

PREVENTING DOMESTIC VIOLENCE IN WEST SUMATRA THROUGH ADAT CRIMINAL LAW AND LOCAL WISDOMS

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ABSTRACT

Violence against Women is a form of violence that occurs based on gender differences, whereas domestic violence is a form of violence that occurs in the family/household environment. Many women and children are victims of violence around the world and Indonesia is no exempt to this sad reality. West Sumatra, home to the Minangkabau ethnic and its adat (custom) ranks second in term of domestic violence in Indonesia. This paper aims at addressing the following questions: what are the causes of domestic violence against women in West Sumatra? And how can customary criminal law and local wisdom best deal with phenomenon in West Sumatra? This study uses a socio-legal approach with descriptive nature using primary and secondary data. The study reveals that the causes of domestic violence against women in West Sumatra come from the victims themselves. The study also shows policies that have been carried out so far rely on penal and non-penal approaches through the criminal justice system, customary criminal law and local wisdom. The restorative justice approach is also used through deliberation and consensus based on the values in Minangkabau customary law. Marriage in the Minangkabau community rests in the hands of niniak mamak (clan leaders), settlement through the principle of musyawarah (consensus) as a principle in customary criminal law carried out first through deliberation in the family, then, at the level of clan leaders known as Kerapatan adat salingka nagari.

Keywords: Domestic Violence, Customary Law, Local Wisdom, Minangkabau Society, West Sumatra.

INTRODUCTION

Violence against women is a form of violence that occurs based on gender differences, while domestic violence is all forms of violence that occurs within the family or household. The definition of a household is different from one to another, but in general the household consist of Father, Mother, and Children, but later domestic helpers are included in family members who must get the same protection as other household members.

In the case of domestic violence, many facts reveal that most of the victims in domestic violence are women and children. Many writings and research reveal that acts of violence against women are a product of the social system adopted by the community. The intended social system is a patriarchal system that places men higher than women (Integrated Service Center, 2006). Domestic violence is a social phenomenon and a form of crime. Criminal acts are a violation of norms on the legislations responded with a criminal sentence, then the characteristics that exist in each criminal act are the nature of breaking the law (Prodjodikoro, 2003).

The terminology of domestic violence relates to housewives or wives as victims. The term domestic violence in literature is generally used in a variety of ways, for example, domestic violence, family violence, wife abuse. However, Lisa Fredman suggested that the term domestic violence does not always describe the actual situation (Martha, 2003).

Various studies on domestic violence include those carried out by the Sebelas Maret University Women's Study Center. The research was conducted in West Java, Central Java, and East Java. This study identifies several factors that cause violence by husbands to wives, the behavior of wives who are considered as the cause of the emergence of husband's violence against their wives, the wife's reaction to the husband's violence, and direct causes of husbands' violence against wives. However, this study lacks an explanation about how to deal with the quality and quantity of acts of violence against women.

Our previous research related to the protection of women and children victims of sexual violence through customary law as the embodiment of the right of origin in West Sumatra examined the protection provided to victims and not yet answered the problem of countermeasures conducted against violence by using customary criminal law and local wisdom in West Sumatra. Furthermore, Ismansyah and Aria Zurnetti in a study that raised the model of coping with misdemeanor committed by children through the application of customary criminal sanctions in West Sumatra discuss the form of repressive measures against children as perpetrators of moral crimes and currently there has been a legal reform in the field of the juvenile justice system in Law No. 11 of 2012 on the Criminal Justice System of Children, for example, the mechanism of diversion (Zurnetti, 2016).

In our recent research, we have examined the synergy between the police and the nagari government through a community-policing program in crime prevention in West Sumatra. We found out that resolving crimes through customary law is still maintained in the community. The use of customary law in crime prevention is now also being implemented by police institutions where the settlement is sometimes more effective than through formal mechanisms. In Minangkabau society, for example, there is a concept of completion through local wisdom, such as the axiom: "*kalau bulu kusuik paruah yang manyalaian*" there is also the concept of "*bajanjang naiak, batanggo turun*" which requires settlement through stages and institutionally through *rapek niniak mamak*, *rapek panghulu*, and *Kerapatan Adat Nagari* (Zurnetti, 2017).

From the research above, no study has specifically discussed the handling of acts of violence against women victims in domestic violence. According to Harian in "*The majority of women have been victims of domestic violence*" reports that the majority of women have experienced domestic violence. Ranging from psychological matters to physical ones (Harian, 2018).

According to Usman Basuni, there are four types of domestic violence experienced by women in Indonesia, namely physical, psychological, sexual, and economic violence; the most reported case is psychical violence. Further, the data obtained based on the latest survey in 2016 related to the National Women's Life Experience survey (SPHPN), states that more than half of women had experienced domestic violence with six (6) out of ten (10) women become victims of domestic violence. This makes Indonesia the 4th country with the highest number of domestic violence in the world. The causes of this situation very diverse, some are caused by the lack of economic needs, feudal culture, a low level of education, and a high level of unemployment.

The number of violence against women in the last four years in West Sumatra according to which refers to a report from WCC Nurani Perempuan, is increasing. In 2013 there were 88

cases of violence against women and 34 reported cases of domestic violence. Then in 2014, there were 81 cases of violence against women, including 40 cases of domestic violence. In 2015, out of 85 cases reported there were 35 cases of domestic violence. And in 2016, out of 109 reported cases, there were 43 cases of domestic violence. While in 2017 until November, there were 90 cases reported including 46 gender-based (Zurnetti, 2017). Based on the description above there are formulations of the problem in this research, namely:

1. What are the factors that cause domestic violence against women in West Sumatra?
2. What is the policy to deal with violence against women victims of domestic violence in West Sumatra?
3. How do customary criminal law and local wisdom address and deal with acts of violence against women victims of domestic violence in West Sumatra?

RESULT AND DISCUSSION

Factors that Cause Domestic Violence against Women in West Sumatra

Data on cases of violence against women from year to year has relatively increased. The violence that occurs in the personal sphere is at the highest position. Acts of violence against women, in general, can be described as a small pyramid at the peak but large at the bottom which means that the cases recorded are not comparable with cases that occur in the field. This is not free from influence if violence occurs in the household environment, the violence case is considered taboo and the victim is reluctant/afraid to report. The effect of this is of course resulting in women victims being forced to keep their mouths shut and keep the matter tight so that the violence cases tend to be resolved on a family basis. However, it cannot guarantee legal protection for victims, especially women.

The National Commission for the Protection of Women noted that acts of violence against women in the country have increased every year. In 2010 there were 101,128 cases of domestic violence, in 2011 there were 113,878. This number has increased by 5.9%. Whereas for 2012 with 142,662 cases, there was an increase of 11.61% compared to the previous year (Soeroso, 2011). Based on Annual Records data from the National Commission on Violence against Women (Komnas Perempuan) in collaboration with various partners who have data and concerns about cases of violence against women, collected data on violence against women from 2013 to 2017 (Soeroso, 2011).

In 2013 the number of cases of violence against women was 279,688 cases, with details handled by the Religious Courts as many as 263,285 cases and 16,403 cases were handled by service provider partner institutions. In 2014 there were 293,220 cases of violence against women, with details of 280,710 cases being handled by the Religious Courts and 12,510 cases being handled by service provider partner institutions. In 2015 there were 305,535 cases of violence against women, with details of 245,548 cases being handled by the Religious Courts and 13,602 cases being handled by service provider partner institutions. In 2017 there were 348,446 cases of violence against women, with details of 335,062 cases handled by the Religious Courts and 13,384 cases handled by service provider partner institutions. While until 2018 the number of violence against women in West Sumatra is 256 out of 13,568 nationally. In general, violence against women in the household can be described based on the following factors:

Religious and Social Factors

Domestic Violence in this case is triggered by the ideology and world view of the community which then influences political, economic, social, cultural events, and views to religious / belief interpretations. One of them is a patriarchal ideology which then influences the way of outlook-behaviour in personal life, household, state society, even the global order of life. Patriarchal ideology is a perspective that places men as the centre of life so that men are placed in a higher position than women. This ideology can be found in various societies and countries, both past and present. This ideology as a worldview can affect various aspects of life. He can sneak in the structure of language, typical regional expressions, and other cultural behaviour's. For example, the expression of women as *konco wingking* (friends from behind) by the Javanese community. The patriarchal ideology gives birth to gender discrimination or discrimination based on different attitudes towards men and women.

Cases of domestic violence, especially against wives that occur at this time have increased both in quality and quantity. This certainly gets the attention of all parties to find out the forms of violence, the factors that cause them, and how the legal protection for wives who are victims of violence for the actions of their husbands. Domestic violence against a wife can be in the form of, (1) physical violence; (2). Psychic violence; (3). Sexual violence; (4) Abandonment from the economic responsibility of the husband.

The culture and position of women's subordination is the beginning of the emergence of opportunities for acts of violence against women (wives). The dominance of men is always maintained because of personal interests to limit women's access to other fields, which has so far been a wetland for men such as political, economic, social, and others. All this is done because men are in the comfort of the status quo of men's hegemony which for them judges doing anything against women.

Criminal Justice System Factors

The criminal justice system related to Domestic Violence cases has several weaknesses so that the criminal justice system has not been able to overcome the weaknesses triggered by factors, including:

1. In the trial process, the parties are not given sufficient time and opportunity to participate in delivering a version of justice,
2. Concentration only on the legal facts and ignoring the emotional factors cause the court not to allow the victim to tell their suffering,
3. Long, rigid, and complicated procedures of law enforcement agencies that ignore victims, make it difficult to achieve satisfactory results, and tend to double the suffering of victims,
4. The high cost of litigation in court,
5. Penalties tend to be motivated by revenge (restitutive justice), and fail to provide a deterrent effect on the perpetrators,
6. The court fails to protect women because often the offender sentenced to a minor sentence will be more abusive to his wife when returning in married life.
7. Failure to pay attention to the balance of position/strength of the parties in the domestic violence case results in weak protection for weak victims,
8. Criminal imprisonment in the form of imprisonment of the perpetrators, the majority of which become the foundation of the family's economy, causes damage to the family and children's future.

Weak Government Preventive Actions

When viewed from the side of government programs on the elimination of domestic violence, it is felt that it is still experiencing a setback or even failure, partly due to:

1. Program managers (both from government and civil society) so far only see and deal with this problem as two separate problems, namely violence against women and violence against children. Though experience in the field proves both of them are an integrated and mutually influencing problem. Where there is a woman's problem, there is most likely a child problem. Vice versa, because each is very rarely stand alone. As a result of handling the two problems separately, instead of being overcome, they often cause each problem to be more complex, and can even create new problems.
2. Frequent mistakes of program managers in conducting therapy, as is known cases of violence against women and children are very dominant in the realm of domestic covertly or hidden so that it makes it difficult for law enforcement and activists to detect it, especially to overcome it. But the fact is that the program managers have been more upside down in the public arena. Like a headache patient, doctors give her a backache medicine.
3. Less optimal (or even absent) efforts of program managers in involving families in the management of violence against children and women. Whereas in reality, the family is the most effective determinant key in resolving the problem.
4. Program managers seem to have been trying to anticipate various effects or symptoms, not the root causes of problems of violence against women and children. All parties tend to function as watchdogs, even though the escalation of the problem is so critical that we all need to be more proactive in handling it.

The centralization of the handling of the problem of violence against women and children is still central. Almost all of these problems of violence occur in these areas. But the fact is the agency assigned to handle it has no representation in various regions. The agency is only a ministry that is classified as "*small*" in terms of budgeting and various other strategic resources. All of this does not at all reflect the anxiety of this nation of the increasingly widespread cases of violence against women and children with a variety of dominoes. If the problem of violence against women and children is like an enemy fighter jet, we have been trying to paralyze it from a distance with just a slingshot.

Various factors causing the occurrence of crime have been stated by experts. The cause of crime lies in addition to the perpetrators themselves, it can also be influenced by the social environment in the community. Factors that cause criminal acts of violence against women in West Sumatra are influenced by internal and external factors. Internal factors are factors that originate from each party in the family, while external factors are factors that come from the community environment. For example, from the Padang Religious Court Report in September 2019, of the 155 cases handled by the Padang Religious Court, 82 cases consisted of on-going disputes and quarrels and as many as 65 cases in the form of leaving either party. From this explanation, it can be seen that such incidents are included as part of the factors that cause domestic violence. While the external factor is the existence of a third party that interferes with family relationships, there is no openness between husband and wife.

Policy for Combating Violence against Women in Domestic Violence in West Sumatera

The policy of combating violence against women in West Sumatra refers to positive law and adat law that apply in West Sumatra. It is implemented using penal and non-penal approaches. Overcoming violence against women in domestic violence through the penal

approach refers to Law Number 23 of 2004 on the Elimination of Domestic Violence. While the non-penal approach is carried out through adat criminal law and local wisdom as a law that lives in Minangkabau community. So, the settlement of domestic violence embraces a consensus approach that is in accordance with Minangkabau philosophy.

Article 1 paragraph 1 of the PKDRT Law explains that domestic violence is: *"every action against a person, especially women, which results in the emergence of physical misery, sexual, psychological, and/or neglect of the household including threats to commit acts, coercion or deprivation of independence in the household environment."* This provision emphasizes and focuses on women as victims of domestic violence. Domestic violence against women can be done in several ways according to Article 5 of the Domestic Violence Law, namely: physical violence, psychological violence, sexual violence and household neglect.

The acts of violence against women in domestic violence that occur in society continue to increase. Based on data from Women's and Children's Services Unit (PPA) of Padang Regional Police, as of January 2018, there has been 103 cases of violence experienced by women and children (Harian, 2018).

Prevention of violence against women in domestic violence through a non-penal approach is using the approach of adat law and local wisdom in the community of West Sumatera. Minangkabau customary legal settlement uses deliberation and consensus to seek peace. This was revealed in the traditional axiom. If the agreement has been reached, the parties must obey and implement the agreement well.

When there is domestic violence, especially against women, then attempts are made to resolve it through deliberation in the family. However, if the settlement effort is unsuccessful, then it will be brought into the niniak mamak deliberation, to be resolved customarily. Besides paying attention to the weight of the acts of violence committed, the settlement is multilevel in the mechanism that starts from the closest family, kaum, suku, jorong, and finally the nagari (Zurnetti, 2016).

Furthermore, to overcome crime and violations in the community for the realization of security, order, and public peace, a collective agreement was made to optimize the empowerment of customary law between the traditional counsel or Minangkabau Nature Adat Density Institution (LKAAAM) and West Sumatra Regional Police. A joint agreement between LKAAAM with West Sumatra Regional Police Number B / 2618 / VII / 2017 and Number 158 / LKAAAM-SB / VII / 2017 concerning the Synergy of the National Police with LKAAAM in maintaining the security and order of the community as well as solving social problems through Minangkabau customary approach and local wisdom at Community and Partnership Center (BKPM) as a form of follow-up to the Police Chief Regulation. The continued action of this collective agreement is the synergy of the police and elements of the nagari government in realizing the goals of the Polmas in tackling crime in West Sumatra (interview with the Chairperson of LKAAAM on August 20, 2018).

Application of Adat Criminal Law and Local Wisdom in Overcoming Domestic Violence

The imposition of sanctions in adat law is part of the efforts of the social control that is owned by certain communities to create order in society. Adat sanctions are actions or efforts to restore the balance including a magical balance resulting from the disorder resulting from the violation of adat law. In adat law, the highest value is a socio-cultural system that contains the

basic principles under which there is a system of norms that function as legal principles. Adat law that grows and develops in society is a means of social control. Therefore, adat law is expected to be able to meet legal needs in accordance with values that live in society (Ismansyah & Aria, 2016).

Minangkabau adat criminal law is a legal rule that is lived and adhered to by the Minangkabau community which originates from the rules of life and the philosophy of the Minangkabau community who adhere to the matrilineal kinship system. Adat is a form of behavior patterns that develop in accordance with the development of society. It gained reinforcement because it is very important in achieving the peace of life of the community by establishing or implementing by providing an institution and provide to set of sanctions for people who broke it. Thus, Minangkabau adat law forms patterns of community behavior by establishing clear sanctions carried out through institutions formed by the community itself.

Minangkabau adat law cannot be separated from Islam as the majority religion adopted by the Minangkabau community. This is reflected in the maxim or basic concept. This expression means that the Minangkabau customary law is based on Islamic law contained in the Holy Qur'an. Customary law is the implementation of Islamic law in Minangkabau as a legal system that is based on an unwritten law, namely the law that lives in society. The law is found in the petition that is passed down from generation to generation. From these various rules in the most common form, we recognize the existence. When viewed from the aspect of national law, this regulation is a form of act or offense that is prohibited from being carried out and can be subject to criminal sanctions.

Minangkabau tradition adopts a matrilineal system, which is a method of determining the lineage from the mother's side. This causes women to have honorable positions in the family and society. The position was acknowledged in the name of women with honor, namely *bundo kanduang*. The expression shows that woman is considered as a mother who must be respected by everyone. Whereas the position of women in the household is reflected in the saying that: women, especially mothers have a very significant role in managing the household and community.

For acts of violence against women, especially those related to honor, Minangkabau customary law provides a very strong protection or protection.

In Minangkabau customary law, offender of the crime is imposed with several possible sanctions. The provision of social sanctions starts from the mild to the heaviest, which is discarded from the tradition (*dibuang sapanjang adat*) and discarded from the nagari (*dibuang dari nagari*). Sanctions of banished along customs and banished from the country are revealed through the wisdom: "*why don't you do it again, why don't you do it again*".

Payment of compensation is a form of sanction aimed to repair damage or loss suffered by a victim. It was stated in the proverb which stated: "*why bangkak in damak, why luko offered*" the meaning of the phrase is that if it occurs as a result of illness, or injury, then it must be treated. While sanctions aimed at the general public usually pay traditional duties by performing traditional ceremonies, in the phrase: "*custom filled limbago poured*." Customary fines of certain buildings, which are used together, are to restore the customary balance that has been disturbed by the violation.

This settlement concept is similar to the concept of restorative justice and penal mediation. In the concept of restorative justice, it is expected that the settlement process and results can improve the existing conditions. This concept has not been formally regulated in Indonesian law.

However, it has been implemented by the police through the community-policing program. The concept of penal mediation develops with the idea that criminal matters must pay attention to the interests of victims. This concept has been regulated by the National Police in the Chief of Police's letter no. Pol: B / 3022 / XII / 2009 / SPDOPS dated December 14, 2009, concerning handling cases through Alternative Dispute Resolution (ADR).

CONCLUSION

Factors that cause domestic violence against women in West Sumatra are influenced by internal and external factors. Internal factors are factors that originate from each party in the family, while external factors are factors that come from the community environment. Internal factors such as constant disputes and quarrelling, leaving one party, etc. While the external factor is the presence of a third party that interferes with family relationships, there is no openness between husband and wife, economic factors, culture, etc.

The policy of combating violence against women in West Sumatra refers to positive law and the provisions of adat law that apply in West Sumatra. Additionally, the mitigation policy is implemented using penal and non-penal approaches. Overcoming acts of violence against women of domestic violence through a penal approach refers to Law Number 23 of 2004 on the Elimination of Domestic Violence. While the non-penal approach is carried out through the adat criminal law approach and local wisdom as a law that lives in Minangkabau community. Therefore, in the settlement of domestic violence used an approach that is in accordance with Minangkabau philosophy, namely the internal settlement in advance, the principle of consensus, the principle of multilevel settlement, and the principle of justice.

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