



THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

"Legal Development in Various Countries"



IMAM AS SYAFEI BUILDING
 Faculty of Law, Sultan Agung Islamic University
 Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
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Indonesia, September 05th 2017

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FACULTY OF LAW
Sultan Agung Islamic University

IMAM AS SYAFEI BUILDING, Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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Date : September 5th 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3rd Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.


Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, September 5th 2017

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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Legal Policy of Investigator in Case Settlement Criminal Violence in the Household

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Abstract

Criminal acts of domestic violence include any act of physical violence, psychic violence, sexual violence or neglect of households conducted by, within and against persons within the household. Violence that occurs in a household does not always arise immediately, but occurs through a certain process. In general, the process of occurrence is as follows: (a) problems arise that strain, (b) followed by a rough verbal expression to the spouse or children, (c) harsh words followed by torture, (d) in this position of resistance will only increase the emotional outburst, (e) after satisfying emotions, the tension decreases, and the regret of the perpetrator follows. To improve the capacity of RPK personnel in the investigation and handling of cases of violence against women is done through education, so that will increase the knowledge of RPK personnel about the investigation in general. Organizing seminars / workshops aimed at providing information on the provisions / regulations relating to the issue of legal protection against domestic violence, as well as how to prevent and deal with violators. Efforts to combat domestic violence are urgently needed the role of law enforcement officers, especially the police as the spearhead of the criminal justice system.

Keywords: Investigators, Crime, Domestic Violence

Preliminary

Law is something that must exist and apply in the midst of society, a community that is not bound by law will lead to irregularity. Humans are creatures that always gather, mingle and interact with each other in order to meet the needs of his life. Law is also a social phenomenon that has many aspects. The law is also a social network that seems to flow through the whole corner of culture without real boundaries.

According to some jurists, the law can be defined as follows: According to Aristotle in the introductory book of law, the law is "particular law is that which each community lays down and applies to its own members. Universal law is the law of nature "(special law is a law that applies to certain communities and applies to members of society.) Common law is a law of nature).¹

Utrecht defines the law as the set of living instructions that govern the order in a society, the violation of the rules of life can lead to actions of the government. Prof. Mahadi defines law is a set of kaedatan that governs human relationships to create justice.²

Based on the definition, then a community of society is in need of law which is expected to be as media of social control, so that can give birth to a society which is peaceful and serene.³

The crime issue remains a hot issue and an important issue in addition to economic, health, unemployment and other issues. Victims of crime suffered huge losses including loss of property, medical expenses or health care and loss of work productivity as well as income, all of which are the result of a criminal offense that has recently increased. Not to mention the losses suffered by victims of crime in the form of pain and trauma fear of crime (fear of crime), suffering and reducing the quality of life.⁴

Taking into account the many cases of violations against protection of domestic violence, the police apparatus as one of the institutions concerned with this issue has made many concrete efforts. Some efforts that have been taken by the Police, among them:

1. Establishing a Room and Special Service (RPK), as a place for handling cases-KDRT.
2. Establish a Service Unit for Women and Children (PPA) from the level of Headquarters to the Polres, as set forth in the Regulation of Kapolri Number 10 Year 2007.

¹ O.K. Chairuddin, 1991, **Pengantar Ilmu Hukum**, Fakultas Hukum USU, Medan, Halaman 51

² E,Utrech, 1966, **Pengantar Dalam Hukum Indonesia**, PT. Penerbitan Universitas, Jakarta, Halaman 1

³ Mahadi, 1964, **Beberapa Sendi-sendi Hukum**, Fakultas Hukum USU, Medan, Halaman 8

⁴ Majalah Rastra Sewakottama, 2007, **Edisi No. 105**, Halaman 2

3. Increase the number of Policewomen to approximate the ideal ratio. Please, Polwan will be the front guard in handling cases of child protection and domestic violence.

To improve the capacity of RPK personnel in the investigation and handling of cases of violence against women is done through education, so that will increase the knowledge of RPK personnel about the investigation in general. Organizing seminars / workshops aims to provide information on the provisions / regulations relating to the issue of legal protection against domestic violence, as well as how to prevent and deal with violators. Efforts to combat domestic violence are urgently needed the role of law enforcement officers, especially the police as the spearhead of the criminal justice system.

Research Methods

In accordance with the problems and objectives of the study, the type of research is descriptive analytical, that is describe, describe, analyze and explain the analytical problems raised. This research is done by library research. Research material is obtained through normative juridical approach that is legal approach by looking at the rules, either primary law or secondary law or approach to the problem by looking in terms of applicable laws and regulations, literature, scientific papers and opinions of experts and others. Soerjono Soekanto said that normative legal research is a legal research conducted by examining library materials or secondary data only. Normative legal research includes research on legal systematics, research on the level of vertical and horizontal synchronization, comparative law and legal history.⁵

Forms of Policy Conducted in the Investigation of Domestic Violence in Asahan District Non Penal Policy

According Muladi, tackling crimes can be done through non-penal means, namely the effort to overcome not using (hukum) penal. Non-penal means for example, sponsorship and social education in order to develop the social responsibility of citizens. Cultivation of community mental health through moral education, religion and so on.⁶ This non-penalty effort is widespread in every sector of social policy. Its main purpose indirectly in addition to improving certain conditions also has a certain preventive effect on crime. The countermeasures are a formal social reaction to crime. There are also formal social reactions

⁵ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, (Jakarta : Rajawali Press, 1995), hlm. 13

⁶ *Ibid*,hal. 113

with emphasis on law enforcement activities (police) and social services. In the data report complaints of Domestic Violence received by Polres Asahan done by non penal settlement.

Based on complaints data obtained from the Asahan Police that of 116 complaints cases, only 30 cases were resolved and this was a case of mistreatment of the wife. Domestic violence committed by husbands against wives due to various factors. In the settlement of this case is done with the legal policy where the withdrawal of complaint letter from the wife.

Factors of the occurrence of violence against women in the household especially those committed by husband to wife have been revealed in a study which Istiadah summarized as follows:⁷

1. There is an unequal power relationship between husband and wife.
2. Economic dependency.
3. Violence as a tool for resolving conflicts.
4. Competition
5. Frustration

Efforts to overcome the Crimes of Domestic Violence in Asahan District have been done through Non Penal approach. This approach is done because the cause of the Crime of Domestic Violence in Asahan Regency is related to the problem that is outside the area of criminal law review. Non-penal policy approach by Asahan Police in handling Crime of Domestic Violence in Asahan District is prevention prior to Criminal Violence in Household.⁸

Preventive efforts conducted by Asahan Police in the handling of Domestic Violence Crime in Asahan Regency is still very less. This is because the incidence of Criminal Acts of Domestic Violence can not be predicted in advance, such as crime in general. For example, to anticipate preventively the occurrence of crimes outside the Criminal Acts of Domestic Violence can be attempted as arranging the Kamtibmas calendar to predict the crime that will appear at certain moments. While Criminal Acts of Domestic Violence itself can not be

⁷ Istiadah, Pembagian Kerja Rumah Tangga Dalam Islam, Lembaga Kajian Agama Dan Jender dengan PSP, Jakarta, halaman 18.

⁸ Lilt Morno Kelana. Kajian Menenai Pencegahan kejahatan dalam Majalah Selapa News Edisi 05 Febrnari-Maret Tahirn 2008. hal. 9. dikatakan bahwa : Dalam penyelenggaraan fungsi Kepolisian (Pernolisian) metode pencegahan kejahatan 'crime p e r m). perimna kali diperkenalkan oleh Henry Fielding yang pada tahun 1748 diangkat sebagai London Maoistrate menyusun dun sasaran yang ingin dicapai dalam pembangunan kekuatan Kepolisian yaitu pertama memberantas kejahatan yang terjadi (to stamp out eisting crime) dan yan kedua adalah bempa gagsan reolusioner yaitu meneegah kejahatan diinasa yang akan datang (to prevent outbreaks of crime in thefuture). Menurut pandangan Fielding, kedua sasaran itu tidak rnungkin tercapai tanpa didukung oleh Kepolisian yang kuat. Kesjasama yang aktif dan masyarakat. Peinusnahan sebab-sebab kejahatan dan kondisi-kondisi yang incrnungkinkan berkemban nya kejahatan. Upaya Fielding dilanjuekan oleh Sir Robert Peel yang berhasil mempengaruhi Parleman dalam melahirkan Metropolitan Police Act pada tahun 1829. Dengan satuan London Metropolitan Police. Robert Peel merealisasikan secara penuh metoda pentolisian preventif.

predicted when will happen, because this depends on the interpersonal relationship and the quality of relations among family members. The above mentioned that rneenggondisikan police officers can not predict the occurrence of Criminal Acts in Domestic Violence, then the preventive efforts can not be implemented optimally.

Penal Mediation emerges as one of the alternative thinking in solving the problem of criminal justice system. This starts from the discourse of restorative justice that seeks to accommodate the interests of victims and perpetrators of criminal acts, and to seek a win-win solution, not win-lose, to overcome various problems of the criminal justice system. Mediation is chosen because with it not only sought a legal certainty but also presented facts so that in can is a truth and what will be decided to solve the problems of both parties can be compromised without any pressure.

Mediation in Criminal Acts is often done and this is regarded as an aberration. But we can not deny that the community wants a form of problem solving fast and cheap cost with mutually satisfactory results of both parties. To achieve that all the various comparisons of the most profitable legal system should we use to achieve the goal of the establishment of the law ie the welfare of society.

From the results of the interviews it was found that the peace offer between the litigants in domestic violence cases is often made in the first stage of the criminal justice process. But this offer was raised on cases of domestic violence that did not cause serious injuries. This means that psychological violence and neglect of households become a type of violence that is often offered for discussion.

Cover

Conclusion

Based on the above description as a result of the discussion in this study can be concluded that:

- a. It is hoped that in each of the four components of the criminal justice system there are Units such as Women and Children Services and there is also a Special Service Room already in the police department. It is desirable not only in the police to prepare special officers who understand the rules concerning women and children and have empathy and perspective of gender perspective. If and three other components of the criminal justice system such as prosecutors, judges and penitentiaries provide the means necessary for successful efforts prevention of Domestic Violence is not a hope.

Suggestion

- a. The need to improve or review Law no. 23 of 2004 to obtain legal certainty in handling cases of Domestic Violence so that law enforcers can determine the direction of legal policy taken.
- b. It is necessary to enact the Implementing Ordinance of the Law on the Elimination of Domestic Violence so that the substance and legal instruments that are problematic in its application are immediately clarified in order to avoid misinterpretation in its application and law enforcement apparatus dealing with Criminal Acts of Domestic Violence. Can also be done by presenting Amendment and Law Abolition of Domestic Violence.

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