

The Indonesian family as a contested site of women's rights¹

Patriarchal religion and culture are embedded in various family laws, such as the 1974 Marriage Law. The socio-political context that allows fundamentalism to grow and influences the law-making process further weakens women's position in the family and society. Fundamentalist groups managed to influence law makers at the local level to such an extent that by the end of 2011, 207 regional by-laws used 'traditional' cultural values and religious teachings as their sources; 78 of these were discriminative towards women.² Lack of capacity among legal authorities and failure of the institution (the Ministry of Women's Empowerment and Child Protection)³ mandated by law to uphold the Domestic Violence Act (DVA) adopted in 2004, also create impunity and limit female victims of domestic violence from exercising their rights and accessing justice.

Nursyahbani Katjasungkana

The 2004 Domestic Violence Act: some progressive provisions

Article 15 of the DVA requires that each person is to the best of his/her ability obliged to: a) prevent a criminal act, b) protect the victim, c) provide emergency assistance, and d) facilitate the process of requesting a protection order. Domestic violence is no longer a private matter but a public concern.

DVA stipulations are regulations for the following reasons. Firstly, an integrated approach is used, which is not only a deterrent, since it criminalizes the perpetrator, but also contains some preventive and rehabilitative provisions that emphasize support to victims. Secondly, the DVA definition includes all members related by blood, marriage or employment (in the case of domestic helpers) and living under the same roof. Article 2 of the DVA provides protection to: 1) husband, wife and child/ren and 2) persons living in the same household as the individuals (as stated in 1) and who are related by blood, breastfeeding,⁴ guardianship or custody. Persons who work in the household are also considered family members for as long as they live under the same roof.

Thirdly, Paragraph 10 of Chapter IV of the DVA deals with the rights of victims, including a) protection from family members, police, prosecutors, courts, lawyers, social institutions or other parties, whether on a temporary

basis or based on court orders; b) access to health services according to medical needs; c) special treatment to maintain confidentiality of the victim; d) welfare and legal assistance at all levels of the investigation, according to existing laws; and e) religious guidance/spiritual counselling. The social institutions referred to are the organizations concerned with the issue of domestic violence, for example, legal aid groups. Social workers are those who are formally trained or those who have practical experience in social work. This means that the issue of gender-based violence, materialized in the DVA as well as other conventions related to the elimination of gender-based violence, must be included in the curricula of legal aid, social work, health and legal education.

Fourthly, the victim protection principle is further strengthened by a stipulation known as the protection order (Article 16 Paragraph 3), which rejects the perception that the DVA tends to cause family breakups and a high rate of divorce. A protection order can be requested on behalf of the victim; similarly, a restraining order can be requested against perpetrators. Fifthly, Articles 5 and 6 of the DVA define violence to include physical, psychological and sexual violence.

Sixthly, the DVA introduced economic abuse or economic neglect. Article 9 of the DVA states that 1) it is forbidden to neglect persons living in the same household; as it is

stipulated by laws, consensus or agreement that a person is obligated to provide a livelihood, care or maintenance to those persons living in the same household; 2) neglect as referred to in Paragraph 1 also applies to all persons who cause economic dependence by limiting and/or forbidding other persons within the household from working or earning a suitable income within or outside the household, such that they become victims under his control.

The struggle for the law: transformative legal aid and the triangle of empowerment

APIK, or the network of offices of feminist lawyers, has used the concept "transformative legal aid" since 1995. A legal case is used as an entry point to look at women's experiences in dealing with the legal system and those experiences are used as research data and translated into policy advice. APIK also uses the concept of the triangle of empowerment in which civil society, parliament (feminist politicians) and government (femocrats) together play a critical role in drafting and advocacy.⁵ This triangle, when it works well, bridges civil society and the state, articulating women's demands, translating them into policy issues and fighting to get political support for their agenda.

During the first year of its formation in 1995, APIK handled 111 cases, 65 percent of which were domestic violence cases. The difficulty in handling them was mainly attributed to the lack of awareness - not only among victims but also among law enforcers, religious leaders, family members and the public in general - that domestic violence is a crime. APIK demonstrated that the only legal regulation on sexual assault in the Criminal Code was very ineffective.

The most contentious aspect of advocating the DVA was the culture and belief system, especially in the Muslim community.⁶ Indonesia has some 300 ethnic groups, all with their own spiritual traditions and customs. Most of them share the notion of women's subordination. Women's economic dependence on men is another factor that made it difficult to punish perpetrators of domestic violence.

In 1997, APIK organized a seminar on "The Social and Legal Responses toward Domestic Violence". The outcome was a mandate to APIK to begin the process of formulating a draft of the DVA.⁷ APIK then conducted media campaigns to promote monthly activities that enabled abused women to report grievances. Policy studies were conducted to compare the Indonesian Criminal Justice Code with domestic violence acts in Malaysia, Turkey, Australia and the United States. Life stories of female victims of domestic violence and their experiences in dealing with the legal system were also collated.⁸ Some of these activities were organized under the auspices of the National Commission on Violence Against

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Women, following its formation in 1998. The final outcome was a draft of the DVA as well as an academic paper produced by the drafting team in collaboration with the Centre for Gender and Law Studies of Brawijaya University in East Java. These were then disseminated and discussed in several cities in Indonesia.

In 2002, the engagement of law makers started. The draft of the DVA (the bill) was submitted to the Indonesian Parliament and the Indonesian Government by APIK's Coalition. Regretfully, there was no response by the government, represented by the Ministry of Women's Empowerment and Child Protection (MoWE & CP), although parliament members were actively involved in reviewing the draft. As the legislating process was going on, lobbying and campaigning activities continued. The parliament finally enacted the DVA on 14 September 2004.

Implementation of the DVA and access to justice

The UNDP defines access to justice as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice and in conformity with human rights standards".⁹ APIK conducted a desk study that concluded access to justice is not guaranteed by the state. The 2006 UNDP conceptual framework sets normative standards. All laws and procedures must be in place and understood by duty and claim holders. The DVA must be understood by legal authorities, other institutions mandated by the law and claim holders. However, the government has no national action plan to implement the DVA. The failure of the MoWE & CP, as coordinator, in upholding the DVA also contributes to the lack of understanding of legal authorities, service providers and claim holders.

A second requirement is legal awareness by victims of domestic abuse, which enables them to have a better understanding of the legal aspect of their case and of the circumstances that triggered the abuse. In Indonesia, the public's familiarity with the law and legal processes is generally very low. This also applies to awareness of the DVA. Since its enactment, few initiatives have been undertaken to improve the public's knowledge about the DVA. These efforts are inadequate in view of Indonesia's population of more than 240 million, its large geographical area, and the low level of legal awareness especially among women.

The third component is access to appropriate forums, either formal or informal. The availability of legal remedies and legal awareness alone is not sufficient for women to gain access to justice. Victims must have access to forums or other forms of mediation through mechanisms that are in their interest. Law enforcement agencies must also facilitate victims' access to justice and be open to accepting

Below: Conducting a wedding prayer, Indonesia.

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domestic abuse cases. The dual court system - *shariah* and general court - and the dichotomy between the civil and the criminal court systems, are a major obstacle for abused women in their quest for justice. The criminal court system is oriented towards punishment, while family members are often influenced by cultural and religious interpretations as well as economic considerations (the possible absence of the breadwinner).

A problem is that although the definition of 'family' in Article 2 of the DVA is quite broad, people with non-normative gender identities or sexual orientation, as well as couples who have not registered their marriage, and children who are considered illegitimate, face various obstacles in accessing legal remedies provided by the DVA. The long and complicated criminal procedure is also a barrier for abused women. It may take months or even years for the court to give its verdict. This makes the procedure very costly because of court and lawyer fees; free legal aid for women is limited and mostly located in big cities.

The fourth component in the 2006 UNDP framework is access to effective handling of grievances and provisions of remedies. It implies that duty bearers or legal enforcers and service providers must take necessary action to provide remedies for a grievance. Our study shows that it is difficult for victims to access such services. The DVA gives victims the right to health, social, spiritual, psychological and legal services. However, we found that these services were not available in many locations. Even where they were available, law enforcers might not provide relevant information or might withhold these services from the victims. The management of a case is considered effective when law enforcement agents and service providers take the appropriate action to resolve abuse cases. The results of monitoring activities by Rifka Annisa and LBH APIK Jakarta in 2009 indicated that law enforcers and service providers were not adequately carrying out their duties and taking appropriate action to help victims, including the most basic action such as issuing a protection order.¹⁰

The fifth component is satisfactory remedies obtained. A legal settlement is considered satisfactory, from the point of view of abuse victims, when all procedures are carried out in accordance with the DVA and human rights standards are fulfilled. An investigation by the Centre for Human Rights Studies at Padang University concluded that legal resolutions on domestic abuse cases are still not satisfactory.¹¹ Thus, the requirements stipulated in the 2006 UNDP Conceptual Framework on Access to Justice are generally not fulfilled in Indonesia.

Conflicting laws and regulations

Apart from the problems noted above, the DVA conflicts with other laws, especially the 1974 Marriage Law. There are also contradictions between the DVA and the many regional by-laws promulgated after the adoption of a policy of regional autonomy in 2001. Similarly, the influential 1991 Compilation of Islamic Laws and the Labour Law contains provisions that make access to justice for victims of DVA difficult.

The 1974 Marriage Law limits a domestic relationship to that between husband and wife and between parent and child. It stipulates an unequal relationship between men and women through a rigid division of labour by which a husband is the head of the family and main wage earner and a wife is the household caretaker (Article 31 in conjunction with Article 34). This Marriage Law regulation can inspire men to prohibit women from working outside the house, which is considered an economic abuse by the DVA.

The provision that gives husbands the right to adopt and practice polygamy,¹² as stipulated in the 1974 Marriage Law in Article 3 (2), is not only discriminatory but also male-biased, as it places the woman as a household caretaker who must serve her husband's sexual needs, a producer of children who is not allowed to be sick (Article 4 (2)). The Criminal Code (Articles 278 and 279) considers marriage while in another marital relationship a criminal act or a marital crime. However, polygamous marriages are seldom exposed by law enforcers. The 1991 Compilation of Islamic Laws determines that a marriage can be substantiated if the following requirements are fulfilled: a) bridegroom, b) bride, c) a male relative or guardian of bride, d) two witnesses and e) marriage solemnization. The groom must also pay a dowry or *mahr*. Without civil registration, however, the marriage is not legal according to the Marriage Law. In an 'unofficial' marriage, the woman and children have no legal recourse in terms of claiming income, assets and the 'husband's' inheritance.

Conceptual contestations

In Indonesia, the family is seen as the fundamental unit of the society; this is legalized in the 1974 Marriage Law. Compounded by Islamic teachings and patriarchal customs this leads to a culture of silence where different kinds of discrimination and violence experienced by women go unvoiced. APIK's Coalition is fully aware of the importance of the family in Indonesian society. For that reason, even while using the principles of gender equality, human rights

and non-discrimination, the 'save our family' discourse was consciously incorporated as a core value in promoting and advocating the domestic violence bill. Gender-neutral wording such as 'anyone' or 'victim' were used to convince the opponents of the bill that it would protect all family members, including men. APIK's Coalition also took into consideration the situation of domestic workers who may be abused by their female employers who treat them as family property. This is why APIK's Coalition used the term 'domestic violence' rather than 'family violence'. APIK's Coalition was able to convince society, government and the opponents of the bill that the law on domestic violence was not meant to send a husband to jail or to make a criminal case, but that it was built on values of equality, peace and unity within the family, also known in Islam as maintaining a 'harmonious family' (*keluarga sakinah*, a safe and peaceful family). The success of APIK's Coalition in advocating the DVA means that the rigid separation of the domestic and the public arena was broken down.

Conclusion

The notion that domestic violence is an internal family problem or a private matter reinforces the tendency to resolve such abuse within the family or by customary law. The silence around domestic violence and the inability of victims to report the abuse they experience are linked to the weak structural position of women vis-à-vis their husbands, their families and the public at large, due to the prevalence of gender stereotyping in Indonesian society. Various policies and laws further formalize gender stereotyping. The public's perception that it is an honour for a woman to be a wife and a mother, and that a mother's primary role is manager of the household (as defined in the Marriage Law) tends to influence victims of abuse to remain dependent - economically, socially and emotionally - on the perpetrators of abuse. These norms have been legalized into various laws and policies.

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Notes

- 1 This article is based on LBH APIK's experiences, a study on the implementation of the DVA conducted by the Kartini Asia Network/APIK (2009) and a follow up desk study.
- 2 See Komnas Perempuan. 2011. *Annual Report on Violence Against Women*, Jakarta: Komnas Perempuan
- 3 In 2000 the Ministry for Women's Affairs was renamed the Ministry of Women's Empowerment, under the progressive Muslim Minister Khofifah Indar Parawansa. In 2009 'Children's Protection' was added to the name.
- 4 According to Islamic law, when a child is breastfed by a woman other than its mother, its status is the same as a biological child.
- 5 Wieringa, S.E. & Vargas, V. 1998. 'The Triangle of Women's Empowerment', in G.A. Nijeholt, V. Vargas & S.E. Wieringa (eds.) 1998. *Women's Movements and Public Policy in Europe, Latin America and Caribbean*, New York and London: Garland, pp 3-25 (p.3)
- 6 Munir, L.Z. 2005. 'Domestic Violence in Indonesia', *Muslim World Journal of Human Rights* 2(1):1-37; Munti, R.B. 1997. 'Pemukulan Istri dalam Perspektif Islam' [Wife Battering from the Perspective of Islam], *APIK Bulletin* 5:7-9.
- 7 We extend our thanks to NOVIB, the Ford Foundation, USAID and other funding agencies and individuals/organizations, that we cannot list individually, for enabling APIK to produce a six-year strategic plan and formulate a draft of the DVA until it was enacted as the DVA No 23/2004.
- 8 Katjasungkana, N. & A. Damanik (eds). 2004. *Studi kasus kekerasan domestik: Kejahatan yang tak dihukum [Case studies on domestic violence, crimes without punishment]*, Jakarta: LBH APIK Jakarta.
- 9 UNDP. 2006. *Programming for Justice: Access for All - A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice*, Asia-Pacific Rights and Justice Initiative, UNDP Regional Centre in Bangkok (p.5); (accessible from <http://tinyurl.com/UNDP2006>)
- 10 Rifka Annisa is a women's organization established in 1993 in Jogjakarta (Central Java). It provides legal services and has a crisis centre for victims of domestic violence. LBH APIK (Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan/Indonesian Women's Association for Justice) is a legal aid society that provides free legal assistance to poor women and does advocacy work or legal reform. The 2004 DVA is a result of the advocacy of LBH APIK from 1995-2004.
- 11 Data was obtained from a researcher at the Centre for Human Rights Studies, Padang University. The results of this investigation were requested by the Judicial Commission to evaluate the promotion of judges; for this reason, the researcher has requested that his/her name be excluded.
- 12 The appropriate term is polygyny, because the right to polygamy (marriage to many partners) is only given to husbands and not to wives.

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