

Handling Domestic Violence Through Mediation Out of Court

Muhammad Mahson^{*)}, Sri Kusriyah^{**)} and Rakhmat Bowo Suharto^{***)}

^{*)}Pekalongan City Environment Service, E-mail: swordsman.son@gmail.com

^{**)} & ^{***)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang

Abstract.

This study was structured to determine the settlement of cases of domestic violence in the city of Pekalongan. This aims to determine the approach to mediation outside the court in the settlement of domestic violence as an alternative. It also analyzes the obstacles in solving cases and their solutions. Method The approach in this study is a qualitative research that produces descriptive data in the form of written or spoken words from people and observable behavior. The specification of this research is descriptive qualitative which analyzes and presents facts systematically to determine the psychological condition of women and children victims of domestic violence. This study concludes that domestic violence in the city of Pekalongan is more experienced by women who are a wife, while the perpetrators are dominated by men who are husbands. Settlement according to state law regulated in the Law on the Elimination of Domestic Violence, it is necessary to find an alternative solution. The settlement through out-of-court mediation with the Pekalongan City Women, Children and Youth Protection Institute (LP PAR) as a companion is an alternative solution as an effort to restore good name, and dignity, especially for women as victims.

Keywords: Children; Court; Mediation; Protection; Violence; Women; Youth.

1. Introduction

Domestic violence in various forms, especially against children and women in recent years is very worrying. Children and women become targets or objects of perpetrators of violence because of their weak physical, psychological, and social conditions. The perpetrators of violence against children and women hide behind unintentional words, mistakes and others. In fact, if adults take a violent approach, either by physical abuse or through non-physical manipulation, children with limited cognitive, moral, emotional, and sexual development cannot think rationally, and cannot simply refuse or accept it without fighting violence. Therefore, every violence committed by adults against children and or women must be considered by itself as violence and exploitation. Many cases show the increasing number of acts of violence against children and women. The case of domestic violence (KDRT) itself has become a very interesting discussion in several media, both print media and electronic media. Cases of violence perpetrated on children and or women in Indonesia itself cannot be underestimated.¹

Like women, children are part of the younger generation, one of the human resources who are the potential and successors of the ideals of the nation's struggle, which require guidance and protection in the context of physical, mental and social development in a harmonious and balanced whole.² Children as the younger

¹Kordi, M. Ghufuran, (2015), *Durhaka Kepada Anak*. Yogyakarta : Pustaka Baru Press, P. 143

²Oscar Stefanus Setjo, Penyidikan Anak Yang Bertentangan Dengan Hukum Dalam Tindak Pidana Narkotika Di Wilayah Hukum Wilayah Hukum Polres Semarang Kota, *Jurnal Daulat Hukum* Vol: 3 No.

generation are the nation's assets, are the successors of the struggle and ideals of the nation as well as human resources for national development. The position of the child as a nation's asset must of course also be balanced with protection in the order of his life, both since he was still in the womb or at birth, then grew and developed. Children must have a comfortable, safe life and grow up in a healthy child's world. Healthy in the sense of the word physically and mentally healthy.³

Based on Act No. 23 of 2004 concerning the Elimination of Domestic Violence Article 1 paragraph (1), what is meant by domestic violence is any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, and or neglect household including threats to commit acts, coercion, or deprivation of liberty unlawfully within the scope of the household.⁴ Act No. 23 of 2004 also confirms that victims of domestic violence are entitled to protection from the family, police, prosecutors, courts, advocates, social institutions or other parties, either temporarily or based on the stipulation of a protection order from the court (Article 10 letter (Article 10 paragraph (1)). a)). The community is obliged to make efforts within the limits of its ability to prevent the occurrence of criminal acts, provide protection to victims, provide emergency assistance and assist the process of submitting applications for protection determination (Article 15).⁵ Domestic violence actually departs from a certain ideology that legitimizes oppression on one side, both individuals and groups against other parties caused by the assumption of inequality that exists in society. The position of the wife who is positioned in subordination to her husband requires the wife to always submit to her husband. Likewise a child who is never considered a partner by his parents. The problem arose after there was another ideological and cultural transformation which gave the idea that everyone has the same rights which in practice is not easily accepted by society. There are times when a wife argues with her husband, a child arguing with his parents is considered unusual, this unusualness often leads to violence.

Mediation is one way that can be taken in an effort to resolve domestic violence. With mediation, the parties will sit together to solve problems between them. Victims will be protected and involved in every stage of decision making. The confidential nature of mediation is very appropriate to be carried out in cases of domestic violence, because it occurs in a personal realm that is not known by other people. Mediation in the Indonesian legal dictionary comes from English mediation which means a peaceful dispute resolution process that involves the assistance of a third party to provide a solution that is acceptable to the disputing parties.⁶ Mediation can also avoid criticism of the legal process which has always been seen as inefficient so far, so that people, especially victims of domestic violence, are reluctant to report what happened to them, because of the assumption

2 (June 2020) ISSN: 2614-560X, P.2,
url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/9851>,

³Titin Prialianti, (2018), Perlindungan Hukum Hak Anak yang Berkonflik dengan Hukum dalam Sistem Pidana di Indonesia, Jurnal Daulat Hukum, Vol. 1 No. 3 (September 2018) ISSN: 2614-560X, P.2, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/3403>,

⁴State Gazette of the Republic of Indonesia of 2014 number 95 concerning the Law on the Elimination of Domestic Violence.

⁵*Ibid*, Articles 10, 11, and 15

⁶Oxford Dictionary

that the legal process they go through is complicated with results that are not necessarily in line with expectations. In Indonesia, mediation already has a legal umbrella, namely the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Courts, it is stated that mediation is "a method of resolving disputes through a negotiation process to obtain an agreement between both parties with the assistance of a mediator".

At first the protection of victims, especially domestic violence, could be reflected in the criminal justice process and facilitate justice for victims, so that the main problem was not that formal compensation for immaterial damages could only be sued in ordinary civil cases, but that the existence of these regulations did not respect the suffering of victims. The victim's suffering is not only physically material, but it is the inner suffering that the victim feels the most deeply.⁷This writing focuses on one form of protection that is non-penal or out of court by involving the role of the community in preventing, anticipating, providing protection and assistance to victims of domestic violence experienced by certain parties, especially children and women, namely violence in the household (domestic-violence) that occurs in the jurisdiction of the city of Pekalongan. Once the importance of successful settlement of cases of domestic violence outside the court that can save the life of the household, prompts the author to research and compile it in an article with the title, "Handling of Domestic Violence through Mediation Out of the Court".

The purpose of this study was to determine the settlement of Domestic Violence (KDRT) in the city of Pekalongan through mediation outside the court along with the obstacles and solutions.

2. Research Methods

The approach method used in this study was a sociological juridical legal approach and the specifications in this study include descriptive analysis. The sources and types of data in this study were primary and secondary data. Primary data were obtained through field studies and interviews with the Pekalongan City LP PAR Manager. And secondary data obtained from literature study. Data were analyzed qualitatively.⁸The data that had been collected was selected and arranged systematically, and then analyzed using existing theories qualitatively, so as to reach a conclusion and the purpose of this research. The specification of this research was descriptive qualitative. Descriptive research aims to systematically and accurately describe facts and characteristics regarding a particular field. This study attempted to describe a situation or event. The data collected was descriptive in nature so it did not intend to seek explanations, test hypotheses, make predictions, or study the implications on the psychological condition of women and children victims of domestic violence.⁹

⁷C.Maya Indah, (2016), *V Perlindungan Korban, Suatu Perspektif Viktimologi dan Kriminologi*, Jakarta : Prenadamedia Group, P.161

⁸Peter Mahmud Marzuki. (2011). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, P.42

⁹Azwar, Saifuddin. (2014). *Metode Penelitian*. Yogyakarta:Pustaka pelajar, P.6

3. Results and Discussion

Positive criminal law, both material and formal, even though it pays attention to victims directly, especially to victims of domestic violence by providing compensation, is still very limited and limitative, namely in the event that the judge imposes a conditional sentence in Article 14 c of the Criminal Code, the judge can apply special conditions for the convict to compensate for all or part of the loss resulting from the crime. Through a critical perspective on these provisions, other weaknesses in the conditional criminal provisions can be studied. Conditional criminal provisions in the Criminal Code do not guarantee that victims will automatically receive compensation if the judge imposes a conditional sentence, because even though the defendant has been sentenced to a conditional sentence, there is no obligation for the judge to include special conditions in the form of compensation.¹⁰

The absence of legal certainty is a major problem in Indonesia in this modern era. Legal uncertainty is a major and systemic problem that includes elements of society as a whole. Legal uncertainty is also an obstacle to stable and just political, social and economic development.¹¹In this case Judges are only required by law to include general conditions as absolute conditions for conditional punishment if the judge imposes a maximum imprisonment of one year or imprisonment. Compensation in Article 14c of the Criminal Code seems to function as a substitute for the main crime, and cannot be given by the judge as a stand-alone sanction. So, it is only a special condition that is facultative in nature not to carry out the main punishment imposed on the convict. Therefore, it can be concluded that the application of conditional criminal institutions in positive law still does not reflect the protection of victims.

The increasing number of cases of crimes against children as victims in society reflects the weakness of law enforcement in Indonesia so far. Crimes against children cause unrest in society, especially parents. Children who are victims of crime often experience prolonged trauma as a result of the incident.¹² With regard to crimes against children, it arises because the prison sentences given to the perpetrators do not make the public afraid to do so, in fact many perpetrators commit these crimes.¹³

A critical perspective on the provisions for merging cases of compensation claims in criminal cases as stipulated in Article 98 to Article 101 of the Criminal Procedure Code tries to state how the aspects of protection for victims are. The advantage of packaging the rights of crime victims with the incorporation of

¹⁰In this regard, the special requirements, apart from paying compensation to victims due to criminal acts committed by the perpetrator, also open up the possibility of customary criminal sanctions.

¹¹Eka Damayanti, *Perlindungan Hukum dari Provokasi Aborsi Terhadap Anak Yang Dikandung Karena Pemerkosaan (Studi Kasus Pada Yurisdiksi Eks Karesidenan Cirebon)*, *Jurnal Daulat Hukum*, Vol.2 No. 4, (December 2019) ISSN: 2614-560X, P.3,
URLs:<http://jurnal.unissula.ac.id/index.php/RH/article/view/8435>,

¹²Sulistyo Utomo, (2019), *Penerapan Hukum Pidana dalam Hukum Perlindungan Anak di Pengadilan Negeri Ngawi*, *Jurnal Daulat Hukum*, Vol. 2 No. 4 (December 2019) ISSN: 2614-560X, P.2,
url:<https://media.neliti.com/media/publications/324314-application-of-criminal-penalties-in-child-abuse.pdf>

¹³*Ibid*, P.2

compensation claims in criminal cases is that it makes it easier for victims or their families because they do not need to file a lawsuit themselves. However, the provisions of the Criminal Procedure Code which are intended for general criminal cases are still more civil in nature, even though they are given through a criminal process.¹⁴ On the other hand, it must also be recognized that the implementing regulations for compensation, namely implementing regulations no. 27 of 1983 only determined the amount of material compensation for costs that had been incurred, and did not include immaterial compensation. The Criminal Procedure Code is also unable to regulate what if the perpetrator is unwilling or unable to pay restitution to the victim. The process of merging compensation cases is still facultative, namely from Article 99 paragraph 1 "the judge can decide to combine the compensation case into the criminal case." Therefore, the judge is given the opportunity to reject or accept the application for the merger of the compensation lawsuit filed by the victim or reject the application.¹⁵

The ambiguity of the provisions for merging civil compensation cases in criminal cases, namely if the defendant who has caused the loss does not reside or resides within the territory of the district court that hears the case. Thus, if the victim submits an amalgamation of compensation to a court covering the area where the defendant lives or resides, while the criminal case itself is examined by another court outside the area where the defendant lives or resides, then this case becomes an ordinary civil lawsuit, and not a merger.¹⁶

Another route is needed whose goal is the completion of the elimination of domestic violence by taking into account the rights of the victims and respecting the perpetrators of domestic violence themselves. This alternative route is in the form of resolving the Elimination of Domestic Violence through mediation outside the Court. In line with this route, the Pekalongan city government through the Institute for the Protection of Women, Children, and Youth or LP PAR takes a strategic path through mediation outside the court as an alternative to resolving the Elimination of Domestic Violence.

3.1. The role of LP PAR in assisting the handling of domestic violence through mediation outside the court

Data from the Social Service for Population Control and Family Planning in Pekalongan City stated that during the January-June 2020 period, 17 cases of violence involving children were reported and reached. Then, the types of cases that

¹⁴ C. Maya Indah, (2016), *Perlindungan Korban, Suatu Perspektif Viktimologi dan Kriminologi*, Jakarta : Prenadamedia Group, P.160

¹⁵Article 99 paragraphs 1 and 2 of the Criminal Procedure Code are the basis for judges' considerations to reject or accept the application for amalgamation of compensation claims filed by the victim, namely: (1) Considerations regarding the authority to adjudicate lawsuits, both absolute and relative; (2) the truth of the basis for compensation. (3) The decision or determination of the penalty for reimbursement of costs that have been incurred, in addition to the sentence for the defendant.

¹⁶Article 99 paragraphs 1 and 2 of the Criminal Procedure Code, namely absolute and relative authority, the basic truth of compensation. It becomes the basis for the judge's consideration to accept or reject the application for merging the claim for compensation submitted by the victim to his criminal case.

occur in children are dominated by cases of sexual violence and cases of violence against women are dominated by cases of domestic violence. LP PAR also recorded at least 4 cases of sexual violence in 2020 and some were handled through a mediation approach outside the Court. However, in 2020 cases of child sexual violence decreased compared to 2019 which reached 6 cases, but the types of cases in 2020 are quite severe.¹⁷

In 2021, LP PAR Pekalongan city recorded complaints of child-based violence cases that included 10 cases and 12 gender-based cases, the two categories of cases of which the majority of victims were women. Cases of violence against children and women that occur are the same as the iceberg phenomenon, that which appears on the surface may be fewer than those that are not visible, in other words, there may be more unreported cases than reported cases.

The number of cases of violence against children and women in 2021 decreased, compared to the previous year, but during the pandemic the types of cases that occurred were considered to be more severe. Compared to cases in 2020, it has decreased, the quantity of cases may have decreased, but sometimes if you look at the severity of a case, it turns out that during the pandemic, cases of violence that occurred were of a more severe type, for example, cases of violence experienced by children were the perpetrators of the biological father or siblings and carried out over a long period of time. LP PAR detailed that in cases of child-based violence (under 18 years of age), 8 cases of which the victims were women and in gender-based cases (over 18 years of age) 12 cases, all of the victims were female.

The process of resolving cases of domestic violence (KDRT) through mediation outside the Court is carried out in accordance with the existing mediation principles, namely the voluntary principle. This means that each party in the case mediates on their own free will, voluntarily and without coercion or pressure from other parties. Although the city of Pekalongan is touted as a Religious City, it does not reduce the number of violence against women and children. Therefore, the Mayor of Pekalongan at that time, M. Basyir Ahmad formed the Institute for the Protection of Women, Children and Youth or commonly called LP PAR Pekalongan City. This institution was established by the government of Pekalongan City on December 18, 2006 by Decree of the Mayor of Pekalongan and the secretariat of LP PAR Pekalongan City is located on Jl. Majapahit No. 7A Pekalongan City.¹⁸

Because the smallest element of a country's society is the family. So welfare, peace, and harmony in a large society (nation) is very dependent on welfare, peace, and family harmony. Families are formed through marriage so there must be an effort to save the household.¹⁹

Meanwhile, the order of assistance carried out by the Pekalongan City LP PAR in completing the Elimination of Domestic Violence is:

¹⁷ Berita Satu.Com, <https://www.beritasatu.com/nasional/710485/kota-pekalongan-serius-soal-perlindungan-anak>, accessed 17 September 2021

¹⁸Naely Soraya, (2018), *Penanganan Trauma Anak Korban Kekerasan Seksual di LP PAR Kota Pekalongan*, Semarang : UIN Walisongo, P.46

¹⁹Yanto Irianto, (2018), *Pelaksanaan Tindak Pidana Pengaduan Kekerasan Seksual Suami Terhadap Istri Di Wilayah Hukum Polres Cirebon; Jurnal Daulat Hukum*, Vol. 1 No. 3 (September 2018) ISSN: 2614-560X, P.2, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/3398>,

- **Registration**
LP PAR officers register the complainants (victims, RT/RW, family representatives or Village), as well as explore initial information related to the scene, time, type of case, data on victims and perpetrators.
- **Submission of Reports and Services**
After the submission of the complaint report to the Professional Team, immediate follow-up is carried out to provide handling services through the following processes: Team coordination, determining work steps/strategies, and services. If the settlement is through mediation outside the Court, the LP PAR Professional Team consists of the Person in Charge, Chairperson, Secretary, and professions in the fields of psychology, medicine, and the field of Social, Children, and Adolescent assistance.
- **Recovery**
After the case resolution process, psychological, mental, social recovery services are carried out through client assistance, psychological therapy, mental and spiritual strengthening, and economic empowerment if deemed necessary.²⁰

3.2. Barriers to resolving domestic violence through mediation outside the Court

It seems that patriarchal culture still dominates in married life, men or husbands feel superior so that even if they are in a position that clearly has made a mistake, they still do not accept their mistakes gracefully, even threaten to divorce because their wives have reported them the domestic violence case to the relevant Protection Agency or to the Police. Likewise, husbands who have been sentenced to criminal sanctions by court decisions because they are proven guilty, in the end they remain adamant and do not want to continue their marriage or he does not want to return to his household.

Another challenge or obstacle that becomes a problem in resolving domestic violence cases is the openness to the victim. Victims of domestic violence are more likely to close themselves and keep silent about the fate that befell them. Even though he talked to the LP PAR in the city of Pekalongan, it was to certain people with very limited limits. This condition greatly hinders the resolution of domestic violence. In addition, the attitude of the victim who tends to protect the perpetrator for humanitarian reasons even though he himself is the object of adverse treatment. Many victims are not willing to talk to those who are supposed to help resolve domestic violence cases. Thus the victim will be more tormented if this is not resolved.

4. Conclusion

The perception of the people of Pekalongan city which reveals that domestic violence is still an internal family matter is still happening, but the PKDRT Law has slightly changed the perception of domestic violence itself. Some people who are aware of the fulfillment and defense of their human rights, have started to process cases of domestic violence, on the other hand some are

²⁰ Leaflet LP PAR of Pekalongan City 2020.

still very careful in dealing with domestic violence. Penal settlement is carried out by the police or other law enforcement officers by processing the law for the perpetrators until the court gives a verdict. The resolution of domestic violence is not only repressive but tends to focus on aspects of preventing domestic violence. In addition, education for children and other household members is to provide a strong foundation for mutual tolerance, respect for differences, forgiveness, prioritizing deliberation and upholding the rule of law. However, if in the case of domestic violence, making children as targets and victims, stakeholders must save children from the effects of domestic violence cases, prioritizing solutions through alternative, non-penal ways that involve government institutions, communities and social organizations that are already close to the community, such as LP PAR Pekalongan city. . LP PAR Pekalongan city prioritizes the settlement of domestic violence outside the court to achieve the effectiveness of a fast settlement, LP-PAR of Pekalongan City must also intensify socialization about child protection to minimize and prevent acts of child sexual violence.

5. References

Journals:

- [1] Damayanti, Eka. (2019). "Perlindungan Hukum dari Provokasi Aborsi Terhadap Anak Yang Dikandung Karena Pemerkoasaan (Studi Kasus Pada Yurisdiksi Eks Karesidenan Cirebon)", *Jurnal Daulat Hukum*, Vol.2, No. 4, [url:http://jurnal.unissula.ac.id/index.php/RH/article/view/8435](http://jurnal.unissula.ac.id/index.php/RH/article/view/8435),
- [2] Irianto, Yanto. (2018). "Pelaksanaan Tindak Pidana Pengaduan Kekerasan Seksual Suami Terhadap Istri Di Wilayah Hukum Polres Cirebon". *Jurnal Daulat Hukum* Vol. 1 No. 3, [url: http://jurnal.unissula.ac.id/index.php/RH/article/view/3398](http://jurnal.unissula.ac.id/index.php/RH/article/view/3398),
- [3] Prialianti, Titin. (2018). "Perlindungan Hukum Hak Anak yang Berkonflik dengan Hukum dalam Sistem Pidana di Indonesia ". *Jurnal Daulat Hukum* Vol. 1 No. 3, [url: http://jurnal.unissula.ac.id/index.php/RH/article/view/3403](http://jurnal.unissula.ac.id/index.php/RH/article/view/3403),
- [4] Septria, Arif. (2018). Penerapan Restoratife Justice Sebagai Alternatif Penyelesaian Tindak Pidana Penganiayaan Di Satreskrim Polsek Lasem, *Jurnal Daulat Hukum*, Semarang, Unissula, Vol. 1. No. 1, [url: http://jurnal.unissula.ac.id/index.php/RH/article/view/2629](http://jurnal.unissula.ac.id/index.php/RH/article/view/2629),
- [5] Stefanus Setjo, Oscar. (2020). "Penyidikan Anak Yang Bertentangan Dengan Hukum Dalam Tindak Pidana Narkotika Di Wilayah Hukum Wilayah Hukum Polres Semarang Kota". *Jurnal Internasional Daulat Hukum* Vol. 3 No. 2, [url:http://jurnal.unissula.ac.id/index.php/RH/article/view/9851](http://jurnal.unissula.ac.id/index.php/RH/article/view/9851),
- [6] Utomo, Sulistyoyo. (2019). "Penerapan Hukum Pidana dalam Hukum Perlindungan Anak di Pengadilan Negeri Ngawi". *Jurnal Daulat Hukum* Vol. 2 No. 4, December 2019, [url: https://media.neliti.com/media/publications/324314-application-of-criminal-penalties-in-chi-e2a0fcbf.pdf](https://media.neliti.com/media/publications/324314-application-of-criminal-penalties-in-chi-e2a0fcbf.pdf).

Books:

- [1] C.Maya Indah, C. (2016). *Perlindungan Korban, Suatu Perspektif Viktimologi dan Kriminologi*. Jakarta : Prenadamedia Group
- [2] Kordi, M. Ghufron. (2015), *Durhaka Kepada Anak*. Yogyakarta : Pustaka Baru Press
- [3] Leaflet LP PAR Kota Pekalongan tahun 2020
- [4] Naely Soraya, Naely. (2018). *Penanganan Trauma Anak Korban Kekerasan Seksual di LP PAR Kota Pekalongan*. Semarang : UIN Walisongo
- [5] Peter Mahmud Marzuki, (2011), *Penelitian Hukum*, Jakarta : Kencana Prenada Media Group.
- [6] Saifuddin, Azwar. (2014). *Metode Penelitian*, Yogyakarta : Pustaka Pelajar

Regulation:

- [1] Criminal Code and Criminal Procedure Code
- [2] The State Gazette of the Republic of Indonesia was ratified on 17 December 1970 concerning Act No. 14 of 1970 concerning Judicial Power
- [3] State Gazette of the Republic of Indonesia of 2004 Number 95 concerning the Law on the Elimination of Domestic Violence Number 23 of 2004
- [4] State Gazette of the Republic of Indonesia of 1999 Number 147 concerning Act No. 35 of 1999 concerning Judicial Power
- [5] State Gazette of the Republic of Indonesia of 2004 Number 8 concerning Act No. 4 of 2004 concerning Judicial Power
- [6] State Gazette of the Republic of Indonesia of 2009 Number 157 concerning Act No. 48 of 2009 concerning Judicial Power
- [7] State Gazette of the Republic of Indonesia of 2014 number 95 concerning the Law on the Elimination of Domestic Violence

Internet:

- [1] Berita Satu.Com, <https://www.beritasatu.com/nasional/710485/kota-pekalongan-serius-soal-perlindungan-anak>, accessed 17 September 2021