

***RESTORATIVE JUSTICE IN DOMESTIC VIOLENCE CASES: A
NORMATIVE STUDY OF THE SENTENCING PARADIGM UNDER
INDONESIA'S LAW NUMBER 1 OF 2023 ON THE CRIMINAL CODE***
**RESTORATIVE JUSTICE TERHADAP TINDAK PIDANA KEKERASAN
DALAM RUMAH TANGGA: KAJIAN NORMATIF TERHADAP
PARADIGMA PEMIDANAAN DALAM UNDANG-UNDANG NOMOR 1
TAHUN 2023 TENTANG KITAB UNDANG-UNDANG HUKUM PIDANA**

Oktino Salmon Hardiansyah, Siti Marwiyah dan Bachrul Amiq

Magister Ilmu Hukum Universitas Dr. Soetomo Surabaya

Korespondensi Penulis : bachrulamiq@unesa.ac.id

Citation Structure Recommendation :

Hardiansyah, Oktino Salmon, Siti Marwiyah dan Bachrul Amiq. *Restorative Justice in Domestic Violence Cases: A Normative Study of The Sentencing Paradigm Under Indonesia's Law Number 1 of 2023 on The Criminal Code*. Jurnal Hukum Lex Generalis. Vol.7. No.12 (2026).

ABSTRACT

Enactment of Indonesian Criminal Code introduces a sentencing paradigm emphasizing crime prevention, offender rehabilitation, conflict resolution and restorative justice. However, applying Restorative Justice remains problematic because it must be balanced with victim protection principles. The findings indicate that current practice prioritizes reconciliation and case closure over offender rehabilitation, victim protection and the prevention of repeated violence. Inadequate eligibility criteria, limited risk assessment and weak post-settlement monitoring undermine restorative objectives. Therefore, this study proposes a Victim-Oriented Restorative Justice Model integrating informed victim consent, risk assessment, offender rehabilitation, post-settlement monitoring and recidivist exclusion to strengthen legal certainty, justice and sustainable victim protection.

Keywords: *Restorative Justice, Domestic Violence, Sentencing Paradigm, Victim Protection*

ABSTRAK

Pemberlakuan Kitab Undang-Undang Hukum Pidana Indonesia memperkenalkan paradigma pemidanaan yang menekankan pencegahan kejahatan, rehabilitasi pelaku, penyelesaian konflik dan keadilan restoratif. Penerapan *Restorative Justice* masih bermasalah karena harus menyeimbangkan prinsip perlindungan korban. Hasil penelitian menunjukkan bahwa praktik sekarang mengutamakan perdamaian dan penghentian perkara daripada rehabilitasi, perlindungan korban dan pencegahan kekerasan berulang. Kriteria kelayakan belum memadai, penilaian risiko terbatas, serta lemahnya pengawasan pascapenyelesaian menghambat tercapainya tujuan restoratif. Penelitian ini mengusulkan Model *Restorative Justice* Berorientasi pada Korban yang mengintegrasikan persetujuan

korban yang bebas dan berdasarkan informasi, penilaian risiko, rehabilitasi pelaku, pengawasan pascapenyelesaian, serta pengecualian terhadap pelaku residivis guna memperkuat kepastian hukum, keadilan dan perlindungan korban berkelanjutan.

Kata Kunci: Keadilan Restoratif, Kekerasan dalam Rumah Tangga, Paradigma Pidana, Perlindungan Korban

A. INTRODUCTION

Domestic violence constitutes a violation of human rights with distinctive characteristics because it occurs within the domestic sphere, which has traditionally been regarded as a private matter. Because of this view, the enactment of Law Number 23 of 2004 on the Elimination of Domestic Violence fundamentally shifted the perspective by recognizing domestic violence as a public concern requiring state intervention through legal protection for victims.¹

Philosophically, the Law pursues two complementary objectives: providing maximum legal protection for victims while preserving family integrity. In practice, however, these objectives are often difficult to achieve because resolving domestic violence cases may lead to family disintegration², particularly when the perpetrator is the victim's spouse or another family member upon whom the victim is emotionally or economically dependent. Consequently, handling domestic violence extends beyond legal considerations and encompasses social, psychological and economic dimensions.

Empirical evidence further indicates that non-judicial mechanisms continue to play a significant role in resolving cases of violence against women. According to the Annual Records (CATAHU) of the National Commission on Violence Against Women³, 1,440 cases (44%) were resolved through non-legal mechanisms in 2023, compared with 1,145 cases (35%) through criminal proceedings. In 2024, non-legal settlements remained substantial, accounting for

¹ Karenina Aulery Putri Wardhani, *Perlindungan Hukum terhadap Perempuan Korban Kekerasan dalam Rumah Tangga (KDRT) pada Tingkat Penyidikan berdasarkan Undang-Undang No. 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga (UUPKDRT)*, Jurnal Riset Ilmu Hukum, Vol.1, No.1 (2021).

² Muhammad Ricky Ananda, dkk., *Diskresi Kepolisian pada Pengawasan Konvoi Komunitas dalam Masa Pandemi di Wilayah Hukum Polda Metro Jaya*, Sosioedukasi: Jurnal Ilmiah Ilmu Pendidikan dan Sosial, Vol.11, No.1 (2022).

³ Komisi Nasional Anti Kekerasan terhadap Perempuan, *Catatan Tahunan (CATAHU) 2024: Menata Data, Menajamkan Arah: Refleksi Pendokumentasian dan Tren Kasus Kekerasan terhadap Perempuan*, Komisi Nasional Anti Kekerasan terhadap Perempuan, Jakarta, 2025.

963 cases (34%), while criminal proceedings constituted 1,032 cases (36%). These figures show that resolution approaches emphasizing restored social relationships are still widely used instead of punitive sanctions.⁴ The use of mediation as an alternative mechanism for resolving domestic violence cases has also been practiced at the police level, demonstrating that non-litigation approaches may be employed in handling domestic violence cases.⁵

Nevertheless, applying such approaches in domestic violence cases remains problematic because unequal power relations, economic dependency and psychological pressure may shape victims' choices. This restorative orientation has been further reinforced by Law Number 1 of 2023 on the Indonesian Criminal Code, which shifts the sentencing paradigm from a predominantly retributive approach toward preventive, rehabilitative and restorative justice.

Article 51 explicitly provides that sentencing aims not only to punish offenders but also to resolve conflicts, restore social balance, encourage offender accountability and promote social harmony. This philosophy is consistent with National Police Regulation Number 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice, which emphasizes restoring the original condition while safeguarding victims' interests.

Despite this normative development, the implementation of restorative justice in domestic violence cases raises significant legal concerns because the relationship between offenders and victims is generally characterized by family ties, emotional attachment and economic dependency. Such conditions may give rise to pseudo-reconciliation, in which settlements are reached not through the victim's genuine free will but rather as a result of psychological pressure, economic dependence, or the perpetrator's dominance.

Previous studies likewise reveal persistent challenges, including the absence of uniform implementation standards, excessive discretion exercised by law enforcement officers during mediation and inadequate protection of victims'

⁴ Chusnul Qotimah Nita Permata dan Rastini, *Eksistensi Penerapan Sanksi Alas Bide dalam Penyelesaian Perkara Kekerasan dalam Rumah Tangga (KDRT) di Kabupaten Bengkayang, Kalimantan Barat*, Rewang Rencang: Jurnal Hukum Lex Generalis, Vol.3, No.3 (2022).

⁵ Eka Mei Riska Br Sitepu dan Arief Wahyudi, *Penyelesaian Tindak Pidana Kekerasan dalam Rumah Tangga melalui Mediasi (Studi di Polres Tanah Karo)*, Rewang Rencang: Jurnal Hukum Lex Generalis, Vol.6, No.7 (2025).

rights.⁶ A clear gap exists between *das sollen* (the law as it ought to be) and *das sein* (the law as it operates in practice) in the application of restorative justice to domestic violence cases. Normatively, Law Number 23 of 2004 prioritizes the protection of victims, whereas Law Number 1 of 2023, particularly Articles 51 and 52, expands opportunities for restorative settlements aimed at restoring social equilibrium and achieving reconciliation.

This philosophical tension raises a fundamental legal issue: the extent to which restorative justice may be applied during the investigation stage without undermining victims' rights to protection, justice and legal certainty. Empirically, investigators' discretionary authority under National Police Regulation Number 8 of 2021 may result in impunity and repeated violence if not accompanied by clear and stringent criteria defining which categories of domestic violence cases are eligible for restorative settlement, such as cases involving psychological abuse or minor physical violence under Article 44(4) of the Domestic Violence Law.

Accordingly, this study seeks to formulate rigorous legal parameters for implementing restorative justice in domestic violence cases to achieve an appropriate balance between legal certainty, justice, utility and victim protection, while remaining consistent with the modern sentencing paradigm embodied in Indonesia's Criminal Code.

The primary issue addressed in this study is not whether Restorative Justice may be applied to domestic violence cases, but rather how to establish its normative boundaries, requirements and implementation parameters so that it remains consistent with the principle of victim protection. To date, no comprehensive legal framework has adequately explained the relationship between the restorative sentencing paradigm introduced by Law Number 1 of 2023 and the victim protection regime established under Law Number 23 of 2004 on the Elimination of Domestic Violence.

Restorative Justice in Indonesia is grounded in the Criminal Procedure Code (Law No. 20/2025) as its procedural basis, the Criminal Code (Law No. 1/2023) as its sentencing paradigm emphasizing prevention, rehabilitation and restoration

⁶ Rian Septia Kurniawan, *Diskresi Kepolisian dalam Menjaga Keamanan dan Ketertiban Masyarakat di Wilayah Hukum Polsek Simokerto Surabaya*, Airlangga Development Journal, Vol.4, No.2 (2020).

and the Domestic Violence Act (Law No. 23/2004) which prioritizes victim protection. These frameworks require normative harmonization between procedure, sentencing objectives and victim protection. Restorative Justice in domestic violence cases is shaped by relational and structural constraints such as family ties, economic dependence, power imbalance and risk of repeated violence, which may compromise the voluntariness of victim consent. Consequently, settlement does not necessarily reflect substantive achievement of Restorative Justice goals, as practice may prioritize case closure over victim recovery and offender accountability. This *de jure–de facto* gap underpins the study's examination of whether RJ at the investigation stage aligns with the sentencing paradigm of Law No. 1/2023 while ensuring victim protection under Law No. 23/2004.

In the development of Indonesian criminal law, Restorative Justice must be analyzed through two interrelated dimensions, namely procedural and substantive dimensions. The procedural dimension relates to criminal procedural law, which determines how restorative justice mechanisms are implemented in the handling of criminal cases, while the substantive dimension concerns the objectives of punishment that guide the resolution of criminal cases. In this context, Law No. 20 of 2025 on the Criminal Procedure Code is significant as it provides the procedural framework for restorative justice within the criminal justice process. On the other hand, Law No. 1 of 2023 on the Criminal Code remains relevant as the basis for analyzing the paradigm and objectives of punishment underlying restorative case resolution. Thus, the Criminal Procedure Code and the Criminal Code occupy different but complementary positions in this study's analysis. In cases of domestic violence, the application of restorative justice procedures under criminal procedural law cannot be separated from Law No. 23 of 2004 on the Elimination of Domestic Violence.

The characteristics of domestic violence, which occur within family relationships, create specific challenges in case resolution, particularly in relation to power imbalances, economic dependency, psychological pressure and the potential for repeated violence. Therefore, restorative justice procedures must not only fulfill formal requirements of agreement or reconciliation but must also be

assessed based on whether they ensure the victim's free and informed decision-making and provide adequate protection. This position is important in this study because the issue examined is not merely the existence of restorative justice in criminal procedure law, but its suitability when applied to domestic violence offenses. Accordingly, the Criminal Procedure Code is used to analyze the procedural implementation of restorative justice at the investigation stage, Law No. 23 of 2004 is used to assess victim protection and Law No. 1 of 2023 is used to evaluate whether such resolution aligns with the paradigm and objectives of punishment that emphasize conflict resolution, restoration, offender rehabilitation and crime prevention as integral components of sentencing goals.

This conceptual gap has the potential to create inconsistent investigative practices and increase the risk of misuse of restorative justice mechanisms in domestic violence cases. Although extensive research has examined restorative justice and the legal protection of domestic violence victims, these issues have generally been explored independently. Mahardhika et al.⁷ further examined the application of restorative justice in domestic violence cases by comparing its implementation in military and civilian courts. Supriyanto and Sulaiman⁸ found that restorative justice has been implemented in domestic violence cases at the police investigation level, but its application remains constrained by the absence of detailed operational guidelines and the risk of pressure being exerted on victims.

Several previous studies have examined restorative justice, police discretion, criminal law reform and victim protection from different perspectives. Yudianto⁹ and Firmansyah¹⁰ provide a conceptual foundation on restorative justice within Indonesian criminal law reform and the criminal justice system, but do not specifically address its application in domestic violence cases at the

⁷ Aurel Muhammad Abdi Mahardhika, dkk., *Restorative Justice Kasus Kekerasan dalam Rumah Tangga Ranah Pengadilan Militer Perbandingan Penerapan Restorative Justice Pengadilan Sipil*, Rewang Rencang: Jurnal Hukum Lex Generalis, Vol.6, No.10 (2025).

⁸ Agus Supriyanto dan Abdullah Sulaiman, *The Urgency of Restorative Justice Implementation in Addressing Domestic Violence Cases to Realize Justice Oriented towards Victim Recovery*, Jurnal Indonesia Sosial Teknologi, Vol.6, No.6 (2025).

⁹ Dadan Try Yudianto, *Implementasi Restorative Justice dalam Perspektif Pembaharuan Hukum Pidana*, Tesis, Universitas Pasundan, Bandung, 2022.

¹⁰ Hery Firmansyah, *Restorative Justice dalam Sistem Peradilan Pidana Indonesia*, Sinar Grafika, Jakarta, 2021.

investigation stage. Santoso¹¹, Jalaluddin¹², Suprianto and Sulaiman¹³ and Kurniawan¹⁴ focus on police discretion, including penal mediation and law enforcement, but do not specifically integrate the characteristics of domestic violence, such as power imbalance, dependency and the risk of repeated violence, into restorative justice. Meanwhile, Baharudin, et.al.¹⁵ emphasize victim protection in domestic violence cases, while Zakran, et.al.¹⁶ (2025) examine victim protection within criminal law reform under Law No. 1 of 2023.

The preceding studies indicate that restorative justice, police discretion, victim protection and criminal law reform have generally been examined separately. This study therefore focuses specifically on restorative justice in domestic violence cases at the investigation stage, by integrating the procedural dimension of the Criminal Procedure Code, the sentencing paradigm under Law No. 1 of 2023 and the victim protection framework under Law No. 23 of 2004. This integrated approach remains within the scope of a normative legal study and does not examine police discretion empirically or restorative justice in criminal cases generally.

The novelty of this research lies in formulating a Victim-Oriented Restorative Justice Model for domestic violence cases at the investigation stage. The model emphasizes free and informed victim consent, risk assessment, offender accountability, rehabilitation, post-settlement monitoring and safeguards against repeated violence. Accordingly, restorative justice is not positioned merely as a mechanism for reconciliation or case termination, but as a normative framework for achieving conflict resolution, offender reform and sustainable

¹¹ Priyo Santoso, *Diskresi Kepolisian melalui Mediasi Penal (Studi Kasus di Polsek Galur, Kulonprogo)*, Jurnal Penegakan Hukum dan Keadilan, Vol.1, No.2 (2020).

¹² Jalaluddin, dkk., *Implikasi Diskresi Kepolisian di Indonesia terhadap Progresivitas Penegakan Hukum*, Jurnal Metrum, Vol.2, No.1 (2024).

¹³ Agus Supriyanto dan Abdullah Sulaiman, *The Urgency of Restorative Justice Implementation in Addressing Domestic Violence Cases to Realize Justice Oriented towards Victim Recovery*.

¹⁴ Rian Septia Kurniawan, *Diskresi Kepolisian dalam Menjaga Keamanan dan Ketertiban Masyarakat di Wilayah Hukum Polsek Simokerto Surabaya*.

¹⁵ Baharudin, dkk., *Legal Protection for Victims of Domestic Violence (Study Decision Number 81/Pid.Sus/2023/PN Liw)*, JETISH: Journal of Education Technology Information Social Sciences and Health, Vol.3, No.2 (2024).

¹⁶ Eka Putra Zakran, dkk., *Pembaruan Hukum Pidana dalam Perspektif Perlindungan Korban: Studi Kritis terhadap Penguatan Hak Korban dalam Undang-Undang No. 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana*, Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora (JURRISH), Vol.4, No.3 (2025).

victim protection while remaining consistent with the sentencing objectives of Law No. 1 of 2023 and the protection mandated by Law No. 23 of 2004.

Based on the foregoing background, this study addresses the following research questions: (1) Is the application of Restorative Justice during the investigation stage of domestic violence offenses consistent with the sentencing paradigm established under Law Number 1 of 2023 on the Indonesian Criminal Code? (2) How should victim protection be formulated within the implementation of Restorative Justice in domestic violence cases?

B. RESULT AND DISCUSSION

1. The Consistency of Restorative Justice at The Investigation Stage With The Sentencing Paradigm Under Law Number 1 of 2023

The enactment of Law Number 1 of 2023 on the Indonesian Criminal Code marks a fundamental shift in Indonesia's sentencing paradigm from a predominantly retributive approach toward corrective, rehabilitative and restorative justice. Unlike the former colonial Criminal Code, which emphasized punishment as retribution against offenses committed against the state while giving limited attention to victims' interests, the new Criminal Code explicitly establishes sentencing objectives through Article 51 for the first time in Indonesia's criminal law. Article 51 defines sentencing as a mechanism to prevent crime, rehabilitate offenders, resolve conflicts, restore social balance, promote public peace and foster offender accountability, thereby providing a normative framework for all stages of the criminal justice process, including investigations.¹⁷

This reform reflects the restorative paradigm, which treats crime as a social conflict requiring the active participation of offenders, victims and the community to achieve meaningful resolution and social restoration.¹⁸ Consequently, the new Criminal Code adopts an integrated sentencing framework that combines retribution, prevention, rehabilitation and

¹⁷ Muchlas Rastra Samara Muksin, *Tujuan Pemidanaan dalam Pembaharuan Hukum Pidana Indonesia*, Sapientia et Virtus, Vol.8, No.1 (2023).

¹⁸ R. A. Duff, *The Realm of Criminal Law*, Oxford University Press, Oxford, 2018.

restoration¹⁹, while serving as the principal normative benchmark for evaluating the implementation of Restorative Justice in Indonesia's contemporary criminal justice system.²⁰

Nevertheless, Restorative Justice cannot be applied uniformly to all categories of criminal offenses, particularly domestic violence, where unequal power relations, emotional dependency, economic vulnerability and psychological pressure may compromise the victim's ability to provide genuine and voluntary consent. Consequently, the effectiveness of restorative justice should not be measured solely by reconciliation or the termination of investigations, but by its capacity to fulfill the sentencing objectives established under Article 51 of Law Number 1 of 2023 and to comply with the procedural requirements established under Articles 79 to 84 of the Criminal Procedure Code.

Article 79 emphasizes the restoration of the victim's condition through measures such as forgiveness, restitution, compensation for medical and psychological treatment, compensation for other losses and repair of damage caused by the offense. Furthermore, Article 80 establishes the substantive requirements for the application of restorative justice, while Article 81 requires that the mechanism be conducted without pressure, coercion, intimidation, threats, violence, torture, deception, or degrading treatment. Specifically at the investigation stage, Article 83 provides that restorative justice is implemented through an agreement to resolve the case before the investigator, followed by the issuance of an order terminating the investigation, while Article 84 requires such termination to be reported to the Public Prosecutor and submitted for determination by the head of the district court. Therefore, in domestic violence cases, the implementation of restorative justice must be assessed through three interconnected dimensions: procedural compliance under the Criminal Procedure Code,

¹⁹ Howard Zehr, *The Little Book of Restorative Justice: Revised and Updated*, Good Books, Intercourse, 2015.

²⁰ Vivi Arfiani Siregar, *Analisis Eksistensi Restorative Justice dalam Sistem Peradilan Pidana di Indonesia*, Jurnal Hukum Das Sollen, Vol.3, No.1 (2019).

consistency with the sentencing objectives under Law Number 1 of 2023 and effective victim protection under Law Number 23 of 2004.

This interaction between the restorative sentencing paradigm and the victim protection regime constitutes the central legal issue of this study, requiring a normative assessment of whether restorative justice can reconcile conflict resolution with the state's obligation to protect victims of domestic violence.²¹

Within Indonesia's criminal justice system, the investigation stage occupies a strategic position because investigators determine whether a case proceeds to prosecution or is resolved through Restorative Justice. This authority is primarily governed by National Police Regulation Number 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice, which redefines investigators as both law enforcers and facilitators of conflict resolution.

However, restorative justice is not an automatic entitlement. Its application requires the fulfillment of statutory conditions, including voluntary reconciliation, offender accountability, public acceptance and adequate protection of victims. As a form of police discretion, its implementation must remain consistent with the principles of legality, accountability, proportionality and respect for human rights to prevent arbitrary or inconsistent practices.

2. Victim Protection Formulation in the Implementation of Restorative Justice in Domestic Violence Cases

Domestic violence differs fundamentally from conventional criminal offenses because it occurs within intimate and continuing family relationships characterized by emotional attachment, economic dependency and unequal power relations. The enactment of Law Number 23 of 2004 on the Elimination of Domestic Violence transformed domestic violence from a private family matter into a public legal issue requiring state intervention and victim protection. This legal framework reflects Indonesia's constitutional and international human rights commitments, recognizing

²¹ Fatin Hamamah, dkk., *The Application of Restorative Justice in Domestic and Child Violence Cases in Indonesia and Finland*, SASI, Vol.31, No.1 (2025),

domestic violence as a violation of fundamental rights rather than merely a criminal offense.²² In such circumstances, victim protection requires not only legal safeguards but also practical assistance, including initial assessment, assistance in reporting, coordination with law enforcement and access to counseling and health services.²³ Unlike ordinary crimes, domestic violence often follows a recurring cycle of abuse in which victims remain vulnerable to intimidation, psychological pressure and repeated violence.

The implementation of restorative justice in domestic violence cases²⁴ must place victim protection as an essential element of the resolution process. Legal protection should not be understood merely as protection after a violation has occurred, but also as protection throughout the investigation and restorative process. This is particularly important in domestic violence cases because victims may experience psychological pressure, economic dependency and unequal power relations with the perpetrator. Wardhani²⁵ emphasizes the importance of legal protection for women victims of domestic violence at the investigation stage, particularly through the implementation of the protection mechanisms mandated by Law Number 23 of 2004. Therefore, restorative justice should only be implemented when the victim's participation and consent are genuinely voluntary and free from pressure, coercion, intimidation, threats, or other circumstances that may undermine the victim's position. This approach is also consistent with the finding of Baharudin et al.²⁶, which highlights the continuing need to strengthen legal protection for victims of domestic violence within the criminal justice system.

²² Komisi Nasional Anti Kekerasan terhadap Perempuan, *Catatan Tahunan (CATAHU) 2024: Menata Data, Menajamkan Arah: Refleksi Pendokumentasian dan Tren Kasus Kekerasan terhadap Perempuan*.

²³ Wulan Atma Putri dan Slamet Haryadi, *Implementasi Peran Lembaga Perlindungan Perempuan dan Anak dalam Memberikan Bantuan Hukum terhadap Korban KDRT di Kabupaten Lampung Utara*, Rewang Rencang: Jurnal Hukum Lex Generalis, Vol.6, No.12 (2026).

²⁴ Affizatul Mua'malah, dkk., *Perspektif Maqashid Al-Syari'ah Jamaluddin Al-'Athiyyah terhadap Urgensi Restorative Justice sebagai Alternatif Penyelesaian Kasus KDRT*, Rewang Rencang: Jurnal Hukum Lex Generalis, Vol.6, No.2 (2025).

²⁵ Karenina Aulery Putri Wardhani, *Perlindungan Hukum terhadap Perempuan Korban Kekerasan dalam Rumah Tangga (KDRT) pada Tingkat Penyidikan berdasarkan Undang-Undang No. 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga (UUPKDRT)*.

²⁶ Baharudin, dkk., *Legal Protection for Victims of Domestic Violence (Study Decision Number 81/Pid.Sus/2023/PN Liw)*.

The protection of victims in restorative justice should also be understood in relation to the legal framework governing witnesses and victims. The Law on the Protection of Witnesses and Victims provides a broader basis for ensuring that victims are protected during the criminal justice process, particularly from threats and other forms of harm that may affect their ability to participate freely in legal proceedings. This principle is particularly relevant to restorative justice in domestic violence cases because an agreement between the victim and perpetrator cannot automatically be regarded as evidence of genuine reconciliation when the victim remains subject to dependency or pressure. Accordingly, victim protection must include the assurance of voluntary participation, physical and psychological safety, access to assistance and protection from further violence. These principles strengthen the specific protection provided under Law Number 23 of 2004 and support the victim-oriented approach proposed in this study.

Consequently, the effectiveness of Restorative Justice cannot be assessed solely by the achievement of reconciliation, but must also be measured by its ability to protect victims, prevent revictimization and restore long-term safety.²⁷ The findings indicate that, although Restorative Justice is conceptually consistent with the sentencing paradigm established under Law Number 1 of 2023, its implementation during the investigation stage of domestic violence cases has not yet fully achieved the objectives of Article 51. In practice, restorative justice is primarily measured by reconciliation and the termination of criminal proceedings rather than by offender rehabilitation, victim protection, conflict restoration and the prevention of repeated violence.²⁸

Consequently, the restorative sentencing objectives function more as formal justification for case settlement than as substantive benchmarks for evaluating successful implementation, particularly where victims remain

²⁷ Sandra Walklate, *Advanced Introduction to Victimology*, Edward Elgar Publishing, Cheltenham, 2023.

²⁸ Muchlas Rastra Samara Muksin, *Tujuan Pemidanaan dalam Pembaharuan Hukum Pidana Indonesia*.

vulnerable because of unequal power relations and economic dependence.²⁹ These findings suggest that the principal challenge lies not in the concept of Restorative Justice itself, but in the absence of a specialized legal framework capable of addressing the distinctive characteristics of domestic violence. Accordingly, restorative justice should adopt a victim-centered approach that ensures effective legal protection while remaining consistent with the sentencing objectives of Law Number 1 of 2023 and international human rights standards.³⁰

These findings indicate that the principal challenge lies not in the concept of Restorative Justice itself, but in the absence of a coherent legal framework that harmonizes the sentencing objectives of Law Number 1 of 2023 with the victim protection principles of Law Number 23 of 2004. Although these statutes do not conflict normatively, they embody different legal orientations that become particularly evident during the investigation stage, where National Police Regulation Number 8 of 2021 authorizes investigators to resolve domestic violence cases through Restorative Justice.

Broad investigative discretion, the absence of clear eligibility criteria, limited risk assessment and inadequate post-settlement monitoring often result in restorative justice being evaluated primarily by reconciliation and case closure rather than by victim safety, offender rehabilitation, or the prevention of repeated violence, despite the unequal power relations and psychological vulnerability that characterize domestic violence cases.³¹ To address these shortcomings, this study proposes a Victim-Oriented Restorative Justice Model based on free and informed victim consent, comprehensive risk assessment, offender accountability, continuous post-settlement monitoring, rehabilitative obligations inspired by the community service punishment under Articles 65, 85 and 86 of Law Number 1 of 2023 and the exclusion of repeat offenders from restorative mechanisms.

²⁹ Komisi Nasional Anti Kekerasan terhadap Perempuan, *Catatan Tahunan (CATAHU) 2024: Menata Data, Menajamkan Arah: Refleksi Pendokumentasian dan Tren Kasus Kekerasan terhadap Perempuan*.

³⁰ Muchlas Rastra Samara Muksin, *Tujuan Pemidanaan dalam Pembaharuan Hukum Pidana Indonesia*.

³¹ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru*, Kencana, Jakarta, 2008.

Rather than defining success solely by reconciliation or case termination, the proposed model measures restorative justice by its ability to ensure victim protection, offender rehabilitation, crime prevention and sustainable legal certainty, thereby harmonizing the restorative sentencing paradigm with the victim protection objectives of Law Number 23 of 2004. Victim protection should also include meaningful restoration of losses suffered by victims, including appropriate compensation where legally applicable.³² One significant innovation introduced by Law Number 1 of 2023 is the recognition of social work punishment under Article 65 as a principal form of punishment. Although formally imposed by the courts, its underlying values can be incorporated into restorative justice at the investigation stage. Instead of limiting restorative agreements to apologies or the withdrawal of complaints, offenders should be required to participate in psychological counseling, anger management programs, gender equality education, behavioral rehabilitation, community service, or other activities that promote legal awareness and social responsibility.

Such rehabilitative obligations would better reflect the restorative, corrective and rehabilitative objectives of Article 51 while ensuring that reconciliation results in genuine behavioral change rather than merely formal settlement. The study further argues that restorative justice should not be applied uniformly to all domestic violence offenders. Article 23 of Law Number 1 of 2023, which regulates recidivism, provides a normative basis for distinguishing first-time offenders from repeat offenders. Given the cyclical nature of domestic violence, repeat offenders who demonstrate persistent patterns of abuse should be excluded from restorative mechanisms and processed through the formal criminal justice system to ensure victim protection and crime prevention. Accordingly, this study proposes a Victim-Oriented Restorative Justice Model, in which Article 65 serves as the legal basis for rehabilitative offender obligations, while Article 23 functions as an

³² Rayhan Prakasa Putra dan Agus Dimyati, *Analisis Yuridis Ketidadaan Pemberian Restitusi bagi Korban Kekerasan dalam Rumah Tangga (KDRT) dalam Putusan Nomor 146/Pid.Sus/2022/PN Cbn Berdasarkan Peraturan Mahkamah Agung Nomor 1 Tahun 2022*, Jurnal Hukum Lex Generalis, Vol.7, No.12 (2026).

exclusion criterion for recidivists. By integrating these provisions, restorative justice can more effectively achieve the sentencing objectives of Article 51, harmonize the Criminal Code with Law Number 23 of 2004 on the Elimination of Domestic Violence and promote legal certainty, offender rehabilitation and sustainable victim protection.

C. CONCLUSION

Based on the normative analysis of Law Number 1 of 2023 on the Indonesian Criminal Code, Law Number 23 of 2004 on the Elimination of Domestic Violence and National Police Regulation Number 8 of 2021, this study reaches the following conclusions.

First, the application of *Restorative Justice* at the investigation stage of domestic violence is normatively consistent with the sentencing paradigm under Law Number 1 of 2023, particularly the objectives of restoring balance, resolving conflicts and preventing reoffending. Its implementation must nevertheless comply with the procedural requirements under the Criminal Procedure Code and the victim protection provisions of Law Number 23 of 2004.

Second, victim protection must be formulated through a victim-oriented approach that guarantees voluntary consent, protection from pressure and intimidation, assessment of the risk of repeated violence, recovery of losses, perpetrator accountability and post-settlement monitoring. Accordingly, *Restorative Justice* should not be limited to reconciliation or termination of the investigation but must ensure victim safety and recovery.

REFERENCES

Books

- Arief, Barda Nawawi. 2008. *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru*. (Jakarta: Kencana).
- Duff, R. A.. 2018. *The Realm of Criminal Law*. (Oxford: Oxford University Press).
- Firmansyah, Hery. 2021. *Restorative Justice dalam Sistem Peradilan Pidana Indonesia*. (Jakarta: Sinar Grafika).
- Walklate, Sandra. 2023. *Advanced Introduction to Victimology*. (Cheltenham: Edward Elgar Publishing).
- Zehr, Howard. 2015. *The Little Book of Restorative Justice: Revised and Updated*. (Intercourse: Good Books).

Publication

- Ananda, Muhammad Ricky, dkk.. *Diskresi Kepolisian pada Pengawalan Konvoi Komunitas dalam Masa Pandemi di Wilayah Hukum Polda Metro Jaya*. Sosioedukasi: Jurnal Ilmiah Ilmu Pendidikan dan Sosial. Vol.11. No.1 (2022).
- Baharudin, dkk.. *Legal Protection for Victims of Domestic Violence (Study Decision Number 81/Pid.Sus/2023/PN Liw)*. JETISH: Journal of Education Technology Information Social Sciences and Health. Vol.3. No.2 (2024).
- Hamamah, Fatin, dkk.. *The Application of Restorative Justice in Domestic and Child Violence Cases in Indonesia and Finland*. SASI. Vol.31. No.1 (2025).
- Jalaluddin, dkk.. *Implikasi Diskresi Kepolisian di Indonesia terhadap Progresivitas Penegakan Hukum*. Jurnal Metrum. Vol.2. No.1 (2024).
- Kurniawan, Rian Septia. *Diskresi Kepolisian dalam Menjaga Keamanan dan Ketertiban Masyarakat di Wilayah Hukum Polsek Simokerto Surabaya*. Airlangga Development Journal. Vol.4. No.2 (2020).
- Mahardhika, Aurel Muhammad Abdi, dkk.. *Restorative Justice Kasus Kekerasan dalam Rumah Tangga Ranah Pengadilan Militer Perbandingan Penerapan Restorative Justice Pengadilan Sipil*. Rewang Rencang: Jurnal Hukum Lex Generalis. Vol.6. No.10 (2025).
- Mua'malah, Affizatul, dkk.. *Perspektif Maqashid Al-Syari'ah Jamaluddin Al-'Athiyyah terhadap Urgensi Restorative Justice sebagai Alternatif Penyelesaian Kasus KDRT*. Rewang Rencang: Jurnal Hukum Lex Generalis. Vol.6. No.2 (2025).
- Muksin, Muchlas Rastra Samara. *Tujuan Pemidanaan dalam Pembaharuan Hukum Pidana Indonesia*. Sapientia et Virtus. Vol.8. No.1 (2023).
- Permata, Chusnul Qotimah Nita dan Rastini. *Eksistensi Penerapan Sanksi Alas Bide dalam Penyelesaian Perkara Kekerasan dalam Rumah Tangga (KDRT) di Kabupaten Bengkayang, Kalimantan Barat*. Rewang Rencang: Jurnal Hukum Lex Generalis. Vol.3. No.3 (2022).
- Putra, Rayhan Prakasa dan Agus Dimiyati. *Analisis Yuridis Ketidadaan Pemberian Restitusi bagi Korban Kekerasan dalam Rumah Tangga (KDRT) dalam Putusan Nomor 146/Pid.Sus/2022/PN Cbn Berdasarkan Peraturan Mahkamah Agung Nomor 1 Tahun 2022*. Jurnal Hukum Lex Generalis. Vol.7. No.12 (2026).

- Putri, Wulan Atma dan Slamet Haryadi. *Implementasi Peran Lembaga Perlindungan Perempuan dan Anak dalam Memberikan Bantuan Hukum terhadap Korban KDRT di Kabupaten Lampung Utara*. Rewang Rencang: Jurnal Hukum Lex Generalis. Vol.6. No.12 (2026).
- Santoso, Priyo. *Diskresi Kepolisian melalui Mediasi Penal (Studi Kasus di Polsek Galur, Kulonprogo)*. Jurnal Penegakan Hukum dan Keadilan. Vol.1. No.2 (2020).
- Siregar, Vivi Arfiani. *Analisis Eksistensi Restorative Justice dalam Sistem Peradilan Pidana di Indonesia*. Jurnal Hukum Das Sollen. Vol.3. No.1 (2019).
- Sitepu, Eka Mei Riska Br dan Arief Wahyudi. *Penyelesaian Tindak Pidana Kekerasan dalam Rumah Tangga melalui Mediasi (Studi di Polres Tanah Karo)*. Rewang Rencang: Jurnal Hukum Lex Generalis. Vol.6. No.7 (2025).
- Supriyanto, Agus dan Abdullah Sulaiman. *The Urgency of Restorative Justice Implementation in Addressing Domestic Violence Cases to Realize Justice Oriented towards Victim Recovery*. Jurnal Indonesia Sosial Teknologi. Vol.6. No.6 (2025).
- Wardhani, Karenina Aulery Putri. *Perlindungan Hukum terhadap Perempuan Korban Kekerasan dalam Rumah Tangga (KDRT) pada Tingkat Penyidikan berdasarkan Undang-Undang No. 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga (UUPKDRT)*. Jurnal Riset Ilmu Hukum. Vol.1. No.1 (2021).
- Zakran, Eka Putra, dkk.. *Pembaruan Hukum Pidana dalam Perspektif Perlindungan Korban: Studi Kritis terhadap Penguatan Hak Korban dalam Undang-Undang No. 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana*. Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora (JURRISH). Vol.4. No.3 (2025).

Scholarly Works

- Yudianto, Dadan Try. 2022. *Implementasi Restorative Justice dalam Perspektif Pembaharuan Hukum Pidana*. Tesis. Bandung: Universitas Pasundan.

Sources of Law

- Kitab Undang-Undang Hukum Pidana.
- Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana. Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1. Tambahan Lembaran Negara Republik Indonesia Nomor 6842.
- Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga. Lembaran Negara Republik Indonesia Tahun 2004 Nomor 95. Tambahan Lembaran Negara Republik Indonesia Nomor 4419.

Other Sources

- Komisi Nasional Anti Kekerasan terhadap Perempuan. 2025. *Catatan Tahunan (CATAHU) 2024: Menata Data, Menajamkan Arah: Refleksi Pendokumentasian dan Tren Kasus Kekerasan terhadap Perempuan*. Jakarta: Komisi Nasional Anti Kekerasan terhadap Perempuan.