

Implementation of Restorative Justice in Cases of Physical Violence Against Children

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Abstract. *This study aims to determine the application of restorative justice in resolving cases of violence against children (physically/psychologically) at the Madiun District Attorney's Office, along with the obstacles and solutions. The approach method used is sociological juridical, the research specification is analytical descriptive. The type and source of data use primary data and secondary data. The data collection method is carried out through field studies and literature studies and the data analysis method is qualitative analysis. The theories for analyzing research are legal system theory, justice theory and progressive legal theory. Based on the research results it can be concluded that the implementation of restorative justice in resolving cases of violence against children (physically/psychologically) at the Madiun District Attorney's Office is in accordance with applicable laws and regulations and Perja Number 15 of 2020 and Circular of the Deputy Attorney General for General Crimes (SE JAM Pidum) No.: 01/E/EJP/02/2022, the process of which after the handover of the suspect and evidence from the investigator, the process involves the perpetrator (suspect) and family, the victim and family, as well as community leaders (village officials) and Polri investigators. Obstacles to the implementation of restorative justice in resolving cases of violence against children (physically/psychologically) at the Madiun District Attorney's Office are limited regulations, limited time, differences in desires between the victim and the suspect, and lack of public understanding regarding restorative justice. In this case, the prosecutor as dominus litis (case handling controller) and also as a facilitator has found a solution so that the case can be resolved based on restorative justice.*

Keywords: Criminal; Dominus; Justice; Restorative.

1. Introduction

Indonesia is a country based on law as stated in Article 3 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945). Therefore, the state has the duty to protect the rights of its citizens from detrimental actions through the application of positive law.¹ According to E. Utrecht, law is a collection of regulations (commands and prohibitions) that regulate the order of a society and therefore must be obeyed by that society.² The state upholds human rights by guaranteeing citizens equal status before the law and government,³ including upholding children's human rights.

Children are a trust that must be protected because they contain inherent dignity, honor and rights as human beings that must be upheld.⁴ Children are prepared to be implementers of sustainable development as well as controllers of a country's future.⁵ Children have strategic roles, ideals, or certain characteristics that will guarantee the continued existence of the nation and state in the future.⁶ Therefore, children need special protection and care, considering their physical and mental maturity and immaturity.⁷

In reality, children who should be cared for, educated, nurtured and protected, sometimes become victims of non-criminal acts⁸ one of them is becoming a victim of physical violence. Violence against children is not a phenomenon that can occur in all racial, economic, and cultural groups, even in families that appear harmonious, violence against children can occur.⁹ This can be seen from the data from the Online Information System for the Protection of Women and Children (Simfoni-PPA) in 2024 the number of victims of child violence in Indonesia

¹Agni Wisnu Brata, Amin Purnawan, Ira Aulia, "Implementation of Restorative Justice in Handling Conflict in Society", *Khaira Ummah Law Journal*, Vol. 12. No. 4, December 2020, p. 2

²Juhaya S. Praja, 2011, *Legal Theory and Its Applications*, Pustaka Setia, Bandung, p. 169

³Anton Rudiyanto, "Fingerprint Function of Murder Perpetrators (Case Study at Tegal Police)", *Khaira Ummah Law Journal*, Volume 12 Number 4 December 2017, p. 928.

⁴Widya Cindy Kirana Sari, *Legal Protection for Children as Victims of Sexual Exploitation Crimes*, *IPMHI Law Journal*, Volume 2 Number 1, 2022, p. 63.

⁵Teguh Ariawan, Siti Rodhiyah Dwi Istinah, and Denny Suwondo, *The Implementation of Child Violence Law which Caused the Fatal Death*, *Law Development Journal*, Volume 4 Issue 1, March 2022, p. 154.

⁶Aris Munandar Pamungkas and Umar Ma'ruf and Bambang Tri Bawono, *The Juridical Analysis of Criminal Responsibility Performer on Children*, *Law Development Journal*, Volume 4 Issue 1, March 2022, p.1

⁷Mohammad Taufik Makarao et al., 2013, *Child Protection Law and the Elimination of Domestic Violence*, Rineka Cipta, Jakarta, p. 14

⁸Rosa Maria and Ratih Mega Puspitasari, *Legal Protection for Perptrators of the Crime of Child Abuse Based on SEMA Number 1 of 2017*, *Ratio Legis Journal*, Volume 2 Number 3, September 2023.

⁹Ibid

reached 15,267. Meanwhile, in the province of East Java, the number of children who were victims of violence reached 1,086 children.¹⁰

Settlement of criminal acts of physical violence against children through the criminal justice process, namely starting from investigation, prosecution to court hearings.¹¹In its development, the resolution of criminal acts has shifted towards non-litigation, known as restorative justice.¹² This concept is different from retributive justice which emphasizes justice in retribution.¹³The concept of restorative justice aims to empower victims, perpetrators, families and communities to correct unlawful acts by using awareness and realization as a basis for improving community life.¹⁴

At the Madiun District Attorney's Office, there are several cases of physical violence against children that have been resolved through restorative justice, because there has been an agreement between the victim and the perpetrator, by considering the consequences of the violence experienced by the child victim. However, the application of restorative justice can have negative impacts, one of which is injustice if the process is not properly regulated, there is no balance between the rights and obligations of the perpetrator and the victim. Therefore, prosecutors are required to be professional in resolving cases so that they are able to realize justice for both parties and ensure public order.

This study aims to determine and analyzing the implementation of restorative justice in resolving cases of physical violence against children at the Madiun District Prosecutor's Office and the obstacles and solutions.

2. Research methods

The approach method in this study is sociological juridical, analytical descriptive research specifications. The types of data used are primary data and secondary data and the data collection method is carried out by means of field studies and literature studies. The data analysis method is qualitative analysis.

3. Results and Discussion

3.1. Implementation of Restorative Justice in Cases of Physical Violence Against Children at the Madiun District Prosecutor's Office

¹⁰Louis Rika Stevani, Madiun City Government Suppresses Cases of Violence Against Women and Children, <https://jatim.antaranews.com/>, accessed January 20, 2025

¹¹Syaiful Bakhri, 2015, *Indonesian Criminal Justice System*, Student Library, Yogyakarta, p. 19.

¹²Arif Septria Hendra Saputra, Gunarto, Lathifah Hanim, Implementation of Restorative Justice as an Alternative to Resolving Criminal Acts of Assault at the Lasem Police Criminal Investigation Unit, *Jurnal Daulat Hukum*, Volume 1 Number 1, March 2018, p. 185.

¹³Ridwan Mansyur, Restorative Justice as the Goal of Implementing Diversion in the Juvenile Criminal Justice System, <https://www.pn-bantul.go.id>, accessed January 20, 2025

¹⁴Nikmah Rosidah, 2014, *Legal Culture of Juvenile Judges in Indonesia*, Pustaka Magister, Semarang, p. 103.

Good law ideally provides something more than just legal procedures, competent and fair. For that, responsive law is needed as an answer to the community's desire for the implementation of law based on living law in society through restorative justice.¹⁵ Restorative justice is an alternative in the criminal justice system that focuses on victim recovery, perpetrator accountability and community involvement in resolving conflicts.

In the conventional criminal justice system, perpetrators of physical violence against children are punished through a retributive approach. However, with the development of the concept of restorative justice, in certain cases, especially minor violence, it is resolved through a restorative approach. This aims to ensure recovery for victims and rehabilitation for perpetrators.¹⁶

The restorative justice approach implemented by the Prosecutor's Office balances the interests of restoring the victim's condition, and also improving the perpetrator's self, the result of which is being able to realize justice, as well as improving the condition of each party, so that it is in line with the community's sense of justice and there is no longer any law enforcement that is not beneficial.¹⁷

Based on the results of research at the Madiun District Attorney's Office, it is still possible to resolve criminal acts of physical violence against children based on restorative justice. Cases that can be resolved based on restorative justice are usually criminal acts of physical violence that result in minor injuries and still allow for mediation between the perpetrator, victim, and family. In addition, there are also criminal acts that are threatened with imprisonment of less than 5 (five) years. The legal basis for the application of restorative justice in resolving criminal acts of physical violence against children is Law No. 16 of 2004 as amended by Law No. 11 of 2021, Perja Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, and Circular Letter of JAM-Pidum Number: 01/E/EJP/02/2022 dated February 10, 2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice.¹⁸

The implementation of restorative justice in cases of physical violence against children is carried out through several stages, namely: ¹⁹

- 1) Case file research

¹⁵East Java High Prosecutor's Office, Attorney General ST Burhanuddin: Restorative Justice is an Alternative in Resolving Cases, <https://kejati-jatim.go.id>, accessed 20 February 2025.

¹⁶Diyariesta Caesari, Subekti, Implementation of Restorative Justice in Resolving Criminal Acts of Sexual Violence Against Children in Magetan Regency, *Recidive*, Volume 11 Issue 3, 2022, p. 315.

¹⁷Ibid

¹⁸Results of an interview with Mustofa, as Head of Criminal Investigation at the Madiun District Attorney's Office

¹⁹Results of an interview with Bram Dhananjaya, as Head of the Pratut Sub-Division of the Madiun District Attorney's Office, January 6, 2025.

Case file research is carried out after the case file is submitted by the investigator. In this case, the investigator has obtained a picture of the case that occurred and can plan to resolve it based on restorative justice.

2) Appointment of Public Prosecutor (JPU) as facilitator

Criminal cases that meet the requirements to be resolved based on restorative justice, then a Letter of Order is issued to facilitate the peace process.

3) Peace facilitation

The public prosecutor as a facilitator invites the suspect, victim, victim's family and suspect's family, community leaders, and other interested parties (investigators & Babinsa) to carry out penal mediation in order to reach an agreement.

4) Peace process

The peace process is carried out at the Restorative Justice House (Omah Udar), either at the prosecutor's office or at another predetermined location.

5) Preparation of minutes of the implementation of peace

After an agreement (peace), a peace implementation report is made which is signed by the suspect, victim and witness. The peace implementation report is also evidence/receipt of the implementation of the peace agreement from the suspect to the victim. The peace agreement report explains that it has been implemented with evidence/documents/witness statements.

6) Expose the case

The public prosecutor (facilitator) exposes the case to the Assistant for General Crimes at the East Java High Prosecutor's Office and continues the exposure with the Attorney General's Office's Criminal Investigation Unit to obtain approval to terminate the prosecution.

7) Decision to terminate prosecution

Based on the letter of request for Termination of Prosecution, if the East Java High Prosecutor's Office and the Attorney General's Office agree, then the Madiun District Prosecutor's Office will issue a Case Settlement Decree (SKPP) based on Restorative Justice within a maximum of 2 (two) days from the approval.

8) Notification to investigators and courts

The public prosecutor (facilitator) made a notification letter to the investigator who sent the case files and also the Madiun District Court that the case in the name of suspect SR had been resolved based on restorative justice.

9) Announcement

Announcement is an official notification from the Prosecutor's Office regarding the termination of prosecution of a criminal act in this case the crime of physical violence against children which is resolved based on restorative justice. The decision letter to terminate prosecution is announced to the public. In this case, the Madiun District Prosecutor's Office announced the termination of prosecution through a press release or press conference.

Based on the description above, it can be seen that the implementation of restorative justice in resolving criminal acts of violence against children (physically/psychologically) at the Madiun District Attorney's Office is in accordance with Perja Number 15 of 2020 and SE JAM Pidum No.: 01/EJP/2/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice. In the case example, the reason for carrying out restorative justice is because the requirements for restorative justice have been met as regulated in Article 4 and Article 5 of Perja Number 15 of 2020. After the requirements for restorative justice have been met, the public prosecutor as the facilitator offers peace efforts to the victim and suspect. This is in line with Article 7 of Perja Number 15 of 2020. Furthermore, an official summons is carried out with a summons letter to the parties, both the suspect, the victim, and the community for the implementation of mediation. This is in line with the provisions of Article 8 of Perja Number 15 of 2020. The peace process was carried out at the RJ House (Omah Udar) of the Jeruk Gulung Village Hall, Belerejo District, Madiun Regency. During the peace process, it was carried out voluntarily without coercion. The prosecutor has also asked for responses from each party. This is in line with Article 9 of Perja Number 15 of 2020.

3.2. Obstacles to the Implementation of Restorative Justice in Cases of Physical Violence Against Children at the Madiun District Prosecutor's Office and Their Solutions

Restorative Justice is a criminal case resolution that offers a more humanistic approach. However, its implementation in the field still faces various obstacles. This is what happened at the Madiun District Attorney's Office in resolving cases of violence against children (physically/psychologically), there were several obstacles, namely:²⁰

1) Regulatory limitations

²⁰Results of an interview with Bram Dhananjaya, as Head of the Pratut Sub-Division of the Madiun District Attorney's Office, January 6, 2025

Restorative justice aims to resolve criminal cases with an approach that is more oriented towards victim recovery, perpetrator accountability, and social restoration than just punishment. However, in this case, it is constrained by the limitations of restorative justice regulations at the prosecution stage. The legal basis for resolving criminal cases based on restorative justice at the prosecution stage is regulated in Perja Number 15 of 2020 and SE JAM Pidum No. 01/EJP/2/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice SE JAM Pidum No. 01/EJP/2/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice which is an internal regulation that only binds the prosecutor's office and there is no law that explicitly regulates the implementation of restorative justice as a whole in the criminal justice system.

In Perja Number 15 of 2020, it is limited that criminal acts that can be resolved based on restorative justice are those that are subject to a sentence of less than 5 (five) years. Restorative justice is very dependent on the agreement of each party, namely the victim and the perpetrator. So if there is no agreement from the parties, then restorative justice cannot be carried out and the case must be prosecuted.

The solution to overcome these obstacles is the need for regulatory strengthening, namely changes to the Criminal Procedure Code to include the formulation of articles regarding case resolution based on restorative justice. In this case, a revision has been made to the explanation of Article 37 paragraph (1) of Law Number 16 of 2004 concerning the Prosecutor's Office as amended by Law Number 11 of 2021 which states that the Attorney General is responsible for prosecution carried out independently for the sake of justice based on law and conscience, in the explanation of Article 37 paragraph (1) it is stated that as a manifestation of restorative justice, prosecution is carried out by considering legal certainty (*rechtmatigheids*) and its benefits (*doelmatigheids*).

2) Time constraints

Based on the provisions of Article 25 paragraph (1) and paragraph (2) of the Criminal Procedure Code, the time limit for detaining a suspect at the prosecution stage is 20 (twenty) days and can be extended to 30 (thirty) days. Meanwhile, the time limit for resolving a case based on restorative justice based on the provisions of Article 9 paragraph (5) of Perja Number 15 of 2020 is 14 (fourteen) days since the transfer of responsibility for the suspect and evidence (stage 2). Thus, the public prosecutor must complete restorative justice within 14 (fourteen) days during the detention period. The short time is an obstacle, considering that the prosecutor must summon the parties (the victim and family, the suspect and family, and community leaders) which takes time. Furthermore, the mediation process and the preparation of a report to the Attorney General's Office until the issuance of the Decree on Termination of

Prosecution and the deadline for implementing the peace agreement, both with and without conditions. After the mediation process is complete, the administration is immediately made and then compiled to be reported in stages, both to the provincial level (East Java High Prosecutor's Office) and the Attorney General's Office (Jakarta). If mediation is unsuccessful, the case must proceed to the prosecution stage with a deadline of less than 20 (twenty) days, so that the time available to the prosecutor is very limited. If there is a case whose process is protracted, it will hinder the legal process and exceed the detention period.

The solution to overcome the above obstacles is that the resolution of cases of violence against children (physically/psychologically) based on restorative justice must be carried out quickly and must not exceed the time limit in the prosecution process. In this case, when the case files are submitted by the investigator, and after the file research is carried out, the prosecutor already has and has carried out a picture (profiling) for and whether a settlement based on restorative justice can be carried out. Thus, at the time of the submission of stage 2 (submission of evidence and suspects) from the investigator, the prosecutor immediately offers a peace effort to the parties which is then facilitated by summoning the parties simultaneously.

3) Differences in wishes between the victim and the suspect

One of the requirements for restorative justice to be carried out is an agreement between the victim and the perpetrator of the crime. In the mediation process, sometimes there are desires from each party that do not match, making it difficult to reach a common ground which can result in the occurrence and implementation of a caucus by the facilitator prosecutor, this condition can slow down the process of achieving peace.

The solution to overcome these obstacles is that the prosecutor as a facilitator in the peace process must be able to facilitate the implementation of the peace process and know the processes in the peace stages. The agreement reached, whether with conditions or not, must still be accommodated. In the event that there is no meeting point, the prosecutor must take a stance to stop the peace process (bring down the Caucus) first by returning it to the parties, then the prosecutor offers a solution from what has been heard from each party. After the solution offered can be accepted, then they are brought together again and until a peace agreement is reached.

4) Lack of public understanding regarding restorative justice

The lack of public understanding of the concept of restorative justice is one of the obstacles in the implementation of restorative justice which emphasizes the resolution of legal conflicts with a focus on victim recovery, perpetrator accountability and reconciliation, not just punishment. However, many people still do not understand the concept of restorative justice. Some people are

skeptical about restorative justice because they consider it a loophole for perpetrators to escape punishment. In addition, there is also a stigma that out-of-court settlements can lead to injustice, especially if there is pressure or an imbalance of power between the perpetrator and the victim.

The solution to overcome these obstacles is to encourage public trust in the mediation mechanism by showing the success of cases that have been resolved through restorative justice so that the public has more confidence in restorative justice. In addition, it also ensures that the mediation process is carried out transparently and fairly, without pressure or coercion from any party by involving community leaders, religious leaders or traditional leaders in the mediation process. This is because religious leaders, community leaders and traditional leaders play an important role in shaping the mindset of the community. If these leaders support restorative justice, the community will more easily accept the concept of restorative justice in resolving criminal cases.

Based on the description above, it can be seen that there are several obstacles in the application of restorative justice in resolving criminal acts of violence against children (physically/psychologically) which can hinder the process of resolving cases based on restorative justice. With the right solution, these obstacles can be overcome and case resolution based on restorative justice can be implemented.

4. Conclusion

The implementation of restorative justice in resolving cases of physical violence against children at the Madiun District Attorney's Office has been in accordance with applicable laws and regulations and Perja Number 15 of 2020 and Circular of the Deputy Attorney General for General Crimes (SE JAM Pidum) No.: 01 / E / EJP / 02/2022, but there are still several obstacles, namely limited regulations, limited time, differences in desires between the victim and the suspect, lack of public understanding regarding restorative justice. In this case, the prosecutor as dominus litis (case handling controller) and also as a facilitator has found a solution so that the case can be resolved based on restorative justice.

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