwan, "The Importance of Legal Assistance for Victims of Crimes of Sexual Violence: The Need and Necessity of Criminal Law," *Legal Standing* 8, no. 2 (2024): 352-68, <https://doi.org/10.24269/ls.v8i1.8545>.

³ Ramlah Yani and Hardianto Djanggih, "Effectiveness of the Application of Restorative Justice in Minor Crimes," *Journal of Lex Philosophy (JLP)* 4, no. 2 (2023): 2023.

⁴ Rena Yulia and Aliyth Prakarsa, "Judicial Review of Restorative Justice Arrangements in the Police," *Faces of Law* 5, no. 2 (2021): 562, <https://doi.org/10.33087/wjh.v5i2.716>.

⁵ Suzanne Brenner, "Private Moralities in the Public Sphere: Democratization, Islam, and Gender in Indonesia," *American Anthropologist* 113, no. 3 (2011): 478-90, <https://doi.org/10.1111/j.1548-1433.2010.01355.x>.

⁶ M. Nur Rasyid Nazaruddin, Husni Djalil, "Protection of Suspects' Human Rights in Police Investigations (Case Study at Pidie Police)," *Syiah Kuala Law Journal* 1, no. 2 (2022): 145-62.

⁷ Reda Manthovani et al., "The Practice of Applying the Concept of Restorative Justice in Law Enforcement in Indonesia," *Russian Law Journal* XI, no. 5 (2023): 5.

involved in the case⁸. This research borrows Werner Menski's theory about legal pluralism. Menski began his discussion that there are three most popular legal approaches in the world. An approach that emphasizes justice and morality can generally be said to be a natural law approach. Meanwhile, an approach that emphasizes fulfilling the normativeness of laws and trial procedures is better known as positive law (state law/legal positivism). Meanwhile, the final approach, namely social law (socio-legal), is not widely used, but still exists outside court institutions⁹.

Menski offers that there is a fourth approach that is suitable for responding to this legal particularism, namely legal pluralism. Legal pluralism focuses on the integration of legal theories which have recently become approaches to law enforcement. Apart from that, legal pluralism also seeks to integrate legal systems that exist in the world and the diversity of laws in various parts of the world, although in his book he compares and then integrates existing laws in Europe, Asia and Africa, Islamic Law, Hindu Law and Chinese Law.¹⁰ From the explanation of the background to the problem above, the researcher can draw 3 problems that will be solved in this research, namely what concepts of justice are used by law enforcers, how to implement restorative justice in domestic violence cases and what is the legal pluralism analysis of the implementation of restorative justice in domestic violence cases.

METHODS

This research is legal research with a normative juridical approach¹¹. Meanwhile, based on the data, this research is qualitative research. Data collection in this research was carried out using a documentation process (in-depth study of related documents. The types of data sources in this research are legal materials which can be classified into three. Primary legal materials such as laws, secondary legal materials which strengthen primary legal materials such as regulations under the law, and tertiary legal materials that provide guidance on the confusion of several legal terms¹². Data analysis in this research uses the Miles and Huberman model analysis, namely reduction, display and drawing conclusions¹³.

⁸ CSA Teddy Lesmana and Rida Ista Sitepu, "Legal Counseling on the Application of Penal Mediation and Restorative Justice to Investigator Members of the Sukabumi City Police Criminal Investigation Unit," *Abdi Nusa Journal* 2, no. 2 (2022): 49–59, <https://doi.org/10.52005/abdinusa.v2i2.92>.

⁹ Belinda Pudjilianto and Emy Handayani, "Application of Legal Pluralism in Society," *Diponegoro Law Journal* 11, no. 2 (2022): p. 344.

¹⁰ Werner Menski, *Comparative Law in a Global Context: European, Asian and African Systems* (Nusa Media, 2008).

¹¹ Muhammad Azhar, Kornelius Benuf, "Legal Research Methodology as an Instrument for Unraveling Contemporary Legal Problems," *Gema Perempuan Journal* 7, no. 1 (2020): 20–33, <https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>.

¹² Mansour Farrokhi, "The Role of Legal Translation in the Interpretation of International Law Documents," *Russian Law Journal* 7, no. 1 (2019): 55–86, <https://doi.org/10.17589/2309-8678-2019-7-1-55-86>.

¹³ Matthew B. Miles, Huberman, Michael, "The Qualitative Researcher's Companion." (Sage Publications, 2002).

RESULT AND DISCUSSION

Types of Justice

1. *Distributive Justice*

There are two kinds of principles for distributive justice, namely formal principles and material principles¹⁴. The formal principle was put forward by Aristotle which was formulated with the sentence equals ought to be treated equally and unequals may be treated unequally that every case that is the same must be treated in the same way, while cases that are not the same may be treated in an unequal way.¹⁵ Aristotle in interpreting justice is strongly influenced by the element of ownership of certain objects. According to him, ideal justice is when all elements of society receive an equal share of all objects in nature, because humans are seen as equal and have the same rights to ownership of certain goods.

Meanwhile, material principles complement the previous formal principles. If there is only one formal principle as proposed by Aristotle, then there are several material principles, distributive justice will be realized if it is given to¹⁶:

- a. To everyone with an equal share
- b. To everyone with their needs
- c. To everyone with their rights
- d. To everyone with their efforts
- e. To everyone with their contribution to society
- f. To everyone with his services.

In conclusion, distributive justice is an effort to bring justice by distributing rights equally to everyone in the same amount.

2. *Retributive Justice*

Retributive justice refers to a situation where an individual experiences a decline in their social standing or reputation due to failing to meet their obligations or engaging in actions that violate the accepted norms of society and the natural order from which their status is derived. In this form of justice, punishment serves as an end in itself, justified by the wrongdoing. It is seen as a necessary consequence of the violation, rather than a means to an alternative goal. The punishment is inherently linked to the principle of retributive justice, which emphasizes that individuals should face consequences proportionate to their actions. It can also be understood as a manifestation of the negative side of distributive justice, which, in this case, automatically responds to the failure of an individual to act in accordance with societal expectations.

¹⁴ DP Indrawan, L Kajoko, and R Candrakirana, "... Distributive Justice in the Implementation of Land Acquisition for the Construction of the Soekarno-Hatta Airport Railway Line: University...", *Yustisi* 11, no. 1 (2024): 81-93, <https://ejournal.uika-bogor.ac.id/index.php/YUSTISI/article/view/16193>.

¹⁵ Julie Brumberg-Chaumont, "Universal Logic and Aristotelian Logic: Formality and Essence of Logic," *Logica Universalis* 9, no. 2 (2015): 253-78, <https://doi.org/10.1007/s11787-015-0123-y>.

¹⁶ Fauzi Almubarak, "Justice in an Islamic Perspective," *Istighna* 1, no. 2 (2018): 115-43.

Consequently, the retributive aspect is driven by the inherent imbalance caused by the wrongdoing, seeking to restore order through punishment¹⁷.

The principle of retributive justice is not a private matter, but lies in the hands of authority, namely the juridical system, which is a representative of society. Retributive justice is said to be effective depending on whether the community considers it to be a law that is a fair reward. If the opposite happens, there is the emergence of the vigilante argument, namely the threat that will occur if retributive justice is not implemented by the state, namely that the public/society will take the law into its own hands¹⁸. The function of retributive justice is repayment for an act of violating the law¹⁹. The purpose of giving punishment is to satisfy the demands of justice, to restore justice that has been damaged, and in a broader sense to fulfill moral demands. Retributive justice is justice that demands the return of lost rights resulting from the perpetrator's treatment, in other words revenge justice.

3. Restorative Justice

The restorative justice approach emphasizes the fulfillment of a sense of justice for both the perpetrator and the victim, namely the perpetrator's efforts to be freed from the punishment that ensnared him and efforts to listen to the victim's wishes so that justice is also present and on his side. Restorative justice does not require retaliation for the perpetrator that brings minimal benefits or even no benefits. complete justice for the victim, in fact restorative justice seeks peace for the perpetrator and victim with various approaches such as mediation, reconciliation and compensation for the perpetrator to the victim²⁰.

Restorative justice (*restorative justice*) prioritizes resolving cases outside the realm of court by prioritizing mediation, compensation and reconciliation carried out by all parties. The restorative justice approach is not something new in the world of law enforcement, especially in the field of criminal law. Restorative justice was introduced by Tonny Marshall and Howard Zehr, an American criminologist who initiated the concept of modern restorative justice.²¹

However, the implementation of restorative justice in Indonesia has only been known and standardized in regulations since the last decade, so far law enforcement in Indonesia has prioritized retributive justice and distributive justice approaches. However, in reality, the culture

¹⁷ Sudiyana Sudiyana and Suswoto Suswoto, "Critical Study of the Theory of Legal Positivism in Seeking Substantive Justice," *Qistie* 11, no. 1 (2018): 107–36, <https://doi.org/10.31942/jqi.v11i1.2225>.

¹⁸ Michael Wenzel et al., "Retributive and Restorative Justice," *Law and Human Behavior* 32, no. 5 (2008): 375–89, <https://doi.org/10.1007/s10979-007-9116-6>.

¹⁹ Pardomuan Gultom, "Sociological Analysis of Law on the Possibility of Applying Restorative Justice in Corruption Crime Cases in Indonesia," *Al-Hikmah Journal of Law and Society* 3, no. 1 (2022): 417–45.

²⁰ W Ness, V., and Daniel, "Restoring Justice: An Introduction to Restorative Justice," 2015.

²¹ Muhammad Rif and Siswah Isnawati, "Restorative Justice: Meaning, Problems, and Proper Application," *UNES Journal of Swara Justice* 8, no. 2 (2024): 276–89.

of Indonesian society has recognized restorative justice through deliberation mechanisms for consensus carried out by traditional institutions, this was stated by Ferry Fathurokhman²².

“Indonesia is a nation with wonderful resources of intracultural restorative justice. Traditions of musyawarah (deliberation) decision by friendly cooperation and deliberation-traverse the archipelago. Adat law at the same time allows for diversity to the point of local criminal laws being written to complement universal national laws”.

Restorative Justice in Domestic Violence Cases

1. Restorative Justice in the Criminal Justice System

Nowadays, in resolving criminal cases, people tend to use court procedural steps. This has two different sides. On the one hand, public legal awareness is increasing, but on the other hand, today's court system is only able to provide win-lose solutions. Whoever has the strongest evidence will win in court. Of course, this system creates a paradox as to whether the win lose solution really provides justice or not. This is because court decisions sometimes still leave grudges between the parties, both the perpetrator and the victim²³.

The criminal justice system in Indonesia is strictly regulated in the Criminal Procedure Code (KUHAP) or Law no. 8 of 1981²⁴. It is said that because of Law no. 8 of 1981 or the Criminal Procedure Code (KUHAP) is actually synonymous with criminal law enforcement, which is a system of power or authorities given to the state in enforcing criminal law, namely the police, prosecutors, judges and correctional institutions.

The criminal justice system is often referred to as the law enforcement system because it embodies the idea that these institutions are primarily focused on making abstract legal rules tangible through concrete enforcement actions. In essence, their role is to ensure that the legal principles established in law are applied and upheld in practical, real-world situations²⁵. Regarding the criminal justice system, Muladi in his book *Kapita Selektta Criminal Justice* offers an integrated criminal justice system. namely re-synchronization from a structural, substantial and cultural perspective. Muladi emphasized that the criminal justice system works when all three run simultaneously²⁶.

²² Ferry Fathurokhman, “The Necessity of Restorative Justice on Juvenile Delinquency in Indonesia, Lessons Learned from the Raju and AAL Cases,” *Procedia Environmental Sciences* 17 (2013): 967-75, <https://doi.org/10.1016/j.proenv.2013.02.115>.

²³ Dewi Setyowati, "Understanding the Concept of Restorative Justice as an Effort by the Criminal Justice System to Achieve Justice," *Pandecta Research Law Journal* 15, no. 1 (2020): 121-41, <https://doi.org/10.15294/pandecta.v15i1.24689>.

²⁴ Handry Argatama Ellion, Abdul Rachmad Budiono, and Bambang Sugiri, "The Basic Regulation Of Judicial Authority In Adjudicating Cases Based On Criminal Procedure," *International Journal of Social Science and Economic Research* 3, no. 06 (2018): 2503-18.

²⁵ Nurcahyo Edi, John Pieris, and Nelson Simanjuntak, "Legal Analysis of the Implementation of Restorative Justice in Efforts to Reform the General Justice System in Indonesia," *Cahaya Mandalika Journal* 4, no. 3 (2023): 1092-99.

²⁶ Muladi, *Capita Selecta Criminal Justice System*. (Undip Press, 1996).

Restorative justice is an important part of this integration. This approach was born out of the reality of the needs of society and victims who are often marginalized by court procedures. In the criminal act itself, restorative justice acts as an element of law enforcement with the aim of correcting the actions of criminals, the consequences they cause and returning the losses experienced by victims (Setyowati). Restorative justice is not retributive punishment like retributive justice. Restorative justice works as community harmonization in criminal law enforcement. There are five main elements in restorative justice:²⁷

- a. Restorative justice is a form of justice that serves as a legal concept within the criminal justice system, widely recognized and increasingly applied in various criminal cases, particularly in developed countries.
- b. It perceives criminal offenses not as violations against the state or society, but rather as acts committed against the victim.
- c. The primary focus of restorative justice is on addressing the harm or loss experienced by the victim, rather than on imposing punishment on the offender.
- d. This approach can involve direct or indirect dialogue, taking forms such as mediation, reconciliation, or court proceedings.
- e. Restorative justice extends beyond just transitional reconciliation, as described in certain frameworks.

2. Restorative Justice Procedures in Domestic Violence Cases

The Criminal Code (KUHP) serves as the primary source of substantive criminal law in Indonesia. One of the provisions reflecting restorative justice principles is found in Article 82 of the KUHP. This article forms the legal basis for dismissing the right of public prosecutors to pursue prosecution in specific cases. According to Article 82, the right to prosecute for offenses punishable solely by a fine is voided if the offender pays the maximum fine. If the case has already progressed to prosecution, the payment must include court costs as well for the right to prosecute to be removed²⁸.

The Criminal Procedure Code, commonly referred to as KUHAP, is governed by Law No. 8 of 1981 on criminal procedural law. Within this law, Article 98 reflects the spirit of restorative justice. Article 98 allows for the combination of criminal and civil matters, specifically enabling a victim to pursue compensation for damages suffered due to a criminal offense, directly within the criminal trial process. This provision underscores the importance of addressing the harm done to victims, aligning with restorative justice principles that emphasize repairing the consequences of crime.):

"If an act which is the basis for an indictment in a criminal case examined by a district court causes harm to another person, then the presiding judge at the trial may decide, at the person's request, to join the claim for compensation to the criminal case."

²⁷ Amabarsari Hanafi Arif, "Application of Justise Restoration in the Criminal Justice System in Indonesia," *Application of Justise Restoration in Criminal Law* 53, no. 9 (2013): 1689–99.

²⁸ Irabiah Irabiah, Beni Suswanto, and Muhammad Ali Alala Mafing, "Implementation of Restorative Justice at the Prosecution Level (Case Study at the Kotamobagu District Prosecutor's Office)," *Perspective* 27, no. 2 (2022): 131–38, <https://doi.org/10.30742/perspeksi.v27i2.828>.

Article 54 of Law No. 23 of 2004 on the Elimination of Domestic Violence states that investigations, prosecutions, and court hearings should follow the applicable criminal procedural laws, unless this law provides specific exceptions. The current procedural law in force is Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP). Therefore, in cases of domestic violence, legal proceedings are conducted in the same manner as other criminal offenses, following the standard procedures outlined in KUHAP.²⁹

In fulfilling its duties and responsibilities, the police play a crucial role in protecting individuals, particularly in cases of domestic violence. According to Article 1 paragraph (1) of Law No. 23 of 2004 on the Elimination of Domestic Violence, domestic violence (KDRT) is defined as any action, especially against women, that causes physical, sexual, or psychological harm, suffering, or neglect within the household. This includes threats, coercion, or the confiscation of property. Furthermore, Article 2 of Law No. 2 of 2002 concerning the Police outlines the police's role as the primary law enforcement body in addressing domestic violence. This role falls under their broader function within the government to maintain public order and security, enforce laws, and provide protection, safety, and services to the community³⁰.

According to Article 1 paragraph (2) of the National Police Chief's Regulation No. 06 of 2019, an investigation is defined as a series of investigative actions, conducted in accordance with legal procedures, aimed at searching for and collecting evidence to clarify the criminal offense and identify the suspect involved. This provision emphasizes the importance of methodical and legal processes in uncovering criminal activities (See Article 1 paragraph (2) National Police Chief Regulation No. 06 of 2019 concerning the Investigation of Criminal Offenses).

In Indonesia's criminal justice system, the police play an integral role. They are not only responsible for investigating crimes but also hold discretionary authority as outlined in Article 18 of Law No. 2 of 2002 concerning the Indonesian National Police. This article grants police officers the discretion to act based on their judgment in the public interest when carrying out their duties. However, such discretion must only be exercised in urgent circumstances and in compliance with relevant laws and regulations, as well as the professional code of ethics of the Indonesian National Police. This balance ensures that police actions align with legal and ethical standard.³¹

The process of implementing criminal case resolution through restorative justice according to National Police Chief Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice begins with accepting a request for peace from both parties. This means that the desire to make peace must be based on the will of both parties (the reporter and the reported person) at the initiation of the police (investigator/mediator). From the results of the research, it was found that the desire to make peace remains the will of the litigants,

²⁹ Pieter Leonardo and Hery Firmansyah, "Implementation of Restorative Justice in View of the Criminal Law Applicable in Indonesia," *Syntax Literate; Indonesian Scientific Journal* 8, no. 8 (2023): 6090-6103, <https://doi.org/10.36418/syntax-literate.v8i8.13516>.

³⁰ Setyowati, "Understanding the Concept of Restorative Justice as an Effort by the Criminal Justice System to Achieve Justice."

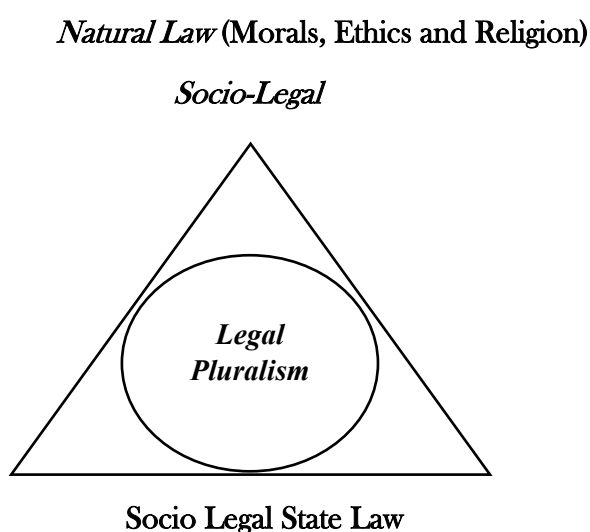
³¹ Ilyas Sarbini, Sukirman, and Aman Ma'arij, "Restorative Justice as an Alternative for Resolving Criminal Cases," *Fundamental: Legal Scientific Journal* 9, no. 1 (2020): 31-42, <https://doi.org/10.34304/fundamental.v1i1.19>.

namely the perpetrator and the victim, however, at the start of the process, mediation will be carried out in the nature of an offer, the investigator requires mediation.³²

This shows that resolving domestic violence cases based on restorative justice involves the awareness of all parties, including perpetrators, victims and the community. However, in domestic violence cases, the role of the community is usually not very visible because this crime is a hidden crime which does not cause direct harm to the community.

Analysis of Legal Pluralism in the implementation of Restorative Justice

His criticism of law enforcement in the world using one of three approaches encouraged Werner Menski to integrate the three approaches. Menski did his work by forming a legal pluralism triangle. According to him, state law or legislation cannot be used as the sole law in solving a case. Menski stated that it is very real that several laws can be applied in one case³³



Menski's statement above is strengthened by his strategic empirical study which compares the laws in force in Europe, Asia and Africa. Despite finding the fact that in enforcing law and its normativity, Jurists in Europe are rationalist and logical and leave behind aspects of religion and morality. In contrast to Asia and Africa, which is plural with its customary and religious laws, judges still use customary law and morality as a logical consequence of closely held religious doctrines.³⁴

The concept of legal pluralism offered by western scholars is that laws formed outside the state are actually laws that are also held by society, but state law is still the most superior and stronger than other laws. This kind of legal pluralism concept is likened to weak legal pluralism³⁵. The concept of legal pluralism above was criticized by Disantara (2021), according to him, the

³² Purnomo Anton, "Implementation of Restorative Justice in Resolving Crimes of Domestic Violence at Pekalongan Police," *Legal Dynamics* 14, no. 2 (2023): 35-52.

³³ Menski, *Comparative Law in a Global Context: European, Asian and African Systems*.

³⁴ Pudjilianto and Handayani, "Application of Legal Pluralism in Society."

³⁵ Sulistyowati Irianto, "History and Development of Legal Pluralism Thought and Its Methodological Consequences," *Journal of Law & Development* 33, no. 4 (2017): 485, <https://doi.org/10.21143/jhp.vol33.no4.1425>.

concept of legal pluralism which still views state law as superior, indirectly denigrates other legal systems such as customary law and religious law. Departing from this, Disantara offers Indonesian Legal Pluralism as a modification of the weak legal pluralism theory and the development of legal pluralism offered by Menski. Indonesian legal pluralism requires three legal orders to run side by side, namely state law, transnational law and customary law (Amongst).

The use of restorative justice in resolving domestic violence is a form of implementing legal pluralism, both offered by Menski and Disantara. In terms of normativeness, it seems that the use of restorative justice in resolving domestic violence adheres more to weak legal pluralism where elements of positive law such as the Criminal Code, Criminal Procedure Code, Perkapolri are still the dominant elements in its normativeness.³⁶ Domestic violence as a hidden crime often does not cause direct harm to the community, so that in implementing restorative justice the role of community leaders is not involved because of uncertainty about whether domestic violence is in the private or public domain. Indonesian Legal Pluralism offers integration between positive law, transnational law and customary law as a new paradigm for Indonesian law enforcement. Domestic violence can be resolved according to custom, but the weakness is that customary settlement does not have permanent legal force like settlement in court.

The final goal of legal pluralism is the realization of substantive justice. Namely the justice that law enforcers are able to provide to all parties in a dispute. The aim of legal pluralism is more or less similar to one of the elements of restorative justice, namely the participation of all parties involved which prioritizes returning losses experienced by victims and improving behavior by perpetrators of criminal acts.³⁷

CONCLUSION

Restorative justice was initially popular in common law countries and was not recognized in civil law countries like Indonesia. Over time, the need for a restorative justice system in Indonesia's criminal justice framework has become apparent, especially for hidden crimes such as domestic violence. Law enforcement agencies like the POLRI and the Prosecutor's Office have started to employ restorative justice in domestic violence cases, offering it as an option to the disputing parties. From the perspective of legal pluralism, as proposed by Menski, restorative justice tends to deliver more effective justice compared to the procedural court process. However, its implementation in Indonesia still faces challenges in balancing the three elements of legal pluralism: state law, socio-legal aspects, and natural law. Despite its formal recognition, the effective application of restorative justice in Indonesia requires further development to ensure a balanced integration of these elements, thus achieving its full potential in delivering justice, certainty, and legal benefits.

³⁶ Artha Sebayar, Utary Maharany Barus, and M. Citra Ramadhan, "Resolving Domestic Violence Cases Through Restorative Justice in the North Sumatra Regional Police," *Journal of Education, Humanities and Social Sciences (JEHSS)* 4, no. 1 (2021): 450-59, <https://doi.org/10.34007/jehss.v4i1.675>.

³⁷ Fradhana Putra Disantara, "The Concept of Indonesian Legal Pluralism as a Strategy for Facing the Era of Legal Modernization," *Al-Adalah: Journal of Islamic Law and Politics* 6, no. 1 (2021): 1-36, <https://doi.org/10.35673/ajmpi.v6i1.1129>.

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REFERENCES

- Almubarok, Fauzi. "Keadilan Dalam Perspektif Islam." *Istighna* 1, No. 2 (2018): 115-43.
- Amalia, Rizky, Hafrida Hafrida, And Elizabeth Siregar. "Perbandingan Pengaturan Tindak Pidana Kekerasan Dalam Rumah Tangga Dalam Hukum Pidana Indonesia Dan Hukum Pidana Malaysia." *Pampas: Journal Of Criminal Law* 2, No. 2 (2021): 1-14. <https://doi.org/10.22437/Pampas.V2i2.13334>.
- Anton, Purnomo. "Pelaksanaan Restorative Justice Dalam Penyelesaian Tindak Pidana Kekerasan Dalam Rumah Tangga Di Polres Pekalongan." *Dinamika Hukum* 14, No. 2 (2023): 35-52.
- Brenner, Suzanne. "Private Moralities In The Public Sphere: Democratization, Islam, And Gender In Indonesia." *American Anthropologist* 113, No. 3 (2011): 478-90. <https://doi.org/10.1111/j.1548-1433.2010.01355.x>.
- Brumberg-Chaumont, Julie. "Universal Logic And Aristotelian Logic: Formality And Essence Of Logic." *Logica Universalis* 9, No. 2 (2015): 253-78. <https://doi.org/10.1007/s11787-015-0123-y>.
- Disantara, Fradhana Putra. "Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum." *Al-Adalah: Jurnal Hukum Dan Politik Islam* 6, No. 1 (2021): 1-36. <https://doi.org/10.35673/ajmpi.v6i1.1129>.
- Edi, Nurcahyo, John Pieris, And Nelson Simanjuntak. "Analisa Hukum Penerapan Restorative Justice Dalam Upaya Mereformasi Sistem Peradilan Umum Di Indonesia." *Jurnal Cahaya Mandalika* 4, No. 3 (2023): 1092-99.
- Ellion, Handry Argatama, Abdul Rachmad Budiono, And Bambang Sugiri. "The Basic Regulation Of Judicial Authority In Adjudicating Cases Based On Criminal Procedure." *International Journal Of Social Science And Economic Research* 3, No. 06 (2018): 2503-18.
- Farrokhi, Mansour. "The Role Of Legal Translation In The Interpretation Of International Law Documents." *Russian Law Journal* 7, No. 1 (2019): 55-86. <https://doi.org/10.17589/2309-8678-2019-7-1-55-86>.
- Fathurokhman, Ferry. "The Necessity Of Restorative Justice On Juvenile Delinquency In Indonesia, Lessons Learned From The Raju And Aal Cases." *Procedia Environmental Sciences* 17 (2013): 967-75. <https://doi.org/10.1016/j.proenv.2013.02.115>.
- Fihra Rizqi Novia Ridwan, Dewi Asri Yustia. "Pentingnya Pendampingan Hukum Bagi Korban Tindak Pidana Kekerasan Seksual: Kebutuhan Dan Keharusan Hukum Pidana." *Legal Standing* 8, No. 2 (2024): 352-68. <https://doi.org/10.24269/l.s.v8i1.8545>.
- Gultom, Pardomuan. "Analisis Sosiologi Hukum Terhadap Kemungkinan Dapat

- Diterapkannya Restorative Justice Dalam Perkara Tindak Pidana Korupsi Di Indonesia.” *Jurnal Hukum Dan Kemasyarakatan Al-Hikmah* 3, No. 1 (2022): 417-45.
- Hanafi Arif, Amabarsari. “Penerapan Restorasi Justise Dalam Sistem Peradilan Pidana Di Indonesia.” *Penerapan Restorasi Justise Dalam Hukum Pidana* 53, No. 9 (2013): 1689-99.
- Huberman, Michael, Dan Matthew B. Miles. “The Qualitative Researcher’s Companion.” Sage Publications, 2002.
- Indrawan, D P, L Karjoko, And R Candrakirana. “... Keadilan Distributif Dalam Pelaksanaan Pengadaan Tanah Untuk Pembangunan Jalur Kereta Api Bandara Soekarno-Hatta: Universitas ...” *Yustisi* 11, No. 1 (2024): 81-93. <https://Ejournal.Uika-Bogor.Ac.Id/Index.Php/Yustisi/Article/View/16193>.
- Irabiah, Irabiah, Beni Suswanto, And Muhammad Ali Alala Mafing. “Penerapan Restorative Justice Pada Tingkat Penuntutan (Studi Kasus Di Kejaksaan Negeri Kotamobagu).” *Perspektif* 27, No. 2 (2022): 131-38. <https://doi.org/10.30742/Perspektif.V27i2.828>.
- Irianto, Sulistyowati. “Sejarah Dan Perkembangan Pemikiran Pluralisme Hukum Dan Konsekuensi Metodologisnya.” *Jurnal Hukum & Pembangunan* 33, No. 4 (2017): 485. <https://doi.org/10.21143/Jhp.Vol33.No4.1425>.
- Kornelius Benuf, Muhammad Azhar. “Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer.” *Jurnal Gema Keadilan* 7, No. 1 (2020): 20-33. <https://doi.org/10.24246/Jrh.2019.V3.I2.P145-160>.
- Leonardo, Pieter, And Hery Firmansyah. “Pelaksanaan Restorative Justice Di Tinjau Dari Hukum Pidana Yang Berlaku Di Indonesia.” *Syntax Literate ; Jurnal Ilmiah Indonesia* 8, No. 8 (2023): 6090-6103. <https://doi.org/10.36418/Syntax-Literate.V8i8.13516>.
- Lesmana, Csa Teddy, And Rida Ista Sitepu. “Penyuluhan Hukum Tentang Penerapan Mediasi Penal Dan Restoratif Justice Kepada Anggota Penyidik Satreskrim Polres Sukabumi Kota.” *Jurnal Abdi Nusa* 2, No. 2 (2022): 49-59. <https://doi.org/10.52005/Abdinusa.V2i2.92>.
- Manthovani, Reda, Rocky Marbun, Adnan Hamid, Andi Wahyu Wibisana, Cipta Indra, And Lestari Rachman. “The Practice Of Applying The Concept Of Restorative Justice In Law Enforcement In Indonesia.” *Russian Law Journal* Xi, No. 5 (2023): 5.
- Menski, Werner. *Perbandingan Hukum Dalam Konteks Global : Sistem Eropa, Asia Dan Afrika*. Nusa Media, 2008.
- Muladi. *Kapita Selekta Sistem Peradilan Pidana*. Undip Press, 1996.
- Nazaruddin, Husni Djalil, M. Nur Rasyid. “Perlindungan Hak Asasi Tersangka Dalam Penyidikan Kepolisian (Studi Kasus Di Polres Pidie).” *Syiah Kuala Law Journal* 1, No. 2 (2022): 145-62.
- Ness, V., And Daniel, W. “Restoring Justice: An Introduction To Restorative Justice.” 2015.
- Pudjilianto, Belinda, And Emy Handayani. “Penerapan Pluralisme Hukum Dalam Masyarakat.” *Diponegoro Law Journal* 11, No. 2 (2022): H. 344.
- Rif, Muhammad, And Muridah Isnawati. “Restorative Justice : Pemaknaan , Problematika , Dan Penerapan Yang Seyogianya.” *Unes Journal Of Swara Justisia* 8, No. 2 (2024): 276-89.
- Sarbini, Ilyas, Sukirman, And Aman Ma’arij. “Restorative Justice Sebagai Alternatif Penyelesaian Perkara Pidana.” *Fundamental: Jurnal Ilmiah Hukum* 9, No. 1 (2020): 31-42.

<https://doi.org/10.34304/Fundamental.V1i1.19>.

Sebayang, Artha, Utary Maharany Barus, And M. Citra Ramadhan. "Penyelesaian Kasus Kekerasan Dalam Rumah Tangga Melalui Restorative Justice Di Polda Sumut." *Journal Of Education, Humaniora And Social Sciences (Jehss)* 4, No. 1 (2021): 450-59. <https://doi.org/10.34007/Jehss.V4i1.675>.

Setyowati, Dewi. "Memahami Konsep Restorative Justice Sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan." *Pandecta Research Law Journal* 15, No. 1 (2020): 121-41. <https://doi.org/10.15294/Pandecta.V15i1.24689>.

Sudiyana, Sudiyana, And Suswoto Suswoto. "Kajian Kritis Terhadap Teori Positivisme Hukum Dalam Mencari Keadilan Substantif." *Qistie* 11, No. 1 (2018): 107-36. <https://doi.org/10.31942/Jqi.V11i1.2225>.

Wenzel, Michael, Tyler G. Okimoto, Norman T. Feather, And Michael J. Platow. "Retributive And Restorative Justice." *Law And Human Behavior* 32, No. 5 (2008): 375-89. <https://doi.org/10.1007/S10979-007-9116-6>.

Yani, Ramlah, And Hardianto Djanggih. "Efektivitas Penerapan Restorative Justice Dalam Tindak Pidana Ringan." *Journal Of Lex Philosophy (Jlp)* 4, No. 2 (2023): 2023.

Yulia, Rena, And Aliyth Prakarsa. "Telaah Yuridis Terhadap Pengaturan Restorative Justice Di Kepolisian." *Wajah Hukum* 5, No. 2 (2021): 562. <https://doi.org/10.33087/Wjh.V5i2.716>.