

## **THE ROLE OF THE POLICE AS MEDIATORS IN RESOLVING CRIMINAL CASES OF DOMESTIC PHYSICAL VIOLENCE THROUGH RESTORATIVE JUSTICE IN THE JURISDICTION OF THE BENGKULU CITY RESORT POLICE**

**Nur Huda<sup>1</sup>**  
**Dr. Hamzah Hatrik, S.H., M.H.<sup>2</sup>**  
**Dr. Antory Royan, S.H., M.H.<sup>3</sup>**

<sup>1</sup>*Faculty of Law, Bengkulu University, Indonesia*  
*E-mail: nurhudaaj99@gmail.com*

<sup>2</sup>*Faculty of Law, Bengkulu University, Indonesia.*  
*E-mail: hhhatrik@unib.ac.id*

<sup>3</sup>*Faculty of Law, Bengkulu University, Indonesia.*  
*E-mail: ar.adyan@unib.ac.id*

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### **ABSTRACT**

Based on the data obtained in the resolution of criminal cases involving domestic physical violence through the restorative justice approach in the jurisdiction of the Bengkulu City Resort Police from 2019 to 2021, it has not been able to function optimally. This condition is because the police, particularly the investigators, await a settlement agreement between the parties involved and the withdrawal of complaints by the complainants. This condition raises the question of how the resolution through a restorative justice-based approach, carried out by the police as mediators, can be the best solution for resolving cases involving the parties through a restorative justice approach. This reason is what motivated the author to conduct this research. The methodology employed is empirical legal research, utilizing primary and secondary data. The data was analyzed qualitatively through a juridical lens, leading to inductive conclusions. Based on the results of this research, the following findings emerge: (1). The concept of restorative justice is employed in handling criminal cases with an emphasis on the integration of perpetrators, victims, and the community as a whole, seeking to find solutions and restore a positive relationship between the perpetrator of the criminal act. (2). The role of the police as mediators has yet to be optimally executed, primarily due to concerns and suspicions from the involved parties regarding potential bias by the police towards one party. Internally, the police have established regulations, such as the Telegram Letter from the Head of the Criminal Investigation Division Number S.T./583/VIII/2012 dated August 8, 2012. (3). Investigator's

considerations as mediators in using the restorative justice-based approach to resolve domestic physical violence within the jurisdiction of the Bengkulu Resort Police include the submission of peace agreements by both the victim and the perpetrator. This consideration is especially relevant in cases of minor physical violence, where the victim does not wish to prolong the case, and the interests of the victim in domestic violence are accommodated

**Keywords : Police Role, Mediator, Restorative Justice, Domestic Violence**

## INTRODUCTION

### Research Background

Restorative justice is an approach to jurisprudence that centres on the needs of victims, perpetrators, and the involved community rather than merely adhering to abstract legal principles or punishing wrongdoers. Victims play an active role in the process. At the same time, offenders are encouraged to take responsibility for their actions by seeking to rectify the harm they have caused through apology and amends. Restorative justice involves the active engagement of both victims and perpetrators, strongly emphasizing addressing their needs.<sup>1</sup>

Based on the police Reports data received within the jurisdiction of the Bengkulu City Resort Police from the beginning of 2020 to the end of 2022, specifically in cases of Domestic Physical Violence (Henceforth KDRT –*Kekerasan dalam Rumah Tangga*), the total number

of cases was 187 (one hundred eighty-seven).<sup>2</sup> Notably, out of the cases mentioned, only 79 (seventy-nine) could be resolved through mediation with a restorative justice-based approach. This is primarily due to the predominant use of a positive law approach, closely associated with legal regulations. Some victims and their families assume that when the police suggest pursuing a restorative justice-based approach, there may be concerns about potential bias towards one party.

Moreover, many victims and their families are reluctant to engage in such a process involving a meeting between the perpetrator and the victim. Based on the legal issues outlined above, this has become a significant concern in handling criminal cases. Therefore, the author is motivated to choose the title for this thesis as "The Role of the Police as Mediators in Resolving Criminal Cases of Domestic Physical Violence through Restorative

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<sup>1</sup>Anas Yusuf, *Implementasi Restorative Justice Dalam Penegakan Hukum Oleh Polri Demi mewujudkan keadilan Substantif*, Universitas Trisakti, Jakarta, 2016. , page 25

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<sup>2</sup> The data from the Bengkulu Resort Police shows that there have been 120 cases of Domestic Violence (KDRT) from 2020 to 2022.

Justice in the Jurisdiction of the Bengkulu City Resort Police."

## **METHOD**

### **Research Type**

The type of research employed in this study is empirical legal research, focusing on the role of the police as mediators in resolving criminal cases of domestic physical violence through a Restorative Justice approach within the jurisdiction of the Bengkulu City Resort Police.

### **Research Approach**

The research approach utilized is the socio-legal juridical approach.<sup>3</sup> In this context, the law is not merely construed as a network of values, officials' decisions, rules and norms, or written positive law. However, it can also be understood as a system of teachings about reality, organized behaviour, and law in the sense of an institution.<sup>4</sup> Therefore, the researcher employs a socio-legal juridical research methodology.

### **Research Location**

This research is conducted at the Bengkulu City Resort Police, particularly within the Women and Children Protection Unit (Satuan Perlindungan

Perempuan dan Anak - PPA) and the Criminal Investigation Unit (Reserse Kriminal).

### **Population and Sample**

#### **a) Population**

1) The population in this research is all investigators and assistant investigators in the Women and Children Protection and Criminal Investigation Unit at the Bengkulu City Resort Police.

2) All victims and perpetrators involved in cases of domestic physical violence are resolved through a Restorative Justice-based approach within the jurisdiction of the Bengkulu City Resort Police.

#### **b) Sample**

1) Head of the Criminal Investigation Unit (Kasat Reskrim) at the Bengkulu City Resort Police.

2) Head of the Women and Children Protection Unit (Kanit PPA) at the Bengkulu City Resort Police.

3) A quota sampling of assistant investigators handling cases.

4) Three (3) non-criminal perpetrators of domestic physical violence.

5) Three (3) non-criminal victims of domestic physical violence.

6) Three (3) Chairpersons of Neighborhood Associations (Rukun Tetangga - R.T.) handling cases of domestic physical violence.

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<sup>3</sup> Abdurrahmad Fathoni, *Metodologi Penelitian & Teknik Penyusunan Skripsi*, (Jakarta: Rieneka Cipta, 2006), pp. 98-99

<sup>4</sup> Zainudin Ali, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta 2014, p. 105.

## **Data Resource**

The data sources used in this research are categorized into two types: primary data sources and secondary data sources.

## **Data Collection Technique**

The researcher used two types of data collection techniques: primary and secondary. Primary data refers to information obtained directly from on-site sources through face-to-face interviews involving oral question-and-answer sessions, during which the researcher gathered information and statements.

In contrast, secondary data was acquired by studying and analyzing literary materials, particularly legal materials, including primary legal documents, through an inventory of literature, documents, articles, and other legal sources to obtain concepts, theories, and opinions about Restorative Justice.

## **7. Data Processing**

Data processing encompasses the procedures for processing and analyzing data following the chosen approach, facilitating the understanding and interpretation of data. This process includes stages such as data examination (editing), classification, verification, analysis, and concluding.

## **8. Data Analysis**

The data analysis involves a comprehensive examination of data to gain a clear understanding for presenting and drawing conclusions. In this research, a qualitative descriptive research method is utilized. Conclusions are drawn from the results of data analysis, allowing for the resolution of issues related to the Role of the Police as Mediators in Resolving Domestic Violence Criminal Cases through Restorative Justice within the Jurisdiction of the Bengkulu City Resort Police, presented in the form of a thesis.

## **RESULTS AND ANALYSIS**

**The Concept of Restorative Justice is One of the Models for Handling Criminal Cases of Domestic Physical Violence within the Jurisdiction of the Bengkulu City Resort Police.**

### **a. Restorative Justice Concept**

Within the jurisdiction of the Bengkulu City Resort Police, from the year 2020 to 2022, cases of Domestic Violence have been addressed, as evidenced by the details in the table below.

**Table of Cases of Domestic Violence within the Jurisdiction of the Bengkulu City Resort Police (2020-2022**

DOMESTIC VIOLENCE CASES				
No	DOMESTIC VIOLENCE	2020	2021	2022
1	Physical Violence	50	48	40
2	Psychological Violence	7	2	2
3	Sexual Violence	-	-	-
4	Domestic Neglection	10	19	9
Total Number		67	69	51

The table above shows that the Bengkulu City Resort Police has handled 187 (one hundred eighty-seven) cases of Domestic Violence from 2020 to 2022. Concerning the author's research on Domestic Violence cases, specifically physical violence, that have been resolved within the jurisdiction of the Bengkulu City Resort Police, details can be observed in the table below.

**Table of Domestic Violence Cases within the Jurisdiction of the Bengkulu City Resort Police Resolved through the**

**Restorative Justice Approach (2020-2022)**

Out of the 79 (seventy-nine) cases that have been resolved within the jurisdiction of the Bengkulu City Resort Police through the concept of restorative justice, it is evident that the Bengkulu City Resort Police has made efforts to facilitate this process. This data is achieved by providing a dedicated space for mediation and positioning the police officers as investigators in the role of mediators. The approach prioritizes dialogue between the conflicting parties to resolve their issues.<sup>5</sup>

**b. Model in Handling Criminal Cases of Domestic Violence within the**

DOMESTIC VIOLENCE CASES				
<i>Restorative Justice</i>		2020	2021	2022
	Physical Violence	28	35	16
Total Number		79		

**Jurisdiction of the Bengkulu City Resort Police**

<sup>5</sup> Interview with Arnita Nainggolan, the Head of the Women and Children's Protection Unit (Kanit PPA), on January 2<sup>nd</sup>, 2023, at 9:32 AM WIB.

The concept of restorative justice is proposed as an alternative to the more coercive concept of retributive justice. This concept is rooted in the philosophical foundation of empowering crime victims, positioning the mediator to empower victims to resolve criminal cases through the restorative justice approach.<sup>6</sup>

The empowerment of victims is the philosophical foundation of the restorative justice concept, and, as a result, the focal point in criminal law shifts objectively from the severity of punishment to a form of revenge against the perpetrator of the criminal act.

## **2. The Regulation of the Police Role in Handling Criminal Cases of Domestic Physical Violence through the Restorative Justice Approach within the Jurisdiction of the Bengkulu Resort Police**

### **a. Regulation of the Police Role in Handling Criminal Cases of Domestic Physical Violence**

In the jurisdiction of the Bengkulu City Resort Police, the resolution of Domestic Violence cases involves the use of mediation with a Restorative Justice-based approach (non-litigation pathway)

implemented based on specific regulations. These regulations include.<sup>7</sup>

a. Circular Letter of the Chief of the Indonesian National Police No. Pol: B/3022/XII/2009/SDEO PS dated December 14<sup>th</sup>, 2009, Regarding Handling Cases through Alternative Dispute Resolution (ADR).

b. Regulation of the Chief of the Indonesian National Police No. 7 Year 2008 Regarding the Basic Guidelines for the Strategy and Implementation of Community Policing/Police Duties.

c. Police Regulation No. 8 of 2021 on the Handling of Criminal Offenses based on Restorative Justice.

Furthermore, clear guidelines for implementing the Restorative Justice approach in cases of domestic physical violence are stipulated with a solid legal foundation in regulations, including:

1. Regulation of the Chief of the Indonesian National Police No. Pol.: 10 Year 2007 Concerning the Organization and Structure of the Women and Children Service Unit (Unit PPA) within the Indonesian National Police.

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<sup>6</sup> Interview with Williwanto Malau, the Head of the Criminal Investigation Division, on January 3<sup>rd</sup>, 2023, at 9:40 AM WIB.

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<sup>7</sup> Interview with Williwanto Malau, the Head of the Criminal Investigation Division, on January 3<sup>rd</sup>, 2023, at 9:40 AM WIB.

2. Circular Letter of the Head of Criminal Investigation Division T.R./1124/XI/2006 dated November 26<sup>th</sup>, 2006, and T.R./395/VI/2008 dated June 9<sup>th</sup>, 2008, on the Implementation of Diversion and Restorative Justice.

3. Joint Decree between the Ministry of Social Affairs of the Republic of Indonesia No. 12/PRS-2/KPT/2009, the Ministry of Law and Human Rights of the Republic of Indonesia No. M.HH.04.HM.03.02 of 2009, the Ministry of National Education of the Republic of Indonesia No. 11/XII/KB/2009, the Ministry of Religious Affairs of the Republic of Indonesia No. 06/XII/2009, and the Indonesian National Police No. B/43/XII/2009 concerning the protection and social rehabilitation of children in conflict with the law.

4. Joint Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of the Indonesian National Police, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, and the Minister of Child Protection of the Republic of Indonesia No. 166/KMA/SKB/XII/2009, No. 148 A/A/JA/12/2009, No. B/45/XII/2009, No.

M.HH.04.HM.03.02 of 2009, No. 10/PRS-2/KPTS/2009, No. 02/Men. P.P. and PA/XII/2009, dated December 22<sup>nd</sup>, 2009, regarding the Handling of Children in Conflict with the Law.

5. Law Number 23 of 2004 concerning Domestic Violence.

#### **b. Handling Criminal Cases of Domestic Physical Violence through the Restorative Justice Approach within the Jurisdiction of the Bengkulu Resort Police**

In addition to applying police discretion, adhering to the relevant legislation is essential. Furthermore, discretion can be exercised based on local customary law or traditions.<sup>8</sup> This is evident in the numerous legal cases resolved through customary practices. For instance, in cases of Domestic Violence (KDRT) with relatively minor impacts on the victims, investigators strive to reconcile the disputing parties by involving the local community leader (Kepala Adat) and the neighbourhood association leader (Kepala Rukun Tetangga or RT). However, cases of KDRT that result in severe injuries or fatalities will naturally follow the

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<sup>8</sup> Interview with Williwanto Malau, the Head of the Criminal Investigation Division, on January 3<sup>rd</sup>, 2023, at 9:40 AM WIB.

established legal provisions, including the court proceedings.<sup>9</sup>

Based on this context, in applying the police role as a mediator in implementing Restorative Justice for cases of physical violence within domestic households in the Bengkulu City Resort Police, several stages are followed, starting from the report, investigation, and case hearing. These stages are undertaken for several reasons:

1. Internal police regulations, particularly Police Regulation No. 8 of 2021, concerning the Handling of Criminal Offenses based on Restorative Justice.
2. The presence of mutual reconciliation between the parties is supported by various considerations, such as:
  - a. Concerns for the well-being of children and maintaining a connection with both parties.
  - b. A sense of remorse is expressed by the perpetrator and acknowledged by the victim.
  - c. Considerations involving economic and social factors.
3. The withdrawal of the report by the complainant.

Based on the above explanation, when related to the theoretical framework used

in this research, specifically the theory of justice within the concept of justice according to progressive law, it revolves around establishing substantive justice.

### **3. Considerations of the Investigator as a Mediator in Using the Restorative Justice-Based Approach to Resolve Criminal Cases of Domestic Physical Violence within the Jurisdiction of the Bengkulu Resort Police**

#### **a. Considerations of the Investigator as a Mediator in Using the Restorative Justice-Based Approach to Resolve Criminal Cases of Domestic Physical Violence within the Jurisdiction of the Bengkulu Resort Police**

The different levels of conflict give rise to various resolution methods, each distinct from the others. These methods include:<sup>10</sup>

- (1) Unilateral resolution
- (2) Self-managed Conflict resolution
- (3) Prejudicial Conflict resolution
- (4) Dispute resolution through legal proceedings
- (5) Juridico-political dispute resolution

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<sup>9</sup> Interview with Williwanto Malau, the Head of the Criminal Investigation Division, on January 3<sup>rd</sup>, 2023, at 9:40 AM WIB.

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<sup>10</sup> Ronny Hanijito Soemitro, *Masalah-Masalah Sosial Hukum*, Bandung: Sinar Baru, 1994, pp. 182-190.



(6) Violent conflict resolution.

These six forms of dispute resolution can be categorized into two main groups: resolution through litigation (proceeding in a court hearing) and non-litigation methods.

## **b. Investigator's Considerations in Resolving Criminal Cases of Domestic Physical Violence within the Jurisdiction of the Bengkulu Resort Police**

### **1) Most Domestic Violence are Women**

Referring back to the definition of KDRT in the Law on the Elimination of Domestic Violence (UU PKDRT), it encompasses any act against an individual, particularly women, that results in physical, sexual, psychological suffering, and household neglect, including threats of illegal coercion or deprivation of freedom within the household context.

Given the unique characteristics and experiences of each female KDRT victim and the perception that the criminal justice system is often challenging to be neutral and objective toward women, mediation using a Restorative Justice-based approach can be a preferred method for handling KDRT.

### **2) Victims Do Not Wish to Prolong Their Cases**

The fact that victims do not want their cases to be prolonged is a consideration for investigators at Polresta Bengkulu to use mediation with a Restorative Justice-based approach to resolve KDRT cases. As mentioned earlier, resolving cases through mediation shortens the duration compared to proceeding to the next stage of the legal process.

This decision is not only about the financial burden but, equally importantly, the psychological burden that can affect the attitudes and activities of the parties involved in the dispute. Choosing conflict resolution in this manner is because litigation has social consequences, such as the severing of family ties or social relationships.

### **3) Domestic Violence Victims' Interest are Accommodated**

In mediation, the victim is directly involved in every step of the process, from reporting or filing the incident to the final stages.<sup>11</sup>

The consideration for using mediation with a Restorative Justice-based approach related to accommodating the interests of KDRT victims brings benefits

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<sup>11</sup> Interview with the Domestic Violence Victim on January 13<sup>th</sup>, 2023, at 3:40 PM WIB.

to both the victims. It provides a solution to the issues within the family concerned.<sup>12</sup>

## CONCLUSION

a) The concept of restorative justice used for handling criminal cases prioritizes the integration of offenders, victims, or the community to find solutions and restore a positive relationship between the offender and the criminal justice system.

b) The role of the police as a mediator has not been optimally executed due to concerns and suspicions of bias among the involved parties, even though there is internal regulation within the police system, such as the National Police Regulation Number 8 of 2021 regarding Handling Criminal Offenses based on Restorative Justice.

c) The Investigator's consideration as a mediator in using a restorative justice-based approach to resolving criminal cases of physical violence in domestic settings in the jurisdiction of the Bengkulu City Resort Police is due to the proposals for reconciliation by both the victim and the offender. This is relevant in cases of

low-level physical violence, where the victim does not wish to prolong the case, and the interests of the KDRT victim are accommodated.

## 2) Suggestion

In order to optimize the role of the police in the resolution of criminal cases involving physical violence in domestic settings based on restorative justice in the jurisdiction of the Bengkulu City Resort Police, the following steps are advised:

(a) Enhance the supervisory function of the investigation through "Wasidik," monitoring the role of investigators in mediation.

(b) Establish a commitment among investigators to perform their duties as mediators during the investigative stage effectively.

(c) Implement penalties for investigators who abuse their authority or demonstrate unprofessional behaviour, including violating the code of ethics.

(d) Provide opportunities for investigators to undergo training to enhance their competence as mediators.

(e) Develop and implement a Standard Operating Procedure (SOP) for investigators acting as mediators using a

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<sup>12</sup> Interview with Williwanto Malau, the Head of the Criminal Investigation Division, on January 3<sup>rd</sup>, 2023, at 9:40 AM WIB.

restorative justice-based approach to resolve cases of physical violence in domestic settings.

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