KnE Social Sciences
2nd ICGCS
2nd International Conference on Gender, Culture and Society
Volume 2024

Research Article

Disintegration Policy on Women's Protection: a Study of a Divorce Lawsuit Verdict Based on Domestic Violence in the Religion Court of Demak

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Abstract.

This study examined whether legislative policies focused on the protection of women against violence have been implemented in judicial practice. The study hypothesised that the legislative policies have not been implemented in judicial practice. To prove the hypothesis, the study was conducted using socio-legal methods by examining the meaning of legal texts in judicial practice. The results of the study proved the hypothesis based on the data on the divorce lawsuits brought by the wife at the Religion Court of Demak in 2022. Most data on divorce lawsuits were based on domestic violence. The interesting point of these data was that even though domestic violence occurred, the wives who were the victims did not settle them criminally as stipulated in Law No. 23 of 2024 concerning Domestic Violence, but instead, they were civilly settled by filing a divorce lawsuit to the Religion Court. Divorce lawsuits based on domestic violence have been regulated in Article 19 of Government Regulation (PP) No. 9 of 1975 as the implementation of the Marriage Law. Another interesting research result was that the verdicts made by the judge of the Religion Court were not based on the reason for committing cruelty or severe persecution that endangered the other party (Article 19 letter (d)), but based on the reason that there were continuous disputes and quarrels between husband and wife which cannot be expected to live in harmony again in the household (Article 19 letter (f)). It was concluded that the protection of women (wives) from domestic violence that has been regulated in legislative policies had not been implemented in the verdicts made by the religious court. The divorce lawsuit's verdicts handed down by the Religion Court of Demak have not interpreted the articles in the laws and regulations within the framework of legal protection for women.

Keywords: Disintegration Policy; Women Protection

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Published: 30 July 2024

Publishing services provided by Knowledge E

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Selection and Peer-review under the responsibility of the 2nd ICGCS Conference Committee.

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1. Introduction

The development of legislative policy in the form of regulation aimed at protecting women is, in reality, not in line with the prevention of violence against women. The promulgation of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (hereinafter abbreviated as UU PKDRT, i.e. the Law on Domestic Violence),

which among others shifts domestic violence from the private domain to the public domain, forms of violence that are not only physical violence as stipulated in the Criminal Code (KUHP) and the law enforcement process that has been oriented towards the interests of victims. The existence of the Law on Domestic Violence which is already quite progressive compared to the regulations in the Criminal Code, is still not enough to prevent violence against women. The existing law products are considered not optimal in providing prevention, protection, access to justice, victim recovery and victim rights and have not been comprehensive in the aspect of law enforcement regulation. These needs are written in consideration of Law Number 12 of 2022 Regarding Sexual Violence Crimes. The legislative policies, which have been responsive to the need to prevent violence against women, are not in line with what are intended by promulgated laws. Although it cannot be compared simply, with the Annual Record of Violence Against Women (CATAHU) reported regularly by the National Commission on Violence Against Women (KOMNAS Perempuan), it has not shown a positive correlation between legislative policies and the reality of the high rate of violence against women.

Referring to the progress of data on violence against women read in the Annual Record of Violence Against Women (CATAHU) in the last two years (2021 and 2022), it is quite concerning. The data on violence against women in 2021 amounted to 4.322 cases and to 4.371 cases in 2022. It increased by 49 cases (1,13%). The number of increases is relatively small, but when associated with the distribution of cases which are divided into three domains, namely (i) personal domain: 2.098 cases (48,54%); (ii) public domain: 1.276 (29,52%) cases and (iii) state domain as many as 68 (1,57%) cases, so the largest concerned cases are in the personal domain, which when read daily, there are 17 cases per day. Data of 2020 shows the same trend. Of the 8.234 cases of violence against women, 79% (6.480 cases) were in the personal domain. Prominent cases of violence against wives (KTI) ranked first, i.e. 3.221 (49%) cases, followed by violence in dating, i.e. 1,309 cases (20%) which ranked the second. The third position is violence against girls as many as 954 cases (14%), the rest are violence by ex-husbands, ex-girlfriends, and violence against workers.

The effectiveness of legislative policies in preventing and overcoming violence against women raised three critical proposals put forward by Widati Wulandari (Irianto & Lidwina Inge Nurtjahyo, 2020). (1) There needs to be a criminological study of the causes of crime/violence against women, including: (i) the process of law formation, (ii) the process of violation of law, (iii) reactions to violations of the law (crime). The study of the causation of this crime will be used as the basis for the most appropriate legal and non-legal intervention policies. How far is the level of reprehension of this violence

against women. The root cause will affect the process of law formation (criminalization). A study will find out whether domestic violence is not a crime, a crime or just a mere persecution. The understanding of the root causes of this problem will be used by policy makers to formulate the characteristics of domestic violence; (2) An understanding of the root cause of domestic violence in point (1) above, raises the question of whether criminal reaction is the most appropriate reaction to solve domestic violence cases; (3) Domestic violence (KDRT) has a different character from crime in general. Domestic violence (KDRT) is a hidden crime. The perpetrator and victim have a close/intimate relationship and there is an interdependent relationship. Thus, domestic violence has a unique character compared to crime in general.

Widiati Wulandari's critical proposals above are in line with the research results of the divorce lawsuit filed by the wife at the Demak Religion Court. Of the three divorce cases motivated by domestic violence, the judge decided based on Article 9 letter (f) of PP No.9 of 1975 junto Article 116 KHI: "between husband and wife there are continuous disputes and quarrels and there is no hope of living in harmony anymore in the household". The three cases (decision (i) No. 461/Pdt.G/2022/PA. Dmk; (ii) Decision No.2141/Pdt.G/2022/PA. Dmk) and (iii) o.692/Pdt.G/2020/PA. Domestic violence is not the sole cause. Starting with economic problems (livelihood), then quarrels arise, and saying insulting words against wives that lead to domestic violence. In all three cases, it was triggered by the disharmonious husband-wife relationship, in which the husband commited infidelity.

Of the three cases studied, there is an interesting point, that is the choice of the wife as a victim of domestic violence committed by the husband, i.e. choosing a civil settlement by filing the divorce case in the Religioun Court. The choice of wife is interesting considering that the actions committed by the husband meet the formulation of Article 5 of the Domestic Violence Law, those are (i) committing physical violence in the form of beatings; (ii) psychic violence by saying abusive words during an argument; (iii) domestic neglect. This reality confirms Widiati Wulandari's critical proposals above about the root causes of domestic violence. This reality also confirms the Legal System proposed by Lawrence M Friedman which consists of three sub-systems, namely structural/institutional sub-systems that are likened to a permanent body framework. This strong institution ensures that the (legal) process flows within its boundaries. The second subsystem is substance, which is the rules that govern how institutions should behave. The third element is legal culture, namely the element of social attitudes and values. This third subsystem functions to move or even "distance" from the law in certain ways (Arief, 2009).

The critical proposals put forward by Widiati Wulandari above seem to be strengthened by the Legal System put forward by Lawrence M Friedman, especially the cultural sub-system. The two opinions converge on the point that domestic violence is not only a legal phenomenon but also a social phenomenon . Thus, the resolution of domestic violence is not only through the Criminal Law (penal means).

Based on the investigation conducted by the Research Team, there are several writings/studies that examine similar things, which can be briefly described as follows: (1) Imam Sukadi and Mila Rahayu Ningsih who wrote in the Journal of Egalita: Journal of Gender Equality and Justice Volume 16, No 1, 2021 with the title "*Legal Protection of Women Victims of Domestic Violence*". This paper emphasizes the perception of domestic violence as part of civil construction both in terms of regulation and pattern of resolution. Quoting Harkristuti Harkrisnomo's opinion, the civil settlement model shows that the legal system, law enforcement attitudes and legal culture have not yet sided with women as victims (Sukadi & Ningsih, 2021); (2) Susi Delmiati in her article published in the journal of Litigasi Vol. 17(1), 2016, 3221–3255 DOI: http://dx.doi.org/10.23969/litigasi.v17i1.46 3230, with the title *Law Enforcement Policy Against Women Victims of Domestic Violence*. The author identifies there are internal and external causes. There are eight internal causes including ignorance, economic dependence, social values such as husbands are destiny, so wives must be patient and resigned if husbands commit domestic violence, having the social status of shame and fear of being blamed by the society and fear of husband threats. While external causes include social construction that views domestic violence as a dosmetic problem and obstacles of the state policies such as the legal process, for example, the victim bears the cost of visum et rertum, complaint offenses so that the judicial process depends on the courage of the wife to report (Delmiati, 2016).

Two new papers focus on the study of weaknesses or obstacles of law enforcement in domestic violence cases, have not critically examined the construction of legislative policies to overcome violence against women by deconstructing legislative policies, namely the Law on Domestic Violence (UU KDRT) and the Law on Sexual Violence Crime (UU TPKS). The idea of deconstruction based on the hypothesis as a legislative policy of the Law on Domestic Violence (UU KDRT) and the law on Sexual Violence Crime (TPKS) is good enough, but violence against women, especially domestic violence, is not only a legal phenomenon, but also a social phenomenon. Therefore, the approach of Criminal Law in both laws in practice has not been optimal. Among them are proven in the research of divorce cases motivated by domestic violence but civilly resolved based on Article 9 letter f PP No.9 of 1975 concerning the Implementation of Marriage

Law No.1 of 1974 junto Article 116 KHI : “between husband and wife there are constant disputes and quarrels and there is no hope of living in harmony again in the household”. Deconstruction by applying an integral policy between penal policy or Criminal Law by applying the Domestic Violence Law and TPKS Law with non-penal policy or policy not using Criminal Law. Alternative solutions using penalty mediation at the investigation stage as stipulated in the Indonesian Chief of Police (KAPOLRI) Regulation No. 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice.

2. Research Method

This study used a sociolegal approach. Referring to Wheeler and Thomas, sociolegal studies are an alternative approach that examines the doctrinal study of law. Sociolegal is the study of law conducted using a social science methodological approach in a broad sense (Irianto & Shidarta, 2013).

The main characteristic in the sociolegal approach is related to textual studies of articles in laws and regulations (in this study a study of the KUHP Law, TPKS Law and PKDRT Law) which can be critically analyzed and explained its meaning to legal subjects whether these articles benefit or harm certain groups of community (in this study, towards women who experience violence).

3. Result

The results of this study will outline: (1) the development of legislative policies regulating legal protection of women as victims of violence; (2) implementation of legislative policy in point (1) on the decision of divorce cases motivated by domestic violence decided in the Demak Religion Court (PA). (3) Integral policy on the use of penal and non-penal means to solve cases of violence against women at the investigation stage at the Kudus Police Regional Office (POLRES Kudus).

3.1. Development of legislative policies regulating legal protection of women as victims of violence

Indonesia has ratified the Convention on the Elimination Of All Forms Of Discrimination against Women (CEDAW) with Law No. 7 of 1984 concerning the Ratification of the Convention on the Elimination of all Forms Of Discrimination against Women. The strategic meaning of such ratification is elaborated by TO. Ihromi and Archie S Luhulima

in the Preface to the Book of Women's Human Rights, Legal Instruments and Realizing Gender Justice, which can be summarized as follows :

Ratification of the convention is strategic. First, the convention substantially affirms that violence against women constitutes discrimination and is a violation of human rights. Second, formally the convention can be effectively implemented to eliminate discrimination against women and uphold human rights.

In other words, the CEDAW convention directs each country to more effectively take policies to eliminate violence against women which is a form of discrimination and violates women's human rights. Prior to ratifying this Convention, Indonesia had approved this Convention on December 18, 1979 on the basis that the substance of the convention did not contradict Pancasila and the 1945 Constitution which stated that all citizens have equal standing in law and government (General Explanation of Law No. 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women. The ratification *of the Convention On The Elimination Of All Forms Of Discrimanation Against Women (CEDAW) with Law No.7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimanation Against Women* is the commitment of the Indonesian nation to overcome violence against women which from the CATAHU above shows a high number in Indonesia. The nation's commitment is good on the one hand, the reality of the high rate of violence against women on the other hand, systematically implemented formulative policies to overcome violence against women.

Revolutionary Changes with the Birth of Law No.23 of 2004 concerning the Elimination of Violence Against Women (hereinafter abbreviated as the Law on Domestic Violence/UU PKDRT) and Law No.12 of 2023 concerning Criminal Acts of Sexual Violence (hereinafter abbreviated as the TPKS Law). The birth of the Domestic Violence Law (UU PKDRT) changed several things from those stipulated in the Criminal Code. Violence against women in the Criminal Code is only defined as physical violence (see Articles 281 to 296). New things in the domestic violence law are described by Ratna Batara Munti, an activist of LBH APIK, simply as follows (Munti, 2023): (1) There has been a shift from the meaning of the private domain to the public domain. The domestic violence law no longer separates the private and public domain when violence occurs, in other words, the barrier between civil law which is better known to solve problems in the private domain and criminal law used to solve problems related to the public domain has become non-existent; (2) Forms of domestic violence include (i) physical violence; (ii) psychic violence; (iii) sexual violence and (iv) family neglect (Article 5); (3) Psychological Violence which became a breakthrough of the Domestic Violence Law

in the legal process, among others, allows Visum et Psychiatricum to be carried out as proof. However, this breakthrough has not been widely used by either law enforcement officials or escorts. This is because there are still few psychologists / psychiatrists who have an understanding of the context in which domestic violence occurs; (4) Sexual violence, one of which is marital rape, is also a breakthrough in the domestic violence law, although it is still an offense complaint. But at least it breaks the silence of victims because of the victim's lack of courage and limited access to the law; (5) There is a legal breakthrough to prove that the victim is the main witness supported by one evidence clue (Article 55).

TPKS Law (Law on Criminal Acts of Sexual Violence). Bratadewa Bima Bayusuta and Yohanes Suwanto reviewed the urgency of the TPKS Law which can be summarized as follows (Bayusuta & Suwanto, 2022): (1) This law specifically regulates sexual violence. It includes efforts to prevent sexual violence and protect, handle, and recover victims of sexual violence. This breakthrough is considered to be able to provide more significant benefits to the community; (2) The TPKS Law has a role to close the "loopholes" in the Criminal Code. This law not only punishes perpetrators, but also provides guarantees of protection to victims. The existence of punishment from the perpetrator does not mean that the psychological disorders suffered by the victim will disappear, thus this law is not only oriented to the perpetrator, but not to the victim so that it can function as a legal instrument that is able to accommodate the rights of victims of sexual violence; (3) The TPKS Law applies the main and additional criminal system (Article 87) The main crime is imprisonment and special rehabilitation, and additional crimes can be in the form of compensation, deprivation of profits obtained from criminal acts, social work, special coaching, revocation of custody, revocation of political rights, and revocation of profession. This criminal form exerts a higher burden of deterrent effect. They are not only sentenced to imprisonment but also other additional crimes that are also more burdensome.

3.2. Regarding the Implementation of Legislative Policy on the Decision of Divorce Cases motivated by domestic violence decided at the Demak Religion Court (PA)

As outlined in the introduction above, legislative policy has been responsive enough to overcome violence against women. However, as stated by Widati Wulandari, violence against women is not only a legal phenomenon but also a social phenomenon. Thus, the settlement of the Criminal Law (Penal) is not the only way. From the results of research,

women as the victims of violence tend not to choose solutions using the means of the Criminal Law as regulated in the PKDRT Law and the TPKS Law. Women for various reasons tend to settle using Civil Law (Non Penal) or even not resolved at all. This trend was found in the study of divorce cases in religious courts throughout 2022. Although motivated by domestic violence, the wife as a victim of domestic violence chose the path of filing for divorce at the Demak Religion Court for various reasons. Confirming Widati Wulandari's opinion above, from the cases studied, domestic violence is not a single phenomenon. Domestic violence cases start from economic problems (husbands do not provide a living), there are two cases and one case of them begins with an affair case. The beginning of the problem that is not completely resolved continues with domestic violence. Disputes between husband and wife that are unresolved and increasingly tapered with the husband who has an affair, then the divorce lawsuit becomes solosi. The case of the legal phenomenon appeared in this phenomenon in the case studied, leads to blurring the domestic violence case which should be the main reason for the wife to file for divorce (Pusat Kajian Wanita Dan Gender Universitas Indonesia (Center for Women and Gender Studies, 2007).

In line with the above hypothesis, the legislative policies have been good enough and by the Criminal Law approach, they are in reality not well implemented in accordance with the intentions of the framers of the law. For this reason, this study was conducted, to examine the integral policy discourse on the use of non-penal facilities with penal facilities.

The integral policy of using penal and non-penal facilities resolves cases of violence against women at the investigation stage at the Kudus Police Station.

In fact, the Criminal Law is a subsidiary or second means (ultimun remedium) in tackling crimes, in this case violence against women. The main means or primum remedium actually uses facilities that do not use Criminal Law or Non-penal means. This is where the controversy arises, do perpetrators of domestic violence not need to be subject to criminal sanctions for imprisonment? On the other hand, the critical proposals put forward by Widati Wulandari above are also another side that must be considered, considering the reality that there is a tendency for women as victims of violence to choose non-penalty means. Theoretically there should be an integral policy between the use of penal facilities and non-penal means (Arief, 2018).

4. Discussion and Analysis

4.1. A shift from Private to Public Policy

The progressive aspect of the legislative policy of protecting women from violence is the shift in policy from the private domain to the public domain. Domestic violence that basically occurs in the private domain, such as husband violence against wife, is sociologically interpreted as violence in the private sphere. Widiati Wulandari defines the private domain with a domain that is beyond the attention of the community and the state. In other words, the private domain is family autonomy. If there is state interference, it is only limited to the jurisdiction of family law that is regulative, such as marriage age limits, divorce procedures and parental obligations and other Family Law regulations. With such construction, the shift from the private domain to the public domain is seen as excessive interference. Progressive legislative policies such as those mentioned above seem to contradict the public perception of a good wife who is described as a wife who upholds the honor of her husband as the head of the family responsible for family support. Thus, whatever happens, including domestic violence, family disgrace should not be brought to the outside world. That is why domestic violence is sociologically not constructed as a public problem. Even more concerning, domestic violence committed by husbands to wives or children is seen by society as something normal .

4.2. Integrative Policy Implementation Ideas

The contradiction of legislative policy construction with social construction causes domestic violence numbers to become dark numbers because they tend to be hidden from public view for various reasons . For this reason, an integrative policy is needed between the use of Criminal Law facilities and non-Penal facilities not using Criminal Law facilities. The Non-Penal means referred to here is the use of out-of-court settlements with a Restorative Justice approach. The latter approach is proposed as an alternative solution based on the idea of overcoming the weaknesses of the use of penal means using the Criminal Law. This alternative has been proposed by experts in Criminal Law in Indonesia since the 1990s, including Muladi and Barda Nawawi Arief. Explored by Muladi, the idea of integrating penal and non-penal facilities departs from weaknesses – the inability to use penal facilities, among others, was put forward by the abolitionist movement which criticized the entire criminal justice system which led to imprisonment as the heart (main point) of the idea. Civilization is shown in the sense of using civil settlements in criminal cases as far as possible. This movement is no longer at the level of repair and reform but has been at the stage of replacing, including being carried

out by delegalization in the sense of strengthening ways of solving cases outside the formal court. In addition, it is equipped with the idea of deprofessionalization in the sense of monopoly authority to solve criminal cases not only in the hands of formal law enforcement officials, but empowering networks in the community to participate on the basis of mutual help and informal services (Muladi, 1995). This movement is also in line with what was decided by the International Conference on Criminal Law Reform at the University of London in 1999 which, among others, stated that one of the key elements of the new agenda for penal reform is to enrich the formal justice system with informal systems or mechanisms in dispute resolution with human rights standards. The conference identified the existence of development strategies in reforming Criminal Law including Restorative Justice, Alternative Dispute Resolution and Informal Justice . The 1999 European Council on Mediation in Penal Matters recommended more or less the same, including Informal Mediation, Traditional Village or Tribal Moots and Victim-Offender Mediation . Recommendations from international institutions in the framework of criminal law reform give room to the idea of integration of Penal and Non-Penal policies. These developments have also been followed up in Indonesia. Although it has not been regulated in the form of laws in an integrative manner, in judicial practice it has been partially authorized. At the investigation stage, the Chief of the Indonesian National Police (KAPOLRI) has issued National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. At the prosecution stage, the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice was issued. While at the court examination stage, the Supreme Court issued Supreme Court Regulation of the Republic of Indonesia No.3 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law (Arief, 2002).

The implementation of penal and non-penal integral policies has got adequate theoretical support and legal tools. If at the level of reality is not implemented optimally, based on the results of research there are two things that become obstacles. First, cultural barriers. The literature review above confirms that there is a gap between the policy basis for the implementation of the Domestic Violence Law and the TPKS Law which places domestic violence as a public domain, while social construction has included domestic violence as a private domain. Second, the implementation of penal mediation in the sense of resolving cases of violence against the company, with a civil approach with a restorative justice orientation, has not been implemented properly. Research on solving cases of violence against women with a restorative justice approach

at the Kudus Police Station has not been carried out properly. POLRI investigators who handle cases have not maximally resolved cases of violence against women outside the court as an implementation of the non-penalty policy.

Based on the results of the research findings above, there need to be two steps to be able to implement integral policies such as penal and non-penal policies. First, it is necessary to change the culture of society that constructs violence against women as a public sphere. Second, it is necessary to optimize the resolution of violence against women with a restorative justice approach, especially at the investigation stage. The strategic value is in the investigation stage, because the investigation process is the entrance to the criminal justice process. In addition, the police work procedures xhic there are steps to describe.

5. Conclusion

From the results of this study, it can be concluded as follows: (1) The shift in legislative policy in this case the Law on Domestic Violence and the TPKS Law from the private domain to the public direction is constrained by social construction of the meaning of domestic violence which is still interpreted as the private domain. This condition is exacerbated by the patriarchal culture that is still strong in society in addition to the reluctance of women as victims to resolve by penal means or use the Criminal Law as regulated by the PKDRT Law and the TPKS Law; (2) The results of research on divorce cases motivated by domestic violence in the Demak Religious Court have two interesting things. First, the woman in this case the wife as a victim of domestic violence deliberately chose the civil path by filing for divorce. Victims deliberately do not resolve through penal channels or the Criminal Law due to various causes related to social construction as in point (1) above. Thus, legislative policies that have been quite progressive with the promulgation of the PKDRT Law and the TPKS Law are not optimal in implementation; (3) The idea of integrative policy between penal and non-penal policies already has a strong theoretical foundation and legislative policy support both in the form of laws and technical arrangements at the level of each law enforcement institution. However, it cannot be optimized because first, the constraints on the part of victims are reluctant, second, the law enforcement process is also not optimal, both caused by legal tools at the technical level that are still fragmentary and the ability of law enforcement officials (in this case investigators) who have not mastered technical solutions using penal mediation, especially the restorative justice approach.

Thus, there is a need for a law that regulates the settlement of criminal cases with a restotarive justice approach and the skills of law enforcement officers.

Acknowledgement

The scientific article was written by a team consisting of Hidayatullah, Henny Susilowati Iskandar Wibawa, Nefira Febriyanti S. And Robbach Ma'sum from the Faculty of Law, Muria Kudus University. The article is the result of research funded by the research fund of the Research and Community Service Institute (LPPM) of Muria Kudus University in 2023 with the title '*Urgensi Integrasi Kebijakan Legislatif, Yudikatif Dan Teoritis Sebagai Upaya Optimalisasi Perlindungan Perempuan Dari Kekerasan'*. The content of the article is entirely the responsibility of the authors.

Declaration of Conflict Interest/Deklarasi Kepentingan yang Bertentangan

We have no conflict of interest to address.

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