

ABSTRACT

The Model of Handling Cases of Violence Against Women Based on Local Wisdom of Lampung People

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Violence against women has now become a national and international strategic issue. Formation of violence against women formally is based on the Criminal Code and the Criminal Procedure Code through the criminal justice system mechanism. But in its implementation in the majority of indigenous communities in Indonesia, especially in Lampung indigenous communities, handling cases of violence against women is actually done through local wisdom mechanisms through customary institutions. Violence against women in Lampung society and several indigenous peoples in Indonesia in addition to violating state law is also a violation of customary criminal law. In Lampung traditional law, this matter is regulated in *Cepalo*. In Lampung's local wisdom, violence against women also means humiliating the large family of women victims of "*piil pesenggiri*", therefore handling cases must involve all parties ranging from victims, perpetrators, families, community leaders, traditional leaders and village officials. The handling of cases of local wisdom based on Lampung community is closely related to the concept of criminal mediation through a restorative justice approach, where the recovery of victims and peace are the main objectives. In the perspective of criminal law reform, regulations need to be made that elaborate local wisdom, especially the people of Lampung in handling violence against women, namely through the affirmation and registration of a peace certificate to the court so that it is expected to have force. Furthermore, the diversion method in juvenile justice can also be used as a model for handling cases of violence against women, especially cases of minor violence such as mild domestic violence, sexual harassment without physical contact. In the future, it is necessary to strictly regulate the authority of discretion carried out by the police in setting aside cases of violence against women.

Keywords: Handling, Women's Violence, Lampung Local Wisdom

1. Introduction

The phenomenon of violence against women has become a strategic issue in every country in the world. Relation to human rights, violence against women is an obstacle to development. Because this violence can have cumulative effects that are not simple, such as reducing women's confidence, hampering women's ability to participate fully in social activities, disrupting health, reducing women's autonomy in the economic, political and cultural fields¹. Women can be victims of violence anywhere in the private sphere by those closest to them, the public sphere and the state sphere². According to the type of violence against women can be divided as follows³ :

a. Domestic violence / personal intimacy. Various forms of violence that occur in family relations between the perpetrator and the victim have a certain closeness. This

¹ Ruby Hadiarti Johny, Criminal Acts Against Women, Legal Dynamics Journal Vol. 11 No.2 May 2011, p.

² Moerti Hadiati Soeroso, Domestic Violence in Juridical-Victimological Perspectives "In Muhammad Hasbi, Women's Violence in Discourse on Religious Thought and Sociology" Al-Tahir Journal, Vol. 15, 2015, pp. 389-410.

³ *Ibid*

- includes abuse of wives, girlfriends, ex-wives, fiancées, biological children and stepchildren, mistreatment of parents, sexual assault or rape by family member ;
- b. Violence in public / community areas, if the perpetrators and victims do not have kinship, blood or marriage relations. If the perpetrators are employers, neighbors, teachers, coworkers, community leaders, or people who are not know;
 - c. Violence in the realm of the state, meaning that the perpetrators of violence are state apparatuses in the capacity of the task including in the case of the state of the canyon when in the event, the state apparatus is in the scene but does not try to stop or instead allow the violence to continue.

Various national criminal law instruments which are the basis for the protection and handling of violence against women are the ratification of the CEDAW document by Indonesia, which came into force since 1981, Law no. 39 of 1999 concerning Human Rights (HAM), Law no. 23 of 2004 concerning the Elimination of Domestic Violence, Law No. 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons, the Convention on the Elimination of Violence Against Women and the Convention on Political Rights. Then in May 2009, the Indonesian government, with the support of the United Development Program (UNDP), had formulated the National Access Strategy (STARNAS) Text on justice. Starnas is part of efforts to strengthen and improve the welfare of the people to achieve one of the objectives of the long-term development plan (RPJPN 2005-2025), namely "Fair Indonesia". To fulfill the access to justice, there are 8 strategies offered, one of which is the strategy of access to justice for women⁴.

Violence against women is an iceberg phenomenon because most women victims of violence tend to report the violence they experience to informal leaders, namely traditional leaders, community leaders and village officials, only 10% of cases of violence are processed in court⁵. Based on several research results on law enforcement of violence against women by law enforcers (police, prosecutors and judges) there are still many who are gender biased and even often use the victim blaming and victim participating approaches. The case handling process only prioritizes the legal aspects and marginalizes justice for the victim⁶.

In indigenous communities violence against women is not only a violation of state law (criminal law) but also a violation of customary law. One of the customary law communities that still upholds the values and principles of customary law as local wisdom is that the people of Lampung with a patrilineal culture view that cases of violence against women are domestic cases which would be a disgrace to large families if adopted into the public sphere. This is more complex because the perpetrator is usually the closest person to the perpetrator and is in a private area (husband, uncle, grandfather, girlfriend's boss).

According to the provisions of formal criminal law, the mechanism for handling cases of violence against women must be carried out through the criminal justice system (law enforcement by the police, prosecutors and judges). According to the provisions of formal criminal law, the mechanism for handling cases of violence against women must be carried out through the criminal justice system (law enforcement by the police, prosecutors and judges).

The existence of customary law in Indonesia to date has been recognized constitutionally as stated in Article 18 B Paragraph (2) of the 1945 Constitution which

⁴ Ani Suratinah "Violence Against Women, Study of the Effectiveness of the Law" Thesis, Postgraduate Program, Muhammadiyah University, Surakarta, 2017.

⁵ Policy Paper, Gender Equality, Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia, 2011

⁶ *Ibid*

states that "The state recognizes and respects the customary law community units and their traditional rights as long as they are still alive and in accordance with the development of the Unitary Republic of Indonesia as stipulated in the law". Furthermore, in Article 28I Paragraph (3) of the 1945 Constitution it is stated that cultural identity and traditional community rights are respected and in line with the changing times. "The state recognizes and respects the customary law community units and their traditional rights as long as they are still alive and in accordance with the development of the Unitary Republic of Indonesia as stipulated in the law. Furthermore, in Article 28I Paragraph (3) of the 1945 Constitution it is stated that cultural identity and traditional community rights are respected and in line with the changing times.

Lampung Province as one of the areas where some people still use local institutions in the settlement of criminal cases regulates the strengthening of local wisdom in Lampung Province Regional Regulation No. 2 of 2008 concerning the Maintenance of Lampung Culture, regulates and recognizes the existence of adat institutions both from the function of duties and rights and obligations which confirms that the meaning and nature of adat and culture as local forces that live dynamically and create conditions that can guarantee the preservation of the diversity of indigenous peoples in strengthening the unity of the nation⁷.

Seeing the reality and facts that exist in the field and on the basis of the concepts that have been described above, the writer sees the phenomenon that between customary law which is the local wisdom of Lampung people should have continuity with national criminal law. Based on these thoughts in the perspective of reforming criminal law, it is necessary to handle violence against women who elaborate the local wisdom values of Lampung society and national criminal law.

This thinking is in line with the theory put forward by Friedman that in general law enforcement will not succeed if it is carried out without regard to or ignore cultural and moral values. Cultural values play an important role in law enforcement. Law enforcement that involves values, ideas of attitudes and behavior related to law conceptualized Friedman with the legal culture (Legal Culture)⁸. National criminal law must be more responsive to the values of local wisdom. This needs to be done given the special characteristics of criminal acts of violence against women related to culture and most occur in the domestic / private area.

The problem approach in this study will be to use the socio legal approach, which examines the law as a social phenomenon associated with handling violence against women. The subject of the study is to find a model for handling cases of violence against women in national criminal law policies that elaborate local wisdom. The model is expected to be a reference in the handling of violence against women policies that make a positive contribution in the context of legal knowledge, especially as an instrument for strengthening the local wisdom of the Lampung people in accordance with national criminal law.

2. Methods

This study uses the socio legal approach and the statute approach. The socio legal approach is used to study the construction, function, role and process of handling violence against women in national criminal law and local wisdom. Whereas the legislative approach is

⁷ Erna Dewi, "Indonesian Criminal System With Local Wisdom" BP. Justice Publisher, 2014.

⁸ Lawrence Friedman in Fitriati Characteristics of Informal Criminal Settlement through Customary Courts, Journal of Legal Media, Vol. 24 No.2 / December 2017. pp. 165-171

used to map the foundation of the handling of cases of violence against women. This research was conducted in 2 (two) districts namely Tulang Bawang Barat and East Lampung Regencies.

3. Analysis and Discussion

3.1. Model of Handling Cases of Violence Against Women in Lampung Indigenous Communities

Broadly speaking, the Lampung indigenous people are divided into 2 (two) groups, namely the *Sai Batin* indigenous people and the *Pepadun* community. In the *Pepadun* community, the customary law is written based on the *Kuntara Rajo Aso* Book for the *Pepadun* community in the *Telian Suku* sub-community, *Kuntara Abung* for *Abung Siwo Mego*, *Kuntara Tulang Bawang* for the *Tulang Bawang* community, and *Kuntara Raja Niti* for the *Way Kanan* Community⁹.

Lampung traditional law is an identity for the Lampung indigenous community in an effort to preserve the customs and culture of the people of Lampung. The Lampung traditional *ketaro* governs the norms, behavior of the Lampung people's way of life, this is the identity and entity of the Lampung people in maintaining the cultural traditions of the Lampung people to this day. The pattern of life behavior both manners, relationships and things that are prohibited are specified in a specific regulation or customary criminal law in Lampung, which is called *Cepalo*¹⁰.

This study is focused on handling violence against women in Lampung indigenous people, especially Lampung *pepadun*, with the research sample of the indigenous peoples of *Megow Pak Tulang Bawang*, especially on the *Indigenous People's Institution*, *Gedung Ratu Village* and the *Abung Siwo Migo Indigenous Peoples*, especially at the *Bandar Mataram Indigenous People*. In general, the handling of cases of violence against women in the community of *Bandar Mataram* and *Gedung Ratu* has the same concept of restoring the situation that was shaken due to violations committed by the perpetrators by conducting deliberations and consensus through traditional war (mediation) in formal and informal forms.

Handling female violence based on the wisdom of the Lampung community is closely related to the culture of the indigenous Lampung people. Lampung society is a patrilineal society which views that violence against women, especially those that occur in private areas such as domestic violence, or violence where the culprit is the closest person to the victim (father, uncle, etc.) should be resolved as a family. The Lampung traditional community considers that the violence experienced by women is related to the honor and dignity of the family and *adat*. If the problem of violence in the private sphere is resolved through public space then it will be a disgrace for the whole family. According to *Ahmad zulkifli M*, in the local community, Lampung people, especially Lampung *pepadun* women are not allowed to divorce their husbands. Divorce can bring shame to the family. This is one of the reasons why women victims of domestic violence prefer to handle cases on a family basis.

Throughout 2018 the Women's Advocacy Institute (DAMAR) has assisted around 40 cases of violence against women in Lampung Province¹¹. The data is an iceberg phenomenon, meaning that this data is data that is not revealed and that is not revealed is

⁹ H.A Rifai Wahid, "Ketaro Adat Lampung" Teluk Betung 2001. Said Speech.

¹⁰ Ngediko Rajo, "Titte Gemetei Adat Lampung" Volume III, 1980. Pg. 15

¹¹ Noval Andriansyah "The Damar Institute Reveals the Highest Cases of Violence Against Women in Bandar Lampung" <https://lampung.tribunnews.com/2018/12/18>. The highest institution-of-expression-of-violence-against-women-case in Lampung was accessed on 27 July 2019.

still greater¹². This is inversely proportional to the data submitted by the National Commission on Violence Against Women which revealed violence against women in Lampung province throughout 2018 of 564 cases. The P2PA Tulang Bawang Barat Office has assisted 5 cases of violence against women since the formation of the P2PA Tulang Bawang Barat Office in 2017¹³.

Based on the data above, it can be seen that the majority of cases of violence against women have not been resolved through formal mechanisms, or that the majority of women victims have not reported the violence they experienced either through handling by law enforcement or through adat institutions. This of course will have an impact on the neglect of the offender who might repeat the violence to the same victim or another victim. In handling cases of female violence in Lampung customary law according to the traditional leader of Bandar Mataram there is no limitation on the form of violence that can be resolved through adat law mechanisms. However, in the implementation of violence against women, it is included in the criteria of serious criminal offenses, such as murder, severe mistreatment or victims within the age limit of indigenous children will coordinate with law enforcement officials¹⁴.

The author's research results reveal that there are several factors that cause women victims of violence in the Lampung indigenous community to choose a solution through local wisdom institutions, (customary law, village court or family consultation), namely:

1. Violence experienced by women occurs in the private sphere and most of the perpetrators are the closest people to the victim, for example in domestic violence where the perpetrators are husbands;
2. Indigenous peoples are more comfortable and believe in resolving legal problems encountered through adat meetings;
3. The existence of stigma on women victims of violence by the community that is a disgrace and shame on large families if the problem of women victims of violence is widely open to the public for example in sexual violence.
4. Community culture, which is largely unable to accept women victims of violence, especially victims of sexual violence, especially in rural communities. Labeling given by the community to women victims of violence, for example women who provoke sexual violence.
5. Public perception which considers that the settlement process through a criminal justice mechanism, is considered complicated, time-consuming and requires a relatively large cost.
6. Lack of evidence in formal justice mechanisms, given that most cases of violence against women occur in the private sphere, so there is minimal evidence.
7. Customary sanctions are felt more justly because they accommodate the wishes of the victim and the victim's family by involving the victim in making decisions through customary deliberations to determine sanctions for perpetrators.
8. On the settlement of adat or mediation of rehabilitation and anti-loss of the victims is facilitated in adat criminal sanctions while in the settlement of cases through the court has not been in favor of the victim.

¹²National Commission on Violence Against Women "Annual Record of Violence Against Women" <https://www.komnas-Perempuan.go.id/read-news-notification-of-violence-against-women-2019>, accessed August 1, 2019

¹³ <http://lamppost.co/berita-4-bulan-berdiri-dinas-pp-dan-pa-tubaba-tangani-lima-kasus>. accessed on July 9, 2019.

¹⁴ The results of the author's interview with Ahmad Zulkifli RM, Bandar Lampung Custom Figure on July 12, 2019

The handling of cases of violence against women based on local wisdom of the Lampung community is in accordance with the concept of restorative justice approaching by promoting peace between the perpetrator and the victim including his family. This is because cases of violence against women in Lampung customary communities are closely related to self-esteem and the good name of extended families which are often referred to as *piil pesenggiri*. Women are considered as one of the symbols of honor in the family, if women become victims of violence then the perpetrators not only dispute with victims but also their extended families. Therefore, the handling of violence against women in the Lampung traditional community must involve the extended family of perpetrators and victims. This is related to social sanctions that will also be received by families and indigenous clans from women victims of violence in Lampung indigenous communities, namely as follows¹⁵:

1. Orau Pepadun (Pepadun which is the subject of discussion due to making a mistake) :
 - a. The clan balancer is wrong (called a defect) called “*Karem Pepadun*” (karam);
 - b. Counterweight Tiyuh do wrong (disabled) is called “*Tanyok Pepadun*” (drifting);
 - c. The counterweight makes a mistake (defect) called “*Coreng Pepadun*” (streak)
2. Pepadun defect
 - a. “*Pepadun kamah*”, namely the wife of the counterweight or the relative of the counterweight has been harassed or harassed to the point.
 - b. “*Pepadun Miring*” tilted, that is, the child or younger sibling is caught stealing.
 - c. “*Pepadun Telekkep*”, which is a divorced child or younger sister.

Based on the results of World Bank research, most Indonesians get justice not from the courthouse, but from informal settlement mechanisms from their communities, without the role of the court at all¹⁶. The handling of customary law-based criminal disputes has positive aspects including¹⁷:

1. The adat institution / village peace judge acts to find facts, ask advice from the traditional elders in the community. Decisions of traditional institutions are taken based on deliberation and consensus whose decisions are accepted and satisfy all parties;
2. The implementation of sanctions involves the parties, this shows a high tolerance (tolerance) between the parties;
3. Peace and harmony between the parties can be restored and community integration can be maintained.

Nurali St. Negri Marga states that the indigenous community of the queen building considers that the customary criminal sanctions imposed by the Indigenous People's Institution have a more deterrent effect to the perpetrators, because there is a great shame borne by the perpetrators for the actions carried out and known by the community. The shame is borne by the perpetrators and even their families in the community in their

¹⁵ Albar Diaz Novandi "Analysis of the Settlement of Criminal Acts Based on Indigenous Lampung Local Wisdom" Thesis, Faculty of Law, University of Lampung, 2016.

¹⁶ I Made Widiana, "Customary Criminal Law and Criminal Law Reform" Jakarta, Fikahati Aneka, 2013. Pg 11

¹⁷ Rachmadi Usman, "Dispute Settlement Options Outside the Judiciary". Bandung. Citra Aditya Bhakti. 2013. P.195

neighborhood¹⁸. Furthermore, according to Ahmad Zulkifli, the legal settlement of customary law in the Lampung community refers to the *Kuntjara Raja Niti* book, which is done by paying compensation (*nyukak*), returning the stolen ones (*nyukak ko sai dimaling*), paying a fine amount of money, cutting a number of buffaloes (*mesol*) kibau, and social punishment such as being exiled from families and indigenous peoples¹⁹.

The results of the author's research indicate that there are currently several alternatives for handling cases of violence against women in the Lampung indigenous community, especially in the adat community of Bandar Mataram and the Queen's Building, as follows :

1. Non-Formal Mediation, namely: Family case handling through a written agreement stamped by the perpetrator and witnessed by family, traditional leaders, community leaders, religious leaders, village officials or even the police (Babinkamtibmas) for example in mild mistreatment by the husband against his wife (Domestic Violence).
2. Formal mediation, namely: Handling cases through the *Pepung Adat* (Indigenous Consultative Forum) where customary leaders bring together perpetrators and victims in order to find a solution together with the problems that occur. The result of deliberation is usually to impose customary sanctions on the perpetrators by paying customary fines in an effort to clear the good name of the victim and family or in certain cases sanctions can be in the form of expulsion of the perpetrators and victims to leave the village, for example in cases of adultery and adultery.
3. In cases of violence against women that fall into the category of serious crimes such as rape, violence resulting in the death of a victim or violence involving child victims handling cases will be followed up through a formal criminal law mechanism namely the criminal justice system.
4. In other cases based on information from informants, the handling of cases can be done in a double manner, namely through the mechanism of customary law and state law. For example in the case of adultery that occurred in Penumangan village committed by men and women who have been bound in marriage, both perpetrators are given customary criminal sanctions namely men must pay a fine to the family of women in this case the husband, while women who have an affair sanction of exile from the village. While in law the State of this case is also reported and processed by law enforcement.

The handling of violence against women through local customary law institutions and village institutions in Lampung society in general can be explained as follows:

1. Reports made by victims or perpetrators to village officials (village heads, hamlet heads, RT heads, etc.) or traditional community leaders where the violence against women occurred;
2. After the report has been received by village officials or traditional community leaders, it will be followed up with an internal meeting of village officials and traditional community leaders to determine the schedule for the hearing;
3. Furthermore, traditional leaders or village heads will approach the victims and perpetrators to explore the problematic events;

¹⁸ Interview with Nurali St. Negri Marga as chairman of the Tiyuh Indigenous Community Building, Ratu Building, Tulang Bawang Udik District, Tulang Bawang Barat District, July 28, 2019.

¹⁹ The results of an interview with Ahmad Zulkifli, Chairperson of the Indigenous Community of Bandar Mataram, East Lampung Regency, on 5 August 2019

4. Summoning victims and perpetrators at the appointed time to conduct adat meetings. The place for conducting traditional meetings is usually at the house of the village head or at the residence of the head of the Indigenous People's Institution.

In principle, the legal system is substantially based on local wisdom based on the values contained in society characterized by the principles of kinship, religious, magical, communal and starting point not on the basis of individual justice but justice together. The logical consequences of the dimension of resolution bring harmony, harmony and togetherness. Strictly speaking, customary law prioritizes the existence of restoration of the situation that was shaken by the violations committed by the perpetrators²⁰.

3.2. Handling Cases of Violence Against Women in the Criminal Justice System

The handling of cases of violence against women is formally regulated under Law No. 8 of 1981 concerning the Criminal Procedure Code, the handling procedure starts at the investigation level until the examination in the court. KUHAP as a form of SPP unfortunately does not recognize the uniqueness experienced by women victims of gender based violence. The Criminal Justice System according to Mardjono is a crime control system consisting of police, prosecutors, courts and prison inmates. The objectives of the criminal justice system are as follows²¹:

- a. Prevent people from becoming victims of crime;
- b. Resolving cases of crimes that occur so that the community is satisfied that justice has been established and the guilty convicted;
- c. Ensure that those who have committed crimes do not repeat their crimes. The Criminal Procedure Code has not yet accommodated victim-sensitive procedural law and has a human and gender perspective, this can be seen in the following matters²²:
 1. There is no specific regulation for the process of drafting the Minutes of Examination (BAP) of women victims, for example, there is no provision prohibiting repeated questioning by investigators, or the process of drafting BAP in terms of asking questions to victims conducted by Investigators who are not on duty in the case, or ask questions that corner the victim or have the effect of traumatic repetition of the victim;
 2. There is no regulation regarding the victim's right to report information and case developments.

Referring to the handling of cases of violence against women that exist today, especially the Criminal Code and the Criminal Procedure Code, in its formulation does not seem to reflect the alignments to women victims of violence. This can be seen based on the following matters²³:

- a. Violence against the integrity of a woman's body has been reduced to purely a violation of the norms of decency. So that the handling approach used is not

²⁰ *Ibid*

²¹ Maria Goretti Ethics Prawahyanti, "Legal Protection for Women in the Integrated Criminal Justice System for Handling Women's Cases in Indonesia" Journal of Law Reform, Law Study Masters Program, Diponogoro University, Number 1 Year 2007.

²² *Ibid*

²³ National Commission on Violence Against Women, "Building Access to Justice for Women Victims of Violence" Komnas Perempuan, 2018.

- oriented to the situation of the victim but to what extent the community considers this to be a violation of decency in the community.
- b. Proof rules that do not recognize the experience and context of violence against women. Such as the necessity of having two witnesses who make it difficult to disclose cases of violence that occurred in the private sphere. In criminal acts, moral rules require pressure and threats in the form of coercion;
 - c. Law enforcement officers who stigmatize women in every hearing victim victim blaming or participatory occur. Women as victims of violence are required to prove that they really did not take advantage in the incident. For example as a rape victim a question like "did you sway?" Became the standard question that needed to be asked during the examination process (BAP).
 - d. The apparatus does not understand the context of violence experienced by the victim as well as the existence of various factors, especially the power relations behind them so that the authorities easily make victims of violence against women as "perpetrators". This can be seen in the case of Baiq Nuril who was convicted by the judge for recording the sexual harassment he experienced from his superiors.
 - e. Victims' rights are not fulfilled, rehabilitation, restitution and compensation²⁴.
 - f. There is no prohibition for any party to publish the case experienced by the victim without the victim's consent. In the Criminal Procedure Code there is no regulation regarding the prohibition of Investigators, Public Prosecutors, Judges and Advocates, as well as the mass media to publish cases experienced by victims without the victim's consent. In the case of the victim giving consent, there is also no provision governing the obligation to maintain the confidentiality of the victim's identity in the reporting²⁵.
 - g. There is no regulation regarding the provision of special examination rooms for women victims or who are separated from the suspect / defendant in the investigation process until the trial. In general, women victims of gender based violence need a safe and comfortable examination room for victims to deliver their information. The legal vacuum was subsequently responded to by the Indonesian Police by issuing National Police Chief Regulation Number 3 of 2008 concerning the Establishment of Special Service Rooms and Procedures for Examining Witnesses and / or Victims of Criminal Acts. Although the National Police Chief's Regulation has been issued, which regulates the obligation of the Police to provide a Special Service Room (RPK) as a complement to the Women's and Children's Services Unit (UPPA), only a small proportion of UPPAs throughout Indonesia have RPK.
 - h. There is no regulation regarding the authority of the Public Prosecutor to communicate with the victim, the victim's family, and the victim's Companion. The absence of this provision raises doubts in the Public Prosecutor whether it is prohibited or not, whereas, as a representation of the state representing the interests of victims at trial, the Public Prosecutor should have a full understanding of the needs of victims in the legal process that is being lived.

Looking at the uniqueness of violence against women that is always in contact with the culture of society, it is necessary to handle and resolve cases of violence against women involving all the interests of victims of violence, family and society. This needs to be done considering that the cases of violence against women in the majority of indigenous

²⁴ *Ibid*

²⁵ *Ibid*

peoples in Indonesia are also related to the good name of the family and the community in their environment so that the families and communities around the victims will also become victims. Therefore, if the solution is only formally done through the mechanism of the criminal justice system, it is feared that it cannot restore balance in society due to the perpetrators' actions.

Based on the characteristics of violence against women, using mediation as an alternative in handling and resolving cases is considered to be in accordance with the nature of mediation that gives full power to all parties to the dispute, which prioritizes the peaceful resolution of disputes based on deliberation, especially in cases of violence in the private sphere such as Domestic Violence (Domestic Violence). The indigenous people of Lampung have and most of the people in Indonesia have the view that violence against women is a disgrace that should not be exposed to the public sphere because it will damage the family's honor and *punyimbang* (traditional leaders). This is in accordance with the nature of mediation which is required to maintain the confidentiality of dispute handling. Seen from an anthropological perspective, the handling of cases of violence against women based on local wisdom through traditional institutions, families or village institutions can fulfill the idiological function of law as implied by cultural values, because the rules are felt and accepted by the community as a pattern of behavior, which is appropriate (proper) to control people's behavior²⁶. Furthermore, from the dynamic nature of customary law, it is always responsive to the changes around it. Violence against women in addition to violating the provisions of the formal criminal law in the Criminal Code and special laws is also a violation of the customary criminal law of the Lampung community which is regulated in the Lampung *Cepalo* Customary Criminal Law.

The instrument of local wisdom has a basic element, namely the custom of behavior (rule of behavior) followed by the community, secondly if the custom is violated it can cause shock and damage the cosmic balance and the three violators can be subject to customary reaction by the community through *adat* institutions. The resolution of *adat* violations in the application level is comprehensive, unifying and open. However, it differentiates the problem and is generally based on the parties' own requests. This is in accordance with the nature of criminal customary law such as²⁷:

1. Thorough and unite Customary law is cosmic, seeing everything as an interconnected whole. In resolving an *adat* violation, what is seen is who the perpetrators, victims and the relationship have influence on the community;
2. Provisions are open customary rules are always open to all events or actions that might occur. The process of resolving *adat* violations is carried out openly upon a request;
3. Differentiate the problems If there is a violation of *adat*, then what is seen is not merely the act and its consequences, but the process behind it. Thus the way of resolving events varies.
4. Court by request resolving *adat* violations is largely based on the request of the injured party or is treated unfairly.
5. The act of reaction or correction
Actions of correction or correction can not only be imposed on the perpetrators but they can also be imposed on families or even the community to restore disturbed balance.

²⁶ Ahmad Ubbe, "Penal mediation and Customary Justice" bphn's paper, http://bphn.go.id/data/documents/lampir_makalah-dr-ahmad-ubbe-sh-mh-pdf. accessed August 1, 2019

²⁷ *Ibid*

3.3. The Ideal Construction of Handling Violence Against Women in Formal Criminal Law and Customary Law.

Theoretical perspectives for legal certainty and community protection that resolve cases through customary justice, fulfill the ideological function of national development, which is based on philosophical, socio-cultural and juridical values of the Indonesian people themselves²⁸. The handling of cases of violence against women through local wisdom procedurally refers to the concept of restorative justice approach, namely through criminal mediation. Some of the benefits of using local wisdom through mediation in handling cases of violence against women are²⁹:

1. Mediation provides the opportunity for the victim to convey to the perpetrator the effect of the crime committed and to negotiate restitution;
2. Mediation becomes a medium for the offender to explain to the victim about the deeds committed, apologize, negotiate and pay for restitution.
3. Mediation has a significant influence in reducing anxiety and weak feelings of the victim.

Although some of the benefits of mediation in local wisdom can provide benefits in handling cases of violence against women, but there are some weaknesses, among others : **First**, there are no restrictions on the criminal acts of violence against women which can be resolved through traditional justice mechanisms, so that often violence against women who enter in the weight category is resolved through a mechanism of local wisdom. According to the authors of violence against women that should be resolved through local wisdom mechanisms, violence should be included in only mild categories such as domestic violence that does not result in physical violence, sexual harassment that does not physically attack and is carried out by novice perpetrators rather than repetition. **Second**, the mechanism of resolving cases of violence against women does not yet have a forced effort against the perpetrators to comply with the agreed peace content so that it is feared that many perpetrators will use the settlement through the local wisdom mechanism to avoid criminal justice (prisons).

Cases of violence against women cannot be separated from the cultural aspects of society, for example in Lampung Pepadun indigenous people who have a view of "Mak Di Juk Siang" (prohibition of divorce). This view will be one of the legitimacy that makes women victims of violence do not want to report cases of violence they experienced to law enforcement, because settlement through the criminal law mechanism will usually lead to divorce³⁰.

In the perspective of indigenous peoples violence against women in addition to having aspects of the conflict that occurs between perpetrators and victims there are also disputes involving families. This means that victims of violence against women in the perspective of indigenous peoples are not single because they involve their extended families as well. In cases of violence against women in indigenous peoples who still have strong family ties and also socio-cultural values that are still considered binding, in fact options can still be handled, that is, if there are criminal aspects, handling should be done through formal justice mechanisms. However, for the aspect of restoring relations between

²⁸ *Ibid*

²⁹ *Ibid*

³⁰ Fathu Sururi, "Mak In Juk Siang In Lampung Indigenous Peoples Pepadun Megou Pak" Al-Hukama, The Indonesian Journal Of Islamic Family Law, 2016.

the perpetrator's family and the victim's family or with the local community, the handling can be done through the adat justice mechanism³¹.

Violence against women in addition to violating the provisions of criminal law in the perspective of indigenous peoples is also a violation of adat. In the Lampung traditional community, the resolution of cases of violence against women through criminal legal mechanisms cannot improve the position of adat, namely "pepadun kamah" (adat position / family social status becomes dirty) if there are female family members who are disturbed by men (sexual violence) and Pepadun telukkep (there are those who become victims because in (adat position / social status of the family is reversed) if there is a female family member who commits divorce. Based on this, the resolution of cases of violence against women only through formal criminal law mechanisms has not been able to restore conflicts and customary disputes in society.

Therefore it is necessary to treat violence against women that is integrated between handling based on local wisdom and formal criminal law. This can be done by referring to the settlement of child criminal cases through discretion, which makes mediation part of the formal case handling mechanism. In its implementation, the police often carry out mediation procedures in handling cases of violence against women, especially domestic violence. This is done by referring to Article 18 Paragraph (1) of Law No. 2 of 2002 concerning Policing, that is, the police are allowed to act according to their own judgment. However, because it has not yet been clearly regulated what limits of violence against women are, then how is the procedure in handling cases of violence against women through mediation by the police still very vulnerable to abuse. Police discretion is very vulnerable to irregularities and misuse, so it needs to be given limits and supervision³².

Komnas Perempuan's monitoring in South Sumatra and Central Sulawesi shows that some women still use non-formal channels, especially adat legal mechanisms because they are considered to be quicker to solve problems than formal channels of justice. It turns out that in some regions, customary law still applies "unwritten customary rules actually live" said Komnas Perempuan commissioner, Sri Nurherawati³³. In line with this, the Secretary General of the Indigenous Peoples of the Archipelago (AMAN), Abdon Nababan stated that the RKUHP must guarantee by explaining how the definition and legal system of the local customary law takes precedence in the resolution of criminal cases directly related to the customs of the local community. After the case is decided on customary law, an official report is made to be registered at the local District Court. The function of the court, said Abdon, is to prioritize maintaining the enforcement of customary law (force)³⁴.

Making customary criminal law as part of the renewal of national criminal law also presents its own challenges for legislators and executives in this regard. The challenge is in the form of the many customary values in Indonesia that are directly proportional to the many tribes and customs that exist in this country. This diversity will give birth to different values of various ethnic groups in viewing and resolving various problems that occur among them, not least in cases related to honor and decency, because this is not only the parties involved in the case, but also involves the wider community. Behind these various

³¹ Tien Handayani Nafi, Lidiwina Nurtjahyo, Iva Kesuma et al "The Role of Customary Law in Resolving Cases of Violence Against Women in Kupang, Atambua and Waingapu" Journal of Law and Development, 2015.

³² Online Law, "Kabareskrim: Police Discretion Must Be Limited" [https:// m. hukumonline.com/berita/baca/lt5059b7d1c3dc/kabareskrim-diskresi-polisi-must-dibata](https://m.hukumonline.com/berita/baca/lt5059b7d1c3dc/kabareskrim-diskresi-polisi-must-dibata)

³³ Fery Kurniawan "Customary Criminal Law as a Source of National Criminal Law Reform" <http://eprints.unpam.ac.id/1405/1/EDUKA,-jurna-Pendidikan-hukum-and-bisnis,-Vol-No-20August-2016.pdf>, 2016.

³⁴ *Ibid*

issues it is appropriate to listen to J. Van Kan's opinion which states, that the law is a mirror (een weerveve) of society, so that the formation of Indonesian criminal law should always reflect the values that live in Indonesian society or based on living law. It shows, that criminal law should reflect the values that live in society so that it can be applied and accepted and meet the sense of justice of the community where the law is enforced³⁵.

4. Conclusions

Based on the descriptions and studies that have been presented previously, the following conclusions can be concluded:

1. Violence against women is a crime that has its own style because it intersects with the culture and local wisdom of indigenous peoples. In the Lampung traditional community, violence against women is not only a violation of criminal law but also a violation of customary criminal law (*Cepalo*). In cases of violence against women, conflicts do not only occur between perpetrators and victims, but also involve families and communities around the victim, therefore the handling through local institutions felt the community more fulfilled the substance of justice.
2. The mechanism for handling cases of violence against women in Lampung society is carried out through criminal mediation with a restorative justice approach. In the Mataram Baru traditional community and Gedung Ratu the process of handling violence against women based on local wisdom is done through institutions, families, traditional institutions and village institutions. If cases of violence are included in the severe category, the handling will be coordinated with law enforcement to be processed through the criminal justice system.
3. In the perspective of criminal law reform, regulations need to be made that elaborate local wisdom, especially the people of Lampung in handling violence against women, namely through the affirmation and registration of a peace certificate to the court so that it is expected to have force. Furthermore, the diversion method in juvenile justice can also be used as a model for handling cases of violence against women, especially cases of minor violence such as mild domestic violence, sexual harassment without physical contact. In the future, it is necessary to strictly regulate the authority of discretion carried out by the police in setting aside cases of violence against women.

5. Recommendation

Based on the conclusions that have been described, the suggestions in this study are:

1. Regulations on the handling of cases of violence against women need to be made that internalize the values of local wisdom in formal criminal law. In the management of violence against women through local wisdom it is necessary to make clear boundaries that only violence that falls into mild categories can be resolved through local wisdom institutions.
2. In the perspective of reforming the handling of cases of violence against women through local wisdom institutions, it must involve law enforcement officials, especially in the post-peace period, so that there is a force for the implementation of the peace certificate agreement to be registered in the State Court.

³⁵ Asliani Harahap, "Renewal of Customary Law Based Criminal Law" *EduTech Journal*, 2108

3. Handling cases of violence against women must be clearly regulated in statutory regulations so as to obtain legal certainty.
4. It is necessary to establish a standard operational procedure for handling violence against women and the institutions that handle it, bearing in mind that the current mechanism does not clearly and firmly regulate it.

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