

Realizing Justice: Integration of Customary Law in Mediation of Domestic Violence Cases

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Abstract

Domestic violence (DV) is a serious problem that requires effective and fair handling. In the Indonesian context, the existence of customary law as an integral part of the legal system often provides alternative solutions that are more in line with the cultural values of the community. This study aims to explore the role of customary law in mediating domestic violence cases and how the integration of customary law and state law can create justice for victims. The research method used is a qualitative approach with descriptive analysis, involving case studies in several areas that apply customary law in conflict resolution. The results of the study indicate that customary law-based mediation can provide space for constructive dialogue, increase community participation, and better accommodate the needs of victims. However, challenges in harmonizing the two legal systems were also identified, such as differences in perspectives on human rights and women's protection. Therefore, it is important to build a framework that supports the integration of customary law and state law, so that comprehensive justice can be realized for all parties. This study provides recommendations to strengthen the capacity of customary leaders and increase public legal awareness of the importance of collaboration between customary law and state law in handling domestic violence cases.

Keyword: Customary Law, Domestic Violence (DV), State Law

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Introduction

Domestic violence (DV) is a complex and disturbing social phenomenon, with significant impacts on individuals and society. According to data from the Ministry of Women's Empowerment and Child Protection, cases of domestic violence in Indonesia continue to increase, indicating that existing handling efforts are still far from adequate. DV involves not only physical actions, but also psychological and emotional aspects that have the potential to damage the victim's life as a whole. In this context, the need for a more effective and sensitive approach to local values is very important Fikri (2023).

Customary law, as part of a rich cultural heritage, plays an important role in resolving conflicts in society. In many cases, customary law can offer solutions that are more accommodating and in accordance with local social norms. Communities that apply customary law tend to value mediation more as a way to resolve disputes, including cases of domestic violence. This mediation process is often carried out by customary figures who have positions and influence in the community, thus creating a climate of more open dialogue and mutual understanding.

However, although customary law has great potential, there are often inconsistencies with the principles of state law, especially in terms of protecting victims' rights. These challenges include differences in interpretation of justice, human rights, and women's protection, which can result in discrimination or injustice in the dispute resolution process. Therefore, an in-depth study is needed to understand how the integration between customary law and state law can be carried out, and how this can contribute to achieving justice for victims of domestic violence Hasibuan (2022).

This study aims to explore the role of customary law in mediating domestic violence cases and analyze the potential for integrating customary law with state law. Using a qualitative approach, this study will explore the experiences and perspectives of communities involved in the mediation process, and identify challenges and opportunities in harmonizing the two legal systems. It is hoped that this study can provide new insights into dispute resolution strategies that are more inclusive and responsive to the needs of victims, as well as offer recommendations for developing better policies in handling domestic violence in Indonesia.

Literature Review

1. Domestic Violence (DV)

Domestic violence (DV) is a serious and complex problem, where acts of violence can be physical, emotional, sexual, or economic, committed by one family member against another. According to the World Health Organization (WHO), domestic violence is one of the most common forms of human rights violations throughout the world, including Indonesia. Research by the Ministry of Women's Empowerment and Child Protection (2023) noted an increase in the number of reports of domestic violence each year, indicating an urgent need for more effective and comprehensive handling.

2. Customary Law in Conflict Resolution

Customary law is a legal system that develops in local communities based on the traditions, norms, and values that live in that community. According to Mardani (2020), customary law has the ability to resolve disputes in a more accommodating manner and in accordance with local culture. In the context of conflict resolution, customary law often uses mediation methods involving customary figures or community leaders. Research by

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Efrizal (2018) shows that the role of customary figures in dispute mediation can create a conducive climate of dialogue, thus allowing for better resolution for all parties involved.

3. Integration of Customary Law and State Law

The integration of customary law and state law has been the focus of study in various studies. Hakim and Saragih (2022) stated that there are challenges in harmonizing these two legal systems, especially in the context of protecting victims' rights. They noted that state law often confronts customary law norms that may not be in line with human rights principles. However, several studies also show that this integration can produce solutions that are more responsive to community needs (Sudrajat, 2020).

4. The Role of Mediation in Resolving Domestic Violence

Mediation as a method of dispute resolution in customary law provides an opportunity for the parties involved to reach an agreement voluntarily, without any pressure from outside parties. Research by Widjaja (2021) emphasizes that mediation can be an effective alternative in resolving domestic violence cases, especially when formal legal approaches are considered ineffective or too complicated. In addition, customary law-based mediation tends to pay more attention to the existing social and cultural context, which has the potential to produce more satisfactory solutions for victims.

5. Challenges in Implementing Customary Law

Although customary law has great potential in resolving domestic violence, there are various challenges that need to be overcome. According to Nuraini (2019), one of the main challenges is the gap between customary law values and state law, especially related to the protection of women and human rights. This can lead to injustice in the dispute resolution process. Research by the Center for Law and Policy Studies (2022) shows the need for customary law reform to adapt to social changes and developments in international law that emphasize the protection of individual rights.

Methods

This study uses a qualitative approach with a descriptive-analytical method. The qualitative approach was chosen because the main objective of this study is to deeply understand the role of customary law in mediating domestic violence (DV) cases, as well as how the integration of customary law and state law can be achieved. This study explores the views and experiences of indigenous peoples, victims, and customary figures who are directly involved in the mediation process. Qualitative data allows for in-depth exploration of customary law values, norms, and practices related to the resolution of DV.

Data collection was conducted through in-depth interviews and participant observation. Interviews were conducted with several traditional figures, victims of domestic violence, and law enforcement officers involved in customary law-based mediation. In addition, participant observation was conducted in several areas that still actively use customary law in resolving domestic violence disputes, to understand the cultural and social contexts that influence the mediation process. Secondary data were also collected from related documents, such as regional regulations, journals, annual reports of the Ministry of Women's Empowerment and Child Protection, and relevant academic literature Siregar (2023).

The data obtained were analyzed using thematic analysis techniques, with steps such as initial coding, identification of main themes, and interpretation of results. The results of this

analysis are expected to provide an overview of how customary law plays a role in mediating domestic violence cases and how the integration process with state law can improve protection for victims. Data validity is maintained through triangulation techniques, namely by comparing the results of interviews, observations, and secondary data sources.

Results and Discussion

1. The Role of Customary Law in Resolving Domestic Violence Cases

This study found that customary law has a significant role in resolving domestic violence (DV) disputes, especially in indigenous communities that strongly maintain local traditions and values. Based on interviews with traditional leaders in Central Aceh, it is known that the process of resolving domestic violence disputes through customary law involves a deliberation approach led by local traditional leaders. Efrizal (2018) stated that the role of traditional leaders as mediators is very important to create a peaceful atmosphere, and in many cases, perpetrators and victims agree to resolve conflicts amicably Fatmawati (2023).

However, problems arise when customary law tends to emphasize social reconciliation and ignores the rights of victims, especially women. Mardani (2020) stated that in some customary communities, the resolution of domestic violence is carried out with the aim of restoring family harmony, but does not provide proportional punishment to the perpetrators of violence. This can reduce the sense of justice for victims and even potentially worsen their psychological condition.

2. Integration of Customary Law and State Law in Resolving Domestic Violence

One of the important findings in this study is the effort to integrate customary law with state law in resolving domestic violence cases. Hakim and Saragih (2022) explain that although customary law plays a central role in dispute resolution, state law must still be prioritized in cases involving human rights violations. This study shows that in several areas such as Central Aceh, there has been collaboration between customary leaders and law enforcement officers in handling domestic violence cases.

For example, when customary mediation cannot guarantee adequate protection for victims, law enforcement officers can take legal steps based on Law Number 23 of 2004 concerning the Elimination of Domestic Violence. This process requires supervision from law enforcement officers to ensure that customary mediation decisions are in line with positive legal provisions. According to Widjaja (2021), this integrative approach provides a more balanced solution while still respecting local wisdom and the principles of state justice.

3. Protection of the Rights of Victims of Domestic Violence through Customary Law

Although customary law has weaknesses in terms of enforcing sanctions against perpetrators of domestic violence, this study found that the customary mediation approach also provides an opportunity for victims to voice their wishes directly. In some cases, victims feel more comfortable speaking in front of customary leaders compared to undergoing a formal court process which is considered more stressful. Sudrajat (2020) noted that customary-based mediation prioritizes dialogue and restoring social relations, although this can be challenging when violations of victims' rights are not adequately addressed.

This study also revealed that to protect the rights of victims more optimally, synergy is needed between customary law and state law. One form of effective synergy is to involve women's organizations or child protection institutions in the customary mediation process, so that they can ensure that the decisions taken still prioritize justice for victims. The Ministry of

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Women's Empowerment and Child Protection (2023) in its report suggests that this integration should be strengthened through training for customary leaders on human rights and women's protection.

4. Challenges and Opportunities for Integrating Customary Law and State Law

The biggest challenge in integrating customary law and state law is the fundamental difference in the objectives of the two legal systems. Customary law focuses on restoring social harmony, while state law aims to provide appropriate punishment to perpetrators based on applicable laws. Nuraini (2019) shows that in the context of domestic violence, there is often a clash between efforts to maintain harmony in the customary community and upholding justice for victims.

However, the study also found that there is great opportunity for this integration, especially with the increasing awareness among traditional leaders about the importance of protecting women's rights. Collaboration between traditional leaders, law enforcement officers, and women's protection organizations can create a more holistic model for resolving domestic violence disputes that is responsive to the needs of victims. The Center for Law and Policy Studies (2022) suggests that customary law reform must include adjustments to human rights values, so that decisions taken not only consider social interests, but also individual justice.

5. Effectiveness of Customary Law in Resolving Domestic Violence Cases

The effectiveness of customary law in resolving domestic violence cases is highly dependent on the existence of respected customary figures and community trust in the mediation process. Efrizal (2018) stated that when customary figures have strong moral authority, the community tends to follow the decisions taken in customary mediation. In addition, a more informal and family-based approach provides comfort to the disputing parties. However, this effectiveness begins to decrease when the community begins to understand the state legal system and feels that resolution through customary law does not provide sufficient legal protection for victims, especially women.

In some cases, victims prefer to report their cases to the police rather than follow customary mediation, especially when the perpetrators of domestic violence repeat their actions. According to Sudrajat (2020), the challenge in resolving domestic violence through customary law is that there is no adequate mechanism to follow up on repeated violations committed by the perpetrators. On the other hand, customary law also does not always have a punishment system that can prevent perpetrators from committing violence again.

6. The Influence of Cultural Values in Resolving Domestic Violence

Local culture greatly influences how domestic violence is resolved in indigenous communities. In some communities, there are strong patriarchal values, where men are considered to have higher authority in the household. Mardani (2020) stated that in the context of patriarchal indigenous communities, customary law tends to provide solutions that benefit men and emphasize reconciliation without giving appropriate punishment to the perpetrators. This certainly reduces the effectiveness of protection for victims, especially women who are victims of domestic violence.

On the other hand, local values can also be used positively to encourage fairer solutions. For example, in some areas, traditional leaders have begun to introduce gender perspectives in customary deliberations, so that women's rights are prioritized. Nuraini (2019) stated that the

application of gender justice values in the customary mediation process is an important step in ensuring that customary law is in line with human rights.

7. Challenges of Implementing Customary Law in the Modern Era

The implementation of customary law in the modern era faces many challenges, especially due to the clash between traditional values and legal norms regulated by the state. In cases of domestic violence, customary mediation decisions often conflict with stricter state legal regulations regarding victim protection and punishment for perpetrators. Widjaja (2021) explains that in some cases, customary mediation decisions that only focus on restoring family relationships can risk weakening legal protection for victims.

On the other hand, communities that are increasingly exposed to formal education and knowledge of national law are beginning to question the effectiveness of customary mediation. This can reduce the legitimacy of customary law in communities that are accustomed to formal law. Therefore, there needs to be synergy between customary leaders and law enforcement officers to overcome this challenge, ensuring that victims' rights remain protected in accordance with applicable law.

8. Solutions in Integrating Customary Law and State Law

One solution to overcome the challenges in resolving domestic violence cases through customary law is to introduce a more structured mediation procedure and involve legal officials in the process. Hakim and Saragih (2022) suggest that the results of customary mediation can be reported to higher legal authorities to obtain validation that the decision is in accordance with state law.

The study also found that training programs for customary leaders on the protection of women's and children's rights are an important step in strengthening the integration of customary law and state law. In this way, customary leaders can better understand the limitations of formal law and how customary mediation processes can remain in line with broader principles of justice.

9. The Need for Legal Education for Indigenous Communities

The importance of legal education in indigenous communities is also one of the key findings of this study. Many victims of domestic violence do not understand their rights under state law and feel pressured to follow the decisions of traditional leaders without considering other options. The Ministry of Women's Empowerment and Child Protection (2023) emphasized the need for a more comprehensive legal education program, especially in remote areas, so that communities have a better understanding of the national legal system and the legal protections available to them.

In addition, the involvement of non-governmental organizations (NGOs) working in the field of women and children protection is also very important in helping to raise legal awareness in indigenous communities. NGOs can serve as a bridge between indigenous communities and the formal legal system, ensuring that victims of domestic violence receive proper protection.

10. Customary Law Reform to Improve Victim Protection

This study concludes that customary law reform is one of the keys to improving the protection of victims of domestic violence in indigenous communities. The Center for Law and Policy Studies (2022) states that this reform should include the introduction of international legal norms that protect the rights of women and children, as well as the enforcement of stricter sanctions against perpetrators of violence.

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In the context of domestic violence, customary law reform must also consider the role of women in customary decision-making processes. This can be done by involving women in customary deliberations or giving them the right to determine the legal steps to be taken, either through customary mediation or formal courts.

Conclusion

That customary law has an important role in resolving domestic violence cases through family-based mediation and deliberation. However, protection for victims, especially women and children, is often not optimal due to patriarchal cultural bias. Therefore, harmonization between customary law and state law is needed to ensure more comprehensive justice and protection, where customary mediation decisions can be strengthened with formal legal sanctions and supervision so that victims' rights are better protected.

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