

The Settlement of Domestic Violence Cases (KDRT) Based On Islamic Values and Local Wisdom

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Abstract: *The Settlement of Domestic Violence Cases (KDRT) Based On Islamic Values and Local Wisdom.* This research explores the conflict resolution of domestic violence (KDRT) cases based on Islamic values and local wisdom. The aim is to find alternatives to solving legal problems without having to go through legal channels (litigation). Although the Government has passed Law No. 23/2004 aimed at suppressing cases of domestic violence, the regulation is still not effective in overcoming the problem. It is proven that such cases still appear in public spaces and stick out like an iceberg. The main factor causing the difficulties was due to the kinship between the victim and the perpetrator. After examining both "al-sulh", the methodology for resolving conflicts based on Islamic values, and "Musyawarah", the method based on local wisdom, this research finds out that the above-two alternative solutions have several advantages compared to legal channels. The two models of the resolution, therefore, can be used as alternatives for resolving conflicts in the household, especially those accompanied by violence.

Keywords: domestic violence, *al-sulh*, deliberation, alternative dispute resolution.

Abstrak: *Penyelesaian Kasus Kekerasan Dalam Rumah Tangga (KDRT) Berbasis Nilai-Nilai Islam dan Kearifan Lokal.* Penelitian ini mengetengahkan konsep penyelesaian kasus kekerasan dalam rumah tangga (KDRT) berbasis nilai-nilai Islam dan kearifan lokal. Tujuannya adalah untuk mencari alternatif penyelesaian masalah hukum tanpa harus melalui jalur hukum (litigasi). Meski pemerintah telah mengeluarkan undang-undang no 23/2004 yang ditujukan untuk menekan kasus kekerasan dalam rumah tangga, namun kenyataannya peraturan itu masih belum efektif dalam mengatasi masalah tersebut. Terbukti kasus-kasus semacam itu masih saja muncul ke ruang publik dan mencuat seperti gunung es. Faktor utama penyebab dari kesulitan tersebut adalah karena hubungan kekerabatan antara pihak korban dan pelaku. Setelah mengkaji metode penyelesaian konflik berbasis nilai Islam "al-sulh" dan metode "musyawarah" yang berbasis kearifan lokal, penelitian ini menemukan fakta bahwa kedua alternatif penyelesaian di atas memiliki beberapa kelebihan dibanding dengan penyelesaian melalui jalur hukum. Oleh karena itu, dua model penyelesaian ini dapat dijadikan alternatif penyelesaian konflik rumah tangga, khususnya yang disertai dengan kekerasan.

Kata Kunci: kekerasan dalam rumah tangga, *al-sulh*, musyawarah, *alternatif dispute resolution*.

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Introduction

Every citizen has the right to get a sense of security and freedom from all forms of human rights violation or against the dignity of virtue. However, the legal system in Indonesia has not been able to provide guarantees for that, specifically for victims in the household. It is ironic that amid the euphoria of upholding human rights by all levels of society, the human rights violators are in the household itself.

The law seems to stop at the bedroom door: So that everything happens to privacy between husband and wife cannot be followed up or be touched by the law. This adage can indirectly affect the rise of human rights violations in the household. This is because the culprit is the closest person or someone who is loved and respected, or even considered something that is common in household relations.¹ Therefore, although the violations that occur are included in the category of crime, the law cannot take action. Under this condition, not surprisingly, frequent domestic violence occurs.

Domestic Violence (KDRT) is one form of human rights violations and is included in the category of criminal acts.² To prevent and overcome these crimes, the Government has enacted Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU-PKDRT). The birth of the PKDRT Law gives a glimmer of hope in overcoming all forms of violence that occur in the household. With this law, it is expected that domestic violence cases can be suppressed so that the security, comfort, and human rights of people in a household can be protected. The existence of the PKDRT Law also shows that the Government is responsible for creating safe and prosperous conditions in the household because the family/household is the most important part of the community. To make the community/country prosperous, the government must first be able to create a prosperous family/household

It must be remembered, the resolution of domestic violence through

¹ Jeffrey Fagan, *The Criminalization of Domestic Violence: Promises and Limits* (Washington, DC: US Department of Justice, Office of Justice Programs, National Institute of Justice, 1996).

² Eva Schlesinger Buzawa, and Carl G. Buzawa, *Domestic Violence: The Criminal Justice Response* (Australia: Sage Publication, 2003), p. 5.

legal channels is not intended by the Act; because in the end it can cause damage to household ties and can even result in someone having to undergo punishment. The main objective of the PKDRT Act is to protect the basic rights of all family members so that an equal and harmonious relationship exists between family members, creating a harmonious, peaceful and prosperous household. Strictly speaking, the PKDRT Law has both a preventive and a repressive function. With these two functions, it is hoped that domestic violence can be reduced so that the main objective of the PKDRT Law to create a harmonious and prosperous household can be achieved.

Unfortunately, based on research results, in Kudus district in 2017,³ the number of domestic violence tends to increase and of all domestic violence cases resolved in the majority, the court ended in divorce. This fact indicates 2 (two) things: (1) PKDRT Act has not been able to suppress the high rate of domestic violence, (2) the use of UU-PKDRT in the settlement of domestic violence is not at all effective in creating harmonious and prosperous households. Therefore, it is necessary to find a more appropriate solution so that domestic violence can be prevented as well as harmonious family welfare can be realized.

This study aims to determine the effectiveness of litigation channels in tackling cases of domestic violence while comparing it with the methods of resolving household conflicts based on Islamic values and local wisdom. This type of research is a qualitative descriptive study, using the socio-legal study approach. Data collection techniques are done through interviews, observation, and documentation while data analysis is done using inductive thinking techniques.

Settlement of Domestic Violence Based on PKDRT Law

The state is responsible for realizing the welfare of the people both physically and mentally. One form of responsibility includes providing a sense of security and protection of human rights through the prevention

³ *Research Findings of Yayasan Jaringan Perlindungan Perempuan dan Anak* (Kabupaten Kudus, 2017).

of all forms of crime/human rights violations. One form of protection provided by the state is the enactment of a law regulating the problem.

Before the enactment of PKDRT Law, efforts to protect domestic violence were not only hindered by the absence of a legal basis but also the view of the community, including the views of law enforcers, that domestic violence was a disgrace or a very personal matter in a domestic relationship. Strictly speaking, sensitivity to domestic violence issues, including gender sensitivity to victims, is still not proportionately shared by the community. As a result, the victims' hopes are dashed and have to endure severe disappointment when the reported case fails to receive legal certainty only because law enforcement officials believe that the domestic violence problem is not a public problem but an internal family problem. But then the Indonesian people should feel grateful because, in the end, the government promulgated Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU-PKDRT).

The issuance of the Domestic Violence Act not only provides legal instruments to prevent and to crack down on perpetrators of domestic violence but also shows that domestic violence is no longer something considered private but has become a public issue. Through Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU-PKDRT), the state protects all people in a household, so that a harmonious, peaceful, prosperous and inner relationship can be created.

Article 1 paragraph 1 of the PKDRT Law defines Domestic Violence as: "every act against a person, especially women, which results in physical, sexual, psychological, and/or misery or neglect of the household including the threat to commit domestic violence unlawful acts, coercion or deprivation of liberty within the scope of the household". Thus it is clear that the boundaries or notions of violence are not limited to physical violence but are extended to include other non-physical violence.

Apart from extending the boundaries of the act, the PKDRT Law also broadens the scope of the protected subject, in the sense that it is not only limited to individuals who are included in the nuclear family

but also all parties within the scope of a household, as referred to in article 2, which include:

- a. Husband, wife, and children;
- b. The person who has family relations with people as referred to in letter a because of blood, marriage, dairy, care, and guardianship, who live in the household, and/or
- c. People who work as referred to in letter c are considered as family members while in the household concerned.

The principle or basis of implementing the Domestic Violence Law, as stipulated in Article 3, is in the context of respecting human rights, upholding justice and gender equality, non-discriminatory, and protecting victims of domestic violence.

Like the legal function in general, the PKDRT Law has a special and general function. Its general function is to create community welfare; whereas its special function is to protect the legal interest against acts violating it with sanctions in the form of a criminal which is sharper when compared to sanctions found in other branches of law.⁴ Apart from that, the PKDRT Law also has a subsidiary function, namely as the *Ultimum Remedium*, or as a “last remedy” if other efforts are unsuccessful or deemed unsuccessful. Unfortunately, sanctions in the PKDRT Law, which take the form of imprisonment and fines, are more retaliatory and only focus on the perpetrator’s side, without considering the condition or position of the victim. So it can be said that the PKDRT Law has not fulfilled the principle of balance between the interests of the perpetrators and the interests of the victims.

The PKDRT Law also functions as a preventive and repressive measure⁵. The preventive function of the PKDRT Law is to prevent domestic violence; while the repressive function is to act against the perpetrators by giving sanctions so that the perpetrators who have been sanctioned become deterrent and will not repeat their evil deeds. This function is explicitly stated in Article 4, which contains 4 (four) main

⁴ Sudarto, *Hukum Pidana I* (Semarang: Yayasan Sudarto, 1990), p. 12.

⁵ Sudarto, *Ibid*, p. 13.

objectives of the PKDRT Law, namely:

- a. Prevent all forms of domestic violence;
- b. Protect victims of domestic violence;
- c. Acting on perpetrators of domestic violence, and
- d. Maintaining the integrity of a harmonious and prosperous household

Based on the description in Article 4 above, it is clear that the main purpose of the Domestic Violence Act is not merely to act against domestic violence, but to protect the human rights of all family members to create unity and harmony in a happy, peaceful, and safe environment.

But in reality, the main goal is difficult to realize. This is because between the perpetrator and the victim there is usually a marriage relationship or a sibling relationship so that if the settlement of domestic violence uses litigation it will eventually break the marriage or kinship relationship.

Several studies have shown that the settlement of domestic violence with legal proceedings in court raises insecurity and fear on the part of the victims,⁶ Nancarrow in his research also found that domestic violence resolution through legal channels on indigenous families in Australia does not function effectively. It even has an impact on the continued increase in domestic violence and the risk of fracturing the social ties of indigenous communities (families). On the other hand, cultural reconciliation between victims and perpetrators has succeeded in increasing the ability of women victims of domestic violence to take a stand in resolving the problem at hand.⁷ In the context of the Kudus community, as stated earlier, the resolution of domestic violence through litigation channels generally ends in divorce. The use of formal law in resolving domestic violence cases results in losers and winners. These results will certainly cause dissatisfaction with the losing party. The losing party will feel that its interests are not accommodated, their rights are not

⁶ Dana Cuomo, 'Security and Fear: The Geopolitics of Intimate Partner Violence Policing', *Geopolitics*, 18.4 (2013), 856–74 (pp. 856–74) <<https://doi.org/10.1080/14650045.2013.811642>>.

⁷ Heather Nancarrow, 'In Search of Justice for Domestic and Family Violence: Indigenous and Non-Indigenous Australian Women's Perspectives', *Theoretical Criminology*, 2016, pp. 87–106 <<https://doi.org/10.1177/1362480606059986>>.

protected and their existence is excluded. Conditions like this often cause resentment on the part of those who feel defeated, making it difficult for the parties to be able to make peace. The above description shows that the resolution of domestic violence cases through litigation channels is counter-productive with the main objective of the Act-PKDRT itself. Therefore, the use of the PKDRT Law should be the *ultimum remedium* or the last drug if other methods are no longer able to solve it.

The failure of the PKDRT Law as stated above does not mean that the existence of the Law is no longer needed. In resolving domestic violence cases through the criminal act the PKDRT functions as a means of preventing domestic violence. Whereas in resolving domestic violence cases, it is better if the living values in the community are used as an alternative solution. This is in line with the thought of Eugen Ehrlich who asserted that law should be based on living values.⁸ Law is always rooted in a particular socio-cultural community which Sapiro Rahardjo called “peculiar form of social life”.⁹ Robert B. Siedman once stated that the law of a nation cannot be transferred to another nation (The law of non-transferability of law).¹⁰ Law formalized in the form of law is one of the characteristics of modern law (Western law) which is individualized. This is very different from Indonesian society that is communal.

Furthermore, to provide services/protection to victims, the PKDRT Law emphasizes that the government and regional governments, under their respective duties and functions, can make efforts to a) provide special service space at the police station; b) provision of apparatus, health workers, social workers, and spiritual mentors; c) creation and development of systems and mechanisms of cooperation in service programs involving parties that are easily accessed by victims; and d) protect the victim's companion, witnesses, family, and friends. To carry

⁸ Eugen Ehrlich once said that positive law will have binding power or will be effective if the existing law is in harmony with the law that lives in society as a reflection of the values that live in it. refers to Endang Sutrisno, *Bunga Rampai Hukum dan Globalisasi* (Yogyakarta: Genta Press, 2009), p. 26.

⁹ Satjipto Rahardjo, *Membangun dan Merombak Hukum Indonesia Sebuah Pendekatan Lintas Disiplin* (Yogyakarta: Genta Press, 2008), p. 105.

¹⁰ Suteki, *Integrasi Hukum dan Masyarakat* (Semarang: Pustaka Magister, 2007), p. 1.

out this task, the government and regional government can work together with the community or other social institutions.¹¹ So that victims can be handled proportionally, the provisions on this matter naturally require supporting facilities and infrastructure, including the availability of skilled and sensitive human resources for victims with high sympathy and empathy for victims.

But in the eyes of the public, if someone has dealt with the law, he is considered to have made a mistake even though it is not necessarily guilty and is still at the stage of mediation. Likewise, in the case of domestic violence, even though it is only at the level of mediation, if it is mediated by law enforcement officials, the community considers it already in the judicial process. This understanding makes the perpetrators feel humiliated so that it creates a grudge which, in the end, is difficult to be reconciled.

Settlement of domestic violence based on Islamic values

Islam is a religion of peace. Therefore, in resolving various problems it encourages its followings to do peacefully wherever possible. Likewise in resolving domestic violence, Islam prioritizes the way of peace. The way to bring about peace is through deliberation. Because Islam prioritizes peace through deliberation, Islam places legal sanctions as the last remedy.

In Islam, the method of peace to resolve a case is known as *Sulh* or peace. Hasbi Ash-Shiddieqy defines the word *Sulh* as a contract agreed upon by two people who are quarreling in the right to carry out something, and with that agreement, the dispute can be lost.¹² While Sayyid Sabiq argues that what is meant by al-Shulh is a type of contract to end the conflict between two opposing people.¹³ Based on the two meanings above, it can be concluded that *Sulh* is a contract agreed by both parties in conflict, which with this agreement makes the dispute end and give birth to peace.

The basis of God's command to resolve problems peacefully is

¹¹ Article 13 and 14 of PKDRT Act

¹² Hasbi Ash Siddiqi, *Pengantar Fiqih Muamalat* (Jakarta: Bulan Bintang, 1984), p. 92.

¹³ Sayid Sabiq, *Fiqh al-Sunnah* (Dar al-Fikr, 1987), p. 189.

contained in Q.S Al-Hujarat: 9-10:¹⁴

“And if there are two groups of believers who are at war, you should reconcile the two! but if one violates the covenant against the other, let those who violate the covenant be fought until they recede to God’s command. if he has receded, reconcile the two according to justice, and you shall behave fairly; Surely Allah loves those who act justly. Believers are indeed brothers and sisters. therefore reconcile (improve the relationship) between your two brothers and fear God, so that you may receive mercy”. (QS. al-Hujurāt: 9-10)

The above verse, according to Quraish Shihab,¹⁵ emphasizes that Islam requires the formation of unity, not vice versa. The implications of brotherhood, as explained by the verse, will lead to a sense of love, peace, cooperation, and unity. All that becomes the main foundation of Muslims in society.

Sulh is a very detailed form of peace because several conditions must be carried out by each party. In *Sulh*, the main principle that must exist is that each party must have the desire or agreement to end the dispute. When one party is required to do something or to give something to the other party as a condition for ending the dispute, then the act must be done voluntarily and no party should feel forced. *Sulh* is also a binding peace, meaning that if an agreement has been taken then each party must obey the contents of the agreement. In *Sulh*, those who carry out the contract must be competent with the law, meaning that they are mature and healthy in mind. Apart from that, something that becomes the object of the contract must be pledged by each party so that no dispute will arise in the future.¹⁶

In principle, *Sulh* can be implemented in all issues relating to human relations except issues concerning God’s right which can not be settled by a human.¹⁷

¹⁴ Abdul Halim Hasan, *Tafsir Abkām*, I (Jakarta: Kencana, 2006), p. 568.

¹⁵ M.Quraish Shihab, *Tafsir al-Misbah*, VIII (Jakarta: Kencana Hati), xiii, p. 248.

¹⁶ Ghazaly Abdul Rahman, Ihsan Ghufron, Shidiq Sapiudin, *Fiqih Muamalat* (Jakarta: Kencana Prenada Media Grup, 2010), p. 197.

¹⁷ Pasaribu, Chairuman & Suhrawardi, K. Lubis, *Hukum Perjanjian dalam Islam* (Jakarta: Sinar Grafika, 1996), pp. 29–30.

Islam teaches that to solve various problems of life, humans are encouraged to solve them by deliberation.¹⁸ This teaching can be found in QS al-Shurā: 38 which states that one of the criteria for a believer is when he completes his affairs by deliberation. In the context of husband and wife relationships, deliberation is also recommended, as the word of God in QS al-Baqarah: 233:

*“If both (husband and wife want to wean their children (before two years) based on willingness and deliberation between them, then there is no sin on both of them”.*¹⁹

This verse discusses how husband and wife relationships should be when making decisions relating to their home affair and children. The verse shows that the al-Qur’an commands that marital problems between husband and wife be resolved by deliberation.²⁰

Next, in QS Ali Imrān: 159, Allah SWT said:

*“Then thanks to the grace of God you (Muhammad) are gentle to them. If you act hard and have a rough heart, surely they will distance themselves from your surroundings. Therefore forgive them and ask forgiveness for them, and consult with them in that matter. Then, if you have made up your mind, fear Allah. Truly, Allah loves those who trust themselves.”*²¹

The above verse, in addition to teaching deliberation, also teaches how to behave when conducting deliberations. Islam teaches that deliberation must be done with polite communication, sitting together to find common ground to unravel the existing problems. Both parties must be gentle, not arrogant, not arbitrary/force the will, and be willing to forgive each other.

Sulh is the best way to solve various problems in social and national life. If a conflict is resolved with *Sulh*, then it must be done

¹⁸ M. Quraish Shihab, p. 619.

¹⁹ M. Quraish Shihab.

²⁰ M. Quraish Shihab.

²¹ M. Quraish Shihab, *Wawasan Al-Quran Tafsir Tematik Atas Pelbagai Persoalan Umat* (Bandung: Mizan, 1996), p. 618.

by deliberation to determine what actions the perpetrator must do or what items are given to the victim. It is also necessary to deliberate on the desired contract process. All of these are determined by deliberation until they find common ground and reach a mutual agreement which is then adhered to together. In this way, any existing problems will be resolved properly so that peace can be realized.

The settlement with the Sulh model is also very appropriate for domestic violence cases. This is because between the perpetrators and victims there are still marriages, sibling relationships or relations between employers and helpers. Specifically for the resolution of domestic violence between husband and wife, Allah gives instructions on the ways to be taken as set out in QS al-Nisā verse 35:

“And if you are worried that there is a dispute between the two, then send an hakam from a male family and a hakam from a female family. If the two hakam people intend to make improvements, surely Allah gave taufik to the husband and wife. Surely Allah is All-knowing”.

The above paragraph describes one form of implementation of conflict resolution methods based on the principle of peace. In husband and wife relationships, the recommended settlement of conflicts is in the form of mediation between the two parties. Mediation is done by sending *hakam* (mediator) from the husband and wife. *Hakam* can be determined by the administrative power holder, in this case, the Religious Court, or can be chosen amicably by both parties.²² *Hakam*'s role here is as a conciliator as well as a giver of advice to both husband and wife so that they can get back together and agree to foster better domestic relations.

Settlement based on Local Wisdom

Law is a reflection of moral values that exist in the society in which the law exists.²³ In other words, the law is the deposition of values or

²² Imad al-Din Abi al-Fida Ismail bin Katsir verified by Musthafa al-Sayyid Muhammad dkk, *Tafsir Al-Quran al-Adzim* (Cairo: Muassasah Qurtubah dan Maktabah Awlad al-Syaikh li al-Turats, 2000), pp. 29–31.

²³ Roeslan Saleh, *Segi Lain Hukum Pidana* (Jakarta: Ghalia Indonesia, 1984), p. 42.

norms that lived and are accepted by a society that is then outlined in the form of a series of rules. Therefore, effective law is a law based on the values that live in the society concerned. According to Djodjodigoeno, law is a process of making normative rules that are constantly being updated which are carried out by the community directly or by intermediaries of the tools of power, which concern the actions or behaviors of its members, in self-relation and which have meaning, to become the basis for maintaining order, justice, and mutual prosperity.²⁴

On the other hand, the Indonesian nation is both a religious and communal nation.²⁵ As a religious nation, reflected in the first principle of the Pancasila, namely Believe in the one of Almighty God, the daily behavior of the Indonesian people is influenced by the religious values of its believers. While as a communal society, this society has a high sense of togetherness, which is very influential on the behavior and manner of community, including ways to resolve problems or conflicts.

In Indonesia the values that live and guide the community in the life of the nation and society are religious values and traditional values (local wisdom). Almost all tribes in Indonesia have local wisdom that can be used to resolve conflicts peacefully. The form of solving problems peacefully that has become local wisdom is to use a deliberation approach.

The Indonesian Dictionary defines the term “deliberation” as a joint discussion to obtain a decision on solving a problem.²⁶ The culture of deliberation, as a form of local wisdom lived by the people of Indonesia, is at the same time a form of enthusiasm from each party to negotiate and communicate the interests, obligations, and rights of the parties, so that problems can be resolved. In negotiations, each party will try not to sharpen the problem or force its stand so that an acceptable meeting point can be reached by all parties and produce an agreement. In consultation, it takes a respected figure to lead the deliberations to

²⁴ Djodjodigoeno dalam Sudarto, *Hukum dan Hukum Pidana* (Semarang: Sinar Baru, 1977), p. 15.

²⁵ Soerojo Wignjodipoero, *Pengantar dan Asas-Asas Hukum Adat* (Jakarta: Gunung Agung, 1968), p. 68.

²⁶ W.J.S. Poerwadarminta, *Kamus Besar Bahasa Indonesia* (Jakarta: PN. Balai Pustaka, 1996), p. 772.

reach an agreement. What decided in the deliberations to resolve the conflict then slowly developed into customary law.²⁷

Deliberation is a way to realize the principle of balance between the interests of perpetrators and victims. This is what distinguishes between modern criminal law and customary criminal law. The purpose of modern criminal law is to correct the person who violates the law. While the purpose of customary law is to restore the balance of law which is the goal of all customary reactions or corrections.²⁸ The main principle put forward in customary law when solving problems is deliberation to create harmony, peace, and harmony in society.

Resolving problems through deliberations is one form of effort in seeking the justice that is more acceptable to all parties. This is in line with the opinion of Marc Galanter who said that justice is not only obtained in the courtroom but can also be found outside the courtroom.²⁹ This means that litigation is not the only way to resolve problems fairly and with dignity; there are still other ways to get it that is based on traditions/values that live in society.

Indonesian is a communal society. Therefore, in solving a problem, Indonesian people will be more inclined to choose a solution through consensus agreement because one of the characteristics of communal society is to prioritize togetherness. In the view of communal communities, the settlement by way of consultation will be able to accommodate the interests of both parties without anyone feeling defeated. In this context, the use of customary law in solving a problem is very possible, because, as Suryono Sukanto said, “customary law that still applies is part of living law ... living law is part of national law and is the goal to be achieved, because living laws apply juridically, sociologically and philosophically”.³⁰

²⁷ Trisno Raharjo, ‘Mediasi Pidana dalam Ketentuan Hukum Pidana Adat’, *Jurnal Hukum IUS QUIA IUSTUM*, 17.3 (2010), 492–519 <<https://doi.org/10.20885/iustum.vol17.iss3.art8>>.

²⁸ Raharjo, p. 493.

²⁹ Marc.Galanter, ‘Keadilan di Berbagai Ruangan: Lembaga Peradilan, Penataan Masyarakat Serta Hukum Rakyat’, in T .O. Ihromi, ed, *Antropologi Hukum Sebuah Bunga Rampai* (Jakarta: Yayasan Obor, 1993), p. 81.

³⁰ Suryono Sukanto, ‘Pembahasan dalam Seminar Hukum Adat dan Pembinaan Hukum Nasional’, in Imam Sudiyat, *Peran Pendidikan dalam Pembangunan Hukum Nasional Berlandaskan Hukum Adat* (Yogyakarta: Liberty, 1980), p. 5.

Among the Javanese people, the tradition of resolving a problem through a consultative body is still practiced in several places, especially in the Central Java region. Javanese people are known as people who tend to avoid conflict; so that in dealing with disputes/conflicts they also tend to prefer the path of compromise/peace.³¹ The local wisdom that becomes the basis of this conflict resolution is contained in the expression, as follows:

1. *Ono rembug yo dirembug* (if there is a way of deliberation, then use the deliberation);
2. *Nglurug tanpa bolo, menang tanpo ngasorake* (attacking without troops, winning without humiliation);
3. *Wong kang ngalah luhur wekasane* (the person who succumbs will be high in rank).

The value contained in the phrase “*ono rembug yo dirembug*” is solving problems with deliberation. According to the Javanese people an issue that can be resolved by mutual discussion between the parties, does not have to be resolved in court. For that, the parties must sit down together and discuss the problem carefully to find a common ground so that the best solution can be found for both parties. Therefore, neither side wins nor loses because the agreement reached will accommodate the interests of both parties.

By using the method of “*ono rembug yo dirembug*” togetherness will be maintained so that the principle of balance can be realized. The end of the use of the phrase “*ono rembug yo dirembug*” is the realization of peace from both parties. This value can certainly also be developed in solving domestic violence cases.

The use of the value of “*ono rembug yo dirembug*” in the resolution of domestic violence cases is more likely to achieve peace so that the integrity and harmony of the household as the purpose of the PKDRT Act can be realized. The settlement in this way will not embarrass, and damage either party, so it will not create unsustainable grudges.

³¹ Anderson dalam Ade Saptomo, *Hukum dan Kearifan Lokal Revitalisasi Hukum Adat Nusantara* (Jakarta: Gramedia, 2010), p. 101.

Through local wisdom contained in “*ono rembug yo dirembug*” problems that result in domestic violence are discussed carefully so that the root causing domestic violence can be found. By knowing the root of the problem/the cause of domestic violence, the handling of this problem will be more easily done at the same time it becomes a lesson for both parties to no longer do things that can lead to conflict in the future.

In contrast to the motto “*ono rembug yo dirembug*” which can be used to solve both private and public problems, the slogan “*nglurug tanpa bolo, menang tanpo ngasorake*” is more often used to resolve public affair. The essence of this motto is to resolve conflicts without the need to involve many people and making the opponent feel defeated, humiliated, disadvantaged or lowered his self-esteem.

While the value contained in the sentence “*wong sing ngalah iku luhur wekasane*” is an encouragement to settle the conflict without pursuing victory but better to succumb because it will be more valued. Javanese society deeply animates this value. Therefore, if there is a problem that must then be resolved through the court, for the Javanese people such a solution is considered unethical, will not solve the problem, or even raises new problems. This is because there will be parties who feel resentment because of humiliation which in turn can be the seeds of conflict/a new source of problems. For Javanese people, it is better to forgive each other because those who can forgive the mistakes of others are noble and big-hearted people. Based on the principles contained in the three slogans above, the Javanese community, in resolving conflicts, including overcoming the problem of domestic violence, prefers the non-litigation path because it is considered more effective and following the soul and personality of the society.

Similar to the practice of resolving conflicts in Javanese society, conflict resolution through adat institutions is also practiced by Batak society. In the Batak community, there is an institution known as “*Dalihan Natolu*” which has 3 (three) important elements, namely *Hula-Hula*, *Dongan Tubu*, and *Boru*. The *Dalihan Natolu* Institution, in the relationship and social fabric of the community, is driven by *Marga*. The *marga* plays a very important role in the social arrangements of the Batak

customary community. The *Marga* is likened as a fire that heats up or as a driving force for social relations in the *Dalihan Natolu* community. *Marga* is the name of the alliance of siblings, blood relatives, along the line of the father, who owns the land as common property in the area of origin or ancestral land.³²

In the Batak community, the practice of resolving domestic violence cases through traditional channels can be found in the Tapung Hulu District. In the local community, the case settlement process was led by *Raja Parhata* and the *Dalihan Natolu* Institute of each party.³³ Decisions made are based on the content of collective agreements made entirely by the parties on the principle of no mutual harm. The Deed of Agreement was subsequently signed by both parties, witnesses, the head of the RT and the foreman.

If an agreement has been reached and the parties agree with the opinions of *Raja Parhata* and the *Dalihan Natolu* institution, the settlement of the criminal case is deemed completed and no longer settled by the Indonesian criminal law system. However, if the parties have not yet been reconciled, the settlement of the case will then be forwarded to the court and settled according to the provisions of Indonesian criminal law.

From the above explanation, it can be concluded that the settlement of domestic violence cases through customary channels brings excellent benefits for litigants, not only to avoid expensive costs but also to avoid prolonged and time-consuming case processes. Settlement through customary law does not recognize winning or losing party; the parties, instead, are reconciled as much as possible, and this differs from the settlement in court, which results in winning and losing parties only.

Conflict resolution, especially in the case of domestic violence, can also be found among the people of Aceh. The study of traditional institutions related to patterns of conflict resolution based on customary law was conducted by Syahrizal Abbas. Through his research, Abbas discovered four forms of dispute resolution models among the people

³² Hartini, Efendi, and Hasanah.

³³ Hartini, Efendi, and Hasanah.

of Aceh, namely *di'iet*, *sayam*, *suloh*, and *peumat jaroe*.³⁴

The basic principle of customary dispute resolution in the Aceh tradition is “resolve”, not “decide”. According to Judge Nyak Pha the “teaching of completing” holds that the process of resolving disputes must be such that the parties in dispute can continue their life together again in the future, just like before the conflict occurs.³⁵

What is contained in the philosophy of the Customary Court is in harmony with *Hadih Maja*, a motto in Acehnese society, which reads “*Uleu beu mate, ranteng bek patah* (beat snakes to death, the stick to hit not break)”. That is, disputes must be resolved or ended, but harmony must also still be maintained. It is not expected that the dispute resolution is achieved but the parties remain hostile to each other and do not get along well.³⁶

In other places, the customary settlement of cases of domestic violence is also carried out by the people of Kupang, East of Nusa Tenggara. The pattern of a resolution carried out by the local community is to take settlement under the customary provisions of each party, especially from the customary community of the victim. In the city of Kupang, which has ethnic heterogeneity, it does not specifically apply the pattern of settlement of domestic violence with the customs of a particular region. However, because the majority of the population comes from the Atoin Meto tribe, which is one of the indigenous tribes on the island of West Timor besides Helong and Melus, the pattern of resolution used is to follow the adat version of the Atoin Meto tribe.³⁷

The examples above are a small part of the entire Indonesian community who resolve domestic violence cases or conflicts using customary values/local wisdom. This shows that in dealing with conflicts, the Indonesian people prioritize deliberation (non-litigation) methods rather than through legal channels (litigation).

³⁴ Kamaruddin Kamaruddin, ‘Model Penyelesaian Konflik di Lembaga Adat’, *Walisongo: Jurnal Penelitian Sosial Keagamaan*, 21.1 (2013), 39–70 <<https://doi.org/10.21580/ws.21.1.236>>.

³⁵ Abdurrahman Abdurrahman, ‘Penyelesaian Sengketa Melalui Pendekatan Adat’, *Kanun: Jurnal Ilmu Hukum*, 12.1 (2010), 127–36 (p. 129).

³⁶ Abdurrahman, p. 130.

³⁷ Lamber Missa, ‘Studi Kriminologi Penyelesaian Kekerasan dalam Rumah Tangga di Kota Kupang’, *Kanun: Jurnal Ilmu Hukum*, 15.2 (2013), 297–312 (p. 309).

Conclusion

The settlement of domestic violence cases through litigation so far has not been able to realize the objectives of the law. In addition to not being able to reduce the number of domestic violence, settlement through litigation leads to more divorce so that the objective of the PKDRT Law to create a harmonious and prosperous household cannot be realized.

For this reason, the alternative settlement offered is to use a religious or cultural approach. For a religious approach, the Islamic conflict resolution method called *Sulh* is appropriate as an alternative solution. This is because *Sulh* is carried out through deliberation with the main goal of resolving disputes/conflicts to create peace in the household. As for the cultural approach, especially among Javanese people, the use of local wisdom based on the norm of “*ono rembug yo dirembug*” is appropriate and following the spirit of the Javanese people who uphold peace and togetherness.

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