

Justice and the identities of women: The case of Indonesian women victims of domestic violence who have access to Family Court

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Abstract

The Family Court is the most important institution for Indonesian women who have experienced domestic violence. The institution becomes their last resort to end the violence and to obtain their rights as wives when the performance of criminal justice system is not satisfying. The women's rights as wives are basically regulated in the Marriage Act 1974 and other implementing regulations of the Act. In reality, the rights of the women in this study, that they expected to be fulfilled, were different for each individual woman victim of domestic violence because of the diverse implementation of regulations in the Family Courts (such as the Religious Courts and the State courts) and the identities belonging to each woman (such as Muslim or non-Muslim, litigant or not litigant, and wife of civil servant or non-civil servant). Even though the substance of the legislations has been accustomed with the sense of gender equality at certain levels, apparently superiority still belongs to men. This causes an imbalance of power for women as litigants or non-litigants before the court. Thus, the different courts and their legislations affect the sense of justice among the women who have had the same experience of domestic violence.

Keywords: justice; identity; Indonesian women; domestic violence; family court

Introduction

Feminists have an assumption that family law rather than the criminal justice system gives women victim of domestic violence more autonomy to make choices and decisions, which in turn empowers them.¹ However, in fact, Indonesian women victims of domestic violence have encountered some difficulties to explore their autonomy in making choices and decisions in order to obtain justice. The difficulties derived from the legal system (both criminal and family law) including its elements (such as prosecutor, lawyer and judge) and its legislation, financial dependency on the abuser, and social, cultural and religious values. Although the legal system has become the main obstacle for women victims of domestic violence in accessing justice, the victims of domestic violence rely for their solution on the legal system, in particular family law, as the last resort in order to cope with the violence, and to obtain their rights. To what extent Family Law in Indonesia ensured the rights of women victims of domestic violence in accessing justice during an abusive marriage and after marital breakdown, exploration of the legislation (such as the Marriage Act 1974 and other legislations in terms of marriage and divorce issues) and its practice through the experience of Indonesian women victims of domestic violence will be examined below.

¹ Leigh Goodmark, "Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases," *Florida State University Law Review* 37 (2009): 27-32.

The Marriage Act 1974 and the Women's Rights

The Marriage Act 1974 was passed in the New Order era (1966-1998) during which time the State emphasised the need to protect women's rights or more precisely, to protect the wife's rights from the arbitrary act of her arbitrary husband (in terms of divorce).² Under the provisions of this law, all marriages were required to include a religious ceremony and state-approved registration, and all divorces must be determined through a court's decision (the Religious Court for Muslim couples and State Court for non-Muslim couples).³ The new law also requires the consent of the parties to marriage which targets the elimination of forced marriage. The aim of marriage, according to this legislation, is to establish a happy and prosperous family; and polygamous marriage is regulated more strictly.⁴

Under this Act, a man can generally have only one wife and a woman can only have one husband. Therefore, one can say that Indonesian Marriage Act is monogamous in intent, though polygamous marriage is not prohibited.⁵ The Marriage Act 1974 insisted that a husband and a wife are equal and have the same rights before the law and in the community. They have obligations and rights to work, help, and to assist to each other. However, there are two contrary Articles to the 'equality between a husband and a wife' since it regulates the gender role of a husband as a 'head of household' and a wife as a 'housewife'. The concept of a husband as a 'head of the family' and a wife as a 'housewife' or 'mother of household' is believed by many to be the main cause of subordination of women to men within marriage. For example, married women are never considered as 'main income earners' unless they are certified as widows or if the husband is unable to work and such status is conferred only upon request.

Another provision of the Marriage Act 1974 involves divorce. Based on the Marriage Act 1974, both a wife and a husband can present as a litigant before the court. Under the

² Before the passage of marriage Act 1974, a husband, who confess Islam had right to divorce his wife without court procedures. A husband could even be married to another woman as second or third or fourth without giving notice and divorce his first wife or other wives

³ This provision was established because Indonesian Muslim women experienced having been divorced arbitrarily by their husbands. Before the passage of Marriage Act 1974, a husband, who confess Islam, had right to divorce his wife without court procedures. A husband could even be married to another woman as second or third or fourth without giving notice and divorce his first wife or other wives. See Elizabeth Martyn, "Confronting the State: the Fight for a Marriage Law," in *The Women's Movement on Post-Colonial Indonesia: Gender and Nation in a New Democracy*, ed. Louise Edwards (Rutledge Curzon, 2005) 122.

⁴ After the Republic of Indonesia was established in 1945, the Indonesian government efforts to regulate the marital practice, especially for Muslims because there was no regulation to make Indonesian native women secure within marriage. A Muslim man had right to issue a *talak* (divorce) without notice or regulation; divorce was very easy for men to obtain and factually impossible for women. Meanwhile, for Non-Muslim groups, under Dutch rule, the written European civil law was valid for them (including European women) namely the *Netherlands Indies Civil Code (Het Burgerlijk Wetboek voor Nederlands Indie)*. The provisions of the law ensured women's rights within marriage through a monogamous marriage concept, minimum age of marriage, grounds for divorce, guardianship for both parents post-divorce. Although this law regulated that women's rights were equal to men's rights; however, in some provisions a married woman should not have the full capacity to own property. These provisions, then, have been diminished by Indonesian government since the contents discriminated against women's rights.

⁵ The Marriage Act allows a husband to engage in a polygamous marriage based on certain circumstances in which the application and requirement must be applied before the Religious Court. Further, the court can give permission to a husband to have more than one wife (polygamous marriage) if he can obtain consent from the relevant parties. Thus, a man must fulfil the requirements set out in law to get permission from the Religious Court.

Marriage Act 1974, a husband as well as a wife must submit a petition to the court for a divorce, and both of them are required to give 'sufficient reasons'. The implementing regulation of the Act (namely is Implementing Regulation No 9 of 1975 (PP 9/75)) gives examples of sufficient reasons. These reasons are: adultery; compulsive drinking, drug taking, or gambling; desertion for two consecutive years; the spouse having a jail sentence of more than five years; endangerment of one spouse by the other; disease or handicap which prevents the carrying out of marital duties; continuous argument caused by irreconcilable differences. Then, if the judges are convinced by the one or several grounds of divorce that are presented by the applicant, the judges will decide the divorce verdict. The government issued another implementing regulation, that is, was *Peraturan Pemerintah Pelaksanaan Undang-Undang Perkawinan 1974 Nomor 10 Tahun 1983* (PP 10/1983) [Implementing Regulation of Marriage Act 1974 No 10 of 1983] on Government Regulations on Permission for Marriage and Divorce for Civil Servants. The aim of the passage of this implementing regulation is to protect women as wives of civil servant in terms of divorce and polygamy issues.

The Marriage Act 1974 is applicable nationally despite the multiple religions, but the applicable court as the institution to process the marriage and divorce issues differs between Muslim groups and non-Muslim groups. This occurred as the result of the division of the legal system during the Dutch Colonial period which exists to date; meanwhile, the Criminal Court has been united within the State court system. Therefore, there is another legislation which was provided by government on the behalf of Muslim group interests, namely the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*). The Compilation of Islamic Law is the official legal document for judges in religious courts across Indonesia and an official legal guide in matters of marriage and divorce⁶, inheritance and religious donation regulation. The purpose in issuing the compilation particularly is to respond to 'social unrest' which is caused by the different verdicts by the Religious Court on similar cases. The provision in the Compilation of Islamic Law in the terms of divorce is accordance with the Marriage Act 1974, but it differs in some respects.

The Marriage Act 1974 and the issue of family/domestic violence

There was no adequate information or documentary evidence about women's experience of violent husbands within families in Indonesia during the era of Dutch colonisation (1602-1942); however, it has been assumed that violence against women within the family sphere occurred in different forms than the present time. For example, whilst physical assault might not have been well known at that time, child marriage and forced marriage, repudiation and polygamy certainly were recorded and represent examples of the prominent forms of what we

⁶ As with the Marriage Law, a number of Articles in the Compilation are believed by Indonesian Muslim feminists to marginalise women. The feminists argue that the Compilation confirms and perpetuates the inequality and inequity between men and women within marriage, such as in the matters of guardianship, the marriage witness, *nusyuz* (women's disobedience in marriage), polygamy and a husband's and wife's rights and obligations.

would now terms domestic violence or curtailment of human rights.⁷ These circumstances became the reason for issuing of the Marriage Act 1974.

Studies on Indonesian divorce trends before and after 1900s found that Indonesia had a higher rate of divorce compared with the United States and the Southeast Asia countries. It was believed that several aspects of the marriage system had contributed to the high divorce rate in Indonesia. However, after 1990s the divorce rate declined due to several factors, such as trend towards marriage at an older age, improvements in education, increasing economic self-sufficiency, and greater difficulty in satisfying the divorce requirements as a consequence of the Marriage Act 1974.⁸

Although some regulations have been provided to make divorce more complicated, data from various resources indicates that domestic violence as a cause of marriage dissolution was prevalent. For example, reported data from the State Ministry of Women's Empowerment in 2001 revealed that 11.4 per cent of the total female population, or approximately 24 million women, said that they had experienced domestic violence which was ended by divorce.⁹ Data obtained from the first level of the Religious Court throughout Indonesia in 2007 indicated that there were 124, 079 petitions for divorce filed by women as applicant (*cerai gugat*) and 72, 759 cases filed by men as applicant (*cerai talak*). In 2008, a study on access and equality to the State Court and the Religious Court found that women who filed divorce in State Court and Religious Court were more than twice as numerous as men. The study also found that in terms of civil cases filed, the divorce cases in the State Court comprised 37 per cent and 97 per cent in the Religious Court.¹⁰

Basically, the data indicated that the reasons for divorce of in most cases could be categorised as domestic violence, but the courts ignored the element of domestic violence. In addition, data released by the National Commission against Violence against Women (*Komnas Perempuan*) in 2008, indicated that the number of reported case of domestic violence increased between 2002 and 2007, and the perpetrators mostly are men and the victims are women. The number of divorce cases which consisted of elements of domestic violence is very high in the Religious Courts.¹¹

⁷ Elsbeth Locher-Scholten, *Women and the Colonial State: Essays on Gender and Modernity in the Netherlands Indies 1900-1942* (Amsterdam University Press, 2000).

⁸ Tim B Heaton, Mark Cammack and Larry Young, "Why Is the Divorce Rate Declining in Indonesia?" *Marriage and Family* 3 (2001): 481. The authors attribute the decline to several aspects including: few legal restrictions on men wishing to divorce under Islamic law, the kinship system and family structure accorded a relatively high social and economic standing to women, early arranged marriages that have a socio-economic impact.

⁹ Siti Musdah Mulia, "Toward Just Marital Law: Empowering Indonesian Woman", accessed March 29, 2013, http://www.oasiscenter.eu/files/Muliah_ENG.pdf. (accessed 2 July 2012).

¹⁰ Mahkamah Agung (Supreme Court) and AusAID, *Memberi Keadilan Bagi Para Pencari Keadilan: Sebuah Laporan Penelitian tentang Akses dan Kesetaraan Pada Pengadilan Negeri dan Pengadilan Agama di Indonesia Tahun 2007-2009* [Giving Justice for Justice Seekers: A Report of Access and Equality to State Court and Religious Court in Indonesia (*Mahkamah Agung* [Supreme Court] and AusAID, 2009) 5.

¹¹ Mahkamah Agung Republik Indonesia Direktorat Jendral Badan Peradilan Agama [Supreme Court of The Republic Indonesia Directorate General of Religious Court Bodies] *Data Perbandingan Faktor-faktor Terbesar Penyebab Terjadinya Perceraian Mahkamah Syari'iyah/Pengadilan Agama Yurisdiksi Mahkamah Syar'iyah Provinsi/Pengadilan Tinggi Agama Seluruh Indonesia Tahun 2005-2009* [the Comparative Data of the Highest Factors as the Cause of Divorce in the Syar'iyah Province Court and the Religious Court in Indonesia Years 2005-2009] 2010) www.badilag.net/data (accessed 17 August 2010)

It has been mentioned above that the Marriage Act 1974 defines a husband as a ‘head of household’ and a wife as a ‘housewife’. The legislation then regulates the responsibilities of the husband and wife based on their gender roles; and, if one of the parties fails to fulfil such obligations the other can bring the matter to court. Failing to fulfil the obligations can be categorised as neglect of the other party since the legislation had determined the responsibilities to each party. ‘Neglect’ itself is not mentioned as the grounds for divorce in the Marriage Act 1974, but it is mentioned clearly in the Compilation of Islamic Law in the part of *taklik-talak*.¹² Therefore, if a husband violates the *taklik-talak*, his wife can use it as the ground for divorce.

Neglect is stated explicitly in the Elimination of Domestic Violence Act 2004 together with other forms of violence, such as physical, psychological, and sexual violence.¹³ However, those forms of domestic violence are not stated clearly in the legislations dealing with marriage and divorce. There are few grounds for divorce regulated in the Marriage Act 1974 (and in the explanation of the Marriage Act 1974), implementing regulations (PP 9/75 and PP 10/83) and the Compilation of Islamic Law that could be categorised as domestic violence, that is, where one party is cruel or mistreats the other, and endangers the life of the other party. Other grounds are a spouse’s adultery, alcoholism, drug addiction, gambling or other vices which are difficult to cure. Wilful neglect, too, where a husband refuses to supply a living to his wife (due to gambling or other vices, rather than an ability to gain employment) is a form of domestic violence. The remaining ground is one very close to ‘irreconcilable differences’ that is ‘between husband and wife where there are persistent disputes and quarrels, and no hope of peace alive in the household’. This can often operate as a ‘polite’ substitute for an admission of violence. These grounds are in addition to the situation where a husband has violated a *taklik-talak* (premarital agreement). As can be seen above the grounds for divorce in the Marriage Act 1974 and the Compilation of Islamic Law include cruelty, mistreatment and life endangerment, and these can be classified as domestic violence similar to those contained in the Elimination of Domestic Violence Act 2004. However, these kinds of violence have never been mentioned by judges (in the Religious Court or the State Court) in their divorce verdicts because of judges’ view that the Elimination of Domestic Violence Act 2004 and the Marriage Act 1974 have different jurisdictions; the former is in the jurisdiction of criminal law system, and the latter is in the

¹² *Taklik talak* to be said by the husband shortly after the wedding ceremony, states that the woman could seek a divorce if he mistreats her or does not fulfil certain conditions. The standard formula of the *taklik talak*, is as follows: Having signed the marriage contract (*akad nikah*), I... (name) *bin.* (name) promise sincerely that I will fulfil my obligation as a husband and will live amicably with my wife, ... (name) *binti* ... (name) according to the teaching of the law of Islam. Furthermore I hereby pronounce the *taklik* formula (*sighat taklik*) with regard to my wife as follows: If ever I (1) leave my wife for six month consecutively, unless I am performing a state responsibility, (2) or I do not give her obligatory support (*nafkah*) for three months, (3) or I maltreat my wife physically, (4) or I neglect my wife for six month consecutively; then, should I violate one of these promises, and my wife refuses to acquiesce and so charges before the *Pengadilan Agama* (Religious Court) competent to deal with this accusation, and the accusation is upheld and accepted by the court or other instance, and my wife pays IDR... as an *iwadl* (giving or present) my first *talak* falls upon my wife...”

¹³ The Domestic Violence Act 2004 article 1 defines ‘domestic violence’ as any conduct by a person (mainly against a woman) that causes a reasonable apprehension of misery or physical, sexual, psychological injury, or neglect; including any threat of such conduct, compelling a person, expropriating the freedom of a person against the law within a household.

family law system.¹⁴ These circumstances will have a significant impact on women victims of domestic violence in accessing justice through the Family Law which will be discussed in this article.

The Marriage Act 1974 and the implementing regulations in dealing with women rights as a litigant and non-litigant in term of divorce

The Marriage Act and its implementing regulations (PP 9/75 and PP 10/83) and the Compilation of Islamic Law have regulated the women's rights during the divorce proceedings and after marriage breakdown. The legislation determines divorce as one of ways to terminate a marriage, and to undertake a divorce there are requirements and procedures that must be fulfilled. Divorce proceedings before a court must be framed in a way by deploying the articles in the legislation that regulate divorce. It means that both women and men who want to file for divorce against their partner must bring the matter to court by citing as grounds the reasons which are available in the relevant legislation.¹⁵

The legislators created the procedure and the grounds for divorce for the purpose of making divorce more difficult than previously. The aims are not only to apply the marriage principle (to maintain a lasting marriage), but also to protect women's rights. Therefore, the litigant must give as reasons for her/his lawsuit one or more grounds for divorce supplied in the Marriage Act 1974 and its implementing regulation or the Compilation of Islamic Law to convince judges who handle the case that the divorce should be granted.

The grounds of divorce are regulated in Article 39 (2) in the explanation of the Marriage Act 1974, Article 19 of PP 9/75, Article 7 of PP 10 of 1983 (this article adjusts to Article 19 of PP 9/75), and Article 116 of the Compilation of Islamic Law : a) One of the parties commits adultery or is an alcoholic, is addicted to drugs, a gambler and/or has other vices which are difficult to cure; b) One party leaves the other party for two consecutive years without the consent of other party and without legal justification or because of other things

¹⁴ This circumstance has triggered a strong demand for the integration of the Elimination of Domestic Violence Act into judge's decision making in the Family Court both in the Religious Court and State Court; see Indonesian Supreme Court Annual Report, 2008), www.badilag.net (accessed 5 May 2010); Rifka Annisa, *Integrasi UU PKDRT dalam Sistem Peradilan Agama di Indonesia* [The Integration of the Domestic Violence Act into the Religious Court's System in Indonesia] 24 November 2009 < <http://rifka-annisa.or.id/go/integrasi-uupkrt-dalam-sistem-peradilan-agama-di-indonesia>>; Rika Saraswati, *Perempuan dan Penyelesaian Kekerasan Dalam Rumah Tangga* [Women and the Solution of Domestic Violence] (Citra Aditya Bakti, 2006) 74; Nidya Deviani, *Kekerasan Dalam Rumah Tangga sebagai Alasan Gugatan Perceraian yang Diajukan oleh Istri sebagai Korban: Studi kasus di Pengadilan Negeri Semarang* [Domestic Violence as a Reason for Divorce Claims Proposed by Wives as Victims: A case study in Semarang District Court] (Skripsi, Fakultas Hukum Universitas Katolik Soegijapranata, Semarang, Indonesia [Undergraduate diss., Faculty of Law, Soegijapranata Catholic University, Semarang, Indonesia], 2001).

¹⁵ Articles 39(1) (2) and 40 of the Marriage Act 1974 state that divorce will be undertaken before the court after the court cannot reconcile both parties, and divorce must be undertaken based on the convincing reason that the marriage relationship between a husband and a wife cannot be sustained; articles 14-18 of PP 9/75 are about the procedures undertaken by litigants, such as to submit the application to divorce with the reasons to court in the region where she/he lives. Then, in thirteen days the court will summon the litigant and his/her partner to confirm the application and to reconcile them; only if there is no reconciliation the court will process the divorce application. Article 3 of PP 10/83 regulates the obligation of the civil servant to ask permission to her/his superior in a formal letter dealing with his/her intent to file divorce. Articles 114 and 115 of the Compilation of Islamic Law state that a marriage breakdown can be undertaken on the basis of *talak* (the litigant is husband) and *gugatan cerai*/divorce (the litigant is wife). The application of divorce either *talak* or *gugat cerai* must be delivered to religious court.

beyond their ability; c) One party gets a five-year jail sentence or punishment after the marriage has been entered into; d) Either party is cruel or mistreats the other, endangering the life of the other party; e) One party has a disability or disease that renders them unable fulfil their obligations as a husband /or wife; f) Between husband and wife there are persistent disputes and quarrels, and no hope of peace alive in the household. The Compilation of Islamic Law gives two additional grounds, that is, violating a *taklik-talak* (premarital agreement), or one becomes an apostate which causes instability in the household.

These laws also regulate the provision of living (maintenance) for a divorced wife through such Articles as Article 41 of the Marriage Act 1974, Articles 8 of PP 10/83, and Articles 149, 152 and 156 of the Compilation of Islamic Law. Article 41(c) of the Marriage Act 1974 states that the court can make an order to the ex-husband to provide a living to his ex-wife (maintenance). However, this Article does not explore further the kind of the living; as result, it affects the women's rights when they sue their husband for maintenance because it does not give further explanation about the kind of maintenance.

Article 8 of PP 10/83 consists of six paragraphs. Paragraph (1) states that if the male civil servant insists on divorce, he must give half of his earnings to the living of his ex-wife and children; (2) the earning distribution mentioned in paragraph (1) is one-third for the male civil servant, one-third for his ex-wife and one-third for children; (3) if there is no child within the marriage, the male civil servant must give a half part of his earning to his ex-wife; (4) if divorce is initiated by the wife of the male civil servant, she is not entitled to the earnings of her ex-husband; (5) the rule in paragraph (4) does not apply to a wife of the male civil servant who files for divorce from her husband because her husband committed polygamy; (6) if the ex-wife of the male civil servant remarries, she will lose her rights to maintenance. Based on the article 8 PP 10/83, the male civil servant has a responsibility to supply his ex-wife with maintenance. He must give two-thirds of his earning to his ex-wife and children (or half to wife if there are no children). This obligation must be fulfilled until his ex-wife remarries. However, the woman's right to obtain the living from her ex-husband will diminish if she initiates divorce. Her rights remain if she can convince judges that her initiating divorce is caused by a polygamous marriage conducted by her husband (whether it is undertaken in the absence of her consent or with her forced consent). PP 10/1983, at a certain level, has ensured women, whose husbands work as public servant, a greater financial security after divorce than women whose husbands are not civil servants.

The Compilation of Islamic Law provides two ways of divorce: *talak* and *gugat cerai*. *Talak* is divorce initiated by a husband; meanwhile, *gugat cerai* is a divorce with a wife as the litigant. These kinds of divorce will affect the women's rights: a woman will obtain maintenance if her husband initiates the divorce. On the other hand, if she initiates the divorce, she will not obtain her rights as a divorced woman. Articles 149, 152 and 156 of the Compilation of Islamic Law govern these matters. Article 149 states in detail, and clearly the responsibilities of the husband who utters *talak*/divorces his wife. Article 149 states that *talak* (is an Arabic word meaning 'to release' or 'to divorce'. It means to untie the matrimonial knot by articulating a word denoting divorce) brings consequences for the ex-husband to: (a) provide *iwald* (a giving or present) either money or stuff to his ex-wife only if his ex-wife does not *qobla al dukul* (does not have sex intercourse with the husband); provide living, *maskan* (a place for living) and *kiswah* (clothes) to his ex-wife during *iddah* (period of time

that must be passed through before she remarries) only if his ex-wife has been subject to *talak ba'in* (*talak* which had been undertaken by the husband three times) or *nusyuz* (disobedient) and she is not pregnant; pay the indebt *mahar* (a gift given by the bride-groom to bride); provide the living for his children whose are aged under twenty years; when one turns to Article 156 with its title mention about 'the consequence of *perceraian*/divorce', there is no statement about the responsibility of the husband to ex-wife; it only mentions the responsibility of the father to the children. The articles of 149 and 156 of the Compilation of Islamic Law have shown the different rights between a husband and a wife as a litigant. Then, article 156 states that a marriage breakdown because of divorce initiated by a wife (*gugat cerai*) brings these consequences: (a) children under twelve (*mumayyiz*) are entitled to have a mother's guardianship, unless the mother is dead and she will then be replaced by: women from the upper-line of the mother, father, women from the upper-line of the father; (b) children who have already completed their *mumayyiz* are entitled to choose a guardian; (c) *hak haddanah* (a guardian right) can be removed if the guardianship is considered not convincing, the removal based on the application to the Religious Court; (d) the expenses of guardianship are one of the father's responsibilities till the children reach 20 years of age; (e) the court will decide the expenses for guardianship if there is conflict on this matter, and the decision will be determined by considering the situation as per paragraphs (a), (b) and (d); (f) the court will consider the responsibility of the father to provide maintenance for children who are not under his guardianship.

Given that these legislations have different premises in the terms of regulating the rights of a woman as a wife in the terms of divorce, to what extent the legislation, either formally or practically, has supported and ensured women victims of domestic violence obtain their rights will be examined on the basis of their experiences. It is important to explore the experiences of Indonesian women victims of domestic violence in accessing the Family Court for the purpose of obtaining justice, because there is a belief that the family law and its system have given more opportunities to parties to litigate before the court, and the intervention of the state is less than in criminal law. Feminists also argued that family law has given women victims of domestic violence more self-autonomy to make choices; therefore, family law has a more important role to empower women victims of domestic violence than criminal law. Their experiences might be evidence to support or to diminish the feminist's account on the role of family law that the law, rather than criminal law, will give women victims of domestic violence more self-autonomy and choices to make decision in terms of coping with the violence.

The experiences of Indonesian women victims of domestic violence in accessing the Family Court

There were two kinds of groups of Indonesian women victims of domestic violence who accessed the Family Court: first, women who filed for divorce against their husbands; and, second, women who were divorced by their husbands. The main reason for Indonesian women victims of domestic violence to file divorce against their husband was to end the violence and to save children. In addition, it was also caused by their disappointment in the performance of the criminal justice system (and its apparatus), particularly in dealing with the response of police to reports of domestic violence. The negative responses from police had

forced them to bring the issue of violence in a marital relationship to the Family Court as their last resort to obtain justice. Meanwhile, for women who were divorced by their husband, their legal actions in the Family Court were basically a 'struggle' in order to avoid a divorce. For these women, a marital breakdown has brought them financial, social, cultural consequences (such as feelings of shame, fear of being a widow, fear of being poor and fear of children's well-being). Therefore, they tried to make sure the marriage survived by standing in court to confront their husbands' lawsuit. Only if their husbands insisted on divorce, the legal actions, finally, were undertaken for the purpose of gaining their rights and their children's rights.

The way to access Family Court in order to obtain their rights which had been neglected by their husbands and to gain justice, in fact, was not easy for women victims of domestic violence either as a litigant or non-litigant. The difficulties were usually triggered by women's lack of financial independence, negative response from the legal system and the identities of women themselves. The identities of these women should not be a problem for the legal issues which always have a concept of 'neutrality'; however, because the legal system and values within community had created such differences particularly in the terms of gender roles within private and public domains, as a result, the women's identities became a significant factor in their struggle to obtain their rights and in accessing to justice.

Indonesian women victims of domestic violence as litigants

The experience of Y

In the case of Y, a Buddhist and Confucian, a housewife, and the wife of a non-civil servant, she was neglected and abused psychologically during nine-year marriage by her husband. Also, she was extremely financial dependent on her husband. Her abusive marriage had forced her to leave the marital relationship and she initiated divorce against her husband. However, difficulties in arranging to divorce were not caused only by her financial inability to hire a lawyer, but also by her inability to find a proper legal aid to help her to arrange a divorce. The legal aids that she approached to seek help were Catholic legal aids; and these legal aids refused to help her to arrange divorce on the basis of their religious principles, but they would help her to process her abusive husband through a criminal procedure. She refused to undertake the criminal procedures because her main interest was to divorce her husband rather than to sentence him to jail. Moreover, her refusal to undertake criminal procedures was also triggered by her disappointment by the negative response from police apparatus when she reported psychological abuse against her for the first time; such psychological violence, according to the police apparatus, was difficult to prove unless she could provide witnesses. She had also contacted with other law firms (non-religion based legal aids), for the purpose of arranging a divorce. Unfortunately, she could not afford the legal fee which had been required by these law firms.

After I told the story of my problem, the representative of legal aid from the university said "The university could not help [with a] divorce, it is our commitment." I was disappointed as someone who had studied there; and I wanted to be assisted; like where [can I] seek protection? It broke my heart not to [get] the legal aid again because of [my] actual experience in Bandung [which was disappointing her because of the response of police], if later being

in trouble again. Following from the Catholic university [experience] [in Semarang], I had in mind... “Why did not anyone help me?” Yesterday, I went to legal aid [service] behind of the Blenduk church [in Semarang]; I got a recommendation from mama’s friend who had even used the services to arrange a divorce for her son. When I went there, the staff did not want to help, the first reason because my religion is Buddhism, second, both legal aid centres have a Catholic background. Third, they had changed [their] course to help poor farmers, so I’m stuck again. I’ve hoped and been disappointed several times. I got to think... what a life, really like this, cannot do this cannot do that...

I once asked a lawyer whose office was next to my house, he asked me for IDR 20 million. The one in the back of the house also asked me for IDR 20 million. I am confused, what do I have to do. I have to save IDR 20 million to [give to] a lawyer, then when can I arrange for [a divorce]? Twenty million, if I save IDR 200,000 each month, how many years [will it take]?¹⁶

Her disappointment to the negative response of police officers has led her to leave the marital house in Bandung and moved to her parent’s house in Semarang. By leaving her husband and the marital house, she definitely can file for divorce against her husband on the basis of the provision of grounds for divorce in the Marriage Act 1974, that is, desertion for two consecutive years. However, she felt that that period of time was too long for her because she wanted a quick process to terminate her marital relationship. It was reasonable for her because she was reluctant to communicate with her husband anymore, and she was afraid of the legal consequences since her husband always took advantage of her as his ‘legal’ wife during the terms of separation, for example by asking her sign to process her husband’s interests in dealing with his parents’ legacy or to get loan from a bank for her husband’s business. Having been disappointed with the legal system in these cities, she felt hopeless and felt that legal system did not give adequate support and protection to her as the victim of domestic violence in gaining justice.¹⁷

The experience of EL

Financial independence might have supported other victims of domestic violence in accessing the legal system, but it was not definitely a warranty to obtain justice. The experience of EL (a Catholic woman, married to a Muslim man, a wife of a civil servant, a pharmacist, a litigant, an abused wife during her twenty year marriage relationship) demonstrated that her financial independence had influenced her decision to leave her husband immediately when she felt that the unhappy circumstances in her marriage relations could not be justified again. As a Catholic woman who married her husband in an Islamic way, she still held the Catholic

¹⁶ Y, interview by Rika Saraswati, January 22, 2011, Semarang, Indonesia.

¹⁷ The author, at the time of interview, then gave her phone number of a contact person from a non-government organisation (NGO) which is concerned with domestic violence issues. This non-profit government organisation has assisted many women victims of domestic violence on the basis of their needs such as psychological and legal counselling, and legal aid. The author recommended her to contact with this NGO because it has a good reputation in its concern with domestic violence issues, in helping and supporting the women victims of domestic violence deal with psychological and legal matters.

religious principle in marriage, until she, at last, decided to file for divorce to save the life of her children who had almost been killed by her husband.

She herself financed the court fee and hired a lawyer from a law firm to process the divorce in the religious court. However, the performance of the lawyer dissatisfied her. The lawyer did not make every effort to her lawsuit, as a consequence, she lost her rights over her husband's salary, and she must struggle again to obtain the support payment for her children.

I submitted divorce in 2003 by hiring a lawyer, at that time I paid 2 million rupiah. The decision was issued in 2004. I submitted also that there was domestic violence, but the [consideration of] the existence of Domestic Violence Act did not appear in the judge's decision. I asked my lawyer to process the living allowance for my children; unfortunately, the lawyer came late in the court hearing. By coming late she could not defend my rights, absolutely. I was actually angry. She was really not professional I wanted to sue her but it was costly...¹⁸

Given that she married her husband in an Islamic way, her lawsuit had to be undertaken before the Religious Court; and as a litigant, under the Compilation of Islamic Law section, she would not be entitled to livings.¹⁹ Article 149 of the Compilation of Islamic Law states clearly the responsibilities of the husband who utters *talak*/divorces; when one turns to Article 156 with its title mention about 'the consequence of *perceraian*/divorce' (in which the litigant is a wife (or wives)), there is no statement about the responsibility of the husband to ex-wife (wives); it only mentions the responsibility of the father to the children. These pieces of legislation of the Compilation of Islamic Law have shown that they do not really take into account women's rights when women become active litigants. Instead the women lose certain rights that they would otherwise have as divorcees if they are the active litigants; they only retain their rights if their husbands are the active litigants.

She tried to obtain the living (maintenance) from her husband's earnings by deploying the implementing regulation for civil servant No 10 of 1983.²⁰ As a wife of a civil servant, she actually had the rights of maintenance if she could prove that her filing for divorce against her husband was caused by the polygamous marriage. Unfortunately, the argumentation of domestic violence within her marriage presented by her lawyer was not covered by PP 10/83. As result, she was not entitled to one third of her husband's earning as her maintenance and her demand to have guardian rights for her children was not fulfilled by the judge as her lawyer failed to defend her demand.

. Indonesian women victims of domestic violence as non-litigants

Financial issues became a major obstacle to women victims of domestic violence who were divorced by their abusive husbands, particularly when they fought against their husband's law suit before the court in order to obtain their rights. Some of them acknowledged that neglect, economic and physical violence which were perpetrated by their husbands had

¹⁸ EL, interview by Rika Saraswati, December 21, 2011, Semarang, Indonesia.

¹⁹ The Compilation of Islamic Law articles 149 and 156.

²⁰ The Implementing Regulation No 10 of 1983 article 8.

affected their financial ability, particularly when they needed amounts of money to prepare documents, witnesses, and to sit in the court hearing. Some of them, particularly Muslim women, had even faced legal uncertainty when their husband who filed for divorce against them, then, did not want to pledge *talak*. Such actions impacted on women victims of domestic violence emotionally and financially. Although the women victims of domestic violence who were divorced by their husbands seemed to look like passive parties, in fact, several of them then had to move from one institution to other institutions in order to obtain their rights as divorced women and victims of domestic violence.

The experience of ID

A financial difficulty was experienced by ID (a Catholic woman, a house wife, and a non-litigant), particularly when her husband filed for divorce against her. Lack of financial support from her husband occurred during her twenty-year marriage as her husband had committed economic abuse and other forms of violence (such as physical and psychological violence) against her. She acknowledged that when her husband sued her for divorce, she was shocked and had no preparation either financially or in the terms of legal aspects. She struggled to seek financial support from her family and legal aid from her friends. In response to her husband's law suit in the State Court, she sought legal aid from a lawyer. The lawsuit was lodged to State Court because she and her husband are non-Muslim; as a consequence, she responded her husband's law suit and demanded all her rights based on the Marriage Act 1974.

She definitely refused her husband's action to file for divorce, because as a Catholic woman, she held her religious principle of 'unity by God'. On the other hand, her husband insisted on divorcing her. She delegated her demands to obtain her rights (such as living maintenance and shared property) which had been determined in the Marriage Act 1974 to her lawyer. However, her expectation to obtain her rights for living maintenance and shared property from her husband diminished as, according to her, her lawyer did not fight it for her behalf. Furthermore, she indicated that there was a mutual agreement between her lawyer and her husband's lawyer to ignore her demands.

I asked for a living but none fulfilled. I did not know the reason for not fulfilling it because I had given all to my lawyer. I also did not ask again because it was the decision of court. His lawyer also said. "No, not given". I myself sometimes thought what's going on? It could be, based on my predictions there might be an agreement between my lawyer and his lawyer; and, I am not involved. So, I thought I was a Catholic different from the PA (*Pengadilan Agama*/Religious Court), the PA has this and this...²¹

Given that she was not satisfied with the court's decision, she then had tried to request her husband's earning from her husband's work place on the basis of the divorce verdict; however, the treasurer at her husband's work place did not approve her request due to a reason that her husband is the person who works.

In responding to the legislation in the terms of marriage and divorce, she argued that she as the same as Muslim women would have the same rights to obtain the living

²¹ ID, interview by Rika Saraswati, January 3, 2012, Semarang, Indonesia.

maintenance. The Marriage Act 1974, in fact, is different from the Compilation of Islamic Law which has provided divorced women with several rights of living maintenance. She then complained that divorced Muslim women are more fortunate with the presence of the Compilation of Islamic Law because they will get living maintenance automatically after the court decision rather than non-Muslim women. However, she did not definitely understand the different consequences of the woman's rights as a litigant and a non-litigant in the Compilation of Islamic Law; in which its provisions, in a certain matter, continue to discriminate against women. Even, she did not know that Muslim women as non-litigants remained in disadvantaged circumstances when their husband refused to pledge *talak*.

The reason for a husband refusing to pledge *talak* varied. The common reason was caused by a husband's rejection to pay living maintenance to his wife due to financial issues. An intentional motion from the husband to 'hang' the marriage status in order to 'hang' the wife's status was also the prevalent reason. Such an action taken by a husband was usually his strategy not only to avoid his responsibility as a litigant to give maintenance which have been regulated by the Compilation of Islamic law, but also as an action of 'revenge' against his wife. Then, the response undertaken by a wife was usually to file for divorce against her husband. Although such an action seemed likely to disadvantage a wife as she had to pay for the court expenses with her own money, her needs and interests to end an abusive marriage remained an important goal. Below is the experience of how SS dealt with such circumstances.

The experience of SS

The experience of SS (a Muslim woman, an employee, and a non-litigant to be a litigant) has shown that her rights as non-litigant and a divorced woman would be secure if her husband pledges *talak* voluntarily. Her journey to Religious Court started when her husband committed psychological violence against her in the first year of their marriage. She did not file for divorce because she was not ready to be a widow (a divorced woman) at that moment. She put up with the violence for twenty years of marriage, and started breaking the silence after her husband abused her physically. Her response to her husband's physical abuse was to report the violence to a police officer. However, her husband counterattacked her action by filing for divorce. Her husband stated that he would withdraw the divorce law suit if she withdrew her report to police. Given that she was worried about being a widow (divorced woman),²² she then withdrew the report.

Unfortunately, her action to withdraw the report did not stop the physical and psychological violence committed by her husband. She tried to report the recurrent violence to police officers on the basis of her husband's statement that he would stop the physical violence. She had an expectation that the police would arrest her husband. However, the police officers were reluctant to arrest her husband for the reason that the statement made by her husband to stop his abusive behaviour had expired and because the report in accordance with such violence had been withdrawn by SS; consequently, the police could not arrest her

²² The fear of being a widow (divorced woman) is usually not caused by financial issues but due to the social and cultural values within the community which tend to underestimate a widow woman rather than a widower. Such values were influenced by patriarchal values which usually blamed on a woman as a wife as a solely person who has responsibility for unhappy marriage.

husband on the basis of such a document. In addition, the police did not arrest her husband because of lack of physical violence evidence as the bruises on her body had already disappeared.

Evidently, her attempt to report her husband's abusive behaviour for the second time had led her husband to commit her to prison. The reason for her detention was caused by her husband's evidence that she had physically abused her own daughter, in which, the physical abuse had affected her daughter's health. This reason, according to SS, was made up by her husband in order to convince the police to arrest her, and it was also his action for revenge because of her report dealing with domestic violence against her.

SS had asked her husband to divorce her as their marriage could not be justified; nevertheless, once again, her husband remained refused to pledge *talak*.

The trial process was eight months, but he would not say the pledge and not give money of IDR 5 million, whereas it was a 30-year marriage. I did not understand why he did not want to give that much money. I came to him and said that I don't need the money.²³

SS had indicated that her husband refused to pledge *talak* not only because of financial issues but also of his intention to 'hang' her marriage status. Given that her husband aimed to make her suffer, she had begged the judges in the Religious Court to make a decision regardless of the statement of the *talak*, but the judges who led the court hearing refused to make any decisions without pledge of *talak* spoken by her husband. The statement of *talak* was the basis for the judges to make the divorce verdict. If the pledge did not exist, the judges could not make any decisions because it was not in accordance with the rule and procedure in the Religious Court and the Compilation of Islamic Law. This means that the decision maker for the divorce issues remains with a husband, while the role of judges in the religious court is only to confirm the *talak* which was spoken by a husband.

She then realised that the only way to end her abusive marriage was to file for divorce against her husband. She must be an active litigant. She was not afraid to be a widow anymore as she realised that her abusive marriage could not be justified anymore. She did not want to report the violence against her to police, in order to avoid her husband's retaliation. She wanted to live in peace. She argued that the expenses for the court fee were not a main obstacle due to her consideration that her life was more important than anything. She understood that as a litigant she was not entitled to her rights for living maintenance. The living maintenance was not the main aim to be pursued because she claimed that she could get her own earning by working as an employee in a private company and having her own business.

The experience of PJ

The experience of PJ (a Muslim woman, a house wife, a wife of a civil servant, and a non-litigant) to access justice was also not as easy, the same as other women victims of domestic violence. She had to approach one institution after another in order to obtain her goals. Her experiences as a victim of domestic violence in accessing justice started when her husband

²³ SS, interview by Rika Saraswati, December 21, 2011, Semarang, Indonesia.

had been caught with another woman after twenty years of marriage. Having been caught by PJ, her husband did not stop his relationship with his mistress, instead had asked permission to PJ to have a polygamous marriage. Her husband had also forced PJ to give such permission by refusing to give her the living maintenance for more than two years. PJ's response was to deny her husband's idea about polygamous marriage, and she demanded her rights of living maintenance to be fulfilled. Her demands, in fact, had triggered physical violence against her. She did not report the violence to police officers because she was thinking about her life and her daughter's life if her husband was put in jail.

Her refusal to her husband's idea for polygamy had led her husband to file for divorce. She was still insistent on her principle, that is, she did not want to be divorced and kept struggling to obtain her rights as a neglected woman and a wife of a civil servant. She argued that to confront her husband's power was not easy given that her husband had had a well-earned reputation as a teacher; he was a member of his professional organisation and a member of the social community.

My husband [Mr Y] asked for legal assistance from PGRI (*Persatuan Guru Republik Indonesia*)/Teacher's Union of the Republic of Indonesia. All the teachers knew the problem, but they said they did not know, so the case could not be brought to trial, [it] stagnates. I knew I did not face Mr Y only, but there are people behind of Mr Y...Mr Y was one of outstanding teachers who maybe should be defended or how in PGRI or in *Korpri/Korps Pegawai Negeri Republik Indonesia* (Corps of Civil Servants of the Republic of Indonesia). If in the office no one dared because they had already known all of the case, especially principal... Who sued for divorce was Mr Y because of the unilateral statement and I couldn't take it. Then I reported to the head of village and the city government. I asked for a statement of the village head stating that I was an arrogant and a cheating wife were wrong—it was not right...²⁴

PJ realised that as a house wife she had not as much power as her husband. Her husband's power derived not only from his education, money and his profession, but also by people and institutions behind him. In the beginning of her endeavour to confront her husband's power, she nearly surrendered. However, she gained support from her friends and legal aid from a non-government organisation to continue her struggle by sending complaints to higher institutions in her husband's work place. She had to disprove her husband's accusation that their marriage breakdown was caused by her cheating, and conversely, she must prove that the marriage breakdown was caused by her husband's infidelity which affected the neglect and physical violence against her. These reasons had been stated not only in the education institutions to obtain her rights as a wife of civil servant, but also in Religious Court in gaining her rights as neglected and divorced woman.

Her struggle has yielded results. She, finally, obtained her rights for living maintenance not only because she was neglected by her husband, but also for years in the future.

²⁴ PJ, interview by Rika Saraswati, December 27, 2011, Semarang, Indonesia.

The assistance from agencies had pro and cons. There was the one who helped but the other didn't. Mr Y said. "Why does no one help me while I am in a big trouble, I am a corps member, why don't I get help. He asked for help there. The principal, branch and city agencies did not help me; even in city agencies they asked me to keep quiet. But I did not want to be quiet. I knew after in the city agencies then to BKD. I met the officials at BKD in which the divorce permit was issued. It means there was cooperation there to support my husband, especially those in city agencies. There was a female civil servant who said, "Just be obedient Mrs PJ, just divorce then finished." I just thought why it should be like this; the peer women did not really concerned or [want to] help so that what I wanted can be fulfilled. I then met the head (a male civil servant) and he said "Mrs PJ, I'll help your child. If Mr Y cannot be fixed anyway he'll probably regret it later." [Based on his explanation] I continue to know if I'll have this right and that right...²⁵

In dealing with her demands to obtain her living maintenance from her husband's earnings in his institution, she had deployed the Implementing Regulation No 10 of 1983 section 8. In addition, she also obtained her rights for the living maintenance on the basis of the divorce verdict from the Religious Court because her husband as a litigant has responsibilities to give her the living maintenance; the responsibilities and the maintenance which are regulated within the Compilation of Islamic Law. Moreover, she could convince judges in the Religious Court that she was not the subject to *nusyuz*.

Discussion

The case studies mentioned above have demonstrated that the first face of the justice system they approached was often the criminal law system when they contacted the police in regard to the violence being suffered. When the response from the police could not overcome the matter, the respondents, then, went to the family law system as an alternative, that is, by proceeding with divorce they sought an end to the violence. The Family Law and its system became their last resort to obtain their rights and justice.

Unfortunately, the legislation in the terms of divorce differs from one to another which has a significant impact on the women's sense of justice. Although the passage of the Marriage Act 1974 aimed to replace the different legislation that was introduced during colonialism with a single unitary Act, the existence of other legislation (such as implementing regulations No 10 of 1983 and the Compilation of Islamic Law) has demonstrated the plurality of legislation within the Indonesian Family Law system. The Religious Court with its reference to the Compilation of Islamic Law has its own legislation and system to adjudicate divorce issues and women's rights. On the other side, the State Court will adjudicate non-Muslim divorce cases based on the Marriage Act 1974 and the implementing regulation. In addition, the women litigants and non-litigants referred the implementing regulations No 10 of 1983 if their husbands were civil servants. Therefore, these women had to adjust their identities with the proper legislation and its system before accessing the court in order to obtain their rights properly. The provisions of the legislation undeniably are a

²⁵ PJ, interview.

'two-edged sword'. On the other side, it has given the opportunity to a woman as well as a man for being a litigant before the court, and to support women's right in obtaining their rights as human beings; however, at the same time, through its provisions, which were influenced by patriarchal values, have significantly limited women's rights.

The experiences of women victims of domestic violence as litigants and non-litigants have demonstrated that such legal biases impacted on their struggle to obtain justice. Being a litigant was apparently a tough experience for a woman victim of domestic violence because it was an unexpected experience. Being involved in a legal battle against her husband took a woman's energy, time and money; the lack of knowledge about the legal system, the legal aid, and a woman's legal rights often became the main obstacle to a woman in obtaining an expected result. Moreover, the legal system often did not support to those who in were need. It has been shown by the experience of Y who was disappointed by the performance of police officers who did not undertake any legal process against her abusive husband; instead they had asked her to provide witnesses to support her report on psychological violence and neglect committed by her husband against her. Unfortunately, she could not provide the witnesses because her friends did not want to be witness, and used the classic excuse that they did not want to involve in a family matter despite the violence.

She was also confronted with the difficulties to find proper legal aid to support her plan to file for divorce against her husband. The difficulties which were caused not only by inners factor such as her religious back ground and her financial incapability to afford the lawyer's fee, but also by other factors such as the grounds for divorce which were inappropriate to her circumstances at that time, the rejection from the legal aids to help her to file divorce because of a number of reasons on the basis of their religious principles, the institution's aim, the religious background of the client and the financial capability.

The blame for difficulties could not be laid on her shoulders because her circumstances (including her identities) did not accord with the requirements demanded by those providers. Only if she could have adjusted her circumstance with those requirements, could she access justice and obtain her rights without getting a significant impediment. On the contrary, if she had to seek other sources, services and agencies which definitely fitted her needs and interests for the purpose of gaining her rights, she probably would have not faced difficulties to obtain her aims. However, it was not a certainty that such services or agencies would meet her expectations. The experiences of the women in this article, such as EL and ID, demonstrated that having been assisted by lawyers was not a certainty that their demands would be fulfilled because their lawyers had eventually taken advantage of them on the basis of their lack of understanding on the legal system in the terms of divorce issues. Only if they found proper legal aid which was provided by government organisations or non-government organisations which were concerned with domestic violence issues, they could have obtained professional assistance.

Regardless of the legal assistance from a lawyer, being a litigant remained an arduous action for those women. They argued that filing for divorce was difficult because they had to prepare witnesses to support their divorce lawsuit; structure their legal application to obtain living maintenance and shared property; attend mediation processes prior to court hearings and attend the court hearings. They even had to confront the power (such as money, authority, education level, and social status) belonging to their husbands, legal apparatus, and

institutions at the husband's work place. Such power had a significant influence on these women to obtain their rights and access justice. However, if they had a proper strategies to cope this imbalance of power (for example by seeking legal assistance, having psychological and financial support from others, such as family members, friends, supervisors from the husband's work place, legal aid et cetera), the expected result might be obtained.

Becoming litigants, particularly in the Religious Court in Indonesia, however, resulted in substantial financial losses for the woman and their children because successful women litigants then have no right to ask for a living to be provided by their former husband after the divorce. The experience of EL has shown that as a litigant in the Religious Court she lost her rights for living maintenance; her argument that she had experienced domestic violence was not considered by the judges in the Religious Court as such violence had never been mentioned explicitly neither by the Marriage Act 1974 (and its implementing regulation) nor by the Compilation of Islamic Law. Therefore, it can be said that her circumstances as a litigant and the presence of domestic violence in the marital relationship did not accord with the legislation, which in turn, affected the judge's decision to dismiss her request for divorce and the living maintenance. On the other hand, if her husband was a litigant, her rights were generally maintained by judges, subject to not having been identified by judges as *nusyuz* or recalcitrant.

A woman would probably obtain her rights for living maintenance only if she could fulfil the requirements which have been framed within the legislation. The experience of PJ has demonstrated that she obtained her rights for living maintenance from the Religious Court and the institution from her husband's work place. There are two reasons for her success in gaining her rights in the Religious Court: first, because she could convince judges in the Religious Court that she was not a cheating wife as her husband's accused; second, because her husband became a litigant. The first reason had convinced judges to impose on her husband to fulfil his responsibilities as a husband and a litigant. These factors were appropriate to the provision in the Compilation of Islamic Law. Therefore, it can be said that the legal system will not be favourable to women victims of domestic violence unless the women's circumstances are in accord with the requirement within the legal system, Therefore, it can be said that the legal system will not be favourable to women victims of domestic violence unless the women's circumstances are in accord with the requirement within the legal system, (including provisions in the legislation); as result, these women would have obtained their rights without getting significant impediment. However, if the women's circumstances are not in accord with the legal system and its legislation, they would probably lose their rights.

In addition, PJ's demand to obtain her rights for living maintenance from her husband's earnings had yielded results because she convinced the institution at her husband's work place that her husband was the person who initiated to file for divorce. The reason for divorce was caused by the presence of another woman in her husband's life. Her husband had married this woman in a religious way and lived with her; as a consequence, PJ as the 'legal' wife had been neglected by her husband for years. Another reason was because she did not take a side as a litigant. The result might be different if she acted as a litigant; she might not have her rights for the living maintenance in the Religious Court, and as a wife of civil servant she would lose her rights for the living maintenance from her husband's earning if

she was unable to provide evidence that her husband had committed to a polygamous marriage. Again, the case of PJ is evidence that legislation will maintain a woman's right as long as the facts are relevant to and accordant with the legal framework.

Meanwhile, for non-Muslim applicants in the State Court, the right to a living after divorce (as regulated by the Marriage Act 1974) is not automatically granted by judges if this is not declared and demanded explicitly in the law suit. The experience of ID, for example, has demonstrated that her demand for the living maintenance and shared property diminished because she did not put her demands explicitly. Her misunderstanding about a divorced woman's rights in the Religious Court had led her to such a belief that she would obtain the same rights. Her misunderstanding could not be put on her shoulders, but rather it was due to her lawyer who did not give her appropriate information about her rights, instead the lawyer took advantage of her and deceived her by having a settlement with her husband's lawyer. As result, she did not obtain her rights to the living maintenance and shared property. Her struggle to obtain the living maintenance from her husband's earnings diminished because of the patriarchal mindset of her husband's supervisor in her husband's workplace.

The descriptions above have shown that the opportunity to obtain the living maintenance after divorce is greater for women litigants whose husbands are public servants if their reason for divorce was on the basis of a polygamous marriage. By giving statements and presenting evidence before the court that they filed for divorce on the basis of domestic violence, judges will not consider that their rights to the living must be maintained because it is not explicitly regulated in the Marriage Act 1974, PP 10 of 1983 and the Compilation of Islamic Law. Only if judges decided that a husband had mistreated his wife and endangered her life, the judges might consider her rights for the living maintenance despite her legal action as a litigant or non-litigant because it is stated explicitly in the grounds for divorce in the Marriage Act 1974. Unfortunately, there is no further explanation in the Marriage Act and its implementing regulation about to what extent the conduct of a husband had mistreated his wife and endangered her life; therefore, the interpretation of judges for this matter is needed.

These pieces of legislation, particularly PP 10/83 and the Compilation of Islamic Law, have shown that they do not really take into account women's rights when women become active litigants. Instead the women lose certain rights that they would otherwise have as divorcees if they are the active litigants; they only retain their rights if their husbands are the active litigants. Therefore, it can be said that there is inconsistency from the legislators in their application of the ideal of equality between a man and a woman within the marriage relationship, both when it is an existing marriage and in its dissolution. The legislators continues to maintain the patriarchal values that a husband is a 'head house hold' and a solely breadwinner, meanwhile a wife has a role as a 'housewife'. The legislation has created a situation for a wife to be concerned or fear losing the living maintenance for herself and her children, if she becomes a litigant. By determining such provisions, the legislators are expecting that a wife will think twice before deciding to file for divorce against her husband; the legislators continue to create a wife's financial dependency on her husband, which in turn further deepened her social and cultural dependency on her husband.

In addition, the legislators continue to demand a woman as a wife to be a passive person and obey to a man as a husband in the marriage and in relation to its dissolution, it is the man who is favoured as the person who decided the marriage is to end; similarly equal

rights are not accorded to the woman by denying her continued support if she initiates divorce proceedings. This legislation, unfortunately, had been undertaken literally by judges, which in turn, had an adverse effect to a woman victim of domestic violence because the divorce verdict did not fit with her need and interest. The judge's decision on the divorce verdict, by ignoring the elements of domestic violence and deploying the legislation strictly, might be accordant with the sense of legal justice. However, it is not compatible with the woman's sense of justice when she definitely needed a special consideration as the victim of domestic violence. Although the marriage dissolution as the main lawsuit from the respondents (regardless of their legal action as litigants or non-litigants) had been granted by judges in the Religious Court and State Court, only PJ's demand for the living maintenance which had been granted by the Religious Court and the local government as the superintendent institutions from her husband's workplace due to her circumstance is relevant to the legal framework which has been regulated by the legislation.

Conclusion

It is undeniable that the Family laws have given the parties more autonomy to make decisions in terms of their marital issues, such as shared property, living maintenance, and child guardianship. Although the parties can determine their demands on the basis of their interest, the family law has also regulated the responsibility and the limited rights of both parties or from one party to another, or conversely. However, the limited rights as demonstrated in the Marriage Act, the implementing regulations and the Compilation of Islamic Law, at certain levels, have discriminated against women. Unfortunately, this legislation had been undertaken literally by judges to make their decision on these women who definitely need a special consideration as the victims of domestic violence. A judge will ignore the factors which do not state and regulate explicitly in the legislation. As a consequence, judges never consider domestic violence as the relevant factor in their decision making to fulfil a woman's demand for the living maintenance. The Family Law as the women's last resort to obtain justice does not accommodate the issue of domestic violence yet. Therefore, it can be said that the Family Law as the avenue for Indonesian women victims of domestic violence to obtain their rights and justice is still far away from their expectations, and even from the aims of the Marriage Act 1974, PP 10 of 1983 and the Compilation of Islamic Law to create equality before the law between a man and a woman in the terms of marriage and divorce.

References

- Goodmark, Leigh. "Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases." *Florida State University Law Review* 37 (2009): 27-32.
- Heaton, Tim B, Mark Cammack and Larry Young. "Why Is the Divorce Rate Declining in Indonesia?" *Journal of Marriage and Family* 3 (2001): 481.
- Komisi Nasional Anti Kekerasan terhadap Perempuan [National Commission on Violence Against Women], *Sepuluh tahun (10) Tahun Reformasi: Kemajuan dan Kemunduran Perjuangan melawan Kekerasan dan Diskriminasi Berbasis Gender [Ten Years of Reformation: Progress and Regress of the Struggle regarding Gender Based Violence and Discrimination]* (Jakarta, Komisi Nasional Anti Kekerasan Terhadap Perempuan [National Commission on Violence Against Women] 2008), 12.

_____, Tak Hanya di Rumah: Pengalaman Perempuan akan Kekerasan di Pusaran Relasi Kekuasaan yang Timpang Catatan KtP Tahun 2009, Catatan Tahunan tentang Kekerasan Terhadap Perempuan [Not Just at Home: Women's Experience of the Unequal Power Relations Turbulence in 2009 Annual Notes on Violence Against Women] Komisi Nasional Anti Kekerasan Terhadap Perempuan [National Commission on Violence Against Women 2010).

Locher-Scholten, Elsbeth. *Women and the Colonial State: Essays on Gender and Modernity in the Netherlands Indies 1900-1942*. Amsterdam University Press, 2000.

Mahkamah Agung (Supreme Court) and AusAID, *Memberi Keadilan Bagi Para Pencari Keadilan: Sebuah Laporan Penelitian tentang Akses dan Kesetaraan Pada Pengadilan Negeri dan Pengadilan Agama di Indonesia Tahun 2007-2009* [Giving Justice for Justice Seekers: A Report of Access and Equality to State Court and Religious Court in Indonesia (Mahkamah Agung [Supreme Court], AusAID, 2009) 5.

Mahkamah Agung Republik Indonesia-Direktorat Jendral Badan Peradilan Agama [Supreme Court of The Republic Indonesia-Directorate General of Religious Court Bodies] *Data Perbandingan Faktor-faktor Terbesar Penyebab Terjadinya Perceraian Mahkamah Syar'iyah/Pengadilan Agama Yurisdiksi Mahkamah Syar'iyah Provinsi/Pengadilan Tinggi Agama Seluruh Indonesia Tahun 2005-2009* [the Comparative Data of the Highest Factors as the Causes of Divorce in the Syar'iyah Province Court and the Religious Court in Indonesia Years 2005-2009] (2010) www.badilag.net (accessed 17 August 2010).

Martyn, Elizabeth. "Confronting the State: the Fight for a Marriage Law." In *The Women's Movement on Post-Colonial Indonesia: Gender and Nation in a New Democracy*, edited by Louise Edwards, 122. Routledge Curzon, 2005.

Mulia, Siti Musdah, 'Toward Just Marital Law: Empowering Indonesian Woman', www.oasiscenter.eu/files/Muliah_ENG.pdf (accessed 2 July 2012).

Salim, Arskal, Euis Nurlaelawati, Lies Marcoes Natsir, Wahdi Sayuti, Demi Keadilan dan Kesetaraan: Dokumentasi Program Sensitivitas Jender Hakim Agama di Indonesia [For the Justice and Equality: Documentation of The Training Program of Gendered Sensitivity toward Judges of Religious Court in Indonesia] (PUSKUMHAM UIN (Pusat Studi Konstitusi, Hukum dan Hak Asasi Manusia Universitas Islam Negeri) Syarif Hidayatullah, The Asia Foundation, 2009).

The Marriage Act 1974.

The implementing Regulation No 9 of 1975.

The Implementing Regulation No 10 of 1983.

The Compilation of Islamic Law.

ID. 2012. Interview by Rika Saraswati.

PJ. 2011. Interview by Rika Saraswati.

SS. 2011. Interview by Rika Saraswati.

Y. 2012. Interview by Rika Saraswati.

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