

**Women as a Victim of Family Violence In Indonesia;
The Impact of Patriarchal Culture or Lack of Law Enforcement?**

by

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Abstract

Quantity and quality of family violence cases in Indonesia have increased significantly. Women and children are mostly being victims in family violence. During 2008, The National Commission for Women recorded, the number of women victims comes from family violence reach 6.800 cases. Women abuse is a primary indicator of child abuse, since violence in any part of the family equals violence in a very part. Although the enactment of The Indonesian Law number 23 year 2004 concerning Elimination on Family Violence had been done for several years, but still the number of family violence has increasing rapidly. More than 70% perpetrators of family violence are male. Does this condition occur due to the impact of patriarchal culture which positions men above the women? or does it occur due to lack of law enforcement with the old paradigm that the legal officers assuming the family violence is a part of family law so no need to intervene with it. This paper looks at factors influencing the family violence victimization in Indonesia in order to get an effective way combating the violence and eradicating this victimization.

1. Introduction

The 1945 Constitution of the Republic of Indonesia declares that every person has equal position before the law. Every person shall be entitled to get a sense of security and shall be free from all forms of violence. All forms of violence, particularly violence in the family, constitutes violence against human rights and crime against human dignity as well as form of discrimination that must be eliminated. Based on this philosophy, the government of Indonesia has enacted several regulations concerning the protection of women. The Government of Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) more than 10 years by Indonesian Act Number 7 Year 1984 concerning CEDAW ratification. Also Indonesia has Law Number 23 year 2004 concerning the Elimination on Family Violence.

Although, several regulation has been enacted, still nowadays the quantity and quality of family violence cases in Indonesia have increased significantly such as sexual violence, physical violence, and psychological violence. Some of the discriminatory action experienced by women arised from the family due to the status as a wife. As recorded in The National Commission for Women, during 2008 the number of women victims comes from family violence reach 6.800 cases. Women as family victims of violence must get protection from the state and/or the public so that they can be avoided and freed from violence or threat of violence, torture, or treatment degrading human degree and dignity. In fact there are many cases of family violence whilst the legal system in Indonesia has not guaranteed protection of victims in family violence. More than 70% perpetrators of family violence are male. In order to protect the victims, this paper is trying to analyze the background of family violence due to patriarchal culture lives in Indonesia and old paradigm of legal officers.

2. The Main Factors Influencing The Family Violence Victimization In Indonesia

The patriarchal culture in Indonesia has systematically influenced the people's mindset that put man (husband) above the woman (wife). It cannot be separated from a series of problems that impact on discriminatory action against women. The condition is even worse due to minimum education and poverty surrounding the life of women, the stronger tide of religious fundamentalism and cultural absolutism currently make life more difficult for women. In fact, restricted women's freedom of movement and expression is a common thing that bound the woman.

Women traditionally held as family financial caretakers, supposed to provide their parents, husband and children with water and food and keep the house suffered from grave economic pressure. The burden of life on women continued to increase. Economic pressure for ten years has resulted in the escalation of poverty figures from year to year whose impacts have led to the greater number of cases of malnutrition among children and women, the increasing number of victims of trafficking in women and children, and the emergence of cases of suicide committed by children and women because stress and depression. The women who become unable to cope as a result of the battering may develop an emotional or mental illness that leaves her unable to fulfill her parenting role.

In some cases, it is the women and girls that become the target of physical, sexual as well as psychological violence that often exceeds tolerance of humanity, class and culture. Katherine S. Williams (1997) explained that some crimes and victims have been calculated to be large problems for certain sectors of the population. Sexual and domestic violence against both women and children falls into this category. Many women are subjected to sexual and other harassments. Although these may fall short of actual crimes, they add to their fear and feeling of vulnerability. In addition, women, the elderly and people who are from one of the ethnic minority groups tend to be relatively powerless physically, financially and socially,

and this adds to their vulnerability. Woman may not enjoy their equal rights because of the violence often experienced by women at all ages because of conflict.

From other evidence it is known that women suffer a large amount of violence, much of which is committed in their own homes by people known to them. Such violence is often perceived as less 'criminal' than offences committed on the street and by strangers (see Stanko (1988)). Police and society often treat the later more seriously than the former even if the physical effects are the same. The survey evidence, suggesting that violence against women appears to be very low, is thus obviously misleading. (Katherine S. Williams, 1997)

Even though Law Number 23 of the year 2004 has already declared family violence as a crime, legally rules that those committing it will be prosecuted and penalized, the Compilation of Islamic Law still allows domestic violence against wives, as provided for under article 48 of the Compilation concerning *Nusyuz* (wife's disobedience towards husband). This article provides authority to husband to commit violence against wife. (CEDAW Report, 2009).

The application of customary traditions in a community that makes it possible for violence against wife in marriage to occur takes place in several regions in Indonesia. In East Nusa Tenggara, for instance, there is a *Belis* tradition (the giving of a dowry in the form of a good(an article by a would-be husband to a would-be wife). The giving of the dowry is intended as a token of appreciation to the woman. In practice, however, this tradition can be wrongly interpreted and be used as a tool to legitimize violence that the husband or his family inflicts on or commits against the wife that he/ his family has "bought" with the dowry and is therefore entitled to have control over her.

Many marriages which are conducted according to a tradition or a religion are considered valid by local communities even though they are not registered officially are marriages that are mostly detrimental to women and children because marriages that are protected by law are only those that have been registered at a civil registry office or a religious affairs office. As a result, there are many instances in which a woman whose

marriage is not registered officially is abandoned together with her children when her husband deserts them.

Strong social and cultural values that have patriarchal system place men and women in different role and position. It always causes problems of subordination, marginalization, violence against women, and stereotype way of thinking and double role. Those problems might lead to injustice and unequal position of gender. Patriarchal social and cultural treatment above makes women have no access, opportunity in planning, conduct and control over development. Unlike men, women don't get benefit from the development either. It makes their position and role low in the society. (Sri Natin, 2006)

Patriarchal culture and cultural constraints has become special challenges in the implementation of women's right in Indonesia. Cultural constraints refer still deeply ingrained in both Indonesian society and state officials as materialized in stereotypical views of women, cultural norms, traditional practices and gender-biased interpretation of religious teachings.

Young J. as cited in M. Maguire and J. Pointing (1988) argues that the extent to which crime risk figures conceal or reveal anything about the real incidence of risk is a function of a number of mechanisms. He uses the example of the victimization of women to illustrate the way in which a realist approach would uncover these mechanisms. First it involves recognizing the way in which the actual impact of known crime on women is trivialized: the mechanism of concealment. Secondly, it involves recognizing that the impact of crime on women cannot be assessed without taking into account the levels of sexual harassment women experiences: the mechanism of compounding. Thirdly, it involves recognizing that the relative powerlessness of women makes them more unequal victims: the mechanism of vulnerability. Finally, it involves recognizing that crime is a product of a particular set of relationships: the mechanism of patriarchy.

The government of Indonesia responsible for all efforts of eliminating discrimination against women through a number of policies or legal regulations. The responsibility of the government is not limited to the process of formulating what discrimination is all about. It's also responsible to make supporting regulations, including conducting evaluation and revocation of policies that discriminate against women.

Some of the Indonesian regulations concerning eliminating discrimination against women are described as follows:

1. Law number 7 year 1984 concerning ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
2. Presidential Decree Number 181 year 1998 concerning the establishing The National Commission For Women
3. Presidential Instruction (Inpres) Number 9 year 2000 concerning Gender Mainstreaming,
4. Law Number 23 year 2004 concerning the Elimination on Family Violence
5. Law Number 21 year 2007 concerning the Elimination of the Crime of Trafficking in Persons.

Beside these regulation the government of Indonesia also formulated the National Plan of Action on the Elimination of Violence against Women in 2000 and the National Plan of Action on the Elimination of Trafficking in Women and Children in 2002.

One of the Indonesia regulation protecting the women from become victims of family violence is Law Number 23 year 2004. Family Violence regulated in that law shall be any act against anyone particularly woman, bringing about physical, sexual, psychological misery or suffering, and/or negligence of household including threat to commit act, forcing, or seizure of freedom in a manner against the law within the family scope. In the article 3 described the principles of the law are:

1. respect for human rights;
2. justice and gender equality;
3. non-discrimination; and
4. victim protection.

It was clearly stated that the government of Indonesia is trying to protect the victims in family violence which particularly women and children.

The intention of this law as it has shown in article 4 is to prevent all forms of family violence; protect the victims of family violence; take action against the perpetrator of family violence; and maintain the intactness of harmonious and prosperous family. All forms of violence, particularly family violence, shall be violation of human rights and crime against human dignity as well as a form of discrimination.

Law number 23 year 2004 belong to a significant legal protection framework for the elimination of violence against women, in particular, family violence, and to support the efforts of women's organizations and the government in providing services, accompaniment/ assistance, rehabilitation of victims and crisis centers for women (Women's Crisis Centers).

Based on Article 28 of the Constitution of the Republic of Indonesia, and its amendment stipulates that "Anyone shall be entitled to protection of himself/herself, family, honor, dignity and property under his/her control, and shall be entitled to sense of security and protection from threat of feat to do or not to do something constituting human rights". Article 28H paragraph (2) of the Constitution of the Republic of Indonesia stipulates that "Anyone shall be entitled to convenience and special treatment to obtain the same opportunity and benefit to achieve equality and justice". The development at present shows that physical, psychic, sexual violence and neglect of household in fact take place thereby bringing about the need to adequate legal tools to eliminate family violence. Law reform siding with susceptible or subordinated group, particularly women, has become urgently needed in connection with the large number of cases in family violence.

Even though various efforts have been made, including by publishing several regulations the cases of family violence still very difficult to eradicate and eliminated.

According to the annual report from the National Commission of Anti-Violence against Women (the National Commission of Anti-Violence against Women, 2008):

In Indonesia, there is no National Statistics that records data (or statistics) on Violence against Women including Domestic Violence. Reports from Women's Crisis Center (WCC), police offices, medical service institutions and other institutions (such as courts, psychological service institutions, etc) show that cases of violence against women are on the rise. Data from the National Commission of Anti-Violence against Women show that 82% of 15,515 women who reported violence are married and the perpetrators are their own husbands (2006). Statistical data from a Women Crisis Center (WCC) in Jakarta (Mitra Perempuan's WCC) show that it handles about 455 cases per year and that 9 out of 10 women who have requested help from WCC have been subjected to more than just one type of violence (physical, psychical, sexual, or economic pressure and abandonment).

Before the enactment of Indonesian Law number 23 year 2004, during the period 2001-2004, there were 9.662 family violence cases being reported. After the enactment of Indonesian Law number 23 year 2004, during the period 2005-2007, there were been 53,704 family violence cases being reported (Annual Report The National Commission of Anti Violence Against Women, 2008) . Although in the realita, a huge number of women as victims of family cases, these number is still hidden and unrevealed. Sandra Walklate stated:

Feminist research consistently shows that very little of women's experiences of rape and sexual assault, for example, comes to the attention of officialdom. The national crime survey approach has uncovered little more.....Unless policing and crime survey researchers lend credence to the concept and reality of gender stratification, violence against women will, on many levels, remain a hidden, but all too real part of women's lives. (Sandra Walklate, 1989)

The main factors raised the number of women as victims in family violence are described as follows:

- 1) The conventional patriarchal culture lives in several places in Indonesia usually in the small towns or village. The paradigm and the belief that put men above the women also become one of the trigger to create the family violence. In some religion in Indonesia legalized the practice of polygamy. In fact, in the Indonesian Marriage Law Number 1 Year 1974 allowed the husband to do the polygamy under special circumstances. In the year 2003, a number of groups of pro-polygamy people went

even further by presenting and distributing a token of appreciation in the form of a polygamy award to a number of community figureheads/ leaders and public officials who are polygamous and support polygamy.

- 2) The poverty and a low level of education and skills are also the factor behind the large number of women's as victims in family violence in Indonesia. In the field of education, the backwardness of women is evidenced in the extremely high illiteracy rate among women in Indonesia. This situation exists because of the still prevailing patriarchic culture which prioritizes men as the main beneficiaries of education because women are still considered second-class citizens and are supposed to just stay at home to take care of family so that it is not necessary to give them education.
- 3) The old paradigm of Indonesian legal officers. Although in the Indonesian Law Number 23 Year 2004 clearly stated that every family violence is a crime and can be proceed in the criminal court, but many of Indonesia legal officer still have the old paradigm that family violence is part of family law and part of private law. The family violence has to be settled in the family itself. No need to intervene with it. Instead giving protection for victims in family violence particularly women, many reports of family violence were not able to be proceed through criminal court. The legal officers often suggested the victims to settled it themselves. Many unfinished investigations in the family violence and being disrupted and stopped by the practitioners.
- 4) Lack of law enforcement combating and eradicating the family violence. In the realita, the implementation of several regulations for women as victims in family violence still very weak. The lack of legal officers revealing the family violence in Indonesia.
- 5) Lack of public awareness of the importance of respecting the fundamental rights of women in the family in order to protect women being victims. Many people believes

that family business is very secret and confidential. Even happened in their neighborhood and society, it is prohibited for getting involve in other family.

- 6) In some cases, the orientation of criminal justice system concerning family violence is how to give the sanctions to perpetrator. Instead giving protection to victims and think the best for the victims, the criminal justice systems more focusing to proof the defendant guilty. It will jeopardized the life of their marriage life. In the result, the women as the victims will re-thinking to report and disclose the violence in her family.

The police still do not see domestic violence as their business and they do not see prosecution as the most appropriate way of dealing with the problem. In domestic violence the woman is not generally seen as a separate entity: she is seen as part of the relationship, and the criminal justice agencies often feel it more appropriate to maintain that unity than to protect her individual person. In some cases it is this unity or, more realistically, the financial dependence of the woman which forces her to stay and be physically abused: it is this power element and the resultant helplessness which the refuges help women to cope with and to overcome. (Katherine S. Williams, 1997)

All of the factors as described above shown that enactment of Indonesian regulation is not enough eradicating and eliminating the family violence. The Indonesian regulation is not enough to give the protection for women as victims in family violence. The government need to pay attention on several factors. The implementation and the law enforcement are needed to combating the violence and eradicating this victimization.

The enactment of these various regulations can actually be seen as the commitment and the efforts of the Government of Indonesia to international to provide guarantee and fulfillment of women's rights under family violence. However maximazing the regulations and the implementation is a priority. Erna Sofwan Sjukrie dan Archie Sudiarti Luhulima

(2007) stated that it is a state obligation to conduct all the principles of CEDAW in order to eradicating the all forms of women discrimination including the women violences.

The government need to be consistent in and is whole-heartedly carrying out its commitment. The government should be more actively providing any kinds of protection scheme for women as victims in domestic crime including provide the shelter homes for the victims and their children with the physically and mentally rehabilitation to bring back their confidence.

Katherine S. Williams (1997) stated that shelter homes or refuges were set up as safe havens for women who were being criminally battered or whose children were being assaulted by people living with them, generally their husbands and/or lovers. These provide very practical help by giving the victim a roof over her head and a place to care for her children, outside the violence of the home and with the help and support of other women in the same predicament.

The Government has already done sufficiently well in making a legal breakthrough in women's favor but quite the contrary, created a number of regulations that discriminate against women. That's why, discrimination against women in a number of statutory laws and regulations has to be explicitly defined. Various efforts have been made, both by the government as well as by a number of non-government organizations, starting from campaigns, the advocacy of victims, the advocacy of policies to build a common alliance for the prevention of and the education on and the raising of awareness of the negative impact due to woman as victims in family violence.

Sandra Walklate (1989) explained that it is possible in the context of domestic violence, if the appropriate agencies were brought together, including the less (formally) recognized women's and community groups, and if domestic violence was prioritized, to establish a network of agencies concerned with monitoring and preventing domestic violence in the same way that efforts are made to police child abuse.

The suggestion of reparation may be achieved by mediation have been made recently concerning family violence but it has to be in form of court ordered. Its the similar type as Wright (1985) stated below:

Reparation is what the offender gives back to the victim in the form of money service or apology. It is not necessarily agreed; it may merely be ordered by the court. Reconciliation is the removal (or reduction) of hostility between two people when one has caused harm to the other, and this is brought about by a mediation process. It usually includes some sort of reparation, but this need not be tangible. (Wright, 1985)

The natural sequence of rendering meaningful justice, social and legal, should proceed as follows :

- (i) Fair, considerate and sympathetic treatment by the police, the hospitals, the welfare organizations, Prosecution and the Courts.
- (ii) Justice during the entire Criminal proceedings and in the final award of punishment on the offender.
- (iii) Prompt Restitution/Compensation to the victim for the injury or loss suffered, and
- (iv) Security to the victims and potential victims against victimization in the future. (S.M. Diaz, 1985)

All of these action will be setforth the best interest for women as victims in family violence.

Protection shall be all efforts intended to provide a sense of security to the victim to be provided by the family, an advocate, a social institution, the police, district attorney office, a court, or another party either temporarily or based on ruling of a court.

3. Conclusion

An effort to minimalize women as victims in family violence comes from social and cultural systems. Patriarchal culture could be several factors influencing the family violence. The conventional patriarchal culture must be change to the modern patriarchal culture with the new principle that men '*leads the women*', not '*control over the women*'. The changing of social and cultural systems is a must. Beside that, the government of Indonesia has to do several things as follows:

1. Promoting awareness and understanding of Law Number 23 year 2004 among legal officers and the general public. Revising a number of policies that clearly discriminate against women both at national level in the form of national acts/ laws and at local level in the form of local government regulations.

2. Enactment Local Legislation Programme that give more priority to the stoppage of the applicability of local regulations that are discriminatory against women because they do not accommodate the interests of the people and do not apply the participatory principle in their deliberation. The government must synchronize discriminatory local governments with higher laws using the perspective of human rights so that their detrimental impacts on the people can be minimized. Harmonizing all the existing and would-be policies, laws and regulations with Law Number 23 of the Year 2004.
3. Strictly enforce and commit for implementing the policies that have been made to prevent and eradicate discrimination against women. Building a consistency in the control mechanism (monitoring) of the implementation of the Law number 23 year 2004 in protecting women.
4. Raising public awareness of the importance of protecting women's rights due to the status of the victims in the family violence.
5. Allocating funds for the protection of women victims of family violence and giving the medical, social rehabilitation for the victims.

The whole society has the role to implementing the equal position for all men and women.

There must be a good coordination among the government, society, and private institutions to realize it simultaneously.

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