The Model of Legal Protection for Children Victims of Domestic Violence Based on Justice

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ABSTRACT

Indonesia has passed a policy on child protection and eliminating domestic violence. However, the critical question that needs to be asked is why violence against children increases yearly. This study aims to analyze the model of legal protection for children victims of domestic violence based on justice. This research is empirical research with primary, secondary, and tertiary data. This study concludes that the norms of Malay customary law that regulate violence in Bengkulu City, namely Cempalo Hand and Cempalo Mouth, can reduce violence against children in the household.

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1. Introduction

Whether physical, psychological, sexual, or economic violence is generally experienced by children and women, violence in the household is not only a national problem but also has an international character. This is evidenced by the existence of a world conference to review and assess the progress of children and women carried out by the United Nations (UN) on equality, development, and peace in Nairobi on July 15–26, 1985, which resulted in the Declaration on the Elimination of Violence Against Women.

Indonesia has ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (Convention on the Elimination of All Forms of Discrimination Against Women), abbreviated as CEDAW in Law No. 7 of 1984, which became the Convention Concerning the Elimination of All Forms of...


Discrimination against Children and Women. To implement this Convention, the United Nations in 1979 established the Commission on the Elimination of All Forms of Discrimination, or the CEDAW Commission. The CEDAW Commission oversees the implementation of CEDAW in countries that have ratified it. This Convention consists of six chapters, which are detailed in thirty articles.

Even though the Indonesian government has ratified this convention since 1984, it has not yet been implemented because it requires a number of national laws that must be made by countries that ratify this convention before it can be operationalized, and as a result, other forms of discrimination still exist. Its form is violence against children and women. It was only on September 22, 2004, that Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) was passed, then followed up with Government Regulation No. 4 of 2006 concerning Implementation and Cooperation in the Recovery of Victims of Domestic Violence, so that law enforcement officers have the authority to take action against perpetrators of domestic violence.

The existence of domestic violence causes every family member to feel insecure and threatened. The household, which should be a place to stay that brings peace and tranquility to every member of the family, did not materialize. This condition denies the meaning and purpose of marriage as mandated by Article 1 of Law No. 1 of 1974 concerning marriage. Domestic violence, be it physical violence, psychological violence, sexual violence, or economic neglect, injures the inner and outer bond, which is the purpose and basis of marriage.

Domestic violence can happen to anyone, whether from wealthy or low-income families, with low or high education, and can happen everywhere, both in big

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cities and small towns; at the village level, in the sub-districts to RT, the people are illiterate.\textsuperscript{10} With the issuance of Law No. 23 of 2004, concerning the Elimination of Domestic Violence (PKdRT), which was declared effective on September 22, 2004, this law oversees the purpose and basis of marriage and maintains the integrity of marriage. Law No. 23 of 2004 aims to prevent violence against children and women.\textsuperscript{11}

However, in reality, in public life, especially in Bengkulu City, the crime of violence against children and women is still high. Therefore, it is very urgent to conduct research to protect victims of such violence legally. Legal protection protects human rights that others have harmed and is given to the community so they can enjoy all the rights granted by law.\textsuperscript{12} Thus, a model of legal protection for children and women victims of domestic violence (KDRT) in Bengkulu City can be formulated as effective and efficient. The family remains intact, and divorce does not occur. It does not cause a sense of revenge based on norms. Malay Customary Law Through the Rajo Penghulu Institution.\textsuperscript{13}

Whenever a dispute arises between members of the community in Bengkulu City, Bengkulu Province, the Pranata Rajo Penghulu is applied as a means of achieving a peaceful resolution. As Pranata Rajo Penghulu, in the daily lives of indigenous peoples, customary peace is intended to restore the equilibrium of material and immaterial goods of life that have been disturbed. This Rajo Penghulu institution was founded by the ancient Bengkulu ancestors who have been passed down from generation to generation.\textsuperscript{14}

The Rajo Penghulu institution is not static, meaning that the determination of daily fines for each customary violation (error) is contingent on the disputing parties’ circumstances and capabilities. The determination of this standardized fine is secondary. Simultaneously, “peace” is the most important, specifically the existence of life between Bengkulu community members who help each other


\textsuperscript{12} Robin Sen and others, ‘“When You’re Sitting in the Room with Two People One of Whom… Has Bashed the Hell out of the Other”: Possibilities and Challenges in the Use of FGCs and Restorative Approaches Following Domestic Violence’, \textit{Children and Youth Services Review}, 88.March (2018), 441–49 https://doi.org/10.1016/j.childyouth.2018.03.027


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(please help or cooperation), an atmosphere of friendship, an atmosphere of intimacy, and family relationships.\textsuperscript{15}

2. Research Method

The research method uses a qualitative approach and legal anthropology.\textsuperscript{16} Data collection techniques include in-depth interviews and secondary data collection.\textsuperscript{17} The determination of the informants was carried out purposefully; the key informants were determined by the researchers themselves based on considerations of having adequate education, position, and experience. The data analysis was qualitative and carried out continuously from the beginning to the end of the study.\textsuperscript{18}

3. Results and Discussion

The norms of Malay customary law that regulate violence are also referred to as customary violations. According to Malay customary law, the type of customary violation (known locally as \textit{dapek Salah} or \textit{cembalo}) is subject to customary sanctions (\textit{dendo adat}), which will be resolved in the \textit{Pranata Rajo Penghulu} court ceremony; this is described in Regional Regulation No. 29 of 2003 pertaining to the Enforcement of City Customs.\textsuperscript{19} Types of customary violations resolved by the \textit{Pranata Rajo Penghulu} are repeated and grave customary violations committed by a community member or group. Minor violations of custom can only be resolved at the family level or the neighborhood (RT) level. Malay customary law norms governing violations of customary violence, namely; \textit{cempalo} of the hand is a forbidden act carried out by the hand, and the spit of the mouth is a forbidden act by the mouth.\textsuperscript{20}


Legal protection for children and women victims of domestic violence (KDRT) through Pranata Rajo Penghulu, consisting of multiple phases from beginning to end. The stage begins when someone is caught in the act of committing a customary violation (dapek Salah) or when a party files a formal complaint with the head of the RT, Pranata Rajo Penghulu, and others. The implementation of the traditional court ceremony Mufakat Pranata Rajo Penghulu consists of 34 stages, which are the process of resolving domestic violence (KDRT) against child and female victims through Pranata Rajo Bengkulu in Bengkulu City, namely legal protection for child and female victims of domestic violence. The way of deliberation and agreement of the Pranata Rajo Penghulu.

In addition, the Pranata Rajo Penghulu deliberation agreement is called peace according to Malay customary law in force in Bengkulu City. Philosophically, the central meaning of customary peace or customary peace is to restore the existence of disturbances in the physical and mental balance of life in communities governed by customary law, and to recreate the atmosphere of ordinary law community life, which is rich in kinship, intimacy, and friendship. In the meantime, the secondary meaning of customary peace is the fine itself, the size of which is proportional to the capacity of the guilty party.

The resolution of domestic violence (KDRT) against children and women through the Pranata Rajo Penghulu in Bengkulu City described above is one of the models of legal protection with the method of resolving domestic violence outside the court. In reality, the resolution of domestic violence through consensus deliberation by Pranata Rajo Penghulu can be effective and efficient because the decision of Pranata Rajo Penghulu does not cause resentment from those who are considered guilty, the household remains intact, the settlement process is fast (does not take a long time like a court judge), the settlement process is more practical and less complicated, and the decision of the Pranata Rajo Penghulu can be directly implemented (executed) by the household.

Initially, these Malay customary law norms were created, developed, maintained, and given customary sanctions for violators by the Malays.

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follows the theory of Sally Falk Moore. They argue that methodically, the Malay indigenous peoples in Bengkulu City, which will be studied, can be viewed as a limited social arena (semi-autonomous social field).

This limited social arena can impose a rule, coercion, or sanction on the people interacting. In addition, this limited social arena exists at the same time within a broader social matrix framework. It can influence and dominate it, sometimes inviting people of their free will to enter the social arena.

The limited social arena theory is used because it examines the Malay indigenous peoples in Bengkulu City, whose autonomy is recognized and limited to interacting with each other. From that interaction, the rules they created were maintained in force and used as behavioral guidelines by every Malay traditional citizen in social life. It aims to maintain resilience, order, peace, and justice. The resolution of domestic violence against children and women through the Pranata Rajo Penghulu in Bengkulu City will reveal the actual applicable Malay customary law norms and the historical context of legal conduct.

In actual Malay customary law communities in Bengkulu City, the straightforward case method is also utilized. According to Holleman, non-dispute cases indicate that general practices that are broad and cover a variety of fields can, of course, be observed as special instances of voluntarily obeying the law, providing numerous concrete examples even though the type is the norm. Not a dispute. If properly documented, these uncontested cases are invaluable units of analysis that reveal the relevant principles and regularities as well as the degree of legal tolerance for deviation from lawful conduct.

According to customary law, non-dispute cases involve normal activities, which serve as a normative reference point for evaluating the expected behavior of the community. By paying adequate attention to these non-disputed cases, specific guidelines and instructions are obtained in order to discover the causes of spontaneous, automatic submission to customary law norms (spontaneous, automatic submission to ADAT) on social life. The norms of Malay customary law

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29 Yati Afiyanti and others, ‘Unmet Supportive Care Needs Survey among Male Partners of Gynecological Cancer Survivors in Indonesia’, Asia-Pacific Journal of Oncology Nursing, 8.6 (2021), 662–69 https://doi.org/10.4103/apjon.apjon-2113
that apply in Bengkulu City have been codified in the Bengkulu City Regional Regulation (Perda) No. 29 of 2003 concerning the Enforcement of Bengkulu City Customs; this further ensures the existence of legal certainty for the implementation of Malay customary law norms.\textsuperscript{31}

The legal system in force in the Unitary State of the Republic of Indonesia (NKRI) is based on the legal philosophy known as Positivism, the law is identical to the legislation (law), which has a written form and is made by an institution with the authority and power to make laws (legism).\textsuperscript{32} In addition, the criminal law system is strengthened by its adherence to the legality principle, which states that an act that is considered a crime or a criminal act must have precedent laws and regulations. So that cases of domestic violence against children and women can be subject to criminal sanctions or can also be settled out of court through the Pranata Rajo Penghulu based on policy (discretion), the perpetrators of domestic violence are still children (Diversion), or the existence of the crime is estimated to have caused a loss of less than Rp. 2.500.000,-, which is already regulated by the existing laws and regulations.\textsuperscript{33}

Traditional functionaries consisting of the Traditional Penghulu, Cerdik Cendikio, and the Syarak Penghulu administer the Rajo Penghulu institution. These traditional functionaries can be found in every kelurahan in the city of Bengkulu. Whenever there is a dispute between community members, the two traditional leaders will examine and consider all aspects of life in order to determine a solution that is acceptable to all parties involved. In dispute resolution, the decision of the Customary Chief (Tuai Adat) is binding because it is based on the values contained in the culture, customs, and is in accordance with the mind and spirit of the indigenous people of the area. Disputed indigenous populations typically do not have the courage to disregard their customary harvest decisions.\textsuperscript{34}

The traditional functionaries of Pranata Rajo Penghulu in resolving disputes through customary peace sometimes fail, cannot apply optimally, do not apply effectively and efficiently, give perpetrators a sense of vengeance, and perpetrators are not present at the customary peace trial ceremony. According to the research team's analysis, this failure occurred because the traditional


functionaries of Pranata Rajo Penghulu had not mastered negotiation and mediation theory and practice.\textsuperscript{35}

Negotiation is a tradition of out-of-court dispute resolution (ADR), the disputing parties are the decision-makers, and the dispute resolution is only approved by the disputing parties without a third party’s involvement. In this phase of negotiations, the disputing parties attempt to persuade one another. They did not attempt to resolve disagreements based on preexisting rules, but instead drafted new rules to govern their relationship. Thus, negotiation is an exclusive method of resolving disputes between two parties.\textsuperscript{36}

This customary peace is a dispute resolution alternative based on mediation. A mediator is a third party who intervenes in a dispute resolution in order to assist the disputing parties in reaching an agreement. In this situation, regardless of whether the disputing parties request the assistance of the mediator appointed by the other party in power, the disputing parties agree to such intervention.\textsuperscript{37} Both disputing parties must agree to utilize the services of a mediator to reach a resolution. There may be individuals in the paguyuban community who serve as mediators, arbitrators, and judges (such as traditional leaders in the community in Bengkulu City). This mediator does not make a decision, but acts as a peacemaker (facilitator) to help the disputing parties reach an agreement. There are no winners or losers in this mediation (win-win resolution).\textsuperscript{38}

The mediation according to positive law, such as Supreme Court Regulation No. 2 of 2003 Concerning Mediation Procedures in Court, the preamble states that reducing the accumulation of cases is one way to resolve cases more quickly and affordably, in accordance with Article 130 HIR and/or Article 153 RBg. The legal basis for this recommendation is Supreme Court Regulation Number 2 of 2012 concerning Settlement of Minor Crime Limits (Tipiring) and the amount of fines in the Criminal Code. In addition, it is recommended that the settlement of criminal cases whose losses are estimated to be below Rp. 2,500,000, - be settled outside of court through mediation (KUHP).\textsuperscript{39}


4. Conclusion

The process of legal protection for children and women victims of domestic violence (KDRT) through Pranata Rajo Penghulu in Bengkulu City, namely, there are 34 stages of settlement through deliberation and consensus of Pranata Rajo Penghulu, this is also called peace according to customary Malay law in force in Bengkulu City. Philosophically, customary peace or customary peace has the central meaning (primary), which is to restore the existence of disturbances in the balance of life in customary law communities both physically and mentally, to re-create the atmosphere of ordinary law community life which is full of kinship, intimacy, friendship, and please help. Meanwhile, the secondary meaning of customary peace is the customary fine itself, the size of which is adjusted to the capacity of the party deemed guilty.

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