

## Reformulation of Restorative Justice Requirements in Handling Sexual Violence Based on Substantive Justice Values and Social Responsiveness

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### ABSTRACT

This study aims to reformulation the regulation of restorative justice requirements by considering social conditions grounded in substantive justice values. Restorative justice is an approach to resolving criminal cases that emphasizes the restoration of relationships among offenders, victims, and the community. However, in practice, the implementation of restorative justice tends to remain normative and formalistic and has not fully accommodated the dynamics of social conditions and justice values that exist within society, thereby potentially creating inequality in justice outcomes. This research employs a normative juridical approach combined with a socio-legal perspective. The data were obtained through a literature review of laws and regulations, legal doctrines, and relevant scholarly literature, and were strengthened by primary data collected through in-depth interviews with law enforcement officers and other stakeholders involved in the implementation of restorative justice. Data analysis was conducted using a descriptive-analytical method by examining the conformity between the normative regulation of restorative justice and social realities in society. The results indicate that the current regulation of restorative justice requirements remains focused on procedural and administrative aspects and has not optimally incorporated indicators of social conditions, local justice values, and community participation. Interview findings reveal a gap between regulatory frameworks and practical implementation, particularly in assessing the eligibility for applying restorative justice. Therefore, a reconstruction of the regulatory framework is necessary, emphasizing substantive justice values, flexibility toward social conditions, and active community involvement. This reconstruction is expected to realize a more contextual, humane, and socially just restorative justice system.

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## Introduction

A state based on the rule of law essentially exercises power based on law, with the primary goal of realizing justice, benefit, and legal certainty. In practice, these three principles are not always balanced, particularly in criminal law, where justice is the most complex aspect, as it relates not only to normative rules but also to the social values prevalent in society. Therefore, law enforcement cannot simply focus on formal procedures; it must also be able to deliver substantive justice that is felt by all parties, particularly victims. (Moeljatno, 2015)

One of the serious issues in criminal law is the crime of sexual violence, which falls under the category of gender-based violence. Sexual violence is an act that forcibly attacks a person's body, dignity, and reproductive rights due to unequal power relations. The impacts are not only physical, but also psychological, social, and economic. In social reality, victims of sexual violence, especially women and children, often experience stigma, discrimination, and even blame for their experiences. This situation makes many victims reluctant to report their cases, thus exacerbating the injustice that occurs.

Although Indonesia has various regulations, such as the Child Protection Law, the Law on the Elimination of Domestic Violence, the Criminal Code, and the Law on the Crime of Sexual Violence (UU TPKS), in practice, protection for victims remains suboptimal. This is evident in the persistence of cases that are not handled fairly, as well as the gaps or limitations in regulations regarding certain types of sexual violence. Furthermore, the formalistic approach to law enforcement often fails to fully address victims' needs for recovery. (Hamzah, 1986)

In the development of modern criminal law, the restorative justice approach has emerged as an alternative way to resolve criminal cases. This approach emphasizes restoring relationships between the perpetrator, victim, and community through dialogue, mediation, and the active participation of all parties. Restorative justice focuses not only on punishment but also on restoring the victim's condition, holding the perpetrator accountable, and fostering social harmony. Therefore, this approach is considered more humane and responsive than the conventional, retributive criminal justice system. (Arif & Mansur, 2006)

However, the application of restorative justice in sexual violence cases raises various issues. In practice, this approach is often used inappropriately, potentially even harming victims. For example, cases are resolved through reconciliation, compensation, or even marriage between the victim and perpetrator, which actually ignores the victim's rights and recovery. Furthermore, there is a tendency for restorative justice to be applied procedurally and administratively, without considering the social conditions, power relations, and trauma experienced by the victim.

Case studies demonstrate that victims of sexual violence often do not receive adequate justice, either due to social pressure, societal stigma, or bias on the part of law enforcement officials. In some cases, cases are even dismissed through restorative justice mechanisms without fully considering the victim's interests. Furthermore, public opinion and social

pressure can also influence the decisions of law enforcement officials, resulting in inconsistent implementation of restorative justice and potentially deviating from its primary purpose.

This situation demonstrates a gap between normative regulations and practice. Current restorative justice requirements do not fully reflect substantive justice values and are not responsive to social dynamics. In the context of sexual violence, a more sensitive approach to victims, attention to psychological aspects, and comprehensive protection of victims' rights are needed. (Qardhawi, 2014)

Furthermore, legal culture and social conditions also influence the effectiveness of restorative justice. Social norms that still view sexual violence as shameful, along with low public legal awareness, are obstacles to achieving true justice. Therefore, existing legal regulations need to be aligned with social values and community needs for effective and fair implementation. (Hadjon, 2011)

Based on these issues, a reconstruction of the requirements for restorative justice is needed, particularly in cases of sexual violence. This reconstruction aims to address weaknesses in existing regulations, emphasizing substantive justice, victim protection, and responsiveness to social conditions. Thus, restorative justice is no longer merely a legal formality but a genuine instrument capable of delivering humane, proportional, and restorative justice.

Through this reconstruction, it is hoped that a more contextual, adaptive, and socially just restorative justice system will be created. Furthermore, clearer and more comprehensive regulations can also provide guidance for law enforcement officials in implementing restorative justice objectively and consistently. Ultimately, this effort is expected to strengthen the legitimacy of the criminal justice system, increase public trust in the law, and achieve justice that is not only formal but also substantive for all parties.

## Method

This research employed a normative juridical method with a socio-legal approach. Data were obtained from primary and secondary legal materials, as well as interviews with relevant parties. Data collection techniques included literature review and interviews. Qualitative analysis using a descriptive-analytical approach was used to formulate a reformulation of restorative justice requirements for handling sexual violence based on substantive justice and social responsiveness.

## Results and Discussion

### 1. Reformulation of Restorative Justice Requirements in Handling Sexual Violence

Restorative justice provisions in the Indonesian criminal law system have essentially gained normative legitimacy through various laws and regulations, including the Juvenile Criminal Justice System Law, Police Regulations, and Prosecutor's Office Regulations. However, these provisions still tend to be procedural and administrative in nature and do not fully reflect the values of substantive justice, particularly in cases of sexual violence. (Ridwan, 2016) In practice, the application of restorative justice often does not take into account social conditions, power relations between perpetrators and victims, and the victims' comprehensive recovery needs.

Current regulations lack clear and comprehensive indicators for determining the appropriateness of restorative justice. Existing requirements focus more on formal aspects, such as an agreement between the perpetrator and victim, without considering whether the agreement was truly freely made or was mediated by social or psychological pressure. In

cases of sexual violence, this situation is particularly problematic because victims are often in vulnerable positions, economically, socially, and emotionally, potentially subject to re-victimization if restorative justice is implemented inappropriately. (Hall, 2012)

The influence of legal culture and social conditions also exacerbate the implementation of restorative justice. Social norms that still view sexual violence as shameful, along with a tendency to blame victims (victim blaming), prevent victims from having a safe space to voice their concerns. Furthermore, law enforcement officials are not entirely free from bias, so in some cases, restorative justice is used as a means to resolve cases quickly without considering justice for the victims. (Muhammad, 2013)

This situation demonstrates a gap between normative regulations and the reality of practice on the ground. Therefore, a reconstruction of the requirements for restorative justice is needed that is not only oriented toward formal legal aspects but also based on the values of substantive justice and social responsiveness. This reconstruction must be able to integrate philosophical, legal, and sociological aspects into a coherent whole.

From a substantive justice perspective, restorative justice arrangements must prioritize victim protection and recovery. This includes the victim's psychological, social, and economic recovery, as well as ensuring that the victim does not experience pressure during the case resolution process. Furthermore, there needs to be a mechanism for objectively assessing the victim's condition, including the level of trauma, power relations, and the impact of the crime. (Moho, 2019)

From a social responsiveness perspective, restorative justice arrangements must adapt to the social dynamics of the community, including local values and cultural wisdom. However, this responsiveness must not ignore the principles of victim protection and human rights. In other words, flexibility in the application of restorative justice must remain within the bounds of justice and not allow for practices that harm victims, such as forced peace or false resolutions.

Regulatory reforms also need to clarify the role of law enforcement officials as neutral and professional facilitators. They serve not only as procedural implementers but also as those who ensure that the restorative justice process is fair, transparent, and recovery-oriented. Furthermore, community involvement needs to be regulated proportionally to avoid creating social pressure that could harm victims. (Kautsar & Muhammad, 2022)

Reformulation of the requirements for restorative justice in sexual violence cases must be directed toward establishing a more contextual, humane, and socially just system. The resulting regulations are expected to not only provide legal certainty but also deliver real justice for victims, perpetrators, and the community. Through this reconstruction, restorative justice can function optimally as an alternative to resolving criminal cases that not only resolves conflicts but also restores social balance and ensures the ongoing protection of victims' rights. (Rofifah et al., 2024)

## **2. Weaknesses in Regulations in Sexual Violence Cases**

Restorative justice arrangements for sexual violence cases in Indonesia have a legal basis through various laws and regulations. However, in practice, these arrangements still have several fundamental weaknesses that contribute to suboptimal protection for victims. One of the main weaknesses lies in the regulation's formal-procedural orientation, which does not fully reflect the values of substantive justice.

The requirements for implementing restorative justice generally emphasize an agreement between the perpetrator and victim, without adequate mechanisms to ensure that the agreement is truly free and uncoerced. In cases of sexual violence, this situation is

particularly problematic because victims are often in a vulnerable position, both psychologically, socially, and economically. The unequal power relationship between the perpetrator and the victim can force victims to agree to a resolution through restorative justice, even though this does not reflect true justice.

Another weakness is the lack of clear and comprehensive indicators regarding the appropriateness of implementing restorative justice in sexual violence cases. Existing regulations fail to explicitly consider important aspects such as the victim's level of trauma, long-term psychological impact, and the risk of recurrence. Consequently, restorative justice is often implemented without a thorough analysis of the victim's circumstances, potentially leading to revictimization.

Furthermore, existing regulations are not fully responsive to the social conditions and legal culture of the community. In many cases, victims of sexual violence still face stigma, discrimination, and a tendency toward victim-blaming. Social norms that view sexual violence as a disgrace often pressure victims to choose a peaceful resolution to protect the reputation of their family or community. In this context, restorative justice has the potential to be misused as a tool to legitimize case resolutions that are unfair to victims.

On the other hand, law enforcement officials still face challenges in implementing restorative justice appropriately. Bias often exists within officers, such as a tendency to blame the victim or ignore the victim's recovery needs. Furthermore, pressure to resolve cases quickly and efficiently can also encourage the use of restorative justice without considering the full justice aspect. This indicates that existing regulations are not yet accompanied by adequate technical guidelines to ensure fair and consistent implementation. (Wahid, n.d.)

Regulatory weaknesses are also evident in the suboptimal recognition of victims' rights in restorative justice processes. Victims often lack adequate legal or psychological support, further weakening their position in the case resolution process. In cases of sexual violence, victim recovery should be a top priority in every law enforcement process.

Thus, the weaknesses of restorative justice regulations in sexual violence cases lie not only in the normative aspect, but also in the implementation aspect, which is influenced by social and legal cultural factors. This situation indicates the need for improvements and refinements in regulations that place greater emphasis on victim protection, substantive justice, and sensitivity to social conditions. Without these improvements, the implementation of restorative justice has the potential not only to fail to deliver justice but also to worsen the situation for victims and undermine public trust in the legal system.

### **3. Reformulation of Restorative Justice Requirements in Handling Sexual Violence Based on Substantive Justice Values and Social Responsiveness**

Reforming the requirements for restorative justice in sexual violence cases is a strategic step to address ongoing normative weaknesses and implementation challenges. Existing regulations tend to be formal and administrative in nature, thus failing to guarantee substantive justice, particularly for victims. Therefore, a reformulation is needed that focuses not only on legal certainty but also on victim protection, comprehensive recovery, and sensitivity to social dynamics. (Arief, 1996)

From a substantive justice perspective, the reformulation of restorative justice requirements must place the victim at the center of attention (a victim-centered approach). This means that any application of restorative justice must be based on the victim's actual circumstances, including the level of trauma, psychological impact, and the power relations between the perpetrator and the victim. A peace agreement cannot be the sole requirement; it must be rigorously tested to ensure that the consent was given freely, without pressure,

intimidation, or socio-economic dependency. Thus, the resulting justice is not merely formal but truly reflects the justice experienced by the victim.

The reformulation also needs to include clear and measurable indicators to determine the appropriateness of restorative justice implementation. These indicators include the seriousness of the crime, the victim's psychological condition, the existence of unequal power relations, and the potential for recurrence of violence. In the context of sexual violence, not all cases are suitable for resolution through a restorative approach. Therefore, strict restrictions are needed on certain types of cases, particularly those that have severe impacts on the victim.

From a social responsiveness perspective, regulatory reforms must adapt to the social and cultural conditions of the community, without neglecting the principle of human rights protection. Local values and social wisdom can be considered in the case resolution process, but they must not be used to legitimize practices that harm victims, such as forced peace settlements or social pressure to protect the family's reputation. Therefore, social responsiveness must be defined as the law's ability to be sensitive to the needs of the community while maintaining objective standards of justice.

Furthermore, the reformulation must also emphasize the role of law enforcement officials as professional facilitators with integrity. Officials are not only tasked with implementing procedures but also with ensuring that the restorative justice process is fair, transparent, and recovery-oriented. Therefore, clear technical guidelines and increased capacity of officials in handling sexual violence cases are needed, including understanding the victim's perspective and gender sensitivity.

Regulatory reforms also need to ensure adequate support for victims, including legal, psychological, and social support. This support is crucial to ensure victims can actively and safely participate in the restorative justice process. Without such support, victims are at risk of experiencing further stress or even renewed trauma during the case resolution process. (Sunarso, 2014)

Thus, the reformulation of restorative justice requirements in sexual violence cases must be directed toward establishing a more comprehensive, adaptive, and equitable system. Integrating substantive justice values with social responsiveness is key to creating regulations that are not only normatively effective but also relevant to social realities. This reformulation is expected to achieve restorative justice that truly functions as a means of victim recovery, perpetrator accountability, and sustainable social harmony.

## Conclusion

Restorative justice regulations in sexual violence cases remain formal and procedural in nature and do not fully reflect substantive justice, particularly in terms of victim protection and recovery. The main weaknesses lie in the lack of clear indicators and the potential for pressure in agreements between perpetrators and victims, which risk creating injustice. Therefore, a reformulation of the regulations is needed that places victims at the center of attention, is supported by comprehensive eligibility indicators, and is responsive to social conditions. This reformulation is expected to achieve restorative justice that is more just, humane, and recovery-oriented.

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