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Moluccas Local Wisdom in the Role of Marriage Arbitrators for Preventing Domestic Violence

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Abstract:

This research aims to reveal the Moluccas local wisdom through the existence of marriage arbitrators among the Muslim community in Salahutu, Leihitu, and West Leihitu, Central Maluku. The data were collected through observation and interviews with community leaders, marriage arbitrators and their married sisters then analyzed descriptively and qualitatively. The research results showed that the marriage arbitrators come from a male distant relative who was appointed by custom as a part of the marriage custom. The appointment aims to strengthen the family relationship between the bride (married sister) and the arbitrator in which they can help each other. Traditionally, an arbitrator serves to help the bride in both material and non-material aspects, particularly in preventing domestic violence. He can become a mediator, peacemaker, and helper of the economic hardship as well as preventing the married sister from psychological domestic violence. Furthermore, he can also provide protection for his married sister from the

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threat of her husband's physical violence. This research found that the role of marriage arbitrators as peacemakers in preventing husband's violence against their married sisters is relevant to *the hakamayn* concept in Islamic law as well as the provisions of "safe houses by the community" in Indonesian Law Number 23 of 2004.

Keywords:

Marriage Arbitrator; Domestic Violence; Islamic Law; National Law

Abstrak:

Tulisan ini bertujuan untuk mengungkapkan peran kearifan lokal saudara kawin pada masyarakat Muslim di Kecamatan Salahutu, Leihitu dan Leihitu Barat. Kabupaten Maluku Tengah. Data dikumpulkan melalui observasi dan wawancara kepada tokoh masyarakat, saudara kawin dan saudari kawin kemudian dianalisis secara deskriptif kualitatif. Hasil penelitian menunjukkan bahwa saudara kawin adalah laki-laki dari kerabat jauh yang diangkat secara adat sebagai bagian dari adat perkawinan. Hal itu bertujuan untuk mempererat hubungan kekeluargaan antara saudara kawin dengan saudari kawinnya di mana keduanya bisa saling membantu. Secara adat, saudara kawin bertugas membantu mempelai perempuan (istri) dalam hal material maupun non-material, utamanya untuk mencegah tindak kekerasan dalam rumah tangga si saudari kawin. Saudara kawin bisa berperan sebagai penengah, juru damai, sekaligus membantu kesulitan ekonomi keluarga saudari kawinnya, termasuk mencegah terjadinya kekerasan psikis yang mungkin dialami si saudari kawin. Lebih jauh, saudara kawin juga bisa berperan melindungi saudari kawinnya dari ancaman kekerasan fisik suaminya. Temuan penelitian ini menunjukkan bahwa peran saudara kawin sebagai juru damai yang mencegah kekerasan suami kepada istri relevan dengan konsep *hakamayn* dalam hukum Islam serta ketentuan "rumah aman oleh masyarakat," dalam Undang-Undang RI Nomor 23 Tahun 2004.

Kata Kunci:

Saudara Kawin; Kekerasan Dalam Rumah Tangga; Hukum Islam; Hukum Nasional

Introduction

Domestic violence is like an iceberg. What appears on the surface in the reports of various mass media is only a very little part of the reality. Those reports have not yet described the real condition of people's lives, although it might trigger the enactment of relevant and needed regulation.¹

The National Commission on Violence against Women has reported that in 2016, as many as 259,150 cases of violence against women happened² and the number increased in 2017 to 348,446 cases. Of that number, 335,062 cases were domestic violence.³ For this reason, the government enacted Law Number 23 of 2004 on the Elimination on Domestic Violence.

The existence of this law has changed the perception of public and law enforcers regarding violent action within the household sphere from private (civil) affairs into public or criminal ones. However, many people still do not understand the laws and regulations which include domestic violence as a criminal act. In this connection, most victims of domestic violence are women that makes

¹ See Hanafi Arief, "Domestic Violence and Victim Rights in Indonesian Law Concerning the Elimination of Domestic Violence," *Journal of Legal, Ethical and Regulatory Issues* 21, no. Spesial Issue (2018): 1.

² "Kekerasan dalam Rumah Tangga Tertinggi adalah Kekerasan atas Perempuan Di Indonesia," BBC Indonesia, 7 Maret 2017, accessed September 25, 2018, <https://www.bbc.com/indonesia/indonesia-39180341>.

³ "Kekerasan pada Perempuan Selama 2017 Didominasi KDRT dan Pelecehan," Detik News, 7 Maret 2018, accessed September 25, 2018, <https://news.detik.com/berita/d-3903861/kekerasan-pada-perempuan-selama-2017-didominasi-kdrt-dan-pelecehan>.

domestic violence in Indonesia mostly refers to violence against women.⁴

Unfortunately, a woman's position that seems weak, both physically and socio-culturally, creates a dilemma in responding to the domestic violence she experiences. In one hand, she might experience suffering physically, psychologically, sexually and even economically but on the other hand, reporting her husband to the police will cause disgrace to the family she builds. As a result, many women—wives, in this context—keep the domestic violence a secret in order to avoid public impression of the disharmony on her family.⁵

This occurs mostly due to the attitude of the Indonesian majority on the gender issues and women which are still so patriarchal. In fact, it potentially leads to various forms of injustice for women and provides space for domestic violence to occur more and more.⁶ Therefore, it is necessary to prevent domestic violence in many ways to save women from the chain of violence.

Relevant to the description above, the Muslim community of Central Maluku, especially in the sub-district of Salahutu, Leihitu, and West Leihitu, has relevant local wisdom in preventing the violence called the marriage arbitrator. Preliminary research shows that the marriage arbitrator has a role to reconcile his married sister's household conflict and protect her from the threat of violence that her husband might perform.⁷

The role of this local wisdom deserves serious exploration from the aspect of Islamic law, especially on its relevance to the function of *hakamayn* (two peacemakers). In Islamic law terms, the *hakamayn* are

⁴ Siti Aisyah and Lyn Parker, "Problematic Conjugations: Women's Agency, Marriage and Domestic Violence in Indonesia," *Asian Studies Review* 38, No. 2 (2014): 208.

⁵ Elli Nur Hayati, "Elastic Band Strategy': Women's Lived Experience of Coping with Domestic Violence in Rural Indonesia," *Globe Health Action* 6 (2013): 2.

⁶ Lily Zakiah Munir, "Domestic Violence in Indonesia," *Muslim World Journal of Human Rights* 2, No. 1 (2005): 34.

⁷ Yusuf Laisouw, "Former Village Head Larike," direct interview on August 17, 2017. Hasrul Kilrey, "Head of the District Office of Religious Affairs Salahutu" direct interview on September 14, 2017.

obliged to reconcile husband and wife's conflicts⁸ to make them reunite again peacefully. In addition, it is also necessary to trace its relevance to the national law in Law Number 23 of 2004 on the Elimination of Domestic Violence.

Interestingly, in the tradition of this local community, a wife who deals with a dispute or suffers violence from her husband is not justified to complain and ask for help and protection from her parents. Instead, she has to complain and ask for protection from her marriage arbitrator.⁹ Therefore, this needs a cross-examination from the perspective of national law since the Law of the Republic of Indonesia Number 23 of 2004 contains a provision on a safe house for domestic violence victims.

Research on domestic violence has been carried out by many scholars. One of which was Hayati, et al. (2014),¹⁰ who examined the involvement of men in the prevention of domestic violence in Indonesian rural areas. However, their research has not mentioned any role of specific local wisdom in preventing domestic violence. Research by Emma Fulu et al¹¹, meanwhile, took a similar focus with those of Hayati although the violence prevention strategy has nothing to do with the role of marriage arbitrator.

Another research on the experiences of women as the victims of domestic violence is of Siti Aisyah and Lyn Parker.¹² Their research examined the experiences of women in Makassar, South Sulawesi, against domestic violence during their marriage. Additionally,

⁸ See Abū Hamid ibn Muhammad al-Gazali, *Ihyā' 'Ulūm Al-Dīn* Vol. II, Ed. 3 (Beirut: Dar al Fikr, 1991), 55-56.

⁹ Farid Naya, "Islamic Religious Figures in Liang Village," direct interview on July 12, 2018.

¹⁰ Hayati, "We No Longer Live in the Old Days: A Qualitative Study on the Role of Masculinity and Religion for Men's Views on Violence Within Marriage in Rural Java, Indonesia," *BMC Women's Health* 14 (2014).

¹¹ See Emma Fulu, "Prevalence of and Factors Associated with Male Perpetration of Intimate Partner Violence: Findings from the UN Multi-Country Cross-Sectional Study on Men and Violence in Asia and the Pacific," Vol 1 October, 2013, 187, www.thelancet.com/lancetgh.

¹² Siti Aisyah and Lyn Parker, "Problematic Conjugations: Women's Agency, Marriage and Domestic Violence in Indonesia," 205, 209.

research by Nabiela Naili¹³ revealed the relevance of Law Number 23 of 2004 with Islamic law. She mentioned that they both aim to protect women's rights and prohibit violence against them. However, she criticized that those types of laws are normative instead of applicable.

This paper, in this context, examines the prevention of domestic violence that the previous researches have not discussed yet. It focuses to analyze the role of marriage local wisdom in the Moluccas marriage arbitrator on the prevention of domestic violence on women. In addition to it, it also reveals the relevance of the marriage arbitrator's role with both Islamic law and national law.

Method

This research used a multidisciplinary approach including cultural, Islamic, and juridical ones. A cultural approach aimed to analyze the effectiveness of local wisdom on the marriage arbitrators in Central Maluku district in preventing domestic violence on women. The Islamic approach, meanwhile, would like to find the relevance of the marriage arbitrator's role with the provisions of Islamic law derived from the Quran, hadiths, and the opinions of Islamic theologians regarding the same issue particularly through the concept of *hakamayn*. As for the last, the juridical approach was used to analyze the relevance of marriage arbitrators' role with the provisions of Law Number 23 of 2004 on domestic violence prevention.

The research took place in Salahutu, Leihitu, and West Leihitu sub-districts, Central Maluku district. It engaged informants from community leaders, religious leaders, as well as marriage arbitrators and their married sisters in those three sub-districts. The data collection was through observation of appointing the marriage arbitrator procession and direct interviews to 14 informants. The interview materials relate mostly to the marriage arbitrator's role in preventing domestic violence. The data was then processed and

¹³ Nabiela Naili, "A Policy Analysis from Gender and Islam Perspective on Regarding Elimination of Violence in Household," *Al-Qanun* 12, no. 1 June (2009): 230.

analyzed in a descriptive qualitative method¹⁴ to make the drawn conclusions in line with the research problems.

Role of Marriage Arbitrators in Preventing Domestic Violence according to Customary Perspective

Muslim communities in Salahutu, Leihitu, and West Leihitu sub-districts have been appointing marriage arbitrators as a part of their own custom since ancient times until today. The binding power of the arbitrator is shown by their habit which still appoints of the arbitrator even though the marriage is carried out outside Maluku. A woman who is married to a local man, furthermore, deserves to appoint a local man whom she knows or trusts as her marriage arbitrator. The first and the main function of this appointment are to fulfill customary marriage requirements for Muslims.

In general, the arbitrators serve to represent the parents of their married sisters or the brides in handing over the duties and responsibilities to take care of her from her parents to her husband. This is in accordance with the prevailing tradition in the area that the marriage contract is carried out at the house of the prospective bridegrooms instead of the brides'. Furthermore, it closely relates to the patrilineal system (following the father's line) in the local community as a clear name from the clan deriving from the father's side instead of the mother's. This is contradictory to those of Minangkabauness with matrilineal ones.¹⁵

When the marriage contract date has been determined, the appointment of the marriage arbitrator (*leu mata'rima*) will take place.¹⁶ This is particularly because the arbitrator will also play a role to perform *'ijāb* for the prospective bridegroom of his married sister. Based on this background from the early process of marriage, the

¹⁴ See Imam Suprayogo and Tobroni, *Metodologi Penelitian Sosial Agama*, 2nd ed. (Bandung: Remaja Rosdakarya, 2003), 192-95.

¹⁵ See Subhan MA. Rahman, "The Dynamic of Malay of Islamic Law The Rise and Practices of Adat Bersendi Syarak, Syarak Bersendi Kitabullah in Jambi," *Journal of Indonesian Islam* 11, no. 02 December (2017): 389.

¹⁶ Farid Naya, "Islamic Religious Figures in Liang Village," direct interview on July 12, 2018.

arbitrator has the responsibility to help the bride as his married sister in several condition as follow:

1. Preventing Economic-Based Domestic Violence

When a married sister celebrates a rite such as the commemoration of the death of parents, the arbitrator must bring specific gifts to her house, namely food (such as bananas, rice) as well as mats and pillows. As a result, the community will automatically know and understand that the specific gift comes from the arbitrator as a customary obligation. Likewise, when a family member of the arbitrator, like his father or father-in-law passes away, the married sister is also obliged the same.¹⁷

In principle, the arbitrators' roles are to provide mutual economic and moral assistance to the married sisters. This applies in both happy celebrations (such as childbirth, *`aqīqah* or child naming celebration, circumcision, marriage, pilgrimage) and the grieving ones (hospitalization, death, etc). The obligation to help each other in social relationship is basically the consequence of human's condition and their basic needs. They have many types of need but on the other hand, they have limitations to fulfill them. Therefore, they need help from others ranging from close relatives, marriage arbitrators, to other parties.

In a more specific context, an arbitrator has, in fact, a duty to support his married sister's household economy. It means that if a married sister experiences financial problem and needs help, the arbitrator must be there to help her. The difficulties to this extent include basic necessities such as groceries (salt, vegetables) or other necessities that are not too burdensome. It aims to prevent any economic-based domestic conflicts as it tends to involve the married sister's parents. The role of the arbitrator is particularly needed in this condition because since appointed at the position, he has received duties and responsibilities from his married sister's parents.

Material assistance from the arbitrators is believed to substantially minimize the occurrence of domestic violence due to economic factors. This makes much sense as there found so much

¹⁷ Hasan Lauselang, "An Islamic Religious Figures in Morella Village," direct interview on July 17, 2018.

household need that one day, a couple may experience shortages both for basic needs and the second one such as children's fee tuition. Relating to this, local customs prohibit a married sister to tell the economic hardship she deals with to her parents or siblings. As an alternative, she needs to ask for help from her arbitrator.

The consideration of this custom is because when a married sister asks for help from her parents or siblings, her family will know the incapacity of her son-in-law or brother-in-law. This can be, furthermore, known as a disgrace for the general public. However, if she tells the arbitrator for getting help, he will not tell anyone about it as he has been given the duty to help her.

The description above shows that the assistance of the arbitrator in overcoming economic hardship implies an effort to prevent domestic violence. If this condition remains the same without the help of the arbitrators, it potentially develops into domestic violence because of the economic factors. On the other hand, if a married sister's household economic hardships can be overcome by the arbitrator, the domestic economic violence can be prevented. From this case, the optimal role of the arbitrators can prevent a form of domestic violence in the married sister's household.

From the perspective of Islamic teaching, this kind of help is relevant to the Qur'anic recommendation to help each other in kindness as described in QS. Al-Ma'idah 5: 2

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ

*'Cooperate with one another in goodness and righteousness, and do not cooperate in sin and transgression.'*¹⁸

This verse is broad in scope and target, including helping humans in general, Muslims, and especially families. However, the material assistance of an arbitrator can specifically save his married sister from any violence that her husband may commit due to the economic problem. Furthermore, his help does not only show his concern for his married sister but also for her husband's obligation to

¹⁸ Department of Religious Affairs of the Republic of Indonesia, *Al-Qur'an Dan Terjemahnya* (Jakarta: Ditjen Bimas Islam, 2009), 142.

make a *ma'rūf* (proper) living adjusted to the local culture.¹⁹ Another scope of the above verse is the importance of helping each other especially between husband and wife in preventing misunderstanding that typically leads to domestic violence.

2. Serving as Mediators and Peacemakers

Besides playing a role in helping material needs, a marriage arbitrator also serves as a mediator and peacemaker in resolving a conflict between his married sister and her husband. In this regard, the arbitrator's obligations include: *First*, protecting his married sister; *Second*, reconciling any conflict between his married sister and her husband.

Interestingly, in a case of household conflict and such, when a person becomes an arbitrator, his uncle(s), aunt(s), other sibling(s), and all of his extended family members are automatically considered as arbitrators right away. As a consequence, the extended family members of the arbitrator also have the same obligation as him to reconcile the conflict.²⁰ However, the obligation to reconcile the household conflict of a married sister still becomes the main responsibility of the marriage arbitrator himself.

The participation of extended family members only applies when the arbitrator needs it. Likewise, the religious and community leaders can also participate in providing advice to solve the household problems of a married sister and her husband. On the other hand, if the arbitrator does not need their intervention, they cannot interfere at all.

The customary provision that requires a married sister to ask for assistance in resolving domestic conflicts to her arbitrator instead of her parents or siblings aims to avoid larger conflicts of interest

¹⁹ Muslim, "Pencegahan Pencegahan Kekerasan Dalam Rumah Tangga (KDRT) Melalui Konsep Hak Dan Kewajiban Suami Istri Dalam Islam," *Gender Equality: International Journal of Child and Gender Studies* 5, no. 1 (2019): 121 See also La Jamaa, *Advokasi Korban Kekerasan Dalam Rumah Tangga Perspektif Hukum Pidana Positif dan Hukum Islam* (Ed. 1; Yogyakarta: Deepublish, 2017).

²⁰ Farid Naya, "Islamic Religious Figures in Liang Village," direct interview on July 12, 2018.

between her family and her husband. If her family gets involved, this will likely worsen the conflict because the family will typically stand by her. When this happens, it is very possible that the husband's family will also take a part and the condition gets worse because each party cannot act objectively. As a result, the conflict is hard to resolve peacefully and leads to divorce instead.

The role of an arbitrator, therefore, is very strategic considering that household problems are inevitable in every married couple. Each is only different in the level of complexity. Even though a husband and wife can solve the problems through internal dialogue between both, under certain conditions, the assistance of a third party as mediator is needed. Due to the importance of this custom, it also applies to non-native prospective bridegrooms of the area because it assures that a woman will be guided by an advisor, mediator, and peacemaker after the marriage.

Furthermore, the role of an arbitrator becomes more crucial in preventing the husband from committing violence to the wife. In this case, the arbitrator is a third and neutral party because even though he is a relative of the wife, he is a distant one so this will typically lead him to have no conflict of interest in resolving the conflict. Additionally, the role he plays is as mediator and peacemaker instead of an executor of the sentence. As far as he can, he needs to prevent his married sister from any domestic violence committed by her husband according to the philosophical value of this marriage custom. He must bridge them both and resolve the conflict between the couple peacefully using the win-win solution.

Technically, when a seed of conflict appears or after getting a report from his married sister, an arbitrator will ask for information from both parties proportionally in a balanced way to maintain his neutrality. He will not hesitate to warn or reprimand his married sister when it is known that she made a mistake. This happens because the arbitrator will also be ashamed of any mistake she might make.²¹ Likewise, he also has the right to reprimand the husband who commits domestic violence against his married sister. However, the

²¹ Abdul Gafar Latulanit, "Imam of the Morella Village Mosque," direct interview on July 3, 2018.

warning should be in a friendly and polite manner using a persuasive approach.

For example, an arbitrator can request his favorite food to the married sister and she will ask her husband to take her to the arbitrator's house so that the husband will not consider it as a force. During the visit, with a warm atmosphere, the arbitrator can convey the wife's complaints and asks him questions on whether he commits domestic violence, for instance.²² Otherwise, he can begin sharing stories then presenting the wife's complaint figuratively and ask the husband's opinion. These actions aim to avoid any partial or missed information while making the husband aware of his mistake.

The arbitrator will then review and investigate the information in order that he can provide proper advice to mediate the dispute appropriately. In short, the marriage arbitrator as the mediator should not take any sides. He must be partial neither to his married sister nor to the husband.²³ In this way, the husband will not feel oppressed by the arbitrator's existence and the role he plays.

Generally, the husband obeys the arbitrator's advice as a part of customary rule obedience. So far, there found no husband who dares to oppose or disobey the advice. More or less, this is much influenced by the way the arbitrator advises him while still making him feel respected and appreciated as well as maintaining his authority.

Later on, an arbitrator also serves to reconcile and find solutions to make conflicted husband and wife return to harmony and peace. This certainly does not only affect worldly life, but also for an afterlife of the couple. In the end, if the conflict can get reconciled by the arbitrator, it will be very useful in maintaining the household harmony and keep the happiness not only for the couple but also for children and families of both.

On the other hand, if the early reconciliation process fails, the household is at the threat of divorce. In this kind of emergency condition, the arbitrator can maximize his role by involving his father to be another mediator, peacemaker, and protector of his married

²² Sittin Masawoy, "Hila Village Community," direct interview on July 12, 2018.

²³ Abdul Wahab Malawat, "An Imam of the Mamala Village Mosque," direct interview on July 13, 2018.

sister. However, again, this role cannot be turned over to his married sister's parents because as mentioned earlier, she is not allowed to directly complain to her parents or return to their house for avoiding the worst things. Moreover, this shortcut will hamper an arbitrator to play his role objectively.²⁴

The description makes it clear that efforts to prevent domestic violence among Muslim communities in the sub-district of Salahutu, Leihitu, and West Leihitu are carried out through the maximization of arbitrator's roles as a mediator and peacemaker. These two functions are carried out simultaneously when dealing with the domestic conflict of a household. It also becomes obvious that the success of the arbitrator in playing their role means the success to prevent domestic violence physically, psychologically, or economically. After all, the couple cannot possibly report or tell the arbitrator on sexual violence she might experience.

3. Protecting the Married Sister from any Domestic Violence

The marriage arbitrator is also given the custom responsibility to protect his married sister from domestic violence that her husband may commit. Therefore, if she experiences any form of domestic violence, she is supposed to directly ask for protection from the arbitrator. Due to this procedure, a husband usually does not have any courage to commit violence against his wife anymore once she tells the arbitrator.²⁵ He will also consider psychological and social sanctions which put him as ignorant of customs and uncivilized if he keeps doing the violence.

The arbitrator, therefore, plays a very important role in protecting the married sister from various forms of domestic violence. Most of the time, a married sister who experiences physical violence will seek protection to the arbitrator's house. In this condition, according to the local wisdom, a husband is not allowed to force his wife to return to his house without the arbitrator's permission or her own consent. He will not even dare to seek and chase his wife to the

²⁴ Farid Naya, "Islamic Religious Figures in Liang Village," direct interview on July 12, 2018.

²⁵ Mas'ad Hatuwe, "A Married Sister in Hila Village," direct interview on August 20, 2018.

house of the arbitrator. This aims to prevent the husband from committing further violence against his wife.

For the wife, the choice to seek protection to the arbitrator's house is safer than returning to her parents' house. By seeking protection from her parents, the husband might interpret that she has run away from the house for breaking the marriage bond. When this happens, the arbitrator cannot typically solve the problem. It is different if the wife seeks protection to the arbitrator's house as it will be interpreted as her effort to ask for protection and find a solution.

In the midst of conflict, the arbitrator has a strong position in the local customary order which enables him to carry out his roles and functions properly. In this regard, he plays a role as a protector. This role applies whether domestic conflict is followed by physical, psychological, or economic violence or without violence. However, in most of the conditions, household conflict generally leads to the domestic violence and this makes the arbitrator's position very urgent.

After receiving a report or complaint from his married sister, the arbitrator will typically seek a proper approach and a common ground to solve the conflict. Instead of taking action authoritatively, he would prefer to take persuasive steps in accomplishing his mission. Additionally, he will also avoid doing any physical violence to avenge the husband of his married sister.

A marriage arbitrator can successfully accomplish his mission in preventing the occurrence of domestic violence in her married sister's household community is due to the community's obedience and acknowledgment to the customs of the marriage arbitrator. Without it, his role will work nothing. More specifically, the significant role of an arbitrator, for this purpose, is particularly due to the following reasons:

- 1) The arbitrator has been delegated responsibility by the parents of his married sister. Therefore, in the process of conflict settlement, the intervention of other parties, including family and even parents, is not justified. Likewise, local religious leaders will not be willing to solve the conflict before it is handled by the arbitrator.
- 2) According to the custom, a husband is supposed not to dare to oppose the arbitrator.

- 3) Advice from the arbitrator must be obeyed by the couple. Likewise, a husband is obliged to be cooperative in supporting the protection efforts that an arbitrator makes for his wife.
- 4) The arbitrator's role also works as a preventive tool of domestic violence and therefore contributing significantly to household harmony.²⁶

Role of Marriage Arbitrator in Preventing Domestic Violence according to Islamic Law

Household is a part of society in with the basic nature to always dynamically change. This is relevant to the theory of law and social change mentioning that law develops following the stages of community development. The law becomes more and more complex as society experiences further development. Another relevant theory was put forward by Emile Durkheim which emphasized his attention to the phenomenon of social solidarity among society members. He argues on a connection between certain types of law and the nature of social solidarity living in the society.²⁷

Meanwhile, Schwartz examines some forms of legal organization as follow: (1) *counsel*, which specialist attorneys out of relatives of a disputing party regularly uses it in resolving a conflict; (2) *mediation*, which a third party out of disputing party's related uses it in a conflict resolution; (3) police, as the special armed forces with either part or whole job to enforce the law. A research found that people with no mediation are the ones with the simplest structure because they rarely experience conflicts of interest.²⁸ On the other hand, complex societies need mediation because its complexity may grow the seed of conflict among one another.

The same goes on in a cultured society in terms of the need for mediation. Handling domestic violence, for instance, requires a mediation institution outside the court by either family members or third party out of family line. The existence of the third party can

²⁶ See La Jamaa, *Fiqh Kontemporer (Kajian Problematika Hukum Islam di Era Kontemporer)* (Yogyakarta: Deepublish, 2017), 38.

²⁷ Satjipto Rahardjo, *Hukum Dan Masyarakat*, 4th ed. (Bandung: Angkasa, 1980), 102-3.

²⁸ Satjipto Rahardjo, 110.

guarantee objectivity and neutrality in resolving domestic disputes or conflicts.

Relating to this, some of Islamic teachings have been crystallized into customs in Muslim community, such as *hakamayn* concept which turns to a form of marriage arbitrator on the perspective of Moluccas local custom. However, some differences are inevitably found. The main different is because in the Qur'an, two people are recommended as peacemakers consisting of one from the husband's side and another from the wife's side. Meanwhile for this local custom, there is only one arbitrator from the wife's side.

Besides, *hakamayn* is chosen after the conflict occurs while the arbitrator has been prepared before the conflict takes place even before the marriage ceremony procession happens. The arbitrator has been formalized since the day of the marriage contract to anticipate all possibilities while the *hakamayn* appointment is only in the midst of conflict. Meaning to say, if there is no conflict, there is no need to choose *hakamayn*. In Indonesia, *hakamayn* is also appointed in the Religious Courts during the divorce process.²⁹

Furthermore, two peacemakers (*hakamayn*) in the Islamic law do not need to come from the couples' family. They can come from other parties who are believed to be able to reconcile the conflict. The number of two representing both sides is one of efforts to create balance or justice to resolve conflict peacefully. The same role is also be manifested in the role of marriage arbitrator no matter he is only one in number as he keeps in neutral position. In short, no matter they are different in many aspects, both *hakam* and arbitrator have the same mission and right to reconcile husband and wife conflicts .

Theoretically, the concept of *hakamayn* is transformed into a custom in certain communities in which Islamic law usually calls it as '*urf*'. '*Urf* itself means general actions of a community, both in the form of oral and deeds, which have become habit as it is acceptable by common sense and good character.³⁰ In essence, '*urf* is a custom that a

²⁹ See Nirmala Hasan, "Pengangkatan Hakamain Dalam Proses Perceraian (Studi Kasus Di Pengadilan Agama Kotamobagu)," *Jurnal Ilmiah Al-Syir'ah* 3, no. 1 (2006).

³⁰ See Fauziah, "Konsep 'Urf Dalam Pandangan Ulama Ushul Fiqh (Telaah Historis)," *Nurani* 14, no. 02 December (2014): 16-17.

community carries it out continuously due to consideration that it has beneficial values in their social life.

'*Urf* is further recognized as a binding legal rule for the Muslim community as clear at one of Islamic law basic rules; *al-'ādah muḥakkamah* (customs can be used as (consideration) law).³¹ From this point, '*urf* is also called *al-'ādah* as it is something that (local) people know it well then repeat it more and more through their words and deeds that it then becomes a common thing and generally accepted.

In this regard, custom ('*urf*) bridges the divine values and human values in Islamic teachings as an effort to take heavenly God's teachings into earthly human life. It becomes important because in fact, Islamic teachings have established all the rules of conduct for Muslim³² although it needs further exploration from Muslim themselves to make them concrete and applicable.

The existence of a marriage arbitrator in carrying out the role of mediator in conflict while preventing domestic violence of his married sister has therefore two positions. *First*, it is a custom that the local Muslim community adhere to that it becomes '*urf* in the perspective of Islamic law. *Second*, it has similar duty and function as *ḥakamayn*. The arbitrator, therefore, has carried out the mission of Islamic law in reconciling husband and wife conflicts³³ particularly through the concept of *ḥakamayn* so that marriage as an institution of procreation³⁴ can be well maintained.

The following definition of '*urf* has strengthened the assumption on the common aim between *ḥakamayn* and the arbitrator. According to Jalāl al-Dīn `Abd al-Raḥman, as mentioned by A. Djazuli, '*urf* or custom is as follows:³⁵

إِنَّمَا تُعْتَبَرُ الْعَادَةُ إِذَا اطَّرَدَتْ فَإِنْ اضْطَرَبَتْ فَلَا

³¹ A. Djazuli, *Kaidah-Kaidah Fikih* (Jakarta: Kencana, 2006), 78.

³² Jan Michiel Otto, ed., *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), 24.

³³ Bustanul Arifin and Lukman Santoso, "Perlindungan Perempuan Korban Kekerasan Dalam Rumah Tangga Perspektif Hukum Islam," *De Jure: Jurnal Hukum Dan Syariah* 8, no. 2 (2016): 113.

³⁴ Bustanul Arifin and Lukman Santoso, 117.

³⁵ A. Djazuli, *Kaidah-Kaidah Fikih*, 85.

A habit can be considered (in Islamic law perspective) due to general acceptance and repetition. When there found so much deviance, it cannot be used as a legal basis.'

The existence of an arbitrator at the Moluccas custom fulfills the above formula. Marriage arbitrators' existence strongly binds the Muslim community in those three subdistricts even for those who live outside. Also, the role of arbitrator is relevant to *hakamayn* because it does not deviate the Islamic law.

Furthermore, the marriage arbitrator as a part of custom meets the requirements of another following rule:

العِبْرَةُ لِلْعَالِبِ الشَّائِعِ لِلنَّادِرِ

*The recognized custom is customary which generally occurs and is known by humans instead of customary that rarely occurs.'*³⁶

In short, although the verses and hadiths do not regulate on the existence and role of the arbitrator textually, the existence of *hakamayn* institution can contextually be used to protect wife from potential husband's violence using analogical reasoning. Moreover, a husband is not only obliged to meet the needs of his wife, but also to protect her. Therefore, there must be a third party who supervises the husband to treat her well by not making her as the object of domestic violence.

Role of Marriage Arbitrator in Preventing Domestic Violence according to Indonesian Law

This research reveals that Muslim community of Salahutu, Leihitu, and West Leihitu district consider domestic violence as a type of public affair. It is quite different from the research finding of Elli Nur Hayati mentioning that domestic violence was still seen by most people as a private matter.³⁷ This shifting mindset is partially clear from serious action of a marriage arbitrator in preventing and

³⁶ A. Djazuli, *Kaidah-Kaidah Fikih*.

³⁷ Elli Nur Hayati, "Domestic Violence Against Women in Rural Indonesia Searching for Multilevel Prevention" (Umeå University Sweden, 2013), v.

protecting her married sister from any domestic violence as well as the maintenance of this customary role among the society across generations.

The role of the arbitrator in resolving household conflicts and preventing any domestic violence is furthermore relevant to the provisions of articles 51 to 53 in the Law on the Elimination of Domestic Violence. This is mainly because the official law enforcers cannot carry out any investigations, examinations, and prosecutions without complaints or reports from domestic violence victims or their families. Likewise, the arbitrator will only carry out his role when he receives a request from either his married sister or her husband.

The existence of the arbitrator as mediation institution in protecting wife from being domestic violence victim is not textually regulated in the whole part of Law of the Republic of Indonesia Number 23 of 2004. Instead, it is only relevant to the provisions of temporary protection regulated in specific articles, mainly the Article 16 as follow:

- (1) Within 1 x 24 (one time twenty four) hours after knowing or receiving reports of domestic violence, the police are obliged to immediately provide temporary protection to the victim;
- (2) Temporary protection as referred to in paragraph (1) shall be given no later than 7 (seven) days after the victim is handled;
- (3) Within 1 x 24 (one time twenty four) hours from granting protection as referred to in paragraph (1), the police are obliged to request a letter of protection order from the court.³⁸

Although addressed for police as one of official law enforcers, the provisions of Article 16 above, mainly the first and the second, are relevant to the role of the arbitrator in providing protection to his married sister. He is always available to be the one whom her married sister will visit to and make complain about her household conflict, particularly dealing with domestic violence. Moreover, a wife who complains and asks for protection from her arbitrator cannot be bothered by her husband.

³⁸ Republic of Indonesia, *Undang-Undang RI Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga* (Jakarta: Sinar Grafika, 2005), 7.

Another article, namely 22 of this Law on the provision of 'safe house', is also relevant to the role that the arbitrator plays. Paragraph (2) of the Article mentions a formula for a 'safe house' that needs to belong to the government, local government, or the community.³⁹ Although the house of the arbitrator is not intentionally built with a special purpose as a "safe house" for protecting domestic violence victims, it can be categorized as so-called a safe house belonging to the community.

The above-mentioned provisions show that domestic violence victims have rights during the justice-seeking process even before the prosecutor has officially proposed a criminal charge.⁴⁰ This means a lot in protecting women's rights in Indonesian Islamic family law.⁴¹ However, the role maximization of a marriage arbitrator in protecting his married sister, in this sense, does not mean ignoring the state's criminal justice system in solving domestic violence.

It is a form of appreciation on the capacity of local communities in adopting the principles of protection on violent victims by their local cultural context and due to the power of customary law.⁴² Moreover, the role of the arbitrator has made so much effort to prevent and protect the domestic violence victims long before the birth of any relevant Indonesian Law.

³⁹ Republic of Indonesia, 9.

⁴⁰ See Paul G. Cassell, "Crime Victims Rights During Criminal Investigations? Applying the Crime Victims Right Act Before Criminal Charges Are Filed," *Journal of Criminal Law and Criminology* 104, no. 1 (2014): 103.

⁴¹ See Abu Rokhmad and Sulistiyono Susilo, "Conceptualizing Authority of The Legalization of Indonesian Women's Rights in Islamic Family Law," *Journal of Indonesian Islam* 11, no. 2 (2017): 489.

⁴² Philippa Venning, "Marrying Contested Approaches: Empowerment and the Imposition of International Principles: Domestic Violence Case Resolution in Indonesia," *The Journal of Development Studies* 46, no. 3 March (2010): 397.

Conclusion

This research finds that the local wisdom of marriage arbitrator in the Muslim community of Salahutu, Leihitu, and West Leihitu districts, Central Maluku district, has a very important role in preventing domestic violence. More specifically, his existence could potentially prevent economic-based domestic violence, resolve household conflict, and protect the domestic violence victims. For the last role, an arbitrator can play both preventive and curative functions. In addition, to have a strong rooted foundation at the customary perspective that it maintains across generation, the role of the arbitrator is relevant to the *ḥakamayn* concept in the Islamic law as well as the Law of the Republic of Indonesia Number 23 of 2004 through the scheme of “safe house”

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