

The Handling of Violence Against Women Through Biak's Traditional Legal Procedures

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Abstract

This study aims to analyse the handling of violence and women through Biak's traditional law, whether the sanctions has fulfilled the sense of justice. This research was socio legal research, an interdisciplinary approach between the fields of anthropology and law as an analytical tool in studying various legal issues. The results showed that the severe violence (Sexual violence and murder) is generally resolved through formal legal procedures. However, if socio-cultural factors and close kinship are still held, there are various options for resolving violence, either through formal legal procedures, or traditional legal procedures, or both formal and traditional legal procedures, or stamped statements. This is done to avoid breaking the bond between the two big families and to cover up the family's disgrace. However, the justice of traditional law is questionable nowadays because the tribal chiefs are unfair to make decisions so that the victim feel aggrieved.

Keywords: *Domestic Violence, Traditional Law, Biak's indigenous tribe*

INTRODUCTION

The application of traditional values in some Indonesian indigenous tribes is still often encountered. However, there are social developments that appear in society, encouraging the reinterpretation of traditional values which of course has various consequences. One example is how Biak's indigenous tribe has reinterpreted the 'Ararem' tradition. In Biak Numfor Regency, there is a tradition of 'Ararem' when applying for a woman. 'Ararem' is a dowry given by a man with the intention of upholding the dignity of a woman. The widely-agreed form of 'Ararem' can be the antique plates or jars, or other utensils, various basic necessities, and livestock (pigs).¹

The impact resulting from these social developments is the deviations in meaning from the 'Ararem' tradition which previously contained noble values. The 'Ararem' tradition even discriminates against the existence of a woman who is only considered as a trading commodity. A woman who wants to be married seems to be set a certain price by her family members which must be fulfilled by the man. The impact of the deviations is, first, people who do not want 'Ararem' payment prefer to elope by leaving their hometown. This was done because 'Ararem' was set quite expensive while the men could not afford it. Second, women's lives become very vulnerable if they marry outside the traditional legal area. Women often experience physical, economic, and psychological violence because men feel free from traditional obligations and can treat women as they want without any traditional sanctions.

In addition, even though marriages are carried out in a traditional manner and traditional legal areas, violence against women is still common. The vulnerability is caused by; First, the man considers that he has paid off 'Ararem' to marry his woman. From this perception, men often do everything to their wives, including being free to do violence. Second, the general wrong perception from the tribe has contributed to the habit of violence committed by men. It is not surprising that traditional sanctions are actually indifferent to the interests of women. For example, when physical or sexual violence occurs against women, the perpetrator is only given a fine for payment of money, livestock or land, or being married to the perpetrator who encourages the exploitation of women. This of course causes other problems for the victims.

The criminal legal system is built on traditional values that are respected in the tribe.² The method used to investigate the rules of traditional criminal law can be done by tracing a dispute case.³ Based on the context of traditional law, the legal sanction of a crime is not only in the form of punishment, but also the payment of compensation which is intended as the fulfilment of justice and as a remedy for the damage caused by the crime.⁴

Violence against women is a type of gender-based violence (GBV) experienced by children and women that causes adverse effects on a person's physical, psychological, developmental, and identity.⁵ One type of GBV is sexual crime. Victims of violence are mostly women and girls although it can also occur in men and boys.⁶ Gender-based violence can occur anywhere, whether in private or public areas.

¹ Mananwir Gerald Kafiar, "The Tradition of Ararem."

² Thomas Duve, "Legal Traditions: A Dialogue between Comparative Law and Comparative Legal History," *Comparative Legal History* 6, no. 1 (2018), <https://doi.org/10.1080/2049677X.2018.1469271>.

³ Andi Winda Sari, Aminuddin Ilmar, and A. Suriyaman Mustari Pide, "Function And Duties of Traditional Institutions In Implementing Village Government In Luwu Utara Regency," *Awang Long Law Review* 3, no. 2 (2021): 219–30, <https://doi.org/http://ejournal.stih-awanglong.ac.id/index.php/awl/article/view/250>.

⁴ Anthony C. Diala, "The Concept of Living Customary Law: A Critique," *The Journal of Legal Pluralism and Unofficial Law* 49, no. 2 (2017): 143–65, <https://doi.org/10.1080/07329113.2017.1331301>.

⁵ Xitsakisi Fiona Mahlori et al., "Perceptions of Gender-Based Violence Among University Staff: Interim Results," *Reproductive Health in Sub-Saharan Africa-Original Research* 8, no. 3 (2018): 1–14, <https://doi.org/10.1177%2F2158244018800163>.

⁶ Laurensius Arliman S, "Prostitusi Anak Laki-Laki Sebagai Kegagalan Perlindungan Anak," *Istinbath Jurnal Hukum* 13, no. 2 (2016): 271–98, <https://e-journal.metrouniv.ac.id/index.php/istinbath/article/view/297>.

The violence occur because of age and status which triggers an imbalance in the relationship between victims and perpetrators. Economic inequality and social status also contribute to the inequality of these relations. So that sexual crime, which is a form of gender-based violence, is not only caused by sexual desire but also by the existence of a person's dominant supremacy over others.⁷

To find out how legal regulations in Indonesia provide procedures for prosecution of various cases of gender-based violence, it is necessary to describe various legal regulations including the Law on the elimination of domestic violence (PKDRT)⁸, the Criminal Code⁹, the CEDAW Convention which was later adopted in the provisions of Law No. 7 of 1984.¹⁰

There are three articles referred to in the PKDRT law. These articles include article 1 regarding the definition of domestic violence, article 5 regarding types of physical violence, article 8 regarding the scope of sexual violence which refers to article 5 letter c.

Article 1 explains that 'domestic violence' can be defined as an act committed especially to women, which causes psychological, sexual, physical suffering or even neglect of household responsibilities as well as intimidation, deprivation of liberty, and coercion. This provision clarifies the definition of violence in the family. This provision is further clarified in detail in Article 5.

Article 5 explains the prohibition of all forms of domestic violence, whether psychologically, sexually, physically or even neglecting household responsibilities. Psychological violence is a form of violence such as intimidation, threats, humiliation that causes fear, trauma, insecurity and feelings of insecurity. Sexual violence is a sexual crime that injures the sexuality of women or children, it can be sodomy, sexual harassment and bullying through certain words, rape and others. Physical violence is a violence that can cause minor injuries, permanent disability, or loss of life. Negligence of household responsibilities, based on the explanation of this article, is violence related to neglecting the fulfilment of the family's economic needs. This provision is understood that if a husband as the head of the family neglects his household responsibilities, namely the fulfilment of a living for his wife and children. A detailed explanation regarding sexual violence is also explained in the provisions of Article 8.

Article 8 which describes sexual violence as stated in Article 5 letter c, forcing sexual intercourse against someone in the household environment, and forcing someone in the household environment to have sexual relations with other people commercially or for other purposes.

There are a number of articles in the Criminal Code related to the research problems, including articles that regulate sexual violence. The articles on rape include Articles 285-288, the articles on lewd acts include articles 289-294, and the article on the act of taking girls away includes Article 332.

Article 285 explains that sexual crimes or forcing women to have intercourse without a marriage bond can be threatened with a criminal sentence, 12-year imprisonment. Article 286 explains that the sexual intercourse against an unconsciousness woman or without a marriage bond, can be threatened with a criminal sentence, 9-year imprisonment. Article 287 explains

⁷ Brittany Patafio et al., "Coercive Controlling Behaviors and Reporting Physical Intimate Partner Violence in Australian Women: An Exploration," *Violence Against Women* 28, no. 2 (2021): 375–94.

⁸ Mudjiati Mudjiati, "Implementasi Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga Suatu Tantangan Menuju Sistem Hukum Yang Responsif Gender," *Jurnal Legislasi Indonesia* 5, no. 3 (2008): 45–68.

⁹ I Wayan Suardi, "Analisis Pembuat, Perbuatan, Dan Tindak Pidana Kekerasan Dalam Rumah Tangga," *Kertha Patrika* 4, no. 3 (2018): 200–212, <https://doi.org/10.24843/KP.2018.v40.i03.p06>.

¹⁰ Rini Maryam, "Menerjemahkan Konvensi Penghapusan Segala Bentuk Diskriminasi Terhadap Perempuan (Cedaw) Ke Dalam Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 9, no. 1 (2012): 99–118, <https://doi.org/https://e-jurnal.peraturan.go.id/index.php/jli/article/download/379/260>.

that having sex with an underage woman or whose age is unidentified is subject to 9-year imprisonment. In addition, prosecution is carried out if there is a complaint, except if the woman's age is not yet 12 years old or if there is one particular thing in accordance with articles 291 and 294.

Article 288 explains that the act of sexual intercourse with a woman who has not yet been married and if the act causes injury, it can be sentenced to 4-year imprisonment, if it causes serious injury, it is sentenced to 8-year imprisonment, and if it causes death, it is sentenced to 12-year imprisonment. Article 289 explains that obscene acts or omission of obscene acts to other people can be sentenced to 9-year imprisonment. Article 290 explains that obscene acts to unconscious people and obscene acts to underage children, can be sentenced to 7-year imprisonment.

Article 291 explains that a criminal act according to articles 286-290 that causes serious injury can be sentenced to 12-year imprisonment, a criminal act according to articles 286-290 that causes death can be sentenced to 15-year imprisonment. Article 292 explains that same-sex obscene acts against the underaged can be sentenced to 5-year imprisonment.

Article 294 explains that obscene acts against biological, step, adopted, or children in their care can be sentenced to 7-year imprisonment. The 7-year imprisonment is also imposed on officials, doctors, employees, teachers, supervisors, or prison guards who commit obscene acts against someone under their supervision.

The provisions of Article 332 explained that the act of carrying away an underaged without the consent of her parents can be sentenced to 7-year imprisonment. In addition, the act of taking a woman away by means of coercion, threats, or trickery can be sentenced to 9-year imprisonment. If he takes a woman away and there is a *Burgerlijk-Wetboek* provision in his marriage, he cannot be sentenced to a criminal sentence.

Regarding acts of violence against women, conflicts involving perpetrators and victims cause disputes¹¹ and the women as the victims submit their complaints to third parties. However, acts of violence, especially in this study, are generally not only against women but can also be experienced by their families.¹² Regarding these disputes and conflicts, third parties (families) can gather and unite into one party and can even act as a third party. So that the violence against women are quite difficult to resolve.

The studies by Mashendra¹³ and Sutiawati & Mappaselleng¹⁴ have discussed the settlement of domestic violence crimes. The results of the study emphasize that based on a criminological perspective, domestic violence is still included in the criminal category, so that the settlement also still refers to criminal law, for example handling domestic violence through traditional law also still imposes criminal sanctions in the form of fines with the aim of restoring dignity and reputation, especially the women as the victims. The causes of domestic violence based on a criminological perspective are the focus of this study. However, this study does not describe the situation and conditions experienced by women as the victims, therefore how women's understanding of each forum for resolving domestic violence crimes has not been described in detail.

¹¹ Jonathan Beckett, "Domestic Abuse? The Complexities of High Conflict Disputes: The Work of Cafcass.," *International Journal of Sociology and Anthropology Research* 4, no. 3 (2018): 12–36, <http://www.eajournals.org/>.

¹² Bezatu Semahegn, Agumasie Mengistie, "Domestic Violence against Women and Associated Factors in Ethiopia; Systematic Review," *Reproductive Health* 12, no. 78 (2015), <https://doi.org/10.1186/s12978-015-0072-1>.

¹³ Mashendra Mashendra, "Penyelesaian Kasus Kekerasan Dalam Rumah Tangga Di Desa Galanti Kecamatan Wolowa Kabupaten Buton," *Jurnal de Jure* 13, no. 1 (2021), <https://doi.org/10.36277/jurnaldejure.v13i1.385>.

¹⁴ Sutiawati and Nur Fadhilah Mappaselleng, "Penanggulangan Tindak Pidana Kekerasan Dalam Rumah Tangga Di Kota Makassar," *Wawasan Yuridika* 4, no. 1 (2020): 17–30, <https://doi.org/10.25072/jwy.v4i1.315>.

In addition, the study by Hartini et al¹⁵ discusses the handling of domestic violence through Batak traditional legal procedures, the findings show that the handling of domestic violence cases is resolved in a familial way to make decisions on traditional sanctions in order to restore wounds caused by the violence. The handling of violence based on Batak traditional law has fulfilled legal certainty given that there is an agreement between the perpetrator and the victim, which if violated will be subject to traditional fines. From the results of this study, researchers are interested in studying how the position of Biak's traditional law is in handling domestic violence. The results of this study are expected to provide new insights regarding the position of traditional law in handling domestic violence.

Based on the introduction above, the research question is what are the efforts of traditional law in dealing with violence against women in Biak's indigenous tribe?

RESEARCH METHODOLOGY

The research approach applied in this research is a socio-legal study. This study attempted to examine the system of norms which includes laws and regulations, norms, principles, doctrines, and an agreement¹⁶ and examine the behaviour of the tribe that arises due to the influence of existing norm enforcement. This research was located in Biak's traditional legal area. According to data from the Papua Province Office of Women's Empowerment and Child Protection, cases of violence against women and children reached around 564 cases during 2021.

The following techniques were used in data collection, first, literature study is used to collect various data relevant to the research by analysing a number of policies related to the steps to resolve the violence against women. Second, data was also collected through interviews with a number of women as the victims. Third, observations were made to observe various conditions and activities of victims or service agencies in the area. Then, this study used descriptive analysis techniques to describe and interpret the data obtained from various sources, both literature sources, interviews, and observations.

RESULTS AND DISCUSSION

The Violence Against Women in Biak Numfor District

Based on data obtained from several research respondents in Biak Numfor Regency, cases of violence against women (wives) were caused by a change in views about the "Ararem" tradition. The Ararem tradition was originally interpreted wisely where the value implies that getting a woman as a wife is not that easy so that respect for women needs to be upheld.¹⁷

However, the 'Ararem' tradition is over time interpreted differently by Biak's indigenous tribe. Because expensive property as a dowry has been paid, men assume that a woman is fully owned and therefore men may be free to do anything, including violence. When a man feels that a wife no longer fits his criteria, a wife can experience neglect and even violence. For example, the case that occurred is based on the story of Mrs. Insos Rumpaidus.¹⁸

"Ini ada mama tong pu kenalan. De di terlantarkan de pu suami. Jadi mama ini de kerja keras baru de urus de pu anak deng de pu rumah, dan de masih kerja. Tapi de

¹⁵ Theresia Devi Hartini, Erdianto Efendi, and Ulfia Hasanah, "Penyelesaian Perkara Tindak Pidana Kekerasan Dalam Rumah Tangga Menurut Hukum Adat Batak Di Tapung Hulu," JOM Fakultas Hukum 3, no. 2 (2016): 1–15.

¹⁶ Victor Imanuel Nalle, "The Relevance of Socio-Legal Studies in Legal Science," *Mimbar Hukum* 27, no. 1 (2015): 179, <https://doi.org/10.22146/jmh.15905>.

¹⁷ The head of the woman & children service Biak, "Interview" (2021); Insos Rumpaidus, "Interview" (2021).

¹⁸ Rumpaidus, "Interview."

pu suami main gila de deng pu teman kantor. Pas dong panggil dan dikasih tau oleh de pu teman, tapi de pu suami langsung membela diri "itu perempuan su sa beli, tapi de tra rawat diri. De pu badan bau sampe, baru tra menarik lagi!"

Traditional law is possible as an alternative in handling the violence against women in Biak's indigenous tribe. However, the results of this study, the women also use formal legal procedure other than traditional legal procedure.¹⁹ The violence handled through traditional law, for example, are beatings, infidelity, and neglect by a husband. As for the violence handled through formal law, for example, are cases of wife murder and sexual violence against children.

There are several procedures for handling the violence against women.²⁰ Physical violence can be subject to traditional sanctions, paying fines with money or livestock such as pigs. This is intended as a form of apology and at the same time as a hope that the perpetrator apologizes for the action. Psychological violence can be subject to the same traditional sanctions, with money or livestock. The payment of the fine is intended so that the victim's mentality can recover and the victim has regained her self-confidence. Negligence of household responsibilities is subject to the same traditional sanctions but the number of livestock is different from the physical or psychological violence. This sanction is intended so that the perpetrators regret their actions and can reunite with their families.

It is quite sad to discuss the cases of sexual violence. The most interesting are the penalties imposed on perpetrators of sexual violence. The perpetrators can even marry their victims, and if the victims object to marriage, the case is lack of clarity. Therefore, sexual violence is rarely handled through traditional legal procedures. The victim actually resolved the case through formal law. However, the alternative to formal law in handling the sexual violence is strongly influenced by the role of the victim's family. The results of the interviews, it can be seen that cases of sexual violence are rarely resolved through formal law without the role of the family.

If the victim of sexual violence lives alone or does not have a family role, the case is rarely resolved through formal legal procedures. For example, the sexual violence that befell a mentally-retarded girl. These cases were not reported to the police or were not resolved through formal legal procedures. There is also the sexual violence against a girl by her own close relatives. Although it was suggested that this be resolved through traditional legal procedures on the grounds that the perpetrator was a close relative, the victim's parents refused and chose to resolve the case through formal legal procedures. The victim's parents hope that the perpetrator will be severely punished and their daughter will be able to return to school even though she is pregnant.

Several other cases were handled through both traditional legal procedures and formal legal procedures. For example, the wife murder occurred in Biak Numfor Regency, the perpetrator was then reported to the police or the case was resolved through formal legal procedures and reported to the tribal chief through traditional legal procedures. In addition to the default in the marriage agreement, a woman was married by a man and had children without knowing that the man was previously married. However, traditional law decisions actually harm women. The woman, who was actually lied to, was instead given traditional sanctions, paying a fine to the perpetrator's wife

A unique settlement without going through Formal law or traditional law, although borrowing the attributes of traditional law, religious law and formal law, occurred in cases of infidelity and domestic violence in Biak. A husband was reported to the police that he was having an affair and was also abusing her and her children. This case was resolved that the

¹⁹ Deputy Chief of Police Biak, "Interview" (2021); The head of the woman & children service Biak, "Interview."

²⁰ Kafiar, "The Tradition of Ararem."

woman, her mistress and her husband were asked to make a letter of agreement in the presence of local religious leaders (priests), the tribal chief, their big families and the police. The agreement letter was made on a stamped paper.

Traditional Marriage and the Position of Women in Biak's Indigenous tribe

There are several forms of traditional marriage in Biak's indigenous tribe which of course are measured based on their lifestyle and social status. The tribe views that marriage is not only the fulfilment of biological desires or obtaining offspring but is also related to the position and duties of an individual in his tribe and for the survival of their offspring or clan.

Biak's traditional marriages consist of:²¹ 1) "Farbakbuk Bekaku" or Pure Marriage, is a very special marriage because it has complied with the provisions of Biak customs, 2) "Farbakbuk Manibow" or acquaintance marriages, is a marriage that occurs as a continuation of the existing good relationship between two close friends. This means that they give each other benefits, for example helping each other when they have life difficulties. Therefore, the two friends promised to marry off their children in the future in order to strengthen their friendship, 3) "Farbakbuk Bebur" or Elopement, is a marriage that occurs because of the absence of the blessing of the couple's parents. The two couples then decided to elope, 4) "Farbakbuk Kinkafar" or Furnace-Substitution Marriage, is a marriage that occurs when a wife dies and her husband is justified to marry his wife's sister-in-law with the intention of maintaining family ties, and 5) "Farbakbuk Bin Babyak" is an extraordinary marriage that occurs when the perpetrator of the murder must give a girl to be married by the victim as a substitute for the murder. This is intended so that a child is born who can replace the murdered victim and can also strengthen the ties of kinship between the two parties so as to eliminate the feeling of revenge.

Women have a strong position, especially related to economic affairs, but not very strong in matters of public area. Based on the belief of Biak's traditional law, men are considered as dignitaries in the public area. On the other hand, women are less able to actualize their potential. However, according to an informant, women understand well the procedure for handling conflicts so that various household problems can be resolved amicably by the women. Family conflict resolution is considered so important to cover up their family's disgrace. So that women also have the responsibility to cover the family disgrace. According to Maria Korwa²², because the national law on the domestic violence has been enacted, the domestic violence case should have been exposed, but because it is considered a disgrace, the case of violence will be covered up to protect the family's reputation. Based on other respondents, a tribe chief can also commit acts of violence. Thus, the violence can occur not only due to gender inequality but also age inequality and social status.²³

Moreover, the resolution of violence could be done through a mediator who should have the same social status or even higher.²⁴ These mediators are generally part of their own family. Certain tribes can act as mediators and their authority is determined based on certain conflicts. There are several different roles for each tribe, for example there are tribes that focus on resolving land dispute, or traditional death ceremonies, or wedding ceremonies, and so on.

²¹ Kafiari.

²² Maria Korwa, "Interview" (2021).

²³ Kelly L. Hazel and Kerry S. Kleyman, "Gender and Sex Inequalities: Implications and Resistance," *Journal of Prevention & Intervention in the Community* 49, no. 1 (2019): 281-92, <https://doi.org/10.1080/10852352.2019.1627079>.

²⁴ Korwa, "Interview."

Another informant named Jessica Wabiser²⁵ said that violence against women was justified and allowed by tribe nowadays. The position of women is lower than that of men. There is a view that acts of violence actually occur because of the obligation to provide "Ararem" which is very expensive for women.

The marriage system of Biak's indigenous tribe consists of:²⁶ 1) "Fakfukén" or the proposal process is the stage where the male family makes an approach to the female family. The process of proposing can only be done three times. Women's parents do not have the right to make decisions unilaterally, because according to the tribe "Ararem" is the right of the clan or family. 2) "Ararem" or the determination of the dowry is the stage of determining the paid amount of the dowry. The amount is determined based on several criteria, the number of family members, social status, the woman's characters (personality, beauty, and virginity). Ararem consists of two parts, "Abobes kapar" which is given to the mother-in-law's family and his wife to-be and all members of the family or clan. 3) "Waffofer" or marriage is the stage where a man and a woman are confirmed as husband and wife. A mananwir (a tribal chief) leads the wedding ceremony while blowing cigarette smoke into the hands of the husband and wife. 4) "Wor" or traditional party is the final stage of the marriage process which takes place within a certain time. According to Mr. Sergius Dimara²⁷, the traditional party contains noble values for Biak's indigenous tribe because: a) it is as a show of ability, social status or degree, the dignity of men, and wealth, b) as a tribute to ancestral spirits, and c) as justification for the value of the traditional party.

Apart from formal and traditional legal procedures, the resolution of violent cases is also carried out through other procedures. The other procedure is an agreement made in a letter of agreement witnessed by a tribal chief, police, religious leaders and families. For example, the abuse against a wife occurred in Biak. The husband, who was drunk after a drinking party with his friends, beat his wife, causing serious injuries. The wife's family then reported the incident to the police and arrested the perpetrator. However, two weeks later, the case was mediated by making a stamped statement witnessed by the police, a tribal chief, religious leaders, and village heads. The letter contains the payment of a fine that the perpetrator must pay off to the victim if he does other abuses in the future.

CONCLUSION

There are a number of procedures for handling the violence against women carried out in Biak's indigenous tribe. Most of the cases (both psychological violence and neglect of household responsibilities) are resolved through traditional legal procedures. This is done to avoid breaking the bond between the two big families and at the same time to cover up the family's disgrace. Cases of violence committed by tribal chiefs or people with higher social status, the handling generally depends on the tribal chiefs. Sexual violence and murder are generally resolved through formal legal procedures. However, if socio-cultural factors and close kinship are still held, then there are various options for resolving cases of violence, either through formal legal procedures, or traditional law procedures, or both formal and traditional legal procedures, or stamped statements.

A number of research respondents hope that sexual violence and murder as far as possible are resolved through formal legal procedures, considering the considerable impact experienced by victims and their families due to the violence. In addition, the tribal chiefs need to be fair and wise in making decisions on the sanctions so that the victim does not feel aggrieved. Therefore, the law on domestic violence needs to be called for by village heads and other village officials to the tribal chiefs so that decisions made later can fulfil a sense of

²⁵ Jessica Wabiser, "Interview" (2021).

²⁶ Kafiar, "The Tradition of Ararem."

²⁷ Sergius Dimara, "Interview."

justice. The victim's family also hopes that the victim is not married to the perpetrator and hopes to continue his education even though he has to bear the shame. So that the tribal chiefs and village officials need to facilitate victims in order to regain their confidence.

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