The Indonesian family as a contested site of women’s rights

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

The 2004 Domestic Violence Act: some progressive provisions

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

DVA stipulations are regulations for the following reasons.

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

Thirdly, Paragraph 10 of Chapter IV of the DVA deals with the rights of victims, including a) protection from family members, police, prosecutors, courts, lawyers, social institutions or other parties, whether on a temporary basis or based on court orders; b) access to health services according to medical needs; c) special treatment to maintain confidentiality of the victim; d) welfare and legal assistance at all levels of the investigation, according to existing laws; and e) religious guidance/spiritual counselling. The social institutions referred to are the organizations concerned with the issue of domestic violence, for example, legal aid groups. Social workers are those who are formally trained or those who have practical experience in social work. This means that the issue of gender-based violence, materialized in the DVA as well as other conventions related to the elimination of gender-based violence, must be included in the curricula of legal aid, social work, health and legal education.

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

Sixthly, the DVA introduced economic abuse or economic neglect. Article 9 of the DVA states that it is forbidden to neglect persons living in the same household; as it is stipulated by laws, consensus or agreement that a person is obligated to provide a livelihood, care or maintenance to those persons living in the same household, 2) neglect as referred to in Paragraph 1 also applies to all persons who cause economic dependence by limiting and/or forbidding other persons within the household from working or earning a suitable income within or outside the household, such that they become victims under his control.

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

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

During the first year of its formation in 1995, APIK handled 111 cases, 60 percent of which were domestic violence cases. The difficulty in handling them was mainly attributed to the lack of awareness - not only among victims but also among law enforcers, religious leaders, family members and the public in general - that domestic violence is a crime. APIK demonstrated that the only legal regulation on sexual assault in the Criminal Code was very ineffective.

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

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

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

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

Implementation of the DVA and access to justice

The UNDP defines access to justice as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice and in conformity with human rights standards.”

APLIK conducted a desk study that concluded access to justice is not guaranteed by the state. The 2006 UNDP conceptual framework sets normative standards. All laws and procedures must be in place and understood by duty and claim holders. The DVA must be understood by legal authorities, other institutions mandated by the law and claim holders. However, the government has no national action plan to implement the DVA. The failure of the MoWE & CP, as coordinator, in upholding the DVA also contributes to the lack of understanding of legal authorities, service providers and claim holders.

A second requirement is legal awareness by victims of domestic abuse, which enables them to have a better understanding of the legal aspect of their case and of the circumstances that triggered the abuse. In Indonesia, the public’s familiarity with the law and legal procedures is generally very low. This also applies to awareness of the DVA. Since its enactment, few initiatives have been undertaken to improve the public’s knowledge about the DVA. These were then disseminated and discussed in several cities in big cities.

The third component is access to appropriate forums, either formal or informal. The availability of legal remedies and legal awareness alone is not sufficient for women to gain access to have access to forums or other forms of mediation through mechanisms that are in their interest. Law enforcement agencies must also facilitate victims’ access to justice and be open to accepting domestic abuse cases. The dual court system - shariah and general court - and the dichotomy between the civil and the criminal court system, are a major obstacle for abused women in their quest for justice. The criminal court system is oriented towards punishment, while family members are more comfortable with civil and religious interpretations as well as economic considerations (the possible absence of the breadwinner).

A problem is that although the definition of ‘family’ in Article 2 of the DVA is quite broad, people with non-normative gender identities or sexual orientation, as well as women who are registered as having married, and children who are considered illegitimate, face various obstacles in accessing legal remedies provided by the DVA. The long and complicated criminal procedure is also a barrier, because the victim may take months or even years to get the court to give its verdict. This makes the procedure very costly because of court and lawyer fees, free legal aid for women is limited and mostly located in big cities.

The fourth component in the 2006 UNDP framework is access to effective handling of grievances and provisions of remedies. It implies that duty bearers or legal enforcers and service providers must take necessary action to provide remedies for a grievance. Our study shows that it is difficult for women to access sexual violence. The DVA gives victims the right to health, social, spiritual, psychological and legal services. However, we found that these services were not available when they were needed. Even if local law enforcers might not provide relevant information or might withhold these services from the victims. The management of a case is considered effective when law enforcement agents and service providers are adequately carrying out their duties and taking appropriate action to help victims, including the most basic action such as issuing a protection order.8

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