



**Samarah:** Jurnal Hukum Keluarga dan Hukum Islam  
Volume 7, No. 1, March 2023  
ISSN: 2549 – 3132; E-ISSN: 2549 – 3167  
DOI: 10.22373/sjhk.v7i1.9471

**Women's Access To Justice:  
Mediation For The Victims of Domestic Violence In Central Java,  
Indonesia**

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**Abstract:** Most of women victims of domestic violence in Indonesia avoid criminal justice system in resolving their cases because criminal justice system gives financial, psychological, and social burdens for them. They accessed the Religious Court instead and other institutions that implements mediation to resolve their cases. This fact gives wider opportunity for mediation, which is a form of restorative justice system, to be a better alternative dispute resolution for domestic violence cases in Indonesia. Unlike retributive justice system that focuses on punishing the perpetrators, restorative justice system focuses on rehabilitation of the rights of the victims. This research is an empirical legal study using the theory of restorative justice. Data was collected through interviews with key informants and literature studies. This research found that mediation for the victims of domestic violence has been carried out by the services institutions for the victims of domestic violence both in the court and outside the court. However, not all mediations conducted properly as some mediators both in-court and non-court have not been trained on mediation. There is also a tendency among one service provider to proceed all cases of domestic violence in the criminal court while others want to proceed through mediation, which sparks some internal conflicts among them. This research enriches the literature on services for victims of domestic violence as an effort to achieve restorative justice and provides alternative insights about solving domestic violence cases in Indonesia and especially Central Java.

**Keywords:** Mediation, domestic violence, restorative justice

|| Submitted: April 26, 2021 || Accepted: March 30, 2023 || Published: March 31, 2023

<http://jurnal.ar-raniry.ac.id/index.php/samarah>

**Abstrak:** Sebagian besar perempuan korban tindak Kekerasan Dalam Rumah Tangga (KDRT) di Indonesia menghindari sistem peradilan pidana dalam penyelesaian perkaranya, karena sistem peradilan pidana memberikan beban finansial, psikologis, dan juga beban sosial bagi mereka. Korban KDRT pergi ke Pengadilan Agama atau lembaga lain yang bisa melakukan mediasi untuk menyelesaikan kasus mereka. Fakta ini memberikan peluang bagi mediasi, yang merupakan salah satu bentuk sistem peradilan restoratif, untuk menjadi alternatif penyelesaian sengketa yang lebih baik untuk kasus-kasus KDRT di Indonesia. Berbeda dengan sistem peradilan retributif yang berfokus pada penghukuman pelaku, peradilan restoratif berfokus pada rehabilitasi hak-hak korban. Penelitian ini merupakan kajian hukum empiris dengan menggunakan teori keadilan restoratif. Pengumpulan data dilakukan melalui wawancara dengan informan kunci dan studi literatur. Hasil penelitian menemukan bahwa mediasi bagi korban KDRT telah dilakukan oleh lembaga pelayanan bagi korban KDRT baik di pengadilan maupun di luar pengadilan. Namun, tidak semua mediasi dilakukan dengan baik karena beberapa mediator, baik di pengadilan maupun di luar pengadilan, belum mendapatkan pelatihan tentang mediasi. Di samping itu, ada kecenderungan di antara penyedia layanan untuk memproses semua kasus KDRT langsung di pengadilan pidana, sementara yang lain ingin menyelesaikannya melalui mediasi, yang memicu terjadinya konflik internal di antara mereka. Penelitian ini memperkaya literatur tentang pelayanan bagi korban KDRT sebagai upaya mewujudkan keadilan restoratif dan memberikan wawasan alternatif tentang penyelesaian kasus KDRT di Indonesia dan khususnya Jawa Tengah.

**Kata Kunci:** Mediasi, kekerasan dalam rumah tangga, keadilan restoratif

## Introduction

The case of violence against women, in all of its forms, has increased year by year in all Indonesian provinces. In terms of location, the violence against women mostly took place in the household, which is domestic violence. It makes the home is the most insecure place for Indonesian women.<sup>1</sup> Domestic violence is the most common violence in Indonesia.<sup>2</sup>

Responding to domestic violence has issued Law No. 23, 2004, on the Elimination of Domestic Violence (DV Law). The aims of the DV Law is to eliminate domestic violence, provide services for the victims of domestic violence, and create a harmony of the Indonesian household. The DV Law

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<sup>1</sup>CNN, *Rumah adalah Tempat Paling Berbahaya bagi Perempuan* (Home is the most insecure place for women), available online <https://www.cnnindonesia.com/gaya-hidup> (last viewed: 5 December 2019).

<sup>2</sup>See: Reports from National Commission on Violence against Women, the Annual Notes/Catatan Tahunan (CATAHU), in year 2017, 2018 and 2019, domestic violence is the most reported cases in Indonesia.

mandates the Central and the Local Government (*Pemerintah Daerah*) to create a system of protection and service for the victims of domestic violence. Therefore, following the DV Law, the Central Government has issued several regulations<sup>3</sup> and established a coordination forum in order to implement the DV Law. At the same time, at the local level, the provincial and districts or cities governments have also created a system for protection and services for implementing the DV Law, which include the enactment of the local regulations (*Perda*) and the establishment of the Integrated Service Center (*PPT*) for the victims of domestic violence.

Central Java is a province that initially implemented the DV Law into a systemic policy for protecting and delivering services for the victims of domestic violence. Central Java was the first province to issue a regional regulation on protection for women and children. In 2009, Central Java issued Regulation No. 3, 2009, on the Implementation of Protection of the Victims of Gender-Based Violence and Children, and followed with the establishment of the Integrated Service Center (*Pusat Pelayanan Terpadu/PPT*) of Central Java in 2009 and the Commission for Protection of Victims of Gender-Based Violence (*Komisi Perlindungan Korban Kekerasan Berbasis Gender dan Anak/KPK2BGA*) in 2011.<sup>4</sup> Central Java has received many awards for its achievement in

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<sup>3</sup> These regulations are: a) Government Regulation of the Republic of Indonesia No. 4, 2006, on the Implementation and Cooperation in the Recovery of the Domestic Violence Victims of Domestic, b) Regulation of the Minister of Women's Empowerment No. 1, 2007, on the the Coordination Forum for the Implementation of the Collaborative Prevention and Recovery of Domestic Violence Victims; c) Regulation of the Minister of Women's Empowerment and Child Protection No. 22, 2010, on the Standard Operating Procedures for the Integrated Services for Witnesses and/or Victims of Trafficking; d) Regulation of the Minister of Women's Empowerment and Child Protection No. 5, 2010, on the Guidelines for the Establishment and Development of the Integrated Service Centers; e) Regulation of the Minister of Women's Empowerment and Child Protection No. 1, 2010, on the Minimum Service Standards of the Integrated Services for Women and Children Victims of Violence; f) Regulation of the Minister of Women's Empowerment and Child Protection No. 19, 2011, on the Guidelines for Empowering Women Victims of Violence.

<sup>4</sup>For the efforts of protection and service for women and children victims of violence the Central Java Government has issued ten regulations: a) Governor Regulation No. 76, 2006, on the formation of the *Pusat Penanganan Kekerasan terhadap Perempuan dan Anak* (PPKPA) or Centre for Handling of Women and Children Victims of Violence; b) Governor Regulation No. 106, 2008 on the Operational Standards and Work Mechanisms of the Integrated Services for Victims of Gender and Child-Based Violence in Central Java; c) Regional Regulation No. 3, 2009, on the Implementation of Protection of the Victims of Gender-Based Violence and Children; d) Governor Regulation No. 45, 2009, dated 7 September 2009, on the Procedures and Requirements for the Establishment of Integrated Services (*PPT*) and the Commission for the Protection of Gender-Based Violence and Child-Based Violence in Central Java Province; f) Decree of the Head of BP3AKB Number 411, 2009, on the Technical Guidelines for Membership of the *PPT*; g) Decree of the Head of BP3AKB of Central Java No. 463, 2010, on Technical Guidelines for the Election of Central Java Gender and Child-Based Victims Protection Commission (*KPK2BGA*). h) Governor Decree No. 411/103 A / 2011, dated August 1, 2011, which confirmed the *KPK2BGA*

implementing protection and services for women victims of domestic violence of women, including three years in a row received the Anugrah Parahita Ekapraya from the President of Indonesia.<sup>5</sup> In addition, Central Java's concept of reporting violence through an online system called *E-Kekerasan* has been adopted by the Ministry of Women's Empowerment and Children Protection for reporting the case of violence in Indonesia.

However, given these achievements above Central Java has several problems related to the implementation of protection and services delivery for the women victims of domestic violence. Among the problems is that Central Java has the highest reported case of domestic violence among other provinces in Indonesia.<sup>6</sup> Although it may indicate that women who experienced domestic violence have good access to the report service, but it is still an evidence that domestic violence is still a big problem in Central Java. In addition, according to the assessment of LRC-KJHAM, although the PPT has been established across 35 districts/cities in Central Java, however, the efforts for delivering services for the victims of domestic violence still need some improvements. LRC-KJHAM in its policy brief in stated that the majority of women victims of domestic violence still face various obstacles and discrimination in accessing services provided by the PPT.<sup>7</sup> There is also a tendency among the service providers, not only in Central Java, to rely on the litigation process in handling the case of domestic violence.

According to Phillipa Venning, state intervention on domestic violence in Indonesia tends to focus on legal aspects and ignores local aspects such as local culture and wisdom.<sup>8</sup> There are some local wisdom that can be utilized in settling

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is consisted of 5 people; i) Governor Decree No. 60, 2012, on the Plan for the Achievement of the Minimum Service Standard (SPM) for Women and Children Victims of Violence in 2012-2014. j) Governor Regulation No. 6, 2014, on the Service Standards of the Integrated Services for Victims of Gender and Child Based Violence (PPT) in Central Java Province; k) Governor Regulation No. 18, 2014 on the Procedures and Requirements for the Establishment of Integrated Services Center (PPT) and the Commission for the Protection of Gender-Based Violence Victims and Children (KPK2BGA).

<sup>5</sup>Inilahonline, *Ketiga Kali Jateng Raih Anugrah Parahita Ekapraya* (Available online: <https://inilahonline.com/ketiga-kali-berturut-turut-jateng-kembali-raih-anugrah-parahita-ekapraya/> (last viewed 12 December 2019).

<sup>6</sup>The National Commission on Violence against Women or *Komnas Perempuan* (the Women Commission) reported that in 2019, like in previous years, the Province of Central Java has the highest reported cases of violence against women in Indonesia, see: National Commission on Violence against Women, *Annual Notes/Catatan Tahunan (CATAHU)*, Jakarta, 8 March 2019.

<sup>7</sup>LRC-KJHAM, Policy Brief LRC-KJHAM tahun 2012, available online: <http://lrc-kjham.blogspot.com/2012/09/> (last viewed: 12 December 2012).

<sup>8</sup>Phillippa Venning, "Marrying Contested Approaches: Empowerment and the Imposition of International Principles: Domestic Violence Case Resolution in Indonesia", *Journal of Development Studies* 46, No. 3 (2010), p. 397.

conflict caused by domestic violence such as *musyawarah* (deliberation), which is close to the concept of mediation.

This research is an empirical legal study using the theory of restorative justice.<sup>9</sup> Data was collected through interviews with key informants and literature studies. The informants interviewed were judges at the Religious Courts, police, mediators in the PPT of Central Java, and top figures from Aisyiah Muhammadiyah and Fatayat of Nahdlatul Ulama, the two largest mass-organizations in Indonesia. A snapshot of the nature of domestic violence in Central Java is displayed to give an understanding about the specific tenets of domestic violence in Javanese communities. In addition, the mediation policy in Indonesia is also explored to give a better picture of how the Indonesian government governs mediation as one of its way in resolving conflict among its citizens.

### **The Nature of Domestic Violence in Indonesia**

According to the Law No 23, 2004, on the Elimination of Domestic Violence (DV Law), domestic violence is, “[A]ny action against anyone particularly woman, bringing about physical, sexual, psychological misery or suffering, and/or negligence of household including threat to commit act, forcing, or seizure of freedom in a manner against the law within the scope of household.”

At national level, the incidents of domestic violence are recorded by the National Commission on Violence against Women or Komnas Perempuan (the Women Commission) that issues a report on violence against women in Indonesia annually. The report, which is called CATAHU (Catatan Tahunan), usually published on 8 March of the year, which is the day of the International Women Day.

In 2016, the Women Commission reported that there were 259.150 cases of violence against women, which 245.548 of them were categorized as domestic violence.<sup>10</sup> The incident had increased in 2017 with 348.446 cases of violence against women, with 335.062 were domestic violence cases.<sup>11</sup> In 2018, the case of violence against women also increased with 406.178 incidents, with 71 percent of them (288.386) were domestic violence cases.<sup>12</sup> The Women Commission

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<sup>9</sup> Munir Fuady, *Metode Riset Hukum: Pendekatan Teori dan Konsep*, Jakarta: Raja Grafindo, 2018. Nur Rochaeti, “A Restorative Justice System in Indonesia: A Close View from The Indigenous Peoples’ Practices,” *Sriwijaya Law Review* 7, No. 1 (2023).

<sup>10</sup>National Commission on Violence against Women, *Annual Notes/Catatan Tahunan* (CATAHU), Jakarta, 7 March 2017.

<sup>11</sup>National Commission on Violence against Women, *Annual Notes/Catatan Tahunan* (CATAHU), Jakarta, 7 March 2018.

<sup>12</sup>National Commission on Violence against Women, *Annual Notes/Catatan Tahunan* (CATAHU), Jakarta, 8 March 2019.

states that during these years the Province of Central Java has the highest reported cases of violence against women in Indonesia.<sup>13</sup>

At the provincial level, data on the number of cases of violence against women in Central Java can be obtained from the Statistics Center (*Badan Pusat Statistik/BPS*) of Central Java. The BPS received the data from annual reports issued by the Office of Women Empowerment, Child Protection, Population Control and Family Planning/*Dinas Pemberdayaan Perempuan, Perlindungan Anak, Pengendalian Penduduk, dan Keluarga Berencana (DP3AP2KB)*, the office that deals with women's issues including domestic violence. The DP3AP2KB receives reports from 35 districts and cities in Central Java every three months.

Based on the data from the BPS of Central Java Province, the number of cases of violence against women over the age of 18 or adult women fluctuated over years. In 2016, there were 1423 incidents of violence against women reported. The number of incidents decreased in 2017 with 1210 incidents before it rised up again in 2018 with 1386 incident.<sup>14</sup>

The number of cases reported above is believed to be only 'a tip of an iceberg'. There are more cases of domestic violence, that are not reported because of some reasons such as the victim feels ashamed as the incident may defile her physically, psychologically, and socially, and the victim feels obliged to protect the good name or harmony of her family,<sup>15</sup> especially if the perpetrators are the family members such as her husband, especially for Javanese women who has an obligation of '*njaga praja*' (protecting the kingdom), means protecting the good name of the household.

The reasons above make the quest for the accurate data of domestic violence as a big challenge. According to M. Sairi Hasbullah, chief of Social Resilience Statistics at the *Badan Pusat Statistik* (Indonesia Central Statistics), the number of cases of domestic violence against women in Indonesia is difficult to record accurately, because most victims of domestic violence choose to hide what happened to them. He states, "Violence against women remains hidden behind a culture of silence. Some people still consider violence an accepted behavior."<sup>16</sup> Regarding the methodology in obtaining the data, Hasbullah argues that, "due to limitations and methodological differences, the data is not

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<sup>13</sup>National Commission on Violence against Women, *Annual Notes/Catatan Tahunan (CATAHU)*, Jakarta, 8 March 2019.

<sup>14</sup>Central Java Statistics (BPS Jateng), *Jumlah Kekerasan Berdasarkan Jenis Kekerasan Yang Dialami Oleh Perempuan Usia di atas 18 Tahun*, available Online: <https://jateng.bps.go.id> (last viewed: 10 December 2109).

<sup>15</sup>Harkristuti Harkrisnowo, *Hukum Pidana dan Kekerasan Terhadap Perempuan*, Jakarta: KKCW-PKWJ, UI, 2000.

<sup>16</sup>The Jakarta Post, '*Culture of Silence*' hinders reporting of violence, 09 August 2012, available online: <http://www.thejakartapost.com> (10 December 2019).

comparable with any international data on violence against women.”<sup>17</sup> However, this statement is not correct enough because other countries also have the same problem in getting accurate data on domestic violence case. In Australia, for example, Parliament of Australia reported that, “[w]omen appear to be particularly reluctant to report violence by current partners... women seem better able to identify Intimate Partner Sexual Violence (IPSV) by a previous, rather than a current partner. They may feel confused, loyal and forgiving about a current partner”<sup>18</sup>.

According to Donna Chung, from the University of Western Australia, [i]t is important to note that all statistics about MVAW (Male Violence against Women), regardless of their source, will be a conservative or underestimate of the actual extent of the problem. This is because there will always be women who are understandably distressed or embarrassed about having been subjected to such violence, and as such, do not disclose or report it.<sup>19</sup>

Australia and Indonesia have the same problem about accuracy of the data on domestic violence cases. Feeling the shame that is experienced by women victims of domestic violence in Australia and Indonesia has prevented them from reporting their cases. However, Dale Bagshaw and Donna Chung argue that although the accurate data is difficult to obtain, for the benefit of government in creating policies and services for the victims of domestic violence, the existing data and the estimation of the number of domestic violence cases that have been collected is very useful.<sup>20</sup>

### **Causes of Domestic Violence in Central Java**

According to LRC-KJHAM, domestic violence occurs due to unequal power relations between a husband and his wife. The wives in Java are often regarded as the property of the husbands, so they can do at any will to his wife. This was also confirmed in the report of the *Komisi Perlindungan Korban Kekerasan Berbasis Gender dan Anak* or Commission for Protection of Victims of Gender-Based Violence (KPK2BGA) of Central Java Province. The commission stated that the cause of domestic violence in Central Java is due to an unequal relationship between men and women.<sup>21</sup>

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<sup>17</sup>The Jakarta Post, ‘Culture of Silence’ hinders reporting of violence, 09 August 2012, available online: <http://www.thejakartapost.com> (10 December 2019).

<sup>18</sup> Parliament of Australia, *Domestic, Family and Sexual Violence in Australia: an overview of the issues*, available online: <http://www.aph.gov.au> (last viewed: 10 December 2019).

<sup>19</sup> Chung, Donna, “Understanding the Statistics about Male Violence Against Women,” *White Ribbon Research Series*, Paper No. 5, May 2013, p. 4.

<sup>20</sup> Dale Bagshaw, et.al., “Gender Politics and Research: Male and Female Violence in Intimate Relationships”, *Women Against Violence* 8, (2000), p. 4.

<sup>21</sup> Annual Report of KPK2BGA for Governor of Central Java for the end year of 2011.

According to Rika Saraswati, the existing social system in Javanese communities reflects the unequal power relations between men and women, including in the household. In the family, men have been assigned as the head of the family. This role has been standardized in the Law No. 1, 1974 on Marriage, which places men as the heads of families and women as housewives. With this social construction that places women as subordinate human beings it is not surprising if the "conspiracy of silence" relating to the case of domestic violence experienced is paramount.

Javanese culture, according to Lily Zakiyah Munir, is patriarchal. This patriarchal ideology emphasizes the differences between men and women, especially biological differences. Based on the the biological differences, then the assumption is built, the assumption that men are superior to women.<sup>22</sup>

Not only Javanese culture, Islam, the religion embraced by the vast majority of the Javanese, has also influence the gender relations of Javanese, including in relation to the household. Religious interpretations are sometimes rigid and uncompromising in upholding gender roles. Not least because religious interpretations and teaching are usually the products of interpretation by religious scholars, most of whom were men. In the case of Java, the *pesantren*<sup>23</sup> (Islamic boarding school), reinforces ideas about gender and relationships within text books such as the Arabic text, *The Chain of Two Pearls: The Explanation of the Rights of a Couple, (Uqud al-Lujain fi Bayan Huquq al-Zawjain)*. This book is commonly taught in the Islamic boarding schools. Some of its teachings include: If a wife refuses to consummate the marriage, she will be cursed by angels all through the long night until morning comes.

The influence of Islam in Javanese culture is disseminated through the writings of Javanese scholars who studied Islam in *pesantren* (Islamic boarding schools) and wrote books that contains 'syncretic' teachings which combine Islam with ancient Javanese customs to shape gender relations. The coming of Islam into Java Island<sup>24</sup> influenced Javanese culture, which intersected with Islamic

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<sup>22</sup>Lily Zakiyah Munir, "'He is your garment and you are his ...': Religious precepts, interpretations, and power relations in marital sexuality among Javanese Muslim women," *Sojourn: Journal of Social Issues in Southeast Asia* 17, No. 2, (2002), p. 191.

<sup>23</sup>The *pesantren* is an Islamic boarding school. The student who study and stay in the *pesantren* is called *santri*. *Pesantren* mainly teaches Islamic teachings under the supervision of a *Kyai* (the owner/director of the *pesantren*). According to Zamaksyarie Dhofier, an institution can be classified as *pesantren* if it has five basic elements: Dormitory, mosque, students, Islamic teachings, and a *Kyai*. Zamaksyarie Dhofier, *Tradisi Pesantren*, Jakarta: LP3ES, 1982.

<sup>24</sup> There are various theories about the coming of Islam into Java about the preachers, routes, and the time, however, with the establishment of Islamic Javanese kingdom in Java, in Demak (a district in the Central Java Province today), in 16 Century, showed that Islam has settled and become the majority religion in Java at that time. See: Sofwan, Ridin, "The Muslim Saints Islamised Java (*Para Wali Mengislamkan Tanah Jawa*)", in *Merumuskan Kembali Interelasi Islam-Jawa*, Yogyakarta: Gama Media, 2004, p. 3.



teaching. Javanese cultures were combined with Islamic teachings by some Javanese literary writers, some of whom were students of *pesantren*, who received an Islamic education. For example, the *pujangga* of the 18<sup>th</sup> Century of the Surakarta Palace, named Yasadipura II, and Rongggowarsito (1802-1873), are considered the greatest *pujangga* of Java.<sup>25</sup>

Some literary works of the 18th and 19th centuries that were palace-centred, known as *serat piwulang* (book of teachings), contain teachings relating specifically to women. These define how to be a 'good' Javanese woman, both in individual and social life.<sup>26</sup> These teachings include *Serat Wulang Puteri* (*The Book of Teaching for Daughters*), *Serat Wulang Estri* (*The Book of Teaching for Women*), *Serat Candrarini* (*The Book of Women's Essays*), *Serat Centhini* (*The Book of a Woman named Chentini*), *Serat Yadnyasusila* (*The Book of Woman's Etiquette*), and *Serat Panitisastra* (*The Book of Knowledge/Wisdom*). The discussion of women's issues in these teachings showed that women's issues are one of the most important issues in the kingdom,<sup>27</sup> as the issues often generated tensions in the house of the king. According to Sukri and Sofwan, these teachings result from political, economic and moral crises that emerged in the kingdom. In addition, the teachings were directed to maintain harmony in the life of palace insiders, as there was disharmony inside the royal family, especially among women, the first lady and other wives of the king and princes. The teachings aimed to ease tension in the royal family caused by issues such as polygamy, but also served to strengthen patriarchy.<sup>28</sup>

The traditional values embraced by the majority of Javanese mean that when a woman marries, she belongs to her husband more than to her parents. Her husband's rights are more important than her parents'. In Java, the bride is advised by her family to carefully conceal any conflict that may arise between the couple. This attitude is known as *Njaga praja*, meaning that the honour of a husband must be protected from people outside the family. After marriage, a woman must meet the demands of her role in the community, which has been socially determined: taking care of the home, giving birth, parenting, and serving her husband.<sup>29</sup> This is one among many reasons why Javanese women tend not to expose or report the domestic violence they experienced.

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<sup>25</sup> Abdurrahman Mas'ud, "Pesantren dan Walisongo" (Pesantren and Walisongo), in Darori Amin (ed.), *Islam dan Kebudayaan Jawa*, Yogyakarta: Gama Media, 2000, p. 238.

<sup>26</sup> Sri Suhandjati Sukri, and Sofwan, Ridin, *Perempuan dan Seksualitas dalam Tradisi Jawa*, Yogyakarta: Gama Media, 2001, p. v

<sup>27</sup> Santri is a student who studies in a *Pesantren* [Islamic Boarding School] see: Zamakhsyarie Dhofier, *Tradisi Pesantren*, Jakarta: LP3ES, 1982.

<sup>28</sup> Sukri and Sofwan, *Women and Sexuality...*, p. vi.

<sup>29</sup> Mohammad Hakimi, et al, *Membisu Demi Harmoni: Kekerasan Terhadap Isteri dan Kesehatan Perempuan di Jawa Tengah, Indonesia*, Yogyakarta: LPKGM-FK-UGM, 2001, p. 19.

## The Need for Mediation as A Form of Restorative Justice for Domestic Violence Cases

In general, there are four ways on how women cope with domestic violence they experienced: *First*, accepting the violence experienced as a normal incident, *second*, negotiating with the situation and the perpetrators, *third*, asking for help from closest people or influential figures among them, and *fourth*, accessing legal or women services.

Among the women victims of domestic violence there were women who accessed services provided by the government and NGOs. However, according to Philippa Venning, in "Marrying Contested Approaches: Domestic Violence Case Resolution in Indonesia", there is increasing pressure on women victims of violence to use the state criminal justice system to resolve domestic violence, and this is justified by international human rights principles. This pressure impedes empowerment programs and fails to recognise the capacity of local communities to apply and adapt international principles to their local context.<sup>30</sup>

Venning writes "imposing the view that domestic violence cases should be handled through the state criminal justice system... may be detrimental to individual victims of violence as their choice and views on how to resolve the problem are discounted and may result in communities rejecting international principles for being foreign imports and inappropriate for local conditions. ..This imposition also fails to appreciate the capacity of local communities to apply and adapt international principles to the local context as appropriate."<sup>31</sup> Venning's views above reinforces the importance of restorative justice system in resolving domestic violence case as it is close to the culture of Indonesia.

Restorative justice is a concept in the legal thoughts that the aim of the justice system is to restore the rights of the victim rather than to punish the perpetrator. In restorative justice, the court is placed as a mediator to facilitate dialogue between disputing parties to settle their cases. From this notion came the idea of Alternative Dispute Resolution (ADR) which is believed to have more options in satisfying the sense of justice and also has more efficiencies than the tribunal.<sup>32</sup> It is an alternative to replace the retributive justice in the court. It focuses not on the perpetrator and the guilt made by the perpetrator in the past, but rather focuses on the rights and the future of the victims that can be restored by the perpetrator.<sup>33</sup>

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<sup>30</sup> Philippa Venning, "Marrying Contested Approaches: Empowerment and the Imposition of International Principles: Domestic Violence Case Resolution in Indonesia", *Journal of Development Studies* 46, No. 3, (2010), p. 397.

Philippa Venning, *Marrying Contested Approaches...*, p. 399.

<sup>32</sup>Muladi, *Hak Asasi Manusia, Politik, dan Sistem Peradilan Pidana*, BP Universitas Diponegoro, Semarang, 1997, p. 66-67.

<sup>33</sup> Muladi, *Kapita Selekta Sistem Peradilan Pidana...*, p. 76-77.

For the case of domestic violence, restorative justice is believed to give more advantages for the victims of domestic violence than retributive justice. Some Indonesian feminists suggest that jailing a husband perpetrator of domestic violence, through retributive justice, is not solving the problem since the victim (wife) will face new problems such as financial problem, the psychological problem of their children (feeling a shame to have their father jailed), and the future of the children. The decision made by the judge often disappointed the victims of domestic violence.<sup>34</sup> This is because, according to Widiartana, based on the retributive justice paradigm the crime is the sole authority of the law apparatus, which is offender-oriented, and not involving the victims. On the other hand, the restorative justice paradigm offers another way to deal with crime. The sanctions imposed do not aim to retaliate against the perpetrators of crimes, but rather to resituate for the victims' rights. In addition, the process of resolving crimes is carried out by involving perpetrators, victims and the community.<sup>35</sup>

In restorative justice, the involvement of victims and society in settling domestic violence cases is necessary. So the result of the agreement is not decided by law apparatus and the perpetrator only as in retributive justice, but by four parties; law apparatus, perpetrator, victim and society. At least there are six reasons why restorative justice should be applied to settle domestic violence cases in Indonesia:

*First*, restorative justice is in line with Pancasila, which is the ideal of law for Indonesians, *second*, restorative justice could satisfy the sense of justice for the victim of domestic violence, and *third*, the fact that most cases of domestic violence involve relatives or people who have close relationship to the victims, *fourth*, the fact that most of the victims and their families choose to not going to the court for settling their cases, but rather settling the dispute through "penyelesaian kekeluargaan" or mediation, *fifth*, settling the domestic violence case through restorative justice is a way to realize harmony (or meeting) of the interests of victim, perpetrator, and society, *sixth*, the international trend on settling the penal cases that tend to pay attention more on the interests of the victim when dealing with criminal cases.<sup>36</sup>

According to Ridwan Mansyur, in his book, *Mediation for Domestic Violence Cases*,<sup>37</sup> litigation in the criminal court causes disharmony in the family since it tends to punish the perpetrator rather than redress the victim's rights.

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<sup>34</sup> G. Widiartana, *Ide Keadilan Restoratif Pada Kebijakan Penanggulangan Kekerasan Dalam Rumah Tangga Dengan Hukum Pidana*, Disertasi Summary, Program Doktor Ilmu Hukum Universitas Diponegoro Semarang, 2011, available online: [http://eprints.undip.ac.id/40816/1/ringkasan\\_disertasi.pdf](http://eprints.undip.ac.id/40816/1/ringkasan_disertasi.pdf) (last accessed: 30 October 2019).

<sup>35</sup> G. Widiartana, *Ide Keadilan Restoratif...*, p. 10-20.

<sup>36</sup> G. Widiartana, *Ide Keadilan Restoratif...*, p. 31-41.

<sup>37</sup> Ridwan Mansur, *Mediasi Penal Terhadap Perkara KDRT*, Jakarta: Yayasan Gema Yustisia Indonesia, 2010, p. 259.

Therefore, domestic violence cases are better resolved through restorative justice, which emphasizes rehabilitation, compensation and restoring the rights of women victims of domestic violence and their children. Restorative justice mechanisms, according to Mansyur, includes court-ordered mediation.<sup>38</sup>

### **Mediation for Domestic Violence Cases in Central Java**

An implementation of restorative justice system is mediation. According to Laurence Boule, Professor of Law from the Bond University, Australia: "Mediation is a decision-making process in which the parties are assisted by a third party; the mediator; the mediator attempts to improve the process of decision-making and to assist the parties reach an outcome to which each of them can assent, without having a binding decision-making function."<sup>39</sup>

Another definition from came from Folberg and Taylor. They stated that mediation is: "The process by which participants, together with the assistance of a neutral persons, systematically isolate dispute in order to develop options, consider alternative, and reach consensual settlement that will accommodate their needs."<sup>40</sup>

The two definitions above imply the importance of third party involvement in the facilitation process to achieve peaceful agreement. Boule emphasized that the mediator should guide the parties to come to an agreement that is accepted by them. Mediator's role is only assisting or facilitating the decision-making process and has no authority to make any decisions for the parties. Whereas, Folberg and Taylor emphasized that the mediation process must include the mapping of issues, exploring as many options as possible from the parties, and guiding the parties to negotiate options so that they could come to an agreement that satisfies them. This emphasis on the process of mediation means that the mediator's skills in facilitating the process of mediation are a determinant factor for the success of mediation.

From the definitions above, it can be concluded that mediation is a dispute resolution process by involving a neutral and impartial third party (mediator) who has the task of facilitating and helping the disputant parties to reach a satisfying agreement or win-win solution. This is in line with the definition given by the Supreme Court of Indonesia. In its decree, No. 1, 2016, the Supreme Court defines mediation as "[a] dispute resolution through a negotiation process to obtain an agreement of the parties through the assistance of the mediator."<sup>41</sup>

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<sup>38</sup> Ridwan Mansur, *Mediasi Penal...*, p. 259.

<sup>39</sup> Laurence Boule, *Mediation: Principles, Process, Practice*, Sydney: Lexis Nexis, 2005, p. 3.

<sup>40</sup> Jay Folberg and Alison Taylor, *Mediation: A Comprehensive Guide to Resolving Conflict Without Litigation*, San Francisco: Jossey-Bass 1984, p. 7.

<sup>41</sup> Article 1, Supreme Court Decree, No. 1, 2016, on the Procedures of Court Mediation.

Mediation has been applied in settling disputes that emerged from domestic violence in Central Java. The spirit to resolve dispute through mediation can be traced through the effort of the Office of Women Empowerment of Central Java<sup>42</sup>, which is in charge of delivering services for the victims of domestic violence, to hold mediation training for its officers, social workers and network (police, NGO, religious leaders and legal firms). The training has been held twice, in 2013 and 2019.<sup>43</sup> Through mediation training, it is expected that the cases of domestic violence reported to the office can be resolved through mediation by trained mediators.

### **Court Mediation**

According to the report of the Women's Commission, most women victims of domestic violence accessed the Religious Court instead of the Criminal Court to settle their cases.<sup>44</sup> Women avoid the criminal court system because of the difficult litigation process, which takes time and money. In addition, many women fear for the future of the children who may feel ashamed to have their fathers jailed as criminals. The burdens that women face are therefore not only financial but psychological.<sup>45</sup>

According to Irianto and Cahyadi, domestic violence is a crime hidden within family matters including divorce.<sup>46</sup> In 2013, 60 percent of the divorce cases filed by women involved domestic violence as a key reason for seeking divorce.<sup>47</sup> Therefore, the religious court is an important venue for the victim of domestic violence to access justice. It is considered the last resort for women to end domestic violence and to obtain their rights as wives, as the criminal court system is not satisfactory.<sup>48</sup>

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<sup>42</sup> The name of the office has been changed several time, and now the full name of the Women Empowerment office is, "Dinas Pemberdayaan Perempuan, Perlindungan Anak, Pengendalian Penduduk dan Keluarga Berencana (DP3AP2KB)." The office is located at Jl. Pamularsih 28, Semarang.

<sup>43</sup> Interview with Sri Dewi Indrajati, Mediator in the Integrated Services Centre (PPT) of Central Java, December 5, 2019.

<sup>44</sup> Indonesian Women's Commission, Report of Violence against Women (*Catatan Kekerasan Terhadap Perempuan Tahun*), 2013.

<sup>45</sup> Any Sundari, *Untuk Peradilan yang Lebih Baik*, *Rifka Media*, No. 51, Nov 2012-Jan 2013, p. 4.

<sup>46</sup> Sulistyowati Irianto and Antonius Cahyadi, *Runtuhnya Sekat Perdata dan Pidana: Studi Peradilan Kasus kekerasan Terhadap Perempuan*, Jakarta: Yayasan Pustaka Obor Indonesia, 2009, p. 326.

<sup>47</sup> Samsul Bahri, Penghukuman Mengikuti Program Konseling Bagi Suami Sebagai Upaya Perlindungan Terhadap Perempuan Korban kekerasan Dalam Rumah Tangga," available online: <http://badilag.mahkamahagung.go.id> (viewed, 12 December 2019).

<sup>48</sup> Rika Saraswati, *Perempuan dan Penyelesaian Kekerasan Dalam Keluarga*, Bandung: Citra Aditya Bakti, 2006, p. 6.

Some women access the Religious Court with the aim to secure a 'good divorce' (*bercerai secara baik-baik*), a divorce that does not break up previously good relationships.<sup>49</sup> This comprises a form of negotiation by women. Even though the divorce is final, there is an expectation that it will not spark the perpetrator's revenge, and the woman can maintain her rights to financial support from the ex-husband for her and the children.<sup>50</sup>

The trend also happens in Central Java. Datul, a staff in the PPT SERUNI said that some women victims of domestic violence that accessed PPT SERUNI wanted to resolve their cases directly to the Religious Court, "the victims who come to SERUNI, some of them told us to go directly to the Religious Court to proceed the divorce. Their intention is to escape from their violent husband as soon as possible."<sup>51</sup>

The Religious Court will settle the cases of the victims of domestic, which is usually an appeal to get a divorce from their husbands, through mediation first. It is a must to get mediation in the Religious Court before the case is brought to the tribunal, as stated in the Supreme Court Decree, No. 1, 2008, and renewed by the Supreme Court Decree No. 1, 2016, on the Procedure of Mediation in the Court.

As explained by Makmun, a judge in the Religious Court of Semarang, about the process of mediation in the court, at the first meeting the disputants are given an opportunity to choose a mediator from the list of mediators that have been registered in the court. The mediator can be a judge in the Religious Court or non-judge who is anyone that has a certificate in mediation and registered in the court.<sup>52</sup> In the Religious Court of Semarang, according to Makmun, most of the mediation is carried out by non-judge mediators.<sup>53</sup>

### **Non-Court Mediation for the Victims of Domestic Violence**

Non-court mediation or mediation outside the court is a mediation or dispute settlement through a mediator outside the court. For this kind of mediation, there is no requirement or qualification for someone who mediates the dispute such as a certificate of mediation. However, the power of the agreement obtained through outside court mediation can be the same as the court mediation if the peace agreement is registered to the court. This has been ruled by the

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<sup>49</sup>LRC-KJHAM, Policy Brief LRC-KJHAM tahun 2012, available online: <http://lrc-kjham.blogspot.com/2012/09/> (last viewed: 12 December 2019), p. 20.

<sup>50</sup>Rika Saraswati, *Perempuan dan Penyelesaian Kekerasan...*, p. 6.

<sup>51</sup> Interview with Datul, Law Division Officer in the Integrated Services Center (PPT) SERUNI of the City of Semarang, in Semarang, November 11, 2019 .

<sup>52</sup> Interview with H. Makmun, A Judge in the Religious Court of Semarang, in Semarang, September 16, 2019.

<sup>53</sup> Interview with H. Makmun, A Judge in the Religious Court of Semarang, in Semarang, September 16, 2019.

Supreme Court Decree No. 1, 2016, on the Procedures of Court Mediation. The decree states that:

- 1) The Parties with or without the assistance of a certified mediator who has successfully resolved disputes outside the court with a Peace Agreement can submit the Peace Agreement to the court to obtain a Peace Act by submitting a claim.
- 2) Filing a claim as referred to in paragraph (1) must be accompanied by a Peace Agreement and a document as evidence that shows the legal relationship between the parties and the object of the dispute.
- 3) The Case Judge before the Parties will only strengthen the Peace Agreement to be a Peace Act if the Peace Agreement is in accordance with Article 27 paragraph (2).<sup>54</sup>
- 4) The Peace Act of a lawsuit to strengthen the Peace Agreement as referred to in paragraph (1) must be pronounced by the Judge Examiner in a hearing that is open to the public no later than 14 (fourteen) days from the date the claim was registered.
- 5) A copy of the Peace Act as referred to in paragraph (4) must be submitted to the Parties on the same day as the recitation of the Peace Act.<sup>55</sup>

Mediation outside the court for the victims of domestic violence has been conducted in the service providers for the victims of domestic violence in Central Java: The police, the PPT of Central Java, and the mass (religious-based) organization.

### **Mediation by the Police**

In the Law No. 2, 2002, on the National Police of Indonesia (National Police Law), there is the concept of "police discretion (*diskresi kepolisian*)". The police discretion is the authority of making a decision on certain conditions on the basis of personal considerations and beliefs of a police officer. The police discretion can be utilized by the police in settling domestic violence cases.<sup>56</sup> A form of police discretion in the case of domestic violence is resolving the case through mediation. In general, in Indonesia, solving domestic violence through mediation has been carried out in several police stations in several provinces. In East Java, for example, in Sidoarjo Police Department, 59 of 67 cases of domestic violence that occurred between May 2015 and May 2017 have been resolved through mediation.

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<sup>54</sup> Article 27 (paragraph 2) of the Supreme Court Decree, No. 1, 2016, on the Procedures of Court Mediation states that: In assisting the parties to formulate peace agreement, the Mediator must ensure that the agreement of peace does not contain any provisions that: a. contrary to law, public order, and/or decency; b. detrimental to third parties; or c. cannot be implemented.

<sup>55</sup> Article 14, Supreme Court Decree, No. 1, 2016, on the Procedures of Court Mediation.

<sup>56</sup> Emy Rosnawati, et all., "*Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Kekerasan Dalam Rumah Tangga, De Jure: Jurnal Hukum dan Syari'ah* 10, No. 2 (2018), p. 63.

In Central Java, the police also mediate cases of domestic violence such as in the Semarang City Police Department (*Polrestabes* Semarang). The mediation is carried out by a unit specialized unit in the police department for cases related to women and children, called the Women's and Children's Services Unit (*Unit Pelayanan Perempuan dan Anak/ PPA*).<sup>57</sup>

The function of the PPA unit is regulated by the Regulation of the Chief of Indonesia National Police No. 10, 2007, on the Organization and Work Procedures of Women's and Children's Services Unit.<sup>58</sup> The Regulation states that: In carrying out the tasks referred to in Article 2, the PPA unit carries out functions: (1). Providing legal services and protection; (2). Implementing crime investigations; (3). Conducting cooperation and coordination with related agencies. The implementation of the PPA function above is regulated as follows: The Head of the PPA Unit is tasked to lead the PPA Unit in organizing the protection for women and children who are the victims of crime and to implement law enforcement on the perpetrators of the crime. The service of the PPA unit is carried out in the Special Service Room (*Ruang Pelayanan Khusus/RPK*).

To maximize the UPPA Unit duties in protecting women victims of domestic violence and to implement law enforcement against perpetrators, the PPA Unit of the Semarang City Police Department cooperates and coordinates their services with government agencies such as PPT SERUNI of Semarang, NGOs, and mass organizations. In addition, the report service for the victims of domestic violence (who are generally women) is carried out by female police officers. This is to minimize the psychological burden of the women victims of domestic violence when reporting their cases, as the victims may feel reluctant to report and tell their cases if the officers are male, especially if the report is also related to the existence of injuries caused by violence on the victim's body.<sup>59</sup>

To improve the report services for the victims of domestic violence the Semarang City Police Department has provided a special building for the office of the PPA Unit. This is because of the growing number of domestic violence cases in the city of Semarang that require special rooms to provide services to the victims of domestic violence. Nevertheless, in principle, reporting the case of domestic violence can be made at any police station, including the sub-district police station (*Polsek*). However, most victims of domestic violence chose to report their cases to the Semarang City Police Department because the reports are

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<sup>57</sup> See Articles, 3 and 4, the Regulation of the Chief of Indonesia National Police No. 10, 2007, on the Organization and Work Procedures of Women's and Children's Services Unit.

<sup>58</sup> In Article 6, the Regulation of the Chief of Indonesia National Police No. 10, 2007, on the Organization and Work Procedures of Women's and Children's Services Unit.

<sup>59</sup> Interview with Esti Handayani, The Chief of Operation Development (formerly she was the Head of the PPA Unit), in Semarang, November 14, 2019.



handled by female police officers, whereas, in the sub-district police station the reports are handled by male police officers as the female police officers are rare.<sup>60</sup>

Regarding the flow of services for the victims of domestic violence in the Semarang City Police Department, Handayani explained that reporting domestic violence can be made by the victims themselves to the closest police station. The report also can be made by the family of the victim or anyone who is given authority by the victims to file a case. The police must accept the report and give an explanation about the rights of the victims to obtain services and assistance entitled to them from the services agencies.

To strengthen the evidence of violence in the investigation process, the victims can ask for a service of *visum et repertum* from a hospital. The *visum* for the victims of domestic violence in the City of Semarang is free of charge and usually obtained from the Tugurejo Hospital of Semarang as this hospital has an MoU (Memorandum of Understanding) with the Semarang City Police Department. However, it is permitted for the victims to obtain the *visum* from other hospitals, and the cost will still be assisted by the police department. Usually, it takes 1 to 2 days to get the result of the *visum*.<sup>61</sup>

Complaints by the victim, according to Handayani, will be followed up with an investigation. If there is an aspect of crime committed by the perpetrator, the case will proceed to the court, and the police must handle the complaints in accordance with the law and should not advise for negotiation as those who report their problems have considered their actions although the case may, eventually, be withdrawn in the middle of the litigation process. On the contrary, if there is no criminal element in the case reported, the police will conduct mediation efforts directly.

In the investigation process, the police invited all parties, both the perpetrator and the victim. Some victims chose not to follow up their cases to the court. This usually happens after the police gave an explanation about several consequences that may be faced by the perpetrator and the victim if the case is processed through the trial in court. After the explanation, usually, some of the victims of domestic violence begin to change their minds and eventually drop the complaint. In this process, mediation usually occurs.<sup>62</sup>

At this mediation stage between the victim and the perpetrator, the police position themselves as mediators. This mediation process ends up with each party makes a statement of peace and signed a peace agreement. The perpetrator makes

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<sup>60</sup>Interview with Esti Handayani, The Chief of Operation Development (formerly she was the Head of the PPA Unit), in Semarang, November 14, 2019.

<sup>61</sup>Interview with Esti Handayani, The Chief of Operation Development (formerly she was the Head of the PPA Unit), in Semarang, November 14, 2019.

<sup>62</sup>Interview with Esti Handayani, The Chief of Operation Development (formerly she was the Head of the PPA Unit), in Semarang, November 14, 2019.

a statement that he will not repeat the violence and ready to change himself to have better behaviour toward the victim.<sup>63</sup>

At the sub-district level, in the Sub-District Police Station (*Polsek*) of Mijen, the City of Semarang, the mediation for the case of domestic violence has been implemented. According to Broto, cases of domestic violence in the district of Mijen were initially resolved at the village level through mediation. There is a principle that every case happened should be resolved first at the lowest level of the police department, before it goes to the Semarang City Police Department and Central Java Regional Police Department (*Polda Jawa Tengah*). Regarding the measure of the success of mediation he carried out, Broto states that mediation is regarded as successful when there is no revenge action between the parties. In addition, the success of mediation is indicated through a good relationship between the parties and the case does not end up in the court.<sup>64</sup>

### **Mediation by the Government-Based Women's Service Centre**

In Central Java, there are two government-based service centers that deliver services for the victims of domestic violence. The first is the service at the provincial level and the second is the service at the district or city level like the PPT SERUNI. At the provincial level, services for the victims of domestic violence are carried out by the Provincial PPT of Central Java, located in the DP3AP2KB Building, level 1, at Jl. Pamularsih No. 28, Semarang.

The services provided by the Provincial PPT of Central Java include: Report services, health assistance services, social rehabilitation services, legal assistance services and social reintegration services.<sup>65</sup> The service in this PPT is a reference service, which means that the Provincial PPT receives domestic violence cases that could not be handled by the PPT of district and city in the Central Java Province. However, some victims of domestic violence come and ask for the services from the Provincial PPT directly without referenced by the district and city, and still accepted by the PPT.

According to Novi, several cases reported to the Provincial PPT were resolved through mediation. In 2019, there have been two cases resolved through mediation. "Usually, what we did after the victim told her problem is conducting an assessment of the case and giving counseling to victims. Then, after that, we leave the decision to the victims, what she will do, whether taking legal action

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<sup>63</sup>Interview with Esti Handayani, The Chief of Operation Development (formerly she was the Head of the PPA Unit), in Semarang, November 14, 2019.

<sup>64</sup> Interview with Broto, *Bhayangkara Pembina Keamanan dan Ketertiban Masyarakat* (Bhabinkamtibmas) Kelurahan Jatisari, Mijen, in Semarang, November 24, 2019.

<sup>65</sup> DP3AKB, *Penanganan Korban Kekerasan Berbasis Gender dan Anak* (Handling the victims of Gender-Based Violence and Children) Available Online: <http://dp3akb.jatengprov.go.id> (last viewed: 5 December 2019).

against the perpetrator or resolving her case through mediation, it is up to her, but we tell her the consequences of both ways."<sup>66</sup>

In the Provincial PPT mediation is carried out by Sri Dewi Indrajati (usually called by Dewi), a certified mediator. Dewi passed a professional mediator training organized by the Indonesian Mediation Center (PMN) for ten days. She has mediated several cases of domestic violence. Mediation was carried out in her office.<sup>67</sup>

Regarding mediation for the domestic violence case, Dewi asserts that not all cases of domestic violence can be mediated. For the cases of domestic violence that caused severe injuries on the victims, according to Dewi, it is better to proceed in the court. "There are women who have been beaten up by their husbands for years; I don't want to mediate this." By doing this, she argues, it will give a deterrent and shock therapy effect to the perpetrators of domestic violence. Meanwhile, if the violence is still moderate, and the perpetrator's behavior can still be amended, then the case can be mediated.<sup>68</sup>

When asked about difficulties in doing mediation, Dewi states that her weak point is the fact that she is a civil servant and involved in the structure of the Office of Women Empowerment, Child Protection, Population Control and Family Planning/*Dinas Pemberdayaan Perempuan, Perlindungan Anak, Pengendalian Penduduk, dan Keluarga Berencana (DP3AP2KB)*, so the principle of neutrality in mediation process was difficult to implement as she 'naturally' took a position in the side of the victim of domestic violence. Another problem is because she has a close relationship with the victims' companions or assistants. The victim's companions usually pull her to be on the side of the victim. Dewi realized that this is not right in accordance with the principles of mediation, as mediation requires neutrality from a mediator. This has been ruled by the Supreme Court Decree, No. 1, 2016, on the Procedure Mediation in the Court.<sup>69</sup>

Another problem in implementing mediation in the Provincial PPT is the limited number of mediators. Some PPT staffs still believe that the person who is permitted to do mediation is the one who has a certificate of mediation. Since Dewi is the only certified mediator, so she is the only person who is considered authorized to carry out the mediation. Every case reported to the PPT that needs

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<sup>66</sup> Interview with Novi, from Law Division of the Inetgrated Service Center (PP) of Central Java, in Semarang, November 12, 2019

<sup>67</sup> Interview with Sri Dewi Indrajati, Mediator in the Integrated Service Centre (PPT) of the Central Java Province, in Semarang, December 5, 2019.

<sup>68</sup> Interview with Sri Dewi Indrajati, Mediator in the Integrated Service Centre (PPT) of the Central Java Province, in Semarang, December 5, 2019.

<sup>69</sup> Article 14 (paragraph C), the Supreme Court Decree, No. 1, 2016, on the Procedure Mediation in the Court.

mediation will be given to her, which gives her a burden as she has duties as a senior civil servant in the DP3AP2KB.<sup>70</sup>

The view that only a certified mediator can mediate and permitted by the law to conduct mediation is incorrect. Because, according to the Supreme Court Decree, No. 1, 2016, on the Procedure Mediation in the Court, a certificate is required only for mediator who conducts a mediation in the court,<sup>71</sup> whereas, outside the court, anyone can do mediation as long as he or she is accepted by the parties as a mediator. The result of the mediation outside the court or the peace agreement agreed by the party outside the court has the same power as the peace agreement resulted by the court mediation as long as the peace agreement is registered to the court and passed the conditions to obtain the Peace Act (*Akta Perdamaian*).<sup>72</sup>

### **Mediation by Community-Based Organisation**

Mediation for the victims of domestic violence is not only carried out by the court, the police and the PPT as described in the sub-chapter above, but also by mass organizations such as Aisyiah Central Java and the Fatayat of Nahdlatul Ulama of Central Java (Fatayat NU).

Aisyiah is the women wing organization of Muhammadiyah. The Aisyiah Central Java has been providing services for the victims of domestic violence including mediation service. The services are provided through the *Pos Bantuan Hukum* (Posbakum) or the Legal Assistance Post, which is under the Law and Human Rights Institution (*Lembaga Hukum dan HAM*) of Aisyiah Central Java. This institution is chaired by Siti Kasiyati.<sup>73</sup>

According to Kasiyati, services for the victims of domestic violence have been provided by the Aisyiah Central Java since 2002. Currently, Aisyiah has established *Rumah Sakinah* (the house of tranquillity), which is a safe house or shelter for the women victims of domestic violence. The Aisyiah Central Java has educated paralegals, who are the members of Aisyiah at the district and city level. Currently, Aisyiah has an estimate of six hundred paralegals throughout Central Java who have been trained to deliver legal services for the victims of domestic violence victims.<sup>74</sup>

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<sup>70</sup>Interview with Sri Dewi Indrajati, Mediator in the Integrated Service Centre (PPT) of the Central Java Province, in Semarang, December 5, 2019.

<sup>71</sup> Article 13, the Supreme Court Decree, No. 1, 2016, on the Procedure Mediation in the Court

<sup>72</sup> Article 36, the Supreme Court Decree, No. 1, 2016, on the Procedure Mediation in the Court

<sup>73</sup> Interview with Siti Kasiyati, the Chair of the Law and Human Rights Institution (*Lembaga Hukum dan HAM*) of Aisyiah Central Java, in Surakarta, November 11, 2019.

<sup>74</sup>Interview with Siti Kasiyati, the Chair of the Law and Human Rights Institution (*Lembaga Hukum dan HAM*) of Aisyiah Central Java, in Surakarta, November 11, 2019.

Kasiyati herself has mediated several cases of domestic violence. She said that "I mediated only several cases of domestic violence because we refer most of the cases to the police to mediate." Some of the mediations were conducted at the Posbakum, and others were conducted at the office of the PPT of Surakarta, which is a district in Central Java.<sup>75</sup>

Regarding problems in mediation, according to Kasiyati, some problems related to mediation often arise from the police. The police tend to resolve every domestic violence case through mediation, and avoiding the court. In Kasiyati's view, forgiving the perpetrator is good, but giving a lesson to perpetrators of heavy violence a must so he does not repeat the violence and the cycles of violence stop.<sup>76</sup>

Kasiyati's view above is the same as Dewi's from PPT of Central Java. Not all cases of domestic violence can be mediated. For cases that only involving a light level of violence, mediation is appropriate to be implemented, but for the cases of severe domestic violence, which is life-threatening, and occurs for years, it is better to be processed through the criminal justice system in order to punish the perpetrator and give a deterrent effect for others.

Not only Aisyiah Muhammadiyah, the Fatayat of Nahdlatul Ulama (Fatayat NU) has also an institution that deliver services for the victims of domestic violence. According to Atatin Malihah, the head of the division of law, politics and advocacy of the Fatayat NU of Central Java, Fatayat NU has *Lembaga Konsultasi Pemberdayaan Perempuan dan Perlindungan Anak* (Consultation Institute for Women's Empowerment and Children Protection/LKP3A) that provide services, including counselling and legal assistance for the victims of domestic violence. In delivering services the LKP3A liaise with the PPT SERUNI and NGOs such as LRC-KJHAM. This institution also has conducted mediation for domestic violence cases.<sup>77</sup>

Regarding the problem in conducting mediation, Malihah said that the main problem she faced in mediation is the power imbalance between parties. She often has some cases where the perpetrators of domestic violence are religious figures who have strong position in the communities.<sup>78</sup> For this cases, she rather chose to advocate the victims instead of mediating. Malihah's problem is strengthening Woodhouse and Stephens view who stated that not all mediation are successfully settling the disputes in the community. The main problem is if

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<sup>75</sup> Interview with Siti Kasiyati, the Chair of the Law and Human Rights Institution (*Lembaga Hukum dan HAM*) of Aisyiah Central Java, in Surakarta, November 11, 2019.

<sup>76</sup> Interview with Siti Kasiyati, the Chair of the Law and Human Rights Institution (*Lembaga Hukum dan HAM*) of Aisyiah Central Java, in Surakarta, November 11, 2019.

<sup>77</sup> Interview with Atatin Malihah, the Chair of the Division of Law, Politics and Advocacy of the Fatayat NU of Central Java, in Semarang, December 6, 2019.

<sup>78</sup> Interview with Atatin Malihah, the Chair of the Division of Law, Politics and Advocacy of the Fatayat NU of Central Java, in Semarang, December 6, 2019.

the disputants have a power imbalance, such the perpetrators and are government officials or someone who has a close relationship with them.<sup>79</sup> This is also strengthening Ross Garrity's view who states that not all cases of domestic violence can be mediated,<sup>80</sup> and the view of Dewi and Kasiyati as explored above.

## Conclusion

Efforts to protect and serve the victims of domestic violence as mandated by the Law No. 23, 2004, on the Elimination of Domestic Violence Law (DV Law) are not only assisting the victims for medical recovery and psychological counselling but also to get their rights back fully as the citizens. The retributive justice, which is focused on punishing the perpetrators, is often disappointing for the victims of domestic violence as the decision are not made by the victims. Therefore, mediation through the paradigm of restorative justice is expected to be a better an alternative for the victims in obtaining their rights. Moreover, restorative justice is in line with the tradition and culture of Indonesians called *musyawarah* (deliberation). Mediation has been carried out in by some service providers for the victims of domestic violence in Central Java. The mediation is conducted in the religious court, police station, government-based services centers and the communities. This is a significant way in the efforts of obtaining the rights of the victims of domestic violence. However, mediation will be counter-productive if mediators are not equipped with adequate knowledge, skills and attitudes for conducting mediation. In addition, as domestic violence involves gender issues, mediators involve in the case of domestic violence must have gender sensitivity. Without proper knowledge, skills, attitude and gender sensitivity, the outcome of mediation may disadvantage victims of domestic violence. In addition, as not all cases of domestic violence need to be brought to the criminal court, mediators need to be aware that not every case of domestic violence can be solved through mediation. In some cases, punishing or jailing the perpetrators through retributive justice in the court is needed to give deterrent effect or shock therapy for the perpetrators to not repeat the violence. Therefore, proper training on mediation alongside dissemination of the DV Law and gender issues is necessary for the law apparatus, police, NGO activists and public or religious figures who work on advocating the women's rights. Mediation service provided for the women victims of domestic violence is intended to reduce domestic violence cases and increase the quality of women's life, at the same time, it also aimed to realize harmony in the family life, which is the goal of DV

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<sup>79</sup> Woodhouse, Andrea and Stephens, Matt, *Village Justice in Indonesia: Case Studies on Access to Justice, Village Democracy and Governance*, World Bank, 2004, available online: <http://siteresources.worldbank.org.pdf> (last viewed: 9 December 2019).

<sup>80</sup>Rose Garrity, *Mediation and Domestic Violence*, biscmi.org, March 1998, available online: <https://www.biscmi.org/documents> (last viewed 15 December 2019).

Law. With family harmony, it is believed that the quality of life of the society is increasing and the quality of the nation is bettering.

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