

Legal Analysis of Police Authority in the Implementation of Settlement of Domestic Violence (KDRT) Cases Through the Restorative Justice Aproach

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Abstract. *Domestic violence (KDRT) is a criminal act regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Handling of domestic violence cases must pay attention to the protection of victims, especially women and children. This is reinforced through Perpol Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. However, the application of restorative justice in domestic violence cases has raised debate regarding the limits of police authority and the potential for neglect of victims' rights. The purpose of the study was to determine and analyze the authority of the police in implementing the resolution of domestic violence crimes through a restorative justice aproach, based on aplicable laws and regulations and to determine and analyze the obstacles and solutions in the application of the restorative justice aproach by the police in resolving domestic violence cases. Normative juridical legal research method, namely legal research conducted by examining primary, secondary, and tertiary legal materials as a basis for analyzing legal issues. The police have the authority to implement restorative justice according to Perpol Number 8 of 2021. In cases of domestic violence, the implementation must still prioritize the protection of victims according to Law Number 23 of 2004. Restorative justice can only be implemented if there is an agreement, there is no serious violence, and there is a guarantee that the act will not be repeated. Challenges in implementing restorative justice in cases of domestic violence include lack of regulation, understanding of officers, and resistance from the parties. Solutions include strengthening internal regulations, training officers, SOPs that side with victims, and involvement of suport institutions. The government and society must jointly suport regulation, education, and supervision so that justice for victims is guaranteed.*

Keywords: *Domestic Violence (KDRT); Police Authority; Restorative Justice.*

1. Introduction

As a form of commitment to this protection, the state issued Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT). This law explicitly regulates the categories of domestic violence, namely physical violence (Article 6), psychological violence (Article 7), sexual violence (Article 8), and neglect of the household (Article 9).² Criminal sanctions against perpetrators are regulated in Articles 44 to 49, with serious criminal threats. For example, Article 44 paragraph (1) states that perpetrators of physical violence in the household can be sentenced to a maximum of five years in prison or a maximum fine of Rp. 15,000,000.00.¹ Domestic violence (KDRT) is a form of human rights violation and a crime against human dignity that is contrary to the values of Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD 1945). Article 28G paragraph (2) of the 1945 Constitution states that "everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain asylum from such treatment."² These constitutional rights are the basis for the state's obligation to protect its citizens from all forms of violence, including domestic violence.

The investigation phase by the police is a very crucial phase in determining the direction of the case resolution. Based on the Criminal Procedure Code (KUHP), investigators have the authority to terminate the investigation for legal reasons or in the interests of justice (Article 109 paragraph (2) of the Criminal Procedure Code). This is an important basis for the implementation of restorative justice, which has now received formal recognition in the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. The police as one of the law enforcement agencies has strategic authority in handling criminal cases, including domestic violence. In Article 13 letter a of Law Number 2 of 2002 concerning the Republic of Indonesia National Police, it is stated that one of the main duties of the Police is to maintain public security and order, enforce the law, and provide protection, patronage, and services to the community. In the law enforcement process, Polri investigators are given the authority to conduct investigations as regulated in Article 1 number 2 and Article 7 paragraph (1) letter a of the Criminal Procedure Code (KUHP).

Article 109 paragraph (2) of the Criminal Procedure Code states that investigators can stop an investigation if there is insufficient evidence, the incident does not constitute a crime, or by law.⁶ In practice, stopping an investigation for reasons of substantive justice and resolution through non-litigation channels can be carried out based on the principle of investigator discretion, which is strengthened by the issuance of the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.³ The Restorative Justice (RJ) approach emerged as an alternative that offers a more humane and recovery-oriented solution. Restorative Justice focuses on restoring the relationship between the perpetrator and the victim, by involving both in the conflict resolution process. This approach prioritizes justice that is oriented towards the needs and

¹Law No. 23 of 2004 concerning the Elimination of Domestic Violence, Article 44 paragraph 1

²The 1945 Constitution of the Republic of Indonesia (UUD 1945), Article 28G paragraph (2)

³Regulation of the Republic of Indonesia National Police Number 8 of 2021

rights of the victim, while also providing an opportunity for the perpetrator to reflect on their actions and take responsibility. In the context of domestic violence investigations, the application of the Restorative Justice approach can be an effective solution to reduce the trauma experienced by the victim, as well as providing an opportunity for the perpetrator to improve themselves without having to impose harsh sanctions.

In the case example at the South Jakarta Metro Police in October 2022, the South Jakarta Metro Police handled a domestic violence case involving celebrity couple Lesti Kejora and Rizky Billar. After the domestic violence report was filed by Lesti, the report was recorded with the Number LP/B/2348/IX/2022/SPKT/South Jakarta Metro Police/Polda Metro Jaya. The police facilitated a restorative justice process involving various parties, including the Integrated Service Center for Women and Children and representatives from Polda Metro Jaya. This process allowed both parties to reach a peaceful agreement, and Lesti withdrew her report. Through this research, it is expected to provide a better understanding of the role of the police in resolving domestic violence cases with a Restorative Justice approach. Thus, it is expected that there will be concrete recommendations for public policy and police practices in Indonesia, which are more sensitive to the needs of victims and more effective in dealing with domestic violence issues. This is in line with efforts to build a more just and sustainable society, where the rights of every individual are respected and protected.

2. Research Methods

This research is a normative legal research, namely legal research conducted by examining primary, secondary, and tertiary legal materials as a basis for analyzing legal issues. This approach focuses on applicable legal norms and how these norms are used to resolve a particular legal problem. According to Mukti Fajar Nur Dewata and Yulianto Achmad, normative legal research is "legal research conducted by examining library materials or secondary data alone."⁴

3. Results and Discussion

3.1. Police Authority in the Implementation of Settlement of Domestic Violence Crimes Through a Restorative Justice Approach

Domestic violence is a phenomenon that can occur in family life, although it is not always considered a common problem. This incident has its own characteristics because it concerns the relationship between the perpetrator and the victim who are in the domestic sphere, both as family members and as parties in an employment relationship, such as between an employer and a domestic worker. Domestic violence is not only a private matter, but can also be a serious threat to the integrity of the family. Unfortunately, many people are still unaware that the home, which should be the safest place, can actually be a space full of threats for

⁴Mukti Fajar ND and Yulianto Achmad, *Dualism of Normative and Empirical Legal Research*, Yogyakarta, Pustaka Pelajar, 2010, p. 34.

some of its members. In various forms and intensities, violence can occur between individuals who should protect and support each other.⁵

Domestic violence is a universal social reality, because it can occur in various family backgrounds regardless of cultural, religious, ethnic, social status, or age differences between the perpetrator and victim. This phenomenon is not limited to certain groups, but can affect anyone, both those from poor, simple families, to those who are classified as rich, highly educated, and have a respected position in society.

The criminal justice system in Indonesia as regulated in Article 10 of the Criminal Code (KUHP) stipulates that anyone who commits a crime, including domestic violence, can be subject to criminal sanctions in accordance with the punishment categories determined in positive criminal law. This punishment can take the form of principal punishment such as imprisonment and fines, or additional punishment such as revocation of certain rights or confiscation of certain goods and other actions regulated by statutory provisions.⁶

Settlement of domestic violence cases in practice refers to two types of regulations, namely general legal provisions and special legal provisions. Before the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, handling of domestic violence cases still used general provisions contained in the Criminal Code (KUHP), such as Article 351 paragraph (1) and Article 356 point 1 which regulates abuse. However, theoretically, domestic violence is not limited to physical violence alone, but also includes psychological violence, sexual violence, and neglect within the household. Therefore, the regulations in the Criminal Code as general law are unable to comprehensively cover these types of non-physical violence, so that special legal instruments are needed that are more specific and sensitive to the complexity of domestic violence problems.

Domestic violence (KDRT) crimes, although the Criminal Code provides a general basis for the types of criminal penalties that can be imposed, the specific regulation that regulates this crime in more detail is Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT). This law not only regulates the definition and types of domestic violence, but also provides specific criminal provisions for perpetrators of such violence, including the threat of imprisonment and fines according to the severity of the violence committed.

The Indonesian National Police has a central role in the national criminal justice system, especially in the early stages of the law enforcement process, namely the investigation and prosecution of criminal acts. In accordance with Law Number 2 of 2002 concerning the Indonesian National Police, the police are tasked with maintaining public security and order, enforcing the law, and providing protection, shelter, and service to the community. In carrying

⁵Livia Iskandar, *Domestic Violence: The Urgency of Victim Protection and the Implementation of the Domestic Violence Law*, Jakarta: Yayasan Pulih, 2010, p. 5.

⁶Bachtar Effendi, *Indonesian Criminal Law*, 7th ed., Bandung, Citra Aditya Bakti, 2009, p. 23-25.

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out these duties, the police have the authority to take legal action to uncover criminal acts, including in the context of domestic violence (KDRT).

This is stated in Law Number 2 of 2002 concerning the Republic of Indonesia National Police, Article 13, which states that: The main duties of the Republic of Indonesia National Police are:

1. Maintaining public security and order;
2. Enforcing the law; and
3. Providing protection, care and services to the community.

Article 14 paragraph (1) of the Law states that in carrying out its main duties, the Police have the authority to:

1. Receiving reports and/or complaints;
2. Help resolve disputes between community members that may disrupt public order;
3. Prevent and overcome the growth of social diseases;
4. Monitoring trends that can cause division or threaten the unity and integrity of the nation;
5. Conducting patrols;
6. Providing services for the benefit of the community; and
7. Carry out other duties in accordance with laws and regulations.

Investigation and inquiry are the main authority of the police in the early stages of the criminal justice system. Investigation is a series of investigator actions to find and discover an event suspected of being a crime, while investigation is a series of investigator actions in order to find and collect evidence to clarify the crime and find the suspect. Domestic violence, this process begins with a report from the victim or third party and is then followed by efforts to collect evidence and examine witnesses.

Specifically in domestic violence cases, the police also have an additional responsibility to protect the victim, who is usually a woman or child. Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) provides an obligation to law enforcement officers, including the police, to provide immediate protection to the victim. This includes providing safe houses, treatment, and reporting to relevant service agencies. Thus, the police's authority in domestic violence cases does not stop at the legal process, but also at the aspect of humanitarian protection.

The implementation of Law Number 23 of 2004 concerning the Elimination of Domestic Violence does have a progressive value in providing protection for victims of violence, especially women and children. However, in practice, law enforcement against perpetrators of domestic violence often creates its own dilemma, especially if the perpetrator is the head of the household who acts as the main breadwinner and leader of the family. If every perpetrator of domestic violence is automatically sentenced to prison, it will often have a detrimental side effect on the victim and the children in the family.

The application of criminal sanctions in prison against perpetrators of domestic violence can cause its own problems, especially if the perpetrator is the head of the family who is the

backbone of the household economy. Imprisonment of the perpetrator has the potential to increase the suffering of the victim and children due to the loss of a source of income and family leader. Therefore, the restorative justice approach is starting to be considered as an alternative to resolving domestic violence cases, especially in certain cases that allow for peace without ignoring justice for the victim. Restorative justice focuses on restoring social and emotional relationships between the perpetrator, victim, and community, and seeks to create a more humane conflict resolution.⁷ such as the restorative justice approach, which prioritizes dialogue and deliberation between the perpetrator and victim in order to achieve the restoration of social and emotional relationships.

Law Number 23 of 2004 concerning the Elimination of Domestic Violence specifically regulates the responsibility of law enforcement officers in protecting victims. In Article 15, it is stated: Anyone who knows, hears, sees, or suspects domestic violence is taking place is obliged to make efforts within their capabilities to:

1. Prevent criminal acts from occurring;
2. Provide protection to victims;
3. Providing emergency assistance; and/or
4. Assisting in the process of submitting applications for protection determination.

Law Number 23 of 2004 in Article 16 emphasizes that victims have the right to receive protection from the police directly and temporarily before there is an order from the court. This shows that the task of the Police in domestic violence cases is not only to handle the criminal aspect, but also the aspect of victim protection.

The development of modern law, especially after the issuance of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, the police's authority has expanded to the function of recovery through restorative justice. Article 5 paragraph (1) of this Police Regulation states: Settlement of criminal acts based on restorative justice is carried out with the following conditions:

1. The suspect committed a crime for the first time;
2. Criminal acts are punishable by imprisonment of no more than 5 (five) years;
3. There is an agreement between the victim and the suspect; and
4. The public responded positively.

Article 11 paragraph (1) of the Police Regulation also states that investigators can stop investigations based on restorative justice after fulfilling the requirements as referred to in Article 5. This means that the police can use their authority to end the criminal process with a restorative approach, as long as the formal and substantial requirements have been fulfilled.

The concept of discretion as also regulated in Article 18 paragraph (1) of the Police Law, gives the police freedom for the public interest, Polri officials in carrying out their duties and authorities can act according to their own judgment. However, paragraph (2) of the article

⁷Aulia Parasdika, Andi Najemi, and Dhenny Wahyudi, "Implementation of Restorative Justice to Criminal Acts of Abuse", Pampas: Journal Of Criminal, Vol. 3, No. 1, 2022, p. 70.

provides limitations that discretion may only be used proportionally, does not violate the law, and must pay attention to applicable social norms.

The implementation of authority by the police must be based on the principle of accountability. This means that every police action, including the decision to resolve a case through restorative justice, must be legally, administratively, and ethically accountable.⁸ Internal and external oversight are important in maintaining the integrity of the police institution, especially when authority is used in a flexible context such as restorative justice.

The authority of the police in resolving domestic violence cases lies not only in the aspects of investigation and inquiry, but also in the implementation of the principles of justice, protection of victims' rights, and the courage to take a more humanistic legal approach. The restorative justice approach carried out by the police is not only about resolving cases quickly, but more about how to create comprehensive justice for victims, perpetrators, and society in general. This is what distinguishes conventional law enforcement practices from a more restorative and progressive approach.

The implementation of the restorative justice approach by the police in handling cases of Domestic Violence (DV) is an alternative form of legal resolution that aims to achieve justice peacefully outside the conventional criminal justice mechanism. The police play a strategic role as the front line in the law enforcement process, especially in the early stages of case handling. Assessing the eligibility of a DV case to be resolved restoratively is part of the institutional responsibility of the Police. The concept of restorative justice itself emphasizes the importance of open communication and dialogue between the perpetrator and the victim in order to achieve understanding, reconciliation, and restoration of disturbed social relations, as well as a preventive effort against the potential for repeated violence.⁹

Based on the provisions of Article 109 paragraph (2) of the Criminal Procedure Code (KUHP), investigators are given the authority to stop investigations if there are legitimate legal reasons or for considerations of justice. Article 109 paragraph (2) of the Criminal Procedure Code, within the framework of progressive legal thinking and restorative justice, provides space for law enforcement officers to adjust legal responses to social dynamics and the need for more humane justice. This is where it appears that investigators do not only work on a legal-formalistic basis, but also on the basis of substantive justice values and social protection, especially in the context of complex cases such as domestic violence.

Not all cases of domestic violence can be resolved through restorative justice. Cases involving serious injuries, repeated violence, or victims in vulnerable positions such as children and pregnant women, generally do not qualify for peaceful resolution. The police need to conduct a thorough assessment of the victim's condition and the characteristics of the perpetrator to

⁸Mardjono Reksodiputro, *Selected Chapters on the Criminal Justice System*, Jakarta: UI Press, 1994, p. 115.

⁹I Made Agus Dwi Suarjaya, *Restorative Justice in Criminal Case Resolution*, Yogyakarta: Deepublish, 2020, p. 45.

ensure that the restorative justice approach does not result in revictimization or further injustice.¹⁰

Restorative justice in cases of domestic violence must also ensure that the victim's rights remain maximally protected. In this case, Article 16 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence emphasizes that victims have the right to receive direct protection from the police before a court decision. This shows that even though a peaceful process is carried out, the physical and psychological protection of victims remains a top priority.

The police also act as facilitators in bringing together perpetrators and victims in the restorative mediation process. Investigators need to have a deep understanding of the principles of restorative justice and empathetic communication skills so that the deliberation process runs fairly and impartially. In some cases, the involvement of community leaders, social workers, and women's protection agencies can help create a more conducive atmosphere for reconciliation.

The implementation of restorative justice by the police in domestic violence cases requires a balance between aspects of law enforcement, victim protection, and social recovery. Although restorative justice can be a humanistic solution to maintain family integrity, this approach must be implemented carefully so as not to be used as a loophole to perpetuate domestic violence. Therefore, the success of the implementation of restorative justice is highly dependent on the professionalism of the police and supervision from supervisory institutions and the community.¹¹

Restorative Justice Theory, as developed by Howard Zehr, emphasizes that justice is not merely punishing the perpetrator, but rather rebalancing social relations that have been disrupted by criminal acts.¹² In the context of handling cases of Domestic Violence (KDRT), this theory provides a new direction for the police to act not only as formal law enforcers, but also as facilitators of reconciliation between perpetrators and victims. This approach is based on the principle that criminal acts are not merely violations of the state, but violations of individuals and communities, which require recovery, not merely revenge or imprisonment.

Restorative justice based on healing values, not just revenge. Therefore, the role of the police is crucial in ensuring that the case resolution process truly involves all affected parties actively and voluntarily, and results in a just peace agreement for the victim.¹³

The police, within the framework of restorative justice, have very strategic initial authority. This process usually begins at the investigation or reporting stage. If the police are able to see that the victim and the perpetrator still have a social relationship (for example, a husband and

¹⁰Lestari, Sri Wiyanti Eddyono, *Women and the Law: Towards a Law with a Perspective of Equality and Justice*, Yogyakarta: Pustaka Pelajar, 2014, p. 143–144.

¹¹Luh Putu Sindhu Praba, "The Urgency of Restorative Justice in Resolving Criminal Acts in Indonesia", *Amarta Journal of Law*, Vol. 1, No. 2 (2020), p. 121.

¹²The Little Book of Restorative Justice, Op Cit, p. 23-27

¹³I Wayan P. Windia, *Restorative Justice and the Criminal Justice System in Indonesia*, Yogyakarta: Thafa Media, 2020, p. 63.

wife relationship or a parent and child relationship), and both are willing to resolve it peacefully, then restorative justice can be a fair middle ground. Howard Zehr himself emphasized the importance of three elements in restorative justice, namely:

1. Active involvement of victims, perpetrators and the community;
2. Focus on the needs of the victims, and
3. The perpetrator's obligation to repair the consequences of his actions

The application of the theory of restorative justice in police authority is not a form of compromise on justice, but rather a transformation of justice itself to be more humanistic, dialogical, and oriented towards recovery. This approach is also in line with the paradigm of progressive law which is not trapped in legality alone, but prioritizes the substance of social justice.

The Theory of Authority is important in examining the legality and legitimacy of police actions in seeking resolution outside the formal judicial channels. The police are indeed given discretionary authority in handling certain cases, but this must be limited by legal and ethical principles so as not to violate authority or exceed limits. In the context of domestic violence, the police must be able to show that their actions are within the legal corridor, as regulated in the Regulation of the Chief of Police No. 8 of 2021 and other regulations that accommodate restorative justice-based resolutions. That way, resolving cases outside the courts is not considered a form of impunity, but as a legitimate legal alternative based on justice.

The Theory of Authority according to Philipus M. Hadjon departs from the view that authority is a legal legitimacy inherent in government organs to act within the framework of public law. Hadjon divides authority into three important elements, namely: attribution authority, delegation, and mandate. Attribution authority is authority that is given directly by law to a particular institution; delegation is the delegation from one official to another; while mandate is the delegation of the implementation of authority while remaining under the responsibility of the mandate giver.

The Indonesian National Police obtains attribution authority based on Law Number 2 of 2002 concerning the Indonesian National Police, which gives the main duties and functions to the Police, including as law enforcers and protectors of the community. Within the framework of restorative justice, the authority of the Police to resolve cases outside the court peacefully is a manifestation of discretion as a form of implementing administrative authority. This discretion becomes legitimate if it is carried out based on laws and regulations and general principles of good governance.

Philipus M. Hadjon emphasized that every implementation of state authority must be based on the principle of legality, namely acting in accordance with the authority granted by law. Therefore, in the practice of restorative justice, the actions of the Police must be guided by valid regulations such as the Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. In this regulation, the Police are given room to use discretion in certain cases, including domestic violence, with certain conditions such as an agreement between the perpetrator and the victim, and criminal acts that do not have major or repeated impacts.

The application of restorative justice by the police in domestic violence cases can be considered legitimate according to the theory of authority if the action is carried out within the framework of attribution authority that has been regulated in the law and internal police regulations. The police do not act arbitrarily, but rather carry out their authority functions with the principles of caution and legality. This confirms that restorative justice is not a form of violation of the law, but a legal alternative that is legally institutionalized and aims to maintain a balance between law enforcement and social recovery.

Progressive Legal Theory, as developed by Satjipto Rahardjo, was born from a critique of the rigid, legalistic, and unresponsive legal approach to social reality. Progressive law rejects the view that law is merely a written norm or statutory regulation that must be enforced as is. Instead, law must be seen as a tool to achieve substantive justice that sides with humans as legal subjects. In this context, law is not a closed institution, but rather is open to the values of humanity, justice, and utility.

Police officers handle domestic violence cases, progressive law demands that law enforcement officers not only focus on the application of criminal sanctions in a repressive manner. An approach that only focuses on punishment has the potential to worsen the social and psychological conditions of the victim, especially if the perpetrator is the sole breadwinner in the family. Therefore, a restorative justice approach that emphasizes the restoration of relationships, victim recovery, and dialogue is a form of legal bias towards humanity, as emphasized by progressive legal theory.

The police have legal discretion to resolve certain cases non-litigationally, including domestic violence cases that meet the criteria as stipulated in the Chief of Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. This action is in line with the spirit of progressive law, where the law is a means to avoid greater damage, restore social conditions, and uphold human dignity. The police do not merely enforce articles, but must be able to weigh the social values and justice that exist in society.

Progressive legal theory provides theoretical justification for legal innovations, including the authority of the police to resolve domestic violence cases through mediation, deliberation, and mutual agreement. The police are positioned not only as a state apparatus that enforces the law, but also as an agent of social change that sides with victims and their families. This approach does not eliminate justice, but rather expands the scope of justice by involving all parties in a peaceful, humane, and sustainable resolution process. The police's authority to implement restorative justice in domestic violence cases is not a violation of the principle of legality, but a form of legal reform that is contextual, responsive, and in favor of social welfare. The police who carry out this function do not only enforce the law, but also rebuild hope, protection, and harmony in society.

The author argues that the police's authority in resolving domestic violence crimes through a restorative justice approach is legitimate and strategic, as long as it is carried out with the principles of legality, caution, and orientation towards victim recovery. This approach not only

prevents over-criminalization in domestic cases, but also brings the justice system closer to the humanitarian values that live in society.

3.2. Obstacles and Solutions in the Implementation of the Restorative Justice Approach by the Police in Resolving Domestic Violence Cases

3.2.1. Obstacles to the Implementation of the Restorative Justice Approach by the Police

The application of the Restorative Justice (RJ) approach in handling cases of Domestic Violence (KDRT) by the police faces a number of obstacles that can be analyzed through a normative approach, namely by referring to positive legal norms and applicable laws and regulations. These obstacles reflect the incompatibility between the idealism of restorative justice and the structure of positive law which tends to be legalistic and repressive.

Obstacles to the implementation of Restorative Justice (RJ) by the police in cases of Domestic Violence (KDRT) are analyzed based on positive legal norms and applicable laws and regulations, as well as relevant legal principles and theories. Some of the identified obstacles are as follows:

1) Regulatory Inconsistency in Serious Domestic Violence Cases

The lack of clarity in regulations in handling serious domestic violence cases in Indonesia is one of the main obstacles to fair and effective law enforcement. Although Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) normatively recognizes that domestic violence is a criminal act, the existing provisions still do not provide strong affirmation of the types of violence that are categorized as "serious" and the legal consequences that are firmly binding on the perpetrators. As a result, law enforcement officers often have difficulty in classifying and processing domestic violence cases consistently.

Articles in the Domestic Violence Law, such as Article 44 paragraph (3) which states a maximum prison sentence of 10 years or a maximum fine of 30 million rupiah for perpetrators who cause serious injuries, seem to provide space for firm sanctions. However, in practice, the implementation of this article is often not optimal because there are no detailed technical guidelines regarding what is meant by serious injuries in the context of the household. This blurs the distinction between minor and serious violence, and provides too much room for interpretation to law enforcement officers, which can lead to injustice for the victim.

This indecisiveness is exacerbated by the potential for non-litigation resolutions such as mediation or restorative justice in cases of serious domestic violence, whereas in substance, serious domestic violence is actually a serious crime that should not be resolved outside the courts. Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice does allow a peaceful approach, but with the provision that there must be no violence that causes deep trauma or serious injury. However, the absence of an explicit explanation in the Domestic Violence Law regarding the limitations on the types of cases that can be resolved restoratively makes this regulation vulnerable to abuse by interested parties.

The dualism in the use of the Criminal Code and the Domestic Violence Law also makes it difficult for law enforcement officers to determine the most appropriate legal basis for prosecuting perpetrators of serious domestic violence. For example, the perpetrator could be charged with Article 351 of the Criminal Code concerning assault, which has a lighter penalty than the Domestic Violence Law. As a result, many cases of serious domestic violence are not prosecuted under the appropriate articles due to considerations of the effectiveness of case handling or because of certain social and cultural interventions.¹⁴ This is a real form of the weak legal support for victims, especially women and children.

Unclear regulations also have an impact on victim protection. Article 16 of the Domestic Violence Law states that victims have the right to receive direct and temporary protection from the police before a court order is issued. However, due to the lack of a standard implementation mechanism and not all police officers having adequate understanding of gender and victims, this protection often does not work as it should. Victims of severe domestic violence often experience re-victimization and do not even receive proper psychological or legal assistance.

The lack of firmness in regulations in cases of serious domestic violence not only impacts the law enforcement process, but also the fate of the victim and the sustainability of the household itself. Revision and harmonization of regulations are needed so that provisions regarding serious domestic violence have clear legal force, reporting and investigation mechanisms that favor victims, and prevent the use of non-litigation approaches to serious crimes that have a major impact on the dignity and safety of victims.

2) The Absence of Fixed Operational Standards in the Implementation of Restorative Justice in Police Areas in Indonesia

The implementation of restorative justice (RJ) by the police in handling criminal cases, especially cases of Domestic Violence (KDRT), still faces serious obstacles due to the absence of standard and uniform Standard Operating Procedures (SOP) in various police regions in Indonesia. This irregularity causes different treatments between regional police in implementing the restorative justice approach, thus complicating efforts to achieve consistent and equitable justice. Unclear standards also have the potential to create legal uncertainty for both perpetrators and victims.

The absence of uniform SOPs results in disparities in the mediation process and resolution of restorative justice cases in each region. Some regional police may implement a comprehensive dialogue and deliberation mechanism involving all stakeholders, while other regions only take a simple approach without adequate professional assistance. This reflects weak technical regulations and a lack of specific training for police officers tasked with resolving restorative justice.

Without clear SOPs, the implementation of restorative justice is also prone to being misused as a tool to reduce the burden of court cases without really paying attention to the rights of the victims. In some cases, the restorative justice process is carried out without adequate

¹⁴Livia Iskandar, "Legal Protection System for Women Victims of Domestic Violence in Indonesia", *Journal of Women and Law*, Vol. 3, No. 2, 2021, p. 43.

verification of the conditions of the victims and perpetrators, thus ignoring the aspects of recovery and substantive justice. As a result, victims who should receive maximum protection are neglected, even experiencing revictimization.

This condition is exacerbated by the lack of coordination between the police and related institutions such as courts, women's protection institutions, and civil society organizations. The absence of SOPs also has an impact on the less than optimal documentation and monitoring of the results of restorative justice settlements, which has implications for the difficulty of evaluating and improving restorative justice implementation policies in the future.¹⁵ Thus, the role of the police as the spearhead of law enforcement and protector of victims becomes less effective without clear operational guidelines.

The Chief of Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice has actually provided a basic framework for the implementation of restorative justice in the police environment. However, these provisions are still general in nature and have not been followed by detailed and binding technical guidelines or SOPs for all police jurisdictions in Indonesia. This opens up room for different interpretations and uneven implementation. Therefore, it is necessary to prepare and implement standardized SOPs throughout the Indonesian police force to ensure that restorative justice is carried out effectively, fairly, and justly for all parties involved. This standardization is important to improve the professionalism of the police, guarantee the rights of victims, and maintain the integrity of the restorative case resolution process amidst the complexity of domestic violence cases.

3) Limited Supporting Resources for Dialogue Facilitation

A significant obstacle in the implementation of restorative justice (RJ) by the police in resolving cases of Domestic Violence is the limited supporting resources to facilitate the dialogue process between the perpetrator and the victim. Restorative justice requires mediation and dialogue involving the relevant parties with the aim of restoring relationships and resolving peacefully. However, the police often lack competent experts in the fields of mediation and psychology, which are very important in guiding dialogue to be effective and just.

Limited resources are also seen from the lack of supporting facilities, such as a special room that is comfortable and safe for dialogue, as well as other supporting facilities that can help create a conducive atmosphere. Adequate space and facilities are very important because dialogues that concern sensitive issues such as domestic violence require privacy and protection for victims so that they do not feel intimidated or pressured.

The absence of professional assistance, such as psychologists or counselors, in the restorative justice process at the police level is also a serious obstacle. This assistance is greatly needed to help victims overcome trauma and provide understanding to perpetrators regarding the impact of the violence that has been committed. Without such support, the dialogue process

¹⁵Nurlina, "Obstacles to the Implementation of Restorative Justice in Domestic Violence Cases", National Law Journal, Vol. 7, No. 2 (2022), p. 55-56.

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is at risk of not running optimally and the goals of recovery and prevention of repeated violence are difficult to achieve.

Special training for police officers tasked with implementing restorative justice is still very limited. Officers who carry out mediation functions often rely only on practical experience without formal training on mediation techniques and the psychology of victims of violence. This results in the quality of dialogue implementation being less than optimal and potentially ignoring aspects of substantive justice for victims.

The limited supporting resources also have an impact on the length of the restorative justice case resolution process. The dialogue process that should be a quick and effective solution is actually hampered by having to wait for the availability of limited manpower and facilities. This condition can cause disappointment for victims and perpetrators who want to immediately resolve the case peacefully.¹⁶

4) Absence of Specific Provisions in the Law on the Elimination of Domestic Violence (PKDRT) Regarding Restorative Justice

Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) to date has not contained specific provisions that explicitly regulate the application of restorative justice in resolving domestic violence cases. This causes the police and other law enforcement officers to have to use general regulations or other legal norms as a basis for implementing a restorative approach.

The absence of specific rules in the Domestic Violence Law regarding restorative justice makes the implementation of this approach less focused and sometimes inconsistent. Law enforcement officers in the field face confusion in determining when and how restorative justice can be applied without violating applicable legal provisions.

Without a clear legal umbrella, the application of restorative justice in domestic violence cases has the potential to give rise to different interpretations, which can be detrimental to the victim or cause injustice in the case resolution process. This condition also hampers the development of standard operating procedures (SOP) for the implementation of restorative justice in the context of domestic violence, so that police officers lack comprehensive guidelines in handling these cases. Therefore, it is necessary to revise or add regulations that specifically regulate the restorative justice mechanism in the Domestic Violence Law so that its implementation becomes clearer, more effective, and optimally protects the rights of victims.

Although there is a legal basis that regulates the space for the application of restorative justice, such as the Regulation of the Republic of Indonesia Police (Perpol) Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, its implementation by police officers in the field still faces a number of obstacles. One of the main obstacles is the lack of conceptual understanding and courage of the officers to implement the restorative justice approach. Investigators are often hesitant to choose a restorative resolution because they are worried that it will be considered a violation of formal criminal law procedures or

¹⁶Satriyo Nugroho, "Obstacles to the Mediation Process in Resolving Domestic Violence Cases", Indonesian Journal of Criminology, Vol. 4, No. 3, 2022, p. 65.

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will not provide a deterrent effect as desired by the retributive approach which is the mainstream of Indonesian positive law.

The legal paradigm adopted by most law enforcement officers still tends to be legalistic and procedural. They are more accustomed to resolving cases through courts and judges' decisions rather than facilitating dialogue between perpetrators and victims. In fact, according to Howard Zehr, the basic principle of restorative justice is to repair losses, not just punish. When officers do not have a complete understanding of these values, the restorative justice process becomes stagnant, even at risk of failure.

From the perspective of Howard Zehr's restorative justice theory, these obstacles indicate that the paradigm transformation has not occurred comprehensively in the police institution. Zehr emphasized the importance of shifting values in legal institutions, where justice must be interpreted as an effort to restore and repair, not just to retaliate and punish. When these values have not been internalized in the attitude of the apparatus, the restorative process will be difficult to grow.

Hadjon's view is that the implementation of authority must refer to formal legality, namely the existence of a clear legal basis. In this context, Law No. 23 of 2004 concerning the Elimination of Domestic Violence does not explicitly regulate the restorative justice mechanism as a path to resolving cases. As a result, the police are hesitant to implement restorative justice because they are worried about going outside the positive legal corridor, which could cause their actions to be considered *ultra vires* (exceeding authority).

Furthermore, there is still an understanding that domestic violence cases are conditional complaint offenses or even ordinary crimes, depending on the type of violence. This complicates the position of investigators: are they authorized to carry out diversion or restorative justice without the full consent of the victim, or conversely, are they obliged to continue to process it formally because it is considered a violation of public law. This ambiguity creates confusion and fear among investigators, who ultimately choose to avoid using restorative justice even though it is sociologically more relevant and fair to the victim.

In Hadjon's theory, authority must also be accompanied by the principle of legal and administrative responsibility. When investigators carry out restorative justice without a definite regulatory framework, they risk being held accountable if the process is considered to violate the principle of legality or formal procedures. Therefore, structurally, there needs to be detailed and explicit derivative regulations, so that the authority exercised by the police in the restorative justice approach has full legal legitimacy.

The analysis of the theory of authority shows that the main obstacle in the implementation of restorative justice by the police in domestic violence cases is the unavailability of a strong basis for attribution, as well as the unclear form of delegation of authority from the relevant laws. As a result, the police are in a dilemma between implementing a progressive approach that is oriented towards recovery or remaining within the conventional legal corridor that is retributive and procedural.

The Progressive Legal Theory initiated by Prof. Satjipto Rahardjo is based on the principle that the law should not shackle justice and humanity. In handling domestic violence, the progressive legal approach requires law enforcers, including the police, not to be fixated on formalistic procedures, but to prioritize the welfare, recovery, and protection of victims. However, in practice, the police often face a number of structural and cultural obstacles that hinder the optimal implementation of restorative justice.

Investigators often feel bound by a rigid formal legal framework that prioritizes deterrence, so they tend to reject or hesitate to adopt a restorative approach, even though it is more oriented towards substantive justice. This is contrary to the spirit of progressive law which emphasizes that the law must serve the people and adapt to changing social needs. Another obstacle lies in the lack of training and in-depth understanding among the police regarding the principles of restorative justice. In fact, one of the pillars of progressive law is the transformation of legal actors into "legal people" who dare to think and act for justice, not just implementers of regulations. Without this in-depth understanding, the police will only make restorative justice a slogan, not a real practice that touches the root of the problem of domestic violence.

Progressive legal perspective, law enforcement by the police in domestic violence cases must be able to explore the values of social justice and humanity, not just execute procedures. Unfortunately, this approach has not become the dominant culture in police institutions. The legal process tends to be viewed as a technical process, not ethical or sociological, thus inhibiting the spirit of recovery emphasized in restorative justice.

3.3. Solutions for Implementing the Restorative Justice Approach

Efforts to encourage the implementation of Restorative Justice (RJ) in handling Domestic Violence (KDRT) in Indonesia cannot be separated from the dynamics of law that are developing in various countries. Amidst the challenges of implementing restorative justice by the police, especially related to limited regulations, the still dominant legalistic paradigm, and concerns about the safety of victims, looking at international practices is important as a comparative review and a reflection of learning.

Comparison Table of Implementation of Restorative Justice by Police Against Domestic Violence (KDRT) Crimes in Several Countries

| Country | Implementation of Restorative Justice for Domestic Violence | Role of the Police | Terms/Limitations | Special Notes |
|-------------|---|--|--|---|
| Canada | There are (limited, mild cases) | Referring to the RJ community, sometimes facilitating directly | Perpetrator admits guilt, victim consents, risk evaluation | Implemented in collaboration with Community Justice Initiatives |
| Australia | There is (limited trials in states) | Initiating family conferencing, in collaboration with NGOs | Only for mild cases, the victim agrees, social assistance | Restricted in some states due to risk to victims |
| New Zealand | There is (with a Māori traditional approach) | Directing to Family Group Conference | Must be safe for victims, there | Local cultural context is very |

| | | | | |
|--------------------------|--|--|---|---|
| | | | must be a neutral facilitator | influential (whānau) |
| South Africa | There is (limited) | Refer cases to RJ institutions, support mediation | Not for serious cases, victim agrees | Great attention to the issue of gender-based violence |
| United States of America | There are (local programs, not national) | RJ Unit in the police in a certain city | Voluntary participation of the victim, the perpetrator admits guilt | For example, the model in Denver & Duluth |
| Norway | Yes (with strict standards) | Engage in mediation through formal systems | The victim must feel safe, the process is without coercion | Mediation is closely supervised by an official mediator. |
| Indonesia | Limited (under certain conditions) | Resolve cases through RJ if in accordance with Perpol No. 8/2021 | No serious injuries, no recurrence, victim's consent | Must pay attention to Law No. 23 of 2004 concerning Domestic Violence |

Table 3.3 Application of Restorative Justice to Domestic Violence (KDRT) crimes

Lessons learned from these countries show that the success of restorative justice in domestic violence cases is largely determined by supportive regulations, professionalism of officers, strict implementation standards, and the existence of a multi-stakeholder framework. This is important to reflect in the Indonesian context, so that there is no misunderstanding of restorative justice as merely a peaceful effort, but truly as a just recovery mechanism.

The implementation of Restorative Justice in cases of Domestic Violence (KDRT) faces a number of structural, cultural, and normative challenges. To overcome these obstacles, it is necessary to formulate several strategic solutions, both from the regulatory, institutional, and human resource capacity aspects, as described below:

a. Strengthening Explicit Legal Basis

The main obstacle in implementing the Restorative Justice approach in handling Domestic Violence (DV) cases by the police in Indonesia is the absence of an explicit and comprehensive legal basis in Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT). Although there are regulations such as the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, this regulation is internal to the police and does not specifically regulate restorative justice in the context of DV, especially in cases of severe violence.

The Indonesian legal system adheres to the principle of legality (*nullum delictum, nulla poena sine praevia lege poenali*), the actions of law enforcement officers, especially police investigators, must be based on written and clear legal provisions. Without an explicit legal basis at the level of laws or higher government regulations, the application of restorative justice in domestic violence cases risks causing procedural violations, lawsuits, and public perception that law enforcement is carried out arbitrarily.

Therefore, an amendment to the Domestic Violence Law or the issuance of implementing regulations (Government Regulations or Ministerial Regulations) is needed that explicitly

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regulate the application of restorative justice in domestic violence cases, including its limitations. For example, that restorative justice can only be carried out in cases of minor domestic violence, with the consent of the victim, and accompanied by supervision from women's and children's advocacy institutions.

The Perspective of Authority Theory according to Philipus M. Hadjon, the authority of government officials including investigators must be based on laws and regulations. If the authority is not confirmed in written law, then the actions of the officers have the potential to be qualified as *ultra vires* or deviate from applicable law. Therefore, clarifying authority through an explicit legal basis is an absolute requirement to guarantee the legality and legitimacy of the implementation of restorative justice by the police.

b. Harmonization of Internal Police Regulations in a Progressive Legal Perspective

The implementation of restorative justice (RJ) by the police in Indonesia is still based on a number of internal regulations, one of which is the Regulation of the Republic of Indonesia National Police (Perpol) Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Although this regulation has been an important breakthrough in opening up space for resolving criminal cases peacefully, its existence is not yet fully in sync with other statutory provisions, such as the Criminal Procedure Code, the Criminal Code, and the Domestic Violence Law. This creates ambiguity in implementation, especially when there is a conflict of norms between the restorative spirit and formal criminal procedures.

Police officers often experience confusion in determining the legal boundaries of resolving cases through restorative justice, especially for domestic violence cases which are considered by some to be serious crimes and not suitable for resolution outside the courts. Therefore, harmonization is needed between Perpol 8/2021 and other internal regulations such as SOP for investigations, the Chief of Police Regulation (Perkap), and Circular Letters (SE) which regulate criminal handling procedures. This harmonization aims to avoid overlapping regulations that confuse officers in the field and to create clarity in the application of restorative justice.

From Satjipto Rahardjo's progressive legal theory perspective, unsynchronized regulations are a reflection of a legal system that does not yet side with humanity and substantive justice. Harmonization is not just the unification of norms, but rather the alignment of values, where regulations must move in line with the spirit of social renewal. In this context, internal police regulations must be directed towards the spirit of victim protection, restoration of social relations, and avoidance of unnecessary criminalization. According to Satjipto Rahardjo, the law should not be a "status quo guardian" but a tool for social change. Thus, internal regulations such as Perpol, SOP, and SE Kapolri must be drafted or revised by prioritizing humanitarian values, procedural flexibility, and siding with victims. This harmonization will strengthen the capacity of investigators to act reflectively and progressively in domestic violence cases that deserve to be resolved restoratively.

Efforts to harmonize internal police regulations in the implementation of restorative justice, especially in cases of Domestic Violence (KDRT), are important to ensure that the approach taken does not conflict with the principles of substantive justice. A legal approach with a gender

and social justice perspective requires law enforcement officers to be sensitive to the vulnerability of victims, especially women, and to avoid a legal approach that is purely legalistic and repressive. As expressed by Sulistyowati Irianto, the law must not be formally neutral, but must take sides substantively in order to achieve equality and justice.

Harmonization of internal police regulations is not only administrative in nature, but is a manifestation of the police institution's commitment to changing the paradigm of law enforcement from being purely repressive to being more humanistic and restorative, in line with the spirit of progressive law.

c. **Strengthening Infrastructure and Personnel Capacity in Facilitating Restorative Dialogue**

The main challenge in implementing restorative justice at the police level is the limited supporting resources, both in terms of trained personnel, appropriate mediation space, and psychosocial support for victims and perpetrators. Facilitating safe, neutral, and productive dialogue is at the heart of the restorative justice process, but currently not all police units have adequate structures, training, and budgets to meet these prerequisites.

The solution to address this obstacle requires strengthening institutional capacity through several strategic steps, including:

- 1) Intensive training for investigators and Binmas function officers on restorative mediation techniques, empathetic communication, and handling victim trauma, in collaboration with professional institutions such as forensic psychologists and social workers.
- 2) Provision of a special restorative justice room in the police station which is designed to be victim-friendly, non-formal, and far from an intimidating atmosphere like the investigation room.
- 3) Cross-sector collaboration with women and children protection institutions, NGOs, and local community leaders to accompany the restorative justice process in a participatory manner.
- 4) Budget support from the central and regional governments so that the implementation of restorative justice is not just a normative discourse, but a real implementation in the criminal justice system.

According to the Progressive Law approach put forward by Satjipto Rahardjo, law is not merely written regulations, but must be seen as a tool to achieve substantive justice. Therefore, limited resources should not be a reason for stagnation, but rather a challenge to encourage institutional transformation and work culture in the police force that is more oriented towards restorative solutions, not just punishment.

d. **The Need for Normative Reformulation in the Domestic Violence Law Regarding Restorative Justice**

The main normative obstacle in the implementation of Restorative Justice by the police in cases of Domestic Violence (KDRT) is the absence of explicit provisions in Law Number 23 of 2004 concerning the Elimination of Domestic Violence regarding the mechanism for settlement based on restorative justice. The PKDRT Law still emphasizes the penal (deterrent) approach and has not opened up sufficient legal space for peaceful resolution between the perpetrator and the victim with the principle of recovery. From a normative legal perspective,

the absence of a specific legal basis for the application of restorative justice in cases of KDRT makes it difficult for law enforcement officers, especially the police, to apply this approach without fear of violating applicable criminal law procedures. This also creates an imbalance in legal interpretation between officers and opens up the potential for violations of victims' rights, especially if the restorative justice process is forced without clear legal protection.

- 1) Revision of the Domestic Violence Law to include normative provisions that explicitly regulate the procedures, conditions and limitations for the application of restorative justice, especially for minor domestic violence cases that do not result in serious injury or the threat of recurrence;
- 2) Preparation of implementing regulations, such as government regulations or joint regulations (Police, Prosecutor's Office, and Ministry of PPA), which detail the procedures for restorative mediation in domestic violence cases;
- 3) Involvement of women's organizations and human rights institutions in the re-legislation process to ensure that restorative justice is implemented with the principles of victim protection and gender equality, not as a form of peaceful coercion.

Satjipto Rahardjo's progressive legal view is that the law must be able to adapt to the needs of society and substantive justice¹. Therefore, the absence of restorative justice norms in the PKDRT Law must be answered with a reformulation of legal policies that open up space for a restorative approach as part of a more humane and solution-oriented justice system.

The author argues that it is necessary to increase the capacity of police personnel through intensive and ongoing training on restorative justice, especially for domestic violence cases. The training should include aspects of victim psychology, gender-sensitive mediation techniques, and trauma healing approaches. In addition, strengthening synergy between related institutions is crucial so that the restorative justice process can run holistically and fairly.

The author believes that restorative justice cannot stand alone without strong regulatory support, especially considering the nature of domestic violence which is very sensitive and prone to abuse. Therefore, the most urgent normative solution is the establishment of clear and binding standard operating procedures (SOPs) for police officers in carrying out restorative justice in domestic violence cases. These SOPs must prioritize the protection and recovery of victims and ensure that the process is fair and transparent. The author also believes that the implementation of restorative justice must always be based on the precautionary principle, where the interests of the victim are the main priority. This is in accordance with existing legal provisions, which stipulate that the resolution process must prevent repeated violence and guarantee the victim's right to receive maximum protection

4. Conclusion

The police have the authority to resolve criminal acts through a restorative justice approach as stipulated in the Regulation of the Republic of Indonesia National Police (Perpol) Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. In cases of

Domestic Violence (KDRT), this authority must still refer to Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which prioritizes the protection of victims. Restorative justice can only be applied if conditions such as agreement by both parties, no serious violence, and guarantees of non-recurrence of the act have been met. Therefore, the implementation of this authority must be carried out carefully, professionally, and still uphold the principles of victim protection and legal justice. The implementation of the restorative justice approach by the police in cases of Domestic Violence (KDRT) faces various obstacles, both in terms of the understanding of the officers, limited regulations, and resistance from victims and perpetrators. Normatively, this approach does not yet have a strong and specific legal umbrella for KDRT cases, so it is vulnerable to misuse. The lack of training and sensitivity of officers to the dynamics of domestic violence is also a serious obstacle. The solution is to strengthen internal police regulations, build SOPs that side with victims, and involve support institutions in every mediation process. With these steps, the implementation of restorative justice can run fairly, effectively, and still protect the rights of victims.

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