



Domestic Violence Court as a New Model for Domestic Violence Cases in Indonesia: A Comparative Study with Australia

Dian Esti Pratiwi

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

Corresponding Author: Dianesti_pratiwi93@staff.uns.ac.id

Hartiwiningsih

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

Riska Andi

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

Diana Lukitasari

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

Subekti

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

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Abstract

The development of domestic violence cases in Indonesia in the last six years since 2016 has 259,150 cases. From 2017 to 2022 domestic violence cases are volatile but still exist. The resolution of domestic violence cases in Indonesia currently mostly uses a penal mediation system by prioritizing *Restorative Justice*. However, solving domestic violence cases using this system has great potential for repeated crimes since it does not have a deterrent effect on the perpetrator. So, this is considered less effective in reducing domestic violence cases in Indonesia. This study aims to examine a new concept idea for courts in Indonesia, namely *the Domestic Violence Court* which is a special court to handle domestic violence cases. This study uses a comparative study method where the authors use a comparison technique between systems running in Australia and Indonesia. The results of this study show that the implementation of the *Domestic Violence Court* system in Australia is effective in handling domestic violence cases. Meanwhile, in Indonesia, there is no court system that specifically regulates domestic violence cases. With this model, Indonesia needs to implement a *Domestic Violence Court* system that prioritizes the rehabilitation of perpetrators, prevents repeated violations, and prioritizes victims as a special court to handle domestic violence cases.

Keywords

Domestic Violence Cases, Women, Restorative Justice, Violent Behavior, Recidivism

A. Introduction

Everyone has rights, including women as wives in the domestic sphere. However, not everyone is aware of the rights they have. Therefore, others can take over their rights and make them victims of domestic violence. The criminal law's response to domestic violence against women has recently been criticized for being considered a domestic issue that prohibits a country from intervening in the past¹. Domestic violence cases against women in Indonesia have evolved from what was once thought of as just a personal family problem to a social epidemic. The development of domestic violence cases can be seen in the last six years since 2016 there have been 259,150 cases of violence against women. Moreover, from 2017 to 2022 it is volatile but still exists².

YEAR	NUMBER OF CASES	MALE VICTIMS	FEMALE VICTIMS
2019	20.531	4.952	17.132
2020	20.501	4.397	17.575
2021	25.210	5.376	21.753
Jan-Aug 2022	14.965	2.320	13.802

When viewed based on the table above, it can be seen that there is an increase in the number of domestic violence cases from year to year, with female victims also increasing. In 2022, there is still no increase because the calculation has not been even for one year. The authors assume that if in the middle of the year there have been 14,965 cases, then the end of the year may surge even more if preventive efforts are not made to reduce these cases. Indonesia enacted Law No. 23 of 2004 on the Elimination of Domestic Violence (hereinafter referred to as the Domestic Violence Law). This law was established to prevent domestic violence, crack down on domestic violence perpetrators, and protect victims of domestic violence. The settlement of domestic violence cases in Indonesia can be done through two processes, namely the settlement of domestic violence cases through the litigation process (in court) and non-litigation (outside the court). The reality that is happening in Indonesia today is that the majority of domestic violence cases are carried out using a non-litigation process with penal mediation. This is done to uphold *restorative justice* and aims to reduce congestion and accumulation of cases in the judiciary (Tsatsou-Nikolouli & Mavrogeni, 2021).

Indonesia does not have a single comprehensive code specifically to deal

¹ Ronagh J.A. McQuigg, 'Domestic Violence as a Human Rights Issue: Rumor v. Italy', *European Journal of International Law*, 26.4 (2015), 1009-25 <<https://doi.org/10.1093/ejil/chv057>>.

² Dina Afrianty, 'Agents for Change: Local Women's Organizations and Domestic Violence in Indonesia', *Bijdragen Tot de Taal-, Land- En Volkenkunde*, 174.1 (2018), 24-46 <<https://doi.org/10.1163/22134379-17401024>>.

with all family law issues³. The administration of family law is not run as a consistent whole. The main purpose of a Domestic Violence Court concept is that in addition to overcoming family law problems through justice and non-judicial processes, it is to support the realization of gender equality as the goal of the Sustainable Development Goals 2030 (SDGs 2030).

B. Research Methods

In this study, the authors used the comparative study research method. The comparative study research method contains the understanding that scientific research or studies are made based on comparisons. Suharsimi Arikunto quoted Aswarni's opinion stated that comparative research will find similarities and differences between objects, people, work procedures, ideas, criticism of people, and groups, to an ideas or work procedures. On the other hand, Mohammad Nasir argues that comparative study or research is a descriptive study that aims to find fundamental answers related to causation with the analysis of factors causing the occurrence of a certain phenomenon or event. In this case, a comparative study is a study with a comparison of two variables aimed at obtaining answers to the facts of the object under study. The comparative research method is *ex post facto*, this can be interpreted as all the data that has been collected comes from past events that have been completed. Therefore, researchers can analyze pre-existing data. In writing this article, the author uses a comparative study research method based on the author's goal to compare the system of solving the problem of domestic violence that occurs in Indonesia and Australia in the hope of finding bright spots in the case.

C. Result and Discussion

D. The Problem of the Domestic Violence Case Resolution System in Indonesia

Domestic violence is a phenomenon that occurs in people's lives that cannot be avoided. This is because every country will not be separated from these challenges. This form of domestic violence can be physical violence or verbal violence. The occurrence of domestic violence is caused by several factors. Here are some of the factors that can trigger the occurrence of domestic violence, these are infidelity, speaking in a high tone that can trigger heartache between family members that has the potential to cause disputes, selfishness that is too high that it tends to be arrogant and arbitrary towards other family members, using violence as an alternative to solving problems in the family and the economic state of the family.⁴

The National Commission on Violence against Women (Komnas Perempuan)

³ Ani Purwanti and Fajar Setiawan, 'The State of Policy of Anti Domestic Violence During Covid-19 Pandemic in Indonesia', *Brawijaya Law Journal*, 7.2 (2020), 238-54 <<https://doi.org/10.21776/ub.blj.2020.007.02.07>>.

⁴ Muhammad Mahson, Sri Kusriyah, and Rakhmat Bowo Suharto, 'Handling Domestic Violence Through Mediation Out of Court', *Law Development Journal*, 4.1 (2022), 99 <<https://doi.org/10.30659/ldj.4.1.99-107>>.

noted that domestic violence against women increased during the Covid-19 pandemic. This was revealed from a survey that was conducted from April to May 2020 online by Komnas Perempuan. In this survey, Komnas Perempuan managed to attract 2,285 respondents, both women and men. The results of this survey stated that as many as 80% of female respondents in groups with incomes of less than RP 5,000,000.00 per month admitted that the violence, they experienced tended to increase (Twumasi, Kyeremeh, & Yankeyera, 2021).

The act of domestic violence was included in the complaint. In this case, perpetrators of domestic violence can only be legally processed if there is a complaint from the victim against the authorities. However, victims who experience domestic violence tend to find it difficult to file complaints with the authorities because there is pressure both from inside and outside themselves. For example, the psychological distress that occurs after the occurrence of domestic violence. In addition, in the investigation process, the authorities were also considered less responsive to victim reports. It caused the victims to be less likely to share their struggles, particularly regarding the household. On the other hand, there are still investigators who consider domestic violence to be an ordinary domestic matter so they do not have to go through criminal court proceedings. One of the other alternatives to court proceedings is an out-of-court settlement or it can be called Restorative Justice.⁵

Indonesia is a country of law that makes the law as an instrument for dispute resolution, community control, and realizing peace in society. Restorative Justice is a term that is familiar in Indonesian law. Since the 1960s the term has been known as one of the stages in the conventional criminal justice system. Initially, Restorative Justice was a concept of solving cases that had been applied by the Indonesian people as a method of solving problems that occurred in society without involving the authorities. Furthermore, Miriam Liebman defines Restorative Justice as "*Restorative Justice has become the term generally used for an approach to criminal justice (and other justice systems such as a school disciplinary system) that emphasizes restoring the victim and community rather than punishing the offender*".⁶

The concept of Restorative Justice emphasizes a justice based on peace where in solving a problem does not recognize justice based on revenge or providing punishment for the perpetrator. The application of this concept is a development in the criminal justice system that focuses on the involvement between the perpetrator and the victim in solving a problem that is not included in the conventional criminal procedural law mechanism. The application of a restorative justice system in the settlement of a case provides an opportunity to

⁵ Melanie B Greenham, 'Dark Personalities and Induced Delusional Disorder: The Research Gap Underlying a Crisis in the Family and Domestic Violence Courts', September, 2022 <<https://doi.org/10.13140/RG.2.2.16477.90084/1>>.

⁶ Muhammad Asad Manzoor and others, 'Social Mining for Sustainable Cities: Thematic Study of Gender-Based Violence Coverage in News Articles and Domestic Violence in Relation to COVID-19', *Journal of Ambient Intelligence and Humanized Computing*, 0123456789, 2022 <<https://doi.org/10.1007/s12652-021-03401-8>>.

the parties involved, especially perpetrators and victims, to participate in the settlement of a case. This aims to transfer the functions of perpetrators and victims who function as witnesses in the settlement of cases carried out by law enforcement.

One example of solving domestic violence with penal mediation is the settlement of domestic violence cases in Tumpak Village. The data exposure resulting from the study states that every time there is a household case that occurs in Tumpak Village, the parties involved will try to solve their own problems first without involving other parties. After discussion, dispute resolution can be done by mediation. If the parties to the dispute can reach a mutual agreement, then the case does not need to be brought to court and only needs to implement the results of the collective agreement that has been set forth in the form of an agreement. The resolution of domestic violence which is only resolved through deliberation is based on the interests of all parties and the integrity of the household, then the resolution of the problem will be carried out through mediation. In this case, there is no question why penal mediation began to proliferate as an alternative to dispute resolution. However, whereas, the use of *Restorative Justice* has the potential to cause repeated events for the parties. Problem-solving carried out through mediation tends not to make the perpetrator feel more deterrent. In addition, *Restorative Justice* has not found a solid legal basis, rather it relies more on law enforcement practices. It is not impossible that in the future domestic violence will occur again.⁷

E. The Success and Effectiveness of the Domestic Violence Court Model in Australia

Domestic violence (KDRT) is a major public and social health problem associated with a variety of physical, mental, and behavioral health outcomes. Around the world and across settings, domestic violence is defined and referred to in a variety of ways, with domestic violence and intimate partner violence often used interchangeably to refer to violence between people who have or have had intimate relationships; Family violence is a broader term that includes violence between intimate partners and between family members. In Australia, the term family violence is used to recognise the various marital and kinship relationships in which violence can occur for indigenous peoples.⁸

Data from the Australian Bureau of Statistics Personal Safety Survey shows one in four women in Australia has experienced at least one incident of violence by an intimate partner and one in twenty women (5.3 percent) aged eighteen and over

⁷ John Ross, Jaqueline Sebire, and Heather Strang, 'Tracking Repeat Victimization After Domestic Abuse Cases Are Heard With and Without Independent Domestic Violence Advisors (IDVAs) in an English Magistrate's Court', *Cambridge Journal of Evidence-Based Policing*, 6.1-2 (2022), 54-68 <<https://doi.org/10.1007/s41887-022-00072-z>>.

⁸ Amie Zarling and Dan Russell, 'A Randomized Clinical Trial of Acceptance and Commitment Therapy and the Duluth Model Classes for Men Court-Mandated to a Domestic Violence Program', *Journal of Consulting and Clinical Psychology*, 90.4 (2022), 326-38 <<https://doi.org/10.1037/ccp0000722>>.

have experienced partner violence in the twelve months prior to the survey. About half of the women who separated from the abusive partner left several times. Whether separated temporarily or permanently, nearly two-thirds (63.7 percent and 61.8 percent, respectively) moved out of their homes. The model of domestic violence courts can be seen from the family courts established in several countries such as Australia and the United States. In Australia, domestic violence cases are heard by the Family Court of Australia. The main purpose of this court is to address family law issues through judicial and non-judicial processes. The process follows the Family Violence Best Practice Principles established by the Family Court of Australia and the *Federal Circuit Court of Australia* through the *Family Violence Committee*.

The increasing reports of domestic and family violence nationwide have resulted in greater awareness and concern about how we respond to this violence, especially in the court system. The volume of civil applications for domestic violence orders pouring into the Australian court system continues to grow. A review of previous research and evaluations of domestic violence courts shows that although there is no single model of specialist domestic violence courts, we can consider specialist domestic violence courts to consist of a collection of practices that reside on a continuum between integrated and interventionist, and between early intervention and targeting of high-risk or repetitive offender approaches. In other words, for example, a specialist domestic violence court in a particular jurisdiction may not be entirely interventionist but may contain elements of an integrated approach.⁹

It can improve efficiency outcomes and increase victim and perpetrator satisfaction with court proceedings, at least in the processing of domestic violence-related crimes. Evidence of its effect on reducing re-violations is mixed. As a result of this evidence, a set of "the principles of good practice" emerged, which included: a dedicated and safe courthouse; interventions that prioritize the safety of the victim and reduce the perpetrator's repeated abuses; special case processing for domestic violence cases; and comprehensive multi-agency support and information services for victims. Importantly, we note that these principles arise primarily from the conduct of domestic violence criminal courts.

Specialization is not a new practice for courts. In particular, a special court register for protection order applications, with support services present at courthouses on the day, is common practice in many Australian magistrates' courts in urban areas. Specialist Australian courts are best described as using a "unified model" for processing domestic and family violence issues, which differs from current court practice in some respects. In considering the evaluation findings, three important characteristics were identified that have implications for the further development of a specialist approach to domestic and family violence by courts.

⁹ Rose Marie Stambe and Silke Meyer, 'Police and Duty Lawyer Perceptions of Domestic Violence Protection Order Proceedings Involving Parents: Towards Greater System Accountability and Family-Centred Decision-Making', *Journal of Family Violence*, 0123456789, 2022 <<https://doi.org/10.1007/s10896-022-00449-8>>.

F. Application of the Domestic Violence Court Model in Indonesia

The Domestic Violence Court (DVS) was introduced as a result of external and internal pressures on the Indonesian justice system to be more effective in handling domestic violence cases. In the last 20 years, we have seen considerable growth in domestic violence cases in the number of courts to date. Based on Leticia Gutierrez's research in her research entitled *Do Domestic Violence Courts Work? A Meta-Analytic Review Examining Treatment and Study Quality*, DVC is one of the most common approaches to addressing a substantial increase in domestic violence cases. This model offers an alternative and unique system for domestic abusers that focuses on improving perpetrator accountability, victim advocacy, and the expediency of the trial process. In addition to focusing on accountability and victim services, the ultimate goal of this DVC concept itself is to reduce future abuses. Citing data presented by the family *Violence Committee* in Australia, the implementation of the *Domestic Violence Court* model can improve efficiency outcomes and increase victim satisfaction because perpetrators continue to carry out court proceedings.¹⁰

The application of the *Domestic Violence Court* model does not always adhere to peace based on revenge or punishment of perpetrators however adheres to a "one-stop integrated" court system, meaning that it hopes to reduce the number of domestic violence cases that accumulate or even go unresolved. In addition, this particular court is needed in order to better handle domestic violence cases because both administrators and court judges understand the meaning of family law itself. With this, it can be conveyed that the application of the *Domestic Violence Court* model is an effective concept to be carried out in solving domestic violence cases in Indonesia. The biggest challenge in implementing this concept of *Domestic Violence Court* is the unique nature of the domestic violence case itself. Unlike other criminal cases, domestic violence cases have a complex nature because they do not only involve criminals however, in this case, we are related to criminal behavior that has a complex relationship. *The Domestic Violence Court* that needs to be implemented in Indonesia is a court that prioritizes the rehabilitation of perpetrators, prevents recidivism to prevent the increase in domestic violence cases, prioritizes the safety of victims, and implements more security/service measures that can provide better results.¹¹ The establishment of the *Domestic Violence Court* must consider to several things such as special staff similar to other courts, *the Domestic Violence Court* must be equipped with a qualified and professional court staff. In addition, both staff, judges, advocates, and other judicial officers must be experts in the field of family and criminal law. They must also understand the emotions as well as the material needs of the victims and

¹⁰ Natalie R. Davidson, 'Everyday Lawmaking in International Human Rights Law: Insights from the Inclusion of Domestic Violence in the Prohibition of Torture', *Law and Social Inquiry*, 47.1 (2022), 205-35 <<https://doi.org/10.1017/lsi.2021.20>>.

¹¹ Ni Nyoman and others, 'The Covid 19 Pandemic as a Strain in Increasing Domestic Violence (An Overview of Restorative Justice in Sustainable Crime)', 18.1 (2022), 18-33.

who will be able to work with them during the litigation.¹²

Also there is assigning one permanent judge to handle domestic violence cases during trials helps to ensure consistency. The judge must resolve the case quickly (understand the case well) and assist other judges in responding to the specific issues presented regarding domestic violence cases so as to make more informed decisions. The decision is expected to reduce recidivism, *The Domestic Violence Court* must be able to provide a sense of security to victims. Usually, in domestic violence cases, victims are afraid to report to the authorities and are afraid to come to the court to confront the perpetrator since the victim is economically dependent on the perpetrator. Therefore, the *Domestic Violence Court* must be equipped with facilities that allow victims to testify or observe the course of the trial without having to be in court physically. Courts should also include a personal space for victims to confront their lawyers and a separate waiting room equipped with victim services.

G. Closing

Based on the description presented in the previous section, the following conclusion may authorities are still considered less responsive to reports of victims of domestic violence cases. The majority of domestic violence cases in Indonesia currently use alternative settlements in courts by means of Penal Mediation. This step is carried out to realize peace in a society that creates justice not based on the principle of *revenge (Restorative Justice)*. However, the use of *Restorative Justice* has the potential to cause repeated events to the parties (recidivism) because the resolution of the problem through Penal Mediation does not make the perpetrator feel more deterrent also the implementation of *the Domestic Violence Court* in Australia is able to increase efficiency results and increase the satisfaction of victims and perpetrators in the process of criminal acts related to domestic violence cases. This is supported by the Family Violence Best Practice Principles established by the Family Court of Australia and the *Federal Circuit Court of Australia* through the *Family Violence Committee*. In its application, the Australian state also evaluates the running of the *Domestic Violence Court* itself to target what percentage of the increase or decrease in the presence of repeat crimes.

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