

Women's Position in Mediating Family Disputes in Indonesia

Fatahillah Abdul Syukur

Faculty of Law, Universitas Pancasila, Jakarta, 12630, Indonesia

Abstract: Patriarchal culture Indonesia in Indonesia has influenced many aspects of life, including the way of resolving family disputes in the judicial system. The patriarchal mindset is also assumed by most judges (men and women) in the Indonesian courts. This paper aims to critically examine the position of women in mediating family disputes in the Indonesian court-annexed mediation and how patriarchal values influence the conflict resolution processes and outcomes for all parties, particularly women. The studies were taken in two provinces of Indonesia, West Java and West Sumatra.

Keywords: Court-annexed mediation, gender, patriarchal culture, Indonesia.

I. INTRODUCTION

Indonesia has been trying to mainstream gender issues in all aspects of life after its independence in 1945. In 1946, the biggest Islamic organisation, Nahdhatul Ulama (revival of Islamic scholars - commonly abbreviated as NU) established Muslimat NU (Muslim women organisation of NU) as its wing to support women's social needs and education. The second largest organisation, Muhammadiyah (followers of Prophet Muhammad) established Aissyiah (Muslim women organisation of Muhammadiyah) to cater for the same purpose.

Oey-Gardiner argues that Indonesian women are unaware of their rights because of their less favourable sociocultural backgrounds and men's ignorance of the importance of women's involvement in policy making [1].

The author analyses the position of women in mediating family disputes in the Indonesian court-annexed mediation and how patriarchal values influence the conflict resolution processes and outcomes for all parties, particularly women.

This paper partly derived from the research conducted by the author together with the Indonesian Supreme Court's Working Group on Mediation. The role of patriarchal culture was evident in that monitored and evaluated the court-annexed mediation implementation in collaboration with the Sustain Project EU-UNDP, sponsored by the European Union and the United Nations Development Programme [2].

This research took place in ten provinces of Indonesia, including West Java and West Sumatra. West Java, where most of the family disputes are among non-Muslims and Chinese descendants who are mostly Christians, so family disputes arising from the community are normally settled in the District Courts. The second location for the research is

Padang (West Sumatra) where most of the population is Muslim, and therefore disputes are normally settled by the *Sharia* Courts. These two courts are two types of judicial authority beside Military Court and Administrative Courts under the supervision of the Supreme Court as the highest hierarchy in the Indonesian judicial system [3]. These two provinces were selected because the communities in each province still have and hold strong customary values, particularly when settling family disputes.

Hadler has suggested that the provinces of West Java and West Sumatra represent two great cultures in Indonesia, which have opposite characters: West Java is part of the 'feudal, involuted and religiously syncretic Javanese' and West Sumatra is 'supposedly dynamic, outward looking and pious'[4].

II. WOMEN'S POSITION IN CONFLICT RESOLUTION IN WEST SUMATRA

Minangkabau is an indigenous ethnic group in West Sumatra, which is famous for its long-held matrilineal tradition, or *matriarchaat* (from the Dutch). Minangkabau *matriarchaat* is an established social system that is drawn largely from the customary practice (*adat*) that involves tracing inheritance through the matrilineal line and giving prominent roles to women in public ceremonies. In West Sumatra, Minangkabau women play an important role in almost all spheres of life in the Minangkabau community – 'from the household to the marketplace, women hold pride of place'[5]. In Minangkabau, gender is a major factor in inheritance. The ownership of property (such as land, house or livestock), for instance, must pass from mother to daughter; however, a father can pass earnings from a business or profession to his son. The former follows principles of *adat* and the latter Islamic law[6].

Minangkabau women have played an important role since Dutch occupation in Indonesia for more than three centuries. Because of their unique position in their culture, they have more power than men and are in a higher bargaining position to contribute to their community. Minangkabau women traditionally had more power than their Javanese and European counterparts[4] and have contributed to the independence of Indonesia by publishing local newspapers and journals, such as *Poetri-Hindia*, *SoentingMelajoe*, *Soeara Perempuan*, to voice their interests, promote gender issues and disseminate the spirit of independence. They have also

played an active role in education by building schools for young women and becoming involved in politics.

Given the Minangkabau's matrilineal system, the so-called subservient position of women and their roles in family and community in Indonesia has been questioned by anthropologists. Blackwood contends that 'the Minangkabau case has always disturbed universalistic assumptions about women's place in the world' [7]. Tanner asserts that 'matrifocal' is the more suitable terminology for Minangkabau lineage because women play a central role in the family, although men are part of their wives' and children's lives [8].

Women also have a special rank in Minangkabau society in commercial transactions. Hadler contends that women in West Sumatra are resilient and have a peculiar position as leaders in Indonesia [4]:

...That a matriarchate has survived in West Sumatra is chalked up to the admirable resilience of Minangkabau tradition. Little attention is given to the historical processes that have defined the matriarchate. And, in fact, it is the dynamic tension between Islamic reformism and the matriarchate that not only has preserved the matriarchate in the face of colonialism but has made West Sumatra the incubator for that extraordinary generation of fin-de-siecle Indonesian leaders.

Benda-Beckmann states that 'the oldest common ancestress...actually stood above the *mamak*' and the oldest women in a Minangkabau group have the most power within the home and in relation to property [9]:

In matters internal to the group authority is also vested in the position of the eldest woman of the group.... She wields the highest authority within the house. But her authority is not restricted to purely domestic matters. For the oldest woman is the one ... who controls and keeps the property, who has the dominant voice in the distribution of the group's property and any surplus the group's property may have yielded.

However, notwithstanding the special position that Minangkabau women have held, observers doubt they are truly equal with men with regard to power before the law, especially when resolving disputes in the community [10]. Many experts have argued about who has the higher authority in the domestic and public arena. Kahn illustrates[11]:

It is also difficult to generalize about female authority. Obviously, the fact that Minangkabau women own rice land, house plots and, in most cases, the houses themselves gives them a certain authority lacking among women in other parts of Indonesia. Older women with married

children in particular have an air of assurance and self-sufficiency about them in the surroundings of their own homes that are difficult to miss...Older women in particular have no hesitation about joining in male conversation, and women do not seem to stand in perpetual fear of a husband's rebuke. At the same time both men and women told me that a husband has the last word in domestic decisions except when these are concerned with ancestral property. It would be almost impossible, therefore, to make any definite statement about relative 'status' of Minangkabau women because of the impossibly subjective nature of the concept.

Blackwood, however, has challenged the argument that Minangkabau women have more power than men in all spheres of life[7]:

Those who located Minangkabau women's authority in the domestic sphere reinforced a dichotomy between men's and women's authority, confirming the traditional view that men held overarching authority. Women's authority included domestic and even 'economic' matters but men's authority resided above everything else. Further, by including subsistence production within the realm of 'household' affairs, women's control of economic matters was reinscribed within the 'domestic' domain.

Nugrohocontended that, despite the matrilineal lineage of the Minangkabau tribe, women's position is marginalised by having to manage not only household affairs but also to make ends meet for the family[12].

The author selected a case from the Sharia Court in Padang to illustrate a divorce, shared property and alimony dispute between Chinese couples, which involved domestic violence. The case is taken from the research conducted by the author together with the Indonesian Supreme Court's Working Group on Mediation as previously mentioned[2]. Pseudonym is used to maintain confidentiality of the parties in this case study. The author further analyses this case study to highlight the how patriarchal values influence the conflict resolution processes and outcomes for all parties, particularly women.

Case in West Sumatra: Divorce

Hasan and Husna were married for three years and had one child. Hasan was a state employee and Husna was not working. For the first two years of marriage, they had been living harmoniously. However, since then there have been quarrels between them. Husna felt that Hasan was not able to give her adequate income to cover the household expenses. Hasan thought that he had given all he could, considering his low income.

Husna did not like the fact that Hasan's family often visited their house because it made her feel uncomfortable and she had to spend some money to entertain them. She also did not favour Hasan's action to give money to his parents. She became angry every time Hasan came home late from work. She suspected Hasan was having an affair with another woman, but Hasan rejected this accusation. She kept mentioning that he was incapable of giving a prosperous livelihood to his family. The dispute culminated when Hasan again came home late from work and Husna left the house the day after. They lived separately for four months. Hasan asked her to come home—although Husna gave him no respect as her husband—because his son needed a mother. He visited Husna's family in an attempt to reconcile their dispute with no result. He then filed for a divorce to the Sharia Court—as they are Muslims—in the province where they live.

Having been given an explanation by the court of their obligation to attempt court-annexed mediation to settle their dispute amicably, the couple appointed one senior male judge from their native tribe as their mediator. With his experience, the mediator tried to persuade the couple to reconcile. To Husna, he asked her to think about the future of her son. He also gave religious advice, that is, a wife should accept and appreciate her husband's financial condition if he has given his best effort. To Hasan, he asked him to be more patient when dealing with his wife because of their economic condition. The couple reached a settlement with some conditions: Hasan agreed to try to find additional income. He also agreed to limit his family's visits and not give too much money to his parents and promised not to have any affairs with other women. Husna promised that she would respect Hasan and try not to get angry with him. She also agreed not to ask Hasan for more things or money than he could afford.

Case Analysis:

In this case, the judge mediator used his experience to persuade the parties to settle the disputes amicably [13]. Despite not having any prior mediation training, he managed to perform his role as a mediator, although he did give advice, which is not encouraged in Western styles of mediation [14]. The fact that he was from a native tribe helped him to convince both parties, who had similar backgrounds, to settle their dispute amicably. His cultural approach, together with religious advice, persuaded the parties to change their behaviour. His position as a judge was highly respected by the parties due to his authority [15].

By giving advice and persuading the parties to reach a mutual agreement, the mediator was using a more Asian style of mediation [16]. However, end users of court-annexed mediation, especially disputants, have a low satisfaction rate for the mediation style and process. They perceived that the high level of power of the mediator in court-annexed mediation process is no different to the adversarial process in litigation [17].

III. WOMEN'S POSITION IN CONFLICT RESOLUTION IN WEST JAVA

The position of women in the West Java region is different to the position of women in West Sumatra. Ekadjati argues that there is a tendency at the village level in West Java for men to hold higher positions than women in decision-making processes[18]. Research conducted on the employment of women in West Java showed that women were marginalised in almost all sectors. Grijns, Smyth and van Velzen illustrated this with a proverb in the Sundanese tradition which states that 'women are like empty rice containers waiting for the men to fill them'[19].

On the other hand, Cooley has argued that Javanese women are mediators in the sense that they are 'vital to the household's survival as they create, maintain, and recreate social networks which enable material exchange to occur'. To quote Cooley[20]:

Javanese women are widely believed to possess better mediating skills than men. Consequently, the ability to negotiate access to, and control over, household resources is considered to be primarily a female function, even if women are not the eventual recipients or beneficiaries of their own action.

At the community level, the most dominant disputes that take place in West Java are divorce and inheritance cases[21]. Traditionally, West Java has been noted not only for its high divorce rates but also for its very early pattern of marriage[22]. In the formal judicial process, many family disputes settled by the District Court involve Chinese descendants, because their religious backgrounds fall under this jurisdiction[23].

Antlov adds that the influence of patriarchal culture derived from indigenous values in the community depend on how effectively the system disguises its dominance[24]:

According to Sundanese cosmology [which also applies to the Minangkabau], power should be embedded in an ideological framework that prevents it from being contested. This framework consists of enchanted commands and gentle hints, including vague ideas of public order, mutual assistance and family solidarity. In a Foucauldian turn, the more disguised domination is, the more effective it becomes. A display of power may thus be proof of its absence.

The author selected a case from the District Court in Bandung to illustrate a divorce, shared property and alimony dispute between Chinese couples, which involved domestic violence. The case is taken from the research conducted by the author together with the Indonesian Supreme Court's Working Group on Mediation as previously mentioned[2]. Pseudonym is used to maintain confidentiality of the parties in this case study.

The author further analyses this case study to highlight the how patriarchal values influence the conflict resolution processes and outcomes for all parties, particularly women.

Case in West Java:

Divorce, shared property and alimony dispute

Married at a young age, Budi and Dina had three daughters aged 3, 6 and 8 and are in their tenth year of marriage. They started from scratch with few resources but are now prosperous, as Budi is a successful businessman and Dina is a lecturer. They own a house, two spacious blocks of land and two cars, and their children are healthy and happy. However, there is one thing that had been bothering Budi. He wanted a son to carry further his family name. Born as an only son, he was raised in a Chinese descendant culture where a man is the sole bearer of the family and the clan. If there is no man in a family, then that family is disconnected with the clan. Therefore, his parents have been encouraging him to have another baby. As the only son, he wants to make his parents happy. However, Dina does not comply with that idea as she is now pursuing her dream to engage in further study to be promoted in the university where she is teaching and thinks that having another baby may hamper her plan. She feels that she deserves to pursue her dream after sacrificing her career to take care of their three daughters. She rejects her husband's request to stop working and to defer her career.

Budi is not happy with his wife's desire to study. He says that he is still capable of feeding the family and paying for their daughters' education. He has started bringing up the negative effects of Dina working on her housekeeping. He complains that Dina has not been giving the best care to him and her daughters. His bad temper keeps increasing and he now yells at her and calls her names. He stopped giving her money some three months ago, so she has had to fund the household expenses and money for their daughters' education from her income. Dina's dissatisfaction culminated when Budi slapped her for coming home late from work. Dina could not stand her husband's treatment of her anymore, so she filed for a divorce. As the couple is non-Muslim, the dispute was brought to the District Court.

The presiding judge ordered the couple to undergo mediation to attempt to settle their dispute amicably. The couple agreed to appoint a senior male judge as the mediator. This mediator had no prior training in mediation, but his extensive career as a judge meant that people considered him to have vast experience in settling disputes. In the mediation process, Budi still did not want to change his decision and did not regret his abusive treatment of his wife. When Dina talked about the violence that happened to her, the mediator normalised this by saying that violence sometimes happens in families, although he warned Budi not to get physical. The mediator asked Dina about the possibility of her deferring her career until her children grow up and to fulfil Budi's 'natural' wish

to have a son. The mediator failed to reconcile the couple and they finally got divorced.

After the divorce the couple disputed over their property and alimony for the children. Budi believed that all property belonged to him because he had been covering the family expenses, but Dina argued that she also had been contributing through her salary and taking care of the family. They finally came to a settlement where Budi took the majority of the property, which included two spacious blocks of land and two cars, and Dina kept the house to live in with the children. Budi also has to cover their daughters' daily expenses and education until they get married or live independently.

Case Analysis:

Cultural and patriarchal values were displayed by both husband and mediator in this case. Influenced by strong patriarchal Chinese values, the husband asserted his need to have a son [25], despite their settled family life and his wife's wishes. The husband expressed strong male dominance by asking his wife to defer her career, and by using verbal and physical abuse to control her when she declined. The mediator also reflected patriarchal values by normalising the violence suffered by the wife and by perceiving the husband's wish to have a son as being 'normal' [26]. He inappropriately asserted that the wife should sacrifice her interests by deferring her career. His culture, sex and position as a senior male judge contributed to his patriarchal response to the case [27]. His conduct violated his role as mediator and brought disadvantages for the wife.

The judge's lack of mediation training also played part in the failure of the couple to reach settlement. He did not maintain a position of neutrality and impartiality towards both parties [28], by taking sides with the husband. He expected the wife to sacrifice her career to take care of the children. The mediator disregarded the violence and did not give protection to the wife or attempt to balance the position between both parties. He failed to acknowledge that according to the Domestic Violence Law, there are other forms of abuse such as psychological, financial and sexual abuse [29]. He also failed to challenge the unfair property settlement reached in the mediation process, whereby the husband kept two spacious blocks of land and two cars, and the wife only kept the house, despite her vital contributions to the household. The mediator's poor performance affected the participants' satisfaction with the process and outcome of court-annexed mediation in West Java, similar to others in the province, as previously shown in table 6.2. Participants have shown a low rate of satisfaction with the mediation process and a medium rate of satisfaction with the mediation outcome. Only judges have scored a high rate of satisfaction with the court-annexed mediation process and outcome.

IV. CONCLUSION

In spite of women in both provinces having some power in the domestic sphere and the Minangkabau's matrilineal system in

West Sumatra, in both provinces women have difficulty in conveying their interests in mediation because in both provinces most of the adjudicators and mediators, in the courts and in the communities, are men [30].

One of the dominant factors that creates injustice (especially for women and children) and an imbalance of power between couples in Indonesia is the strong patriarchal culture [31]. Patriarchal values also dominate the way of life, including the method of resolving conflicts. This view is reflected in the Marriage Law and has been criticised by Indonesian women's organisations and feminists for encouraging the patriarchal attitudes and practices in the culture [32]. The patriarchal mindset is also assumed by most judges (men and women) in the judicial system [27].

REFERENCES

- [1] Oey-Gardiner, M. (2002) And The Winner Is...Indonesian Women in Public Life, In *Women in Indonesia: Gender, Equity and Development* (Robinson, K., and Bessell, S., Eds.), pp 100-112, Institute of Southeast Asian Studies, Singapore.
- [2] The Sustain Project EU-UNDP. (2019) Monitoring and Evaluation on Court-Annexed Mediation Implementation with the Supreme Court of Indonesia Working Group on Mediation, Jakarta.
- [3] Abdul Syukur, F. (2020) Judicial Oversight in Indonesia & Constraints Hampering Its Implementation, *International Journal of Research and Innovation in Social Science* 4.
- [4] Hadler, J. (2008) *Muslims and Matriarchs: Cultural Resilience in Indonesia through Jihad and Colonialism*, Cornell University Press, New York.
- [5] Bhanbhro, S. (2017) Indonesia's Minangkabau culture promotes empowered Muslim women.
- [6] Abdul Syukur, F. (2013) Court-Annexed Mediation for Settling Family Disputes in Indonesia, PhD thesis, School of Social Work and Social Policy, University of South Australia, Adelaide.
- [7] Blackwood, E. (2000) *Webs of Power: Women, Kin, and Community in A Sumatran Village*, Rowman & Littlefield Publishers, Inc., Maryland.
- [8] Tanner, N. (1974) Matrilocality in Indonesia and Africa and among Black Americans, In *Women, culture, and society* (Rosaldo, M. Z., and Lamphere, L., Eds.), pp 129-156, Stanford University Press, Stanford.
- [9] Benda-Beckmann, F. (1979) *Property in Social Continuity: Continuity and Change in The Maintenance of Property Relationships through Time in Minangkabau, West Sumatra*, Martinus Nijhoff, The Hague.
- [10] Abdul Syukur, F., and Bagshaw, D. (2013) "When Home is No Longer Sweet": Family Violence and Court-Annexed Mediation in Indonesia, *Conflict Resolution Quarterly*.
- [11] Kahn, J. S. (1980) *Minangkabau Social Formations*, Cambridge University Press, New York.
- [12] Nugroho, R. (2008) *Gender dan Strategi Pengarus-Utamaannya di Indonesia (Gender and Its Mainstream Strategy in Indonesia)*, Pustaka Pelajar, Yogyakarta.
- [13] Sidis, M. (2006) Judicial Mediation in The District Court, *Judicial Officers' Bulletin* 18, 73-74.
- [14] Bagshaw, D. (2009a) Challenging Western constructs of mediation, In *Mediation in the Asia-Pacific Region: Transforming Conflicts and Building Peace* (Bagshaw, D., and Porter, E., Eds.), pp 317-338, Routledge, London, New York.
- [15] Zalar, A. (2004) Managing Judicial Change through Mediation - Part 2 *ADR Bulletin* 6, 1-6.
- [16] Lee, J., and Hwee, T. (2009) The Quest for An Asian Perspective on Mediation, In *An Asian Perspective on Mediation* (Lee, J., and Hwee, T., Eds.), pp 3-20, Academy Publishing, Singapore.
- [17] Abdul Syukur, F. (2008) Constraints Hampering The Implementation of Indonesian Court-Annexed Mediation and Some Proposed Solutions, In *4th Asia Pacific Mediation Forum Conference*, International Islamic University, Kuala Lumpur Malaysia.
- [18] Ekadjati, E. S. (2009) *Kebudayaan Sunda: Suatu pendekatan sejarah (Sundanese Culture: A Historical Approach)*, Pustaka Jaya, Jakarta.
- [19] Grijns, M., Smyth, I., van Velzen, A., Machfud, S., and Sayogyo, P. (1994) Conclusions and Policy Considerations, In *Different Women, Different Work* (Grijns, M., Smyth, I., van Velzen, A., Machfud, S., and Sayogyo, P., Eds.), pp 191-204, Ashgate Publishing Company, Vermont.
- [20] Cooley, L. (1992) Maintaining Rukun for Javanese Households and for The State, In *Women and Mediation in Indonesia* (van Bemmelen, S., Ed.), pp pp. 230-231, KITLV Press, Leiden.
- [21] Abdul Syukur, F., and Bagshaw, D. (2013) Court-Annexed Mediation in Indonesia: Does Culture Matter?, *Conflict Resolution Quarterly*.
- [22] Abdul Syukur, F., and Bagshaw, D. (2018) Indonesia: The Role of the Traditional, Indigenous Musyawarah Mufakat Process of Mediation, In *Conflict Resolution in Asia. Mediation and Other Cultural Models*. (Stobbe, S. P., Ed.), pp 13-34, Lexington Books, New York.
- [23] Abdul Syukur, F., and Bagshaw, D. (2020) Power, Gender, and Court-Annexed Mediation in Indonesia, *Conflict Resolution Quarterly* 37.
- [24] Antlov, H. (1995) *Exemplary Centre, Administrative Periphery: Rural Leadership and The New Order in Java*, Curzon Press, Richmond.
- [25] Goh, B. C. (2002) *Law Without Lawyers, Justice Without Courts: On Traditional Chinese Mediation*, Ashgate, Hampshire.
- [26] Bagshaw, D. (2003) Language, Power and Mediation, *Australian Dispute Resolution Journal* 14, 128-142.
- [27] Abdul Syukur, F. (2011) *Mediasi Perkara KDRT (Kekerasan Dalam Rumah Tangga) Teori dan Praktek di Pengadilan Indonesia (Court-Annexed Mediation for Settling Domestic Violence in Indonesia: Theory and Practice)* CV. Mandar Maju, Bandung
- [28] Boulle, L. (2005) *Mediation: Principles, Process, Practice*, 2nd Edition ed., Butterworths, New South Wales.
- [29] The Government of Republic of Indonesia. (2004) Law No. 23 Year 2004 concerning Alleviation of Domestic Violence.
- [30] Abdul Syukur, F., and Bagshaw, D. (2015) Victim-Offender Mediation for Youth Offenders in Indonesia, *Conflict Resolution Quarterly* 32.
- [31] Utomo, I. D. (2005) Women's Lives: Fifty Years of Change and Continuity, In *People, Population and Policy in Indonesia* (Hull, T., Ed.), pp 71-124, Equinox Publishing (Asia) Pte. Ltd., Singapore.
- [32] Blackburn, S. (2001) Gender Relations in Indonesia: What Women Want, In *Indonesia Today: Challenges of History* (Lloyd, G., and Smith, S., Eds.), pp 270-282, Institute of Southeast Asian Studies, Singapore.