

**LEGAL PROTECTION FOR CHILD VICTIMS INVOLVED BY DOMESTIC
VIOLENCE IN THE RESTORATIVE JUSTICE IMPLEMENTATION (CASE
STUDY AT PUBLIC PROSECUTION SERVICE OF LABUHAN BATU
DISTRICT IN 2023)**

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ABSTRAK

Kasus kekerasan dalam rumah tangga yang terjadi di Indonesia tidak hanya mengakibatkan perempuan sebagai korban, tetapi juga dapat terjadi pada anak-anak. Rumusan masalah dalam tesis ini adalah: Bagaimana peran Kejaksaan Negeri Labuhan Batu dalam memberikan perlindungan hukum terhadap anak korban kekerasan dalam rumah tangga melalui pendekatan Restorative Justice; Apa saja kendala bagi Kejaksaan Negeri Labuhan Batu dalam memberikan perlindungan hukum terhadap anak korban kekerasan dalam rumah tangga melalui pendekatan Restorative Justice? Metode penelitian yang digunakan dalam jurnal ini adalah metode penelitian yuridis sosiologis. Hasil penelitian ini dapat disimpulkan bahwa restorative justice dapat dilaksanakan dengan syarat-syarat sebagai berikut: ancaman hukuman paling lama 5 (lima) tahun, pelaku bukan residivis, ada persetujuan korban atau keinginan untuk berdamai, ada itikad baik dari tersangka untuk memenuhi kewajiban yang disepakati antara korban dan tersangka, dan harus ada kesepakatan antara korban, tersangka dan pihak lain.

Kata Kunci: Perlindungan Hukum, Korban Anak, Kekerasan dalam Rumah Tangga, Keadilan Restoratif.

ABSTRACT

Cases of domestic violence that occur in Indonesia not only result in women as victims, but can also occur in children. The problem formulation in this thesis is: What is the role of the Labuhan Batu District Prosecutor's Office in providing legal protection towards child victims of domestic violence through a Restorative Justice approach; What are the obstacles for the Labuhan Batu District Prosecutor's Office in providing legal protection for child victims of domestic violence through a Restorative Justice approach? The research method used in this journal is the sociological juridical research method. The results of this research can be concluded that restorative justice can be implemented with the following requirements: the threat of a sentence of no more than 5 (five) years, the perpetrator is not a recidivist, there is the victim's consent or desire to make peace, there is good faith from the suspect to fulfill the obligations agreed between the victim and the suspect, and there must be an agreement between the victim, the suspect and other parties

Keywords: *Legal Protection, Child Victims, Domestic Violence, Restorative Justice.*

A. INTRODUCTION

As a country of law, human rights are the main elements that must be protected, enforced, and fulfilled by the state. In this case, the human rights of women and children need special attention and protection. This is because of the many problems that occur among women and children, some of which are physical and psychological violence, discrimination in various areas of life, poverty, backwardness in various areas, and others. The problem that often occurs is domestic violence, especially by partners against women, and has an impact on children. According to Setiawan et al. (2023), Domestic violence (DV) is a serious problem in family law. DV can occur in various forms, including physical, psychological, sexual, and economic. DV can affect the physical and mental health of victims, as well as disrupt child development and overall family harmony.¹

The problem of domestic violence, if left unchecked, can become a culture in the community.² Because domestic violence against women has an impact on children, the challenges of child protection are very diverse, ranging from poverty, ownership of birth certificates, and child participation to violence against children.³ The impacts that occur in children from domestic violence are personality disorders, poor self-concept, and the ability to commit criminal acts as adults.⁴ In Indonesia, Law No. 23 of 2004 concerning the elimination of domestic violence has been enacted, but criminal acts of domestic violence are still very high. The focus of the analysis in this study is domestic violence cases in the jurisdiction of the North Sumatra Regional Police, as many as 792 in 2022.⁵

¹ Setiawan et al., "PEMAHAMAN DAN FAKTOR – FAKTOR PENYEBAB KEKERASAN DALAM RUMAH TANGGA: TINJAUAN LITERATUR."

² Khairani, *Pembentukan Undang-Undang Penghapusan Kekerasan Dalam Rumah Tangga Dan Urgensinya Untuk Ketahanan Keluarga.*

³ Eleanora et al., *Hukum Perlindungan Anak Dan Perempuan.*

⁴ Ismaidar and Rahmayanti, *Perlindungan Hukum Terhadap Anak Sebagai Korban Kekerasan Dalam Rumah Tangga.*

⁵ Kemenpppa, "Simfoni-PPA."

Based on its classification, if domestic violence is still in a small scope, then the concept of restorative justice is prioritized. Institutions and law enforcement officers at every level of the criminal case resolution process facilitate, process, and make minutes to ensure that the resolution of criminal cases based on this justice restoration will provide benefits according to the principles and objectives of implementing justice restoration in restoring the relationship between victims, especially children, perpetrators, and the community which can reduce the burden on the state and the main thing is an effort to protect child victims.⁶ The target of the restorative justice process prioritizes the opinions of victims who agree to be involved so that this process can be carried out safely and comfortably. The perpetrators know how their actions have affected the victim (in this case, the child) and others, take responsibility for the consequences of their actions, and are serious about not repeating their deviant actions and taking actions agreed upon by the parties that emphasize repairing the damage that has occurred.

Based on data from the Labuhan Batu District Attorney's Office in 2022, there were 24 (twenty-four) cases of domestic violence that had been reported to the police, which were then followed up by the Prosecutor's Office to be processed to the trial stage. Meanwhile, in the 2023 period, there were 25 (twenty-five) cases. This shows that there are quite a few cases of domestic violence at the Labuhan Batu District Attorney's Office. This study only focuses on 2 (two) cases of domestic violence at the Labuhan Batu District Attorney's Office, especially those that occurred in 2023. The author's reason for focusing on the 2 (two) cases is because the cases specifically involve child victims. The author's consideration in taking the four cases is because, in both cases, children as victims of violence did not have some of their rights fulfilled in the restorative justice implementation process.

Some reasons for carrying out the vital justice stage are because a peace process has been carried out where the suspect apologized. The victim has given an apology, the suspect is willing to change and promises not to be

⁶ Bawole, "Tinjauan Hukum Atas Keadilan Restoratif Sebagai Perlindungan Hukum Bagi Korban Tindak Pidana Di Indonesia."

violent again towards his children, the suspect has never been convicted, the suspect has only committed a crime for the first time, the threat of criminal and imprisonment is no more than 5 (five) years, the suspect promises not to repeat his actions, the peace process is carried out voluntarily through deliberation to reach a consensus, without pressure, coercion and intimidation, the victim agrees not to continue the problem to court because it will not bring greater benefits, sociological considerations and the community responds positively.⁷

As is the case with cases of violence against children and domestic violence in Labuhan Batu Regency, the author focuses more on discussing the issue of legal protection for child victims of domestic violence resolved through restorative justice. The formulation of the problem that correlates with the description of the problem above is as follows:

1. What is the role of the Labuhan Batu District Attorney's Office in providing legal protection for child victims of domestic violence through the Restorative Justice approach?
2. What are the obstacles for the Labuhan Batu District Attorney's Office in providing legal protection for child victims of domestic violence through the Restorative Justice approach?
3. What are the future efforts to overcome the obstacles to the role of the Labuhan Batu District Attorney's Office in providing legal protection for child victims of domestic violence through the Restorative Justice approach?

B. DISCUSSION

1. The Role of the Labuhan Batu District Attorney's Office in Providing Legal Protection for Child Victims of Domestic Violence through the Restorative Justice Approach

The resolution of cases of children in conflict with the law must still prioritize the principles of children's rights, where arrest,

⁷ "Kejaksaan Negeri Labuhan Batu, Restorative Justice Reg. Perkara: PDM-25/RP.RAP/03/2023 An. Lambok Parulian Simamora."

detention, or even imprisonment is only carried out as a last resort (ultimum remedium) and for the shortest possible period of time. Restorative justice is a concept of case resolution that emphasizes restoration to the original state rather than retaliation. The prioritization of restorative justice in the criminal justice system in Indonesia is specifically regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, but its implementation has not been carried out evenly. This is because it still takes time to adjust to the new rules in effect, in order to fulfill the completeness of facilities and additional law enforcement resources and professional personnel who are specially trained to handle children's cases.

The Restorative Justice approach in resolving child cases is based on comprehensive efforts by the government to ensure the recovery of the conflicting parties, both children as perpetrators, children as victims, including children as witnesses, so that the goal of restorative justice is achieved, namely peace between victims and children, the resolution of children's cases can be resolved outside the judicial process, preventing children from deprivation of liberty, encouraging society to participate, instilling a sense of responsibility for children and most importantly avoiding negative stigma on children.⁸ The discussion in this study is the implementation of legal protection for child victims of domestic violence with restorative justice at the Labuhan Batu District Attorney's Office.

The cases studied were domestic violence cases that occurred in 2023, where the victims were children resolved through the Restorative Justice process at the Labuhan Batu District Attorney's Office. The cases were 1) the Lambok Parulian Simamora case and 2) the Imam Debiansyak Panjaitan case. To strive for the implementation of restorative justice, at least the Attorney General's Office has issued

⁸ Muhammad, "Pendekatan Keadilan Restoratif Dalam Implementasi Sistem Peradilan Pidana Anak Di Indonesia."

several policies, including:⁹

- a. Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This provision is a form of prosecutorial discretion. It is expected to be used by the Prosecutor to see and balance the applicable regulations with the principle of benefit to be achieved. Furthermore, the Restorative Justice House or Rumah RJ was formed as a follow-up to the involvement of community elements in every effort to reconcile the settlement of cases by involving victims, suspects, community leaders or representatives, and other parties.
- b. Prosecutor's Guidelines Number 1 of 2021 concerning Access to Justice for Women and Children in Handling Criminal Cases. These guidelines guide Prosecutors in handling criminal cases involving women and children while optimizing access to justice for women and children who conflict with the law, especially as victims of criminal acts.
- c. Guideline Number 18 of 2021 concerning Settlement of Handling of Narcotics Abuse Criminal Cases Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Prosecutor's Dominus Litis Principle. This guideline is a regulation of the restorative justice approach in resolving narcotics abuse cases to treat people with an addiction and drug abusers who are considered victims of drug abuse itself.

The protection efforts that have been carried out by the Labuhan Batu District Attorney's Office for child victims of domestic violence at the restorative justice stage are:

- a. Presenting special child companion officers from LPSK (Witness and Victim Protection Agency).

⁹ "Siaran Pers Nomor: PR-1911/187/K.3/Kph.3/11/2022, 'Jaksa Agung ST Burhanuddin : Restorative Justice Menjadi Alternatif Dalam Penyelesaian Perkara', November ."

- b. Protection from identity reporting through the mass media to avoid labeling by not including the child victim's full name but only the initials of the child victim's name.
- c. Providing accessibility to obtain information regarding the case's progress to the child victim through the parents/guardians, in this case represented by the child victim's mother.
- d. Providing guarantees to maintain relationships with parents and family.
- e. Providing safety guarantees for the child victim if the perpetrator commits violence against the child victim again, then the perpetrator will be given a heavier sentence.
- f. Providing compensation for losses suffered by the child victim as a result of suffering directly related to the crime and reimbursement of medical and psychological costs.

The implementation of restorative justice at the Labuhan Batu District Attorney's Office has also been reported in the news. Still, the victim's child is protected from all forms of reporting by not disclosing the victim's child's identity in detail to the mass media. This is evidenced by several online media that reported the implementation of restorative justice, namely online media: antaranews.com, riaupower.com, triasinfo.com, and news.co.id, where none of these media revealed the victim's child's identity. The Child Criminal Justice System Law explains the rules for publishing the child's identity in the mass media. Efforts to protect the child victim's legal rights, in this case, are also implemented with compensation in the form of medical treatment costs borne by the suspect due to the physical violence committed against the three child victims. As has been discussed, the suspect's actions in hitting the victim's child using a broom on the victim's head and hitting him using his own hands resulted in the victim's child suffering bruises. The regulation on compensation has been regulated in Article 7A paragraph (1) of Law Number 3 of 2014 concerning Protection of Witnesses and Victims, which states that every victim has the right to receive compensation in the form of

compensation for lost income or property; for the impact/suffering of the crime and compensation for physical, psychological and other medical care costs. The Witness and Victim Protection Agency (LPSK) is also tasked with protecting the rights of child victims related to criminal acts committed by the suspect. The restorative justice efforts implemented above are not much different from the two cases. The difference is that in the second case, there is a guarantee written by the Suspect in a Statement Letter stating that the Suspect will look for work to help the family's economy.

2. Obstacles for the Labuhan Batu District Attorney's Office in Providing Legal Protection for Child Victims of Domestic Violence through the Restorative Justice Approach

The discussion related to obstacles for the prosecutor's office is divided into two, namely internal and external. Referring to the theory of legal effectiveness, if we look at the application of the termination of prosecution of criminal cases through restorative justice based on 2 (two) case studies of domestic violence that occurred in the jurisdiction of the Labuhanbatu District Attorney's Office in the period 2023, it can be seen that there are several internal obstacles in the implementation of legal protection for child victims of domestic violence, including:

1. Incomplete legal substance.
2. Law enforcers who abuse their authority.
3. Lack of coordination between agencies.

External obstacles in the implementation of legal protection for child victims of domestic violence through restorative justice include:

1. Low public understanding.
2. A culture of society that is less concerned.
3. Inadequate facilities and infrastructure.
4. Incomplete legal sources.

Victims of domestic violence have the right to receive protection and support from various agencies such as the police, social agencies, and other legal institutions. Although there is a law that protects victims, many do not receive this protection. Victims can be protected through prevention,

assistance, and recovery. Law enforcement against perpetrators of violence is important to provide a deterrent effect and prevent the recurrence of such acts. Domestic violence still occurs frequently, so cooperation between the government and the community is needed to reduce the number of violence and handle victims. Children who are victims of domestic violence also have the right to protection according to applicable laws. As written in Articles 89 and 90, paragraph (1), child victims have the right to receive rehabilitation, safety guarantees, and information regarding their case.¹⁰ Research shows that some child victims have received their rights through restorative justice. Some children who were victims of their own father's actions have been treated medically but did not receive counseling for their mental health. Although they do not appear traumatized after reconciling with their father, counseling is still needed. Protection of child victims is stated in a statement letter made by the perpetrator, in which he promises not to repeat his actions. The Labuhan Batu District Attorney's Office provides guarantees to child victims by issuing a case settlement letter based on restorative justice. This letter stipulates that if the perpetrator commits violence again, the victim's family can report it, and the peace effort can be canceled.

Another obstacle in the research case is that victims of domestic violence have not used their right to be accompanied by a legal advisor (attorney) because, in general cases, the one who uses a legal advisor (attorney) is the suspect/suspect of the crime. No victims have filed a protection order application with the local district court. In this case, handling domestic violence, child victims must be protected by applicable law by the human rights conditions that have been regulated in laws and regulations. Thus, it can be concluded that in the 2 (two) cases of domestic violence resolved through restorative justice/peace, it can be said that the prosecutor has correctly understood the existence of restorative justice in resolving cases. This plays a very important role because, as previously discussed, restorative justice is an approach to justice that focuses on the needs of victims and perpetrators of crimes, involves the role of society, and does not merely fulfill

¹⁰ "Surat Pernyataan Lambok Parulian Simamora Tanggal 30 Maret 2023 ."

legal provisions or criminal penalties. In this case, the principle of request remedial inherent in criminal sanctions has been successfully implemented through restorative justice mechanism efforts.¹¹

3. Efforts to Overcome Obstacles to the Role of the Labuhan Batu District Attorney's Office in Providing Legal Protection for Child Victims of Domestic Violence through a Restorative Justice Approach

Some law enforcement officers do not yet understand the Law on the Elimination of Domestic Violence, so there are obstacles in investigating domestic violence cases when victims report to the RPK (Special Service Room), so officers tend to release the perpetrators without sanctions so that the perpetrators have the opportunity to repeat their actions and potentially cause more victims. Unprofessional investigators are one of the problems faced by law enforcement. In communities that still adhere to the patrilineal customary law system, resolving domestic violence cases often uses alternative solutions outside the judicial system, known as Alternative Dispute Resolution (ADR).¹²

Efforts made by law enforcement officers related to children in conflict with the law implemented in Law Number 23 of 2002 can be summarized as follows:

1. Special protection for children in conflict with the law is the obligation and responsibility of the government and society;
2. Treatment of children in a humane manner by the dignity and rights of children;
3. Provision of special companion officers from an early age;
4. Provision of special facilities and infrastructure;
5. Imposition of appropriate sanctions for the best interests of the child;
6. Continuous monitoring and recording of the development of children in conflict with the law;
7. Protection from identity news through the mass media and to avoid labeling; and

¹¹ "Hasil Wawancara Dengan Jaksa Rani Trisna Togatorop S.H., M.H. 20 Maret 2024."

¹² Alimi and Nurwati, "Faktor Penyebab Terjadinya Kekerasan Dalam Rumah Tangga Terhadap Perempuan."

8. Provide safety guarantees for victim witnesses and expert witnesses, both physically, mentally, and socially, and ensure accessibility to obtain information regarding case developments.

Efforts made by law enforcement officers related to children who are victims of domestic violence based on Law Number 23 of 2004 concerning the Elimination of Domestic Violence can be explained as follows:

1. Carrying out legal consultations, where victims are given the right to share/consult on legal events that occur to the victim with an advocate who can then draw conclusions about the legal event and provide the right solution for the victim. If the victim does not provide an advocate for the case, it can be replaced by an LPSK (witness protection agency) employee by sending a letter of request for assistance for the child victim at the investigation level to the court level.
2. Carrying out mediation or negotiation between the victim and perpetrator of domestic violence; in this process, the investigator becomes a neutral party between the victim and perpetrator and provides input/advice to find a solution to the legal event that occurred;
3. Accompanying the child victim at the investigation, prosecution, and examination levels in court. In this case, advocates / LPSK must provide assistance and monitoring at every stage of the legal process because every case development must be closely monitored. This is very important and affects the evidence and the imposition of criminal penalties on the perpetrators. What is feared when there is no assistance is that the victim may be emotionally unstable due to the legal incident that befell them and the fear of giving true testimony. Another thing that can happen is that the victim can be intimidated by the perpetrator so that the victim's child is convoluted in giving their testimony;
4. Advocates and/or LPSK must coordinate with fellow law enforcers, volunteer companions, and other social workers to

obtain more accurate information and assist child victims in investigation, prosecution, examination, and court hearings.

Based on interviews with sources from the Head of the General Crimes Section, S.H at the Labuhanbatu District Attorney's Office, the efforts made to overcome obstacles to the implementation of restorative justice to motivate other restorative justice at the Labuhanbatu District Attorney's Office:¹³

1. Strengthening the strong commitment of the Head of the Labuhanbatu District Attorney's Office to increase the effectiveness of resolving community problems through professional restorative justice
2. Optimizing efforts to conceptualize living law in society (living law)
3. Providing strict sanctions against personnel who abuse their authority in implementing restorative justice. Efforts are made by creating integrity facts.
4. Improving the quality of each Prosecutor's personnel who carry out duties in law enforcement. Efforts made include increasing understanding in the form of knowledge, skills, and attitudes related to restorative justice
5. Avoiding violations and abuses committed by Prosecutors in carrying out their duties and authorities with Reward and Punishment efforts that can be given to the Labuhanbatu District Attorney's Office consistently and consequently without discrimination, especially related to personnel who are proactive in handling criminal cases through a restorative justice approach by the values adopted by social institutions
6. Realizing the community's hopes for the creation of a professional, proportional, and just law enforcement process.

¹³ "Hasil Wawancara Dengan Kepala Seksi Tindak Pidana Umum Bapak Horas Monang Jeffry Gultom Pada Tanggal 20 Maret 2024. ."

C. CONCLUSION

The Labuhan Batu District Attorney's Office can play a role in stopping prosecution based on opportunity or the principle of prosecution policy. The Labuhan Batu District Attorney's Office, where the prosecutor stopped his/her prosecution in domestic violence cases, which is based on the threat is not more than 5 (five) years; the perpetrator is not a recidivist, there is the victim's agreement or desire to reconcile, there is good faith from the suspect to fulfill certain obligations agreed upon between the victim and the suspect in the peace, there is no pressure or influence from any party, in other words, it must be based on an agreement between the victim and the suspect and other parties.

Obstacles for the Labuhan Batu District Attorney's Office in providing legal protection for child victims of domestic violence through the Restorative Justice approach are divided into internal and external obstacles. Internal obstacles are incomplete legal substance, law enforcers who abuse their authority, and lack of coordination between agencies, while external obstacles include low public understanding, a culture of society that is less concerned, inadequate facilities and infrastructure, and incomplete legal sources.

Future efforts to overcome the obstacles to the role of the Labuhan Batu District Attorney's Office in providing legal protection for child victims of domestic violence through the Restorative Justice approach are regulated in Law Number 23 of 2002 concerning Child Protection and Law Number 23 of 2004 concerning the Elimination of Domestic Violence. This effort is carried out by implementing mediation and preventive and repressive efforts in the form of arrest and detention of perpetrators of domestic violence.

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