

The Relevance of Islamic and Customary Law on Concerning of Domestic Violence in Bali's Case Study

A relevância da lei islâmica e consuetudinária sobre a violência doméstica no estudo de caso de Bali

La relevancia del derecho islámico y consuetudinario sobre la violencia doméstica en el estudio de caso de Bali

Received: 09/15/2020 | Reviewed: 09/15/2020 | Accept: 09/17/2020 | Published: 09/20/2020

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Abstract

This study aims to determine the relevance of Islamic and customary law in Bali with acts of domestic violence, which are related to Law No. 23/2004. This research is a qualitative study with a normative juridical approach, through literature studies and exploration methods from secondary data. The objects examined in this study are Balinese Customary Law, Islamic Law, and Law No. 23/2004 concerning the Elimination of Domestic Violence. The case object in this study originated from several cases of domestic violence in Bali. The results of the study showed that domestic violence increased every year, where the majority of victims were women. Several factors cause cases to occur, where the Balinese tradition with the patrilineal system is an important factor that creates a gap between men and women. Referring to Islamic and customary law in Bali does not explicitly explain the rules and sanctions related to internal violence. However, this local regulation still does not justify the existence of acts of violence in the household by applicable law.

Keywords: Bali; Customary law; Domestic violence; Islamic Law, Legislation.

Resumo

Este estudo tem como objetivo determinar a relevância do direito islâmico e consuetudinário em Bali com atos de violência doméstica, que estão relacionados com a Lei nº 23/2004. Esta pesquisa é um estudo qualitativo com abordagem jurídica normativa, por meio de estudos de

literatura e métodos de exploração de dados secundários. Os objetos examinados neste estudo são a Lei Consuetudinária Balinesa, a Lei Islâmica e a Lei nº 23/2004 sobre a Eliminação da Violência Doméstica. O caso objeto deste estudo teve origem em diversos casos de violência doméstica em Bali. Os resultados do estudo mostraram que a violência doméstica aumenta a cada ano, sendo a maioria das vítimas mulheres. Vários fatores fazem com que ocorram casos, onde a tradição balinesa com o sistema patrilinear é um fator importante que cria um fosso entre homens e mulheres. Referir-se à lei islâmica e consuetudinária em Bali não explica explicitamente as regras e sanções relacionadas à violência interna. No entanto, esta regulamentação local ainda não justifica a existência de atos de violência no domicílio pela legislação aplicável.

Palavras-chave: Bali; Lei costumeira; Violência doméstica; Lei Islâmica; Legislação.

Resumen

Este estudio tiene como objetivo determinar la relevancia del derecho islámico y consuetudinario en Bali con los actos de violencia doméstica, que están relacionados con la Ley No. 23/2004. Esta investigación es un estudio cualitativo con un enfoque jurídico normativo, a través de estudios de literatura y métodos de exploración a partir de datos secundarios. Los objetos examinados en este estudio son el derecho consuetudinario balinés, el derecho islámico y la ley núm. 23/2004 sobre la eliminación de la violencia doméstica. El caso objeto de este estudio se originó a partir de varios casos de violencia doméstica en Bali. Los resultados del estudio mostraron que la violencia doméstica aumentaba cada año, donde la mayoría de las víctimas eran mujeres. Varios factores hacen que ocurran casos, donde la tradición balinesa con el sistema patrilineal es un factor importante que crea una brecha entre hombres y mujeres. La referencia al derecho islámico y consuetudinario en Bali no explica explícitamente las reglas y sanciones relacionadas con la violencia interna. Sin embargo, esta normativa local aún no justifica la existencia de actos de violencia en el hogar por la ley aplicable.

Palabras clave: Bali; Derecho consuetudinario; Violencia doméstica; Derecho islámico; Legislación.

1. Introduction

Domestic violence (domestic violence in Indonesia) is a form of crime as a form of crime and violations of human rights, which is currently happening in many communities.

Cases of domestic violence not only occur in families with low economic levels but also many in families with high economic levels. This is one of the trigger factors for divorce.

Sukardi, (2015) states that disharmony and lack of family moral support are often the main factors in domestic violence. Besides, acts of domestic violence are crimes that escape the attention and reach of the law. Referring to Law Number 23/2004 concerning the Elimination of Domestic Violence in article 1 point 1 states that Domestic Violence is any act against a person, especially women, which results in physical, sexual, psychological, and or neglect or physical suffering. , including neglect of households, including threats to illegal actions, coercion, or deprivation of liberty within the household.

Physical, sexual, psychological, and physical misery or neglect of the household, include threats to illegal actions, coercion, or deprivation of liberty within the scope of the household. Domestic violence is not only in the form of physical acts, but also psychologically and sexually. Lau and Kosberg inside (Wahab, 2006) in their study emphasize that there are four types of violence, including physical abuse, psychological abuse, material abuse of personal property, and violations of rights.

In Indonesian law, the known are written and unwritten law. Customary law is a law that is not written in Indonesian law containing religious elements, applied to the customary law community by its legal circle. Because these regulations are unwritten and thrive, customary law can adapt and be elastic (Hilman Hadikusumo, 1992). One of them is Balinese customary law, applicable to the Balinese customary legal community, namely Balinese Hinduism which is bound by their legal alliance, both territory (village) and genealogy/ancestry (*soroh*), according to the *desa*, *kala*, *patra* (place, time, and condition) where customary law is enforced. Unlike the case with Islamic law as a written legal law that is recognized in addition to national law. Islamic law is based on human understanding of the Al'quran and Hadis that governs universal human life, is recognized, believed to be valid, and is binding on all Muslims (Attamimi, 1996) The universality of Islamic law is a continuation of the nature of Islam as a universal religion, namely religion whose substance is not limited by human space and time, but applies to all Muslims anywhere, anytime and any nationality.

Islamic law and Customary Law do not justify the existence of violence in the household, be it on wives, husbands, children, or parents who live in the family, as regulated in the legislation. But in reality, the practice of domestic violence shows an increase in only one year, 2018-2019, with various motives (Eurazmy, 2020).

The facts in the field show that the victims of these acts are dominated by women. This situation occurs because of socio-cultural factors that tend to position women as the

second actor and are allowed to get any treatment (Nurmadiansyah, 2011). Some studies mention the transformation of knowledge in local traditions such as the kitchen-well-mattress paradigm is often misunderstood, so that women's contribution is limited to the domestic sphere, thus positioning the wife to submit to and participate in what the husband says, as well as giving dominance power over the husband.

The impact of patriarchal culture in Indonesia is included in the blaming approach system, in which a problem is caused by a system that runs not by the wishes or expectations (Sakina & A., 2017). Acts of domestic violence are also still considered taboo and become an internal problem that cannot be intervened by other parties. Of course, this is contrary to the purpose of marriage itself, which is to foster a sense of security, peace, and comfort, which protects the objectives of sharia (Sukardi, 2015).

Domestic violence is a social problem that cannot be underestimated and is a form of violation of the law. However, due to the scope of violence that occurs in the family, it is inseparable from the element of marriage, the relationship between parents and children is indirectly implicit in the teachings of religion and tradition.

Seeing the complexity of the problem, the purpose of this study is to determine the relevance of Islamic law and customary law in acts of domestic violence related to the implementation of Law No. 23/2004 about the Elimination of Domestic Violence, by taking case studies in Bali.

This study aimed to determine the relevance of Islamic and customary law in Bali with acts of domestic violence, which are related to Law No. 23/2004.

2. Method

This research was qualitative research with a normative juridical approach. Normative Juridical Approach was a problem approach by looking at, analyzing, and interpreting theoretical matters concerning legal principles in the form of conceptions, statutory regulations, views, legal doctrines, and related legal systems. This type of approach emphasizes obtaining information in the form of legal texts relating to the object under study (H. Hadikusumo, 1992).

The method used in this research was a literature study and an exploratory method from the secondary data. The objects examined in this study are Balinese Customary Law, Islamic Law, and Law Number 23/2004 concerning the Elimination of Domestic Violence. This study was aimed to determine the Relevance of Islamic and Customary Law in Bali

related to acts of domestic violence and its relationship with Law Number 23/2004. Data obtained from the results of the study will be analyzed descriptively to obtain a conclusion by what the research objectives this.

Domestic Violence Factors

The data states that the level of domestic violence in Bali is quite high. This was stated by the Chair of the Indonesian Women's Association Legal Aid for Justice (LBH APIK) in Bali, Ni Luh Putu Anggraini, who stated that the number of cases in 2018 was 248 cases, and there was an increase of almost 100 percents in 2019, reaching 408 cases (Eurazmy, 2020). Cases of violence were dominated by acts of domestic violence which reached 236 cases, intimidation/discrimination 64 cases, neglect of the elderly 47 cases, and sexual violence as many as 39 cases. The high factor of domestic violence is caused starting from the economy, infidelity, and due to the intervention of the parents of the parties. The distribution of data on cases in Bali is shown in Table 1 above:

Table 1. Domestic Violence Cases in Bali.

Regency	Year 2018	Year 2019
Denpasar	154	251
Gianyar	37	56
Buleleng	23	30
Badung	21	38
Tabanan	6	8
Karangasem	3	16
Bangli	2	5
Jembrana	2	3
Klungkung	-	1
Total	248 cases	408 cases

Resource: <https://bali.tribunnews.com>

Buchori (2015) states that several factors cause domestic violence; First, the anthropological manner where the dominance of patriarchal culture in Indonesian society creates hierarchical structural social gap between men and women, especially in marital

relations; Second, sociologically that places women in an isolated (marginalized) position strengthened by institutions (family, marriage, religion, economy, culture, and politics) to preserve male power. Besides, there are also major social changes that affect changes in family structure and function, especially shifting roles between husband and wife in the household. Finally, psychologically what appears as a process of imitation of perpetrators of crimes that occur through social media or see / experience directly and there is interference for psychopathic sufferers or perpetrators who suffer from mental disorders.

From the perspective of Islamic law, domestic violence is caused by several factors; First, there are husband/wife irregularities in carrying out marital obligations, such as not wanting to serve a husband if he does not experience menstruation or illness; Second, the lack of understanding or practice of Islamic teachings, especially regarding marital relations, as well as the temporal characteristics of individuals. Other factors are the economy, low levels of education, jealousy that leads to domestic violence (Suma, 2004). In line with the view of Islamic law, based on customary law in Bali, several factors can trigger domestic violence. The mistaken understanding of *purusha* (husband) and *pradhana* (wife) which has become a tradition has resulted in a gap between men and women, especially for families who are still conservative. The validity of the patrilineal family system also places women in very limited families.

Rights such as making decisions or inheritance rights are not obtained by women. However, on the other hand, women get more workload, starting from domestic affairs, customary affairs, and even a few Balinese women who have to work to help meet household needs. Economic factors often trigger disputes between husband and wife, especially if it relates to religious ceremonies (*yadnya*), where people tend to have the wrong paradigm about the implementation of *yadnya*. Society tends to show the ego of social status so that the essence of *yadnya* itself is neglected. Another fact is the underage marriage. Although this practice is not justified in customary or national law, there are still many early marriage practices found in Bali. Early marriage has an impact on the emotional stability of the couple which can lead to acts of violence both physically and psychologically (Windia & Sudantra, 2006).

Strauss A. Murray (2010) identified male dominance in the context of community and family structure as triggers for domestic violence. This can be seen from the actions of men maintaining their legitimacy as a superior party over women so that they can regulate and control women. Discrimination and economic restrictions cause women (wives) to become dependent on their husbands, and when the husband loses his job then the wife experiences

acts of violence. The burden of child care is imposed entirely on the wife so that whatever happens to the child is the wife's responsibility.

The wives who does not work, makes him bear the burden of child care. When something unexpected happens to a child, the husband will blame the wife so that domestic violence occurs. The concept of women as men's property according to law, results in men's freedom to regulates and control all women's rights and obligations. Men feel they have the right to violence because a father violates their children in an orderly manner (Nurmadiansyah, 2011).

As the Hindu tradition in Bali which still adheres to the patrilineal system gives influence to customary law in Bali. The existence of cultural traditions and customs influences the existence of women in community life, where men are often prioritized over women. Instead, women are placed under the dominance of male power. Similar to the views of the Hindu community in Bali, in the Javanese community's view comes to the expression that women are '*koncowingking*', meaning that the role of women-only exists in the back or domestic territory of the household. There is even a Javanese term that says that the woman is "*suwargonunutnerokokatut*", meaning that if the husband enters heaven then the wife as part of the husband automatically goes to heaven, but if the husband goes to hell, then the wife must also go to hell (Fadlillah, 2019).

The Relevance of Islamic Law and Balinese Customary Law to Legislation Related on Domestic Violence

Islam does not recognize the term domestic violence and defines it specifically. Islam expressly prohibits acts of violence of any kind, including domestic violence, as indicated in the Qur'an and the hadith which instructs every man (husband) to treat his wife well (Aziz, 2017).

Giving law as a tool to discipline his wife or children must be done carefully. Become a woman is compared to a man's rib, so when the rib cage is bent, a man's obligation to straighten it properly and carefully so that it will not be broken or damaged. Mansour Fakih (1996) states that basically, Islam adheres to the notion of justice, so any injustice that develops in an Islamic society is a social construction of interpretation.

Therefore, interpretations that are not by the principle of justice must be deconstructed. Through a review of the hadith of women's creation from the ribs, it can be concluded that this hadith is one of the Islamic missions that aim to increase the degree and

dignity of women so that they are no longer treated as slaves and become objects for men. However, by treating it as a life partner, they can mutually complement each other, protect each other, and respect each other, and respect each other. So that relations between men and women, both within the family and in the public environment can be created and run harmoniously (Fadillah, 2019). This shows the principle of human equality in Islam, including equality for women and men, and does not provide an opportunity for arbitrary treatment of women.

In Indonesia, the crime of domestic violence is regulated in Law No. 23/2004 concerning the Elimination of Domestic Violence. Referring to Law Number 23/2004, there appears to be relevance between the two legal subjects, namely the existence of the same principle of respect for human rights, the principle of justice and gender equality, the principle of non-discrimination and the principle of victim protection (Harahap, 2014).

The first principle in Law No. 23/2004 concerning the Elimination of Domestic Violence is the principle of respect for human rights. In the Islamic Perspective, the existence of teachings about human rights in Islam shows that Islam as a religion has placed humans as respectable and noble beings. Therefore, protection and respect for humans is a guideline for the teachings that must be carried out by his people towards fellow human beings.

The second principle is the principle of justice and gender equality, where relevance in an Islamic perspective is seen in the elements of the Islamic law that are just, the idea of equality and equality among all people, including also placing women in an honorable position.

The third principle is the principle of non-discrimination has relevance to Islamic law, where Islam is a religion that eliminates all forms of discrimination, both discrimination based on ethnicity, race, religion, skin color, gender, and so on. Next, the fourth principle is the principle of victim protection. Islamic criminal law stipulates that protection for victims of crime/violence aims to realize the hope of obtaining their rights, where the rights of the victim are the perpetrators get a punishment by what suffered by the victim, namely the punishment of *qisas*, *hudud*, *diyat* and *ta'zir*. The victims of violence are given large and decisive rights in determining cases through the courts (*qadha*) (Tamrin, 2007).

In Customary law in Bali, violence is called Sahasa. Djilantikin his book titled "Adi-religion" mentions the term "Danda Walat Sahasa" related to violence against women (Windia, 2017). It is said that there are seven forms of violence, namely *walatkaniya*, which are acts of marriage against underage women and have implications for the cancellation of

marriage. *Waltasih*, is an act of marrying women who are not allowed, such as women who are still bound by marital status, mothers, and others.

Walatpati, acts of killing innocent people. *Walatsahasa*, acts of taking or seizing certain items without permission. *Walatatahayi*, acts of hiding other people's property. *Walatdasih*, employs a child as a housemaid, without the permission of their parents. Finally, *walatkurenasih*, acts of marrying someone without notifying the family in advance.

Explicit acts of domestic violence are not included in customary law in Bali called Awig-Awig Desa Pekraman. All acts of community violations in the Pekraman Village area that are contrary to Awig-Awig Desa Pekraman (Customary Law) or contrary to national law, will be subject to sanctions as applicable in the local area, where the village/banjaradat are given the authority to impose sanctions on indigenous peoples who committing an offense. Sanctions can be in the form of an obligation to do something work, done in place of mistakes made (*ayah-ayahanpanukunkasisipan*); fines in the form of money along with additional fines for negligence to pay (*dandaarta, dosasahapanikel-panikelnyamiwahpanikelpanikelurikel*); confiscation/*rerampagan*; seclusion/*kesepakang*; dismissed as an indigenous citizen (*kawusangmekramakawaliangpipilnyane*); or fines in the form of the implementation of certain ceremonies/*penyangaskara* (Windia, 2017).

In principle, all deviant actions taken by indigenous peoples are not justified and must be followed up based on customary rules. Conversely, acts of community violations that are in the criminal or criminal domain then are resolved and prosecuted by applicable national law.

Domestic Violence Based on Law in Indonesia

Law No. 23/2004 article 5 confirms the prohibition on violence in the realm of household, stating that "every person is prohibited from carrying out domestic violence against people within the scope of his household, either by physical abuse, psychological abuse, sexual harassment, or economic violence in the form of domestic neglect." Further in article 6 explains the acts of physical harassment referred to in article 5 are actions that result in pain or serious injury. It can be concluded that there are two elements of physical abuse, namely the existence of action and the consequences that result from that action. The existence of the action in question is the existence of actions or actions in carrying out physical violence or torture in the form of beating, kicking, punching, pushing, either with

hands/feet or with tools or weapons. As a result of the action is the result of actions in the form of pain and injury to the body.

The issuance of Law No. 23/2004 concerning the Elimination of Domestic Violence, positioning that abusive treatment or acts of domestic violence are included in the category of criminal acts, where the perpetrators of such actions may be subject to criminal penalties. These criminal sanctions are contained in articles 44-50, in the form of:

1. Article 44, stipulates that perpetrators of physical violence can be subject to criminal sanctions between 5 years, 10 years and 15 years, or a fine of Rp. 15,000,000 to Rp. 45,000,000. Whereas if the husband or wife perpetrators, may be subject to criminal for 4 months or a fine of Rp. 5,000,000.
2. Article 45, regulates that perpetrators of psychological violence can be subject to criminal sanctions for 3 years or a fine of Rp. 9,000.00 0, and if the offender is a husband or wife, then the sentence is around 4 months or a fine of Rp. 3,000,000
3. Article 46, stipulates that perpetrators of sexual violence can be sentenced to 12 years or a fine of Rp. 36,000,000.
4. Article 47, regulates perpetrators of sexual violence within the scope of the household, sentenced for 4 to 15 years or a fine of around Rp. 12,000,000 to Rp. 300,000,000
5. Article 48, regulates if the victim suffers from mental illness or abortion or reproductive damage, then the offender can be sentenced to between 5 and 20 years or a fine of between Rp. 25,000,000 to Rp. 500,000,000
6. Article 49, regulates that perpetrators of economic violence can be subject to criminal sanctions for 3 years or a fine of Rp. 15,000,000. Article 50 stipulates additional penalties for perpetrators of domestic violence, namely restrictions on the movement and separation of places from victims and participation in counseling programs.

Although clear laws are governing domestic violence, the facts that occur on the ground are the opposite, where sometimes the resolution of cases of violence is postponed or closed. The general reason given by law enforcers is the legal legitimacy for husbands to commit violence as long as they act in the context of family harmony (Nurmadiansyah, 2011).

The existence of the Law on the Elimination of Domestic Violence provides the law for victims of violence and takes decisive action against perpetrators of violence, thus giving legitimacy to report any acts of domestic violence to the authorities. However, the facts on the ground show that victims (most of them are wives), prefer not to take criminal legal actions,

and tend to resolve cases in the realm of civil law, such as divorce. In this case, victims of domestic violence are given freedom by law in the resolution of cases both criminal and civil, or through deliberations. This shows that the Law on the Elimination of Domestic Violence emphasizes concern for the interests of victims, as well as the interests of perpetrators and the community.

3. Conclusion

Domestic violence is any action against a person, which results in physical, sexual, psychological, and/or misery or neglect of the household, including threats to illegally commit acts, coercion or deprivation of liberty within the household.

In the Province of Bali, the number of cases of domestic violence is quite high which shows an increase in the number of cases reaching twice from the previous year. Several factors trigger the violence in the household, one of which is the cultural system of the Hindu community in Bali which adopts a patrilineal system. This Balinese tradition indirectly creates social inequality between men and women, who has been hereditary produces a gap between men and women in the family.

In principle, both Islamic and Hindu teachings emphasize the principle of harmony, but a misunderstanding of each teaching legitimizes the dominance of male power over women. In Islamic law and Customary Law of Bali, it is not explicitly explained about the rules and sanctions that apply to acts of domestic violence, but in essence, it is an act of deviation of human rights. Strengthening the position of women in the household, the state provides legal protection for victims of domestic violence with the issuance of Law No. 23/2004 concerning the Elimination of Domestic Violence.

Regulations that apply both in Islamic law and customary law, have relevance to the rules contained in the legislation, which emphasizes the principle of justice and does not justify the existence of acts of violence in the household either in any form.

Suggestions for future researchers are to find the other relevance of Islamic and customary law in another place or the other country.

Acknowledgments

This article is part of a personal research project that discusses cases of domestic violence, referring to the phenomenon of increasing cases of domestic violence especially against women, which is increasing from year to year.

There are no sources of funding such as funding from universities, grants, or other institutions that support the holding of this research, and there is no financial interest in conducting this research.

Here, I am very grateful for the support of those who have helped provide support data for this research. Finally, I am very grateful to families, organizations, and individuals who provided moral support in conducting this research.

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Percentage of contribution of each author in the manuscript

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