



The Power of Local Wisdom Law in Resolving Domestic Violence And its Relationship with Law No. 23 of 2004 in Toba Regency Indonesia

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Abstract. Marriage is a vital thing in life, both individually and in society, everyone wants their life to be successful in all things both in career and in household survival. However, there are still many people out there who do not have good fortune in their household life. This paper examines the issue of domestic violence in the family domain. The study employs a sociological approach where the data sources are primary and secondary data with a focus on the population of the Batak community in the Toba Regency, Indonesia. Interviews were conducted with respondents consisting of perpetrators (abusers), victims, traditional elders, and government officials (police). The study finds that the occurrence of domestic violence is predominantly due to the kinship system in Batak society that prioritizes and deifies the position of a son, giving rise to superior traits and feeling higher and arrogant, this carries over into his life married. Such culture has contributed to the incidents of domestic violence in the family. Often a wife in the Batak community becomes a victim of domestic violence, she would not report such violence to the authorities. Instead, some of them would take an alternative measure by submitting to the local wisdom who can decide in such abuse cases and can be considered to guarantee legal certainty in the Batak community.

Keywords: power of law, local wisdom, domestic violence, victim, Batak

1 Introduction

Every human being is a social being who cannot live alone. Humans really need other humans in all aspects of their life, even in developing offspring, humans also need other parties in the continuation and consolidation of marriage.

Marriage provides both inner and outer bonds between a woman and a man forming an eternal household. The marriage bond is not only concerned with a matter of physical attraction between the two parties but rather the presence of turmoil or movement of a man's heart – where their hearts can make them compatible with each other.

Law Number 1 of 1974 defines a marriage, which is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on belief in the One Supreme God.

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Every married couple always hopes that their household life lasts for posterity until they are separated by death in accordance with the religious teachings adhered to by both parties. To achieve this posterity, there is always hope with all efforts that every marriage must have the blessing of both parents and relatives but above all is the presence and blessing of God.

Living a married life requires mental and psychological maturity as well as toughness to withstand and face the upheavals of life, whether the challenges come from within one's family or those that come externally. The meaning of psychological maturity refers to the ability of a married couple to control their emotions and temperament. Without such maturity, the occurrence of miscommunication, rifts in the household, and even domestic violence perpetrated by one spouse against the other can lead to separation and divorce between the spouses.

The above argument relating to psychological maturity resonates well with the provision of the law. Law Number 16 of 2019 Article 7 (1) states that permission to marry is allowed if a man and a woman have reached the age of 19 (nineteen) years. This age is considered mature enough for both men and women to understand the underlying objective of marriage and the responsibility that comes with it.

Addressing the issue of domestic violence in the family domain, Law Number 23 of 2004 concerning the Elimination of Domestic Violence criminalizes the act of domestic violence and provides legal protection to stop domestic violence. According to Article (1) of Law No. 23 of 2004, domestic violence refers to any act against a person, especially against a woman, which results in physical, sexual, or psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty within the household sphere.

In the Toba Batak household, consciously or not, domestic violence is rampant. However, within this Batak community, being violent in one's family is considered a normal thing. It seems that being violent is identified as a habit of the Batak men possessing an arrogant character. Within the Batak community, their culture prioritizes the position of a man as the head of the family, and all other family members must respect and abide by him.

It is argued that domestic violence is very similar to a high iceberg with only a few sticking out on the surface. Reports of domestic violence are sporadic depending on whether the victim is willing to speak up and make a report against her own spouse. Many cases show that repeated domestic violence frequently makes a victim helpless and despair prompting the victim to report against the perpetrator.

Based on the available data, in 2020 the number of domestic violence cases against women in Indonesia was 299,911 cases. The data came from various sources:

- a. 291,677 cases filed in the Syariah Courts.
- b. 8,234 cases reported by an independent agency as a partner of Komnas Perempuan
- c. 2,389 cases were reported to Unit Pelayanan dan Rujukan (UPR), a unit formed to accommodate complaints from victims of violence against women.

Apart from the above statistic, there are also reported cases of domestic violence cases that are not gender-based of 255 cases and gender-based ones totaling 2,134 cases. (CATAHU Komnas Perempuan, 2021).

The occurrence of domestic violence increased during the COVID-19 pandemic. Many domestic violence victims visited non-governmental service institutions to complain about their plight. These institutions were able to gather a growing number of domestic violence cases during the pandemic. Using the data, they assist the government in providing necessary help to the affected community.

The data obtained from Komnas Perempuan shows that there are 3 forms of violence happening in the community. The highest number of cases was domestic violence (KDRT) in the personal sphere totaling 6,480 cases (79%) with the following details:

- a. 3221 cases (49%) of domestic violence against wives (KTI).
- b. 1,309 cases (20%) of dating violence
- c. 954 cases (14%) of violence against girls, including domestic workers and exes, be they ex-boyfriends or husbands (CATAHU Komnas Perempuan, 2021).

Although this paper focuses on domestic violence in the Batak community, domestic violence can happen to any woman regardless of the standing and position of the woman in society. Domestic violence involving people at high places in society is evidenced by a member of the Council of the Republic of Indonesia, Venna Melinda who was a victim of violence by her own husband who was considered a priest in the family. A well-known celebrity, Lesti Kejora, was also a victim of domestic violence by her husband. These two well-known victims form part of the larger number of victims receiving treatment at the hospital due to abuse committed by their own spouses.

2 Research Method

This study undertakes a juridical sociological approach with the study location of the Toba Batak tribe consisting of 16 sub-districts and several villages. The study selected a sample of 5 sub-districts consisting of 92 villages where 50 respondents were chosen consisting of 10 persons from each sub-district. In turn, the ten persons consisted of 2 alleged perpetrators of domestic violence, 2 victims, 2 traditional leaders, 2 informants from the community, and 2 government officers. Apart from interview responses, data was also obtained from observation and questionnaires distributed to the above sub-districts. All the data was collected and analyzed to gain insights as to the implementation of the positive legal regulation, namely Law No. 23 of 2004 on the Eradication of Domestic Violence in the Toba Batak community.

3 Result and Discussion

Indonesia consists of 1,340 ethnic groups (Central Bureau of Statistics 2010), and one of them is the Toba Batak tribe which is the subject of this study and is in North Sumatra Province. Most of the Toba Batak people reside in Toba District, Samosir Regency, Humbang Hasundutan District, and North Tapanuli District.

Toba Regency consists of 16 sub-districts but only 5 sub-districts were used as research locations, namely: Balige, Porsea, Borbor, Habinsaran, and Tampahan. This can be seen in the table below:

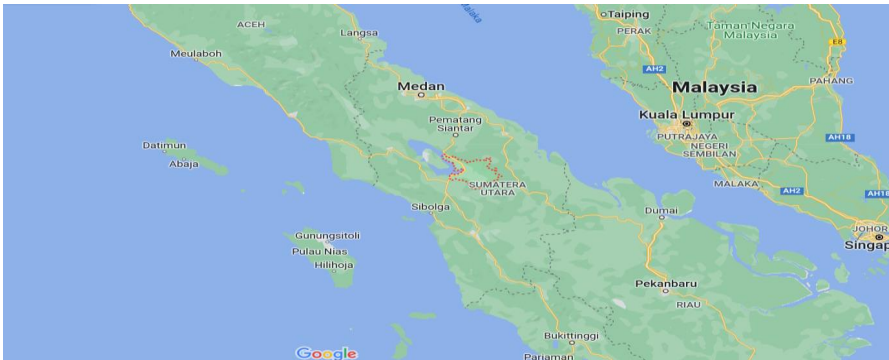


Fig. 1. Location of Toba Regency
Source: Google Maps

A tribe is a social group that has a certain position due to heredity, custom, religion, or language. Usually, each member of the tribe has similarities in terms of history, language, customs, and tradition.

There are several characteristics of a tribe, namely:

- a. Differences in physical attributes.
- b. Language Difference
- c. Cultural differences
- d. Having domicile

Applying the above traits, the Batak community is a group of people who consciously unite with the local culture, and usually communicate using the same language i.e. the Batak language.

The Toba Batak people have a firm character and a loud and harsh voice, are persistent in working to earn money, and are firm in making decisions. These are the characteristics of the Toba Batak tribe, because of their persistence this tribe is widely known throughout Indonesia, and even outside the country. The trait that deserves to be emulated is that this tribe has a very strong family bond. When a Batak person succeeds in his employment overseas, he will call his relatives to come and work overseas. A lot of young people in Batak community have moved to work elsewhere and are no longer living in the Toba Batak area.

It is noted that the patrilineal Toba Batak kinship system which continues the lineage and heirs of one family is the son, a daughter does not get a preferred place in the family. The dominant trait of a boy as a superior and more exalted person has influenced the character growth of the Batak man in a negative way which gives rise to arrogance and wanting to win alone in everything.

This special treatment towards a son can be seen at the birth of a baby boy in the family, his parents would quickly inform his *"tulang"* and his *"hula – hula"* and relatives that there was already a continuation of the offspring and a thanksgiving event would be held soon and his father looks proud and full of joy. However, if a daughter is born, it is treated as nothing special and just a normal birth. A family without any sons is called *"not Gabe"*, the relatives do not really respect the family, and the continuation of the lineage ends.

If viewed from the point of view of marriage for the Toba Batak tribe, even though the marriage is legal according to religion and has fulfilled the conditions determined by the laws and regulations, the marriage is not valid according to custom, the legal consequence is that the person cannot take part in traditional events, for example: in adat batak, *"ulos"* is a tool in conveying hopes and prayers that will be given to someone, this cannot be done if that person has not paid for adat or is excluded from traditional ceremonies.

If there is domestic violence between the two parties, *"dalihan natolu"* will not intervene to resolve it because the marriage of the two parties is invalid (*"golap"*). Such invalidity of marriage will not give birth to the rights and obligations of *"dalihan natolu"* to both parties.

In a traditional Batak marriage, the man gives *"sinamot"*, an amount of money given to the woman's family as a substitute for the woman in her parents' family because if a Toba Batak girl marries, the woman enters the husband's clan. The legal consequence is that the woman no longer inherits from her parents but from her husband's family. She only has the right *"Genot"* and all the husband's property, and children born following the husband's lineage.

In the Toba Batak tribe, *"dalihan natolu"* (three furnaces) means that a stable stove must have three stones that support the stove. Philosophically, in the Toba Batak tribe *"dalihan natolu"* means whatever is to be done there must be cooperation between *"dalihan natolu"* in order to produce good results. *Dalihan Natolu* consists of:

- a. *Hula hula*: is a wife-giving family
- b. *Dongan tubu*: blood relatives
- c. *Boru*: the recipient of the wife

The existence of *"dalihan natolu"* which is a philosophy in Toba society until now is still recognized and exists in the life of the Toba Batak people, there are several attitudes that must be obeyed with these three *"dalihan natolu"* namely *"somba marhula hula"*, *"manat mardongan tubu"* and *"elek marboru"*, in the table below it can be seen that there are three components which constitute the application of *"dalihan natolu"* in one's life.

Table 1. Actions and outputs from implementing "dalihan natolu"

| No | Example | Font size and style |
|----|------------------------|---|
| 1 | Sangap mar hula - hula | Obtain offspring of sons, and daughters and get grandchildren from sons and grandchildren from daughters. |
| 2 | Manat mar dongan tubu | Having material and immaterial wealth means getting abundant wealth, both tangible and intangible wealth. |
| 3 | Elek marboru | Get respect in the family and society, for example: get a position in the work environment. |

In the above table it can be seen that the first element of "dalihan natolu" is "sangap mar hula - hula" which means the parties must respect each other because in the Batak Toba custom the person who is positioned as "hula-hula" is highly respected and valued because "hula -hula" is "mataniari nabicar" (the sun rises and shines) which is considered to be the source of the blessings of his "borunya" life. Therefore, anyone who is less harmonious with their "hula hula" lives rather inadequately, that is a belief in the Batak Toba community.

Based on interviews with traditional elders in Haunatas, Mr. Tomu Pasaribu, this is why the Batak woman always "manaon" (withholds) anything that happens in her household life, especially cases of domestic violence that she experienced while having a family. "Boru" is very careful not to share anything that is not good in his life that can make his "hula - hula" heart hurt, especially those related to his household life. Even though there are strict provisions in positive law regarding domestic violence but he would not tell for the sake of the integrity of the big family and the good name and "tondi" of the "hula - hula".

"Manat mardongan tubu", which means you must be careful, do not be reckless, be careful because "dongan sabutuha" is a place to vent, discuss, friends in joy and sorrow, avoid disputes because they result in fatalities; because friends of the same clan are very vulnerable, and the parties take care of each other for the continuation of kinship relations in the future.

"Elek marboru" means respect and honor Boru because this Boru also has a very important role in every traditional event. In the Toba Batak tribe, it is Boru who remains responsible for any customary events, be it marriage or death or an event to handle cases of domestic violence. Therefore, a person who is a "hula-hula" must also appreciate his "Boru" because the "Boru" works hard and is responsible every time there is a "ulaon" from the "hula-hula" (any event organized in the "hula-hula" family) and thus any good or bad is the responsibility of "Boru".

Article 5 of Law No. 23 of 2004 on the Elimination of Domestic Violence defines domestic violence as:

- a. Physical violence: violence that can cause pain, minor injuries, or serious injuries.
- b. Psychological violence: which creates fear for the victim, lacks confidence, and causes severe physical pressure.
- c. Sexual violence: coercion to have sex that is inappropriate even if the victim does not like it, as well as commercial sexual intercourse by the husband.
- d. Household neglect: in the form of economic violence by not carrying out its obligations to provide for the family.

Under the above law, domestic violence is considered an offense or a criminal act if it is committed intentionally and is carried out repeatedly. This offense is classified as a complaint offense, which means that the authorities cannot intervene to investigate the problem unless there is a complaint by the victim.

However, it is also noted that not all domestic violence cases are complaint offenses, but domestic violence can be an ordinary offense if the act is beyond what has been specified in the above law, namely:

- a. If the act committed by the husband does not cause illness or result in the victim being unable to carry out her daily work or position.
- b. Physical violence perpetrated by the husband does not cause the victim to be unable to carry out her daily duties and does not cause illness to the wife's body.
- c. The existence of acts of sexual violence committed by one of the husbands or wives does not cause the victim to be unable to carry out her daily work or cause illness for one of the parties.

In the Toba Batak tribe, the acts of domestic violence can occur in the following manner, namely:

- a. Swearing and insults thrown by one party;
- b. beating;
- c. Does not respect the family of one party;
- d. Always underestimate one party in everything;
- e. The husband always makes decisions without consulting the wife;
- f. There is no opportunity to discuss anything for either party.

So domestic violence for the Toba Batak tribe is very different and rarely has an economic motive because the Batak woman is very creative and agile in maintaining her family life, even if violence occurs in her family, she always takes a stand to survive because there is a slogan from the Batak people "*anakkoki do hamoraon di au.*" (my son is my wealth).

This slogan is the underlying reason why a Batak woman does not want to make a complaint of domestic violence to the authorities. To her, it will hurt the feelings of the relatives of both parties, and it will impact their relationship forward. Another reason is the possibility of the husband being sent to prison in the event he is found guilty of domestic violence. For the Toba Batak tribe, the solemnization of marriage by way of religion is paramount and cannot be divorced by humans once the oath is made in the Church (Matthew 19 verse 6). Hence, this is firmly held by Toba Batak women.

In an interview with the council member Mr. B. Sinurat as a DPRD member, he mentioned that the local government of the TOBA district strongly supports the decisions of a customary institution because the Toba Batak people have full confidence in

the traditional institution of "dalihan natolu ". This institution seems to be able to regulate the life of the Toba Batak people in all respects so that a just, safe, and harmonious social life is achieved.

The "Dalihan Natolu" acts as a mediator for the Toba Batak people in settling their disputes. Their decisions are reached and result in a sense of peace and kinship without any of the parties feeling isolated. It is argued that the extraordinary role of this natolu dalihan in Toba Batak tribe can create harmony, order, and comfort.

In cases of domestic violence, even though the law provides that a victim can complain regarding the act of violence, relatives of both parties who are aware of such incident may also file a complaint to LADN (Dalihan Natolu Traditional Institute). Once LADN is informed about the case, the natolu dalihan will meet and swiftly discuss resolving the case of domestic violence that befell relatives. Often a reconciliation will be decided between the two parties with some very serious conditions especially regarding children as the next generation according to Batak custom "*anankkoki do hamoraon di au*" and the parents' families from both sides.

There are several sanctions for the customary decision of "dalihan natolu", namely:

- a. If the husband continues to commit domestic violence against his wife, then the wife's relatives will bring their daughter back to their house (their parents).
- b. Isolate or expel the offender from the community.
- c. Paying compensation to the victim or replacing all costs incurred to resolve the dispute in a customary manner.
- d. Apologize to the victim in the presence of all parties involved in the customary settlement.

The Toba Batak people respect the decisions of the "dalihan natolu" because of the nature of kinship and personality, the unity of the family to maintain the continuity of kinship. The nature of mutual respect and forgiveness are very prominent.

The above traditional dispute mechanism is preferred over the existing three ways of solving domestic violence cases, namely by investigation, prosecution, and judge's decision, and provides the possibility of legal remedies.

From the data obtained, the resolution of domestic violence cases was carried out on a non-legal basis by deliberation on the work of NGOs in 1,043 cases of P2TP2A (Integrated Service Center for the Protection of Women and Children) in 526 cases and WCC in 214 cases. However, the data failed to identify the types of cases whose settlements were carried out using non-legal approaches, such as mediation by families, heads of Neighborhood Associations, and community and religious leaders, and most customary settlements were carried out for cases reported to LSM and P2TP2A. Other enforcement agencies such as the Police could also take the settlement of non-legal cases which sometimes are referred to as Restorative Justice. There were 87 cases that were resolved by means of non-legal settlement in the Police (UPPA).

This shows that the influence of local wisdom and deliberation for consensus is still strong in the character of Indonesian society because as many as 29% of domestic violence cases are not brought to court.

From a practical point of view, crimes of violence against women are managed via alternative means to achieve restorative justice. These cases are not tried in the court

of law. Implementing restorative justice, has a number of prerequisites, namely to emphasize the interests of the victim as the party directly affected by the crime, including the victim's family, and the wider community that is affected, as well as the full participation of the victim and other affected parties.

On closer analysis, the restorative justice mechanism practiced in cases of domestic violence only aims to stop cases or avoid the criminal justice process. It is noted that the investigation and court process are ineffective, taking a long time, and expensive resulting in a backlog of cases, without resolving the root problem of domestic violence i.e., the use of power and control in the household context where the cycle of domestic violence continues to recur.

The impact of implementing this mechanism does not benefit the victim but rather the perpetrator and law enforcement officials. This study recommends to Law Enforcement Officials that alternative mechanisms such as mediation/restorative justice can be avoided and that KPPPA and Komnas Perempuan establish clear standards regarding cases that can be resolved in restorative justice and the handling process through victim empowerment by assistants who have predetermined qualifications.

4 Conclusion

1. The Toba Batak people will not hand over the problem of Domestic Violence that occurred to them to the authorities, it does not mean that the community does not understand the regulations made by the government, but the Toba Batak people are more confident that all the problems they face are resolved kinship to avoid any embarrassment, especially towards the appreciation of "dalihan natolu".
2. "Dalihan natolu" is a philosophy of the Toba Batak people whose existence is still recognized and obeyed by the community so that all aspects of the life of the community are regulated in the order of "dalihan natolu".
3. It has been ingrained in the Batak Toba community, which in general adheres to Christianity that marriage is paramount, if domestic violence is regulated in positive law and sanctions imprisonment, it is considered that there is no longer any hope of living in harmony in the household and there is already pain between the two big circle of relatives of the husband and wife.

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