Dimension of justice of restoration justice paradigm in the criminal system for sexual violence in Indonesia

Dimensión de la justicia de la restauración del paradigma de justicia en el sistema penal por violencia sexual en Indonesia

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Abstract

The act of sexual violence is a crime that is classified as a violation of human rights (HAM). The increase in cases of sexual violence in the world, including in Indonesia, shows that this shows that the existing justice system is unable to guarantee justice for victims, and most importantly recovery for victims. For this reason, a justice restoration approach is needed as an alternative in law enforcement against sexual crimes. In practice, marriage is used as a way to approach justice restoration. This article uses a normative and juridical approach to discuss law enforcement on sexual crimes through a restoration justice approach. It can be concluded that law enforcement on sexual crimes must look at the criminological, victimological and ontological aspects, in order to be able to place the problem objectively. As a complaint offense, sexual crimes may not be passed on to the criminal process, if there is peace between the victim and the perpetrator, provided that there is an agreement between the victim, the perpetrator, the family and the community without coercion from various parties. The main thing in the justice restoration approach for sexual crimes is to provide protection and assistance to victims from various parties, so that victims can be separated from the trauma or psychological impact caused by sexual violence experienced by the victim or the impact received after the occurrence of the sexual crime.

Keywords: Restoration Justice; Sexual Violence; Victim Protection; Victim Assistance.

Resumen

El acto de violencia sexual es un delito tipificado como violación de los derechos humanos (DH). El aumento de casos de violencia sexual en el mundo, incluso en Indonesia, muestra que esto demuestra que el sistema de justicia existente no puede garantizar justicia para las víctimas y, lo que es más importante, recuperación para las víctimas. Por esta razón, se necesita un enfoque de restauración de la justicia como alternativa en la aplicación de la ley contra los delitos sexuales. En la práctica, el matrimonio se utiliza como una forma de abordar la restauración de la justicia. Este artículo utiliza un enfoque normativo y jurídico para discutir la aplicación de la ley en delitos sexuales a través de un enfoque de justicia restaurativa. Se puede concluir que la aplicación de la ley sobre delitos sexuales debe mirar los aspectos criminológicos, victimológicos y ontológicos, para poder ubicar el problema de manera objetiva. Como delito de denuncia, los delitos sexuales no podrán pasarse al proceso penal, si existe paz entre la víctima y el autor, siempre que exista un acuerdo entre la víctima, el autor, la familia y la comunidad sin coacción de diversas fiestas. Lo principal en el enfoque de restitución de justicia para los delitos sexuales es brindar protección y asistencia a las víctimas de diversas partes, para que las víctimas puedan ser separadas del trauma o impacto psicológico causado por la violencia sexual vivida por la víctima o el impacto recibido después de la ocurrencia. del delito sexual.

Palabras clave: Justicia Restaurativa; Violencia sexual; Protección a las víctimas; Asistencia a las víctimas.

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INTRODUCTION

In principle, the state has a legal obligation to protect and promote the rights of all people without exception based on the constitution and the principles of human rights (HAM). In ideology and the constitution, nothing can seize the rights of others, including the rights of women and children (Siregar, 2018). Thus, violence that occurs to women and children, especially sexual violence, is a violation of human rights, a violation of dignity and discrimination that must be eliminated (Makarao, M Taufik, Bukamo, W., and Azri, 2013).

Victims of various kinds of behavior from sexual harassment to sexual violence in general are women, children, and people with disabilities, as marginal people in society (Achie Sudiarti Luhulima, S.H., 2000). Women and children as victims often experience more violence, both physical and mental, at home and in the community (Khanif, 2019). The victims and their families experience prolonged suffering due to sexual violence, in the form of trauma and depression (Sarong, 2019).Some cases of sexual violence were even committed by people closest to the victim, such as family members or friends, and often resulted in re-victimization. On the other hand, the criminal law enforcement system, especially to prevent sexual-related offenses, is still weak. Generally, sexual violence is revealed when the victim complains, or the victim's family reports sexual harassment. However, the absence of prevention efforts and the absence of severe sanctions for perpetrators of sexual harassment have led to these actions being repeated (Susila, 2019).

Even in some large countries such as America, the complexity of the problem of sexual violence is understood as a condition where gender and sexuality intersect with racial and class- based oppression systems in society. Several cases of sexual violence indicate that perpetrators of sexual violence tend to be committed by victims of sexual violence when they reach adulthood, which is caused by past trauma and depression experienced by victims (Probosiwi & Bahransyaf, 2015). This is also expressed by (Faulkner, 2003) in his study which revealed that 31% of women convicted of sexual violence in America were victims of sexual violence during their childhood. 95% of sex workers are victims of sexual violence during their childhood. 40% of child sexual assault offenders and 76% of serial rapists also experienced sexual violence in childhood. This shows that the existing justice system is unable to guarantee justice for victims, and most importantly recovery for victims.

The procedure for criminal and criminal procedural law in Indonesia regulates the formal procedures that must be followed in a criminal case, including in the crime of sexual violence. However, in practice, the system is often used as a repressive tool for law enforcers. The adage "*fiat justiciaruat coelom*" seems to be implemented in a narrow frame of mind on the pretext of law enforcement and certainty. It can be said that what is meant as a

tangible form of law enforcement is the imposition of penalties or sanctions.

Bagir Manan, in his view, is of the opinion that law enforcement in Indonesia can be considered to have failed to achieve the objectives indicated by the law. For that, we need a law enforcement with a socio-cultural approach and not a normative approach. In many countries, dissatisfaction and frustration with the formal justice system has regenerated interest in preserving and strengthening customary law as an alternative to tackling crime and social disruption. The concept of justice restoration is an alternative in law enforcement. The concept is based on the belief that parties to conflict must be actively involved in resolving and reducing negative consequences.

The existence of justice restoration in the criminal justice system in Indonesia is not new. However, the implementation of the concept of justice restoration, especially in cases of sexual violence, actually creates a new problem. In particular, the criminal justice system continues to operate against the backdrop of sex-based stereotypes and the "rape myth" that are pervasive in our society. One of these beliefs is that "rough sex" is an accepted cultural practice or that some women enjoy it. Another belief is that only women who behave like "perfect victims" - women who are chaste, dress modestly or resist their attackers - should be trusted and taken seriously by law enforcement. In fact, it is not uncommon in some cases, marriage is an option in solving acts of sexual violence on the pretext of providing justice for victims. This is especially so when the perpetrator is still the closest person or even a community leader. In cases of sexual assault, never there is agreement in it, so that after all acts of violence certainly occur when the victim is threatened. Marriage is not a form of settlement in the concept of justice restoration, because it clearly ignores the interests and roles of victims. It is necessary to modernize the criminal justice system to ensure that every victim of sexual violence is treated with the same compassion and respect. This is where an effort is needed that can reveal structural inequalities in the legal system that are detrimental to women. Efforts are needed to suppress recidivists and can help change the social and cultural conditions that promote violence. Then how is the application of the concept of justice restoration in solving cases of sexual violence?

Based on the description above, the purpose of this paper is to explain how the concept of justice restoration can be applied in solving cases of sexual violence with due regard to the interests of victims, where in the process it must be able to provide justice for victims based on the interests of victim recovery. Qualitative methods are used in this research by using a qualitative method approach with a normative juridical approach (legal research) and juridical empirical as a support for the Normative approach. The juridical empirical approach in this study is an approach in terms of applicable laws and regulations both nationally and internationally and is based on primary data obtained directly, while the nor-

mative approach is an approach that is carried out by examining library materials or secondary data on legal principles. , legal systematics, legal comparisons and case studies which in other words are often referred to as literature law research (Zainudin Ali, 2010).

DISCUSSION

Global Justice Restoration Paradigm

Restorative practices are currently of interest to modern politicians, where policies and practices are being reformed using a restorative justice paradigm. The term restorative justice itself was introduced in the literature and practice of modern criminal justice in 1970 (Yantzi, 1998). The 1970s see med to be the decade that criminologists around the world began to think about what was missing in the criminal justice system. The three articles in 1977 by Randy (Barnett, 1977), (Christie, 1977), (Eglash, 1977), were the first to talk about crises in the criminal justice system, and about alternative paradigms that can fundamentally replace the punishment paradigm, who claim that the criminal justice system ignores the interests of victims. In 1990 Restoration justice was expanded to include communities that also care for the families and friends of victims, and perpetrators participate in collaborative processes. This new focus on the recovery and associated empowerment of those affected by crime appears to have great potential for increasing social cohesion in an increasingly severed society. It seems clear that restorative justice is a collaborative process that involves those most directly affected by crime, the so-called "key stakeholders", in determining how best to repair the damage caused by the offense (Paul Mccold and Ted Wachtel, 2003).

In its development, there has not been a conception of justice retoration that satisfies all parties, because there are so many practices of implementing justice restoration in various countries with all its variations, as well as ideas related to justice restoration continue to develop. Several experts formulated concepts that are often used as a reference in the justice restoration approach, including, (Bazemore, Gordon, 2002), and (Sullivan, 2006). British criminologist stated that "Restorative Justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implication for the future". In this view, justice restoration is an approach to resolving violations where in the process the parties with an interest in a particular violation meet together to resolve problems collectively for the common interest and for the future.

As a legal system, restoration justice aims to restore the welfare of victims, perpetrators and communities damaged by crime and prevent further violations or crimes (Liebmann, 2007). In principle, there are three main concepts in justice restoration. First, crime is seen as the main conflict between individuals that causes suffering to the victim, society and the perpetrator himself. In this case, viola-

tions against the state are seen as not the main thing. Second, the aim of the criminal justice process must be aimed at creating peace in society by reconciling the parties and correcting the suffering or loss caused by the conflict. Finally, the criminal justice process must be able to facilitate the active participation of victims, perpetrators and the community to find solutions and conflicts (Sullivan, 2006).

This is in accordance with the three basic principles of justice restoration as stated by (Bazemore, Gordon, 2002). First, restoration justice emphasizes the principle of improvement. Justice must be able to heal victims, perpetrators, and the community who were injured or harmed as a result of the violations that occurred. Second, justice restoration emphasizes the active participation of stakeholders. Handling conflicts, disputes or violations cooperatively and constructively as early as possible in the judicial process must involve victims, perpetrators and the community. The third principle emphasizes transformation in the roles and relations of society and government. Through the justice restoration approach, it must be able to rethink the roles and responsibilities of government and society in promoting justice, the government is responsible for public order to create peace.

Referring to this, it is clear that the justice restoration movement began as an attempt to rethink unfulfilled needs in ordinary judicial processes. Restoration justice expands the circle of stakeholders or parties involved in events or cases where it is not only the government and perpetrators but also includes victims and members of the public. Restoration of justice is a response to the operation of the justice system which places the parties in an unbalanced position and has an impact on the creation asked injustice. In the current criminal justice system, there is an assumption that the rights of the parties have been taken by the state as the sole monolithic authority in the settlement of criminal cases. Therefore, although until now criminal law still exists as a means of social control, the idea of justice restoration is increasingly developing and applied by various countries (Braithwaite, 2002; Zulfa, 2009).

Restoration of justice in the context of Criminal Law in Indonesia

The criminal justice system in Indonesia adheres to a retributive justice system that is inseparable from Law Number 8 of 1981 concerning Criminal Procedure Law, which in its implementation refers to formal law. Under the regulations, law enforcement powers are exercised by the police, prosecutors and courts at all levels. These legal institutions have the authority to carry out the criminal justice process, from the investigation stage to the verdict stage in court. Talking about the criminal justice system cannot be separated from the criminal procedure law. Both are closely related to the legal system in force in a country. This is normal because the criminal justice system is one of the sub-systems of the national legal system as a whole adopted

by a country. Therefore, every country in the world has a criminal justice system which, although broadly speaking, is almost the same but has its own character which is adaptedto thesocial,culturalandpoliticalconditionsadopted(Atmasasmita, 2010).

In the practice of the justice system in Indonesia, the concept of the purpose of punishment has developed, starting from retribution as a form of absolute counterfeiting against criminals, without seeing further impacts and benefits. Furthermore, there is a restrain concept with the aim of alienating criminals from society, to ensure a sense of security for the community. There is also the concept of deterrence, with the aim of providing a deterrent effect on perpetrators and as an example for society not to take similar actions. The next development is the concept of reformation (rehabilitation) as a form of punishment with the aim of correcting the perpetrator so that he can be accepted again in the community. In this context, the concrete form of law enforcement is in the form of imposing penalties or sanctions based on regulations made (Arief & Ambarsari, 2018), regardless of how the impact and benefits are for victims, perpetrators, and the community.

In the development of the criminal justice system, Bagir Manan is of the view that law enforcement in Indonesia today is considered to have failed in achieving the goals indicated by the law or termed "communis opinion doctorum"). So, it is necessary to introduce an alternative approach based on socio-cultural and normative, and this can be carried out through the restoration justice system. Restoration of justice aims to empower victims, perpetrators, families, and the community to correct an illegal act by using awareness and conviction as a basis for improving social life (Nikmah Rosidah, 2014).

Justice is no longer measured as the amount of retribution from the victim to the perpetrator, physically and psychologically, but the results of the crime can be cured by providing support to the victim, and holding the perpetrator to account, either with the help of his family or the community if necessary. In this case, it is clear that justice restoration is intended for a fair settlement with the active involvement of victims, perpetrators, families, and other parties related to a conflict or criminal act, and emphasizes efforts to restore to its original state. Law is placed as a progressive law aimed at humans and not the other way around. Law is not an absolute and final institution, but as a moral, conscientious institution and is therefore largely determined by its ability to serve humans. Law is an institution that aims to lead people to a just, prosperous life and make humans happy. Humanity and justice are the goals of everything in our legal life. This is in line with the objectives of the Indonesian state which are stated in the basis of the Pancasila state, namely to create a just and prosperous society.

The position of restorative justice in Indonesia is clearly regulated in various laws and regulations such as the 1945 Constitution of

the Republic of Indonesia; Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 as amended by Law Number 5 of 2004 as lastly amended by Law Number 3 of 2009 concerning the Supreme Court. Given that the Supreme Court (MA) is a state institution that exercises judicial power and is the top of the judiciary, so it should be if the Supreme Court (MA) adopts or adopts and implements the approach or concept of restorative justice (restorative justice). In addition, the Law on Judicial Power, namely the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, specifically Article 5 clearly states that judges are obliged to explore the values that live in society (the living law or local wisdom). In this context, judges are in essence obliged to apply a restorative justice approach in resolving conflicts and law enforcement based on the values contained in Pancasila, by prioritizing the principles or values of morals, religions and beliefs of the Indonesian nation.

The definition of restoration justice itself can be found in Law Number 11 of 2012 concerning the Criminal Justice System for Children in Article 1 states that "*Restorative Justice is the settlement of criminal cases by involving the perpetrator, the victim, the family of the perpetrator / victim, and other related parties to work together the same as seeking a just solution by emphasizing restoration to its original state, and not retaliation*". In handling violations of the law on the age of children must be based on a welfare approach. This is based on the consideration that children are deemed not to fully understand the wrongs that have been made, so that it is appropriate to be given a reduction in punishment, as well as differentiation of punishment for children and adults. Another factor that is taken into consideration is that children are believed to be easier to nurture and bring to life than adults. Even though in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 7, there is a requirement that diversion can only be carried out on children who are threatened with imprisonment of under 7 (seven) years, and not a repetition of a criminal act (residive). However, this is a real step towards solving cases through other alternatives to minimize case handling to court, and a form of protection not only for the victim, but also for the perpetrator and the community (Sianturi, 2016).

As previously stated, the fundamental value contained in the principle of justice restoration is the balance of justice, and the absence of domination between one parties to another, and on the other hand, there is no discrimination with the criminal case settlement system. In addition, the basic value contained in this restorative process is carried out through a collaborative process that involves all parties (stakeholders). This value, which tends to be exactly the same as the principle of mediation contained in civil disputes as stipulated in Perma No. 1 of 2016. This is different from a criminal act. In principle, a criminal case is a complaint offense, so if the complainant withdraws his complaint, the legal process can be terminated. However, this is different

from the usual complaint offense, where the case can be processed without the consent / report of the victim (victim). However, it should be noted that the settlement of criminal cases can still be carried out in a family manner or based on restorative justice based on the following provisions: Prosecutor'sRegu lationNumber15of2020concerning Cessation of Prosecution Based on Restorative Justice ("Perkejaksaan 15/2020"); Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation ("Perkapolri 6/2019"); and Circular of the Chief of the National Police of the Republic of Indonesia Number SE / 8 / VII / 2018 of 2018 concerning the Application of Restorative Justice in the Resolution of Criminal Cases ("SE Kapolri 8/2018").

The principle of restorative justice cannot be interpreted as a method of terminating a case peacefully, but is broader in fulfilling a sense of justice for all parties involved in a criminal case through efforts involving victims, perpetrators and the local community as well as investigators / investigators as mediators, while case settlement is one of them in In the form of a peace agreement and revocation of the right to sue from the victim, it is necessary to request a judge through the public prosecutor to abort the authority to prosecute from the victim and the public prosecutor. In other words, the application of restorative justice in the criminal justice process can be done in several stages or processes that must be passed for justice seekers at the level of investigation, investigation, prosecution, examination in court to the stage of a judge's decision.

Sexual Violence in the Justice Restoration

Sexual crime is all sexual acts, attempted sexual acts, unwanted comments, sex trafficking, using force, threats, physical coercion by anyone regardless of the relationship with the victim, under any circumstances, including but not limited to home and work. (IASC, 2005). Sexual crimes can take many forms including rape, sexual slavery and / or sex trafficking, forced pregnancy, sexual violence, sexual exploitation and / or sexual abuse and abortion (Hawari, 2011). Not all types of violence can be identified as having subjective and objective elements as required in the criminalization of criminal law, so that the types of sexual violence which are practices, traditions and policies, do not have to be resolved by criminal regulations (for example sexual violence in the form of harmful sexual practices or traditions. discriminating against women and sexual control, including through discriminatory rules based on morality and religion). For this reason, sexual violence also needs to be intervened by changing perspectives and mindsets through education and information dissemination. This is especially education and information about how to do gender justice without discriminating against women, improving cultural practices in society that still harm women.

Referring to the book "KUHP and its Comments" by (Soesilo, 1986), the term sexual violence is included in the category of ob-

scene acts, which are described as acts that violate the sense of decency, or other heinous acts, and all in an environment of sexual lust, for example, kissing, groping members of the genitals, feeling the breasts and so on. Obscene acts in the Criminal Code are regulated in Book Two on Crimes, Chapter XIV on Crimes of Decency (Articles 281 to 303). For example, obscene acts committed by a married man or woman (Article 284), rape (Article 285), or inducing immorality to an immature person (Article 293). Furthermore, Soesilo explained that the term "obscene act" refers to Article 289 of the Criminal Code, "Whoever with violence or threats of violence force someone to commit or allow to commit obscene acts, is punished for committing an act that attacks the honor of decency with a sentence of perpetuity for nine years". Thus, an important element of sexual harassment is the presence of unwillingness or resistance to any form of sexual attention. So it could be actions such as whistles, words, comments which according to local culture or courtesy (sense of morality) are normal, however, if that is not what the recipient wants, then the act can be categorized as sexual harassment.

According to the annual records of the National Commission on Violence against Women (Komnas Perempuan), in 2017 there were 348,446 cases of violence against women recorded, 26% or 3,528 of which occurred in public spaces. Data obtained by Komnas Perempuan based on a questionnaire, shows an increase in cases of violence against women by 25% compared to 2016. Cases of violence against women in public spaces were recorded in 2017, there were 2,657 cases of sexual violence consisting of sexual abuse (911 cases), sexual harassment (704 cases), rape (699 cases) and sexual intercourse (343 cases). The development of sexual violence acts and their handling so far has become an indication and evidence of the weak protection (protection) of human rights, especially women from acts of sexual violence. The act of sexual violence is placed as an example of a criminal act that violates women's human rights because it puts the advantage of gender discrimination.

It is an indisputable reality that in handling cases of sexual violence, the interests and rights of the perpetrators (suspects) are more concerned with the interests and rights of the victims. Since the beginning of the investigation process, the perpetrator receives protection of his rights, obtains legal assistance, receives good treatment, is kept away from torture, is informed about the crime he is suspected of, and even the right to ask for compensation if an error occurs in the criminal case process. Unlike the case with the victim, apart from the pain that was felt when the crime occurred up to the trial process, the victim also received unpleasant treatment from his environment. This condition has implications for the reluctance of victims to report the incident, or to take other solutions, although sometimes it is outside the will of their conscience (Surbakti, 2010). So far, rape has been discussed in term so find individual actions in "private" situations. Several rape cases that occurred in Indonesia show that rape is

not just a thing the actions of an individual in the private space but also the actions of groups in the public space. Referring to this, the resolution of cases of sexual violence cannot be done automatically with a justice restoration approach. In solving cases, sexual crimes must be viewed based on criminological, victimological and ontological aspects.

In a criminological perspective, not sexual crimes should refer to motives and behavior. This is different from criminal law, which focuses on the factors that cause crime. Criminology has been shown to reveal the motives of perpetrators of crime, whereas criminal law is concerned with the relationship between actions and consequences (Atmasasmita, 1995). The motive factor can be traced to evidence that strengthens the intention to commit a crime. In a criminological review, the causes of sexual violence are based on internal factors, namely the negative (negative) mental personality of a person or individual, so that they tend to commit crimes. (Sahetapy, 1983), states that crime can also be triggered from external invoices, such as the condition of his family, environment, and society. (Sianturi, 2016) in his study also states that the external factor in the occurrence of sexual crimes is the role of the victim in the occurrence of crime, such as appearance, situation, environmental conditions and the position of the victim, which can trigger the perpetrator's intention to commit the sexual crime (rape). Various conditions and situations become motives that cause the perpetrator to take the initiative to commit sexual crimes against the victim. However, whatever the motives and factors that trigger sexual crimes, in the perspective of criminologists, the element of consent is the main thing that determines and qualifies an act as an act of sexual violence or not. Steven Box and J.E. Sahetapy in (Weda, 1996) states that criminological acts of sexual violence are based on the absence of the consent of women. This is what distinguishes it from a juridical perspective, which often sees acts of sexual violence from the presence or absence of an element of violence.

If criminology sees crime from the perpetrator's point of view, the victimology perspective sees crime from the victim's perspective. Victims are people who either individually or collectively have suffered losses, including physical or mental, emotional, economic or substantial harm to their fundamental rights, through acts or conditions that violate the law in each country, including abuse power (Gosita, 2014). Victims are those who suffer both physically and spiritually as a result of the actions of others who seek fulfillment of their own or other people's interests that are contrary to the rights of the injured party (Mansur, Dikdik M. Arief, 2007). In this case, victims of sexual crimes are people who suffer both physically and spiritually because they have received the consequences of the sexual violence they have experienced, so that legally positive, the victim has the right to claim damages or compensation to the perpetrator as part of legal protection. However, it should be emphasized that, in order to observe the problem of crime according to the actual proportions of various dimensions (dimensionally), we must con-

sider the role of victims in the emergence of a crime, whether the victim plays a role directly or indirectly, or in circumstances. Consciously or unconsciously, thus triggering sexual crimes. (Weda, 1996) calls it "victim precipitation", which is the role of the victim in terms of the position and behavior of the victim who intentionally or unintentionally encourages the crime of rape. Victim precipitation can be in the form of clothes the victim is wearing, where the victim is in a quiet environment and position, and the victim is alone.

Ontology, sexual crimes cannot be viewed as crimes that are only a private matter (individual victims), but must be made a public problem, because this crime is clearly a form of primitive behavior that emphasizes lust, revenge and superiority, namely who is strong. That is the right to sacrifice others. Sexual crimes are one of the heaviest forms of violence against women. In the UN Convention on the Elimination of Violence against Women, it even extends to the protection of women in household matters such as the case of "marital rape" (rape in marriage), not limited to women's rights outside the home or the public sector. Although in cases such as rape by husband to wife, this is not recognized in the Criminal Procedure Code and is still an object of discourse by expert's Islamic law, but at least it can be used as a measure of increasing concern for women's human rights.

According to Article 1 of the Declaration on the Elimination of Violence against Women, it has been stated that violence against women is any act based on sex differences that results in, or may result in suffering or suffering women physically, sexually or psychologically, including the threat of certain actions, coercion or arbitrary deprivation of liberty. - authority, whether occurring in public or in private life. It is very clear that women should be kept away from acts that involve abuse, deprivation of their rights and desecration of their human dignity, so that sexual crimes are one of the evil and heinous acts which in addition to violating human rights, also causes physical, social and psychological suffering to women. Human rights violations started when the rape did not stop at that time, but can take place in the next life. The victim does not receive humane treatment, but is treated the opposite, namely being positioned as an object such as a used object that cannot be used or placed on an equal footing in the humanitarian level.

Referring to these conditions, this is where the community plays a role in assisting victims of sexual crimes. As a crime that cannot be viewed as a private crime, of course, law enforcement in cases of sexual crimes cannot necessarily be carried out only as a restoration justice approach. In the articles of the Criminal Code concerning decency, not all cases of sexual crimes are included in the offense of complaint. To be able to find out whether an arrangement regarding a criminal act is a complaint offense or an ordinary offense, we must look at the construction of the governing article. Based on the provisions in the formulation of Article 76D and Article 76E of Law 35/2014 concerning Amendments to

Law Number 23 of 2002 concerning Child Protection, as well as Article 81 and Article 82 of 1/2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Protection Children, it appears that there is no obligation for the offense to be reported by the victim. Thus, the offense of intercourse with a child and fornication of the child is an offense, not a complaint offense.

Ordinary offenses can be processed without the consent of the injured person (victim). In general, sexual crimes constituting offenses for complaints that can be prosecuted if there is a report from the victim, criminal sanctions are the last resort (ultimatum remedium); if there is peace, the case will be withdrawn. The peace referred to here can be in the form of an agreement between the perpetrator and the victim to resolve disputes through marriage, with various considerations such as norms, pregnancy, etc., to prevent further crimes. Peace is a form of justice restoration approach, which is based on the agreement of all parties, be it victims, perpetrators, families or communities, without any coercion, threats or pressure from other parties. Justice for sexual crimes must take into account the best interests of the victim. In principle, the best justice restoration approach for sexual crimes is to provide protection and assistance to victims, so as to prevent victims from psychological impacts that will be received during the trial process and when they return to society. This is where the participation of all parties is not only the family, but also the community and law enforcers in providing protection and assistance to victims.

CONCLUSION

Sexual crimes are crimes that cannot be categorized as private crimes, because they are violations of human rights. In enforcing cases of sexual crimes, it must be seen from the perspective of criminology (based on the perspective of the perpetrator), victimology (based on the perspective of the victim), and ontology (based on the substance of the sexual crime act itself). It is important to position the problem objectively, which provides justice for both the perpetrator and the victim. Sexual offenses are general offenses for complaints which can be processed when there is a complaint from the victim, except for sexual crimes against children, because they view children as persons who are not legally competent. As a complaint offense, enabling case resolution through peace as a form of law enforcement with a restoration justice approach. However, what should be noted here is that the justice restoration approach cannot automatically be carried out if there is no agreement between the perpetrator, victim, family or community. The active participation of all parties and the absence of compulsion must still be prioritized. The most possible step in the justice restoration approach for sexual crimes is to provide legal protection and assistance to victims, so as to minimize the psychological impact received by victims, even providing healing from trauma caused by sexual crimes that victims received. The role of families, law enforcement officials and the community is very important in providing protection and assistance to victims, and this is the fairest act that can be received by victims.

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