




Women and Violence In Hibualamo Traditions (An Analysis of Restorative Justice in Resolving Cases of Domestic Violence)

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Abstract

Introduction: Cases of domestic violence are increasing in Indonesia, this is a manifestation of the unequal power relations between men and women and is also influenced by the culture/customs of the community, one of which is the Tobelo woman in the Hibualamo customs.

Purposes of the Research: This study aims to explain the concept of Restorative Justice in the Indonesian criminal law system and the Restorative Justice Model in Resolving Domestic Violence Cases against Tobelo women.

Methods of the Research: The research method used is a combination of empirical-normative legal research. The approach uses a socio-legal approach (social science) and a statutory approach (statute approach).

Results of the Research: The results of this study include: 1. There is negative labeling of women in Tobelo customary law in the misunderstanding of the Hibualamo concept; 2. The concept of Restorative justice based on Hibualamo ideology which contains noble values that are fair and moral can be the basis for resolving cases of domestic violence in Tobelo to create harmonization and prevent multi-interpretation gaps in the implementation of restorative justice.

1. INTRODUCTION

Women's problems and violence are global phenomena and include serious crimes against human rights. *The World Health Organization, Global and Regional Estimates of Violence Against Women* in 2010 stated that first, one-third of women in the world experience physical and/or sexual violence in their lifetime, and it is estimated that around 35% with an age range of 15-64 years have experienced violence against women. acts of violence by a partner or other person.¹ Second, in about 81 countries, it was found that the most affected countries were Southeast Asia, the East Mediterranean region, and Africa, and the percentage of violence against women was around 37% and Southeast Asia reached 40.2% of sexual violence by partners and non-partners.²

¹ Eddyono, SW. "Urgensi Mempercepat Optimalisasi Dan Efektivitas Pelaksanaan UU No. 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga." Kajian bersama Antar Kementerian Pemberdayaan Perempuan dan Perlindungan Anak RI dan Komisi Nasional Anti Kekerasan Terhadap Perempuan didukung oleh UN Women, (JAKARTA: UN Women, 2018).

² WHO, 'Kekerasan Terhadap Perempuan Epidemi Global', *VOA Indonesia*, 2013, <https://www.voaindonesia.com/a/who-kekerasan-terhadap-perempuan-epidemi-global/1686309.html>.

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This phenomenon has an impact in Indonesia, based on Komnas Perempuan data every year there is an increase in domestic violence cases. In 2019 the number of victims of violence reported 431,471 cases of violence against women, this number increased compared to the previous year of 348,466 or an increase of about 14%, the most prominent violence was domestic violence, which rose to 71%.³ In 2020 domestic violence cases increased by 79% or around 6,480, where violence against wives was around 50% (3,221 cases) and in 2021 there was a decrease in data collection on the number of cases. The data collected in Catahu's data is 31% less than the number of cases in 2019. This is not because the number of cases has decreased, but because of the influence of the COVID-19 pandemic so that many data/questionnaires are not returned as reports to complement Komnas data.⁴

In essence, women are part of the Unitary State of the Republic of Indonesia which has human rights and this becomes the basis for women to be free from all forms of discrimination or other acts of violence. This is in line with the historical development of the legal system in Indonesia, which developed based on the view that legal development is related to the values or principles in Pancasila as the nation's philosophy. In formal juridical terms, legal justice is given to people or parties whose rights are violated in this case by judicial institutions, including criminal justice institutions that provide guarantees for upholding justice to those whose rights are violated, who are referred to as victims.

The above understanding will be much different when explaining the construction of the current criminal law system which is based on a retributive justice approach, namely the suffering or loss of the victim will be translated and compensated for the threat of sanctions received by the perpetrator. This concept is of course very detrimental to women as victims of violent crimes. This is one of the weaknesses of the criminal justice system that does not involve the participation of victims or perpetrators directly in the decision of criminal sanctions. This conventional criminal system still views the purpose of punishing it because the crime was committed against the state so the victim is not the party who directly experiences the impact of the crime.⁵

In principle, the conventional legal system does not provide justice because it only involves the perpetrators of crimes with the State. Even though the criminal acts have an impact on the perpetrators, victims, and also the community. In the end, it ends in psychological violence which is always accepted by the victim. Regarding cases of violence against women, Eddyono SW stated that there is a tendency for the Indonesian criminal law system to re-victimize women as victims of violence, namely in the mechanism for handling cases of violence that are not gendered sensitive so that in the process victims are more traumatized by what they have experienced.⁶

The development of domestic violence cases in North Halmahera in 2019 - 2021 reported 110 cases, 23 cases were resolved with restorative justice at the PPA Criminal Investigation Unit, 3 further legal cases, and 86 other cases that ended when submitting a

³ Komisi Nasional Perempuan, "Korban Bersuara, Data Bicara: Sahkan RUU Penghapusan Kekerasan Seksual Sebagai Wujud Komitmen Negara," 2019, <https://komnasperempuan.go.id/catatan-tahunan-detail/lembar-fakta-dan-poin-kunci-catatan-tahunan-komnas-perempuan-tahun-2019>.

⁴ Komisi Nasional Anti Kekerasan Terhadap Perempuan (Komnas Perempuan), *CATAHU 2020 Komnas Perempuan: Lembar Fakta dan Poin Kunci* (Siaran Pers Catatan Tahunan Komnas Perempuan Tahun 2020, Jakarta 5 Maret 2021).

⁵ Tim Departemen Kriminologi FISIP UI, *Viktimologi Reparasi dan Kompensasi Korban Dalam Restorative Justice System* (Jakarta : Lembaga Perlindungan Saksi dan Korban (LPSK), 2011),p. 29

⁶Eddyono (n 1) p. 8-9.

report to the SPKT (Police Service Center) Integrated) with a statement of peace, as well as by negotiating with the victim's family to pay compensation and withdraw the complaint.⁷ In principle, in North Halmahera Regency, women are very vulnerable to acts of violence in the domestic area, but this has developed and become a tradition. men (husbands) and some women stated that the acts of violence they experienced were a hereditary process from very patriarchal families who considered women housewives who only took care of the domestic and could not be higher than men (husbands).⁸

The concept of restorative justice developed from critical thinking and disappointment with the conventional concept of punishment as previously stated, which was considered ineffective and deemed inhumane. This is in line with the thinking of the UNODC (United Nations Office on Drugs and Crime) which states: "*Restorative justice can therefore be understood as a response to dissatisfaction and frustration with the formal justice system.*"⁹ Restorative justice is an idea and movement that puts justice in the perspective of the perpetrators and their families, victims and their family, community, and stakeholders in the context of recovery. The concept of *restorative justice* is a concept of criminal justice which views crime as a crime against the community, not a crime against the state. The purpose of this concept is to create a relationship of justice in the right dialogue, namely directly or indirectly between the victim and the community and the perpetrators of the crime in the form of mediation.¹⁰ Although in principle, restorative justice is still highly criticized and becomes a debate among academics and legal practitioners who question the subject and purpose of *restorative justice* compared to the current criminal justice system.¹¹

Criticism also comes from feminists who question the model of applying restorative justice in the criminal system, namely tolerating acts of domestic violence and sexual crimes. This feminist criticism is based on the influence of patriarchal culture in the law enforcement process which also weakens the practice of restorative justice.¹² Although this view is not a new theory, feminists are still concerned about its application in handling domestic violence cases, namely that there are actions to privatize domestic violence and provide little protection to victims.¹³ namely the principle of self-determination, which in the mediation process will place women as victims of domestic violence in a weak position and unable to negotiate effectively.¹⁴

From the development of restorative justice, it can be seen that this approach has been used not only for cases involving children or adolescents but also for adult cases, including cases of domestic violence. Restorative justice itself contains the following principles: a. Make the violator responsible for repairing the damage caused by his fault; b. Provide opportunities for offenders to prove their capacity and quality while dealing with guilt

⁷ Wawancara dengan Kanit PPA Polres Halmahera Utara dan Kepala dinas DP3KB

⁸ *Ibid*

⁹ Sarah Curtis-Fawley and Kathleen Daly, "Gendered Violence and Restorative Justice," *Violence Against Women* 11, no. 5 (May 30, 2005): 603–38, <https://doi.org/10.1177/1077801205274488>.

¹⁰ Marwan Effendy, "Teori Hukum dari perspektif kebijakan, perbandingan dan harmonisasi hukum pidana", ed. oleh Referensi ME Center Group (JAKARTA: 2014)p,132

¹¹ Hendra Kusuma Wardana, "Reformulasi Keadilan Restoratif Dalam Sistem Hukum" (Disertasi Fakultas Hukum Universitas Gadjad Mada, Yogyakarta, 2018).

¹² Kathleen Daly and Julie Stubbs, "Feminist Engagement with Restorative Justice," *Theoretical Criminology* 10, no. 1 (February 6, 2006): 9–28, <https://doi.org/10.1177/1362480606059980>.

¹³ Donna Coker, "Domestic Violence and Social Justice," *Violence Against Women* 22, no. 12 (October 9, 2016): 1426–37, <https://doi.org/10.1177/1077801215625851>.

¹⁴ Fatahillah A.Syukur, "Mediasi Perkara KDRT (Kekerasan Dalam Rumah Tangga) Teori Dan Praktek Di Pengadilan Indonesia." (Bandung: CV. Mandar Maju, 2001).

constructively; c. Involve victims, parents, extended family, school, peers; d. Create a forum to work together to solve the problem; and e. Establish a direct and tangible relationship between wrongdoing and formal social reaction.¹⁵

Based on the above explanation and the dynamics of acts of violence against women in Tobelo, North Halmahera, as well as the difficulty of resolving domestic violence cases, how are women in the Hibualamo tradition and how is the concept of restorative justice which is a model outside of criminal justice procedures that can facilitate Hibualamo women to get access to justice and perpetrators of crimes. violence against women can be held accountable for their actions and has the state in this case seriously fought for and provided legal protection to women as victims of violence?

2. METHOD

The research method used is a combination of empirical-normative legal research. The approach used is the socio-legal approach (social science) and the legal approach (statute approach). to obtain accurate data, this study uses primary data and secondary data. The socio-legal analysis is carried out by classifying/categorizing data based on themes that emerge from empirical data or research findings and confirming between theory and data.

3. RESULTS AND DISCUSSION

3.1 Women And Violence In Hibualamo Traditions

The development of the Tobelo community in the Hibualamo traditional system has shifted due to the development of globalization by the global community. Hibualamo is a big house where the Tobelo people live and take shelter, this explains that Hibualamo is the strength of the Tobelo community alliance in developing ancestral values that govern society's civility. Hibualamo as a big house also has a universal spiritual meaning, that is, it contains noble values that become an image and become a strong glue (social cohesion) for the Tobelo people. These values are first, the Hibualamo Ideology which explains the value of simplicity and honor; Second, noble values are a reflection of the expression of the people's soul which crystallizes in people's lives as something that is inherited, which consists of:¹⁶

- a) Affection (*O'Dora O'Hayangi*) is to love and help each other.
- b) Truth and Justice (*O'Banari O'Adili*) is an appreciation of truth (right is right, wrong is wrong).
- c) Sincerity and care (*O'Tiai O'Baliara*) is an expression of sincerity, sincerity of heart that is carried out selflessly and responsibly.
- d) Service (*O'Leleani*) is an attitude of life that prioritizes service in joy and sorrow.
- e) Fellowship (*O'Doomu*) is an expression that emphasizes fellowship and togetherness.

The five noble values above explain that Hibualamo is a big house that gives birth to religious and moral principles and characters, and is still upheld in society as Higar and canga which means barekata, namely upholding peaceful and sovereign life, respecting the freedom of the Hibualamo both women and men in society. Based on the results of the author's research, the Hibualamo values are not interpreted as their principles and character

¹⁵ Kathleen Daly, "What Is Restorative Justice? Fresh Answers to a Vexed Question," *Victims & Offenders* 11, no. 1 (January 2, 2016): 9–29, <https://doi.org/10.1080/15564886.2015.1107797>.

¹⁶ Hamka Naping, dkk. "Halmahera Utara: Sejarah Perkembangan Peradaban di Bumi Hibualamo." (Tobelo :Yayasan Bina Generasi Makasar. 2013) p, 482–486.

because, in the development of the Tobelo customary law system in North Halmahera, it is a customary law system that is still rooted in the Patrilineal kinship system where authority and power are in the hands of men. man. If it is associated with genealogical maps and the history of the North Halmahera people, it will be found that men have the right to the clan, inheritance, and all the inheritance of their families, while women have nothing.

Furthermore, the implementation of Bobangu in North Halmahera, especially the Tobelo custom of asking for a hand is an embodiment of traditional values that are still sustainable to this day. Bobangu (in Tobelo language) is defined as a dowry in proposing, where the amount and shape have been determined by the traditional elders based on an agreement with the family. In practice then, as a result of the development of society, the bobangu system was given a different meaning and instead placed women as a trading commodity. The woman to be married, as if given a certain price by her family. This price must be paid by men, so that in many cases of violence the victims are women. On the other hand, in making decisions based on the bobangu system, women are not directly involved, women are only listeners.¹⁷

The mechanism for resolving violence with the bobangu system is still understood as a settlement pattern in the village (negotiations) with the village head and some traditional elders as well as the perpetrators and their families, but the procedures and stages carried out are only limited to talking and dialogue about peace and compensation. In addition, legal construction in legal protection for the community, especially women by providing rules in the form of Regional Regulations in North Halmahera Regency regarding the protection of women and children victims of violence that are adapted to the values of local wisdom until now does not exist, this is still constrained by the budget that must be paid. adjusted for local revenue.¹⁸

Some of the findings that the author got in the research process were that the *bobangu system* which had been used in the process of proposing before marriage had resulted in Tobelo women experiencing psychological and physical violence, even some wives who experienced violence but did not want to leave their husbands. For example, as illustrated in the results of an interview with Wati in Gira Village in North Tobelo, as follows:

I am Wati (name changed), I have experienced psychological violence for almost 4 years because my husband has another woman and has lived for 1 year with that woman, but I will not leave my household for the sake of my children and the good name of my family.

In Tobelo, violence against women is mostly resolved by custom or by paying compensation, this model can be likened to a *restorative justice* process because the customary process is with deliberation in negotiations by bringing several people into the settlement process. The results of research from the Halmahera University research team In 2018, it was found that the level of violence against women and girls increased by around 526 cases and around 152 cases, or 38% chose a settlement with a traditional settlement route or with compensation.¹⁹ This explains that the selection of traditional settlements cannot provide access to justice for victims but provides prolonged trauma to women as victims of domestic violence.

What is interesting is the finding of cases of sexual violence that were settled according to custom, where someone who has an economic advantage will easily solve this case. On

¹⁷ Wawancara dengan Yesayas Banary, salah satu pengurus Rumah Adat Hibualamo.

¹⁸ Wawancara dengan Kepala Dinas DP3KB "M. Tapi-Tapi, SE (18 Maret 2022)

¹⁹ Hasil penelitian Pusat Studi Universitas Halmahera Tahun 2017 di Kabupaten Halmahera Utara.

the condition that there is reconciliation money, the case is closed. For example, in the case of Avira (name withheld) by paying a settlement fee of 60 million, the case that had been reported to the police was then closed. Not to mention the added case of domestic violence experienced by a wife which resulted in death, of course, this is a serious crime that must be prosecuted by the perpetrators with heavy criminal penalties as well. But what can a woman with limited evidence do so that her case can be interpreted differently? This is also a law enforcement dilemma because most women just want their husbands to be aware and then the case is withdrawn, but this case will be repeated again and again..²⁰

In connection with the above, and the results of interviews with traditional leaders and the community, the authors found that several factors became the basis for women to continue to experience violence in the Hibualamo tradition, namely:²¹

- 1) There is negative labeling of Tobelo women, namely the place at home, kitchen/furnace, and garden. Symbolized "*saloi*", a tool used by women and carried as a sign that women are in the garden
- 2) Tobelo customs do not allow women to be entitled to family inheritance. Women are considered weak creatures who cannot lead let alone be spokespersons for adat.
- 3) The dowry paid by men to women is the reason that women have a heavier burden in the household, women will take care of children while washing and managing other households. "*Moyoka*" is a term for a daughter-in-law who has to wake up earlier and sleep longer than the other residents of the house.
- 4) The dowry that is paid when asking for a hand is one of the reasons why Tobelo women are vulnerable to acts of violence against themselves, in terms of having been paid in full so that it becomes a symbol of freedom in beatings and others.

Some of the factors above explain that there is still a misunderstanding of the noble values of Hibualamo, the assumption that men are protectors and leaders in the family and women as domestic workers, in the kitchen, bed, and garden which explains that this is the position of women based on Hibualamo customs. The Tobelo people's understanding of the position of women makes women have no space to actualize themselves in society.

3.2 The Concept of Restorative Justice in the Settlement of Domestic Violence Cases Against Hibualamo Women.

The concept of restorative justice in Indonesia began to be applied and enforced as a legal concept contained in the legislation since the enactment of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. The restorative justice clause is contained in Article 1 point 6 which contains the definition and is embodied later in Article 5 paragraph (1), Article 8 paragraph (1), and Article 93 letter (d). The definition of restorative justice in the Act is²² : Restorative Justice is the settlement of criminal cases involving the perpetrators, victims, families of the perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. The term above does indeed cover the concept of restorative justice. Law No. 11 of 2012 also expressly stated about prioritizing the use of restorative justice in the juvenile

²⁰ Wawancara dengan Kanit PPA Polres Halmahera Utara Tahun 2022.

²¹ Wawancara dengan Yohanis D, salah satu tokoh adat Desa Pitu, Ibu Elizabeth Ruru salah satu pengurus P2TP2A Kabupaten Halmahera.

²² Destri Tsurayya Istiqamah, "Analisis Nilai Keadilan Restoratif Pada Penerapan Hukum Adat Di Indonesia," *Veritas et Justitia* 4, no. 1 (2018): 201–26, <https://doi.org/10.25123/vej.2914>.

criminal justice system (see Article 5 paragraph (1) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System).

The concept of *restorative justice* is expressed by Kathleen Daly, namely by stating that in general it cannot be defined, but concretely it can be referred to as a mechanism of justice, this reasoning is based on four points, namely: ²³ Restorative justice is not a type of justice, it is a mechanism of justice; Retributive justice is not a type of justice or a mechanism of justice; Restorative justice is one of many justice mechanisms under the umbrella of innovative justice, and restorative justice can be defined by comparing various conventional to innovative justice mechanisms on a continuum.

Wright emphasized that the main goal of restorative justice is restoration, while the second goal is compensation. This means that the process of overcoming criminal acts through a restorative approach is a process of resolving criminal acts, which aims to restore the situation and includes compensation for victims through certain methods agreed upon by the parties involved in it. Tony Marshall, stated that restorative justice is a concept of resolving a particular crime that involves all interested parties jointly seeking a solution and at the same time seeking a solution in dealing with events after the occurrence of the crime and how to overcome its implications in the future.²⁴

In the formulation of the background of the problem, the author has explained that a restorative justice approach is an option for women and families in the approach to resolving cases of violence, one of which is domestic violence. and does not complicate the settlement processes with law enforcement. The term compensation is then equated with *bobangu* "by paying the reconciliation money then the business is finished"

According to the author, there is a misperception in the application of restorative justice by law enforcers in resolving cases of domestic violence because restorative justice is not just about peace and uniting a husband and wife relationship in the household but more about how when women get violence then women can also fight for justice for themselves. Regarding this, Eddyono SW said that peace efforts made by law enforcement officers based on considerations made by law enforcers, namely who will provide for the family if the perpetrator is imprisoned and problems with family shame, will result in domestic violence being seen as a domestic dispute rather than a criminal act.²⁵

Peace efforts with a restorative justice approach should not be translated from the perspective of patriarchal law enforcement because it will have a direct impact on women as victims of violence, namely distrust, fear of speaking out, and other intimidation. The above statement is supported by the authors' findings in the study, namely that in 2019-2021 there were peace efforts carried out by law enforcement because the domestic violence report was associated with a private family issue, the family disgrace, resulting in the report being discontinued and stopped with a piece of peace paper.

Based on the results of the author's research, the Hibualamo values are not interpreted as their principles and character because, in the current development of the Tobelo customary law system in North Halmahera, it is a customary law system that is still rooted in the Patrilineal kinship system where authority and power are in the hands of men. -man.

²³ Kathleen Daly, (n 13)p, 1-9

²⁴ Martin Wright, "CHAPTER 37," "in *Roughing It*" (University of California Press, 2019), 238-44, <https://doi.org/10.1525/9780520948068-040>.

²⁵ Eddyono, SW. "Rancangan Undang-Undang Pidana dan Perlindungan Korban Kekerasan Berbasis Gender." *Jurnal Perempuan* (2018) 23 (2) <https://lib.ui.ac.id/detail?id=20470379>

If it is associated with genealogical maps and the history of the North Halmahera people, it will be found that men have the right to the clan, inheritance, and all the inheritance of their families while women do not.

Hibualamo ideology, if understood based on its history and in the correct meaning, is applied in the processes of resolving domestic violence by law enforcement and the basis for regional regulations in North Halmahera regarding the protection of women as victims of violence, so that in principle it can encourage the strengthening of guidelines for the implementation of restorative justice by enforcement officers. Law, in particular Police Regulation No. 8 of 2021 concerning the Application of Restorative Justice in the Settlement of Criminal Cases, needs to be harmonized with Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and Decree of the Director General of the General Judiciary Agency No. 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts. Harmonization includes the types of criminal acts to prevent multi-interpretation gaps in the implementation of Restorative Justice when accepting cases of violence against women, including rape.

In addition, it is necessary to encourage the Police to develop policies that ensure access to justice for women in criminal investigations and investigations as a step to strengthen the efforts of the Prosecutor's Office through Prosecutor's Regulation No. 1 of 2021 concerning Access to Justice for Women and Children in Handling Criminal Cases and Supreme Court Regulation No. 3 of 2017 concerning Guidelines for Prosecuting Women Against the Law. These regulations from the Attorney General's Office and the Supreme Court serve as guidelines for attitudes and behavior in related institutions in dealing with women in conflict with the law, both as victims and suspects/defendants.

Considering the current criminal law policy is more on a repressive and retributive approach which has a very negative impact on victims of justice seekers, so the concept of a restorative approach should be a solution and law enforcement can understand this concept so that in its application it does not contain a sense of injustice to women as victims. In this regard, according to the author, several things must be considered, namely: first, in the process of resolving criminal cases, especially in the settlement of domestic violence, there should be room for victims without coercion/intimidation in determining what agreement should be determined. Second, the restoration of the victim's rights, not only focusing on material compensation but also on psychological considerations. Third, if there is an agreement to reconcile by the victim, but the legal process is still carried out (the judicial route) this is related to cases of sexual and physical violence (severe abuse) and the last is strengthening the criminal justice sub-system in the effectiveness of law enforcement. So that transformative justice in the application of restorative justice can describe a systems approach to identify the root causes of violence experienced by women and create a restoration of justice for transformative women.

4. CONCLUSION

This study finds that there was a misunderstanding of the views of the Tobelo community in giving negative labels or symbols to women. This misunderstanding causes women to tend to experience acts of violence, one of which is in the household and this is considered a Hibualamo tradition/custom. Through this paper, it is hoped that the settlement of criminal cases, especially the crime of domestic violence in Tobelo, North Halmahera Regency with a restorative justice approach, should be carried out based on

Hibualamo ideology, namely by considering the noble values of being fair and moral, namely First, the settlement of domestic violence should provide space for victims without coercion/intimidation in determining what agreement must be determined. Second, the restoration of the victim's rights does not only focus on material compensation but also psychological considerations. Third, if there is an agreement to reconcile by the victim, but the legal process is still carried out (the judicial route) this is related to cases of sexual and physical violence (severe abuse) and the last is strengthening the criminal justice sub-system in the effectiveness of law enforcement based on applicable regulations.

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