

## The Conflict between the Objectives of Restorative Justice and its Implementation in Marriage Cases of Rape Victims and Perpetrators in Indonesia

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### ABSTRACT

This research aims to examine the conflict between the goals of restorative justice and its implementation in marriage cases involving rape victims and perpetrators in Indonesia. Using a desk-based research method, this study analyzes legal frameworks, case studies, and relevant literature to understand the dynamics of restorative justice in this context. The results show that many sexual violence cases are inadequately resolved, with a significant percentage of victims not receiving satisfactory outcomes, often leading to forced marriages or financial compensation instead of justice. This research concludes that restorative justice practices should not be applied to rape cases and law enforcement officials must understand the concept and purpose of restorative justice in implementing it. Law enforcement in rape cases should prioritize recovery and justice for victims.

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## INTRODUCTION

Sexual harassment, as a form of criminal behavior, remains a pervasive issue across various countries, including Indonesia. Indonesia ranks among the countries with the highest incidence of child sexual abuse victims in Asia. As of January 1, 2024, the SIMFONI PPA (Online Information System for the Protection of Women and Children) has documented a total of 20,157 cases of rape, which include 4,401 male victims and 17,466 female victims.

Social scientists, in their conceptualization of sexual harassment, have often focused on the specific behaviors and subjective experiences of individuals who have either directly encountered or, in some studies, witnessed instances of sexual harassment. This focus is evident in definitions such as the one provided by Fitzgerald et al. (1997), which describes sexual harassment as "unwanted sex-related conduct in the workplace that the recipient perceives as offensive, beyond their capacity to endure, or threatening to their well-being" (p. 15). A more contemporary definition, applicable to all genders, frames sexual or "sex-based" harassment as conduct that "disrespects, degrades, or humiliates a person on the basis of sex" (Berdahl, 2007, p. 644). Berdahl further posits that sexual harassment functions as an expression of power and control, serving as a mechanism to preserve or reinforce social status based on gender. This dynamic is reflective of entrenched gender hierarchies, which privilege men, thereby explaining why men are statistically more likely to perpetrate sexual harassment than women.

In the context of academic discourse, sexual harassment is employed as an umbrella term, encompassing several distinct types of behavior. Fitzgerald's well-validated three-part model of sexual harassment is widely regarded as a comprehensive framework for understanding the phenomenon (Fitzgerald et al., 1995, 1997b; Gelfand et al., 1995). This model, alongside its corresponding measurement instrument—the Sexual Experience Questionnaire (SEQ)—has been extensively utilized in studies across different genders, ethnicities, nations, and occupations (e.g., Cortina, 2001; Fitzgerald et al., 1988; Gelfand et al., 1995; Stark et al., 2002; Waldo et al., 1998). The model delineates three overarching categories of behavior: sexual coercion, unwanted sexual attention, and gender harassment. Sexual coercion involves making job-related conditions contingent upon sexual compliance, whether explicitly or implicitly. This includes promises of professional rewards in exchange for sexual favors (e.g., offering a job conditional on sexual activity) or threats of professional harm (e.g., demotion or termination) for non-compliance. Although sexual coercion is often the most commonly associated form of harassment, it is statistically the least frequent. The second form, unwanted sexual attention, encompasses expressions of sexual interest that are undesired, offensive, and potentially frightening or traumatic for the subject. This can manifest as unsolicited sexual conversations, non-consensual physical contact, forced kissing, persistent pressure to engage in romantic or sexual activities, and acts of sexual violence.

Sexual harassment and sexual violence are often misconceived as distinct phenomena; however, the latter is, in fact, a subset of the former and falls within the broader category of unwanted sexual attention (Fitzgerald, 2019;

Fitzgerald et al., 1988). For instance, if a hotel manager commits rape against a room attendant, the incident constitutes both sexual assault—a criminal offense—and sexual harassment, as it violates civil rights within the workplace. Additionally, gender harassment, a third dimension of sexual harassment, is not directed at obtaining sexual cooperation. Instead, it manifests as behavior intended to demean, belittle, or express hostility based on an individual's gender or sex (Leskinen & Cortina, 2014; Leskinen et al., 2011). Examples of such harassment include derogatory remarks about women's capabilities (e.g., "women don't belong in science") or negative stereotypes about men (e.g., "men are terrible nurses"). The presence of sexually degrading imagery and language further contributes to this hostility, often seen through obscene graffiti, graphic cartoons, or sexually explicit insults displayed in public spaces such as blackboards.

Sexual violence constitutes a breach of human rights, a violation of human dignity, and a form of discrimination that necessitates eradication (Commentary to Law No. 12 of 2022). Article 1, paragraph 1, of Law No. 12 of 2022 concerning Sexual Violence Offenses (TPKS) defines sexual violence offenses as all actions that fulfill the criteria of criminal acts as delineated by this legislation. In instances where this law does not provide specific regulations, existing legal provisions apply. Previously, the academic discourse surrounding the TPKS law identified three forms of sexual violence, which, while not exclusively sexual in nature, are governed by current legal norms: rape, sexual exploitation, and human trafficking (Pohlman, 2017). However, the legal frameworks pertaining to these three categories of sexual violence are markedly inadequate when contrasted with the broader spectrum of recognized sexual violence types.

According to the report from the National Commission on Violence Against Women, there are 15 distinct types of sexual violence (Komnas Perempuan, 2013): 1) rape; 2) sexual intimidation, including threats or attempts of rape; 3) sexual harassment; 4) sexual exploitation; 5) trafficking of women for sexual purposes; 6) forced prostitution; 7) sexual slavery; 8) forced marriage, including enforced divorce; 9) forced pregnancy; 10) forced abortion; 11) forced sterilization and contraception; 12) sexual torture; 13) inhumane treatment with sexual undertones; 14) the perpetuation of harmful or discriminatory sexual traditions against women; and 15) sexual control, encompassing discriminatory regulations rooted in morality or religion. This identification of 15 types of sexual violence is based on a comprehensive review conducted over a 15-year period (1998-2013) by the National Commission on Violence Against Women. According to Komnas Perempuan, this enumeration is not exhaustive, as there may exist additional forms of sexual violence that remain unrecognized due to insufficient information (Komnas Perempuan, 2013). Of these 15 types, however, only nine are classified as crimes under the TPKS Law. Following the enactment of the TPKS Law, the identified criminal acts of sexual violence comprise: non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic sexual harassment.

In Indonesia, cases of sexual violence, particularly rape, often face challenges where resolutions do not adequately support victims. Many cases are settled outside of court through means such as compensating the victim, negotiating peace with their family, or even marrying the victim to the perpetrator. These settlement methods reflect aspects of restorative justice, which typically arise at later stages of the police reporting process.

## LITERATURE REVIEW

### *Rape*

One form of sexual violence classified as a criminal offense is rape. According to Article 285 of the Indonesian Criminal Code, the act of compelling a woman to engage in sexual intercourse through the use of violence or threats, outside the bounds of marriage, is punishable by a maximum imprisonment of 12 years. The article stipulates that rape is defined as non-consensual intercourse occurring outside of marriage. Furthermore, the legal interpretation of sexual intercourse in this context involves the act of penetration; if penetration does not occur, the offense is categorized as sexual harassment or abuse rather than rape. These provisions align with Soesilo's interpretation, which defines rape in criminal law as the physical union of male and female genitals, primarily with the purpose of procreation. Therefore, the legal consequences for rape vary based on specific factors, and the severity of the punishment imposed on the perpetrator is determined by certain legal criteria. Rape, as defined in Black's Law Dictionary, can be understood in three distinct forms, each based on the specific elements that constitute the crime:

1. Rape is characterized as an unlawful act of sexual intercourse occurring without the woman's consent. This definition highlights the presence of a dominant male party and prohibits sexual relations between a man and a woman in the absence of the woman's voluntary agreement.
2. Rape involves unlawful sexual intercourse where no legal relationship exists between the parties, and the act is carried out forcibly by the man against the woman's will. This formulation emphasizes the absence of legal ties and the use of force in the sexual act against the woman's wishes.
3. Rape refers to a man engaging in a forced sexual act with a woman, where there is neither a legal marital relationship nor her consent, and the woman is subjected to threats or intimidation, causing her fear. This definition closely aligns with the commentary on Article 285 of the Penal Code, underscoring the coercive nature of the offense. In each of these definitions, the unlawful, non-consensual, and coercive nature of the act forms the central elements of the crime.

### *Criminal Justice System (CJS)*

The criminal justice system can be conceptualized as a structured network of institutions, processes, and individuals working collaboratively to uphold the law, maintain societal order, and ensure justice. This system comprises essential components such as law enforcement, the judiciary, and corrections, encompassing activities such as arrest procedures, adjudication of

guilt or innocence, and the imposition of appropriate sanctions for criminal conduct. The overarching objective is to uphold the rule of law, safeguard individual rights, and promote public safety (Feeley, 1973). Feeley identifies two principal organizational models within the criminal justice system:

1. **Goal Model:** This model prioritizes "organizational effectiveness," wherein the success of the system is evaluated based on the attainment of predefined objectives, such as reducing crime, ensuring public safety, and delivering justice. It emphasizes clearly defined goals and outcomes, assessing system performance by its capacity to meet these objectives. This model typically adopts a bureaucratic approach, characterized by strict adherence to established rules and procedures.
2. **Functional-Systems Model:** In contrast, this model views the criminal justice system as a complex web of interactions among various actors (e.g., police, prosecutors, defense attorneys, and judges), with a focus on cooperation, negotiation, and adaptability rather than rigid compliance with formal rules. The model emphasizes the behavior and relationships of the actors involved, acknowledging that individual decisions are shaped by various factors, including social dynamics and informal practices. It seeks to explain how the system functions in practice, as opposed to how it is expected to operate according to formal regulations.

In the context of criminal punishment, several theories propose different primary purposes for imposing penalties on offenders. First, Retribution theory, it holds that punishment is an absolute and necessary legal consequence, serving as retribution for the crime committed. In this framework, the justification for punishment stems from the occurrence of the crime itself. Because the crime inflicts suffering on the victim, the offender must endure an equivalent form of suffering through punishment. This theory disregards the broader societal impact of punishment, focusing solely on moral retribution. The act of punishment is viewed as a moral imperative, irrespective of any potential consequences beyond the individual case. This perspective is closely aligned with the classical notion of retaliation, often encapsulated in the concept of *lex talionis*. Second, Deterrence Theory, In contrast to the retributive view, the deterrence theory posits that punishment serves not only as retribution but also as a tool for achieving broader societal goals, specifically crime prevention. As articulated by Muladi and Barda Nawawi Arif, the imposition of punishment is not solely a response to the commission of a crime; it is intended to prevent future crimes by discouraging both the perpetrator and others in society from engaging in similar criminal conduct. The primary objective of this theory is to create a deterrent effect, reducing the likelihood of future criminal behavior. Third, Rehabilitation Theory, though often associated with deterrence, is distinct in its focus. While deterrence emphasizes preventing future crimes, rehabilitation aims at reforming the offender. According to Andrew Ashworth, rehabilitation's goal is to restore and improve offenders, enabling them to reintegrate into society as law-abiding citizens. This theory promotes the personal development of offenders through various programs designed to support their reform and societal reintegration, thus highlighting

the transformative potential of punishment. Fourth, the incapacitation theory centres on restricting the offender's ability to commit further crimes by removing them from society. This is particularly relevant in cases involving highly dangerous individuals, such as terrorists or perpetrators of genocide, who may be subjected to severe penalties, including the death penalty, to protect the public from further harm. Although sometimes associated with deterrence, incapacitation has a distinct purpose: to safeguard society from individuals deemed incapable of rehabilitation. Fifth, resocialization theory. According to Valinka and Ute, the resocialization theory focuses on reintegrating offenders into society by addressing their social needs. This approach emphasizes respect for human rights and the importance of providing opportunities for offenders to rehabilitate. However, this theory is often criticized for its practical application, as it is generally considered most relevant toward the end of an offender's sentence when they are being prepared for reintegration into society. Sixth, Theories of Reparation, Restitution, and Compensation, these theories emphasize compensating for the harm caused by criminal acts. Reparation refers to actions taken to make amends for the damage inflicted, while restitution involves restoring rights or returning property to its rightful owner. Compensation, on the other hand, involves court-ordered payments from the offender to the victim to address the losses suffered. Collectively, these theories aim to repair both the physical and moral harm caused by criminal offenses. Seventh, Pallegriano Rossi introduced the integrative theory, also known as *vereninging toerieen*, within the European continental legal tradition. Rossi recognizes retribution as a foundational principle of punishment, but he also argues that punishment serves additional purposes, including deterrence, rehabilitation, and the restoration of social order. By integrating these various objectives, the theory seeks to provide a more comprehensive and balanced approach to the administration of justice.

The Ministry of Law and Human Rights, through the Indonesian National Law Development Agency (2008), identifies two perspectives in defining the punishment system. The first perspective, from a functional viewpoint, defines the punishment system as the entire framework of legislation aimed at the functionalization, operationalization, and concretization of punishment. This encompasses the complete set of laws governing how criminal law is enforced and operationalized, ultimately leading to the imposition of sanctions on individuals who have violated the law. In this context, the punishment system is seen as the mechanism that transforms legal norms into concrete actions, resulting in punitive measures against offenders. The second perspective, also from a functional angle, similarly views the punishment system as the total legislative framework that operationalizes criminal sanctions. This interpretation focuses on how the legal system is designed to function practically, ensuring that criminal laws are enforced and applied in real-world scenarios to hold individuals accountable. The emphasis here is on the practical implementation of legal norms and the mechanisms by which offenders are brought to justice and sanctioned according to the law.

Furthermore, the objectives of punishment within Indonesian criminal law are articulated in Article 51 of Law No. 1 of 2023 concerning the Criminal Code. These objectives include, first and foremost, the prevention of criminal offenses through the enforcement of legal norms aimed at the protection of society. Additionally, the law seeks to rehabilitate offenders by providing them with guidance and supervision, with the goal of transforming them into productive and law-abiding citizens. Another key aim is to resolve the conflicts that arise from criminal acts, restoring societal balance and fostering peace and tranquillity. Lastly, the punishment system is designed to cultivate a sense of remorse in offenders and to alleviate their guilt, thereby contributing to their moral and social rehabilitation.

### *Restorative Justice*

Restorative justice is a method of addressing criminal offenses without resorting to formal legal proceedings or incarceration. This approach emphasizes the restoration of the status quo prior to the offense, aiming to prevent future occurrences by facilitating dialogue and consensus between the involved parties, while also involving law enforcement and adhering to the principles of justice (Ningrum, 2023, p. 166). As defined by criminologist Tony F. Marshall (Susanti, 2021, p. 22), restorative justice entails a collaborative process where stakeholders in a specific offense convene to collectively address how to remedy the repercussions of that offense, with an eye toward future benefits. The traditional punitive focus of the criminal justice system is transformed into a process of dialogue and mediation to achieve a resolution that is more equitable for both victims and offenders. This restoration of relationships is predicated on mutual consent between the victim and the perpetrator, allowing the victim to articulate the harm suffered while granting the perpetrator an opportunity to make reparations through compensation, reconciliation, community service, or other mutually agreed-upon arrangements.

### **METHODOLOGY**

The research was performed by applying library methods with a systematic approach to facilitate understanding of the subject matter. The literature review focused on locating theoretical references relevant to the subject of the article in relation to the case or problem faced. The author performed the data collection process by collecting both written and electronic documents from a variety of sources, including journals, articles, and papers. The collected data were compared and selected to be presented in this document. To support this scientific article, the Internet was also used to search for library materials relevant to the current situation regarding criminal cases of rape. While the type of approach used is descriptive, the legal materials used include primary and secondary legal materials. Primary legal materials refer to legal regulations relevant to the study, while secondary legal materials include books, journals, and scientific articles related to the topic under study.

## RESEARCH RESULT

In general, the resolution of sexual crimes through criminal sanctions or litigation primarily focuses on the perpetrator. Conversely, the repercussions of the offense persistently affect the victims. Even when the maximum penalties are imposed on the perpetrator, the victim's condition cannot be restored to its prior state. According to research published by the Indonesian Judicial Research Society (IJRS), titled "Data and Facts on Sexual Violence in Indonesia 2021," the findings indicate that the settlement of sexual violence cases often fails to adequately address the needs of the victims. Specifically, 57.0% of respondents reported not receiving any form of settlement; 39.9% of cases were resolved through financial compensation; 26.2% were settled by the victim marrying the perpetrator; 23.8% were resolved through reconciliation or familial interventions; and 19.2% involved the perpetrator being imprisoned.

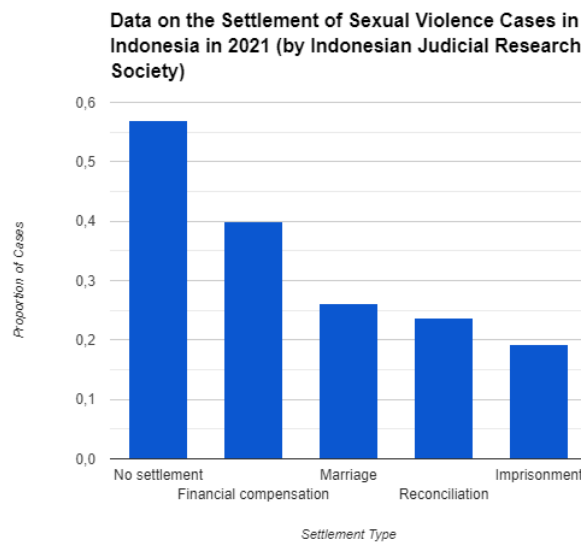


Figure 1 Data on the Number of Sexual Violence Case Settlements in Indonesia for 2021

Source: Indonesian Judicial Research Society

Later in 2022, the Gender Equality Barometer Quantitative Research Report, conducted in collaboration between the Indonesian Justice Research Society (IJRS) and the International NGO Forum on Indonesian Development (INFID), revealed that nearly 60% of respondents who had experienced sexual violence did not achieve a satisfactory resolution. Of those surveyed, approximately 39.9% had their cases resolved through financial compensation from the perpetrator, while 26.2% resulted in the victim marrying the perpetrator. These statistics imply that the majority of sexual violence cases are addressed through the application of restorative justice principles.

## DISCUSSION

### *Restorative Justice Under Indonesian Law*

Ultimately, restorative justice seeks to rehabilitate the conditions of the victims, offenders, and the broader community by fostering resolutions that

transcend mere punitive measures against offenders. Misinterpretations surrounding the implementation of restorative justice principles in cases of sexual violence in Indonesia can lead to considerable detriment to victims. Consequently, victims may be denied their right to recovery from their traumatic experiences, while perpetrators evade the criminal liabilities that they rightfully face. Hence, this study seeks to investigate the appropriate application and limitations of restorative justice in cases of sexual violence in Indonesia, particularly concerning instances of rape, in alignment with the fundamental principles of justice within the legal framework.

The National Police Regulation of the Republic of Indonesia concerning the Handling of Criminal Acts through Restorative Justice, commonly referred to as the Police Regulation of the Republic of Indonesia, represents a significant initiative by the Indonesian National Police aimed at resolving criminal offenses through a restorative justice framework that prioritizes societal restoration. Addressing criminal acts without a punitive focus is considered a legal imperative for the community. The legal foundation for the application of a restorative justice approach encompasses several key regulations. Firstly, the National Police Regulation (Perkap) No. 8 of 2021 establishes the guidelines for the management of criminal acts grounded in restorative justice principles. Secondly, the Attorney General Regulation No. 15 of 2020 emphasizes the cessation of prosecutions in alignment with this restorative approach. Furthermore, the Criminal Code (KUHP) No. 1 of 2023 provides sentencing guidelines that must incorporate considerations of forgiveness from the victim or their family.

Restorative justice transcends mere punitive measures aimed at sanctioning individuals who have engaged in criminal behavior; it is a comprehensive approach that warrants serious consideration. Within the framework of the criminal justice system, restorative justice is guided by distinct objectives. Primarily, it seeks to repair or compensate victims for the harm they have endured while fostering recognition and accountability among offenders regarding the detrimental effects of their actions on both the victims and the broader community. Theoretically, restorative justice serves as a foundational principle for resolving disputes outside of traditional court proceedings, facilitating mediation and deliberation to achieve consensus and agreement that is deemed the most favorable outcome for all parties involved. Its overarching aim is to restore and enhance societal welfare, thereby fostering the improvement of individuals as integral members of the community. This is achieved through mechanisms that encourage direct interaction between offenders and victims, allowing the former to fulfill their responsibility to compensate for the damages inflicted upon the latter. The concept itself is designed to create an environment conducive to dialogue and collaboration between the perpetrator and the victim. Ultimately, it is anticipated that this engagement will lead to constructive efforts to ameliorate existing conditions, with the expectation that the offender will reflect on their actions and exhibit behavioral changes, enabling their reintegration into society imbued with a sense of remorse and a commitment to personal growth.

According to Setyo Utomo, restorative justice encompasses several key characteristics that warrant careful consideration. It frames crime as a social phenomenon rather than a mere violation of criminal law. In this context, crime is perceived as an action that can inflict harm on individuals and disrupt social relationships. While criminal law traditionally regards crime as a matter for the state to adjudicate, it may also be subject to conventional sanctions (Arief & Amabasari, Syahputra, 2023). Muladi (1995: 129) elaborates on this concept, highlighting that restorative justice emphasizes problem-solving, accountability, and future obligations. The establishment of norms occurs through dialogue and negotiation, with reparations serving as a mechanism for achieving reconciliation, where restoration is the primary aim. Justice is viewed as a relational concept, evaluated based on its outcomes. Additionally, attention is directed toward healing the social wounds inflicted by criminal acts. In this framework, the community plays a facilitating role in the restorative process, and both victims and perpetrators are recognized for their roles in identifying issues and addressing the rights and needs of victims. Responsibility for offenders is formulated based on an understanding of their behavior and is aimed at collaboratively finding the most effective solutions. Furthermore, criminal behavior is contextualized within a broader framework that incorporates moral, social, and economic dimensions.

Soerjono Soekanto identified five factors that influence the enforcement of law: (1) legal factors, (2) law enforcement officer factors, (3) factors related to equipment and facilities, (4) community factors, and (5) cultural factors (Soekanto, 2014). The primary objectives of law enforcement are to ensure legal certainty, promote social welfare, and uphold justice. In the context of rape cases, one prevalent misconception regarding the resolution process is the application of restorative justice principles that fail to adequately consider the victim's perspective. This oversight undermines the fundamental essence of restorative justice, which seeks to restore justice for both the victim and the perpetrator.

### ***Case Study of Conflict between Restorative Justice Goals and Its Implementation***

One of examplecase in Indonesia, in 2019, a female honorary employee of the Ministry of Cooperatives and Small and Medium Enterprises (Kemenkop UKM) became a victim of rape committed by four colleagues, one of whom held the position of civil servant (PNS). A year later, the police discontinued the case, instead suggesting that the victim marry one of the assailants. This action by law enforcement officials to terminate a criminal case through a conciliatory approach is classified as restorative justice. As articulated in the National Police Regulation of the Republic of Indonesia concerning the Handling of Criminal Acts Based on Restorative Justice, Regulation No. 8 of 2021, restorative justice denotes a methodology for resolving criminal offenses that encompasses the perpetrator, the victim, their families, and relevant community stakeholders, including religious and traditional authorities. The primary objective of this approach is to achieve an equitable resolution through a process of reconciliation, with a focus on reinstating the circumstances to their original

state prior to the commission of the offense. As indicated by Hosnah et al. (2023:363), adherence to the principles of legality and substantive law as practiced in Indonesia is essential for effective law enforcement. Consequently, in the aforementioned case, a just resolution is unattainable within this framework, as it contradicts the fundamental objectives of restorative justice and undermines the aims of law enforcement, which include ensuring legal certainty, promoting social benefit, and achieving tangible justice. As a result, the enforcement of law in such rape cases proves ineffective and fails to deliver justice to the victims. Mertokusumo, as cited in Safitri et al. (2023:30), posits that when legal frameworks align with legal ideals, they gain authority and relevance within society, a notion that constitutes the philosophical foundation of law. In contemporary criminal jurisprudence, the law transcends mere legal certainty, primarily aiming to safeguard society from criminal activities (Hiariej, 2016).

Kathleen Daly and Julie Stubbs have raised concerns regarding restorative justice, suggesting that it may implicitly endorse the behaviors of perpetrators of domestic and sexual violence. This critique is further informed by the limitations associated with the implementation of restorative justice within patriarchal cultural contexts, wherein women are often situated in vulnerable and inequitable positions. Similarly, Muladi has noted that proponents of retributive justice have also expressed reservations about restorative justice.

These critiques are articulated through several key points (Muladi, 2012):

1. Restorative justice places excessive emphasis on rehabilitation;
2. It appears to condone acts of violence, particularly those directed at women and children;
3. It conflicts with the principle of transparent public justice and the provision of legal protections within private forums;
4. It tends to be lenient toward criminal behavior, thereby neglecting the societal demand for retribution;
5. It undermines traditional legal standards by relying on community justice and informal assessments; The variability in outcomes within the restorative justice framework undermines the legal objective of ensuring consistent and equitable treatment for similar cases.

The Supreme Court's Guidelines on Restorative Justice stipulate that the restorative justice framework is applicable solely to the resolution of cases involving minor offenses, specifically those enumerated in Articles 364, 373, 379, 384, 407, and 482 of the Criminal Code, which carry penalties of imprisonment for a maximum of three months or a fine of 2.5 million IDR. This framework also extends to cases involving women in conflict with the law, minors, and drug-related offenses. The Supreme Court has delineated these parameters within the Guidelines for the Implementation of Restorative Justice in the General Court Environment, which explicitly identifies criminal acts eligible for resolution via the restorative justice approach, including those pertaining to women facing legal challenges. However, concerning sexual violence offenses, Article 23 of the Law on Sexual Violence Crimes (TPKS) explicitly states that such cases, with the exception of those involving juvenile

perpetrators, cannot be resolved outside the judicial system. Despite this legal framework, instances of law enforcement officials pressuring victims of sexual violence to settle their cases amicably under the guise of restorative justice frequently occur. In many instances, it is law enforcement officers or state officials who mediate these agreements during judicial proceedings. Furthermore, an additional impediment in the legal process regarding sexual violence cases is the tendency of families, communities, village officials, government representatives, and law enforcement to promote informal resolutions, emphasizing reconciliation. Such approaches are prevalent in numerous sexual violence cases, particularly where the victim is pregnant or the perpetrator is a former intimate partner of the victim.

The concept of restorative justice is neither appropriate nor applicable in cases of sexual violence, particularly in instances of rape. The mechanisms of restorative justice are delineated in the National Police Regulation No. 6 of 2019 concerning Criminal Investigation (Perkapolri 6/2019) and further reinforced by the issuance of the National Police Regulation No. 8 of 2021 regarding the handling of criminal offenses through restorative justice. However, the Criminal Procedure Code (KUHAP) lacks provisions addressing the notion of reconciliation between victims and perpetrators. Thus, the frameworks established in Perkapolri 6/2019 and Perpol 8/2021 lack a solid legal foundation within the Criminal Procedure Code. Additionally, Circular Letter No. SE/8/VII/2018 on the implementation of restorative justice explicitly states that restorative justice should not be regarded as a method for amicably resolving legal cases. Conversely, Law No. 12 of 2022 regarding Sexual Violence Crimes (TPKS) asserts that cases of sexual violence cannot be settled outside of court, except in instances involving juvenile offenders, which are governed by Law No. 11 of 2012 on the Juvenile Criminal Justice System. Therefore, it is imperative for the government, particularly law enforcement agencies, to evaluate the application of restorative justice in cases of sexual violence and to revise technical regulations to bolster the protection and rehabilitation of victims. Article 23 of the TPKS Law stipulates that “criminal cases of sexual violence may not be resolved outside the judicial process, except for child offenders as provided by law.” However, this provision does not elucidate the concept of restorative justice in the context of resolving sexual violence offenses. Consequently, an in-depth examination of the mechanisms for addressing sexual violence cases in relation to restorative justice under the TPKS Law is essential.

The aforementioned cases highlight a significant misinterpretation of restorative justice by law enforcement authorities in relation to the TPKS Act. These authorities erroneously equate restorative justice with the notion of “peace” or the resolution of cases outside the formal legal framework. Despite Article 23 of the TPKS Act clearly and unequivocally stating that acts of sexual violence cannot be resolved outside the judicial process, an exception is made solely for instances where the perpetrator is a minor. In such cases, resolution outside the courtroom may be permissible.

## CONCLUSIONS AND RECOMMENDATIONS

### *Conclusions*

The conclusions derived from the preceding discussion highlight several critical issues concerning the application of restorative justice in Indonesia, particularly in cases of sexual violence. Firstly, there is a significant misunderstanding among law enforcement officials regarding the fundamental principles of restorative justice, especially in relation to its intended purpose. Many law enforcement officials mistakenly equate restorative justice with informal settlements or “peace” agreements, a practice that conflicts with the legal framework established by the PRSP Law. This law explicitly prohibits the resolution of sexual violence cases outside the formal justice system, with the only exception being for juvenile offenders. Such a misunderstanding undermines the integrity of the justice system and compromises the rights of victims. Secondly, the implementation of restorative justice in cases of sexual violence frequently neglects the needs and rights of victims. In numerous instances, victims do not receive the necessary support or an adequate resolution, exacerbating their trauma and resulting in a lack of accountability for perpetrators. This failure to address victim needs effectively further perpetuates the cycle of harm, leaving victims without justice and weakening the deterrent effect of the justice system on future offenders. Thirdly, there is a notable absence of a comprehensive and explicit legal definition of sexual violence, particularly rape, within Indonesia's Criminal Code. This lack of legal clarity hinders the proper application of restorative justice in such cases. Without clear legal guidelines, victims are left uncertain about their rights, and the legal system may fail to provide appropriate consequences for perpetrators. Ensuring legal certainty is essential to guarantee that victims receive justice and that offenders face the penalties their actions warrant.

### *Recommendations*

In light of these conclusions, several recommendations are proposed. First, there is an urgent need for reforms in the application of restorative justice to ensure it aligns more closely with the principles of justice and prioritizes the recovery and well-being of victims. The process of restorative justice must not undermine the legal rights of victims or allow offenders to escape accountability. This includes ensuring that restorative justice mechanisms are not used in ways that disadvantage victims or diminish the seriousness of the crimes committed. Secondly, a more comprehensive and victim-centered approach to restorative justice is necessary. Such an approach should not only address the needs of the offender but should also emphasize the rehabilitation and support of the victim. By focusing on victim recovery and providing appropriate rehabilitative services, a more just and equitable resolution of sexual violence cases, particularly in instances of rape, can be achieved. This approach would help to balance the needs of both the victim and the offender, promoting healing and accountability. Lastly, it is imperative to advocate for stronger policies that reinforce the legal framework surrounding restorative justice, especially in relation to sexual violence crimes. Policy reforms should specifically prohibit the use of restorative justice in cases of rape to ensure that

these cases are handled with the gravity they deserve through formal judicial processes. Practices such as reconciliation or forcing marriage between the victim and the perpetrator should be explicitly banned to uphold the dignity of victims and ensure that justice is served appropriately. Strengthening the legal framework will enhance legal certainty and provide victims with the justice they deserve while ensuring that perpetrators are held fully accountable for their actions.

#### **ADVANCED RESEARCH**

Several limitations of this study impact the validity and generalizability of its findings. The analysis focused exclusively on cases involving rape victims who were married to their perpetrators, thereby limiting the applicability of the results to other types of crimes. Broadening the scope to encompass various forms of sexual violence or alternative rape cases that have been resolved amicably through restorative justice—such as those involving compensation payments or family-based resolutions—would enrich the discussion and provide a more comprehensive understanding of the issues at hand. Furthermore, the relatively short data collection period may obscure long-term trends, underscoring the necessity of extending the study's duration to capture a more accurate representation of these dynamics. Additionally, the narrow range of references utilized diminishes the depth of the analysis, highlighting the need for a more extensive review of relevant literature. The research recommendations should also prioritize practical and implementable strategies for addressing rape cases effectively. Future researchers are encouraged to consider the evolution of laws and regulations that may influence existing statutes and procedures concerning rape, as well as the technical application of restorative justice practices.

## REFERENCES

- Cortina, L. M., & Areguin, M. A. (2021). Putting people down and pushing them out: Sexual harassment in the workplace. *Annual Review of Organizational Psychology and Organizational Behavior*, 8(1), 285-309.
- Feeley, M. M. (1973). Two models of the criminal justice system: An organizational perspective. *Law & Society Review*, 7(3), 407-425.
- Hosnah, A. U., Antoni, H., & Yofany, R. (2023). Law Enforcement Against Perpetrators of Defamation Through Social Media Based on the ITE Law. *International Journal of Multicultural and Multireligious Understanding*, 10(4), 362-372.
- Maharani, M., & Wicaksana, D. A. (2022, November 7). Menikahkan korban dengan pelaku bukan solusi: Bagaimana pendekatan keadilan restoratif sangat merugikan korban kekerasan seksual. Retrieved from <https://theconversation.com/menikahkan-korban-dengan-pelaku-bukan-solusi-bagaimana-pendekatan-keadilan-restoratif-sangat-merugikan-korban-kekerasan-seksual-193853>.
- Mudzakkir, T. K. B. (2008). Perencanaan Pembangunan Hukum Nasional Bidang Hukum Pidana dan Sistem Pemidanaan (Politik Hukum dan Pemidanaan). Badan Pembinaan Hukum Nasional Departemen Hukum Dan Hak Asasi Manusia.
- Ningrum, A. M., Sulistyowati, H., & Arsetyo, Y. I. C. (2023). Pelaksanaan Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Penganiayaan Di Kejaksaan Negeri Sragen. *Justicia Journal*, 12(2), 164-176.
- Nurisman, E. (2022). Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022. *Jurnal Pembangunan Hukum Indonesia*, 4(2), 170-196.
- Saefudin, Y., Wahidah, F. R. N., Susanti, R., Adi, L. K., & Putri, P. M. (2023). Tindak Pidana Kekerasan Seksual dan Perlindungan Hukum bagi Korban Kekerasan Seksual di Indonesia. *Kosmik Hukum*, 23(1), 24-33.
- Safitri, S. S., Ardiansah, M. D., & Prasetyo, A. (2023). Quo Vadis Keadilan Restoratif pada Perkara Tindak Pidana Kekerasan Seksual Pasca Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual

(Studi Terhadap Pasal 23 UU TPKS). *Jurnal Hukum dan HAM Wara Sains*, 2(01), 29-44.

Santoso, A. P. A., & Rezi, A. (2021). *Pengantar Hukum Pidana*. Yogyakarta, Pustakabarupress.

Syahputra, A. A. (2023). *Penerapan Restorative Justice Dalam Kasus Kekerasan Seksual Terhadap Anak Di Kota Medan (Studi Di Polrestabes Medan)* (Doctoral dissertation, Universitas Medan Area).