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WOMEN ACCESS TO JUSTICE : MEDIATION FOR DOMESTIC VIOLENCE CASES IN INDONESIA AND AUSTRALIA

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MEDIATION FOR DOMESTIC VIOLENCE CASES IN
INDONESIA AND AUSTRALIA



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ABSTRACT

Services for the victims of domestic violence have been provided by the Indonesian and Australian governments. The services include medical assistance, psychological counselling, financial assistance, and legal services. The Legal service for the victims of domestic violence is intended to restore the rights of the victims. However, the legal service often ignores the interests and needs of the victims by criminalizing the perpetrators through the criminal justice system or retributive justice system. This often makes victims disappointed, as not all victims of domestic violence want their cases to be resolved in the criminal court because it would give burdens for the victims such as financial and psychological burden. Therefore, some victims wanted their cases to be resolved without involving the litigation system, but through mediation. This research explores mediation conducted by the service institutions for the victims of domestic violence in Indonesia and Australia. The data collected through interviews with judges, police, social workers in the women crisis centers, and public or religious figures from social organizations. This research found that

mediation for the victims of domestic violence has been carried out by the services institutions for the victims of domestic violence both in Indonesia and Australia. However, not all mediations conducted properly as some mediators both in-court and non-court have not been trained on mediation. In addition, the opinion that domestic violence should proceed through the criminal court, not mediation, is still strong among social workers at the women's crisis centers. This research enriches the literature on the services for the victims of domestic violence and provides some insights for alternative resolution for domestic violence cases.

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CHAPTER I

INTRODUCETION

A. Research Background

The case of violence against women, in all of its forms, has increased year by year in all Indonesia provinces. In terms of location, the violence against women mostly took place in the household. It makes the home is the most insecure place for Indonesian women. Violence inside the home, or what so-called domestic violence, is the most common violence in Indonesia.¹ Regarding the domestic violence, The *Jakarta Post* wrote,

Violence within families has no borders. The beating of mainly wives and girlfriends happens in every country around the world. Domestic violence pays no heed to wealth or status, race or religion; it is almost as common among the rich as among the poor,

¹CNN, *Rumah adalah Tempat Paling Berbahaya bagi Perempuan*, available online: <https://www.cnnindonesia.com/gaya-hidup/20181206092659-284-351538/rumah-adalah-tempat-paling-berbahaya-bagi-perempuan> (last viewed: 5 December 2019).

in the world's biggest countries and on the tiniest of islands.²

According to the Law No 23, 2004, on the Elimination of Domestic Violence (DV Law), domestic violence is,

“shall be any action against anyone particularly woman, bringing about physical, sexual, psychological misery or suffering, and/or negligence of household including threat to commit act, forcing, or seizure of freedom in a manner against the law within the scope of household.”

National Commission on Violence against Women or *Komnas Perempuan* (the Women Commission) issues report on violence against women in indonesia annually. The report, which is called CATAHU (*Catatan Tahunan*), usually published on 8 March of the year, which is the day of the International Women Day. The Women

²The Jakarta Post, *Domestic violence is a war zone*, 09 March 2010, available online: <http://www.thejakartapost.com/news/2010/03/09/domestic-violence-a-war-zone.html> (5 December 2019).

Commission reported that in 2016 there were 259.150 cases of violence against women, which 245.548 of them are categorized as domestic violence³. The incident has increased in 2017 with 348.446 cases of violence against women, 335.062 were domestic violence cases⁴. The trend is steady in 2018. The violence against women increased in 2018 with 406.178 incidents with 71 percent of them (288.386) is domestic violence cases⁵. The Women Commission also reported that, like in previous years, the Province of Central Java has the highest reported cases of violence against women in Indonesia⁶.

Responding to the violence against women, the Indonesian government has made efforts to eliminate it and provide services for its victims.

³ National Commission on Violence against Women, *Annual Notes/Catatan Tahunan* (CATAHU), Jakarta, 7 March 2017

⁴ National Commission on Violence against Women, *Annual Notes/Catatan Tahunan* (CATAHU), Jakarta, 7 March 2018

⁵ National Commission on Violence against Women, *Annual Notes/Catatan Tahunan* (CATAHU), Jakarta, 8 March 2019

⁶ National Commission on Violence against Women, *Annual Notes/Catatan Tahunan* (CATAHU), Jakarta, 8 March 2019

Among those efforts is the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984. The ratification of this CEDAW has made the Indonesian government bound to the international and obliged to respect, protect, and fulfill the rights of women victims of violence. In addition, increasing their commitment to protecting Indonesian women from all forms of violence the Indonesia governments establish the Women Commission in 1989. Finally, Indonesia made a breakthrough in 2004 with the issuance of Law No. 23, 2004, on the Elimination of Domestic Violence (DV Law). The aims of the DV Law is to eliminate domestic violence, provide services for the victims of domestic violence, and create a harmony of the Indonesian household.

Despite these efforts above, the violence against women, especially domestic violence is increasing year by year. One of the explanations of why domestic violence is increasing is due to the problems in the DV Law itself. There are some problems in the implementation of the DV Law such as the problem of the witness for domestic violence case, the measurement of the psychological violence, the problem of *visum et*

repertum, and the problem of punishment through mandated-counseling.

Rifka Annisa Women's Crisis Center has conducted research in six provinces to examine whether the DV Law has been implemented effectively and properly. They found that the substance of the law in the DV Law has no fixed criteria on how to measure the level of psychological violence. Judges have their own criteria regarding the level of severity of psychological violence. Some judges use the physical appearance of the victims of domestic violence to measure the level of psychological violence, which can be misleading. While other judges assess the level of psychological violence based on psychological the *visum et revertum* conducted by an expert in the hospital.⁷ The DV Law itself has not set up strict criteria for defining psychological violence. Article 7 of DV Law only states that "psychological violence as referred to in Article 5, paragraph b, is an act that causes fear,

⁷ Hasyim and Kurniawan, Hasyim, Nur, and Kurniawan, Aditya P., *Monitoring of the Implementation of the Law on the Eradication of Domestic Violence in Six Provinces (Pemantauan Impelementasi UUPKDRT di Enam Provinsi)*, Rifka Annisa, Yogyakarta, 2009, pp. 17-18

loss of self-confidence, loss of ability to act, despair, and / or serious psychological suffering on a person." Another problem is there is confusion among the police, prosecutors and judges about whether domestic violence is a crime or a crime upon complaints (*delik aduan*).⁸ Some law enforcers see domestic violence as a crime upon complaint, which requires the victim to report her case to proceed in the police station or service centers. Their views influence the community that sees domestic violence as a crime upon complaint. It makes people who witness domestic violence incident are reluctant or do not report the violence to the service provider or the police, because they think that domestic violence is something that should be complained by the victims themselves.

In addition, instead of suing the perpetrator and reporting the case to the police, the vast majority of the victims of domestic violence went to the Religious Court (*Pengadilan Agama*) to resolve their cases. The Women's Commission

⁸ Fatikhun, M., *The Logic of Law in Psychological Crime (Nalar Hukum Pidana Kekerasan Psikis)*, Ihya Media, Cilacap, 2013, p. 3.

reported that the Religious Court deal with most allegations of domestic violence.⁹

Most women (wives) victims of domestic violence avoid the criminal justice system because the litigation process gives burdens for them. The litigation process that starting from reporting the case to the police and ending with the court proceedings gives burdens on women as they have to spend time and money on the case. Moreover, the litigation process may give also psychological and social burdens for them. Nevertheless, facing their husbands in the court will make them in an adversarial relationship not only with their husbands but also with the entire family of their husbands. This makes the victims of domestic violence are very vulnerable to any forms of intimidation from their husband and their families. The intimidation in the form of blaming or shaming the victims of domestic violence may also come from the communities, as due to the patriarchal culture the communities often see domestic violence as the guilt of the wife, not husband. Women victims of domestic violence are

⁹ National Commission on Violence against Women, *Annual Notes/Catatan Tahunan (CATAHU)*, Jakarta, 8 March, 2013

also afraid that if their husbands are imprisoned, as it may cause financial problems for them and their children. Therefore, the burdens faced by women victims of domestic violence in the litigation process are not only physical and financial but also psychological.¹⁰ Therefore, women victims of domestic violence prefer to go to the Religious Court rather than the Criminal Court to settle their cases where they can resolve the case through court-mediation. Mediation in the Religious Court is mandated by the Supreme Court's Regulation No. 1, 2008. It says that litigants in the Religious Court must try to settle their disputes through mediation before proceeding to the court.

According to Fatahillah Abdul Syukur and Dale Bagshaw, court-mediation could be the best alternative in resolving disputes caused by domestic violence. Through mediation, the disputes can be settled peacefully in accordance with the tradition of *musyawarah*, which is based on the culture of Indonesian society.¹¹ The view of

¹⁰ Sundari, Any, "For the Better Court" (*Untuk Peradilan yang Lebih Baik*), *Rifka Media*, No. 51, Nov 2012-Jan 2013, p. 4

¹¹ Syukur, Fatahillah Abdul, and Bagshaw, Dale Margaret., "When Home Is No Longer "Sweet": Family Violence and Sharia Court-Annexed Mediation in

Syukur and Bagshaw above is in line with the view of Ridwan Mansyur. Mansyur, in his book *Mediasi Penal Terhadap Perkara KDRT* (Penal Mediation for Domestic Violence Cases), argues that domestic violence cases are better to be resolved through mediation. This is because mediation is in line with the principle of restorative justice, which is more concerned about fulfilling the rights of victims of domestic violence rather than punishing the perpetrators as in retributive justice.¹² Moreover, mediation is better in improving the relations between the disputants, which is good for the future life of the disputants. Hence, it is more able to create harmony in the household. The harmony of the household is one of the aims of the enactment of the DV Law.

Compared to Indonesia, Australia has more studies on mediation as they have 25 years of experience in engaging mediation as its alternative

Indonesia”, *Conflict Resolution Quarterly*, Vol. 30, No. 3, 2013, p. 271

¹²Mansyur, Ridwan, *Mediation for Domestic Violence Cases (Mediasi Penal Terhadap Perkara KDRT)*, Yayasan Gema Yustisia Indonesia, 2010, p. 259

dispute resolution.¹³ Among the works on mediation in Australia is the work of Rachael Field, “A Call for a Safe Model of Family Mediation.” Field argues that Australia needs more efforts to ensure that post-separation agreements are safe. However, a key and proven initiative, the Coordinated Family Dispute Resolution model — a model that has the potential to offer a safe(r) family mediation environment in DV contexts — has not been made accessible to the Australian public. Therefore, is comment argues that the Australian government has a social and ethical responsibility to introduce this model to the family law system.¹⁴

Another work on mediation in Australia is the work of Helen Rhoades, “Mandatory Mediation of Family Disputes: Reflections from Australia.” Rhoades investigates debates on whether mediation is mandatory or not in family

¹³ Rooney, Greg, *The Australian Experience of Pre-Litigation ADR Requirements*, *Mediate.Com*, January 2016, online:
<https://www.mediate.com/articles/RooneyG3.cfm>(last viewed: 15 December 2019)

¹⁴ Field, Rachael, “A Call for a Safe Model of Family Mediation”, *Bond Law Review*, Vol. 28, Issue 1, 2016, p. 83.

law matters. After Australia enacted mandatory mediation of family disputes, there has been a growing interface between legal practitioners and mediation professionals in Australia. She elaborates on the collaboration between these legal practitioners and mediation professionals to reflect on the implications of compulsory mediation for client services and inter-professional practices. She suggests that the success of mediation as an alternative dispute resolution will depend on the culture of collaboration and the training of practitioners.

This research focuses on mediation in the case of domestic violence in Indonesia and Australia. The locus of this research is the Central Java Province of Indonesia and the State of South Australia. The selection of the Central Java Province as the locus of this research is because the province, according to the Women's Commission, has the highest reported cases of domestic violence among other provinces in Indonesia.¹⁵ While the selection of South Australia is based on the evidence that South Australia is the

¹⁵National Commission on Violence against Women, *Annual Notes/ Catatan Tahunan (CATAHU)*, Jakarta, 8 March 2019.

first time to set up Family and Domestic Violence Court in Australia in 1997.¹⁶

B. Aims of Research

- a) To elaborate on the nature of domestic violence and the intervention on domestic violence in Indonesia and Australia.
- b) To explore the implementation of mediation in domestic violence cases in Indonesia and Australia

C. Significance of the Research

The literature on domestic violence in the past two decades has tended to focus on the nature and effect of domestic violence on women and children. There is not much literature on the service for the victims of domestic violence and its effectiveness, especially the service on the legal aspects of domestic violence. The existing legal assistance for the victims of domestic violence is more concentrated on litigation or punishing the

¹⁶ A. M. Hennessy, *Specialist Domestic and Family Violence Courts*, (The Rockhampton: Queensland, 2008), p. 3

perpetrators, and often overlooked the rights of victims that need to be restored. This research endeavors to find evidence from two countries, Indonesia and Australia, on how the two countries serve the women victims of domestic violence to seek justice through the restorative justice system, which is mediation. In addition, this research enriches the existing literature on the intervention of domestic violence. It also provides a theory for social workers, law apparatus, counselors, and people who engage with the service delivery for the victims of domestic violence on how to resolve domestic violence cases through mediation in the frameworks of the restorative justice system.

D. Data Collection Methods

The research combines a qualitative approach and a series of one-to-one interviews exploring how the mediation system is formulated and implemented in Indonesia and Australia. Primary data is collected through a series of semi-structured in-depth interviews, conducted with key people in the Family Court, the Integrated Service Center (PPT) of Central Java, the police, and the Women's Safety of South Australia. Participants

share their views, experiences, and perceptions of the issues outlined in the interview guides.

Data is also collected through a series of Focus Group Discussion (FGD). The FGD will engage with groups of the people engaged with mediation both inside and outside the court.

In addition, library research or document collection will be conducted for this research, such as the government regulations, case reports and news related to the services of the mediation in Indonesia and Australia.

E. Theories for Analysis

The process of analyzing the data is started during and after the data collection activities, which is both in the field of the research and after leaving the field. Since this is qualitative research, the data collected will be analyzed and interpreted in the form of a description of words, not numbers. Coding will be done through the identification of keywords to manage the data. As the data is collected through various methods; interview, Focus Group Discussion (FGD), and Document Collection, triangulation will be conducted to get the most valid data.

For the framework of data analysis, Miles and Huberman's framework will be adopted. This framework has three main components: Data reduction, data display, drawing and verifying conclusions.¹⁷

This research will use Interpretive Evaluation Research to engage with the study of policymaking of court-mandated mediation. According to Denzin, this approach can provide policymakers with pragmatic, action-oriented recommendations to alleviate the policy problem,¹⁸ and can also provide the basis for practical proposals such as the improvement or removal of specific programs.¹⁹

As one of the aims of this research is to compare the mediation system in Indonesia and Australia, it will use Lawrence M. Friedman's theory of the legal system. Friedman states that the effectivity of the implementation of certain regulations depends on three factors: Legal

¹⁷ Miles, M.B., & Huberman, M.. *Qualitative Data Analysis: An Expanded Sourcebook*, (2. ed.), London, 1994.

¹⁸ Denzin, Norman K., *Interpretive Interactionism*, Sage Publication, California, 1989, p. 18

¹⁹ Denzin, *Ibid.*, p. 23

structure, a legal substance, and legal culture.²⁰ Regulations on mediation in Indonesia and Australia will be compared through the perspective of Friedman above. Hence, the structure of mediation, the substance of regulations on mediation, and the culture of mediation in Indonesia and Australia will be explored and compared.

Furthermore, as this research engages with women, it will employ a feminist perspective. So, this research is not only *about* women, but also *for* women, and the betterment of women's lives. Feminists believe that objective knowledge is not possible. Knowledge should be used for emancipatory purposes, in this case, is for women's emancipation against domestic violence. With this in mind, some recommendations will be generated from this research for Indonesian and Australian governments to enhance the effectiveness of their mediation systems to protect women's rights and wider their access to justice.

F. Structure of Research Report

²⁰ Friedman, Lawrence M. *The Legal System: A Social Science Perspective*, Russel Sage Foundation, New York, 1975

Chapter One is the directions for this research. It serves as a theoretical framework, presenting information about domestic violence in Indonesia and Australia and the efforts made by Indonesian and Australian governments to eliminate domestic violence and deliver services for the victims of domestic violence.

Chapter Two explores domestic violence and its intervention by the Central Java Government. It covers the figure and the causes of domestic violence in Central Java. This chapter also explores the policy of Central Java Government in eliminating domestic violence and delivering services for the victims of domestic violence. At the same time, as the policy of the Central Java Government cannot be separated and must be in accordance with the Indonesia Central Government a sub-chapter on the policy of the Indonesia Central Government is also displayed.

Chapter Three explores domestic violence and its intervention in Australia. It covers the nature of domestic violence and Australian policy in eliminating domestic violence and delivering services for the victims of domestic violence.

Chapter Four explains some reason why restorative justice through mediation is needed in resolving the case of domestic violence. It also describes examples of the implementation of the restorative justice in the society. This chapter also explores some drawbacks of mediation for the case of domestic violence.

Chapter Five explores the efforts of the Indonesia and Australia government in delivering mediation service for the cases of domestic. It explores the policy of mediation in Indonesia and Australia both mediation inside the court and outside the court, and mediation implemented by the governmental agencies and by non-governmental agencies such as mass organization. compares Indonesia's mediation system and Australia's

Chapter Six concludes the research, returning to the aims of the research to summarise its findings. It will also suggest some potential areas for further research in the field of mediation for domestic violence cases.

CHAPTER II

DOMESTIC VIOLENCE AND ITS INTERVENTION IN CENTRAL JAVA, INDONESIA

This chapter explores domestic violence and its intervention by the Central Java Government. It covers the figure and the causes of domestic violence in Central Java. This chapter also explores the policy of Central Java Government in eliminating domestic violence and delivering services for the victims of domestic violence. At the same time, as the policy of the Central Java Government cannot be separated and must be in accordance with the Indonesia Central Government a sub-chapter on the policy of the Indonesia Central Government is also displayed.

A. Figures of Domestic Violence in Central Java

Legal Resources Center –Keadilan Jender untuk Hak Asasi Manusia (LRC-KJHAM), a prominent NGO in Central Java, reported that the number of the case of violence against women in Central Java is still high. From October 2018 to

June 2019, 79 cases are reported to LRC-KJHAM involving 80 victims and 81 perpetrators.²¹

Data on the number of cases of violence against women in Central Java can be obtained from the Statistics Center (*Badan Pusat Statistik/BPS*) of Central Java. The BPS received the data from annual reports issued by the Office of Women Empowerment, Child Protection, Population Control and Family Planning /*Dinas Pemberdayaan Perempuan, Perlindungan Anak, Pengendalian Penduduk, dan Keluarga Berencana (DP3AP2KB)*, the office that deals with women's issues including domestic violence. The DP3AP2KB receives reports from 35 districts and cities in Central Java every three months.

Based on the data from the BPS of Central Java Province, the number of cases of violence against women over the age of 18 or adult women fluctuated over years. In 2016, there were 1423 incidents of violence against women reported. The number of incidents decreased in 2017 with 1210

²¹ Serat, “*Kasus Kekerasan Seksual di Jateng Masih Tinggi (The Case of the Sexual Violence is still High)*”, available online: <https://serat.id/2019/07/25/kasus-kekerasan-seksual-di-jateng-masih-tinggi/> (Last viewed, 7 December 2019)

incidents before it risen up again in 2018 with 1386 incident.²²

The number of cases reported above is believed to be only ‘a tip of an iceberg’. There are more cases of violence against women, especially domestic violence, that are not reported because of some reasons. Among the reasons of unreported cases of domestic violence, according to Harkristuti Harkrisnowo:

1. The victim feels ashamed as the incident may defile her physically, psychologically, and socially,
2. The victim feels obliged to protect the good name or harmony of her family, especially if the perpetrators are the family members,
3. The victim feels that the criminal justice system may not able to make the conviction against the perpetrator,.

²² Central Java Statistics (BPS Jateng), *Jumlah Kekerasan Berdasarkan Jenis Kekerasan Yang Dialami Oleh Perempuan Usia di atas 18 Tahun* (The Number of Experienced by Women over 18 Years of Ages), available Online:

<https://jateng.bps.go.id/dynamictable/2019/09/25/516/jumlah-kekerasan-berdasarkan-jenis-kekerasan-yang-dialami-oleh-perempuan-usia-18-tahun-korban-kekerasan-di-provinsi-jawa-tengah-2015---2018.html>(last viewed: 10 December 2109)

4. The victim is worried that the report to the service center or police will make her life worst as the case could be published by the mass media.
5. The victim's fear of retaliation by the perpetrator if she reports her case.
6. The location of the police station or the service center for the women victims of domestic violence is far from the victim's residence, which made her reluctant to report her case.
7. The victim's perception that even if she reports her case, she will not get special protection from the law enforcement. So she feels intimidated if she report the case.
8. The victim's does not know that what the perpetrator did against her was a form of domestic violence that is criminalized by the Domestic Violence Law (DV Law).²³

The reasons above make the quest for the accurate data of domestic violence as a big challenge. According to M. Sairi Hasbullah, chief of Social Resilience Statistics at the *Badan Pusat Statistik*

²³ Harkristuti Harkrisnowo, *Hukum Pidana dan Kekerasan Terhadap Perempuan*, KKCW-PKWJ, UI, Jakarta, 2000

(Indonesia Central Statistics), the number of cases of domestic violence against women in Indonesia is difficult to record accurately, because most victims of domestic violence choose to hide what happened to them. He states, “Violence against women remains hidden behind a culture of silence. Some people still consider violence an accepted behavior.”²⁴ Regarding the methodology in obtaining the data, Hasbullah argues that, “due to limitations and methodological differences, the data is not comparable with any international data on violence against women.”²⁵

However, the statement from Hasbullah above about the methodology for collecting domestic violence data is not correct enough. This is because other countries also have the same problem as Indonesia in getting accurate data on domestic violence case. In Australia, for example, Parliament of Australia reported that,

“[w]omen appear to be particularly reluctant to report violence by current partners

²⁴ The Jakarta Post, ‘*Culture of Silence*’ hinders reporting of violence, 09 August 2012, available online: <http://www.thejakartapost.com/news/2012/08/09/culture-silence-hinders-reporting-violence.html> (10 December 2019).

²⁵The Jakarta Post, *Ibid.*

women seem better able to identify Intimate Partner Sexual Violence (IPSV) by a previous, rather than a current partner. They may feel confused, loyal and forgiving about a current partner”²⁶.

According to Donna Chung, from the University of Western Australia,

[i]t is important to note that all statistics about MVAW (Male Violence against Women), regardless of their source, will be a conservative or underestimate of the actual extent of the problem. This is because there will always be women who are understandably distressed or embarrassed about having been subjected to such violence, and as such, do not disclose or report it.²⁷

Australia and Indonesia have the same problem about accuracy of the data on domestic violence cases. Feeling the shame that is experienced by women victims of domestic

²⁶ Parliament of Australia, *Domestic, family and sexual violence in Australia: an overview of the issues*, available online:

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/ViolenceAust (last viewed: 10 December 2019)

²⁷ Chung, Donna, “Understanding the Statistics about Male Violence Against Women,” *White Ribbon Research Series*, Paper No. 5, May 2013, p. 4.

violence in Australia and Indonesia has prevented them from reporting their cases. However, Dale Bagshaw and Donna Chung argue that although the accurate data is difficult to obtain, for the benefit of government in creating policies and services for the victims of domestic violence, the existing data and the estimation of the number of domestic violence cases that have been collected is very useful.²⁸

B. Causes of Domestic Violence: Patriarchal Culture Based on Culture and Religion

According to LRC-KJHAM, domestic violence occurs due to unequal power relations between a husband and his wife. The wives in Java are often regarded as the property of the husbands, so they can do at any will to his wife. This was also confirmed in the report of the *Komisi Perlindungan Korban Kekerasan Berbasis Gender dan Anak* Commission for Protection of Victims of Gender-Based Violence (KPK2BGA) of Central Java Province. The commission stated that the

²⁸ Bagshaw, Dale, and Chung, Donna, "Gender Politics and Research: Male and Female Violence in Intimate Relationships", *Women Against Violence*, Issue: Eight, July 2000, p.4

cause of domestic violence in Central Java is due to an unequal relationship between men and women.²⁹

According to Rika Saraswati, the existing social system in Javanese communities reflects the unequal power relations between men and women, including in the household. In the family, men have been assigned as the head of the family. This role has been standardized in the Law No. 1, 1974 on Marriage, which places men as the heads of families and women as housewives. With this social construction that places women as subordinate human beings it is not surprising if the "conspiracy of silence" relating to the case of domestic violence experienced by women happened.

This phenomenon of "conspiracy of silence" is a consequence of a number of cultural myths or assumptions that eventually becomes social norms such as:

1. There is a view that domestic violence is a private problem so it must be resolved privately between a husband and a wife.

²⁹Annual Report of KPK2BGA for Governor of Central Java for the end year of 2011.

2. There is myth that a wife is obliged to serve her husband as he is the head of the household. The service includes protecting the 'good name' of her husband, which is also means the 'good name' of the family. Therefore, reporting husband's violence against his wife will be interpreted as a violation of the 'good name' of the family. Only an unkind wife will do that to her husband. In the Javanese philosophy there is a saying "olo meneng, becik meneng" (whether a husband is good or bad a wife must remain silent) or "swarga nunut, neroko katut" (whether go to the heaven, or go to the hell, a wife must keep following her husband).
3. The problem of economic dependence. As the head of the family it is the duty of a husband to be a breadwinner, and the wife will be dependence on her husband. This condition makes a barrier for a wife to report domestic violence committed by her husband against her or her children, because if the husband is arrested and imprisoned, it will give a negative impact on the financial condition of the family.
4. The wife is worried that her husband will be more brutal to her and her children if she reports domestic violence to the police. Usually perpetrators of domestic violence will

intimidate or threaten victims not to share the violence they experience with others. This threat is also accompanied by further threats by the perpetrators, such as threatening to kill the victims, their children or their families.

5. There is an assumption that a husband commits domestic violence because he loves his wife and children. This assumption comes from sexual stereotypes of men who perceive men as aggressive, strong, and accustomed to violent ways in solving their problems. As a result, any violence committed by a husband is socially legal. The legitimacy also comes from interpretations of religious teachings that see domestic violence perpetrated by a husband as a way to educate his wife for 'not obeying' her husband.
6. There is an assumption that wives are to blame in cases of domestic violence because they invite husbands to commit violence. The phrase "tidak ada asap kalau tidak ada api" (no smoke if there is no fire) is often used to justify domestic violence.
7. There is an assumption that a man (husband) commits domestic violence because he has experienced violence in his childhood. This bitter experience affected his life and

'incidentally' committed the same violence against his wife and children.³⁰

These assumptions have been internalized in the life of women continuously so they are perceived as undeniable truths. These assumptions also form the rationale that violence committed by a husband against his wife is normal. The justification of the authority of the husband also supported by Javanese culture.

Javanese culture, according to Lily Zakiyah Munir, is patriarchal. This patriarchal ideology emphasizes the differences between men and women, especially biological differences. Based on the biological differences, then the assumption is built, the assumption that men are superior to women.³¹

³⁰ Saraswati, Rika, *Women and the Settlement of Domestic Violence (Perempuandan Penyelesaian Kekerasan Dalam Keluarga)*, Citra Aditya Bakti, Bandung, 2006, p. 10

³¹ Munir, Lily Zakiyah, "'He is your garment and you are his ...': Religious precepts, interpretations, and power relations in marital sexuality among Javanese Muslim women," *SOJOURN: Journal of Social Issues in Southeast Asia*, Vol. 17, No. 2, October 2002, pp. 191

Not only Javanese culture, Islam, the religion embraced by the vast majority of the Javanese, has also influence the gender relations of Javanese, including in relation to the household.

Religious thought is sometimes rigid and uncompromising in upholding gender roles. Not least because religious thought and teaching are usually the products of interpretation by religious scholars, most of whom were men.

In the case of Java, the *pesantren*³² (Islamic boarding school), reinforces ideas about gender and relationships within text books such as the Arabic text, *The Chain of Two Pearls: The Explanation of the Rights of a Couple*, (*Uqud al-Lujain fi Bayan Huquq al-Zawjain*). This book is commonly taught in the Islamic boarding schools. Some of its teachings include: If a wife refuses to consummate the marriage, she will be cursed by

³²The *pesantren* is an Islamic boarding school. The student who study and stay in the *pesantren* is called *santri*. *Pesantren* mainly teaches Islamic teachings under the supervision of a *Kyai* (the owner/director of the *pesantren*). According to Zamachsjarie Dhofier, an institution can be classified as *pesantren* if it has five basic elements: Dormitory, mosque, students, Islamic teachings, and a *Kyai*, see: Zamaksjarie Dhofier, *Pesantren Tradition (Tradisi Pesantren)*, LP3ES, Jakarta, 1982.

angels all through the long night until morning comes; and a wife has to accept a husband's request for sex even if she is on the back of a camel.

Javanese patriarchal gender ideology is also reinforced by custom and religious traditions that developed in Java before and after the coming of Islam in the 13th Century.³³ Hinduism, Buddhism, and Christianity also shape Javanese cultural tradition. This is, according to Sri Suhandjati Sukri and Ridin Sofwan, because religion and its teachings were formulated and transmitted by men, so the norms that develop are the norms that most benefit men. Quoting Riffat Hassan, Sukri and Sofwan state that there are three main theological assumptions used to support patriarchal society, especially in the Islamic and Christian tradition. First, the first human female was created from the rib of the first man, so women are secondary, or derive from men. Second, woman was the first being to commit sin by tempting Adam to eat the fruit of the tree of knowledge. Third, woman was not only created from man, but was also created *for*

³³Sukri, Sri Suhandjati, and Sofwan, Ridin, *Women and Sexuality in Javanese Tradition (Perempuan dan Seksualitas dalam Tradisi Jawa)*, Gama Media, Yogyakarta, 2001, p. ix-x

man. Therefore, women are not entitled to special status, rights or dignity, except for what is already provided to and by men.³⁴

The influence of Islam in Javanese culture is disseminated through the writings of Javanese scholars who studied Islam in *pesantren* (Islamic boarding schools) and wrote books that contains ‘syncretic’ teachings which combine Islam with ancient Javanese customs to shape gender relations. The coming of Islam into Java Island³⁵ influenced Javanese culture, which intersected with Islamic teaching. Javanese cultures were combined with Islamic teachings by some Javanese literary writers, some of whom were students of *pesantren*, who received an Islamic education. For example, the *pujangga* of the 18th Century of the Surakarta

³⁴Sukri and Sofwan, *Ibid*, p. x

³⁵ There are various theories about the coming of Islam into Java about the preachers, routes, and the time, however, with the establishment of Islamic Javanese kingdom in Java, in Demak (a district in the Central Java Province today), in 16 century, showed that Islam has settled and become the majority religion in Java at that time. See: Sofwan, Ridin, “The Muslim Saints Islamised Java (*Para Wali Mengislamkan Tanah Jawa*)”, in *Reformulating the Inter-relation of Islam-Java (Merumuskan Kembali Interelasi Islam-Jawa)*, Gama Media, Yogyakarta, 2004, p. 3.

Palace, named Yasadipura II, and Rongggowarsito (1802-1873), are considered the greatest *pujangga* of Java.³⁶ Although Islam was easily accepted by the Javanese as a new religion that came in the 13th century, the Javanese did not completely abandon the teachings of their previous religions, Hinduism and Buddhism. They accepted Islam in a syncretic way, so although the Javanese are officially Muslim, they still practice some customs deriving from Hinduism and Buddhism. This type of religiosity is called *Islam-Kejawen*, meaning Javanese-Islam. For example, it can be seen through traditions such as the custom of birthday fasting (*weton*).

Some literary works of the 18th and 19th centuries that were palace-centered, known as *seratpiwulang* (book of teachings), contain teachings relating specifically to women. These define how to be a ‘good’ Javanese woman, both in individual and social life.³⁷ These teachings include *Serat Wulang Puteri (The Book of Teaching for Daughters)*, *Serat Wulang Estri (The*

³⁶ Mas’ud, Abdurrahman, “Pesantrendan Walisongo” (Pesantren and Walisongo), in Darori Amin (ed.), *Islam and Javanese Culture (Islam dan Kebudayaan Jawa)*, Gama Media, Yogyakarta, 2000, p. 238.

³⁷ Sukri and Sofwan, *Op. Cit.*, p. v

Book of Teaching for Women), *Serat Candrarini* (*The Book of Women's Essays*), *Serat Centhini* (*The Book of a Woman named Chentini*), *Serat Yadnyasusila* (*The Book of Woman's Etiquette*), and *Serat Panitisastra* (*The Book of Knowledge / Wisdom*). The discussion of women's issues in these teachings showed that women's issues are one of the most important issues in the kingdom,³⁸ as the issues often generated tensions in the house of the king. According to Sukri and Sofwan, these teachings result from political, economic and moral crises that emerged in the kingdom. In addition, the teachings were directed to maintain harmony in the life of palace insiders, as there was disharmony inside the royal family, especially among women, the first lady and other wives of the king and princes. The teachings aimed to ease tension in the royal family caused by issues such as polygamy, but also served to strengthen patriarchy.³⁹

These teachings have had a significant influence among the Javanese community. This is

³⁸Santri is a student who studies in a *Pesantren* (Islamic Boarding School) see: Dhofier, Zamakhsjarie, *Pesantren Tradition (Tradisi Pesantren)*, LP3ES, Jakarta, 1982.

³⁹Sukri and Sofwan, *Op. Cit.*, p. vi

because in Javanese culture, the king is positioned as the highest authority, so that his influence is not limited to territory or wealth, but extends to the personal lives of his people. This is the reason why the Javanese are feudalistic in character.

Javanese society is also paternalistic. The power of the father or man is greater than the mother's or woman's. Several concepts defining Javanese femininity spread within society, but these were constructed by men through the teachings in those books discussed above.

In Javanese tradition, a wife is often called *Kanca Wingking* which literally means 'a friend in the background'.⁴⁰ This also marginalizes women, as the woman's role was confined to the domestic sphere. There is a saying in Java that women's space is limited to *dapur* (the kitchen), *sumur* (the well or laundry) and *kasur* (the bed). This gender division of labor, according to Sukri and Sofwan, generates the 'task role' of women, which involves *macak* (grooming herself to please her husband), *manak* (giving birth) and *masak* (cooking).⁴¹ Because women's role is to manage the domestic sphere, Javanese parents teach girls from an early

⁴⁰Munir, 2002, *Op. Cit.*, p. 197

⁴¹Sukri and Sofwan, *Op. Cit.*, p. 6

age to undertake domestic work. Thus, it is Javanese tradition for a girl of marriageable age to be taught how to present herself, cook, and serve a man. This tradition in Javanese culture, known as *pingitan* (seclusion), restricts girls to the home.⁴² Although *pingitan* is not always practiced in every Javanese family in contemporary society, the assumed woman's role still exists. This confirms Judith Butler who states:

[T]o be a woman is to have *become* a woman, to compel the body to conform to a historical idea of 'woman'...to materialize oneself in obedience to an historically delimited possibility, and to do this as a sustained and repeated corporeal project.⁴³

As *kancawingking*, the place of a woman is behind her husband, following him and obeying his orders. There is a popular saying in Java that a wife must be "*swargo nunut neroko katut*", which means a woman must faithfully follow her husband, whether he goes to heaven or to hell.⁴⁴ This concept is

⁴²Sukri and Sofwan, *Ibid*, p. 8

⁴³ Butler, Judith, "Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory," *Theatre Journal*, Vol. 40, No. 4, 1988, p. 522

⁴⁴Hakimi et al, Mohammad, et al, *Silent for Harmony: Violence against Wives and Women's Health in Central*

taken from Islamic teaching, from the interpretation of the Qur'an, chapter 4, verse 34: "Men are the protectors (*qawwamun*) and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them with their means."

A wife in Java is also called '*garwa*', which is an abbreviation of '*sigaraning nyawa*,' meaning half a soul. This idea offers greater equality than that of *konco wingking*. This is because the husband and wife are considered two persons who become one after they marry.⁴⁵ This concept is taken from the Islamic teaching in the Qur'an, Chapter Al-Baqarah (2), verse 187, "*hunna libaasun lakum waantum libaasun lahunna*." Translated, this means they are your garment, and you are their garment, so men and women cover and protect each other. However, in Javanese culture, it is reinterpreted to mean that a woman

Java Indonesia (Membisu Demi Harmoni: Kekerasan Terhadap Isteri dan Kesehatan Perempuan di Jawa Tengah, Indonesia), LPKGM-FK-UGM, Yogyakarta, 2001., p. 19

⁴⁵Handayani, Christina S., and Novianto, Ardhian, *The Power of Javanese Women (Kuasa Wanita Jawa)*, LKIS, Yogyakarta, 2004, p. 120

must protect her husband's dignity and honour. She must not expose the bad side of her husband.

The traditional values embraced by the majority of Javanese mean that when a woman marries, she belongs to her husband more than to her parents. Her husband's rights are more important than her parents'. In Java, the bride is advised by her family to carefully conceal any conflict that may arise between the couple. This attitude is known as *Njaga praja*, meaning that the honour of a husband must be protected from people outside the family. After marriage, a woman must meet the demands of her role in the community, which has been socially determined: taking care of the home, giving birth, parenting, and serving her husband.⁴⁶ This is one among many reasons why Javanese women tend not to expose or report the domestic violence they experienced.

C. Service Policy for the Victims of Domestic Violence: The Central Government of Indonesia

As the policy of the Central Java government in delivering protection and services for the

⁴⁶Hakimi et al, *Op. Cit.*, p. 19

victims of domestic violence should follow and must be in accordance to the policy of the Central Government of Indonesia, hence, it is necessary to explore the policy of the Central Government about the services provided for the victims of domestic violence at first before the policy of the Central Java Province. Understanding the policy of the central government will form a basis of analyses of the same policy on domestic violence in the context of Central Java.

In general, there are four ways on how women cope with domestic violence they experienced: *First*, accepting the violence experienced as a normal incident, *second*, negotiating with the situation and the perpetrators, *third*, asking for help from closest people or influential figures among them, and *fourth*, accessing legal or women services.

Among the women victims of domestic violence there were women who accessed services provided by the government and NGOs.

As mandated by the Law No 23, 2004, on the Elimination of Domestic Violence (DV Law) Indonesian government must provide service for the victims of domestic violence. These services include:

- a. Protection by the family of the victims of domestic violence, police, attorney's office, court, advocate, social institutions, or other party either temporarily or based on authority on the protection order from court;
- b. health services for recovery according to medical needs of the victims of domestic violence;
- c. handling specific matters that related to the confidentiality of the victims of domestic violence;
- d. assistance by social workers, and legal aid at every level of the litigation process in accordance with statutory provisions; and
- e. spiritual counselling service for the victims of domestic violence.⁴⁷

For the services above, the central government (pemerintah pusat) or the regional government (pemerintah daerah) may provide the following:

- a. providing special service room (for the case of domestic violence) at the police station;
- b. providing apparatuses, health workers, social workers and spiritual counsellors;

⁴⁷Article 10, Law No. 2, 2004 on the Elimination of Domestic Violence

- c. establishing and developing systems and mechanisms of cooperation among service providers that are easily accessed by the victims of domestic violence; and
- d. providing protection for the victim's assistants (usually from social workers), witnesses, family and friends.⁴⁸

The DV Law states that in delivering services for the victims of domestic violence the Indonesian governments must issue regulations regarding the implementation of the services provided. The regulations must describe in details about the rights of the victims and how the services provided are run. For this reason, the Indonesian central government has issued six regulations.⁴⁹

These regulations are:

1. Government Regulation of the Republic of Indonesia No. 4, 2006, on the Implementation and Cooperation in the Recovery of the Domestic Violence Victims of Domestic ,

⁴⁸ Article 13, Law No. 2, 2004 on the Elimination of Domestic Violence

⁴⁹ Article 43, Law No. 2, 2004 on the Elimination of Domestic Violence

2. Regulation of the Minister of Women's Empowerment No. 1, 2007, on the Coordination Forum for the Implementation of the Collaborative Prevention and Recovery of Domestic Violence Victims,
3. Regulation of the Minister of Women's Empowerment and Child Protection No. 22, 2010, on the Standard Operating Procedures for the Integrated Services for Witnesses and/or Victims of Trafficking,
4. Regulation of the Minister of Women's Empowerment and Child Protection No. 5, 2010, on the Guidelines for the Establishment and Development of the Integrated Service Centers,
5. Regulation of the Minister of Women's Empowerment and Child Protection No. 1, 2010, on the Minimum Service Standards of the Integrated Services for Women and Children Victims of Violence,
6. Regulation of the Minister of Women's Empowerment and Child Protection No. 19, 2011, on the Guidelines for Empowering Women Victims of Violence.

Based on the explanation of the Government Regulation of the Republic of Indonesia No. 4, 2006, on the Implementation and Cooperation of the Recovery of Victims of Domestic Violence, it is stated that efforts to deliver recovery service for the victims of domestic violence should be conducted in a coordinated and integrated way involving various sectors across the central government, provincial government, and district/city government . This coordination service must also involve cooperation between government agencies and the communities (non-governmental organizations).

To coordinate the effort of service delivery it is necessary to establish a coordination forum to provide services for victims of domestic violence. The coordination forum is established both in the central and regional level. At the central level, the coordination forum is established by the Ministry of Women's Empowerment and Children Protection, while in the province formed by the Governor, and at the district and city level formed by the head of district and the Mayor..⁵⁰

⁵⁰Explanation of the Government Regulation of the Republic of Indonesia No. 4, 2006, on the

To establish a Coordination Forum at the Central level, the Minister of Women's Empowerment and Children Protection has issued Regulation of the Ministry No.1, 2007, on the Establishment of the Coordination Forum for the Implementation of Cooperation and Prevention of Victims of Domestic Violence.

This coordination forum consists of several ministries, NGOs and community organizations. The coordinator or the leading sector of the coordination forum is the Minister for Women's Empowerment and Children Protection, and the steering committee members are: the Minister of health, the Minister of Social Affairs, the Minister of Religious Affairs, the Minister of Internal Affairs, and the Chief of Indonesian police. The chair of the coordination forum is the Deputy of the Minister Women's Empowerment and Children Protection. This forum involves several NGOs and mass organizations including; Muslimat NU, Fatayat NU, Aisyiah Muhammadiyah, and LBH APIK, Puan Amal Hayati, Komnas Perempuan,

Mitra Wanita, the Indonesian Church Association and the Indonesian Ulama Council (MUI).⁵¹

In addition, not only establishing a Coordination Forum at the central level, based on the government regulation No. 4, 2006, the Ministry of Women's Empowerment and Children Protection 'also issued the regulation No. 5, 2010, on the Guidelines for the Establishment and Development of Integrated Service Centers for the Victims of Domestic Violence. This regulation requires provincial and district / city governments to establish a coordination forum, the same forum as at the central government level, for services to the victims of domestic violence. The coordination forum established at the regional level is called the Integrated Service Center for services for the victims of gender-based violence and children, or commonly abbreviated as Integrated Service Centers (PPT).

The PPT is obliged to provide services to victims with the following provisions:

⁵¹Regulation of the Minister of Women's Empowerment and Children Protection, No. 01, 2007, on the Coordination Forum for the Implementation of Cooperation in the Prevention and Recovery of the Victims of Domestic Violence.

1. Providing services as quickly as possible (after the report of the incident) and "without cost" to the victims,
2. organizing protection and fulfillment of the victims' rights to health rehabilitation, social rehabilitation, social reintegration and legal assistance,
3. collaborating with other institutions to provide interpreters and volunteer assistants needed by the victims,
4. networking with other government institutions or private hospitals for the treatment and recovery of the victims, and collaborating with the witness and victim protection institutions, safety shelters, or community-owned trauma centers and other institutions for the recovering of the victims' health,
5. providing convenience, comfort, and safety for victims,
6. maintaining the confidentiality of the victims,
7. providing legal assistance for the victims,
8. in the case that the implementation of the integrated services is carried out in a network, the Integrated Service Center (PPT) remains the responsible agency for

the entire process of referral services needed by victims.⁵²

The regulation of the Ministry of Women's Empowerment and Children Protection No. 5, 2010 also mandated that the services for the victims of domestic violence should be:

- a. Easy, comfortable and guarantees the victim's safety,
- b. effective and efficient in the process of the services,
- c. a guarantee for legal certainty and justice for the victims,
- d. Sustainable.⁵³

In addition, in delivering the service for the victims of domestic violence the PPT should apply the basic principles as follows:

- a. Creating a sense of security for the victims, which means convincing the victims to eliminate the fear when

⁵² Attachment of the Regulation of the Minister of Women's Empowerment and Children Protection, No. 5, 2010, on the Guidelines of Establishment and Development of the Integrated Service Center, Article "Obligation of the Integrated Service Center."

⁵³ The Regulation of the Minister of Women's Empowerment and Children Protection, No. 5, 2010, on the Guidelines of Establishment and Development of the Integrated Service Center.

- revealing their problems, and helping the victims for making a rescue plan;
- b. respecting the rights of victims (the right to confidentiality, the right to information, the right to protection, the right of their children, the right not to be discriminated against), and prioritizing the interests and choices of the victims;
 - c. having non-judgmental attitude towards the victims and avoiding the manner of blaming the victim, which means not asking questions and statements that make the victim feel guilty and ashamed;
 - d. Strengthening the victims, means giving motivation and mental reinforcement;
 - e. being empathic, which means placing the self in the position of the victims and being able to feel what the victim feels while maintaining a distance, listening actively to the victim's complaints;
 - f. facilitating and not complicating the access and services for the victims by minimizing the procedures of the bureaucracy, and prioritizing for handling the case.⁵⁴

⁵⁴*Ibid.*

In order to measure the performance of the PPT services, the Minister of Women's Empowerment and Children Protection set up a benchmark and issued the Minimum Service Standards (*Standar Pelayanan Minimal*/SPM) for the PPT. This SPM is outlined in the Regulation of the Minister No. 1, 2010. This regulation also requires all regional governments to set up an SPM for their PPTs.

The Regulation of the Minister of Women's Empowerment and Children Protection, No.1, 2010, states that what is meant by Minimum Service Standards:

"...is a benchmark for the performance of the integrated service units in providing reports/complaints service, health service, social rehabilitation service, legal assistance service, and social reintegration of women and children victims of violence."⁵⁵

Regarding the purpose of the SPM, the regulation states that the minimum services standard is intended to be a guide for the (central) government and regional governments in providing

⁵⁵Article 1, the Regulation of the Minister of Women's Empowerment and Children Protection, No. 1, 2010, on Minimum Service Standards of the Integrated Service Center of the Women and Children Victims of Violence.

integrated services for women and children victims of violence.⁵⁶ In addition, the SPM is also intended to make sure that the women and children victims of violence receive what their needs.⁵⁷

The SPM constitutes a promise of government. The SPM contains the rights that must be obtained by every victims of domestic violence. Hence, the SPM is a benchmark or reference for evaluating the performance of PPT, and a reference for the victims to claim their rights. The SPM of PPT includes services as follow:

- a. Handling complaints / reports from the women and children victims of violence;
- b. Handling health services for women and children victims of violence;
- c. Delivering social rehabilitation service for women and children victims of violence;

⁵⁶Article 2, the Regulation of the Minister of Women's Empowerment and Children Protection, No. 1, 2010, on Minimum Service Standards of the Integrated Service Center of the Women and Children Victims of Violence.

⁵⁷Article 3, the Regulation of the Minister of Women's Empowerment and Children Protection, No. 1, 2010, on Minimum Service Standards of the Integrated Service Center of the Women and Children Victims of Violence.

- d. Giving legal assistance for women and children victims of violence; and
- e. Arranging service of return and social reintegration for women and children victims of violence.⁵⁸

The efforts of PPT in delivering services for the victims are monitored and evaluated regularly. The PPT is also obliged to send regular report of activities to the upper agency. Regarding monitoring, evaluation, and report of the PPT, the regulation no 1, 2010, states that:

- a. The Minister and relevant technical agencies monitor and evaluate the implementation of the SPM of PPT,
- b. Monitoring and evaluation as referred to in paragraph (a) is intended to identify any developments and obstacles in the implementation of SPM in the PPT,
- c. In conducting the monitoring and evaluation the Minister and relevant technical agencies (should) cooperate the

⁵⁸Article 5, the Regulation of the Minister of Women's Empowerment and Children Protection, No. 1, 2010, on Minimum Service Standards of the Integrated Service Center of the Women and Children Victims of Violence.

Regional Governments (*Pemerintah Daerah*),

- d. The monitoring and evaluation as referred to in paragraph (a) shall be carried out in accordance with provisions in the regulation.⁵⁹

In terms of responsibility of sending the report of implementation of the SPM, the regulation states that:

- a. The Minister of Women's Empowerment and Children Protection is responsible for making and submitting a report on the implementation of the SPM of the PPT to the President of Republic of Indonesia,
- b. The Governor of the province is responsible for making and submitting a report on the implementation of the SPM of the PPT of its province to the Minister for Women's Empowerment and Children Protection with a copy delivered to the Minister of Internal Affairs,

⁵⁹Article 8, the Regulation of the Minister of Women's Empowerment and Children Protection, No. 1, 2010, on Minimum Service Standards of the Integrated Service Center of the Women and Children Victims of Violence.

- c. The Head of the District/Mayor is responsible for making and submitting a report on the implementation of SPM of the PPT in its region to the Governor with a copy delivered to the Minister for Women's Empowerment and Children Protection and the Minister of Internal Affairs.⁶⁰

As discussed above, the implementation of the SPM by the PPT is supervised and evaluated. The result of the evaluation forms a basis for the development and the betterment of the PPT. Regarding institutions that are in charge for the supervision and development of the PPT, Article 11 of the Regulation No. 1, 2010 states that:

- a. The Minister of Women's Empowerment and Children Protection supervises and guides the implementation of the SPM in the PPT of the provincial government.

⁶⁰Article 9, the Regulation of the Minister of Women's Empowerment and Children Protection, No. 1, 2010, on Minimum Service Standards of the Integrated Service Center of the Women and Children Victims of Violence.

- b. The Governor supervises the implementation of the SPM in the PPT of the district and city governments,
- c. The Head of District and Mayor supervise the implementation of the SPM in the PPT of the district and city level.⁶¹

Following the issuance of the SPM of the PPT, the Minister of the Women Empowerment issued a Standard Operating Procedure (*Prosedur Standar Operasional/PSO*). The issuance of the PSO is intended to making the implementation of the SPM is easier for the services deliverers in the PPT. The PSO uses a specific approach, which is oriented to the fulfilment of the rights of the women and children victims of violence. In addition, the PSO also provides guidelines for each agency involves in the PPT to provide services in their respective fields.

D. Service Policy for the Victims of Domestic Violence: The Central Java Province

⁶¹Article 11, the Regulation of the Minister of Women's Empowerment and Children Protection, No. 1, 2010, on Minimum Service Standards of the Integrated Service Center of the Women and Children Victims of Violence.

Based on the Law No. 2, 2004, on the Elimination of Domestic Violence (DV Law) the regional government are obliged to provide services to the victims of domestic violence by establishing an integrative services centre called *Pusat Pelayanan Terpadu* (PPT). The DV Law, Articles 13 and 14, obligates the local government (*Pemerintah Daerah*)⁶², in the provinces and districts to provide a range of services to victims of domestic violence. These include: a special service room in the police station, trained staff, medical personnel, social workers and religious counsellors. Local governments must also ensure the system of service involves relevant support agencies that can be easily accessed by victims, and provide protection for the victim's helpers, witnesses, family or friends.⁶³ To provide these services, the Provincial government can liaise with

⁶² The term '*Pemerintah Daerah*,' literally means 'Local Government,' is referred to the provincial and district governments. It is stated in Article 3 of the Indonesian Law No. 23, 2014, on Local Government.

⁶³ Article 13, the Law No. 23, 2004, on the Elimination of Domestic Violence

community and NGOs,⁶⁴ but is not obligated to do so.

Central Java is one of the provinces that established its PPT early. The embryo of the Central Java's PPT was established in 2003 in Tugurejo Hospital, called *Pusat Penanganan Kekerasan terhadap Perempuan dan Anak* (PPKPA) or Centre for Handling of Women and Children Victims of Violence. At that time, the service was not yet named a PPT, as there were no regulations about the nomenclature for services provided to victims of domestic violence. After the issuance of the Central Java Regulation (*Peraturan Daerah Jawa Tengah*), No. 3, 2009, on the Implementation of Protection of the Victims of Gender-Based Violence and Children, the service center then officially named *Pusat Pelayanan Terpadu* and shortened or well-known as PPT. Recently the PPT of Central Java is located in the DP3AP2KB building on the first floor, on Jl. Pamularsih No 28, Semarang.

Responding violence against women in its region and following up the Central Government Policy, the Central Java issued Regional

⁶⁴ Article 14, the Law No. 23, 2004, on the Elimination of Domestic Violence

Regulation No. 3, 2009 on the Implementation of Protection of the Victims of Gender-Based Violence and Children. This regulation has mandated the Central Java Government to two establish two institutions for the protection and services of the victims of gender based violence and children. These two institutions are namely the PPT and KPK2BGA (Komisi Korban Kekerasan Berbasis Gender dan Anak/*Commission on Victims of Violence Based on Gender and Children*). In addition, not only establishing the PPT its own, the Central Java Government was also obliged to support and initiate the establishment of PPT in all of its districts (*kabupaten*) and cities (*kota*). This obligation is in accordance with the Law No 3, 2004, on the Local Government, which mandated the Provincial Government to provide guidance for its districts and cities.

The task of PPT in the district and city is to deliver services for the victims of domestic violence in its own area or territorial. For the bigger cases such as cases that are cross-districts or provinces and cases involving public figures or high rank civil servants in the district or city will

be referred to the PPT of the provincial government.⁶⁵

For the efforts of protection and service for women and children victims of violence the Central Java Government has issued ten regulations:

1. Governor Regulation No. 76, 2006, on the formation of the *Pusat Penanganan Kekerasan terhadap Perempuan dan Anak* (PPKPA) or Centre for Handling of Women and Children Victims of Violence.
2. Governor Regulation No. 106, 2008 on the Operational Standards and Work Mechanisms of the Integrated Services for Victims of Gender and Child-Based Violence in Central Java
3. Regional Regulation No. 3, 2009, on the Implementation of Protection of the

⁶⁵There are some cases where the perpetrators are a high rank officials in the district governments such as the case of domestic violence committed by the Deputy of Mayor of Magelang City, Central Java. The fact that the officers of the PPT in Magelang are the staffs (subordinates) of the Deputy of Mayor makes them difficult to handle this case.

Victims of Gender-Based Violence and Children

4. Governor Regulation No. 45, 2009, dated 7 September 2009, on the Procedures and Requirements for the Establishment of Integrated Services (PPT) and the Commission for the Protection of Gender-Based Violence and Child-Based Violence in Central Java Province.
5. Decree of the Head of BP3AKB Number 411, 2009, on the Technical Guidelines for Membership of the PPT
6. Decree of the Head of BP3AKB of Central Java No. 463, 2010, on Technical Guidelines for the Election of Central Java Gender and Child-Based Victims Protection Commission (KPK2BGA)
7. Governor Decree No. 411/103 A / 2011, dated August 1, 2011, which confirmed the KPK2BGA is consisted of 5 people.
8. Governor Decree No. 60, 2012, on the Plan for the Achievement of the Minimum Service Standard (SPM) for Women and Children Victims of Violence in 2012-2014.
9. Governor Regulation No. 6, 2014, on the Service Standards of the Integrated

Services for Victims of Gender and Child Based Violence (PPT) in Central Java Province.

10. Governor Regulation No. 18, 2014 on the Procedures and Requirements for the Establishment of Integrated Services Center (PPT) and the Commission for the Protection of Gender-Based Violence Victims and Children (KPK2BGA).

These regulations above ensure Central Java government to deliver services for the women and children victims of violence. The integrated services it-self, as mentioned in the Central Java Regulation No. 3, 2009, means "a series of activities to provide protection for victims of gender based violence and children which are carried out collaboratively by related agencies or institutions as a single agency, prevention efforts, health services, psychosocial rehabilitation, repatriation, social reintegration, and legal assistance for the victims of gender based violence and children."⁶⁶

⁶⁶ Article 1 (18), The Central Java Regulation No. 3, 2009, on on the Implementation of Protection of the Victims of Gender-Based Violence and Children

The implementation of the protection of women and children, according to the mandate of the Central Java Regulation No. 3 of 2009, is carried out by two institutions, namely: the Integrated Service Center (PPT) and the Commission for the Protection of Gender and Child-Based Violence Victims (KPK2BGA).⁶⁷

Responding to the mandate, the Central Java Governor then issued Governor Regulation, No. 45, 2009, which was dated on September 7, 2009. It governed the Procedures and Requirements for the Establishment of the PPT of Central Java. Two months later, on December 10, 2009, the PPT was formally inaugurated. The inauguration was based on the Governor Decree No 411/91/2009. The decree also stated that the membership of the PPT consisted of the elements of local government, non-governmental institutions (NGOs), health service institutions, law apparatus, professionals, volunteers, social workers, clergy, safe houses (shelter), and social rehabilitation centers.

In addition, as mandated also by the Central Java Regulation No. 3, 2009, the Central Java

⁶⁷Article 6, The Central Java Regulation No. 3, 2009, on the Implementation of Protection of the Victims of Gender-Based Violence and Children

Government should establish another institution for the implementation of protection for women and children against any violence, namely the KPK2BGA. For this reason, the Central Java government then established the KPK2BGA in 2011.

The KPK2BGA is an independent institution. It is not under any the government structure. However, it has an obligation to report its activities and is responsible to the governor of Central Java. As mentioned in the Central Java Regulation No. 2, 2009, KPK2BGA has the tasks as follow:

1. Mediating disputes between institutions that provide services for the victims of gender-based violence and children,
2. Advocating policies and programs to protect victims of gender-based violence and children
3. Supervising the case handling process (by PPT) that is still on progress, and

4. Monitoring and supervising the implementation of integrated services on gender-based violence and children.⁶⁸

To carry out the tasks above, the KPK2BGA, in accordance to the regulation has functions to:

1. Prepare material for formulating policies and programs for the protection of victims of gender based violence and children,
2. coordinating disputes between institutions that provide services to the victims of gender based violence and children,
3. develop a system for protecting the victims of gender-based violence and children, and
4. monitor, supervise, and report the implementation of the protection and services for the victims of gender based violence and children.⁶⁹

According to the assessment of LRC-KJHAM, although the PPT has been established

⁶⁸Article 18, The Central Java Regulation No. 3, 2009, on on the Implementation of Protection of the Victims of Gender-Based Violence and Children

⁶⁹Article 19, The Central Java Regulation No. 3, 2009, on on the Implementation of Protection of the Victims of Gender-Based Violence and Children

across 35 districts/cities in Central Java, but the efforts for delivering services for the victims of domestic violence is still need some improvements. LRC-KJHAM in its policy brief in 2012 stated that the majority of women victims of domestic violence still face various obstacles and discrimination in accessing services provided by the PPT.⁷⁰ Among the causes these problems is the poor coordination among the services providers due to ‘silo mentality’, meaning that each provider does only the work that related to its interests and does not care for other providers. As the PPT of Central Java and all PPTs in the district and cities of Central Java chose networking system for their works, coordination and cooperation among them are necessary. However, some disputes often occur among them in delivering services to the victims of domestic violence, which of course disadvantage the victims. The cause of the disputes is, for example , because a service provider or agency relies on or tells other parties to perform a service for the a victim of domestic violence, whereas the

⁷⁰LRC-KJHAM, Policy Brief LRC-KJHAM of 2012, available online: <http://lrc-kjham.blogspot.com/2012/09/> (last viewed: 12 December 2012).

provider itself is actually in charge to conduct the service.

Nevertheless, although there are some weaknesses the Central Java is considered a better province compared to some other provinces in the implementation of protection for women and children and gender mainstreaming, including its efforts in delivering services for the victims of domestic violence. This is indicated by Central Java receiving the Parahita Ekapraya award for three consecutive years from 2015 to 2018 from the President of Indonesia.⁷¹

⁷¹ Inilahonline, *Ketiga Kali Jateng Raih Anugrah Parahita Ekapraya* (For the Thrid Time Central Java Awarded the Anugrah Parahita Ekapraya), (Available online:<https://inilahonline.com/ketiga-kali-berturut-turut-jateng-kembali-raih-anugrah-parahita-ekapraya/> (last viewed 12 December 2019).

CHAPTER III

DOMESTIC VIOLENCE AND STATE INTERVENTION IN AUSTRALIA

This chapter describes and goes through the discourse of domestic violence in Australia and how the Australian government deals with it. Related to the latter, in this chapter there is also an explanation of the judicial legal system and the rules of government intervention order in relation to domestic violence. In addition, there is an explanation of family dispute resolution as part of ways to mediate domestic violence conflicts.

A. Women and Domestic Violence in Australia

Domestic violence and sexual violence in 1970s were emphasized as substances of remarkable civic anxiety in Australia through involvement of feminists and the Royal Commission on Human Relationships.⁷² The movement of female refugee originated was

⁷² Evatt, E., Arnott, F. & Deveson, A., *The Royal Commission on Human Relationships*, (Canberra: Australian Government Publishing Service, 1977), p.71

fundamental to safeguarding women's care. During the 1980s governments established several major inquiries including the Commonwealth/State Co-ordination Task Force on Domestic Violence, the National Committee on Violence (NCV) and several taskforces and committees in states and territories.⁷³ These explorations normally opened varied extending references through zones of public policy and law and were not limited to criminal justice responses. For instance, the NCV noted that: '[a]ttitudes of gender inequality are deeply embedded in Australian culture, and both rape and domestic assault can be viewed as violent expression of this cultural norm'.⁷⁴ The NCV depicted developing theories of masculinities in acknowledging that reducing violence would require 'confronting our construction of masculinity'.⁷⁵

The minutes summed up that 'legislative and procedural changes are essential' but also admitted

⁷³ Murray, S. and Powell, A. *Domestic Violence: Australian Public Policy*, (Melbourne: Australian Scholarly Publishing, 2011), p. 37

⁷⁴ National Committee on Violence, *Violence: Directions for Australia*, (Canberra: Australian Institute of Criminology, 1990), p. xxv

⁷⁵ National Committee on Violence, *Ibid.* p. 101

that ‘changes in community attitudes must precede changes in behaviour’.⁷⁶ It acknowledges a prerequisite for assistance with governmental segments; between government and non-government works. The Australian rule growths also have been inclined to international research and practices. Police failure to enforce the relevant domestic violence laws has been a matter of substantial concern. In Australia, the Minneapolis domestic violence experiment,⁷⁷ which purported to demonstrate the deterrent effect of arrest, was one of the factors that encouraged greater emphasis on criminal justice responses to domestic violence. While there was debate about the implications of the original research and replication studies,⁷⁸ the nuance and complexity of that debate was largely lost and the message heard by many advocates, legislators and policy makers seemed to be that arrest deterred domestic violence.

⁷⁶ National Committee on Violence, *Ibid.* p. 102

⁷⁷ Sherman, L. and Berk, R. “The Specific Deterrent Effects of Arrest for Domestic Assault,” *American Sociological Review*, 49 (1984), p. 261-272

⁷⁸ Binder, A. and Meeker, J.W. “Experiments as Reforms,” *Journal of Criminal Justice*, 16(4) (1988), p. 347-358

In the 1980s judicial changes through Australian states made clear and prolonged police supremacies to boost greater application of the law, and announced domestic violence guard instructions. As a matter of policy, domestic violence protection orders were introduced as a supplement and not an alternative to criminal proceedings; both may be appropriate when there has been criminal conduct and there is a need to protect the victim. Since the 1990s Australian states and territories have implemented policies and strategies to address family violence in Indigenous communities. These policies typically recognise the need for a culturally appropriate framework that acknowledges the historical context of colonisation, the Indigenous emphasis on healing and the need for more holistic responses than that provided by mainstream policies.⁷⁹

For example, in 2000 a major taskforce made up predominantly of Indigenous women was established in Queensland to examine domestic violence in Aboriginal and Torres Strait Island communities (Aboriginal and Torres Strait Islander Women's Task Force on Violence 2000). The report documented very high levels of violence in

⁷⁹ Murray, S. and Powell, A., *Op.Cit*, p.49

some communities, especially against women and children. It identified factors that contribute to violence in Indigenous communities including the legacy of colonialism, together with structural disadvantage, but also held men accountable for their behaviour.⁸⁰

The Task Force made many recommendations directed towards improving government service provision across health, education and the criminal justice system as well as towards developing economic sustainability, healing and well-being in Indigenous communities. However, Indigenous women and their communities have identified ongoing concerns and have called for increased recognition of violence against women, greater consultation with Indigenous communities about programs and initiatives, support for Indigenous devised initiatives, and more adequate resourcing of specialist programs and services.⁸¹

The Australian Bureau of Statistics 2016 Personal Safety Survey has confirmed that 2.2 million Australians are subjects of physical and/or sexual violence from a partner and 3.6 million

⁸⁰Murray, S. and Powell, A., *Ibid.*

⁸¹Murray, S. and Powell, A., *Ibid.*

Australians have experience emotional abuse from a partner. About 2.2 million Australians have experience sexual violence since the age of 15.⁸²

Domestic violence is a pervasive social issue that affects multiple lives across a range of cultures and communities. In Australia, one of the most common forms of physical violence experienced by women is caused by a family member or an intimate partner (Department of Parliamentary Services 2014, 4); one woman a week is killed in Australia as a result of DV (Australia's National Research Organisation for Women's Safety 2017). In 2015 there were close to 8,000 reported family and domestic violence assaults in SA, with women and girls constituting 77% of victims.⁸³ DV discourse is predominantly focused on women as victims and men as perpetrators; DV is treated as a gendered issue as a result of power imbalance between the genders.⁸⁴

The Australian Government recognises domestic violence as including: “physical violence, sexual assault and other sexually abusive behavior, economic (financial) abuse, emotional or

⁸²Murray, S. and Powell, A., *Ibid.*

⁸³ Attorney-General's Department 2016, p.4

⁸⁴ Attorney-General's Department 2016,*Ibid.*

psychological abuse, stalking, kidnapping or deprivation of liberty [and] serious neglect where there is a relationship of dependence.”⁸⁵

It affects people of all ages and from all backgrounds, but predominantly affects women and children. The Australian Bureau of Statistics (ABS) 2016 Personal Safety Survey (PSS) estimated that 2.2 million adults have been victims of physical and/or sexual violence from a partner since the age of 15.⁸⁶

B. Law System Concerning Domestic Violences in South Australia

In South Australia, the primary regulation concerning domestic violence restraining orders (DVRO) is the Domestic Violence Act 1994. It is called the SA Act. It is pointedly less thorough than the Acts in other authorities. The main tenacity of the SA Act is to arrange for “restraining order” in problems of domestic violence. The SA Act provides that a court may make a domestic violence restraining order upon a complaint being made under the Act (s 4(1)) if there is a reasonable

⁸⁵ Australian Department of Human Services 2016, p.3

⁸⁶ Australian Bureau Statistics 2017

apprehension that the defendant may commit ‘domestic violence.’⁸⁷

A complaint may be made by a police officer or a person against whom, or against whose property, the behaviour complained about, is directed (s 7). In addition, a complaint may be made and dealt with by telephone by a police officer or a person introduced by a police officer (s 8). Though there are no provisions for interim DVROs or for the issue of a DVRO by a person other than a court, the SA Act provides for the issuing of DVROs by a court in urgent situations in the absence of the defendant (s 9).⁸⁸ The SA Act states jurisdiction on the Magistrates Court of South Australia to make DVROs (see the definition of ‘Court’ in s 3).

Domestic violence includes triggering private grievance or involving other kinds of behavior with regard to a family member. Family member, related to person against whom an order

⁸⁷ Restraining orders outside the domestic violence context are provided for in Division 7 of Part 4 of the Summary Procedure Act 1921(SA).

⁸⁸ The SA Act also provides that proceedings for DVROs are to be dealt with by the Court as a matter of priority (s 18)

may be made (a ‘defendant’), is defined in s 3 of the Act as:

- (a) a spouse or former spouse of the defendant;
- (b) a domestic partner or former domestic partner of the defendant; or
- (c) a child of whom – (i) the defendant; or (ii) a spouse or former spouse of the defendant; or (iii) a domestic partner or former domestic partner of the defendant, has custody as a parent or guardian; or
- (d) a child who usually or habitually resides with – (i) the defendant; or (ii) a spouse or former spouse of the defendant; or (iii) a domestic partner or former domestic partner of the defendant.⁸⁹

⁸⁹ In the act it is clearly explained that a spouse of a defendant is a person to whom the defendant is legitimately married. A domestic partner is a person with whom the defendant lives in a close personal relationship, i.e. a relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis (s 3 of the SA Act). The relationship needs not be, or have been, sexual. A person who lives with the defendant as part of the same household, but who does not form a couple with the defendant, e.g. an elderly mother living with the defendant and his wife, would not be a family member. Further, a person who is in a sexual or other close relationship with the defendant, but who does not live with the defendant, is not a family member.

However, persons who are not family members may apply for a restraining order under the Summary Procedure Act 1921 (SA) (the Summary Procedure Act). A court may grant a restraining order under that Act in broadly similar terms to a DVRO.⁹⁰ Courts' power to make restraining orders under the Summary Procedure Act is not confined to particular categories of people or relationships, but is instead based on there being a reasonable apprehension that the defendant may, unless restrained, cause personal injury or damage to property or behave in an intimidating or offensive manner towards the person for whose benefit the order would be made, and the court being satisfied that the making of the order is appropriate in the circumstances.⁹¹

An application for a DVRO is made to the court by way of a complaint under s 7 of the South Australia Act. A complaint may be made by:

- a member of the police force; or

⁹⁰Procedure Act, s 99.

⁹¹ Procedure Act, s 99 (1)

– a person against whom, or against whose property, the alleged domestic violence has been, or may be, directed (s 7(1)).⁹²

If the applicant is a child, the complaint may be made on behalf of the child by his or her parent or guardian, or a person with whom the child resides, or by the child with the court’s permission (but only if the child is over 14) (s 16 of the SA Act).⁹³

The South Australia Act does not require anyone (for instance, a police officer) to apply for a DVRO in any conditions. It should be understood that a court may make a DVRO if there is “a reasonable apprehension” that the defendant may commit domestic violence and the court is satisfied that the making of the order is appropriate in the circumstances (s 4(1)).⁹⁴

For the tenacities of the SA Act, domestic violence takes account of “causing personal injury to a family member or damage to the property of a family member.” It also covers engaging in any of the following manner on two or more occasions so

⁹² Domestic Violence Laws in Australia, (The National Council to Reduce Violence against Women and their Children: Canberra, 2009), p. 53

⁹³ Domestic Violence Laws in Australia, *Ibid.*

⁹⁴ Domestic Violence Laws in Australia, *Ibid.*

as to reasonably arouse in a family member apprehension or fear of personal injury or damage to property or any other significant apprehension or fear (s 4(2)):

- following a family member;
 - loitering outside the residence of, or other place frequented by, a family member;
 - interfering with property of a family member;
 - giving, sending, publishing etc offensive material to a family member;
 - communicating with a family member or to others about a family member using mail, telephone or other form of electronic communication;
 - keeping a family member under surveillance;
- or
- engaging in other conduct.⁹⁵

The court may consider happenings outside South Australia, and may issue an order “against a person who is not resident in the State” (s 4(3)). The court can also directly issue a DVRO without taking into account the premises of the application if the defendant approves to the order,

⁹⁵ Domestic Violence Laws in Australia, *Ibid.*

even though the defendant may dispute that the premises exist (s 4(4)).⁹⁶

A DVRO is made under the SA Act on a complaint (s 4). The SA Act does not set out the procedure in any detail. Section 7 requires complainants to inform the court of any relevant family contact order, or pending application for a family contact order of which the complainant is aware. As noted above, the SA Act has a procedure for dealing with a complaint by telephone, and s 9 contains a procedure for making an order in the absence of the defendant. Section 19 provides that, subject to the South Australia Act and relevant rules of court, the Summary Procedure Act applies to a complaint and proceedings under the SA Act.⁹⁷

A police officer may require a person who the officer has reason to believe is subject to a DVRO that has not been served on the person to remain at a particular place for up to two hours to allow the order to be served. If the police officer reasonably suspects the person will not comply with the order, the police officer may, without

⁹⁶ Domestic Violence Laws in Australia, *Ibid.*

⁹⁷ Domestic Violence Laws in Australia, *Ibid.*, p.54

warrant, arrest and detain the person for up to two hours (s 11).⁹⁸

The similar supremaeies can be put on if a police officer takes motive to trust a complaint about the person has been or is about to be made by telephone (s 8(7)). A DVRO ‘may impose such restraints on the defendant as are necessary or desirable to prevent the defendant acting in the apprehended manner’ (s 5(1)(a)), including:

- prohibiting the defendant from being on premises or in a specified locality;
- prohibiting the defendant from approaching a family member within a specified distance;
- prohibiting the defendant from contacting, harassing, threatening or intimidating a family member or any other person at a place where a family member resides or works;
- prohibiting the defendant from damaging property or taking possession of specified personal property;
- prohibiting the defendant from causing or allowing another person to engage in such conduct; and
- restricting the defendant’s possession of firearms.⁹⁹

⁹⁸ Domestic Violence Laws in Australia, *Ibid.*

A DVRO may disallow the defendant from being on grounds at which a family member resides (s 5(2)(a)). Such an order may be made against the defendant in relation to premises despite the fact that the defendant has a legal or equitable interest in the premises or property (s 5(3)). Where the aggrieved person and the defendant normally live together, therefore, the defendant can be excluded from the family home.¹⁰⁰

If a defendant has possession of a firearm or is licensed to possess a firearm, s 10 of the SA Act obliges a court to make certain supplementary orders:

- an order that the firearm be confiscated and disposed of or dealt with in accordance with the court’s directions;
- an order authorising a police officer to enter premises and to search and take possession of any such firearm;
- an order that a licence or permit to possess a firearm held by the defendant be cancelled and delivered up;

⁹⁹ Domestic Violence Laws in Australia, *Ibid.*

¹⁰⁰ Domestic Violence Laws in Australia, *Ibid.*

- an order that the defendant be disqualified from holding or obtaining a firearm licence or permit; and
- an order that the defendant be prohibited from possessing a firearm in the course of his or her employment.¹⁰¹

A DVRO must be served on the defendant personally and is not binding until it has been served (s 11). The SA Act makes no specific provision for the duration of a final DVRO (presumably, the term of a DVRO is set out in the order).¹⁰²

Accordingly, A DVRO made in response to a telephone complaint or in the absence of the defendant will continue in force only until the conclusion of the hearing to which the defendant is summoned to appear, unless the court confirms the order (ss 8 and 9). A DVRO can be varied or revoked on the application of a police officer, a person for whose benefit the order was made or the defendant (s 12). The defendant must have the permission of the court to seek a variation or revocation. There are safeguards relating to the revocation of firearms orders (s 12(2)) and no

¹⁰¹ Domestic Violence Laws in Australia, *Ibid.*

¹⁰² Domestic Violence Laws in Australia, *Ibid.*

order may be varied or revoked without all parties being given a reasonable opportunity to be heard. It is an offence to contravene or fail to comply with a DVRO, for which the maximum penalty is 2 years imprisonment (s 15(1)).¹⁰³

Police may arrest without warrant, and detain for up to 24 hours, a person suspected of contravening or failing to comply with a DVRO (s 15). A police officer may, without warrant, arrest and detain a person for up to 24 hours if the officer has reason to suspect that the person has contravened or failed to comply with a DVRO (s 15(2) and (3)). A DVRO may apply for the benefit of any family member specified in the order, in addition to the family member who made the complaint or on whose behalf the complaint was made (s 5(1)(b)). By virtue of s 16, a child may him or herself be the complainant or applicant for a DVRO. If the child is 14 or over, the court can give leave for the child to make an application.¹⁰⁴

Otherwise, an application can be made for a DVRO for the child by a parent or guardian, or a person with whom the child normally or regularly resides. The SA Act makes no special provision in

¹⁰³ Domestic Violence Laws in Australia, *Ibid.*

¹⁰⁴ Domestic Violence Laws in Australia, *Ibid.*

relation to children as witnesses in DVRO proceedings. Recognition and enforcement of orders made in other jurisdictions. The Principal Registrar may, subject to any applicable rules of court, register a foreign domestic violence restraint order, being an order made under a law of another State or Territory or New Zealand declared by regulation to be a law corresponding to the SA Act (see ss 3 and 14).¹⁰⁵

C. Family Dispute Resolution in Australia

The term family dispute resolution (FDR), instead of mediation, is roughly defined in Australian Act. It denotes a process that is other than a judicial process,¹⁰⁶ in which “the practitioner

¹⁰⁵ A registered foreign DVRO has the same effect, and may be enforced in the same way, as a DVRO under made under the SA Act (s 14(2)). The court may give such directions and make such adaptations or modifications to the order as the court considers to be necessary for the effective operation of the order in South Australia (s 14(3)), and may, on application, vary the order or cancel the registration at any time (s 14(4)). See Domestic Violence Laws in Australia, (The National Council to Reduce Violence against Women and their Children: Canberra, 2009), p.53

¹⁰⁶ Family Law Act 1975 (Cth) s 10F

is independent of all of the parties.”¹⁰⁷ The nature of FDR as stated in the act is to help seek the parties solution or determination of some or all of their disputes.¹⁰⁸ Practically, mediation is indeed crucial behind the term FDR employed by parties required to partake in the process since arbitration is regarded inappropriate in most cases of family law.¹⁰⁹

Effectively, the legislation obliges parties to participate in FDR before searching for the aid of family courts, except their cases are vital or tumble in certain situations.¹¹⁰ The government’s viewpoint behind this legislation is to inspire people to be responsible for determining disputes themselves “in a non-adversarial manner.”¹¹¹

In addition to the parties being required to attend dispute resolution, they must also obtain a certificate from the FDR to evidence their attendance. This certificate is issued at the

¹⁰⁷ Family Law Act 1975 (Cth) s 10F (b)

¹⁰⁸ Family Law Act 1975 (Cth) s 10F(a)

¹⁰⁹ Family Law Act 1975 (Cth) s 10L which confines arbitration to cases involving financial issues.

¹¹⁰ Family Law Act 1975 (Cth) s 60I

¹¹¹ Explanatory Memorandum, Family Law Amendment (Shared Parental Responsibility) Bill 2005 (Cth) Schedule 1

conclusion of the mediation,¹¹² and must be filed with any later parenting application made to a Family Court.¹¹³ FDR can issue one of four types of certificates, depending on the circumstances that present. One certificate states that one or both parties made a ‘genuine effort’ to negotiate, another that one or both parties did not in fact make a ‘genuine effort’. An additional type of certificate attests to the fact that one party attempted to organize mediation and the other party either refused or failed to attend.¹¹⁴ Finally, a certificate can be issued where the FDR considers that family dispute resolution was inappropriate in the circumstances.¹¹⁵

¹¹² The exceptions are set out in the Family Law Act 1975 (Cth) s 60I(9)

¹¹³ Family Law Act 1975 (Cth) s 60I(7)

¹¹⁴ Family Law Act 1975 (Cth) s 60I(8)(a)

¹¹⁵ In examining if the case needs a proper mediation the practitioner must have regard to whether both parties can ‘negotiate freely’ or whether there are any factors present which will mean that a party is unable to negotiate freely, including family violence, safety issues, inequality of bargaining power and the physical or psychological health of a party, see Family Law Act 1975 (Cth) s 60I(8)(aa); and Family Law Regulations 1984 (Cth) reg 62.

To be able to issue certificates, mediators must be registered FDR,¹¹⁶ and have sufficient family law mediation experience and training to be accepted on to the dispute resolution register of the Commonwealth Attorney-General's Department.¹¹⁷

In practice, FDR will generally be handled by specialist family mediators who can work outside the "parameters of the court," although regulated to a significant grade by the legal basis.¹¹⁸ They will regularly also be qualified

¹¹⁶ The FDR practitioners must be on the Dispute Resolution Register of the Commonwealth Attorney-General's Department. The requirements for a person to qualify for registration are set out in the Family Law Regulations 1984 (Cth) reg 58. All FDRPs in Family Relationship Centres are registered practitioners. If a party is considering using other types of community or private FDRPs, it is prudent to check their registration status.

¹¹⁷ Family Law Regulations 1984 (Cth) pt4A div 2, 'Accreditation of persons as family dispute resolution practitioners' and pt B, div 2, 'Registration of family dispute resolution practitioners'. See Commonwealth Attorney-General's Department, For Family Dispute Resolution Practitioners, Accreditation and Registration at 2 July 2008

¹¹⁸ For example, there are more than 40 references to 'family dispute resolution practitioner' in the Family Law Act 1975 (Cth) and more than 100 references in the Family Law Regulations 1984 (Cth)

beneath the recently reputable controlled “national mediation accreditation system,” and as such will be subject to the Australian National Mediation Standards (‘Practice Standards’).¹¹⁹

Many FDR practice in Family Relationships Centers and other community mediation organizations are funded by the federal government, but separate to the functioning of courts.¹²⁰ Other providers of family dispute resolution include Legal Aid Commissions around Australia and independently accredited practitioners who consist of family lawyers and social scientists. Lawyer and social scientist mediators are also subject to the professional codes of conduct of their professions.¹²¹

¹¹⁹ National Alternative Dispute Resolution Advisory Council (NADRAC), Australian National Mediator Standards, Practice Standards (2007) (‘Practice Standards’) at 2 July 2008

¹²⁰ See L Maloney and B Smyth, ‘Family Relationship Centres in Australia’ (2004) 69 Family Matters 64. See also Commonwealth Attorney-General’s Department, Family Relationship Centres

¹²¹ For example, family lawyers are subject to the Family Law Council and Family Law Section of Law Council, Best Practice Guidelines for Lawyers Doing Family Law Work (2004) paras 1.3, 12 at 2 July 2008.

The term ‘independent’ in its application to the role and practice of FDR in Australia, has not been explicitly defined in the Act. The only guidance as to its meaning is the reference in the Act to the practitioner being required to be ‘independent of all the parties involved in the process.’¹²² The term is also yet to be judicially considered. However, an examination of the legal and ethical obligations of FDR can inform our analysis as to the true meaning of the term ‘independent’ in the context of family dispute resolution.¹²³ These obligations are primarily contained in the Act and the Family Law Regulations 1984 (Cth). Also relevant to this discussion are the recently drafted National Alternative Dispute Resolution Advisory Council (NADRAC), Australian National Mediator Standards (‘Practice Standards’).¹²⁴

¹²² Family Law Act 1975 (Cth) s 10F(b). The definition in s 10G of Family Dispute Resolution Practitioner only sets out the groups of people eligible to be FDRPs, it does not provide any specific guidance in relation to their role appropriate role

¹²³ The legal and ethical obligations are set out under the Family Law Act 1975 (Cth); Family Law Regulations 1984 (Cth); and Practice Standards, NADRAC, above n 18

¹²⁴ NADRAC, above n 18

The overriding legal obligation of practitioners in family dispute resolution processes is to ensure that, during the discussions and when considering parenting arrangements, the best interests of children are promoted.¹²⁵ For lawyer FDRPs, the Best Practice Guidelines for Lawyers Doing Family Law Work reinforce this obligation making clear that ‘all practitioners or conciliators who deal with parenting matters are required by the Family Law Act to promote an outcome which is in the best interests of the child.’¹²⁶ Another overarching legal obligation is that FDRPs encourage parents to share parental responsibility

¹²⁵ Family Law Act 1975 (Cth) s 63DA(2). This mirrors the obligations of judicial officers when considering parenting applications as the overriding consideration for the court is that the best interests of the children are paramount, Family Law Act 1975 (Cth) s 60CA. Best interests are determined by the court examining the lists of factors set out in Family Law Act 1975 (Cth) s 60CC. For lawyer FDRPs this is reinforced in the Family Law Section Law Council of Australia and Family Law Council Australian Government, Best Practice Guidelines for Lawyers Doing Family Law Work, above n 20

¹²⁶ Family Law Section Law Council of Australia and Family Law Council Australian Government, above n 20, paras 6.1, 17.

for their children, that is, have joint input into important long-term decisions.¹²⁷

FDR practitioners are themes to an array of more legal and ethical obligations which arise before, during and after the mediation. Prior to mediations taking place, they are required to screen parties and their cases to ensure they are suitable for mediation.¹²⁸ In practice, many FDR practitioners undertake detailed intake processes, often engaging parties in separate meetings prior to the mediation.¹²⁹

¹²⁷ Family Law Act 1975 (Cth) ss61B and 61C. This also derives from the rebuttable presumption in the Act of shared parental responsibility: Family Law Act 1975 (Cth) s 61DA. Shared parental responsibility involves parents having joint input into decisions in relation to a child, see s 61B. For an explanation of the approach of the court see Z Rathus, 'How Judicial Officers are Applying the New Part V11 of the Family Law Act: A Guide to Application and Interpretation (2008) 20(2) Australian Family Lawyer 5. See also B Fehlberg and J Behrens, *Australian Family Law: The Contemporary Context* (Oxford University Press, 2008), p. 264–77

¹²⁸ Family Law Regulations 1984 (Cth) reg 62

¹²⁹ Cooper, D. and Brandon, M., 'Non-Adversarial Advocates and Gatekeepers: Lawyers, FDR Practitioners and Co-operative Post-Separation Parenting' (2008) 19 *Australasian Dispute Resolution Journal*, p. 104, 107

In the course of these intake processes they are also required to supply parents with certain types of information concerning mediation,¹³⁰ including details of the mediator's role, their qualifications, any fees that will be charged, and information that they are not permitted to provide legal advice to parties, 'unless they are legal practitioners or the advice is about procedural matters'.¹³¹ Practitioners must also advise parties of the limits to the confidentiality and admissibility of certain types of information disclosed during the course of discussions.¹³² For example, FDRPs cannot keep information confidential that may assist to protect children from physical or psychological abuse.¹³³ Practitioners are also, in certain circumstances, required to provide parties

¹³⁰ If a parent is considering making a parenting application in a family court the FDRP is obliged to provide the parties with information about reconciliation, Family Law Act 1975 (Cth) s 12G

¹³¹ Family Law Regulations 1984 (Cth) regs 64(d), 63(1)(a), (b) and (c)

¹³² Family Law Act 1975 (Cth) ss10H and 10J. See also NADRAC, above n 18, para 6.9

¹³³ Family Law Act 1975 (Cth) s 10H(4)(a)

with information to assist them to assess the possibility of reconciliation.¹³⁴

FDR practitioners are also subject to a cluster of what may be termed ethical obligations when engaged in family dispute resolutions. They are specifically directed to avoid conflicts of interest and cannot facilitate mediations in which they have had personal or professional dealings with parties, unless both parties agree or the previous dealing is ‘not of a kind that could reasonably be expected to influence the ... practitioner in the provision of his or her family dispute resolution services’.¹³⁵ Further, practitioners cannot use any information obtained from mediations ‘for personal gain’ or ‘to the detriment of any person’.¹³⁶

¹³⁴ Where parties are considering filing court proceedings: Family Law Act 1975 (Cth) s 12G. This is unless the parties have already been supplied with such information or the FDRP considers ‘that there is no reasonable possibility’ that the parties will reconcile

¹³⁵ Family Law Regulations 1984 (Cth) reg 65. This is echoed in the Practice Standards which require mediators to disclose any potential grounds for bias or conflicts of interest, NADRAC, above n 18, para 5(2) 8

¹³⁶ Family Law Regulations 1984 (Cth) reg 64(e). Again, also contained in the Practice Standards, NADRAC, above n 18, para 5(4) 8

In certain contexts, practitioners are also required to raise specific parenting issues with parties. When discussing with parties how parental decision-making will occur after separation, FDRPs are obliged to ask the parties to consider whether any agreement reached should be committed to writing in the form of a formal ‘parenting plan’.¹³⁷ They are also required to provide the parents with information as to where they can obtain assistance to further develop such a plan.¹³⁸ Again, practitioners must inform clients that all decisions made in the course of developing their parenting plans should be in the best interests of their children.¹³⁹

The second major provider of family dispute resolution services in Australia after the state is Legal Aid Commissions, which have in-house mediation programs for family law matters. Legal Aid Commissions operate under government guidelines that require non-urgent disputes to be considered for dispute resolution processes other than litigation. One of the peculiarities of the Legal Aid model is that the clients’ legal advisers, and

¹³⁷ Family Law Act 1975 (Cth) s 63DA(1)

¹³⁸ Family Law Act 1975 (Cth) s 63DA(1)

¹³⁹ Family Law Act 1975 (Cth) s 63DA(2)(a)(ii).

frequently a legal representative for the children, are present throughout the dispute resolution process to act as support persons and advisers for their clients.

In another contrast with many community sector services, which aim to build communication skills and/or effect behavioral change, Legal Aid programs have a more functional orientation, focused on producing workable parenting agreements.¹⁴⁰

Since 2006, there has been a third key player in the Australian family dispute resolution sector. As part of the reform package, the Australian government established a network of 65 Family Relationship Centers around the country located in major population centers. Designed by the previous Howard government, the point of these programs was to divert families away from the court system, by providing inexpensive dispute resolution and counseling services for separating parents with referrals to related services such as

¹⁴⁰ Family Law Act 1975 (Cth) s 63DA(2)(a)(ii)

anger management and domestic violence programs¹⁴¹.

Family Relationship Centers are run by non-government organizations with experience in the family relationships sector, selected on a tender basis and staffed by professional mediators and counselors who provide parents with three hours of mediation at no cost. As initially considered, lawyers were prohibited from attending these Centers and referrals to the legal profession were not encouraged. However, the present Australian government has moved away from this approach, and in 2009 introduced a Legal Assistance Partnership Programs to ensure that mediation clients receive accurate legal advice about their options and entitlements.

D. The Rules of South Australian Intervention Order for Domestic Violence

The Rules of Domestic Violence in South Australia are called Intervention Orders. Order Intervention Orders (IO) in South Australia are

¹⁴¹ Parkinson, P., “Keeping in Contact: Family Relationship Centers in Australia. *Child and Family*,” law quarterly, 18 (2) 2006, p. 159

issued under the Intervention Orders (Prevention of Abuse) Act 2009 (SA):

“Article 18 of this Act allows a Police officer to Issue a temporary Intervention Order against a defendant (PIIO). This can be issued without the consent of a person protected and effective as soon as given to the defendant. PIIO gives the defendant a court date within 8 days (or within the next 2 days) of court hearing. Under Article 20 of the Act, an application can be submitted to the court for an Intervention Order to be issued. Applications can be made by the police, guardians or those responsible on behalf of the child or by an individual person. In this situation, the person protected does not have the protection of an Intervention Order before an order is issued by the court. Instead, the court may also issue Intervention Orders in accordance with Section 28 of Sentencing of 2017 (SA) when completing a criminal charge or in accordance with Section 23A of the Bail Act 1985 (SA) when considering bail applications. A new court file was created for this order.”¹⁴²

¹⁴² *Information About Intervention Order*, (South Australia Police: SA), p.3

In South Australia, the Intervention Order (Abuse Prevention) Act 2009, is a set of rules made for the problem of domestic and or non-domestic violence. Other states might have different rules in this regard. Judicial cases stated to deal with domestic violence must clearly state that this is a "nationally recognized DVO"¹⁴³

Judicial Trial Process for Intervention Orders In South Australia, Intervention Orders are ongoing after those involved are confirmed/ the conditions ar completed in accordance with section 11 of the Act. After being confirmed/completed, the defendant cannot submit an application to change or cancel the order for 12 months or longer if ordered by the court. There is no limit on when a protected person or applicant (eg South Australian Police) can apply to change or cancel an order. Applications to vary / revoke Intervention Orders are only made on the final order. If someone wants to vary or revoke an Interim Order Intervention, they can submit an application but the file will be carried forward rather than the newly created variation file.¹⁴⁴

¹⁴³*Information About Intervention Order ,Ibid.,p.4*

¹⁴⁴*Information About Intervention Order, Ibid., p.5*

Intervention Orders brought to the Magistrates Court of South Australia generally do not require a protected person to be present in court. Protected persons are usually absent unless they are required to provide evidence during the contested trial, which may be several months after the first list of issues. If the protected person must provide evidence in the Intervention trial, the court must submit an application, ordering specific arrangements for taking evidence from witnesses. Applications for special arrangements must be made in writing by those who call vulnerable witnesses to provide evidence and submit it to the court before the trial begins.¹⁴⁵

All Orders of Domestic Violence Interventions in South Australia are handled in the criminal jurisdiction of the Court. Criminal matters and related Intervention Orders are often postponed to allow the accused to be assessed and then attend an abuse prevention program. Interim Intervention Orders may include provisions that the defendant contacts the Intervention Program Manager. Successfully completing this program can result in reduced penalties for criminal charges. Failure to attend the program can result in

¹⁴⁵*Information About Intervention Order, Ibid.*

a prison sentence. The main focus at the beginning of criminal proceedings tends to refer the accused to the right program, together with giving SAPOL time to produce relevant evidence and ensure temporary orders / conditions of satisfaction are satisfactory.¹⁴⁶

Depending on the severity of criminal charges, some defendants will be detained. Below is an overview of Intervention procedures in the South Australian Magistrates Court:

1. When the PIIO was published, SAPOL accessed the court database through a link from the SAPOL database to get the date and location of court hearings entered into the PIIO.
2. The first court session took place without the presence of the accused, as required by the Intervention Act. If an Interim Interim Order is issued by a court, the service is enforced on the date after the first trial by SAPOL. This usually happens before the second trial.
3. If the defendant attends the court for a second or subsequent hearing, they are considered to have been served but will receive a copy of the Intervention Order issued.

¹⁴⁶*Information About Intervention Order, Ibid.*

4. A limited number of Intervention Orders are registered for mediation - this can occur after the first trial or on the same day as the next session. Mediation can be requested by the Judge before or after issuing a temporary Intervention Order. This tends to be a problem of family violence compared to disputes between neighbors.
5. Defendants are represented personally, if at all, for Intervention matters because generally there is no right to legal assistance. When a personal application is submitted, representatives for the applicant / victim can be available through the Women's Domestic Violence Court Assistance Service managed by the Legal Services Commission.
6. The last Intervention Order has no expiration date.
7. The defendant can only submit variations / revocation 12 months or more after confirmation of the final order.¹⁴⁷

The aforementioned explanation indicates that Australian government deals seriously with the issue of domestic violence and other issues related

¹⁴⁷*Information About Intervention Order, Ibid., p.7*

to it. The seriousness can also be seen from how courts and non-court organizations go hand in hand to resolve the problems. What highlights this chapter is that Family Dispute Resolution/mediation in another term becomes, part and parcel, the very beginning of such issue before going to courts.

CHAPTER IV

THE NEED OF RESTORATIVE JUSTICE FOR THE CASE OF DOMESTIC VIOLENCE

Restorative justice is a concept in the legal thoughts that the aim of the justice system is to restore the rights of the victim rather than to punish the perpetrator. In restorative justice, the court is placed as a mediator to facilitate dialogue between disputing parties to settle their cases. From this notion came the idea of Alternative Dispute Resolution (ADR) which is believed to have more options in satisfying the sense of justice and also has more efficiencies than the tribunal.¹⁴⁸

Restorative justice is an alternative to replace the retributive justice in the court. It focuses not on the perpetrator and the guilt made by the perpetrator in the past, but rather focuses on

¹⁴⁸ Muladi, *HakAsasi Manusia, Politik, dan Sistem Peradilan Pidana* (Human Rights, Politics, the System of Criminal Court) , BP Universitas Diponegoro, Semarang, 1997, pp. 66-67

the rights and the future of the victims that can be restored by the perpetrator.¹⁴⁹

For the case of domestic violence, restorative justice is believed to give more advantages for the victims of domestic violence than retributive justice. Some Indonesian feminists suggest that jailing a husband perpetrator of domestic violence, through retributive justice, is not solving the problem since the victim (wife) will face new problems such as financial problem, the psychological problem of their children (feeling a shame to have their father jailed), and the future of the children. The decision made by the judge often disappointed the victims of domestic violence.¹⁵⁰ This is because, according to Widiartana, based on the retributive justice paradigm the crime is the

¹⁴⁹ Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Selected Writings on the System of Criminal Court), BP Universitas Diponegoro, pp. 76-77.

¹⁵⁰ Widiartana, G, *Ide Keadilan Restorative Pada Kebijakan Penanggulangan Kekerasan Dalam Rumah Tangga Dengan Hukum Pidana* (*The Idea of Restorative Justice in the Policy of Eliminating Domestic Violence through the Criminal Law*), Thesis Summary, Program Doktor Ilmu Hukum Universitas Diponegoro Semarang, 2011, available online: http://eprints.undip.ac.id/40816/1/ringkasan_disertasi.pdf (last accessed: 30 October 2019)

sole authority of the law apparatus, which is offender-oriented, and not involving the victims. On the other hand, the restorative justice paradigm offers another way to deal with crime. The sanctions imposed do not aim to retaliate against the perpetrators of crimes, but rather to resituate for the victims' rights. In addition, the process of resolving crimes is carried out by involving perpetrators, victims and the community.¹⁵¹

A. The Need for Restorative Justice in the Case of Domestic Violence

In restorative justice, the involvement of victims and society in settling domestic violence cases is necessary. So the result of the agreement is not decided by law apparatus and the perpetrator only as in retributive justice, but by five parties; law apparatus, perpetrator, victim and society. At least there are six reasons why restorative justice should be applied to settle domestic violence cases in Indonesia:

First, restorative justice is in line with Pancasila, which is the ideal of law for Indonesians, *second*, restorative justice could satisfy the sense

¹⁵¹*Ibid.*

of justice for the victim of domestic violence, and *third*, the fact that most cases of domestic violence involve relatives or people who have close relationship to the victims, *fourth*, the fact that most of the victims and their families choose to not going to the court for settling their cases, but rather settling the dispute through “penyelesaian ke keluargaan” or mediation, *fifth*, settling the domestic violence case through restorative justice is a way to realize harmony (or meeting) of the interests of victim, perpetrator, and society, *sixth*, the international trend on settling the penal cases that tend to pay attention more on the interests of the victim when dealing with criminal cases.¹⁵²

According to Phillipa Venning, Indonesia tends to focus on legal aspects but ignores local aspects such as local culture and wisdom.¹⁵³ One of the local wisdom in dealing with conflict is mediation, including that related to domestic violence. This is emphasized by Fatahillah Abdul Syukur and Dale Margaret Bagshaw. In “When

¹⁵²*Ibid.*, pp. 31-41

¹⁵³Venning, Philippa, “Marrying Contested Approaches: Empowerment and the Imposition of International Principles: Domestic Violence Case Resolution in Indonesia”, *Journal of Development Studies*, Volume 46, No. 3, 2010, pp. 397

Home Is No Longer “Sweet”: Family Violence and Sharia Court–Annexed Mediation in Indonesia,” Syukur and Bagshaw argue that court-annexed mediation has the potential to be a champion of Indonesian legal reform, as it has similar characteristics to *musyawarah* (deliberation), settling disputes in an amicable way. This could include domestic violence cases.¹⁵⁴

According to Ridwan Mansyur, in his book, *Mediation for Domestic Violence Cases*,¹⁵⁵ litigation in the criminal court causes disharmony in the family since it tends to punish the perpetrator rather than redress the victim’s rights. Therefore, domestic violence cases are better resolved through restorative justice, which emphasizes rehabilitation, compensation and restoring the rights of women victims of domestic violence and their children.¹⁵⁶ Restorative justice

¹⁵⁴ Syukur, Fatahillah Abdul, and Bagshaw, Dale Margaret., “When Home Is No Longer ‘Sweet’: Family Violence and Sharia Court–Annexed Mediation in Indonesia”, *Conflict Resolution Quarterly*, Vol. 30, No. 3, Spring 2013, p. 290

¹⁵⁵ Mansyur, Ridwan, *Mediation for Domestic Violence Cases (Mediasi Penal Terhadap Perkara KDRT)*, Yayasan Gema Yustisia Indonesia, 2010, p. 259

¹⁵⁶ There are some innovation (implementation of the idea of restorative justice) made by the Religious Court

mechanisms, according to Mansyur, include¹⁵⁷ court-ordered mediation.

B. Examples of Restorative Justice on Domestic Violence Cases in Indonesia

Restorative justice has been applied in Indonesia. Some communities chose to settle their disputes including criminal matters through alternative dispute resolution and avoiding litigation or the court.

In a report by the World Bank, “Village Justice in Indonesia: Case Studies on Access to Justice, Village Democracy and Governance”,¹⁵⁸ based on a research of eighteen ethnographic case

by the redress of compensation for divorce (*mut'ah*) against husband who committed domestic violence against his wife, which is forcing the husband to pay an amount of money to his ex-wife although the divorce case filed by the wife (*ceraigugat*).

¹⁵⁷Mansyur, *Op. Cit.*, p. 259

¹⁵⁸Woodhouse, Andrea and Stephens, Matt, *Village Justice in Indonesia: Case Studies on Access to Justice, Village Democracy and Governance*, World Bank, 2004, available online:

<http://siteresources.worldbank.org/INTINDONESIA/Resources/Publication/04-Publication/VillageJustice+.pdf>, (last viewed: 9 December 2019).

studies from fourteen different locations in nine provinces in Indonesia, it was found that villagers and village leaders preferred to resolve disputes informally. As they think that the informal approach is cheaper, quicker and easier compared to the formal legal system.¹⁵⁹ In addition, informal dispute resolution is considered to be less disruptive to the harmony of the community compared to the formal legal system. Moreover, they think formal legal systems such as reporting the case to the police will make the case even worse for them as they cannot control the outcome of the process.¹⁶⁰

C. Some Drawbacks of Mediation

Instead of having some advantages, mediation for domestic violence cases also has some drawbacks that need to take into account for those who involve in the mediation.

Woodhouse and Stephens stated that not all negotiation and mediation (informal approach) are successfully settling the disputes in the community. The main problem is if the disputants have a power

¹⁵⁹*Ibid.*

¹⁶⁰*Ibid.* p. V

imbalance, such the perpetrators are government officials or someone who has a close relationship with them.¹⁶¹

Woodhouse and Stephens' finding above is in line with Ross Garrity's view. She states that not all cases of domestic violence can be mediated. She put some questions, "Would we mediate between a rapist and his 14-year-old victim? Between a father and the 10-year-old child he sexually abused for several years?"¹⁶² This view is emphasized by Dewi, a mediator in the Office in Women Empowerment of Central Java. Dewi said that she would not mediate the case of domestic violence if the case is involving heavy abuse such as a husband who abused her wife for years or the case of rape.¹⁶³ For these cases, she said, the husband and the rapist should be punished to give them lessons and deterrent effects.¹⁶⁴

¹⁶¹*Ibid.*

¹⁶² Garrity, Rose, *Mediation and Domestic Violence*, biscmi.org, March 1998, available online: https://www.biscmi.org/documents/MEDIATION_AND_DOMESTIC_VIOLENCE.html (last viewed 15 December 2019)

¹⁶³ Interview with Sri Dewi Indrajati, Mediator in the Integrated Service Centre (PPT) of the Central Java Province, in Semarang, 5 December 2019.

¹⁶⁴ Interview with Indrajati, *Ibid.*

There were some cases in Central Java where the rapist, through “mediation” by the police or the head of communities, were forced to marry the victim, especially in the case where the victim has got pregnant. In this case, the victim might also get forced to get married with the perpetrator.¹⁶⁵ The marriage was usually upon request from the parent of the victim. It can be understood that the situation was not ideal and gave a dilemma for the parent whether to jail the perpetrator or to marry their daughters as both will give several impacts on the victims. If the perpetrator, who was usually familiar to the victims and their families (like the uncle of the victim), were jailed the consequence may disadvantage the pregnant victim as she would bear the pregnancy without a husband. The pregnancy would give her shame and she was prone to be victimized by the community with this situation, as some people might see the incident, due to patriarchal culture, was caused by the woman. She would be accused of attracting the incident to happen. In addition, the future of the child of the victim would be difficult to live without a legal father in the culture of Javanese.

¹⁶⁵Interview with Indrajati, *Ibid.*

The child, and also their mother, may face some embarrassment that will influence their quality of life. They are prone to be the victims of other violence in the future such as shaming and exclusion by the communities. On the other hand, there would be also problems if the rapist is forced to marry the victim, and the victim is forced to accept her rapist to live together as a couple. It would hurt not only the feeling of the victim but also the sense of justice of the communities. There is also a risk that the victim would be treated poorly in marital life by her husband.

It is believed that the core of the problem is not about marrying or jailing the rapist, as both cases are facts and happened in the society, but more than that is how to save the victim and her children and their future life. It is the duty of the state and who are involved in the service for the victims of violence against women to make sure that any option chosen by the victim and her family would give advantage to the victim and make her life better in the future. If the victim and her family choose to marry the perpetrator, the state through its service institution for the victims of domestic violence in cooperation with the victim's family must set up a system to protect the victim in her marital life, including the safety of

the child. Similarly, if they decided to sue the perpetrator and go to the criminal court, the state must also protect and support the victim and the child that will be born to have a good quality of life in the future.

CHAPTER V

MEDIATION FOR DOMESTIC VIOLENCE CASES IN CENTRAL JAVA INDONESIA AND SOUTH AUSTRALIA

This chapter explores the efforts of the Central Java government of Indonesia and the South Australia government in delivering mediation service for domestic violence cases. The mediation for domestic violence cases is conducted in the court and outside the court. In the court, which so-called as court-mandated mediation, mediation is conducted by the judge or certified mediator. Outside the court, the mediation is conducted by the police, social workers or counsellor in women service centers, and religious leaders or public figures in non-governmental organizations or communities. A snapshot of mediation policy in Indonesia is explored to give a better picture on how Indonesia government concern on mediation issues.

A. Mediation in Indonesian Policy

There are several definitions of mediation. According to Laurence Boulle, Professor of Law from the Bond University, Australia:

“Mediation is a decision-making process in which the parties are assisted by a third party; the mediator; the mediator attempts to improve the process of decision-making and to assist the parties reach an outcome to which each of them can assent, without having a binding decision-making function.”¹⁶⁶

Another definition from came from J. Folberg dan A. Taylor. They stated that mediation is:

“The process by which participants, together with the assistance of a neutral persons, systematically isolate dispute in order to develop options, consider alternative, and reach consensual settlement that will accommodate their needs.”¹⁶⁷

The two definitions above imply the importance of third party involvement in the

¹⁶⁶Boulle, L., *Mediation: Principles, Process, Practice*, Sydney: Lexis Nexis, 2005, p.3

¹⁶⁷Folberg, J., and Taylor, A., *Mediation: A Comprehensive Guide to Resolving Conflict Without Litigation*, San Francisco: Jossey-Bass (1984), p.7

facilitation process to achieve peaceful agreement. Boulle emphasized that the mediator should guide the parties to come to an agreement that is accepted by them. Mediator's role is only assisting or facilitating the decision-making process and has no authority to make any decisions for the parties. Whereas, Folberg and Taylor emphasized that the mediation process must include the mapping of issues, exploring as many options as possible from the parties, and guiding the parties to negotiate options so that they could come to an agreement that satisfies them. This emphasis on the process of mediation means that the mediator's skills in facilitating the process of mediation are a determinant factor for the success of mediation.

The definition of mediation by Folberg and Taylor above is in line with the definition given by *The National Alternative Dispute Resolution Advisory Council* (NADRAC) of Australia. According to NADRAC,

“Mediation is usually considered to be a process in which the participants, with the assistance of the dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to

reach an agreement. The mediator is usually regarded as having a facilitative role and will not provide advice on the matters in dispute.”¹⁶⁸

From three definitions above, it can be concluded that mediation is a dispute resolution process by involving a neutral and impartial third party (mediator) who has the task of facilitating and helping the disputant parties to reach a satisfying agreement or win-win solution. This is in line with the definition given by the Supreme Court of Indonesia. In its decree, No. 1, 2016, the Supreme Court defines mediation as “[a] dispute resolution through a negotiation process to obtain an agreement of the parties through the assistance of the mediator.”¹⁶⁹

Historically, in Indonesia, mediation, which is an effort of finding a solution to problems through *musyawarah* (deliberation) had before the colonial era in Indonesia. These meetings are held

¹⁶⁸ NADRAC, Alternative Dispute Resolution: Mediation, available Online: https://web.archive.org/web/20111001132729/http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/What_is_ADRMediation (last viewed: 5 December 2019)

¹⁶⁹ Article 1, Supreme Court Decree, No. 1, 2016, on the Procedures of Court Mediation.

at the village hall or at the home of a public or religious figure attended by the parties of the disputes. Indonesian Muslim societies, mediation is known also as *Shura* (also means deliberation) and *Islah* (peace). It is carried out in the mosque, which later became the embryo of the birth of the Religious Court.¹⁷⁰

In Indonesian regions and ethnics, the tradition of the peaceful settlement outside the court is known by several terms. In Aceh, the peaceful resolution of disputes is known as *Dong Teungoh*, which means mediation. The mediators of the *Dong Teungoh* are traditional leaders, community leaders, and village officials. In Bali, a peaceful settlement is known as *sangkepan*, which means meeting. Whereas, in the Batak Karo community, the peaceful settlement outside the court is known as *runggun*, which means meeting or negotiating. In the Dayak Taman community (West Kalimantan), the peaceful disputes resolution outside the court is called "Lembaga Musyawarah Kombong". Every problem arises in

¹⁷⁰ Fanani, Ahwan, Jamil, M. M. and Sari, Isna H., (ed.), *Mengelola Konflik Membangun Damai* (Managing Conflict and Building Peace) , Walisongo Mediation Center, Semarang, p. 265

the communities is almost resolved through this institution, not through the formal court.¹⁷¹

The settlement of disputes carried out by these indigenous peoples above includes the disputes over civil and criminal cases, including violence. They realize that the peaceful settlement through their local institutions is better in order to maintain good relations between the disputant parties. This reason motivates them to avoid settlement in the formal court through the litigation process. For them, the harmony of the society must be put in the first place.

The use of the word “mediation” in the Indonesian legal system was in Law No. 30, 1999, on the Arbitration and Alternative Dispute Resolution. This law states that "in the event that a dispute or difference of opinion as referred to in paragraph (2) cannot be resolved, then based on the written agreement between the parties, the dispute or difference of opinion will be resolved through the assistance of one or more expert advisors or through mediation."¹⁷² Although the term mediation has been introduced, this law does

¹⁷¹*Ibid.*, p. 265

¹⁷² Article 6, (paragraph 3), the Law No. 30, 1999, on the Arbitration and Alternative Dispute Resolution.

not explain the meaning of mediation. The definition of mediation is explicitly stated in Supreme Court Decree (*Peraturan Mahkamah Agung*) No. 2, 2003, that describes mediation as “the settlement of disputes through a negotiation process between the parties through the assistance of a mediator”.¹⁷³ This Supreme Court Decree that rules the procedures of mediation been amended twice, through the Supreme Court Decree No. 1, 2008, and the Supreme Court Decree No. 1, 2016. There was a change in the definition of mediation. Supreme Court Decree No. 1, 2016, defines mediation as a way of resolving disputes through a negotiation process to obtain the agreement of the Parties through the assistance of the Mediator.¹⁷⁴ The change of the definition existed in the addition of the words "to obtain an agreement", which refers to an amicable effort by the parties in order that the agreement can be accepted by the parties or constitutes a win-win solution.

According to the Supreme Court Decree No. 1, 2016, the mediator in charge in the court

¹⁷³ Article 1, (paragraph 6), the Supreme Court Decree No. 2, 2003, on the Procedure of Mediation in the Court.

¹⁷⁴ Article 1, the Supreme Court Decree No. 1, 2006, on the Procedure of Mediation in the Court

mediation must have a certificate of mediation. The certificate is obtained after a person joining a mediation training and passing the test of mediator held by the Supreme Court or an institution accredited by the Supreme Court¹⁷⁵ such as Walisongo Mediation Center.¹⁷⁶

However, in a condition that there is no certified mediator in the court, or the number of the certified mediator is limited, a judge, based on the decree of the head of the court can conduct a mediation.¹⁷⁷

In conducting the task of mediation, the mediators should do the following:

- a. Introduce themselves and give opportunities to the Parties to introduce themselves to one another;
- b. explain the intention, purpose, and nature of the mediation to the parties;

¹⁷⁵ Article 13, Supreme Court Decree, No. 1, 2016, on the Procedures of Court Mediation.

¹⁷⁶ For more information about Mediation Training by Walisongo Mediation Center (WMC), please go to its website:

<http://www.mediasiwalisongo.com/2016/05/training-mediator-angkatan-ke-17-13.html> (last viewed: 17 December 2019)

¹⁷⁷ Article 13, Supreme Court Decree, No. 1, 2016, on the Procedures of Court Mediation.

- c. explain the position and role of the mediator that is neutral and does not make decisions;
- d. make the rules of the process of mediation with the parties;
- e. explain that the mediator can hold a meeting with one party without the presence of another party (caucus);
- f. draw up a Mediation schedule with the Parties;
- g. fill out the mediation schedule form;
- h. provide an opportunity for the parties to tell their problems and proposals for peace;
- i. inventory problems and schedule the discussions based on the priority scale;
- j. facilitate and encourage parties to: 1. explore the interests of the parties; 2. look for various settlement options for the parties; and 3. work together to reach a settlement;
- k. assist the parties in making and formulating peace agreements;
- l. submit reports on the successes, failures and/or inability to conduct mediation to the case inspector judge;

- m. declare that one of the parties has not the good intention and submit it to the case inspector judge;
- n. (conduct) other tasks in carrying out mediator's functions.¹⁷⁸

B. Mediation for Domestic Violence Cases in Central Java

Mediation has been applied in settling disputes that emerged from domestic violence in Central Java. The spirit to resolve dispute through mediation can be traced through the effort of the Office of Women Empowerment of Central Java¹⁷⁹, which is in charge of delivering services for the victims of domestic violence, to hold mediation training for its officers, social workers and network (police, NGO, religious leaders and legal firms). The training has been held twice, in 2013

¹⁷⁸ Article 14, Supreme Court Decree, No. 1, 2016, on the Procedures of Court Mediation.

¹⁷⁹ The name of the office has been changed several time, and now the full name of the Women Empowerment office is, “Dinas Pemberdayaan Perempuan, Perlindungan Anak, Pengendalian Penduduk dan Keluarga Berencana.” The office is located at Jl. Pamularsih 29, Kota Semarang.

and 2019.¹⁸⁰ Through mediation training, it is expected that the cases of domestic violence reported to the office can be resolved through mediation by trained mediators.

1. Court Mediation

As mentioned in the previous chapter, most women victims of domestic violence accessed the Religious Court instead of the Criminal Court to settle their cases.¹⁸¹

According to Sulistyowati Irianto and Antonius Cahyadi, domestic violence is a crime hidden within family matters including divorce.¹⁸² In 2013, 60 percent of the divorce cases filed by

¹⁸⁰ Interview with Sri Dewi Indrajati, Mediator in the Integrated Services Centre (PPT) of Central Java, 5 December 2019, in Semarang

¹⁸¹ Indonesian Women's Commission, Report of Violence against Women (*Catatan Kekerasan Terhadap Perempuan Tahun*), 2013

¹⁸² Irianto, Sulistyowati and Cahyadi, Antonius, *The Broken Barrier of Criminal and Family Law: Study of the Court for Violence against Women (Runtuhnya Sekat Perdata dan Pidana: Studi Peradilan Kasus kekerasan Terhadap Perempuan)*, Yayasan Pustaka Obor Indonesia, Jakarta, 2009, p. 326.

women involved domestic violence as a key reason for seeking divorce.¹⁸³

Therefore, the religious court is an important venue for the victim of domestic violence to access justice. According to Saraswati, the Religious Court is considered the last resort for women to end domestic violence and to obtain their rights as wives, as the criminal court system is not satisfactory.¹⁸⁴ Women avoid the criminal court system because of the difficult litigation process, which takes time and money. In addition, many

¹⁸³ Bahri, Samsul, "Punishment of Court-Annexed Counselling for Husbands as a Protection for Women Victims of Domestic Violence (*Penghukuman Mengikuti Program Konseling Bagi Suami Sebagai Upaya Perlindungan Terhadap Perempuan Korban kekerasan Dalam Rumah Tangga*)," *Publication of Indonesian Supreme Court*, 02 September 2014, available online: <http://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/penghukuman-mengikuti-program-konseling-bagi-suami-sebagai-upaya-perlindungan-terhadap-perempuan-korban-kekerasan-dalam-rumah-tangga-oleh-samsul-bahri-29> Indonesian (viewed, 2 January 2016)

¹⁸⁴ Saraswati, Rika, *Women and the Settlement of Domestic Violence (Perempuan dan Penyelesaian Kekerasan Dalam Keluarga)*, Citra Aditya Bakti, Bandung, 2006, p. 6

women fear for the future of the children who may feel ashamed to have their fathers jailed as criminals. The burdens that women face are therefore not only financial but psychological.¹⁸⁵

Some women access the Religious Court with the aim to secure a ‘good divorce’ (*bercerai secara baik-baik*), a divorce that does not break up previously good relationships.¹⁸⁶ This comprises a form of negotiation by women. Even though the divorce is final, there is an expectation that it will not spark the perpetrator’s revenge, and the woman can maintain her rights to financial support from the ex-husband for her and the children.¹⁸⁷

The trend also happens in Central Java, according to Datul, Some women victims of domestic violence that access the service of PPT SERUNI, Semarang, Central Java, ask the PPT to resolve their cases directly to the Religious Court,

¹⁸⁵ Sundari, Any, “For the Better Court” (*Untuk Peradilan yang Lebih Baik*), *Rifka Media*, No. 51, Nov 2012-Jan 2013, p. 4

¹⁸⁶ LRC-KJHAM, Policy Brief LRC-KJHAM tahun 2012, available online: <http://lrc-kjham.blogspot.com/2012/09/> (last viewed: 12 December 2019), p. 20

¹⁸⁷ Saraswati, *Op. Cit.*, p. 6

“the victims who come to SERUNI, some of them told us to go directly to the Religious Court to proceed the divorce. Their intention is to escape from their violent husband as soon as possible.”¹⁸⁸

The Religious Court will settle the cases of the victims of domestic, which is usually an appeal to get a divorce from their husbands, through mediation first. It is a must to get mediation in the Religious Court before the case is brought to the tribunal, as stated in the Supreme Court Decree, No. 1, 2008.

As explained by Makmun, a judge in the Religious Court of Semarang, about the process of mediation in the court, at the first meeting the disputants are given an opportunity to choose a mediator from the list of mediators that have been registered in the court. The mediator can be a judge in the Religious Court or non-judge who is anyone that has a certificate in mediation and registered in the court.¹⁸⁹ It the Religious Court of Semarang,

¹⁸⁸ Interview with Datul, Law Division Officer in the Integrated Services Center (PPT) SERUNI of the City of Semarang, in Semarang, 11 November 2019 .

¹⁸⁹ Interview with H. Makmun, A Judge in the Religious Court of Semarang, in Semarang, 16 September 2019.

according to Makmun, most of the mediation is carried out by non-judge mediators.¹⁹⁰

2. Non-Court Mediation for the Victims of Domestic Violence

Non-court mediation or mediation outside the court is a mediation or dispute settlement through a mediator outside the court. For this kind of mediation, there is no requirement or qualification for someone who mediates the dispute such as a certificate of mediation. However, the power of the agreement obtained through outside court mediation can be the same as the court mediation if the peace agreement is registered to the court. This has been ruled by the Supreme Court Decree No. 1, 2016, on the Procedures of Court Mediation. The decree states that:

- 1) The Parties with or without the assistance of a certified mediator who has successfully resolved disputes outside the court with a Peace Agreement can submit the Peace

¹⁹⁰ *Ibid.*

Agreement to the court to obtain a Peace Act by submitting a claim.

- 2) Filing a claim as referred to in paragraph (1) must be accompanied by a Peace Agreement and a document as evidence that shows the legal relationship between the parties and the object of the dispute.
- 3) The Case Judge before the Parties will only strengthen the Peace Agreement to be a Peace Act if the Peace Agreement is in accordance with Article 27 paragraph (2).¹⁹¹
- 4) The Peace Act of a lawsuit to strengthen the Peace Agreement as referred to in paragraph (1) must be pronounced by the Judge Examiner in a hearing that is open to the public no later than 14 (fourteen) days from the date the claim was registered.
- 5) A copy of the Peace Act as referred to in paragraph (4) must be submitted to the

¹⁹¹ Article 27 (paragraph 2) of the Supreme Court Decree, No. 1, 2016, on the Procedures of Court Mediation states that: In assisting the parties to formulate peace agreement, the Mediator must ensure that the agreement of peace does not contain any provisions that: a. contrary to law, public order, and/or decency; b. detrimental to third parties; or c. cannot be implemented.

Parties on the same day as the recitation of the Peace Act.¹⁹²

Mediation outside the court for the victims of domestic violence has been conducted in the service providers for the victims of domestic violence in Central Java: The police, the PPT of Central Java, and the mass (religious-based) organization.

a. Mediation by the Police

In the Law No. 2, 2002, on the National Police of Indonesia (National Police Law), there is the concept of "police discretion (*diskresi kepolisian*)". The police discretion is the authority of making a decision on certain conditions on the basis of personal considerations and beliefs of a police officer. The police discretion can be utilized by the police in settling domestic violence cases.¹⁹³

¹⁹² Article 14, Supreme Court Decree, No. 1, 2016, on the Procedures of Court Mediation.

¹⁹³ Rosnawati, Emy, et al., "*Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Kekerasan Dalam Rumah Tangga* (Penal Mediation as an Alternative of Dispute Resolution for the Case of Domestic Violence) ,

A form of police discretion in the case of domestic violence is resolving the case through mediation. In general, in Indonesia, solving domestic violence through mediation has been carried out in several police stations in several provinces. In East Java, for example, in Sidoarjo Police Department, 59 of 67 cases of domestic violence that occurred between May 2015 and May 2017 have been resolved through mediation.

In Central Java, the police also mediate cases of domestic violence such as in the Semarang City Police Department (*Polrestabes* Semarang). The mediation is carried out by a unit specialized unit in the police department for cases related to women and children, called the Women's and Children's Services Unit (*Unit Pelayanan Perempuan dan Anak/ PPA*).¹⁹⁴

The function of the PPA unit is regulated by the Regulation of the Chief of Indonesia National Police No. 10, 2007, on the Organization and Work Procedures of Women's and Children's

De Jure: Jurnal Hukum dan Syari'ah, Vol. 10, No. 2, 2018, p.63

¹⁹⁴ See Articles, 3 and 4, the Regulation of the Chief of Indonesia National Police No. 10, 2007, on the Organization and Work Procedures of Women's and Children's Services Unit.

Services Unit.¹⁹⁵ The Regulation states that: In carrying out the tasks referred to in Article 2, the PPA unit carries out functions: (1). Providing legal services and protection; (2). Implementing crime investigations; (3). Conducting cooperation and coordination with related agencies. The implementation of the PPA function above is regulated as follows: The Head of the PPA Unit is tasked to lead the PPA Unit in organizing the protection for women and children who are the victims of crime and to implement law enforcement on the perpetrators of the crime. The service of the PPA unit is carried out in the Special Service Room (*Ruang Pelayanan Khusus/RPK*).

To maximize the UPPA Unit duties in protecting women victims of domestic violence and to implement law enforcement against perpetrators, the PPA Unit of the Semarang City Police Department cooperates and coordinates their services with government agencies such as PPT SERUNI of Semarang, NGOs, and mass organizations. In addition, the report service for the

¹⁹⁵ in Article 6, the Regulation of the Chief of Indonesia National Police No. 10, 2007, on the Organization and Work Procedures of Women's and Children's Services Unit.

victims of domestic violence (who are generally women) is carried out by female police officers. This is to minimize the psychological burden of the women victims of domestic violence when reporting their cases, as the victims may feel reluctant to report and tell their cases if the officers are male, especially if the report is also related to the existence of injuries caused by violence on the victim's body.¹⁹⁶

To improve the report services for the victims of domestic violence the Semarang City Police Department has provided a special building for the office of the PPA Unit. This is because of the growing number of domestic violence cases in the city of Semarang that require special rooms to provide services to the victims of domestic violence. Nevertheless, in principle, reporting the case of domestic violence can be made at any police station, including the sub-district police station (*Polsek*). However, most victims of domestic violence chose to report their cases to the Semarang City Police Department because the reports are handled by female police officers,

¹⁹⁶Interview with Esti Handayani, S.H., The Chief of Operation Development (formerly she was the Head of the PPA Unit), in Semarang, 14 November 2019.

whereas, in the sub-district police station the reports are handled by male police officers as the female police officers are rare.¹⁹⁷

Regarding the flow of services for the victims of domestic violence in the Semarang City Police Department, Handayani explained that reporting domestic violence can be made by the victims themselves to the closest police station. The report also can be made by the family of the victim or anyone who is given authority by the victims to file a case. The police must accept the report and give an explanation about the rights of the victims to obtain services and assistance entitled to them from the services agencies.

To strengthen the evidence of violence in the investigation process, the victims can ask for a service of *visum et repertum* from a hospital. The *visum* for the victims of domestic violence in the City of Semarang is free of charge and usually obtained from the Tugurejo Hospital of Semarang as this hospital has an MoU (Memorandum of Understanding) with the Semarang City Police Department. However, it is permitted for the victims to obtain the *visum* from other hospitals, and the cost will still be assisted by the police

¹⁹⁷ *Ibid.*

department. Usually, it takes 1 to 2 days to get the result of the *visum*.¹⁹⁸

Complaints by the victim, according to Handayani, will be followed up with an investigation. If there is an aspect of crime committed by the perpetrator, the case will proceed to the court, and the police must handle the complaints in accordance with the law and should not advise for negotiation as those who report their problems have considered their actions although the case may, eventually, be withdrawn in the middle of the litigation process. On the contrary, if there is no criminal element in the case reported, the police will conduct mediation efforts directly.

In the investigation process, the police invited all parties, both the perpetrator and the victim. Some victims chose not to follow up their cases to the court. This usually happens after the police gave an explanation about several consequences that may be faced by the perpetrator and the victim if the case is processed through the trial in court. After the explanation, usually, some of the victims of domestic violence begin to change their minds and eventually drop the

¹⁹⁸*Ibid.*

complaint. In this process, mediation usually occurs.¹⁹⁹

At this mediation stage between the victim and the perpetrator, the police position themselves as mediators. This mediation process ends up with each party makes a statement of peace and signed a peace agreement. The perpetrator makes a statement that he will not repeat the violence and ready to change himself to have better behaviour toward the victim.²⁰⁰

At the sub-district level, in the Sub-District Police Station (*Polsek*) of Mijen, the City of Semarang, the mediation for the case of domestic violence has been implemented. According to Broto, cases of domestic violence in the district of Mijen were initially resolved at the village level through mediation. There is a principle that every case happened should be resolved first at the lowest level of the police department, before it goes to the Semarang City Police Department and Central Java Regional Police Department (*Polda Jawa Tengah*). Regarding the measure of the success of mediation he carried out, Broto states that mediation is regarded as successful when there

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

is no revenge action between the parties. In addition, the success of mediation is indicated through a good relationship between the parties and the case does not end up in the court.²⁰¹

b. Mediation by the Government-Based Women's Service Centre

As described in Chapter Two, in Central Java, there are two government-based service centers that deliver services for the victims of domestic violence. The first is the service at the provincial level and the second is the service at the district or city level like the PPT SERUNI.

At the provincial level, services for the victims of domestic violence are carried out by the Provincial PPT of Central Java, located in the DP3AP2KB Building, level 1, at Jl. Pamularsih No. 28, Semarang.

The services provided by the Provincial PPT of Central Java include: Report services, health assistance services, social rehabilitation services,

²⁰¹ Interview with Broto, *Bhayangkara Pembina Keamanan dan Ketertiban Masyarakat* (Bhabinkamtibmas) Kelurahan Jatisari, Mijen, di Semarang, 24 November 2019.

legal assistance services and social reintegration services.²⁰²

The service in this PPT is a reference service, which means that the Provincial PPT receives domestic violence cases that could not be handled by the PPT of district and city in the Central Java Province. However, some victims of domestic violence come and ask for the services from the Provincial PPT directly without referenced by the district and city, and still accepted by the PPT.

According to Novi, several cases reported to the Provincial PPT were resolved through mediation. In 2019, there have been two cases resolved through mediation. "Usually, what we did after the victim told her problem is conducting an assessment of the case and giving counseling to victims. Then, after that, we leave the decision to the victims, what she will do, whether taking legal action against the perpetrator or resolving her case

²⁰² DP3AKB, *Penanganan Korban Kekerasan Berbasis Gender dan Anak* (Handling the victims of Gender-Based Violence and Children) Available Online: <http://dp3akb.jatengprov.go.id/berita/read/penanganan-korban-kekerasan-berbasis-gender-dan-anak> (last viewed: 5 December 2019).

through mediation, it is up to her, but we tell her the consequences of both ways."²⁰³

In the Provincial PPT mediation is carried out by Sri Dewi Indrajati (usually called by Dewi), a certified mediator. Dewi passed a professional mediator training organized by the Indonesian Mediation Center (PMN) for ten days. She has mediated several cases of domestic violence. Mediation was carried out in her office.²⁰⁴

Regarding mediation for the domestic violence case, Dewi asserts that not all cases of domestic violence can be mediated. For the cases of domestic violence that caused severe injuries on the victims, according to Dewi, it is better to proceed in the court. "There are women who have been beaten up by their husbands for years; I don't want to mediate this." By doing this, she argues, it will give a deterrent and shock therapy effect to the perpetrators of domestic violence. Meanwhile, if the violence is still moderate, and the perpetrator's

²⁰³ Interview with Novi, from Law Division of the Integrated Service Center (PP) of Central Java, in Semarang, 12 November 2019

²⁰⁴ Interview with Sri Dewi Indrajati, Mediator in the Integrated Service Centre (PPT) of the Central Java Province, in Semarang, 5 December 2019.

behavior can still be amended, then the case can be mediated.²⁰⁵

When asked about difficulties in doing mediation, Dewi states that her weak point is the fact that she is a civil servant and involved in the structure of the Office of Women Empowerment, Child Protection, Population Control and Family Planning/*Dinas Pemberdayaan Perempuan, Perlindungan Anak, Pengendalian Penduduk, dan Keluarga Berencana (DP3AP2KB)*, so the principle of neutrality in mediation process was difficult to implement as she ‘naturally’ took a position in the side of the victim of domestic violence. Another problem is because she has a close relationship with the victims' companions or assistants. The victim's companions usually pull her to be on the side of the victim. Dewi realized that this is not right in accordance with the principles of mediation, as mediation requires neutrality from a mediator. This has been ruled by the Supreme Court Decree, No. 1, 2016, on the Procedure Mediation in the Court.²⁰⁶

²⁰⁵ *Ibid.*

²⁰⁶ Article 14 (paragraph C), the Supreme Court Decree, No. 1, 2016, on the Procedure Mediation in the Court.

Another problem in implementing mediation in the Provincial PPT is the limited number of mediators. Some PPT staffs still believe that the person who is permitted to do mediation is the one who has a certificate of mediation. Since Dewi is the only certified mediator, so she is the only person who is considered authorized to carry out the mediation. Every case reported to the PPT that needs mediation will be given to her, which gives her a burden as she has duties as a senior civil servant in the DP3AP2KB.²⁰⁷

The view that only a certified mediator can mediate and permitted by the law to conduct mediation is incorrect. Because, according to the Supreme Court Decree, No. 1, 2016, on the Procedure Mediation in the Court, a certificate is required only for mediator who conducts a mediation in the court,²⁰⁸ whereas, outside the court, anyone can do mediation as long as he or she is accepted by the parties as a mediator. The result of the mediation outside the court or the peace agreement agreed by the party outside the court has the same power as the peace agreement

²⁰⁷ Interview with Sri Dewi Indrajati, *Op. Cit.*

²⁰⁸ Article 13, the Supreme Court Decree, No. 1, 2016, on the Procedure Mediation in the Court

resulted by the court mediation as long as the peace agreement is registered to the court and passed the conditions to obtain the Peace Act (*Akta Perdamaian*).²⁰⁹

c. Mediation by Community-Based Organization

Mediation for the victims of domestic violence is not only carried out by the court, the police and the PPT as described in the sub-chapter above, but also by mass organizations such as Aisyiah Central Java. Aisyiah is the women wing organization of Muhammadiyah. The Aisyiah Central Java has been providing services for the victims of domestic violence including mediation service. The services are provided through the *Pos Bantuan Hukum* (Posbakum) or the Legal Assistance Post, which is under the Law and Human Rights Institution (*Lembaga Hukum dan HAM*) of Aisyiah Central Java. This institution is chaired by Siti Kasiyati.²¹⁰

²⁰⁹ Article 36, the Supreme Court Decree, No. 1, 2016, on the Procedure Mediation in the Court

²¹⁰ Interview with Siti Kasiyati, in Surakarta, 11 November 2019.

According to Kasiyati, services for the victims of domestic violence have been provided by the Aisyiah Central Java since 2002. Currently, Aisyiah has established *Rumah Sakinah* (the house of tranquility), which is a safe house or shelter for the women victims of domestic violence. The Aisyiah Central Java has educated paralegals, who are the members of Aisyiah at the district and city level. Currently, Aisyiah has an estimate of six hundred paralegals throughout Central Java who have been trained to deliver legal services for the victims of domestic violence victims.²¹¹

Kasiyati herself has mediated several cases of domestic violence. She said that “I mediated only several cases of domestic violence because we refer most of the cases to the police to mediate.” Some of the mediations were conducted at the Posbakum, and others were conducted at the office of the PPT of Surakarta, which is a district in Central Java.²¹²

Regarding problems in mediation, according to Kasiyati, some problems related to mediation often arise from the police. The police tend to resolve every domestic violence case through

²¹¹*Ibid.*

²¹²*Ibid.*

mediation, and avoiding the court. In Kasiyati's view, forgiving the perpetrator is good, but giving a lesson to perpetrators of heavy violence a must so he does not repeat the violence and the cycles of violence stop.²¹³

Kasiyati's view above is the same as Dewi's from PPT of Central Java. Not all cases of domestic violence can be mediated. For cases that only involving a light level of violence, mediation is appropriate to be implemented, but for the cases of severe domestic violence, which is life-threatening, and occurs for years, it is better to be processed through the criminal justice system in order to punish the perpetrator and give a deterrent effect for others.

Not only Aisyiah Muhammadiyah, the Fatayat of Nahdlatul Ulama (Fatayat NU) has also an institution that deliver services for the victims of domestic violence. According to Atatin Malihah, the head of the division of law, politics and advocacy of the Fatayat NU of Central Java, Fatayat NU has *Lembaga Konsultasi Pemberdayaan Perempuan dan Perlindungan Anak* (Consultation Institute for Women's Empowerment and Children Protection/LKP3A)

²¹³ *Ibid.*

that provide services, including counselling and legal assistance for the victims of domestic violence. In delivering services the LKP3A liaise with the PPT SERUNI and NGOs such as LRC-KJHAM. This institution also has conducted mediation for domestic violence cases.²¹⁴

Regarding the problem in conducting mediation, Malihah said that the main problem she faced in mediation is the power imbalance between parties. She often has some cases where the perpetrators of domestic violence are religious figures who have strong position in the communities.²¹⁵ For this cases, she rather chose to advocate the victims instead of mediating. Malihah's problem is strengthening Woodhouse and Stephens view who stated that not all mediation are successfully settling the disputes in the community. The main problem is if the disputants have a power imbalance, such the perpetrators and are government officials or someone who has a close relationship with them.²¹⁶

²¹⁴ Interview with Atatin Malihah, in Semarang, 6 December 2019.

²¹⁵ *Ibid.*

²¹⁶ Woodhouse, Andrea and Stephens, Matt, *Village Justice in Indonesia: Case Studies on Access to Justice, Village Democracy and Governance*, World Bank,

This is also strengthening Ross Garrity's view who states that not all cases of domestic violence can be mediated,²¹⁷ and the view of Dewi and Kasiyati as explored above.

C. Mediation/ Family Dispute Resolution in South Australia

According to Hennessy, Family and Domestic Violence magistrates were recognized in South Australia in 1997. Then, the states of Australia which in different ways and styles, of course, like Queensland, Melbourne, and Victoria initiated trial for some cases. These courts are operated specifically in conditions that are "non-therapeutic argumentative" in Australia. Initially,

2004, available online: <http://siteresources.worldbank.org/INTINDONESIA/Resources/Publication/04-Publication/VillageJustice+.pdf>, (last viewed: 9 December 2019).

²¹⁷Garrity, Rose, *Mediation and Domestic Violence*, biscmi.org, March 1998, available online: [https://www.biscmi.org/documents/MEDIATION AND DOMESTIC VIOLENCE.html](https://www.biscmi.org/documents/MEDIATION_AND_DOMESTIC_VIOLENCE.html) (last viewed 15 December 2019)

the South Australia court for Family and Domestic Violence courts were developed without using a clear legislative basis. They were run in a way quite complex through involving four different court sessions to connect separate jurisdictions related to family violence. A treatment program for mediation is offered to all offenders, victims and families who are monitored by the Penitentiary Department. There are special judges, police and advocates for all parties.²¹⁸

In the court proceedings, Family Dispute Resolution (FDR), better known than mediation, facilitates those who aim to terminate their marriage and offers a long-term partnership with effective and alternative methods in the court system. As a matter of fact, research among separated and divorced Australians show that more people are satisfied with the FDR experience than with negotiations between lawyers, Family Courts or ways of 'doing it yourself' to resolve separation or divorce. FDR helps them to get an agreement between related parties such as financial and property issues, childcare. Guided by a skilled

²¹⁸ Hennessy, A. M., *Specialist Family and Domestic Violence Courts*, (The Rockhampton: South Australia, 2008), p. 3

practitioner, this process also encourages them to discuss problems and develop solutions that make sense in contexts that are possible. It also enablesthem to achieve a sense of emotional closure. Besides, it paves a way to parenting plans and a more satisfactorysolution in terms of assisting individuals to follow separate lives, while continuing as parents.²¹⁹

The new Australian family law system even now requires parents involved in post-separation disputes about children, although there are exceptions, to participate in a family dispute resolution process before they are able to file an application in a Family Court.²²⁰ Family dispute resolution practitioners (FDRPs) in these contexts are required to be registered, and are obliged by law to fully inform parents of their obligations under the Act.²²¹

²¹⁹ Hennessy, A. M., *Ibid.*, p.4

²²⁰ Family Law Act 1975(Cth) s 60I. Note that this section also provides for a number of exceptions to compulsory family dispute resolution see s 60I(9)

²²¹ Referral to the Advice line on 1800 050 321 and verbal and in written form relevant information details available in the Attorney-General's fact sheets available on: Family Relationships Online
<<http://www.familyrelationships.gov.au>>

There are some basic principles of mediation (or FDR in the context of SA) in Australia that can be universally applied. Although there is centrality for the disputing parties, mediation is a process structured and guided by an independent party. In this case, mediation is different from the ad hoc negotiation process carried out between the parties. Mediation is considered successful particularly depending on the ability of the mediator. In Australia, mediation is generally carried out by former court officials, lawyers and other professionals with special expertise. In general, court staffs (Registrants or Commissioners) carry out mediations attached to the court. But in some jurisdictions the judge acts as a mediator (judicial mediation).²²²

It is noteworthy that the tenet of mediation in Australia is that it is confidential. Australian laws explicitly do not allow parties to add proof of communication made, or documents prepared, in

²²² For instance, in the judicial resolution conferences conducted in Victoria under the Civil Procedure Act 2010 (Vic). See also Practice Note 2 2012, “Judicial Mediator Guidelines Supreme Court of Victoria”, 30 March 2012; Nickless R., “Victoria Allows Judge Mediators”, Australian Financial Review, 13 April 2012.

connection with efforts to negotiate a settlement of a case. The readiness of the parties to voluntarily settle their disputes through mediation depends to a large extent on a process that is highly protected. If there are parties who are worried that their disclosure to the mediator or other parties during the mediation process will be leaked and published outside the mediation session, it is most likely that the process will come to failure or be deteriorated by those “manipulating their presentation” to ensure that the mediator and/or the other parties are not provided with certain information that might otherwise be pivotal to a settlement being reached at the mediation.²²³

In general, mediation is voluntary in Australia. Although there may be mandatory requirements for mediation, the results are also voluntary. The parties determine whether they will settle their dispute and the conditions they will resolve their dispute, even though they are assisted in this matter by the mediator.²²⁴

²²³Nickless, R., *Ibid.*

²²⁴Brandon, Mieke and Stodulka, Tom, “A Comparative Analysis of the Practice of Mediation and Conciliation in Family Dispute Resolution in Australia: How Practitioners Practice Across Both Processes, ”Vol. 8 No 1 (QUTLJJ), p.211

Mediation has been a central process of the Australian conflict resolution over the past decades. Over thirty years ago, mediation could only be encountered in courts or community family/justice centers, or in specific contexts such as family or environmental and planning disputes. On the contrary, Australian Federal legislation recently necessitates parties to have alternative methods of dispute resolution as a general rule, before commencing civil litigation.²²⁵

The comparable legislation has been implemented in New South Wales and Victoria. The Victorian legislation was recently revoked and the commencement of the New South Wales legislation was deferred until 2013 to help the monitoring of the operation of the Federal legislation.²²⁶

It is no hesitation that the substantial cultural change in favour of alternative dispute resolution (ADR) has backed an additional effective and

²²⁵Brandon, Mieke and Stodulka, Tom,*Ibid.*,p.213

²²⁶NSW Law Reform Commission, Community Justice Centres, Report 106 (2005) 3
([http://www.lawlink.nsw.gov.au/lrc.nsf/b302b703a1328b7e4a2565e8002658dc/675813304049fdf3ca256fcb00826416/\\$FILE/r106.pdf](http://www.lawlink.nsw.gov.au/lrc.nsf/b302b703a1328b7e4a2565e8002658dc/675813304049fdf3ca256fcb00826416/$FILE/r106.pdf))

vigorous civil justice system in Australia. Australia already has experience of a number of successful mandatory mediation schemes which provides some foundation for further work in this area and is indicative of wider support among the legal profession and judiciary than exists in the European jurisdictions discussed above. As early as 1980, Community Justice Centres were established in NSW as a pilot program to provide voluntary mediation services for certain disputes.²²⁷ The scheme was made permanent in 1983 after a 1982 report indicated promising results.²²⁸

Since that time, the number of organisations offering mediation services has dramatically increased and Australia has been at the forefront of the establishment of mandatory mediation schemes. These range from far-reaching court powers permitting discretionary referral to mediation to categorical legislative schemes which require mediation as a prerequisite to bringing a court action. Examples of categorical schemes in NSW include the Farm Debt Mediation Act 1994, Retail Leases Act

²²⁷ *Ibid.*

²²⁸ *Ibid.*

1994, Legal Profession Act 2004 and Strata Schemes Management Act 1996.²²⁹

Mediation / FDR takes place in an environment of cooperation. The benefits of this service will differ for each person, but some of the main advantages are: 1.) Solutions which both people have helped to create, 2.) Cost-effective process 3.) Resolution that is faster than through the legal system 4.) Sessions that can take place at mutually convenient times 5.) Service which is private and confidential. How do we ensure the best for our children? As well as helping adults, there are a number of ways we can offer support to you as a parent and to your children. We have information you can read, we can talk to you about your children, or we can talk with your children if that would be helpful for them and for you. Children's views can be involved in FDR through using a child consultant. Ask your practitioner to explain this process or for information to be sent to you.²³⁰

²²⁹ Sourdin, Tania, "Mediation in Australia: Impacts on Litigation," in Nadja Alexander (ed), *Global Trends in Mediation*, (Kluwer Law International, 2006), p.37, 62.

²³⁰ Cooper, Donna and Field, Rachael "The Family Dispute Resolution Of Parenting Matters In Australia:

The Family dispute resolution (FDR) can lead to valuable solutions for people who are separating, including those in married, de-facto and same sex relationships. If someone decides, or has decided to separate, this difficult period can be made less stressful through family dispute resolution. It is a process in which a trained and independent mediator assists separated families to discuss issues relating to their children, property and other matters. The mediator helps the parties to explore and negotiate their options in an effort to reach a mutual and lasting agreement.²³¹

To be noted, it has become an established part of the family law system and it is now mandatory for separated parents to attempt mediation before seeking court orders in relation to their children (subject to certain exceptions, e.g. where there has been family violence or child abuse). Agreements reached through mediation can be formalised in writing (referred to as a parenting plan or property settlement) and can also be the basis for seeking binding consent orders from the Family Law Courts. Family dispute resolution is

An Analysis Of The Notion Of An ‘Independent’ Practitioner” Vol 8, 2000, No 1, (QUTLJJ), p. 158-175

²³¹Cooper, Donna and Field, Rachael, *Ibid.*

offered by the Legal Services Commission, each of the Family Relationship Centres, and by a number of non government organisations and private practitioners.²³²

It is indeed obligatory under the new family law system in Australia. for separating parents to go to family dispute resolution prior to taking their parenting dispute to court FDR is the new term for what was previously referred to as family mediation. FDR is a process in which an independent person assists separating parents to resolve disputes through negotiation and compromise. The Federal Government is establishing Family Relationship Centres (FRCs) across the country to provide FDR services to separating couples. The government wants separating parents to ‘sit down, focus on their children and agree on parenting arrangements rather than going to court’.²³³

FDR is promoted as a faster, cheaper and less adversarial way to resolve family disputes than court. However, there are also potential disadvantages with FDR and it may not be suitable

²³²Cooper, Donna and Field, Rachael, *Ibid.*

²³³ Kirkwood, Debbie, *Behind Closed Doors: Family Dispute Resolution and Family Violence*, (GT Graphics: Victoria, 2007), p. 6

for all separating couples. FDR is not required to adhere to legal principles and may therefore disadvantage the less powerful party to the dispute. Family violence services and other professionals are particularly concerned about FDR taking place where family violence has occurred. FDR may not be appropriate in family violence cases for the following reasons:

- 1.) victims of family violence may experience risks to their safety and wellbeing in the FDR process,
- 2.) FDR practitioners may not identify family violence and/or may underestimate the impact of the various forms of violence on women and children,
- 3.) family violence creates a power imbalance that impacts on the parties' capacity to negotiate on an equal footing,
- 4.) victims may feel intimidated or pressured into parenting arrangements that are unsafe, unfair and/or not in the best interests of the children.

There is an exemption from compulsory FDR in the new family law system in cases where family violence or child abuse is present. However,

there are a number of reasons why FDR is still likely to occur in such cases.²³⁴ These include:

1. For the exemption to apply and the parties to bypass FDR, the court must be satisfied that there are reasonable grounds to believe that violence occurred. Due to the hidden nature of family violence victims may be fearful that they will not be able to ‘prove’ to the court the family violence occurred
2. Although FDR services can ‘screen out’ family violence cases and provide a certificate for the court, family violence may not be identified by FDR services.
3. Even where family violence is identified, FDR services have discretion in determining whether family violence cases are appropriate for proceeding with dispute resolution.
4. Some women who have experienced family violence may choose to access FDR services rather than try to negotiate on their own with their ex-partner or go through the court process.²³⁵

²³⁴Kirkwood, Debbie, *Ibid.*, p.7

²³⁵Kirkwood, Debbie, *Ibid.*, p.8

It is apparent that many women who have experienced family violence will be accessing FDR services in the new family law system. It is therefore imperative that FDR providers are fully aware of the impact of family violence and are able to effectively respond to victims and perpetrators from the first point of contact. Specific policies and practices are necessary to ensure that women's and children's safety is paramount. It is also important that family violence workers, lawyers and other professionals are able to prepare victims for dispute resolution and support them through the process.²³⁶

At a federal level, legislation mandates mediation in family law proceedings except where there are certain factors making mediation unsuitable, in which case parties are permitted to opt out.²³⁷ Courts in Australia have wide discretionary powers to order mediation without

²³⁶Kirkwood, Debbie, *Ibid.*, p.9

²³⁷ See Sourdin, above n 120, 58–9; Nicola Berkovic, 'Family Law Blitz to Hit Backlog', *The Australian* (online) 24 May 2012 (<http://www.theaustralian.com.au/business/legal-affairs/family-lawblitz-to-hit-backlog/story-e6frg97x-1226365070014>).

the parties' consent. Legislative provisions empowering the Supreme Court of NSW to order mandatory mediation first appeared in 2000.²³⁸ Supreme Court Practice Notes have reinforced these powers of judges to order unwilling parties to mediate.²³⁹

D. Dispute Resolution Approaches in Family Violence Cases in South Australia

If an FDR practitioner and the parties to the dispute decide to proceed with FDR in a case where there has been family violence, a number

²³⁸ Supreme Court Act 1970 (NSW), s 110K; this provision has since been repealed and replaced by a near identical provision in the Civil Procedure Act 2005 (NSW), s 26(1) and (2).

²³⁹ See, eg, Supreme Court of NSW, Practice Note SC Gen 6 – Mediation, 10 March 2010, [5]. This Practice Note applies to the NSW Court of Appeal, the Common Law Division (civil cases only) and the Equity Division. See also Supreme Court of Victoria, Commercial Court, Practice Note 10 of 2011 – General (1 January 2010) pt 10; Supreme Court of Victoria, Practice Note 3 of 2012 – Professional Liability List (1 October 2012) [5.3], which provides that ‘all proceedings will be referred to mediation unless there is a good reason to the contrary’.

of dispute resolution practices and formats can be utilised. The following guidelines are suggested by the AGD:

- 1.) use short multiple sessions,
- 2.) allow for individual follow up between sessions, or consider having short pre-mediation sessions before each session,
- 3.) include break-out private sessions (caucus) during sessions, and always have a private session to do a reality and safety check before moving towards finalising an agreement or parenting plan,
- 4.) consider drafting up a draft agreement / parenting plan and encourage the parents to discuss this with support people before returning to ‘finalize’ (i.e. sign and date) the agreement. The guidelines also suggest the use of specific FDR forms such as co-mediation and shuttle mediation (outlined below). DVIRC believes these should be available to all parties where family violence is identified.²⁴⁰

Among the approaches is shuttle mediation. This involves the dispute resolution

²⁴⁰Kirkwood, Debbie, *Op.Cit.*, p.11

practitioner(s) acting as a conduit between the parties by transferring messages from one to the other.²⁴¹ The parties remain in separate rooms or locations while the practitioner ‘shuttles’ between them. The benefit of shuttle mediation is that the victim of violence does not have to come face-to-face with the perpetrator. This may reduce the impact of controlling or intimidating behaviour. Skilled practitioners can use shuttle mediation to help parties focus on the task and reduce the likelihood of being distracted by emotive claims made by the other party because the dispute resolution practitioner can ‘tone down’ the communications when relaying information.²⁴²

The use of mediation may not fully counter the impact of violence as victims may still experience intimidation via shuttle negotiations. ‘Physical separation of the clients may not eliminate the patterns of fear and control that may be present in relationships where there has been a

²⁴¹Fisher, L. and Brandon, M., *Mediating with Families, Making the Difference*, (Pearson Education: Australia, 2002), p.39

²⁴² Young, Keys, “Research/Evaluation of Family Mediation Practice and the Issue of Violence,” (Final Report, Attorney-General’s Department: Canberra, 1996), p.40

history of violence'. It may also be the case that some parties would prefer to be face-to-face so that they know what the other party says to the mediator. They may be concerned about the perpetrator manipulating the FDR practitioner and that the practitioner may not recognise the signs of intimidation or control. Although it may take longer and require more resources it is a worthwhile approach if it enhances the parties' capacity to participate.²⁴³

A recent study of the relationship between FDR practitioners and family lawyers in Australia found that good relationships between the two professions occurred where there was mutual collaboration and trust, an understanding of each others disciplines and where they each perceived the other made a valuable contribution to resolving family disputes.²⁴⁴

There is a model of dispute resolution that centralizes the role of a legal advocate through the process and includes their presence

²⁴³Young, Keys, *Ibid.* p.41

²⁴⁴Rhoades, H., Sanson, A., and Kaspiew, R., *Working on Their Relationships: Inter-Professional Practices in a Changing Family Law System*, (University of Melbourne, 2006), p.107

during the dispute resolution sessions. The lawyer is able to provide advice and clarify information through the process so that women are less likely to be pressured into agreements that are highly disadvantageous to themselves and their children.²⁴⁵

The following benefits (based on Field's model) would also apply to parties who access legal advice and assistance without the lawyer being present during dispute resolution sessions. Lawyers may be able to be available during the course of the dispute resolution by telephone or to provide advice between sessions.

1. Pre-mediationstage: ensuring that the victim does not participate in dispute resolution if the risks to their safety are too great. If dispute resolution is appropriate a lawyer can prepare the client for dispute resolution by providing them with information about the process and skills for participation, and by generating some options to raise in the negotiation. The lawyer can assist the client to choose an appropriate dispute resolution practitioner such as one with family violence training and with effective practices for

²⁴⁵Kirkwood, Debbie, *Op.Cit.*, p.60

working with family violence cases such as co-mediation or shuttle mediation. A lawyer can also provide the victim with an understanding of possible outcomes and establish a bottom line for matters to be agreed upon. The lawyer can help the woman prepare her opening statement for the first dispute resolution session outlining her needs and concerns.

2. During the dispute resolution process: the lawyer can provide advice and clarification through the process. If the victim is finding the dispute resolution sessions difficult, the lawyer can advise them of strategies to enable them to cope – such as asking for time-out, shorter sessions and, if necessary, withdrawing from the process. Lawyers may have a role in ensuring the high standard of conduct required of FDR practitioners (Sordo 1996). The lawyers' knowledge of legal principles can assist the victim to ensure that options which arise are thoroughly tested and 'reality-checked'. The lawyers can ensure the agreements are safe and fair before the clients sign them.
3. Post-dispute resolution: lawyers can provide assistance in ensuring that agreements become

legally binding by filing a consent order with the family court. If a victim experiences abuse from her partner at any of the above stages, the lawyer can provide advice and assistance in obtaining an intervention order. DVIRC recommends that victims of violence have access to legal advice before, during and after participation in FDR.²⁴⁶

Theoretically it is also recommended that legal representatives be permitted at FDR sessions in FRCs for victims in family violence cases. In the absence of legal representation during sessions, DVIRC strongly recommends that family violence victims be referred to legal advice prior to proceeding with dispute resolution and be advised not to sign a parenting agreement without legal advice.²⁴⁷

E. Australian Government NGOs Concerning Mediation Process of Domestic Violence

In family dispute resolution the first critical element of practice is that conciliator or mediator has no determinative role. Conciliators, while

²⁴⁶Kirkwood, Debbie, *Ibid.*, p.61

²⁴⁷Kirkwood, Debbie, *Ibid.*, p.61

actively indicating their independence, can have an advisory role in the process, content and probable outcome of a dispute. Mediators can only advise on, or determine, the process to be used.²⁴⁸

In both mediation and conciliation practitioners can incorporate facilitative problem solving, advisory, or evaluative approaches and use narrative, transformative, solution focused and therapeutic principles of practice. Depending on the particular training and philosophical underpinning of the practitioner's theoretical framework, they will use the process and skilled interventions (such as reframing, summarising and clarifying questioning) accordingly. The following continuum shows how a practitioner can move from being outcome focused to concentrating more on process over outcome. The continuum also demonstrates the behaviours that may indicate such goals.²⁴⁹

²⁴⁸Mieke Brandon and Tom Stodulka, "A Comparative Analysis of the Practice of Mediation and Conciliation in Family Dispute Resolution in Australia: How Practitioners Practice Across Both Processes," Vol. 8, 2000, No 1 (QUTLJJ), p.200

²⁴⁹Gaynier, L. P., "Transformative Mediation: In Search of a Theory of Practice" (2005) 22(3) Conflict Resolution Quarterly, p.379, 404. 38

1. Magistrate Court

The family law system within the Adelaide Magistrate Court is to help separated families work through the legal and personal issues that arise when couples separate. It incorporates a broad range of organizations and programs to help ensure separating families can access the specific assistance they need.

The family law system assists separated families to;

- 1.) Make arrangements to see and care for their children,
- 2.) Resolve their property and financial issues, and
- 3.) Seek support to manage the stress and challenges of separation.²⁵⁰ It has also to be known that the family law system adheres to the following principles:

- 1.) the safety and welfare of all parties, adults and children, is paramount,

²⁵⁰ *The Family Law System in South Australia: A Handbook and Service Directory for Separated Families*, (Australian Government: SA,), p,2

- 2.) Where children are involved, their best interests will be the primary consideration in all decision making,
- 3.) Where appropriate, parties are encouraged to resolve their parenting, property and other disputes without resorting to contested court proceedings.²⁵¹

Besides, it is noteworthy that court proceedings are a serious element of the family law system and in some cases may be the most appropriate choice for resolving conflicts or disputes. Court proceedings can however be expensive, protracted and divisive. Decisions are taken out of the parties' hands and the overall process may be inherently stressful.²⁵²

Parties should think carefully before commencing court proceedings and even after litigation has commenced, should be mindful of opportunities to cease litigation and resolve their disputes by mutual agreement. Please note that subject to certain exceptions, parties will generally be required to attempt mediation before commencing court proceedings in relation to their

²⁵¹*The Family Law System in South Australia, Ibid.*

²⁵²*The Family Law System in South Australia, Ibid.*

children. The court will not be able to provide legal advice.²⁵³

Regarding with counseling, separated parents who are present before the Family Law Courts are often referred to a court appointed family consultant for a family assessment. Family consultants meet with separated families and their children to advise the Court about issues such as:

- a.) The relationship between separated parents and their children
- b.) How the parents communicate with each other and work together as co-parents
- c.) The suitability of any proposed living or parenting arrangements
- d.) Whether counselling, parent education, mediation or other services may help the parties.²⁵⁴

Family consultants help parents understand the family law system and the importance of remaining child focused. In appropriate cases, they may assist parents to discuss and agree upon arrangements for their children.

The Australian FDR scope is wide and reputable. It provides a various range of facilities

²⁵³*The Family Law System in South Australia, Ibid.*

²⁵⁴*The Family Law System in South Australia, Ibid.*

and models, from service to “advisory and therapeutic.”²⁵⁵ Mostly, the programs are operated by what so-called long-standing community-based family relationships organizations, which offer dispute resolution combined with other facilities and services such as therapy, parents learning, courses on relationships skills, financial assistance and aids.²⁵⁶

The FDR is financed by many such as the federal government and service fees from clients charged on a sliding balance along with salary. In contradiction of services which are court-based mediation and have existed in Australia since the 1970s,²⁵⁷ the program has conventionally coped with charitableness of clients who have recently separated and often have no legal representation when they approach the service.

Magistrates should arrange time for the improvement and process of the program within

²⁵⁵ Cooper, D. and Brandon, M., “How Can Family Lawyers Effectively Represent Their Clients In Mediation And Conciliation Processes?” *Australian Journal of Family Law*, 21 (3) 2007, p.288– 308.

²⁵⁶ Cooper, D. and Brandon, M., *Ibid.*, p. 293

²⁵⁷ Nicholson, A. and Harrison, M., *Family Law and the Family Court of Australia: Experiences of The First 25 Years*, Melbourne University law review, 24 (3) 2000, p.756– 783.

the restrictions of the list and further demands on the court. Provision has to be made for court time in incorporating the numerous authorities (to develop admittance for the parties and dodge conflicts) and managing “the offenders on programs.” A cooperation officer would help the requirement for ongoing communication with important amenities and the court, as well as giving a capacity for assessment and checking the progress of the process. Appropriate facilities need to be available at courts to provide for the safety of the victim while attending court and the appropriate housing of the respondent. Victim services need to be available, and readily accessed by the victim, preferably at any early stage in the proceedings.²⁵⁸

2. Muslim Women’s Association of South Australia (MWASA)

The Muslim Women’s Association of South Australia (MWASA) is a non-profit organization that was incorporated in July 1993. This foundation is supported by the South Australian

²⁵⁸Nicholson,A. and Harrison,M., *Ibid.*, p.771

Government.²⁵⁹ Over the years, MWASA has been a strong and active group catering to the social, educational, religious and recreational needs of Muslim women living in South Australia. With a membership of over 300 women and their families, MWASA provides an essential support network to the Muslim community.

In the Australian context, the main factor of Muslim Women's participation in Muslim Women Organizations is to provide the majority voluntary services for their communities and for women involved in programs and other social events organized by such organizations. For those who participate in it, they feel to get social and religious friendship that is in various activities.

In matters of governance, all the organizations graphed are included bodies that are regulated by the number of members of the Board required by law, with overall responsibility for finance and management. All send externally audited annual financial reports and the majority also have annual reports.

The number of memberships varies. All councils have members from various ethnicities,

²⁵⁹ An interview with Mrs. Aini at MWASA office on September 30, 2019 at 10.00 AM

showing the heterogeneity of the communities they serve. Funding for special projects comes from various levels of state, federal and local governments and some organizations raise funds and receive donations. However, most work is done on a voluntary basis.²⁶⁰

In general, all Muslim women's organizations in Australia have very minimal human resources, the nature and scope of work performed and all organizations are very dependent on voluntary work, including from all members of the Board of the organization.

All organizations depend on volunteers to bulk from the other work they do. Most of this work involves family support services of various kinds, beyond those provided for migrants. Their work also involves cross-cultural training and advocacy. This cross-cultural training is carried out on request through schools, universities, technical colleges, churches and other religious organizations, professional associations, women's groups, non-governmental institutions, service providers, networks and all government services in

²⁶⁰ An interview with Mrs. Aini at MWASA office on September 30, 2019 at 10.00 AM

the fields of health, education, welfare and Police.²⁶¹

The scope and nature of the services provided by these organizations are various but, in general, their focuses are the Muslim women's community in their country, new comers through settlement services, specific services such as shelters or old age and community services and, for some people, interfaith activities with the community non-Muslim. Full details about the natures and scopes of work carried out by these women organizations are:

- Settlement services
- Domestic violence and protection services
- Age care and community services
- Family support including housing / childcare / relationship skills.

Community development:

- Capacity building
- Sports and Recreation Programs for women
- Leadership skills
- Research on various issues, publications and distribution

²⁶¹ An interview with Mrs. Aini at MWASA office on September 30, 2019 at 10.00 AM

- Support for new arrivals
- Women's conference Young Muslim Women:
- Various programs for young Muslim women, especially leadership

exercise

- Recreation and leadership camps
- Newsletters and Journals
- An annual dinner or a nice dinner
- Guiding and facilitating the formation of young Muslim women

organization

- Religious Study Groups
- Sports and Recreation including girls' soccer teams
- Individual case work
- Conference.

However, the services that MWASA specifically delivers are:

- 1.) Settlement services for newly arrived Muslim women and their families,
- 2.) Youth programs to build confidence and develop leadership skills,
- 3.) Basic and Intermediate English classes and Computing classes,
- 3.) Cross-cultural training for individuals, service providers, schools and community groups,

- 4.) Coordination, recruitment and training of volunteers
- 5.) Study circles, support group and Quran classes,
- 6.) Casework service,
- 7.) Community and home support for seniors,
- 8.) Referrals to mainstream agencies, and
- 9.) Referrals to Muslim doctors, Imams and other professionals.²⁶²

When interviewed, related to the issue of domestic violence, MWASA provided information that there had indeed been several cases of complaints of victims of domestic violence to MWASA. In this case, MWASA could also provide assistance to victims of domestic violence in this case mental psychology assistance. Meanwhile, for the purposes of mediation, they act as referrals which are then referred to a priest. If this is more urgent, then MWASA will refer the case to the police. MWASA indeed tends to be rather exclusive because only Muslims get the service.²⁶³

3. Indopeduli

²⁶² An interview with Mrs. Aini at MWASA office, Adelaide on September 30, 2019.

²⁶³ *Ibid.*

The initiative of founding this community is due to recurring needs of volunteers in Adelaide in obtaining information and ways to participate in filling gaps that arise between people needs and the limited abilities of the Bali Smile Foundation and the Craniofacial Department in Women and Children Hospital Adelaide. The jargon of this NGO is "A meaningful life is not being rich, being popular, being highly educated or being perfect..... It is about being real, being humble, being able to share ourselves and touch the lives of others. It is only then that we could have a full, happy and contented life."²⁶⁴

Accordingly the foundation of the community is named Indopeduli Adelaide that was set up in Adelaide in 2014 because some of us in the Indonesian community wanted to provide some support for the Indonesian craniofacial unit patients who come and stay for 3-6 months until their surgeries are complete. It is also indeed in partnership with Flinders University. For the support and struggle of Indopeduli's colleagues in Adelaide, Indopeduli officially gets incorporated so that Indopeduli officially become an official and

²⁶⁴ The jargon can be accessed through its website

legal entity in Adelaide, South Australia. Based on the South Australia Association Incorporation Act 1985 Section 20 (1) with the incorporation number A42600, Indopeduli Adelaide Incorporated has officially become one of the incorporation in South Australia.²⁶⁵

The spirit of Indopeduli is actually inspired by its previous foundation i.e., the Smile Foundation which provides logistical help for these patients and their accompanying family member and the craniofacial surgeons provide medical treatment free of charge. Our main focus is to make these patients feel at home here in Adelaide and provide good links between their families, Smile Foundation, and the medical teams. The people who are brought to Adelaide are often from remote villages and very poor backgrounds. They cannot speak English and are sometimes illiterate. It is the responsibility of ours to help them be able to communicate, to interact with each other and to access information properly.²⁶⁶

The contribution made by Indonesian students is very significant. Together with them,

²⁶⁵ An interview with Eni Mosel, in Adelaide, on September 30, 2019.

²⁶⁶ *Ibid.*

Indopeduli has developed ways to support the patients to learn how to get around in Adelaide. Students help with taking the patients and parents on outings, such as to the museum and the zoo, and also help them with shopping, taking them to the airport and helping them to check in and fill out forms. The families and the students really bond strongly.

Although it is not limited only to accompany patients from Indonesia sent by the Bali Smile Foundation, but the main focus is to try to reduce the burden carried by patients, companions and the Hospital. As an Indonesian citizen who lives in Adelaide, for Indo-care is our obligation to contribute to the service of others who need assistance around us. Especially seeing the fact that the Bali Smile Foundation provides logistical assistance for free and the doctors are willing to operate on them free of charge.²⁶⁷

Speaking about cases of domestic violence, Indopeduli has had several times providing assistance to victims who experienced domestic violence. From the words of Eni Mosel, founder of Indopeduli, there are at least three cases of domestic violence in which the wife gets assistance;

²⁶⁷*Ibid.*

among them is the case of physical abuse by an Australian husband to an Indonesian wife. In such case, she heard and listened to the wife. Indopeduli like MWASA is only a referral to go to the next direction whether the mediation process or its severity is through legal channels. Providing financial support and psychological mentality become part of the charitable indopeduli. Indopeduli is more inclusive in this matter, because it provides services not only to Muslims but also non-Muslims, not only Indonesia but also those who come from other nations.²⁶⁸

4. Women’s Safety Services SA

It is remarkable to see their jargon “All women and their children have the right to a life free of violence.” From such jargon it can be understood that Women’s Safety Services SA (WSSSA) is committed to assisting “women and their children who are living with or escaping domestic or family violence.” through being responsible for a variety of aids and programs.²⁶⁹

²⁶⁸ *Ibid.*

²⁶⁹ An interview with Susan Hughes, in Adelaide, on October 1, 2019.

The aim of this institution is that they provide a guarantee for improving the safety and welfare of women and children who join this program. The Women's Safety Contact Officer (WSCO) works with women and their children whose spouses or ex-colleagues have been referred to the Domestic Violence Prevention and Domestic Violence Prevention Program.²⁷⁰

The Women's Safety Contact Officer will contact those in need with information about the services that can be provided, and also to help decide their case is a case / case that requires ongoing assistance.²⁷¹

The Women's Safety Services SA run their programs in partnership with providers of the Domestic Violence Prevention Program (DVAPP). Any information given is confidential, no information is shared with your partner or former partner at any time.²⁷²

Through its website, it can be known that this organization remains firm in declaring that “domestic and/or Family violence is not acceptable

²⁷⁰*Ibid.*

²⁷¹*Ibid.*

²⁷²*Ibid.*

in any community or culture. Culture is never an excuse for violence.”²⁷³

Susan during our interview said that they have “a bilingual bicultural staff of Migrant Women's Support Program (MWSP) that runs a program with migrant women of diverse cultural and linguistic backgrounds in insecure relations. Such program mostly takes care of the issue of migrant women and children who are mostly “at risk of violence.”²⁷⁴ This kind of program offers culturally “sensitive needs and risk assessments, safety planning, support, information, advocacy, referrals and other relevant services.” It recognizes and holds the importance of clients’ confidentiality. It is also important to know that MWSP is in cooperation with domestic violence services.²⁷⁵

²⁷³ <https://womenssafetyservices.com.au/index.php/about/services>

²⁷⁴ An interview with Susan Hughes, *Op. Cit.*

²⁷⁵ *Ibid.*

CHAPTER VI

CONCLUSION

The commitment of the Indonesian government to eliminate all forms of violence against women, especially domestic violence, must be followed up not only by the ratification of CEDAW through the Law No. 1, 1984, the issuance of Domestic Violence Law No 23, 2004 (UU PKDRT) and the establishment of the National Commission on Violence Against Women (KOMNAS PEREMPUAN), but also to make the Domestic Violence Law as an effective medium to protect women from domestic violence, and serve victims to get their rights fully as Indonesian citizens.

Efforts to protect and serve the victims of domestic violence as mandated by the Domestic Violence Law are not only assisting the victims in medical recovery and psychological counselling but also to get their rights back after being taken by the perpetrators. To compensate the victims, the retributive justice, which is focused on punishing the perpetrators, is considered not fair enough for the victims of domestic violence in gaining their rights. This is because any decisions made in the

retributive justice is the product of the legal apparatus and perpetrators, and do not involve victims and the community. Hence, in some cases, it gives disappointment to the victim of domestic violence. Therefore, restorative justice is needed to settle domestic violence cases. The main reason is that restorative justice instead of focusing on punishing the perpetrator it focuses on fulfilling the rights of the victims of domestic violence. In addition, it involves not only the legal apparatus and the perpetrator in deciding the compensation of the crime committed by the perpetrators but involves also the victims and the community. Moreover, restorative justice is in line with the tradition and culture of Indonesians called *musyawarah* (deliberation). A manifestation of restorative justice is mediation, which is settling a dispute between two parties through the facilitation of a mediator.

This research found that mediation has been carried out in Central Java as an effort to resolve domestic violence cases. Mediation in Central Java is conducted by the religious court, police, government-based services centers for victims of domestic violence, non-governmental organizations (NGO), and public or religious figures in the communities. This mediation service

is complimentary, and completing other services provided for victims of domestic violence. In accordance with Domestic Violence Law, the victims of domestic violence mandate are entitled to obtain protection services by the police, health assistance services, counselling services, and legal services.

In South Australia, mediation services are also provided to resolve domestic violence disputes. This service is provided at the Magistrate Court or lower court and in communities such as Muslim Women Association of South Australia (MWASA). In addition to this mediation service, other services are also provided to victims of domestic violence, which is, in principle, the same as services provided to victims of domestic violence in Central Java.

Mediation that is conducted by the government centers and the communities in Indonesia and Australia in resolving domestic violence cases is a significant step in the efforts of obtaining the rights of the victims of domestic violence. However, mediation will be counter-productive if not accompanied by adequate knowledge, skills and attitudes of mediators in conducting mediation. In addition, as domestic violence involves gender issues, mediators involve

in the case of domestic violence must have gender sensitivity. Without proper knowledge, skills, attitude and gender sensitivity, the outcome of mediation may disadvantage victims of domestic violence. It may involve victims blaming. In addition, mediators need to be aware that not every case of domestic violence can be solved through mediation. In some cases, punishing or jailing the perpetrators through retributive justice in the court is needed to give deterrent effect or shock therapy for the perpetrators to not repeat the violence. Therefore, proper training on mediation alongside dissemination of Domestic Violence Law and gender issues is necessary for the law apparatus, police, NGO activists and public or religious figures who work on advocating the women's rights.

As mediation service provided for the victims of domestic violence is intended to reduce domestic violence cases, at the same time, it also aimed to realize harmony in the household life, which is the purpose of the issuance of Domestic Violence Law. With family harmony, it is believed that the quality of life of the society is increasing and the quality of the nation is bettering.

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