Criminal Justice System Reform for Women as Victims of Domestic Violence Through Local Wisdom

Syamsul Fatoni, Dewi Muti’ah, Dodik Pranata Wijaya
Fakultas Hukum Universitas Trunojoyo Madura
syamsul.fatoni@trunojoyo.ac.id, dewi.congir@gmail.com, dodik.p.wijaya@gmail.com

Abstract: The criminal justice system aiming to serve as a resolution of domestic violence should take into account the adat law system, religious law, and self-regulation living in society. Marriage Institution and Law Number 23 of 2004 concerning Abolishment of Domestic Violence turns out to be a criminogenic factor. This research seeks to investigate the criminal justice system linked to measures for the protection of women as victims of domestic violence in Indonesia and to find out and analyze the contribution of local wisdom to the reform of the system regarding the protection of female victims of domestic violence. This research required doctrines involving the study of secondary data supported by a field study and systematic analyses of the existence of the criminal justice system regarding domestic violence cases with an approach to the local wisdom in Madurese society. The research discovers that the criminal justice system in mitigating the female victims of domestic violence must be integrated and synergized with the sub-systems embracing police, health professionals, social workers, voluntary facilitators, and preachers assigned in criminal court as governed under the Law Number 23 of 2004. The presence of local wisdom in the reform of the criminal justice system concerning domestic violence cases represents the measures taken to shape criminal law in Indonesia by accommodating the values that live in societies, including religious teaching through restorative justice. This approach is intended to accommodate the interest of the victims and criminal offenders to resolve the issue within the criminal justice system.

Keywords: criminal justice system, domestic violence, local wisdom
Introduction

On 24 July 1984, the Indonesian government ratified The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), followed by the enactment of law Number 23 of 2002 concerning Child Protection, Law Number 23 of 2004 concerning Abolishment of Domestic Violence, and Law Number 21 of 2007 concerning Eradication of Human Trafficking as a preventive action responding to violence against women, children, and trafficking issues and to protect the rights of the victims. In 2002, a Memorandum of Understanding between the Minister of Women Empowerment, the Minister of Health, Social Minster, and the Chief of the Indonesian National Police came together to form an Integrated Service Center for Victims of Violence against Women and Children.

The Commission of Anti-Violence Against Women reported that there were about 5,114 cases of domestic violence against women in the last five years, ending up with divorce. This directly or indirectly will contribute to impunity when it is linked to judicial processes at the District Court (184 cases or 3.6%).

The judicial body resolving the cases of domestic violence in the criminal justice system aims to assure justice for victims especially women, in line with the implementation of Law Number 23 of 2004, tending to criminalize women as victims because law enforcers do not often consider the interest of husbands, wives, and children as the aggrieved parties, making women lose their rights. It creates an assumption implying that marriage institutions tend to initiate violence, and Law Number 23 of 2004 criminalizes wives instead of offenders.

Furthermore, penal mediation in the criminal justice system is believed to demonstrate its capacity to assure justice and

---


benefit, with certainty ruled out. Notwithstanding children as the perpetrators and the existence of penal mediation, the regulation governing the restitution or compensation to serve diversion allowing the cessation of criminal indictments between an offender and a victim is absent.\(^3\) The presence of Supreme Court Decision Number 2 of 2003, positioning the mediation as part of the litigation process at a court has been perfected by the Supreme Court Decision Number 1 of 2008 concerning Mediation Procedures at Court, further replaced by the Supreme Court Decision Number 1 of 2016 concerning Mediation Procedures at court, which has put mediation as an essential part in a litigation process by referring to the changing paradigm of settling legal disputes.

There have been some mediations taking place regarding legal issues arising in families with the focus, conclusion, and social setting, albeit different from the issue discussed in this research. To mention, several other studies, inter alia, were conducted by Muhammad Ishar Helmi, Usman, and Andi Najem’i, and the study previously conducted by the author. Departing from this consideration, the author assumes that the studies on the growing strength of local mediations in domestic violence cases as given within the scope of “criminal law” have never taken place, especially from the perspective of the criminal justice system, indicating that the contributing factors to the growing mediations need immediate investigation.

The growing values in society help shape the law sourced from cultural, moral, and religious values. The reform of the criminal justice system, especially for the protection of domestic violence victims is put as a paramount issue, allowing for the empowerment of values as local wisdom, enabling them to get their rights relevant to the criminal justice system, and preventing criminalization stemming from patriarchal culture. This will also

allow for an indictment in case of complaint (klacht delict) raised and “normal delict”.

Developing law should take into account the system of adat law, religious law, and self-regulation in the community. Nonetheless, positivism-centralism seems to rule out the legal pluralism living in society regarding the resolution of domestic violence.

This research aims to investigate the criminal justice system to give legal protection to women as victims of domestic violence has taken place in Indonesia and to find out and analyze the contribution of local wisdom to the reform of the criminal justice system in Indonesia against female victims of domestic violence.

This research adheres to doctrinal law requiring library research from which secondary data was obtained, supported with a field study intended to discover the rules of law, legal principles, and legal doctrines concerning the existence of the criminal justice system in domestic violence cases through local wisdom living in Madurese society. This approach aims to draw argumentation, theories, and new concepts forming a perception to resolve the problem. The data were analyzed based on grammatical and systematic interpretations, interpreting laws as the entire system of legislation correlated with other laws logically and systematically, and futuristic interpretation involving the study of the Draft Penal Code.

---

5 Amiruddin and Zainal Askin, Pengantar Metode Penelitian Hukum (Jakarta: PT. Raja Grafindo Persada, 2004), 23.
6 ND Mukti Fajar and Yulianto Achmad, Dualisme Penelitian Hukum: Normatif & Empiris (Yogyakarta: Pustaka Pelajar, 2010), 34.
Criminal Justice System and its Connection to Domestic Violence

Understanding the Criminal Justice System

Criminal justice system refers to the term of the system defined in Black’s Law Dictionary, stating “The system typically has three components: law enforcement (police, sheriffs, marshals), the judicial process (judges, prosecutors, defense lawyers), and corrections (prison officials, probation officers, parole officers).” The components of the law enforcement system involves police, general prosecutors, judges, and department of corrections working to “enforce criminal law” including inquiry, proceedings, and serving punishment. Advocates are supposed to be under the criminal judicial sub-system, considering that they represent an independent institution differing from the other four institutions in terms of either their role or function.

Alan Coffey, as cited by Mardjono Reksodipoetro, argues that the criminal justice system should not be understood as a system that works independently without any interrelationship with another segment to give rise to cause-and-effect relationships. Similarly, with the theory introduced by C. G. Howard & R.S. Mumners, linked to violence against women, in Law: its Nature and Limits, Achmad Ali deduced that several factors affecting “our piety to law” include: the introduction of rules of the law addressed to the target, sanctions properly set by the rules of law, the weight of the sanctions imposed that must be proportionate and whether or not they are effective in their implementation, depending on how optimal and professional law enforcers can be, starting from the process of the making, introduction, and the law enforcement, which further involves the discovery of law.

---

9 “Law Number 18 of 2003 concerning Advocates”
10 Mardjono Reksodipoetro, Sistem Peradilan Pidana (Jakarta: Pusat Dokumentasi Hukum UI, 1983), 82.
including legal reasoning, interpretation, construction, and implementation of the law. Sanctioning is intended to prevent any turbulence in society and ensure that others will not trigger issues.\textsuperscript{12}

The shift of the concept of “crime” and the orientation of criminal law has brought further to the shift of protection of the victims of the crime.\textsuperscript{13} The concept of “violence” mentioned in Article 89 of the Penal Code\textsuperscript{14} refers to illicit physical power involving hitting with hands or weapons and kicking that may cause a person to faint or be helpless. Law Number 23 of 2004, however, highlights “violence” as a crime happening in a household, putting women as victims and leaving physical, sexual, and psychological impacts; it even leaves the household neglected. Domestic violence is often linked to coercion and seizure of freedom involving torts within a family.\textsuperscript{15} Furthermore, the term “violence” represents covert, overt, offensive, or defensive behavior, or sometimes involves the use of another person’s power. Domestic violence is a phenomenon within the social community, or it is often referred to as a hidden crime, where both offenders and victims tend to hide them from the public.\textsuperscript{16}

Cruelty against a spouse in domestic violence may take place in a marriage, a date, or a family,\textsuperscript{17} leaving negative impacts and even wounds, bruises, broken bones, internal injuries, organ

\textsuperscript{15}“Law number 23 of 2004 concerning Abolishment of Domestic Violence, Article 1 Point 1. the scope of family according to Article 2: A husband, wife, and children, including persons having blood relationship, marital relationship, milk kinship, raising kinship, and guardianship kinship included in a household and/or a person who helps with the household for as long as he/she is in the household”.
\textsuperscript{16}Moerti Hadiati Soeroso, \textit{Kekerasan Dalam Rumah Tangga Dalam Perspektif Yuridis-Viktimologis} (Jakarta: Sinar Grafika, 2010), 1.
damage, and other forms of defect caused by sharp objects and long-term mental disorder.¹⁸

Kumar added that physical violence caused may result in physical wounds, fainting, and other chronic illnesses or psychological issues like sadness, irritation, anger, depression, feeling hurt, and marriage depression. These situations may trigger a wife to flee from her husband or leave him on divorce, or, even worse, it may raise the feeling of revenge and disclosure of her husband’s shame to the public, cause a wife to stand against her husband, expect herself to die and expect her husband to get what he did, and even request compensation by reporting the husband to the police.¹⁹

When this is the case, the intervention of the state through the criminal justice system is required in protecting the victims of domestic violence. To allow for proper and professional application of the system, it needs to be synchronized in terms of its structure with law enforcers, legislation, and culture according to a philosophical perspective.

Within the framework of a criminal justice system, the police supported by other sub-systems give legal protection to the victims of domestic violence. Philipus M. Hadjon²⁰ classifies legal protection into preventive and repressive protection, where the former is related to the freis ernaissen principle, representing general protection, while the repressive one is provided by a court within the scope of General Judicature, a government institution as a court of administrative appeal, and a special institution of court by imposing criminal punishment to the perpetrators concerned.

The protection of domestic violence victims is given as part of the rehabilitation with the help of social volunteers, medical workers, or advocates; psychological protection is given to ensure that the victims are well covered with their spiritual guidance or

advocacy for their litigation process; recovery of the victims, services given by health workers, social workers, voluntary facilitators, or spiritual facilitators (Article 39 of Law concerning Domestic Violence as Criminal Offense). Spiritual guidance is provided by a religious preacher representing the religion followed by the persons concerned, considering that this issue is often linked to the poor piety of a husband and poor patience of a wife. Furthermore, Article 40 of the Law concerning Domestic Violence as a Criminal Offense) requires health professionals to examine the victims according to their professional domains, and recovery and rehabilitation must be facilitated by health workers concerned to help the victims with their physical and psychological health. Article 41 of the Law concerning Domestic Violence as a Criminal Crime requires social workers, facilitators, and/or religious priests to give counseling to the victims to make them strong and/or help establish safety for the victims.

The victims need advocacy from voluntary facilitators when their cases take litigation processes (Article 23 of Law concerning Domestic Violence as Criminal Offense) by a) informing the rights of victims to the availability of a facilitator; b) assisting victims in the processes of inquiry, criminal charge, or court investigation to ensure that facts are objectively and comprehensively revealed; c) hearing the victims; d) strengthening victims’ psychological conditions. Facilitating the victims in the inquiry process is intended to reveal the violence chronology and how it started.

Advocates also facilitate the victims in the process of court investigation by providing protection and services; legal consultation regarding the rights of the victims and judicial processes; this facilitation is given across inquiry, indictment, and court investigation to help victims reveal the case, coordination with law enforcers, voluntary facilitators, and social workers (Article 25 of Law Number 23 of 2004). To optimize the process of legal protection, Article 18 of the Government Regulation Number 4 of 2006 concerning Coordination for Recovery of Domestic
Violence Victims implies that particular conditions where health workers, social workers, and voluntary facilitators and/or spiritual facilitators can work together with the police to report and process offenders in domestic violence, advocates are assigned to help with litigation processes, while other law enforcers may help with litigation processes. Other institutions are also involved such as the National Commission of Anti-Violence Against Women, the Indonesian Child Protection Commission, and particular parties expected to assist with the interest of the victims.

Victims are entitled to the right to information on the progress of the cases handled by the police to prevent any cessation of the investigation process. Family members must be informed regarding the bail. The safety of the victims has to be assured following their release under court decisions (Article 5 of law Number 13 of 2006 concerning Protection of Witnesses and Victims).

For more involvement of the role of the police in women protection, the Regulation of the Chief of Police Number 10 of 2007 concerning Unit of Services for Women and Children implies that police are required to give protection to women and children as the victims of crimes and to enforce the law for offenders. The Unit of Services for Women and Children (henceforth referred to as UPPA) is to provide services, and legal protection, perform investigation and inquiry, and conduct coordination with related institutions.\textsuperscript{21} A special Services Unit is made available, working under the function of the Criminal Investigation Agency to handle the cases involving women as the victims, witnesses, or offenders.

Other regulations governing domestic violence cases are Government Regulation Number 4 of 2006 concerning Administration and Collaboration in the Recovery of Domestic Violence Victims, Law Number 23 of 2002 concerning Child Protection, and Law Number 35 of 2014 concerning the

\textsuperscript{21} “The Chief Regulation of Indonesian National Police Pol. Number.: 10 the Year 2007 concerning Organization and Work Scheme of the Unit of Services for Women and Children (UPPA) within the scope of Indonesian National Police,”.
Amendment to Law Number 23 of 2002 concerning Child Protection. In the perspective of the principle of *geen straf zonder schuld*, a person cannot be punished by law if (s)he cannot be held liable for what (s)he did according to the provision of criminal law. However, a domestic violence offender can be held liable for what (s)he has committed according to Law Number 23 of 2004 concerning Abolishment of Domestic Violence and other related regulations.

Several examples of the cases are given in this study. First, 2 domestic violence cases were registered in the Court of Pamekasan in 2017, 3 cases in 2018, and 3 cases in 2019. Decision Number 63/Pid.Sus/2019/PN. Pmk announces that the defendant with initial name E (50) was legally and convincingly proven guilty of committing domestic violence against his wife, albeit not causing any illness or interruption to the person concerned (Article 44 paragraph (4) of law Number 23 of 2004 concerning Abolishment of Domestic Violence, and the offender is subject to two years and fifteen months of imprisonment and an Rp. 5,000 fine. Second, there were 7 cases of domestic violence at the UPPA of the Sub-Regional Police Department of Sampang in 2019. These cases involved neglected families (Article 49 of Law Number 23 of 2004), physical violence within a family (Article 44 paragraph (1) and paragraph (2) of Law Number 23 of 2004), physical violence within a household (Article 44 of Law Number 23 of 2004). Furthermore, the offenders of domestic violence are punishable under Law Number 23 of 2004, Article 49 in conjunction with Articles 9 and 279 of the Penal Code (neglected household and remarriage of a husband without the consent of his wife); Article 44 (physical violence) Article 45 (psychic violence involving threats as in Article 81 and Article 82 of law Number 23 of 2002), all affected by elements proven in a court. Courts can impose additional punishment on offenders of domestic violence (article 50 of Law Number 23 of 2004) by giving space between an offender and a victim and providing counseling services to offenders under the supervision of an institution.
The following table highlights the issues in the criminal justice system and other problems in the case of domestic violence:

### Table: 1

<table>
<thead>
<tr>
<th>No.</th>
<th>Scope</th>
<th>Elaborate Issues</th>
</tr>
</thead>
</table>
| 1   | The perspective of Law Enforcers          | Different perspectives between law enforcers slow down the enforcement of Law concerning Domestic Violence as a Criminal Offense:  
  ▪ Understanding the form, element, scope, function, and qualification of facilitators for victims,  
  ▪ Government’s role,  
  ▪ The person in charge of the report and fine paid by an offender to a victim; |
| 2   | Budget                                    | This case requires a great deal of cost to deal with domestic violence cases according to Law Number 23 of 2004, covering the initial step of case handling that involves police, health services, and facilitators for victims.                                           |
| 3   | Culture                                   | Patriarchal culture seems to affect women as the victims of domestic violence in the legal process, including the requirement to revoke the case from the police due to the dominant role of the male parties over women and the responsibility to cover the shame and keep the harmony of the family. |
| 4   | Economics                                 | Economic reliance among women as victims keeps the number of cases held at courts low.                                                                                                                                                                                                                   |
| 5   | Role of the members of the public         | An understanding that domestic violence-related problems should be understood as an internal problem, setting the objective of the Law concerning Domestic Violence as a Criminal Offense to establish a *Sakinah, mawaddah, and warohmah* family with the support from the members of the public, the government, law enforcers, and related parties will make it even harder to realize the resolution. |

The above Table indicates that in addition to juridical issues concerning the attitude of law enforcers and the involvement of the people in helping discover domestic violence cases, other issues such as budget, economics, and culture also have impacts on the criminal justice system.
The Existence of Local Wisdom in the Reform of Positive Law for the Victims of Domestic Violence

The criminal justice system in terms of the legal protection of women as victims of domestic violence can consider local wisdom to represent adat values attached to the people. The criminal justice system in Indonesia guarantees the protection of women, which requires synergy between the government and the public through “local wisdom”.

Local wisdom in the theoretical perspective, as Ibnu Khaldun calls it Ashâbiyat theory, is understood as a manifestation of a harmony theory ka al-jasad al-wahid implying that humans protect, complete, and help each other. The life of Muslim community with ka al-bunyan yasuddu ba’duha ba’dla is like a building with elements strengthening other elements.22 This theory departed from the perspective of akidah and sharia as Islamic teaching.23

In the etymology of adat and ‘urf, it is different from al-‘adah that stems from mashdar al-‘aud and al-mu’awadah, meaning “repetition”, while an ‘urf derived from mashdar al muta’aruf, meaning “knowing each other.” ‘Urf’ emphasizes a repeated action by a community with an offender as the object. Adat, on the other hand, refers to a person or a group as an offender/offenders, while the type of the action is seen as an object. The similarity, however, lies in the matter where the action done is rational and healthy, internalized in conscience, and repeated according to the characteristics of the persons doing it.24

The local wisdom of indigenous knowledge living in Indonesia with diversity is manifested in the legislation at both national and regional levels to obey simply because the public understands the substance set out.25 Local wisdom represents

---

24Qamaruddin SF, Melampaui Dialog Agama (Jakarta: Buku Kompas, 2002), 158-160.
values, norms, laws, and knowledge stemming from religious thoughts, beliefs, traditional values, and experiences as the legacy of ancestors, forming indigenous knowledge with which problems are resolved. This element is further manifested in the resolution of domestic violence issues by referring to “penal mediation”.

The historical and cultural thoughts expressed by von Savigny (1779-1861) imply that law results from the manifestation of legal awareness of the public (volksgeist). That is, law started from traditions, and beliefs, not from the law that stands against the decision of the legislative body. It is taken this way simply because people perceive that laws are often incongruent with the legal awareness growing in society, which may harm society alone.

Law was initiated by the legal concept that people adhere to, where traditions, philosophies, and theories of law contribute to the formation and enforcement of the law. Law is not a written product made by a group of people with power, but this law rather grows in society, making it prone to conflict when public safety is overlooked. This theory, however, tends to be rather slow, stagnant, and not easily adaptable to the progressing and increasingly complex society.

The criminal justice system in Indonesia is majorly the legacy of the colonials and its change is only partial and does not wholly represent justice for the people. Local wisdom can give color to the reform of criminal law simply because it carries values that fit social matters.

Adat law carries local wisdom that acts as a useful approach to legal case handling. Within formal-juridical scopes, local wisdom is set forth in Article 1 paragraph (3) of law Number

---

24 Nurjaya, “Reorientasi Paradigma Pembangunan Hukum Negara Dalam Masyarakat Multikultural: Perspektif Hukum Progresif.”
25 Soerjono Soekanto, Pokok-Pokok Sosiologi Hukum (Jakarta: Raja Grafindo, 2007).
27 Ibid..
32 of 2009 concerning Environmental Protection and Management implying that local wisdom represents noble values living in society to protect and manage the environment for pristine nature.

First, Madurese people are loyal to their jobs, leaders such as kyai, klebun (village heads), and blater (black world leaders), and systems or structures; second, Madurese people strongly adhere to their tradition of saduhuna, making them difficult to get influenced by the outer world outside of what they have believed to be true. Such characteristics of these people lead further to ‘how the law should work’, considering that Madurese people are closely attached to the law different from other laws.

This tendency is inextricable from the unique culture embedded in the society, including their piety, obedience, and their submission to the four main figures in the following hierarchy in their religious life: Buppa’, Babbu, Guru, ban Rato (father, mother, teacher, and the government). Obedience to a father and a mother as biological parents or nasabiya is culturally absolute. Similarly, they also demonstrate obedience to their guru/kyai and the government as leaders since they believe that their involvement in settling the issues of domestic violence is required in penal mediation.

In criminal law, penal mediation requires the participation of adat people, and the legal reform should be in line with the values and the expectation of the Indonesian people as a whole, represented by the fourth principle of Pancasila, supported by the idea of proportionality and extension of legality principle. The Regulation of the Chief of Indonesian National Police Number B/3022/XII/2009/SDEOPS on 14 December 2009 concerning Case Handling through Alternative Dispute Resolution implies that ordinary cases can be resolved with restorative justice by involving the members of the public, police, offenders, and victims.

---

Penal mediation is a form of restorative justice. Eva Achjani Zulfa argues that restorative justice settles the cases justly by recovering the condition, not by emphasizing retaliation involving an offender, a victim, the family members of the victim, and other related parties.

In terms of the operation of penal mediation, Barda Nawawi Arief links it to penal reform, pragmatism, the idea of victim protection, harmonization, restorative justice, the idea of coping with formality and negative effects brought by the criminal justice system and criminalization system, and imprisonment as an alternative measure. Penal mediation serves as an alternative resolution in a criminal justice system starting with the restorative justice concept aiming to accommodate the interest of the victims/families, offenders, and other related parties.

Penal mediation is for violations subject to fines (Article 28 of the Penal Code), implying that this delict is revoked after a maximum fine is paid by the defendant and after the cost charged is paid following the indictment (“afkoop” or “fine paid to establish reconciliation on the grounds of indictment revocation). Compensation is given to a victim if the judge concerned imposes parole (Article 14c of the Penal Code). The provision of parole set forth in the Penal Code is more offender-oriented instead of victim-oriented. A law exists to reinforce the position of the state to take actions for the sake of the changes for the people, through which the law is formed. Law also aims to build a synchronization between religious law and culture in society to settle issues including domestic violence.

Thus, the reform in criminal law through local wisdom as a penal policy is necessary. This proposition is relevant to the idea


35Satjipto Rahardjo, Hukum Dan Perubahan Sosial (Bandung: Alumni, 1979), 79.
of Soedarto as cited by Barda Nawawi Arief,\textsuperscript{36} believing that legal politics brings about regulations relevant to the real situations, conditions, and policies of the state with the help of authorized institutions to set rules and express and manifest the ideas of the people in general.

Barda Nawawi Arief further argues that this reform that takes into account the policy approach also considers the values it carries. The meaning and principle of the reform of criminal law in the perspective of a policy approach are a) part of the social policy in which the reform is intended to achieve national objectives to cope with social issues, b) part of a criminal policy in which the reform of criminal law represents the protection of the people, especially in mitigating crimes; c) part of the policy set by law enforcers in which criminal law reform represents an attempt to reform the legal substance to establish law enforcement. From the perspective of a value approach, criminal law reform demonstrates the reorientation and re-evaluation of socio-political, socio-philosophical, and socio-cultural values underlying normative and substantive substances of criminal law as expected.\textsuperscript{37}

The principle of the criminal law reform is aimed to discover the potential of the law living in society and replace the systems of national law that are more Dutch colonial-oriented to be further adjusted to the Pancasila and the 1945 Indonesian Constitution and synchronized with socio-cultural conditions of the people and the Islamic teaching and local wisdom because religious values are philosophically and juridically intended to reach the objectives of criminal law.

The Supreme Court Regulation Number 1 of 2008 concerning Judicial Mediation Procedures (replaced by Supreme Court Regulation Number 1 of 2016) asserts that mediation involving related parties is required along with its legal consequences only for the cases brought to courts. This procedure

\textsuperscript{36}Barda Nawawi Arief, \textit{Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru} (Jakarta: Kencana Prenada Media Group, 2008), 25.

\textsuperscript{37}Ibid., 26.
has taken place since the date the Supreme court enacted Supreme Court Regulation Number 2 of 2003\textsuperscript{38} although the mediation was voluntary.

As part of the penal mediation, the restorative justice concept is a response to the development of the criminal justice system with its focus on the participation of the people and victims for law enforcers and those working in legal domains.\textsuperscript{39} Muladi\textsuperscript{40} groups Restorative Justice as follows:

- It focuses on responsibility and liability in the time to come on a basis of dialogues and negotiations;
- It involves both victims and offenders in the problem and the resolution to fulfill the rights and needs of the victims;
- It involves the responsibility of criminal offenders;
- Criminal offenses can be seen from moral, social, and economic perspectives;
- It fosters reciprocal deeds;
- Stigma is erased by a restorative approach;
- It carries the possibility to repent and give clemency;
- It is intended to recover the social loss.

Settling legal issues in society does not always refer to formal legal procedures since penal mediation goes along with deliberation, especially in a domestic violence case should be considered as a step to overcome issues arising in the criminal justice system simply because: (1) the old procedure is rigid, costly, and complicated, and law enforcers tend to neglect victims and make them suffer; (2) it leans towards restitutive justice, failing to deter offenders; (3) too lenient punishment does not deter offenders, making them offensive upon their release back to their families; (4) it puts the future of the family at risk since most

\textsuperscript{38}Takdir Rahmadi, Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat (Jakarta: Rajawali Pers, 2011), 32-33.
\textsuperscript{40}Muladi, Kapita Selekta Sistem Peradilan Pidana (Semarang: BP Undip, 1995), 27-29.
husbands involved in the violence serve as breadwinners.\textsuperscript{41}

The complexity of domestic violence is often affected by political, economic, social, and cultural factors,\textsuperscript{42} meaning that the settlement taken will affect all walks of life. Domestic violence departs from poor awareness of religious teaching and harmony in relationships and communication built in a family, the presence of the third person, and economic factors, while the protection given to the victims is only temporary, involving village apparatus and the members of the community instead of reporting it to authorities. Notwithstanding the presence of UPPA often inviting volunteers as social workers, advocates, and religious facilitators, the lack of participation of these related parties and the public seems to be affected by the patriarchal culture, preventing the victims of domestic violence from reporting the cases since they are concerned about the shame of the family they may reveal. This condition indicates that Law Number 23 of 2004 needs to be made known by people in a wider scope to help cope with domestic violence through penal mediation by considering safety, while settling this case through litigation may lead to a criminogenic factor.

Mutmainnah\textsuperscript{43} argues that domestic violence results from social factors that tend to be general without any discrimination against either offenders or victims, regardless of their social status, education, and dignity. What is important is to understand that domestic violence leaves prolonged traumatic conditions in the persons concerned. Anton Zulkarnaen\textsuperscript{44}, however, suggests that unregistered marriages need to be regulated within positive law to assure the protection of the victims, considering that the law,

\textsuperscript{41}Fatahillah A. Syukur, Mediasi Perkara KDRT (Kekerasan Dalam Rumah Tangga) Teori Dan Praktek Di Pengadilan Indonesia (Bandung: Mandar Maju, 2011), 9-10.
\textsuperscript{43}An interview with the Agency of Women Empowerment, Child Protection, and Family Planning in the Regency of Sampang, 7 October 2019.
\textsuperscript{44}An interview in District Prosecutor General of Sampang, 9 October 2019.
under a certain article, also prohibits torture. Some measures need to be considered to help avoid domestic violence: spreading religious teaching, establishing proper communication (between a husband, a wife, and family members), educating children within the scope of the family, and solving problems in a family by establishing proper communication. On the other hands, domestic violence may arise due to the following reasons: patriarchal culture, low education level among women, economic factors, and disharmony in a family. The Sub-Regional Police Department also contributes to the thought, believing that inserting unregistered marriage into the purview of positive law will allow for better enforcement of the law although this practice is still common in Madura.

Furthermore, Tiu⁴⁵ argues that an unregistered marriage may bring the couple to a condition that is prone to domestic violence that is subject to criminal punishment against a tort according to Law Number 23 of 2002 concerning Child Protection (in the case that it takes a child as the victim, lex specialis) and Law Number 23 of 2004 concerning Abolishment of Domestic Violence. Legal protection of the victims of domestic violence, especially women, as in line with the thought of Tito Eliandi⁴⁶ and Syaiful Anwar,⁴⁷ is aimed to deter offenders with the maximum indictment instead of the minimum one, leading to alternative sanctions such as fines or short-period imprisonment lighter than its consequences.

Regarding the introduction of the mitigation of domestic violence, Abrori⁴⁸ believes that the introduction of the mitigation to society along with its resolution among parties is often expected to raise awareness of their guilt and not repeat the conduct by focusing more on the right and responsibility of the family members. However, domestic violence harms and put the victims

---

⁴⁵An interview with the Judge of the District Court of Bangkalan, 14 October 2019.
⁴⁶An interview with the Judge of the District Court of Pamekasan, 16 October 2019.
⁴⁷An interview with a Judge of the District Court of Sumenep, 17 October 2019.
⁴⁸An interview with the Agency of Women Empowerment, Children Protection, and Family Planning of the Regency of Sumenep, 18 October 2019.
at risk. Thus, it requires sanctions according to the current regulations. Marsuto Alfianto\textsuperscript{49} confirms that domestic violence is also triggered by domination in a family, the influences of the surroundings arising from domestic violence, and poor traditions where domestic violence is common against unemployed wives. Furthermore, Beny Nugroho Sadhi\textsuperscript{50} believes that prevention and actions should be taken to guarantee legal certainty for both offenders and victims.

These measures are complex matters since it has something to do with the tendency of covering internal problems in a family. On the other hand, interference from another party is still considered taboo, while formal social control is seen as the last resort. Domestic violence is qualified as a complaint delict (\textit{klacht delict}), where the right to report to the authorities is restricted only to victims/parents/other persons with the power of attorney. Those who discover the practice of domestic violence in their surroundings are required to give protection to the aggrieved parties with the above procedures.

According to Herman Poernomo,\textsuperscript{51} in September 2018, there were 11 unreported domestic violence cases because most believed it may reveal the shame of their family.\textsuperscript{52} Similarly, there was only one case of domestic violence registered in the District Court of Sampang\textsuperscript{53} from January to May 2017, one case in July 2018, two cases in September and December of the same year, and one case in January and April 2019, indicating that all cases seen are only the tip of the iceberg existing within the scope of positive law that favors penal mediation.

People will favor village heads or public figures to serve as the mediators in this case since both offenders and victims share

\textsuperscript{49}An interview with a Legal Aid Foundation ‘Pusara’, 17 October 2019.
\textsuperscript{50}An interview with the Section Head of General Crime of the District Prosecutor General of Sumenep, 22 October 2019.
\textsuperscript{51}An interview with the Agency of Women Empowerment, Child Protection, and Family Planning (DP3AKB) of Sumenep, 23 October 2019.
\textsuperscript{53}An interview with the Judge of the District Court of Sampang, 24 October 2019.
similar social and cultural perspectives and beliefs, and they usually understand their expectations for justice. Tedi Sudrajat\textsuperscript{54} opines that a village head is often recognized as a chief of local tradition and a religious head serving as a mediator (a village judge of peace) who traditionally shows the connection between law and people.

The mechanism of the resolution of domestic violence cases in the criminal justice system through local wisdom is shown in the following diagram:

Pattern 1:

The Flow of Domestic Violence Resolution

The above pattern indicates that:

1. The litigation process may take place due to the following reasons:
   
a. Parties fail to come to an agreement, thereby allowing the victim or his/her family to report the case through a litigation process

b. UPPA in Sub-Regional Police Department/Regional Police provides facilitating activities to help with the recovery of the victim. The facilitators may involve health workers, social workers, voluntary workers, or religious facilitators;

c. The offender is found guilty of domestic violence in court and declared to be registered to the Department of Corrections;

d. The victims of domestic violence report the case to the police and the police return the case to a village head to be resolved based on penal mediation.

2. Penal mediation chosen by the claimant must follow the following procedures:

a. Refer to Supreme Court Regulation Number 1 of 2008 Article 8 paragraph (1) that states: Every party concerned has the right to choose the judge as a mediator, insofar that the judge is not assigned to the judgment of the case concerned or advocates or legal academicians. However, this provision has been overlooked simply because the party is concerned about disclosing shame. Considering this situation, the mediator can be picked from the people close to the party concerned;

b. Both the victim and the offender establish an internal discussion and, if no agreement is reached, a person or several persons can be assigned as mediators, such as the Chief of Neighborhood Association/Community Association or a village head, religious figure, or other public figures. This idea is relevant to the proposition in the Quran, Surah An-Nisa verse 35, implying that disputes can be settled through *tahkim* (mediation). This surah states “if you fear a breach between the two, appoint an arbiter from his family and an arbiter from her family. This verse shows that the presence of a mediator is encouraged;

c. If the issue can be informally resolved and all parties agree, the involvement of police as a mediator/or a
witness or supervisor in the mediation must be at the request of the village;

d. All parties often believe in the involvement of a traditional figure or a kyai, Klebun (a village head) as the third mediator, as they believe that those figures hold wisdom, and are respected; their words are obeyed, and, as believed, they are secret keepers;

e. Through the words of their traditional, and religious language, the mediator encourages the parties in dispute to sit together at the same height, sharing how the disputes arose, what caused them, and the possibility of a way out to end the disputes;

f. If every party reaches an agreement, a statement of peace should be issued, in which the offender admits his/her conduct and expresses his/her apology, and promises not to recommit the conduct. The offender must also pay for the compensation to the victim; the victim is supposed to forgive the offender and no further report or complaint should be made and filed to the authorities.

The involvement of the police is acceptable in terms of guaranteeing the protection of the people and discretion with moral consideration stemming from conscience rather than from legal consideration intended for justice.  

Regulating the law living in a society with futuristic interpretation is asserted in Article 2 paragraph (1) of Draft Penal Code (henceforth referred to as RKUHP), implying that a person is subject to punishment although the conduct committed is not set out in the legislation. Furthermore, Article 2 paragraph (2) of RKUHP states that the effectuation of this living law complies with the principle of Pancasila, human rights, and the principle of general law recognized in society and nations despite multi-interpretations among law enforcers.

Adi Sulistyono believes that a non-litigation process can (1) minimize court congestion; (2) increase public participation; (3) open wider access to justice; (4) allow for resolution accepted by all parties; (5) allow for more efficient and affordable resolution process; (6) establish good relationships among parties in dispute under an agreement; (7) minimize the potential of “dirty games” in courts.\(^{56}\)

Enforcing criminal law by establishing deliberation and an agreement in the criminal justice system aims to bring about certainty, justice, significance, and compliance with the noble values of the state, the Pancasila, in which dispute resolution has always referred to local wisdom\(^{57}\). The mechanism of the criminal justice system through local wisdom to settle a domestic violence case with the deliberation to come to an agreement represents the culture of the people.

It is important to note for legislative drafters that criminalization that looks at the interest of the people and the authority of the members of the *adat* community is prone to criminal disparity regarding the enforcement of *adat* law.\(^{58}\) As a result, law enforcement and court decisions regarding *adat* delict can result in varied interpretations in line with the plurality of regional areas and the tradition that grows in society. The measures set by police serve as the spearhead of the criminal justice system according to restorative justice in the process taken to resolve domestic violence, just legal resolution to settle a social conflict, and the implementation of local wisdom with the traditions of deliberation to reach an agreement.

---


Conclusion
The criminal justice system in giving protection to women as the victims of domestic violence in Indonesia complies with rules and concepts outlined in Law Number 23 of 2004 concerning the Abolishment of Domestic Violence. These rules must be integrated and synergized with all the sub-systems of justice and other law enforcers such as police, health workers, social workers, voluntary facilitators, and religious preachers. They should be capable of explaining their rights and responsibilities, reinforcing their piety and fear of God. The prosecutors and courts, in terms of indicting the defendants, should ensure that the conduct is not recommitted by implementing deterring effects. The contribution of local wisdom to help reform the criminal justice system for the victims of domestic violence among Madurese people takes mediation as an alternative step in resolving problems to allow for the application of restorative justice in the criminal justice system by accommodating the interest of the victims and offenders.

References


Criminal Justice Reform for Woman as Victims


“Peraturan Kepala Kepolisian Negara Republik Indonesia No. Pol.: 10 Tahun 2007 Tentang Organisasi Dan Tata Kerja Unit Pelayanan Perempuan Dan Anak (UNIT PPA ) Di Lingkungan Kepolisian Negara Republik Indonesia,”


Syamlul Fatoni dkk


“Law Number 18 of 2003 concerning Advocates,”

“Law number 23 of 2004 concerning Abolishment of Domestic Violence, Article 1 Point 1. the scope of family according to Article 2: A husband, wife, and children, including persons having blood relationship, marital relationship, milk kinship, raising kinship, and guardianship kinship included in a household and/or a person who helps with the household for as long as he/she is in the household”


An interview with the Agency of Women Empowerment, Child Protection, and Family Planning in the Regency of Sampang, 7 October 2019.

An interview in District Prosecutor General of Sampang, 9 October 2019.

An interview with the Judge of the District Court of Bangkalan, 14 October 2019.

An interview with the Judge of the District Court of Pamekasan, 16 October 2019.

An interview with the Agency of Women Empowerment, Children Protection, and Family Planning of the Regency of Sumenep, 18 October 2019.

An interview with a Legal Aid Foundation ‘Pusara”, 17 October 2019.

An interview with the Section Head of General Crime of the District Prosecutor General of Sumenep, 22 October 2019.

An interview with the Agency of Women Empowerment, Child Protection, and Family Planning (DP3AKB) of Sumenep, 23 October 2019.

An interview with the Judge of the District Court of Sampang, 24 October 2019.

