



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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Reviewer:

Prof. Dr. H. Gunarto, S.H., S.E., Akt., M.Hum

Dr. Hj. Anis Mashdurohatun, S.H., M.Hum

Prof. Henning Glaser

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM

Prof. Shimada Yuzuru

Prof. Associate Dr. Dr. Ahmad Zaharudin Sani

Editor:

Dr. Amin Purnawan., S.H., CN., M.Hum

Dr. Hj. Widayati., S.H., M.H

Dr. Hj. Sri Endah Wahyuningsih, S.H., M.Hum

Dr. H. Ahmad Khisni., S.H., M.H

M. Abdul Hadi., SE

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INFORMATION OF THE CONFERENCE AND CALL PAPER

WORLD CLASS ISLAMIC UNIVERSITY
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Welcome to Participants on International Conference

"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
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

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Nagoya University, Japan
2. Prof. Dr. Ruzian Markom
Universitas Kebangsaan Malaysia, Malaysia
3. Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M
Sebelas Maret University, Indonesia
4. Assoc Prof. Dr. Ahmad Zaharuddin S.
Universitas Utara Malaysia, Malaysia
5. Dr. Anis Mashdurohatus, S.H., M.Hum
Sultas Agung Islamic University, Indonesia

Indonesia, September 05th 2017

WORLD CLASS ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

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Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : **Faculty of Law UNISSULA**
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5
September
2017

FACULTY OF LAW
Sultan Agung Islamic University

SPEAKERS :

1. Prof. Shimada Yuzuru
Nagoya University, Japan
2. Dr. Hilaire Tegnau, LL.M.
Faculty of Law, Sorbonne University
3. Prof. Dr. Ruzian Markom
Universitas Kebangsaan Malaysia, Malaysia
4. Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M
Sebelas Maret University, Indonesia
5. Assoc Prof. Dr. Ahmad Zaharuddin S.
Universitas Utara Malaysia, Malaysia
6. Dr. Anis Mashdurohatus, S.H., M.Hum
Sultan Agung Islamic University, Indonesia

This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

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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Semarang 50112

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AND CALL FOR PAPER
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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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

TABLE OF CONTENTS

Front Page	i
Information of the International Seminar	ii
Committee Composition	iii
Preface	iv
Greeting From The Dean Faculty of Law	vi
THE IMPACT OF ARTICLE 3(1) OF MALAYSIAN CONSTITUTION TOWARDS JUDGMENT MADE IN CIVIL COURT	
Ahmad Zaharuddin Sani Sabri	1
INTANGIBLES INTELLECTUAL PROPERTY DEVELOPMENT CONCEPTS AS BANKING PRINCIPLES IN INDONESIA	
Anis Mashdurohatun	11
THE HISTORICAL DEVELOPMENT OF THE FRENCH LEGAL SYSTEM	
Hilaire Tegnau	23
JAPANESE CONSTITUTION AND STATE SYSTEM	
Shimada Yuzuru	29
POWER AND PROCESSES UNDER THE THAI CONSTITUTION 2017”	
Henning Glaser	38
JURIDICAL NORMATIVE REVIEW OF DIFFERENT RELIGIOUS MARRIAGE	
Doni Adi Supriyo	38
THE IMPLEMENTATION OF ROLES AND FUNCTIONS OF REGIONAL HOUSE OF REPRESENTATIVES (DPRD) BASED ON LAW STATE FRAMEWORK TO ACHIEVE GOOD GOVERNANCE	
Agus Sukadi	65
OPTIMALIZATION OF THE ROLE OF THE DPRD (Regional House of Representative) IN THE PREPARATION OF REGIONAL REGULATIONS	
Budi Alimudin	81
THE PROGRESSIVE LEGAL THEORY IN THE IMPLEMENTATION OF LAW ENFORCEMENT BY THE LAW ENFORCER (POLICE, PROSECUTOR, JUDGE)	
Teguh Santoso	99

CRIMINAL POLICIES IN LEGAL ACCOUNTABILITY AGAINST FACILITATION OF HEALTH SERVICES AND HEALTH PERSONNEL IN DISTRIBUTION AND SALES OF HARD DRUGS FOR SALE WITHOUT PRESCRIPTION DOCTORS Teguh Santoso	99
CRIMINAL POLICIES IN LEGAL ACCOUNTABILITY AGAINST FACILITATION OF HEALTH SERVICES AND HEALTH PERSONNEL IN DISTRIBUTION AND SALES OF HARD DRUGS FOR SALE WITHOUT PRESCRIPTION DOCTORS Yadi Supriyadi.....	111
RECONSTRUCTION OF PATIENT LEGAL PROTECTION HOSPITAL IN USE OF X-RAY IN THE HEALTH BASED FIELD OF JUSTICE Andhika Yuli Rimbawan.....	127
CORRUPTION ASSET RECOVERY THROUGH STATE CIVIL LAWSUIT Sujono.....	139
THE EFFECTIVENESS OF GUIDANCE OF CHILD PRISONERS IN ADULT PRISON Wilsa	147
URGENCY OF VOTERS PARTICIPATION ON THE REGIONAL HEAD ELECTION IN THE STATE OF DEMOCRACY (Study: Voters Participation On Governor and Vice Governor Election in Indonesia in2015) Dewi Haryanti	152
COMPARATIVE RULES ON DETENTION IN SOME COUNTRIES Dewi Haryanti	158
THE DEVELOPMENT OF LAW OF BUYING AND SELLING LAND IN INDONESIA Lilik Warsito	169
INDONESIAN LEGAL DEVELOPMENT PROGRESSIVE LAW APPROACH TO BUILD THE LAW IN INDONESIAN SENSE Wendra Yunaldi	179
REMOTE SENSING TO THE INDONESIAN SURFACE OF THE FOREIGN SATELLITE AND THE SOVEREIGNTY OF INDONESIA Ruman Sudradjat.....	186
THE CONSTRUCTION OF THE RAHN SYARIAH LAW IN THE LEGAL SYSTEM OF WARRANTIES OF INDONESIA Suryati	194
THE DEVELOPMENT OF ISLAMIC LAW IN THE LEGAL SYSTEM IN INDONESIA Sumarwoto	194

CONTRACT ABOLITION DUE TO UNDUE INFLUENCE (LAW RECONSTRUCTION OF OBLIGATION THE CIVIL CODE IN INDONESIA) Bahmid	210
FIDUCIARY GUARANTEE PROBLEMATIC WITH OBJECTS INVENTORY IN CREDIT AGREEMENT LathifahHanim and MS.Noorman.....	214
LEGAL POLICY OF INVESTIGATOR IN CASE SETTLEMENTCRIMINAL VIOLENCE IN THE HOUSEHOLD Anwar Sanusi Simanjuntak.....	222
INDUSTRIAL RELATIONS COURT’S VERDICT IN THE CASE OF CERTAIN TIME WORKING AGREEMENT (PKWT) BECOME UNCERTAIN TIME WORKING AGREEMENT (PKWTT) (Analysis of Industrial Relations Court’s Verdict Number : 37/G/2011/PHI.Mdn) MangarajaManurung	222
DOMESTIC COMPANY LAW "PMDN" AFTER SHARE PURCHASED (ACQUIRED) BY FOREIGN CITIZENS OR FOREIGN LEGAL AGENCIES M. IrfanIslamiRambe	245
GUARANTEE OF RICE FARMS HAVE NOT YET BEEN HARVESTED IN SIMALUNGUN REGENCY RiduanManik.....	245
LEGAL PROTECTION OF CONSUMERS IN CONSUMER FINANCING AGREEMENTS Imelda Mardayanti	267
THE AUTHORITY OF PERFORMING A DEATH PENALTY ACCORDING TO THE DOCTRINE OF LOVE OF JESUS CHRIST IN THE BIBLE Dame Pandiangan.....	278
CRIMINAL ACCIDENT OF NARCOTICS, APPLICATION OF LAW NUMBER 35 YEAR 2009 AND JUDICIAL DECISIONS IN THE COURTCOUNTRY KISARAN Muhammad SalimFauziLubis	283
ISLAMIC LAW STUDY ABOUT DAM TAMATU' HAJJ FOR INDONESIAN JAMAAH HAJJ FOR PEOPLE’S CONSULTATION Muthoam	290
IS RICH AND POOR UNIFORM IN PATENT LAW AbdThalib.....	299

PREVENT VIOLENT ONLINE VIDEO GAMES THROUGH LEGAL CONSTRUCTION	
Yenny AS, Charlyna S. Purba, Hendrik	309
COMMUNITY PARTICIPATION IN THE FORMATION OF LOCAL REGULATION BASED ON JUSTICE (Analysis of Political Interaction and Law)	
NursidWarsonoSetiawan	314
THE ROLE OF POLITICAL PARTIES IN RECRUITMENT OF CANDIDATES FOR REGIONAL HEAD AND DEPUTY REGIONAL HEADS BASED ON LAW NO. 32 YEAR 2004 (CASE STUDY IN PURBALINGGA AND CILACAP)	
Anton Budiarto	324
THE BASICS AND THE FUNCTIONS OF FINGERPRINTS OF MURDER PERPETRATORS	
AchmadSulchan, Annisa	343
RECONSTRUCTION OF DIFFERENT TYPES OF MENS REA TO PROVE CORRUPTIONBASED ON JUSTICE VALUES	
ArifAwaludin	349
PRINCIPLES OF FAIR LAND REGISTRATION (STUDY OF PUBLIC SERVICE OF LAND REGISTRATION IN INDONESIA)	
Shalman	355
INDEPENDENCY AND IMPARTIALITY OF AD HOC JUDGE INDUSTRIAL RELATIONS COURT (PHI) IN RESOLVING DISPUTES	
ResyDesifaNasution	378
CONSTRUCTION WORK CONTRACT IN GOVERNMENT BASED VALUE OF BENEFIT	
MokhamadHilman.....	387
SHARIA ECONOMICS DISPUTE RESOLUTION IN RELIGIOUS COURT INSTITUTIONS	
Amanah	400
WOMEN PROTECTION POLICY FROM PHYSICAL VIOLENCE BASED ON JUSTICE VALUES	
HadjarHandokojati	417
LEGAL ANALYSIS ON THE IMPLEMENTATION OF DIRECT APPOINTMENT OF PROCUREMENT SERVICESOF GOVERNMENT’S PROJECT	
HumalaSitinjak.....	424
RECONSTRUCTION ON CORRUPTION ACT AND SHIFTING BURDEN OF PROOF ON THE SETTLEMENT OF CORRUPTION IN INDONESIA	
IbnuHadjar.....	434

COMPARATIVE RELIGIOUS APPROACH IN THE DEVELOPMENT OF NATIONAL CRIMINAL LAW SYSTEM Sri EndahWahyuningsih.....	443
LEGAL STUDY OF DECISIONSSUPREME COURTS NUMBER: 85 K / Pid.Sus / 2012Contract Abolition Due to Undue Influence (Law Reconstruction of Obligation the Civil Code in Indonesia) Ismail.....	449
THE EXISTENCE AND RECONSTRUCTION OF SALE AND PURCHASE FIQH MADHAB SYAFI'I IN GLOBALIZATION ERA (Sale and Purchase Practice Study in PondokPesantrenTahfidzul Qur'an Al-Asy'ariyahWonosobo Central Java and PondokPesantren Al-Munawir Krapyak Jogjakarta) Machfudz.....	457
RECONSTRUCTION OF LEGAL SANCTIONS ON BUILDING FAILURE IN LAW NO.2 YEAR 2017 ON CONSTRUCTION SERVICES BASED ON THE VALUE OF BENEFIT SubhanSyarief	466
THE CONSTRUCTION OF RESIDENTIAL SERVICES AND CIVIL REGISTRATION BY THE GOVERNMENT OF PEMATANGSIANTAR CITY IN PERSPECTIVE OF PUBLIC SERVICES LAW NO: 25 2009 PandapotanDamanik.....	485
CRIMINAL RESPONSIBILITY AND CIVIL RESPONSIBILITY ACCORDING TO COMMON LAW FOR A MAN WHO HAS SEXUAL INTERCOURSE BEFORE LEGAL MARRIAGE MangembangPandiangan	485
INTERNATIONAL SEMINAR PHOTOS	512

WOMEN PROTECTION POLICY FROM PHYSICAL VIOLENCE BASED ON JUSTICE VALUES

Hadjar Handokojati

hadjar.handokodjati@yahoo.co.id

The Student of Law Doctoral Programme UNISSULA

ABSTRACT

Violence against women especially in Indonesia is not a single cause. The historical and cultural factors of patriarchic that grow in social society are the fundamental causes of discrimination between women and men. Religious factors are also one of the reasons to strengthen the position of men. The formulation of the problem in this research is how is the implementation of the protection policy of women from physical violence in Indonesia? This research is descriptive research by using qualitative approach, with sampling technique used was purposive random sampling. Conclusion with the issuance of Law Number 23 of 2004 shows the government's concern for women in particular, the abolition of domestic violence. Even with the issuance of this Law, there is a shift from the problem of private law to public law. This means that in enhancing the protection of women, the state intervenes to determine the punishment for physical offenders. The authors conclude in general the reality of the field there are many things that cause domestic violence continues to occur even though there is a law that tries to overcome. These are as follows: The existence of patriarchal culture in the community, the lack of education and knowledge of women as wives, discrimination and economic dependence, Weak understanding and handling of law enforcement officers.

INTRODUCTION

A. BACKGROUND

The state of Indonesia is a democracy and based on law. This view can be clearly seen in the constitution of the Indonesian state, namely the Constitution of the Unitary State of the Republic of Indonesia Year 1945. Article 1 Number (3) of the Constitution of the Unitary State of the Republic of Indonesia Year 1945 states that:

"The state of Indonesia is a state based on law."

Then in Article 28G stated that:

- (1) Everyone is entitled to personal, family, honor, dignity and property protection under his control, and they are entitled to a sense of security and protection from the threat of fear of doing or not acting in rights;

- (2) Everyone has the right to be free from torture or degrading treatment of human dignity and entitled to obtain political asylum from other countries. "

Next Article 28I states that:

- (1) The right to life, the right not to be tortured, the right of freedom of thought and conscience, the right of religion, the right not to be enslaved, the right to be recognized as a person before the law and the right not to be prosecuted on the basis of retroactive law is a basic human right cannot be reduced under any circumstances.
- (2) Everyone shall have the right to be free of discriminatory treatment on any basis and shall be entitled to protection against discriminatory treatment.

Cases of violence (including murder) in households in Indonesia tend to increase. In the household, tension and conflict are common. However, if the tension is violent, such as: slapping, kicking, cursing, torturing and so on, this is an unusual thing. That's what is often called domestic violence. Domestic Violence (KDRT) in Law No. 23/2004 article 1 is an act against a person, especially a woman, resulting in physical, sexual, psychological harm, neglect of households, threats, coercion or unlawful deprivation of liberty in the household.

On September 14, 2004 the government had released Act no. Law No. 23 of 2004 on the Elimination of Domestic Violence (PKDRT) consisting of 10 chapters and 56 articles, which is expected to be a legal protection for members in the household, especially women, from all acts of violence. By considering:

1. Every citizen shall be entitled to secure and free from all forms of violence in accordance with the philosophy of Pancasila and the 1945 Constitution of the State of the Republic of Indonesia.
2. All forms of violence, especially domestic violence, constitute a violation of human rights and crimes against human dignity and the form of discrimination must be abolished.
3. Victims of domestic violence, most of whom are women, must be protected from the state and/or the community to avoid and be free from violence or threats of violence, torture, or peril that regulates the degree and marriage of humanity.
4. In reality many cases of violence in households occur, while the legal system in Indonesia has not guaranteed protection against victims of domestic violence.

5. Based on the considerations as referred to in letter a, letter b, letter c, and letter d, it is necessary to establish Law concerning Elimination of Domestic Violence.

Although the legislation has been released but the reality shows that the impact of violent behavior on women that tends to increase, not only from victims, but also negatively affect the survival of the family and in turn penetrated into the life order of society in general. This tendency even brings an overall impact, so this problem cannot be ignored.

Based on data collected from the National Commission for the Protection of Women, the most prominent type of violence against women is domestic violence which reaches 11,207 cases (69%). In the domains of domestic violence / violence, the most prominent violence was physical violence of 4,304 cases (38%), ranked first followed by sexual violence 3,325 cases (30%), psychological 2,607 cases (23%) and economy 971 cases (9%).¹

For violence in households/personal relations, violence against wives (KTI) ranked first 6,725 (60%), followed by 2,734 courtship (24%), violence against girls 930 cases (8%) and the remaining violence of ex-husbands , ex-girlfriend violence, and violence against domestic workers. Still in the realm of personal relations, data entering through the Complaint Unit for Referral and Monitoring Division of Komnas Perempuan (Woman Protection Commission) during 2015 shows 71 cases of unmarried marriage and 80 cases of polygamy. Komnas Perempuan (Woman Protection Commission) observes that cases of unregistered marriages are difficult cases handled by law enforcement officials due to the lack of legal protection.² Unregistered marriage cases often face obstacles in the settlement of cases due to the absence of a marriage license causing women who are subjected to violence unprotected by the Law on the Elimination of Domestic Violence (UU PKDRT).

The main contributing factors that encourage violence against women according to Government Regulation no. 9 of 1975 on the implementation of Law no. 1 Year 1974 on Marriage the absence of harmony, the absence of responsibility, and economic factors. It is also caused by third party interference, moral crisis, unhealthy polygamy, jealousy, forced marriage, physical cruelty, mental cruelty, marriage under general, political factors, biological defects, one party is punished and others.

¹ Komisi Nasional Anti Kekerasan Terhadap Perempuan, Kekerasan Terhadap Perempuan Meluas: Negara Urgen Hadir Hentikan Kekerasan terhadap Perempuan di Ranah Domestik, Komunitas dan Negara, (Jakarta: Catatan Tahunan Tentang Kekerasan Terhadap Perempuan, 2016), hlm. 1.

² Ibid, hlm. 2.

Violence against women especially in Indonesia is not a single cause. The historical factor and patriarchal culture that grows in social society is the fundamental cause of discrimination between women and men. Religious factors are also one of the reasons to strengthen the position of men.

B. PROBLEM FORMULATION

How is the implementation of women protection policy from physical violence in Indonesia?

C. THE OBJECTIVES OF WRITING

The purposes of writing this paper are:

1. To be able to understand thoroughly about the protection policy of women from physical violence in Indonesia
2. To identify the forms and factors that lead to domestic violence (KDRT) in Indonesia.

D. THE THEORY AND DISCUSSION

POLICY IMPLEMENTATION

Policy implementation³ refers to the activity of carrying out policies in the realm, whether conducted by government organs as well as parties that have been determined in the policy. In the implementation of the policy itself there are usually referred to as the implementer, and the target group. Implementer policies are those officially recognized as individuals/institutions responsible for the implementation of programs in the field. The target group is to appoint the parties to which the policy object is made. Implementation is an important stage in policy. This stage determines whether the policies pursued by the government are truly applicable in the field and succeed to produce output and outcomes as planned. According to Riant Nugroho⁴, the important thing to be considered in the policy implementation process is the basic principles for effective policy implementation, that is (1) Policy Accuracy; (2) Implementation Accuracy; (3) Target Accuracy; (4) Environmental

³ Dwiyanto, Indiahono. 2009. Kebijakan Publik Berbasis Dynamic Policy Analisis. Yogyakarta: Gaya Media, hlm. 143

⁴ Nugroho, Riant. 2011. Public Policy. Jakarta: Gramedia, hlm. 650

Accuracy; (5) Process Accuracy. Furthermore, according to Van Metter and Van Horn⁵, there are six variables that affect the implementation and performance of public policy, namely: (1) Standards and Policy Objectives; (2) Resources; (3) Communications between implementing agencies; (4) Characteristics of the Implementing Body; (5) Social, Economic, and Political Environment; (6) Attitudes or Trends Implementing.

VIOLENCE AGAINST WOMEN

According to La Pona⁶ et al, violence against women is the act of a man or a number of men by exercising certain powers resulting in physical, sexual, or psychological harm or suffering to a woman or group of women, including coercive, threatening, and/or acts arbitrarily, both in public life and in private life in domestic and public spaces. Based on the site of the occurrence, violence against women can be divided into two, namely violence that occurs in the domestic arena or domestic violence and violence in the public arena. Sri Nurdjunaida (2006) explains the types of violence against women, among others, can occur in the form of: (1) Physical violence; (2) Psychological violence; (3) Sexual assault; (4) Economic violence.

CENTER OF INTEGRATED SERVICES

Regulation of the Minister of Women's Empowerment and Child Protection of the Republic of Indonesia concerning Guidance on the Establishment and Development of Integrated Service Centers explains that what is meant by Integrated Service Center hereinafter referred to as PPT is a functional work unit that organizes integrated services for witnesses and / or victims of violence. While the definition of integrated services is a series of activities to carry out the handling and protection for victims of violence including the criminal acts of trafficking of persons carried out jointly by the relevant agencies or institutions and the community as a unity of health rehabilitation, social rehabilitation, repatriation, re-integration social and legal aid. Further explained about the understanding of each of the handling of the implementation, namely: (1) Health services / rehabilitation; (2) Social rehabilitation; (3) Legal Assistance; (4) Returns; (5) Social reintegration.

⁵ Dwiyanto, Indiahono. 2009. Kebijakan Publik Berbasis Dynamic Policy Analisis. Yogyakarta: Gaya Media, hlm.38-40.

⁶ Sugihastuti dan Saptiawan, Itsna Hadi. 2010. Gender dan Inferioritas Perempuan. Yogyakarta: Pustaka Pelajar, hlm. 172.

E. METHOD

In this research is descriptive research by using qualitative approach, with sampling technique used was purposive random sampling where researcher use random sampling purposed by selecting own sample of research that already exist then data which have got presented, reduced until it can be drawn conclusion.

F. CONCLUSION

Domestic violence is one type of gender-based violence (women) in addition to other types of violence such as rape, prostitution, pornography, sexual harassment, etc. From the results of the research and case reports, the institutions that care about women show that the victims of domestic violence continue to increase, especially those done by men with the most physical casualties are women.

With the issuance of Law Number 23 of 2004, it shows that the government's concern for women in particular, the abolition of domestic violence. Even with the passage of this Law there is a shift from the problem of private law to public law. This means that in enhancing the protection of women, the state intervenes in determining the punishment for physical offenders. But the reality in the field of the regulation has not been effectively implemented. The authors conclude in general the reality of the field there are many things that cause domestic violence still occur despite the existing laws that try to overcome this. It is as follows:

- The existence of patriarchal culture in the community
- The low education and knowledge of women as wives
- Discrimination and economic dependency
- Weak understanding and handling of law enforcement officers

Sociologically the solidarity of women throughout the world as well as in each country tends to show improvement both from the institutional side and from the practical side. This happens because women's awareness of their rights is increasing. Today there are many women who dare to appear, not only defend their rights, but complain to the authorities when experiencing a kind of violence that eventually impose human dignity, although it contains various risks. Even the unattainable protection of women with the enactment of UU PKDRT has not run fairly in terms of victim (physical violence of woman) and guarantee of protection which then there is reluctance for victim to report.

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