

The Effects of Kindship System in Judicial Perception in Handling Cases of Violence against Women

by Kadek Wiwik 11

Submission date: 16-Jun-2022 06:28PM (UTC+0700)

Submission ID: 1857886097

File name: 11_Setiyono_dan_Kadek.pdf (341.5K)

Word count: 5016

Character count: 25586

The Effects of Kindship System in Judicial Perception in Handling Cases of Violence against Women

Setiyono^{1*} and Kadek W. Indrayanti¹

¹Faculty of Law, University of Merdeka Malang, East Java, Indonesia

DOI: 10.29322/IJSRP.10.08.2020.p10468

<http://dx.doi.org/10.29322/IJSRP.10.08.2020.p10468>

Abstract:

The phenomenon of violence against women is increasing with all kinds of diverse forms of violence. There are still many Indonesian women who find it difficult to access legal justice when they are victims in cases of violence. The legal culture of judges needs to be studied in depth given the judges' decisions that are very diverse and far from a sense of justice in cases of violence against women. Moreover, the principle of the benefits of the decisions are often perceived as not fulfilling a sense of justice both by justice seekers and the community. The specific purpose of this study is to obtain in-depth information on the impact of existing values on the kinship system that forms the basis of life, perception and judges understanding of the law, especially in giving decisions on cases of violence against women. This research is expected to contribute to one aspect of the legal system component, namely the legal culture component, in order to enrich judicial behavior theories to improve the conditions of the law enforcement process in Indonesia. This research is exploratory with an approach that is more directed towards empirical legal research by examining one aspect of the legal system component and aspects of the legal structure about the impact of the kinship system on the perception of judges in cases of violence. This research was conducted in the East Java High Court and Denpasar, because these two locations have different kinship systems, namely Java with a parental system and Bali with a patrilineal system. The kinship system adopted by the judge determines the judge's perception so that it will be reflected in his decision. For this reason, studies in the field of legal culture both among law enforcement, executive and legislative bodies need to be carried out so that the results can be used as material to increase knowledge in the legal aspects.

Keywords: Violence against women, legal culture, kinship system and judicial behavior.

Introduction

The phenomenon of violence against women is increasing with all kinds of diverse forms of violence. In the annual record of the National Women's Commission in 2010, the number of violence against women reached 105,103 cases and 96% of them occurred in private area. Behind this number, it turns out that for years women victims of violence have had difficulty in accessing justice. There are still many Indonesian women who find it difficult to access legal justice when they are victims in cases of violence.

In 2012, there were 8,315 cases (66%), while 34% were violence in the community and state domain. Of these, psychological violence was the highest form of domestic violence (46%), physical violence reached 28%, sexual violence 17%, and economic violence amounted to 8%. Another form of domestic violence that is currently being reported is in the form of marital crime.

In connection with reports of victims of violence against women and children who entered the police in Malang Police station, the case rose to 300% in 2008-2009. However, the case that came to the trial decreased because it was the parties who withdrew the case due to peace and one of the parties moved domicile (Ristanty and Indrayanti, 2009). Punishment for rape cases that only last for 3-6 months has not been maximized, and the verdict does not reflect a sense of justice for the victim. This is due to the ways in which they perceive violence against women themselves, whether the case of violence against women is considered a personal problem or as a complex social problem. In addition, factors outside the law are often also used as considerations in passing decisions by judges.

Legal culture of judges needs to be studied in depth given the judges' decisions which are very diverse and far from a sense of justice in cases of violence against women. The study of legal issues that only observe and emphasize the operation of the law according to formal procedures as outlined in the legislation, have not been able to explain fully and broadly how the community actually resolves the legal problems encountered, including in this case how the patterns of judicial behavior in give decisions that are influenced by the values they hold.

The specific purpose of this study is to obtain in-depth information on the impact of existing values on the kinship system that forms the basis of life, perception, and judges' understanding of the law, especially in giving decisions on cases of violence against women. Furthermore, we will try to find the differences and similarities of the kinship system adopted by the judges which are an internal part of the legal culture in giving decisions. This research is expected to contribute to one aspect of the legal system component, namely the legal culture component, in order to enrich judicial behavior theories to improve the conditions of the law enforcement process in Indonesia.

Literature Review

Concept of Legal Culture in Law Enforcement

Friedman (1975) revealed that there are three components of the legal system, namely: (1) structure, (2) substance and (3) culture. The structure consists of number and size of the court, its jurisdiction (the type of case being examined and the procedural law used), including in this structure also concerning the arrangement of the legislative body. Substance, namely the rules, norms and patterns of real human behavior within the system. Included in this understanding of the substance is also the "products" produced by people who are in the legal system - the decisions they make, the new rules they draft. Meanwhile, culture or legal culture, namely human attitudes towards law and the legal system - their beliefs, values, thoughts and expectations.

One very important type of group legal culture is the legal culture of legal professionals - the values, ideologies and principles of law enforcement. The behavior and attitudes of professionals have a big influence on the pattern of demands put on the system. A judge will decide in a certain way to satisfy the demands offered to him when he has an interest in doing the thing or group of his own age or values for it (Friedman, 1975).

Types of Kinship Systems

In Indonesia there are three kinship or kinship systems, namely matrilineal, patrilineal and parental kinship systems. Patrilineal is a community custom that regulates the flow of descent from the father's side. This word is often equated with patriarchy or patriarchy, although basically the meaning is different. Matrilineal kinship system is a kinship system that draws a lineage from the line of women (mothers). This system is adopted in West Sumatra (remote areas). It is a community custom that regulates the flow of descent from the mother's side. While the parental kinship system is a kinship system that draws a lineage from the line of men (fathers) and women (mothers). This system is practiced in Java, Madura, South Sumatra and others. Although in Indonesia there are three kinship or kinship systems, the power remains in the hands of men as a result of the influence of patriarchal ideology.

The matrilineal kinship system adopted in the Minangkabau community in West Sumatra is the oldest kinship system. This kinship system places a high status of women and is a successor to offspring and in inheritance law as well as heirs. In the Minangkabau community, although the lineage is drawn from the line of women (mothers) but the power remains in the hands of men. In the patrilineal kinship system is adopted by the people of Tapanuli, Lampung, Bali and others. It is very clear that men are placed in a higher position. Men have the position of heirs, as a continuation of family names, as successors to offspring, as members of indigenous peoples and also have a role in family and community decision making. In a society that adopts a patrilineal kinship system, women are the opposite, that is, having a very low position, not as an heir, not as a descendant, not as a successor to the family name because in honest marriage (in general) women follow their husbands and also do not become members culture.

Concepts and Forms of Violence Against Women

Violence means an attack on a person's physical or psychological mental integrity. The types of violence according to the Law are physical, psychological and economic violence. Therefore violence does not only involve physical attacks such as rape, beatings and torture but also non-physical ones such as threats, sexual harassment and coercion so that women or men emotionally feel disturbed in their hearts. While economic violence felt by women (wives) in the form of not being provided with a living from a husband, can occur because the husband is unemployed, small income or wasteful. As a result, it is not uncommon to cause quarrels in the household until physical violence occurs.

Theories of Judicial Decision Making

One of factors influencing judicial behavior is structural variable, which is the factor of regulations regarding procedures and jurisdiction, etiquette and court customs. Another explanation is because of law itself. Judges adhere to legal principles or listen to better legal arguments. For individual cases and in the short term, these factors are important and even greater than the impact of the values and attitudes of judges and the pressure of particular interests and events.

Based on behavioral techniques, political scientists view the judges themselves as the key determinants, especially their attitudes and values. They also use scaling to measure sensitivity to several factors such as the economy, civil liberties, sympathy for marginalized parties and so on. Judges have values, attitudes and intuitions, but they also play the role of judges and this role requires them to play the game of law. In a review like this, judges are also a product of an institutional setting in addition to their products.background

There is diversity between judges and courts. Some courts follow economic, social or political flow as does the North-South boundary line in the United States. It is not easy to find out the contents of the judges' heads. A study conducted by Glick (1971) raises initial expectations. He interviewed judges who served in four courts in New Jersey, Massachusetts, Louisiana and Pennsylvania. Judges have very diverse attitudes. Glick for example asked, "How do non-legal factors influence decision making in a case? How important are these things? Every member of the New Jersey court said "very important". Judges of Louisiana, except for one, said that these factors were not important at all. From Glick's interview came a picture of the four trials. New Jersey is the seat of legal realism; judges in the other three states generally have a more conservative mindset.

In another study, Daynard (1971) examined three hundred cases in three mid-level courts to see the style used by these courts in deciding cases. He distinguished six styles. Three of them are narrow - limited to the precedent or facts about the case or the applicable law; the other three are wider.

Levin (1972) filters data about the behavior of judges in sentencing in two cities, Minneapolis and Pittsburgh USA. Levin found differences in the behavior and attitudes of Pittsburgh judges, generally giving lighter sentences than judges in

Minneapolis. Judges in Minneapolis are more oriented towards the community's need for protection and towards their professional goals rather than to the suspect. On the other hand, judges in Pittsburgh are oriented to the suspect and to the provision of punishment or efforts to prevent crime.

Verdict Research on Cases of Violence against Women

Many cases of sexual violence against children are difficult to prove in court, especially children aged 16-17 years because of using the Child Protection Act. While for children under the age of 15, many use the Criminal Code (KUHP). Not all judges have the perspective and sensitivity of gender and children's rights, so that there are still judges' decisions and prosecutors' demands that have not been able to fulfill the sense of justice for victims, including rape cases with 3 perpetrators by the Sleman District Court.

A sexual abuse case in Wates District Court was prosecuted for 2 years and the panel of judges decided for 1 year and 3 months. This happens because of assumptions among judges and prosecutors, especially for cases of sexual violence for children over the age of 15 years who are considered to have grown up and contributed to the occurrence of rape, while the age is still not even 18 years.

The attitudes of law enforcement officers are still found to assess victims from the physical side and external appearance. According to them the victim should show a sad attitude, not caring for themselves, stressed, depressed or a picture of bad things. As a result, the demands are not optimal and the decision is not more than 2 years.

A study conducted by Ristanty and Indrayanti (2009) on the perception of law enforcement officers in rape cases in the Malang District Court shows that the verdicts were not yet maximal because they only ranged 3-6 months and did not reflect a sense of justice for victims. This is due to how they perceive violence against women themselves whether considered a personal problem or as a complex social problem. There are several factors that are used as a basis for consideration by judges to the convicted person, such as: during the trial the defendant behaves politely, the perpetrators of domestic violence (KDRT) are the husband who acts as a breadwinner. Thus, factors outside the law are often also taken into consideration in passing decisions by judges. In order to make sure that the elements of justice and expediency can be reflected in the judges' decision, the judge, in addition to understand the domestic violence law needs to have a further understanding of domestic violence cases, namely how a phenomenon is accepted will determine the response to it. When a violence is conceived as a problem, the response will lead to a solution.

Violence against women in many forms is rarely accepted by the government as a problem that requires important action. When violence occurs at home, it is seen as a personal problem and must be resolved in a family way. When violence occurs in the community naturally, it will be underestimated or treated as a moral problem of the woman and her behavior is blamed. Violence that happens to women has not been seen as a problem like crime. So the first step that must be agreed is that violence against women should be accepted and understood as social problems. When violence against women begins to be defined as a social problem rather than a personal problem, it will become clear that our understanding is still limited. The cause of violence is still unclear, if not controversy and seen differently by a variety of professionals, cultures and even gender actors. In-depth understanding that needs attention due to the violence itself most of the attention is directed at victims not on others such as family and society. Because it will be very useful as the concept of the problem impacts the involvement of the government sector so as to make our understanding deeper into the whole problem.

A general theory of judicial decision making cannot ignore social forces. This means that special studies that discuss the impact of the kinship system on judicial perceptions need to be done up to now. So that the results of this study will enrich the theory of legal system components, especially in the aspect of legal culture.

METHODOLOGY

This research is an exploratory one since the study is related to the culture of law in the environment of law enforcement officers. The approach used in conducting this research is more directed towards empirical legal research by examining one aspect of the legal system component and aspects of the legal structure regarding the impact of the judge's kinship system on judges' perceptions in violent cases.

This research was conducted in the East Java High Court and Denpasar, because these two locations have different kinship systems, namely Java with a parental system and Bali with a patrilineal system. The population in this study are the judges in the East Java and Bali District Courts. Whereas the sample location to be chosen was determined purposively, namely for East Java are Malang District Courts, Pasuruan and Banyuwangi and the Bali District Courts of Denpasar, Singaraja and Tabanan. This is because there is prior information that says that the courts have handled cases of violence against women.

This study uses two kinds of data in the form of primary data and secondary data. The stages of primary data collection are done in two steps. The first step is to use interview techniques with closed and open ended questionnaire questionnaires. The second technique is to conduct focus group discussion (FGD), which is a more focused group discussion to get more in-depth information, especially related to the background of the experience of the judges, the values adopted and their perception in deciding cases of violence.

After the data is collected it will be analyzed using a qualitative descriptive method that is describing the information obtained so that a concrete description of the presence or absence of the kinship system affects the perceptions of judges in giving decisions on cases of violence against women. Furthermore, the analysis was carried out using a comparative approach to describe the similarities and differences in the impact of the kinship system on the perceptions of judges.

RESULTS AND DISCUSSION

Based on Table 1, out of 9 judges there were 5 Muslim judges, 2 Hindu and 2 Christians. There were 2 judges from Bali, 2 from Sumatra, 1 from NTT and 1 from Makassar and 3 from Java.

Table 1. Kinship and Religion Embraced by the Judge

| Number | District Court | Gender | Kinship system | Religion |
|--------|----------------|-----------------|---|--------------------|
| 1. | Pasuruan | Male | Patrilineal (Batak) | Christian |
| 2. | Malang | Female | Patrilineal and Parental (NTT and Java) | Islam and Islam |
| 3. | Singaraja | Female and Male | Patrilineal (Bali) and Parental | Hinduism and Islam |
| 4. | Tabanan | Female | Patrilineal (Bali) | Hinduism |
| 5. | Denpasar | Male | Patrilineal (Tapanuli) | Christian |
| 6. | Banyuwangi | Male | Patrilineal (Makassar) and Parental (Kediri, East Java) | Islam |

Related to which element is more prioritized in giving decisions, it turns out that out of 9 judges, there were 4 judges who gave an opinion that the priority element was the principle of justice. Meanwhile, judges who said that all elements are used were 3 judges, 1 judge chosen legal certainty and benefits (Table 2).

Table 2. Elements of Non-Legal Elements that are Prioritized in the Decision

| Number | District Court | Gender | Elements of Decision Certainty, Fairness and Expediency | Non-Legal Elements |
|--------|----------------|-----------------|---|--|
| 1. | Pasuruan | Male | Expediency | Very important |
| 2. | Malang | Female | Fairness and all (2 judges) | Very important |
| 3. | Singaraja | Female and Male | Fairness and fairness | Very important |
| 4. | Tabanan | Female | All | Important |
| 5. | Denpasar | Male | All | Very important |
| 6. | Banyuwangi | Male | Fairness and legal certainty | Very important and depends on the case |

All judges interviewed said that the non-legal element is very important factor and had an effect on the judge in giving a decision. There were 2 judges who stated the verdicts depended on the facts in the trial and the motives of the perpetrators. Meanwhile, 6 other judges said the verdict was lighter than the prosecutor's demands and only 1 judge said the verdict was the same or even higher than the prosecutor's claim (Table 3).

Table 3. Verdict by Court

| No. | District Court | Origin of Judge | Sanction Category | Perception about Law: Laws, judges' decisions and institutionalized values or behavior |
|-----|----------------|---------------------|---|--|
| 1 | Pasuruan | Batak | Lighter than prosecutors demand | All |
| 2 | Malang | NTT and Jogja | Lighter than prosecutors demand | All |
| 3 | Singaraja | Bali and Jogja | Lighter than prosecutors 'demands and not always under prosecutors' demands: sometimes the same | All |
| 4 | Tabanan | Bali | It depends on the facts at the trial | All |
| 5 | Denpasar | Tapanuli | Depending on the case and motives of the perpetrators | All |
| 6 | Banyuwangi | Makassar and Kediri | Lighter | All and only number 1 and 2 |

Judges' understanding of the concept of law turns out to almost all say that the law includes laws, judicial decisions and institutionalized values or behavior in society. Only 1 judge believes that the law includes the law and the judge's decision, while the institutionalized values of behavior are difficult to categorize as law.

Based on the results of interviews conducted with 9 judges from 6 District Courts who have handled cases of violence against women, it turns out that there are some findings that are quite interesting to be used as a study material related to the impact of the kinship system adopted by the judge. In connection with the judges' answers about the elements or principles prioritized in the decision, apparently out of 5 judges there were 3 judges who gave answers to the priority element of justice. Others said the three elements were taken into consideration in their decision. Theoretically, each judge's decision should reflect the three elements proportionally. But in reality it is impossible for a judge's decision to consider all three elements. There must be a sacrifice if one element is prioritized, surely the other elements don't get enough attention.

Furthermore, 2 judges (Malang and Singaraja District Courts) who answered the priority element of justice came from the patrilineal kinship system. Judges from the community system who adhere to the patrilineal experience experience, subordinate treatment from men. When handling cases of violence that befall women in their decisions, they do use legal certainty as a basis for deciding a case, the values and experiences of women judges who are influenced by the patrilineal kinship system are also reflected in the decisions made.

On the contrary, one male judge who served in the Pasuruan District Court who came from the patrilineal system gave the answer that the priority was the benefit aspect because it was related to the matter of the decision. While legal certainty is related to the legal process, namely the issue of proof and legal justice takes into account the aspects of the background and accompanying circumstances.

Furthermore, regarding the influence of non-legal elements on the judge's decision, it turned out that all the judges considered it is necessary to be used as a consideration in making decisions and the judges argued that non-legal factors were very important especially in cases of violence against women. Because in the hearing, the victims and their families usually ask for leniency on the perpetrators, which in fact are mostly the husband of the victim. The reasons given varied so that the judge decided to calculate non-legal factors. So it was not merely legal certainty. In a judge's decision the element of legal certainty is indeed used as a basis but the decision is handed down by considering many things including non-legal elements.

Likewise, the sanctions given turned out in practice from 9 judges of whom 5 judges said the verdict was lighter than the prosecutor's demands. Only 1 judge said it was not always the same as the prosecutor's demands and was always more severe whereas 2 judges gave explanations that it depends on the case and facts in court or in other words it can be lighter or vice versa. In connection with the existence of the perception of 1 judge who firmly said that the decision handed down was not always lighter. It means that the judge decided that cases of violence against women were always more severe than prosecutors demanded. This finding is interesting because the judge who gave his opinion came from the parental kinship system (Javanese: Jogja) which put forward the element of justice. So it can be predicted that the reason given has to do with the answer given in the question: which of the three elements (certainty, fairness and usefulness of law) takes precedence in giving a decision? Because the judge chose the element of justice on the grounds that in cases of violence against women there were strong parties (men) and weak parties (women). The weak party must be protected which is the sense of justice.

There are other findings that shows similarity of answers related to judges' perceptions about the law including laws, judges' decisions and institutionalized values or behavior, that the three items above are legal. Likewise, the decisions handed down by the judges tend to be lighter than the demands of the prosecutors. That was due to the influence of non-law which was considered by the judges. However, the findings of a judge who gave a decision is not always lighter in the sense that there is a judge who gives the same decision as the prosecutor's demands. The judge gave the reason that in cases of violence against women, there were two parties confronting, namely the strong and the weak.

Relating to internal and external cultural factors of judges that have a significant impact on decisions in violent cases, it is still necessary to conduct further in-depth studies. This is in the sense that the questions and material submitted should more specifically explore non-legal aspects and principles in decisions as well as the impact of the internal environment of the personal, work environment as well as the environment outside the work of judges need to be further explored.

There are several external environments or environments experienced felt by the judges which turned out to have an impact in making decisions. In this study, judges from patrilineal and parental kinship systems did not consider the same elements prioritized in the decision. So there are values obtained by judges of the kinship value system adopted also gives color in the decisions given. Where as many as 4 judges prioritize a sense of justice in their decisions, 1 benefit, 1 legal certainty and 3 judges said all elements take precedence.

The kinship system adopted by the judge determines the judge's perception so that it will be reflected in his decision that the judge should be able to filter which of the values that he adheres to harm or benefit all justice seekers. The term given by the judge that the kinship system is like an infant carrying that affects the way of thinking of a judge, for example between the norm and the judge's way of thinking which is sometimes contrary to the law. Then these things can become obstacles or obstacles to the verdicts handed down.

CONCLUSIONS AND RECOMMENDATIONS

Based on the results of the study after conducting interviews with judges in 6 regions of the District Court, it can be concluded that: 1) The values held by the judges greatly influence the perception in giving decisions in cases of violence against women, 2) There are several differences and similarities in the choice of decisions from judges with different kinship backgrounds as follows: The difference is: 4 judges prioritize a sense of justice in their decisions, 1 judge chooses an element of legal advantage that is prioritized, 1 judge chooses legal certainty and 3 the judge said that all the elements take precedence. As a

result, it will affect the sanctions imposed in which there are 4 judges whose verdicts are lighter than the demands of the prosecutor and 1 judge are the same and the rest depends on the facts and motives of the perpetrators. Whereas the similarity of all judges with different background of kinship uses the norm for legal certainty, 3. Internal and external factors of legal culture have significant impact on decisions in violent cases, 4) The impact of the kinship system on the perception of judges of the special decision in the domestic violence case can actually make a significant contribution to the aspects of legal culture in Indonesia. For this reason, studies in the field of legal culture both among law enforcement, executive and legislative bodies need to be conducted so that the results can be used as material to increase knowledge in the legal aspects.

REFERENCES

- Ristanty, E dan K. Indrayanti. 2009. *Pemahaman Aparat Penegak Hukum tentang kasus KDRT sebagai suatu Torture*. Research article
- Lawrence M. Friedman, L. M. 1975. *The Legal System: A Social Science Perspective*. Russel Sage Foundation.
- Glick, H. R. 1971. *Supreme Courts in State Politics, an investigation of the Judicial Role*. Basic Books, New York.
- Levin, M. A. 1972. Urban Politics and Judicial Behavior, *Journal of Legal Studies*: 1(1), article 8.
- Daynard, R. A. 1971. The Use of social Policy in Judicial Decision Making. *Cornell Law Review*. 56, 919-950.

The Effects of Kindship System in Judicial Perception in Handling Cases of Violence against Women

ORIGINALITY REPORT

10%

SIMILARITY INDEX

10%

INTERNET SOURCES

2%

PUBLICATIONS

%

STUDENT PAPERS

MATCH ALL SOURCES (ONLY SELECTED SOURCE PRINTED)

4%

★ jurnal.unmer.ac.id

Internet Source

Exclude quotes Off

Exclude matches Off

Exclude bibliography On

The Effects of Kindship System in Judicial Perception in Handling Cases of Violence against Women

GRADEMARK REPORT

FINAL GRADE

/0

GENERAL COMMENTS

Instructor

PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6
