

PROTECTING WOMEN' RIGHTS: A RESTORATIVE JUSTICE APPROACH IN RESOLVING MARRIAGE VOWS CASE

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Abstract:

This article offers a comprehensive assessment of the theoretical and practical connections between restorative justice in resolving marriage and protecting women' rights. Type of the study is a normative-legal research by using statute, case, and conceptual approaches. This paper provides information on the latest trend in research. The results show that the basic principle of restorative justice is to emphasize justice in providing protection for perpetrators and victims as well as a reference for parties including the police as mediators, perpetrators, victims and the people involved. Resolution through penal mediation to protect women' rights must first know what women' rights have been violated. The right to protect the dignity of women, and victims demand the right to recovery in the form of compensation. In addition to reducing the accumulation of cases, this restorative justice approach can create a balance between court fees and the development of cases based on marriage vows, as well as prioritizing fast and low-cost judicial processes in order to fulfil a sense of justice for the community.

Keywords: Human Rights; Marriage; Restorative Justice; Women Rights

1. INTRODUCTION

Although the last few years have seen considerable advances in the theoretical clarification of restorative justice as well as proliferation of programmes putting the ideas into practice, there are still some important questions that remain unresolved (Hudson, 2002). These revolve around the issues of the range of cases and offenders for which restorative justice is appropriate, and the extent to which restorative justice needs to incorporate due process safeguards and standards such as proportionality, which are important in formal criminal justice. Various crime phenomena that occur and committed by men must be anticipated because they are increasingly causing a lot of unrest, with the main goal being to protect (Gaw, 2022). However, actions taken by men against women on the grounds that they are going to get married but are not carried out, so the dignity and chastity of women are taken irresponsibly which makes women call "Bunga" as victims and experiencing depression, their passion for life is lost and many try to commit suicide because they will be a pile of blame for the events they experience.

This problem raises philosophical, juridical, theoretical and sociological problems. Sociological problems, women as victims of non-fulfillment of marriage promises are referred to as victims of 'primary victimization' (individual or individual victims) because they experience psychological, physical, sexual, social and economic suffering and there is no maximum protection both in terms of human rights and criminal laws and regulations and impact for the lives of victims such as their health both now and in the future, which also results

in the occurrence of illegal abortions that affect their reproductive health and lives because pregnant, giving birth and raising children which causes an increase in the burden of economic life, men are free and even proud because they have succeeded in deceiving women by taking away their chastity (Tijow, 2017).

In comparison, a lawsuit for breach of a marriage vow requires a legal engagement. As with Nevada law, this does not need to be in writing (as a prenuptial agreement is required), but may be made orally by both parties. All that is needed is that each has vowed to marry in the future (there is no definite time required). Generally, promises made to someone who has not reached the age of majority can be broken at any time, without penalty, as can promises made by a married person (for example, on the condition of the death of the current spouse), as long as the other party knows that the person is married at the time. Similarly, engagements between persons who are not legally permitted to marry (e.g. due to kinship laws) are invalid.

Until 1970, in England it was a woman whose fiancé broke off the engagement could be prosecuted for breach of vow, while for women who were historically considered the weaker gender were allowed to change their mind without penalty. An interesting case occurred in 1969, when Eva Haraldsted sued George Best, a prominent football player, for breaking a vow. England and Wales undertook legal reforms in 1970 which generally made property disputes related to engagements similar to property disputes between husband and wife. France nominally disallowing is a breach of vow, stating that a marriage must have the free consent of both parties, and if the engagement is legally binding, free consent is not possible. However, either party can sue for damages as a result of inappropriate behavior by the betrothed (Feinsinger, 1934; Busch, 2002).

A legal engagement can be annulled without penalty by either party after material and material facts, such as previously unknown financial conditions (if completely hidden, partially uncovered: Shell case in Georgia in 2008 allowed the jury awarding a woman worth \$150,000 even though the man who broke the engagement stated that he did so after paying \$ 0,000 of his debt when he found out he still owed more), bad character, deception, overly close blood relations, or absolute physical or mental disability of the betrothed. In South Africa, the engagement can be dissolved by mutual agreement. Impotence, infertility, crime, and alcoholism are also valid reasons for ending the engagement. In addition, a person who refuses to marry cannot sue for breaking a vow.

In this research, marriage vows are in the form of promises given by men to women to marry. However, the problem is when a criminal act arises against the background of the marriage vow and finally the marriage vow is not fulfilled and causes losses, especially immaterial losses such as psychological disorders due to trauma and also shame or moral sanctions experienced by women as victims and even the victim' family due to non-fulfillment of the marriage vow.

As comparison, in Bali, cases of marriage vows are well known through community customs in addition to civil law. This marriage vow is categorized as a customary offense called Lokika Sanggraha. Offense of Lokika Sanggraha is regulated in Article 359 of the Adhigama Book and is considered a habit of the community towards sanctions given to perpetrators of marriage

vows (Widyarini, 2009). For this reason, the researcher tries to give ideas about the settlement of cases of marriage vows through a restorative justice approach.

Restorative justice is the settlement of criminal acts by involving the perpetrators, victims, families of perpetrators/victims and other related parties to jointly seek a fair solution by emphasizing restoration to its original condition, and not triggering retaliation. Restorative justice is a solution. Restorative justice is a new approach model in efforts to resolve criminal cases. This restorative justice approach model has been used in several countries with the approach being perpetrators, victims and the community in the process of resolving legal cases that occur between them.

Regarding restorative justice, the Police issued a Circular Letter from the Head of the Indonesian National Police No. SE/8/VII/2018 concerning the Application of Restorative Justice. In the Settlement of criminal cases, it stipulates that cases that can be resolved through a restorative justice mechanism are criminal cases with a small level of loss and not serious crimes that cause fatalities (Amin et al., 2020).

The promise vow by investigators at the Regional Police of North Sulawesi Province is still a legal vacuum regarding elements of this crime, so that the action taken by police investigators so that this case can be handled is to enforce Article 489 of the Criminal Code. This action was taken due to the fact that there were many reports, but initially, some of the reports were rejected because there was no legal basis. Then, more and more reports about the same case continue to grow even based on data from the last 3 (three) years where in 2019 there were 20 cases, increasing in 2020 to 25 cases and in 2021 increasing to 27 cases. The cases have not been counted with some cases rejected. As a result, the Police then took actions like the one above to be able to help victims of marriage promises to get legal protection by applying a more general article. The flaws within the legal system and customary laws in addressing victims' and offenders' issues will be examined and an alternative process of restorative justice will be discussed (Shah, 2013). Hence, the development of the problem of marriage vow from a man to a woman in the last 3 years has increased significantly.

2. METHODOLOGY

This research is a normative legal research. It serves to provide juridical arguments that can help if there is a void, ambiguity and conflict over norms (Diantha, 2016). This research focuses on doctrinal research (library research) particularly examines the application of Restorative Justice principles in the settlement of marriage vow to protect women' rights. This paper provides information on the latest trend in research (Yunus, 2020).

3. RESULTS AND DISCUSSION

3.1. Legal Policy on Restorative Justice in Resolving Marriage Vow Case

Restorative justice is often referred to as 'Freies Ermessen'. Freies Ermessen or Discretionary Power is a term that contains obligations and powers broadly. In Indonesia, the term is better known as discretion, which means "freedom of action" or making decisions based on self-

assessment (Suryana, 2018). In this case, if it is related to the case of marriage vows, whether the case of marriage vows is applied to Restorative Justice, it can be seen that the case of marriage vows is not a case that causes the victim to die and the losses caused by marriage promises are mostly immaterial in nature namely shame and dignity and women's dignity is humiliated, ridiculed as women who have had sex with men.

In this context, restorative justice to be appropriate to be implemented because it relates to the dignity of women if it comes to court more people will know. Hence, the victim will experience more psychological suffering, settlement with a restorative justice approach provides an opportunity for the victim to express the feelings and needs needed for recovery as well as the perpetrator get a chance to recognize mistakes and make improvements (Madu, 2021).

The results of analysis of legal policies related to restorative justice in the resolving of marriage vow case, restorative justice is used as an alternative to fill the shortcomings and weaknesses in the application of the principle of legality (Arief, 2000). The legal system regarding the application of restorative justice, seen from the legal substance, the discretion issued by the Chief of the Indonesian National Police, explains the mechanism for resolving criminal cases through the application of restorative justice. From the legal structure aspect, it explains that the police as law enforcers can act as mediators in the process of resolving cases of marriage vows through a restorative justice approach at the stage of investigation and investigation at the police office. Finally, from the aspect of legal culture, considering that there is still confusion in the handling of cases of marriage vows by police investigators because there is no legal substance that regulates marriage promises in criminal law.

The discretionary policy by the Head of the National Police of the Republic of Indonesia is expected to be a reference for the police to be able to resolve cases of non-fulfillment of marriage vows entered in the police and can be completed only at the stage of investigation in the police with a mutual agreement to provide justice, protection and legal protection for victims of marriage vows. One form of restorative justice is penal mediation (victim-offender mediation). The reason for using penal mediation in the settlement of criminal cases is because the idea of penal mediation is related to the issue of criminal law reform (Penal Reform). Related to pragmatism, and other reasons are the idea of victim protection (Aziz & Basir, 2021), the idea of harmonization, the idea of restorative justice, the idea of overcoming rigidity (formality) and the negative effects of the criminal justice system and the prevailing criminal system, as well as the search for alternative forms of punishment (other than imprisonment).

The process of resolving cases in criminal law outside the court process through penal mediation is different from the process of resolving disputes outside the court through mediation. In civil law, mediation is usually related to money matters, while in criminal law it is more related to freedom and life. For the parties involved, civil mediation is usually the parties directly in dispute or a second party has an interest, while in criminal law mediation the parties involved are more complex and there are not only perpetrators, victims, but also public prosecutors and the wider community. According to Frehsee (1999), the increasing use of restitution in the criminal case settlement process shows that the difference between criminal and civil law is not that big and the difference is not functioning.

The results of analysis of the principles of restorative justice in resolving marriage vow case are that most of the principles of the restorative justice approach described above, some have been applied to some reports of criminal acts submitted to the North Sulawesi Regional Police and these principles can be applied in marriage vow case. The basic value of restorative justice that gives satisfaction to all parties (win-win solution) is not prolonging the problem so that new problems do not arise that can eliminate the public' view of the criminal law enforcement process in the police which was previously considered convoluted so that many cases are not resolved. This is where the application of the theory of justice for perpetrators and victims (win-win solution). Furthermore, why should there be restorative justice in resolving marriage vow case? Because the settlement process through a restorative justice approach with penal mediation is much easier and seen from the speed of case settlement time and cheaper costs than proceeding through civil mediation (conventional courts).

3.2. Vacuum Norm in Resolving Marriage Vow Cases to Protect Women' Rights as Victims

In addition to the absence of rules governing the marriage vow, there is a vacuum norm because there are no specific and concrete statutory rules regarding cases of marriage vows, thus causing injustice in the enforcement of human rights as citizens who have human nature (Chauhan, & Kaur, 2022). From the sociological aspect, individual victims experience physical, psychological, sexual, social, economic and social suffering (primary victimization), so it is very appropriate to apply restorative justice.

Table 1: Number of cases of non-fulfillment of marriage vows in the Regional Police of North Sulawesi, Indonesia

| No. | Year | Cases | Indicated Case | | |
|-----|--------------|-----------|----------------|-----------|----------|
| | | | Pregnant | Violence | Abortion |
| 1. | 2019 | 20 | 15 | 3 | 2 |
| 2. | 2020 | 25 | 17 | 7 | 1 |
| 3. | 2021 | 27 | 10 | 14 | 3 |
| | Total | 72 | 42 | 24 | 6 |

Source: Secondary Data, 2022 (Processed)

The results showed that all cases that occurred were based on the marriage vow. In 2021, there was a case that was carried out by a man who was a member of the National Police, where the woman gave birth to twin boys. Initially, the mediation process had been carried out, but it did not work, so the women asked for further processing at that time. The case was then processed according to the police code of ethics because the perpetrator was a member of the National Police and had been sentenced. Officially, this is quite heavy, but women are still not satisfied. Even with the transfer penalty, women find it difficult to communicate to ask for fees for their children and caesar costs.

From the perpetrator' side, there is no normative rule that states that those who are punished must provide costs for these children. For violence, many cannot be followed up because the

evidence is not supportive, such as the file does not exist because the distance between the incident and the report has been long. One of the efforts in the application of restorative justice that can be done by the police in maximizing case resolution is to use a penal mediation mechanism. These cases can be resolved by the police as the main guard in the criminal justice system. With discretionary authority, the police as law enforcement officers can resolve cases of marriage vows.

According to the author' view, restorative justice is an alternative action in resolving criminal cases carried out by the police in the investigation and investigation stage, the aim is to reduce the build-up of cases, create a balance between case costs and case development, prevent over capacity in correctional institutions and prioritize fast and timely judicial processes, low cost to fulfil a sense of justice for the community.

Table 2: Relevance of the principles of restorative justice in the resolving of marriage vow cases

| Victim | Perpetrator | Mediator |
|---|--|---|
| <ol style="list-style-type: none"> 1. Victim' rights 2. Proportionality | <ol style="list-style-type: none"> 1. Presumption of innocence 2. Perpetrators are given the right to offer remedies, such as compensation | <ol style="list-style-type: none"> 1. Prohibit efforts that are not irrational and violate human values to be carried out by perpetrators. 2. Community reunification and security. 3. Ensure in advance that cases of marriage vows do not result in human casualties (death). 4. Maintain the confidentiality of mediation 5. Must be neutral and facilitate weak parties in negotiations. |

Source: Secondary Data, 2022 (processed)

The form of settlement of marriage vows case to protect the rights of women as victims can be done through the consistent application of restorative justice principles. Legal certainty is seen in terms of seeking justice by wanting to know the law in specific matters before starting a case by the parties including the police as law enforcers in the investigation and investigation stage (Husin et al., 2020). Considering the legal substance regarding the marriage vow which is still experiencing a legal vacuum so that it has not been able to provide legal protection for the victims of the non-fulfillment of the marriage vows, which in this case is a woman.

The principles of restorative theory are non-exhaustive, including direct accountability and mutuality, honest and respectful dialogue, community caring and participation, healing, forgiveness, repentance, responsibility, moral learning, and reparation (Kearney et al., 2006). These factors reflect inclusive deliberation in responding to conflict, focused on minimising and repairing harm and strengthening relationships as an alternative to adjudication and retributive sanctions (Kirkwood, 2010). The most prominent image is that of sitting parties down to discuss the emotional impacts of harm and deal with its effects and aftermath (Butler et al., 2022). Discussions are centred on: what happened, the consequences, and what should be done to redress the harm and prevent recurrence (Shapland et al., 2011).

The effectiveness of the application of restorative justice has previously been stated in the results of interviews and questionnaires by police investigators who said that restorative justice was very appropriate to be applied in cases of marriage vows and according to investigators, they did not find any obstacles in its implementation. The form of the principles, mechanisms and positions of the application of restorative justice in the settlement of cases of marriage vows at the Regional Police of North Sulawesi is a finding concept suggested by the author with the aim of realizing the principles of restorative justice that are just in the settlement of cases of marriage vows as a form of protection of the dignity and worth of women.

4. IMPLICATIONS AND RECOMMENDATIONS

The existence of a norm vacuum in handling cases of marriage vows so that restorative justice must be carried out consistently, the aim is to provide protection and legal protection for victims from non-fulfillment of the marriage vows. The basic principle of restorative justice is to emphasize justice in providing protection for perpetrators and victims as well as a reference for parties including the police as mediators, perpetrators, victims and the people involved. Resolution through penal mediation to protect women's rights must first know what women's rights have been violated. The right to protect the dignity of women, and victims demand the right to recovery in the form of compensation. In addition to reducing the accumulation of cases, this restorative justice approach can create a balance between court fees and the development of cases based on marriage vows, as well as prioritizing fast and low-cost judicial processes in order to fulfill a sense of justice for the community.

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DECLARATION OF INTEREST

Authors declare there are no competing interests in this research and publication.

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