

N A T I O N A L C O M M I S S I O N
O N
V I O L E N C E A G A I N S T W O M E N

WOMEN'S VULNERABILITY TO ECONOMIC & SEXUAL VIOLENCE:

At Home, Educational Institution and State Agency

VAW Notes of Year 2008

ANNUAL NOTES
ON VIOLENCE AGAINST WOMEN

Jakarta, 7 March 2009

WOMEN'S VULNERABILITY TO ECONOMIC & SEXUAL VIOLENCE:

At Home, Educational Institution and State Agency

EXECUTIVE SUMMARY

This Annual Notes of 2009 is a compilation record of violence against women that occurred in year 2008 (period of January to December). As usual, this annual notes' data is from partner institutions of *Komisi Nasional Anti Kekerasan terhadap Perempuan* (hereafter *Komnas Perempuan*) which have taken care of victims of violence against women, either take care of them directly or accepted denunciation, then referred it to other partner institution that has adequate capacity.

The number of recorded violence against women that handled by service-provider institutions is increasing every year (year 2001 – 2008). This year 2008, the increasing number of violence against women is reaching more than double than year 2007 (25.522 VAW cases), that is 213% reach to 54.425 violence against women cases. The increasing number of these cases has occurred due to the increase of accessibility to data of Religious Courts as the implementation of the Head of Supreme Court Decree No. 144/KMA/SK/VIII/2007 on Information Disclosure in Court's environment.

If we observed from violence against women cases handled by service-provider institutions, hospital and law enforcer institutions, economic violence that occurred within household and sexual violence that occurred in community environment are two types of violence experienced by most women. This trend applies consistently from year to year, since year 2006 – 2008.

In year 2008, majority of women victims of economic violence within household are wives, that as many as 6.800 cases (of 46.882 violence against wives cases), meanwhile, majority of sexual violence victims in community are women under age, that as many as 469 cases (of 1.870 cases).

Four categories of women victims of violence who require special attention on this year are religious minority women, poor women, women's entertainment sector workers, and women human rights defenders, while, four figures perpetrators of violence against women who require further monitoring are public officials, region leaders, legislative members, and educators.

Institutions that use Law on Elimination of Domestic Violence (*UU Penghapusan Kekerasan Dalam Rumah Tangga*, hereafter *UU PKDRT*) in handling cases are increasing in environment of court institution, especially District Court and Religious Court, when compared with previous years. This shows the increasing of judge's knowledge of this Law.

In year 2008, there were a number of policies that conducive to the fulfilment of the rights of women victims of violence, particularly in the field of racial and ethnic discrimination, migrant women, services for women victims of violence, and confiscation marital problems in divorce cases. However, *Komnas Perempuan* also noted the policy products that keep away women from the fulfilment of their rights, particularly in terms of guarantees of freedom of expression (Pornography Law), women's access to justice (*jinayat* case appeals from Aceh), and women's political rights (Constitutional Court decision regarding the determination of elected legislative candidates). Relating to the arrangement of migrant workers, almost all legal products produced in the year 2008 led to policies that mutually contradictory and tend to weaken the protection of migrant workers.

FOREWORD

This Annual Notes of 2009 is a record compilation of violence against women (hereafter VAW) that occurred in year 2008 (period of January to December). As usual, this annual notes' data is from partner institutions of *Komnas Perempuan* which have taken care of victims of VAW, either handled directly or accepted denunciation, then referred it to other partner institutions that has adequate capacity.

Similar to the previous annual notes, this year annual notes describe the number of VAW cases in various regions and according to data from partner institutions that send back the filling form from *Komnas Perempuan*. This annual notes pays attention to and give emphasizes on economic violence types that colouring VAW in domestic realm (domestic violence/RP) and sexual violence that also colouring VAW in public sphere (VAW in Community). This annual notes is also presented a description of institution's capacity in handling the cases, barriers that faced by the institutions, especially in respect to data collection and handling the cases, also the cooperation that was developed by partner institutions. Monitoring record on new policies or regulations related to the issue of VAW that effectively applied in the past year were presented, including the local regulation that positively provide space for women or negatively is become a legitimacy 'tool' of VAW in various regions.

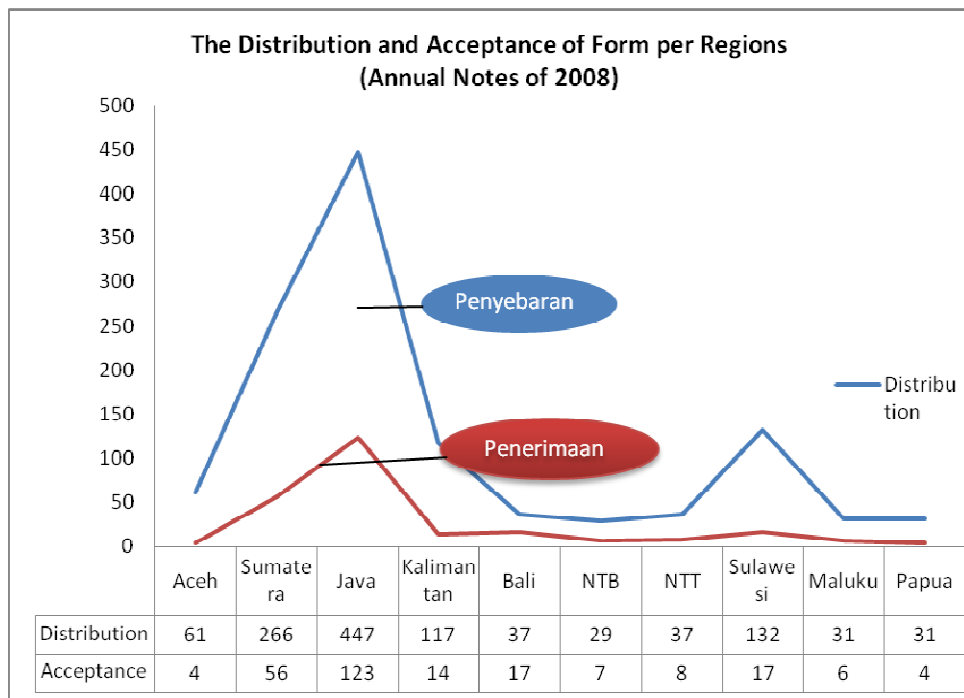
On this opportunity, *Komnas Perempuan* would like to give the highest appreciation to the partner institutions which have participated in filling and sending back the filling form and/or sending their data directly to *Komnas Perempuan*. To improve cooperation and participation of partner institutions, in year 2008, *Komnas Perempuan* held a workshop in order to provide inputs on the filling form of annual notes in two regions: Makassar (includes local partner institutions in Sulawesi) and Medan (includes Sumatra region). This kind of meeting/workshop is useful to improve communication and cooperation among institutions.

Finally, it is expected through data collection of VAW which is sustained from year to year, we will be able to continue to monitor the magnitude and complexity of the problem of VAW as our problems and also assess how far we as a nation has made progress (or setback) in handling and overcoming this form of women's rights violation that has already spread.

METHODOLOGY

Since *Komnas Perempuan* produces its annual notes, the primary data source is service-provider partner institutions that spread out in various regions in Indonesia. From year to year, partner institutions is increasing their participation actively by filling the form that was sent and/or provide data based on existing in the respective institutions. So, in principle, data collected in the annual notes is data that was handled by partner institutions during (in) the year.

The spread (distribution) of form and response rate



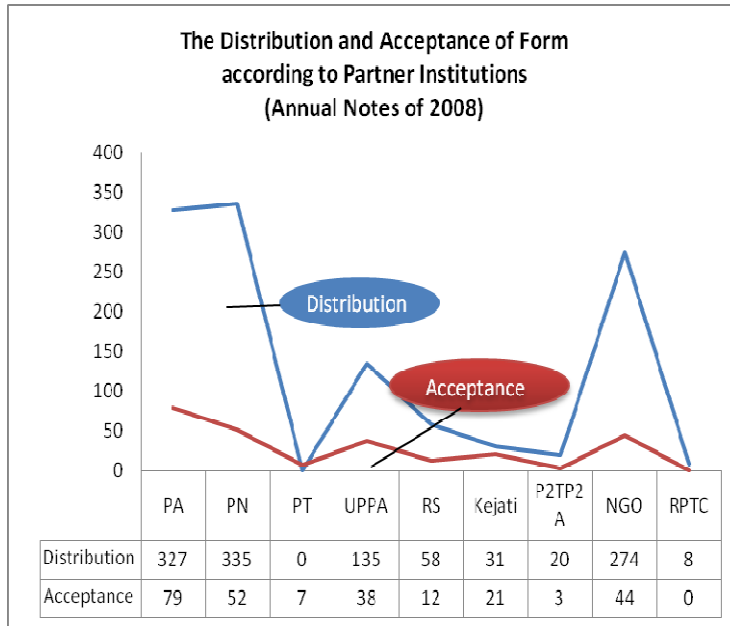
THE DELIVERY/DISTRIBUTION OF FORM on this year is conducted in November 2008 to 1188 partner institutions in all regions in Indonesia (see graph above). Half of forms were distributed to partner institutions in the Java and Sumatera regions (564 institutions), the response rate of partner institutions has reached 21.55% (that is 256 partner institutions) of the total number of distributed forms.

If it viewed per region, partner institutions in Bali provide the highest response that is reached 45.95%. Partner institutions in other regions give responses more or less the same, except for Aceh.

As in previous years, the main obstacle in data collection and its impact on response rate is the unpreparedness of human resources also tools and facilities owned by partner institutions. The other thing which is also a common problem in the context of data collection of VAW is no similar system and data format for all types of institutions – each institution develops their own data collection based on need.

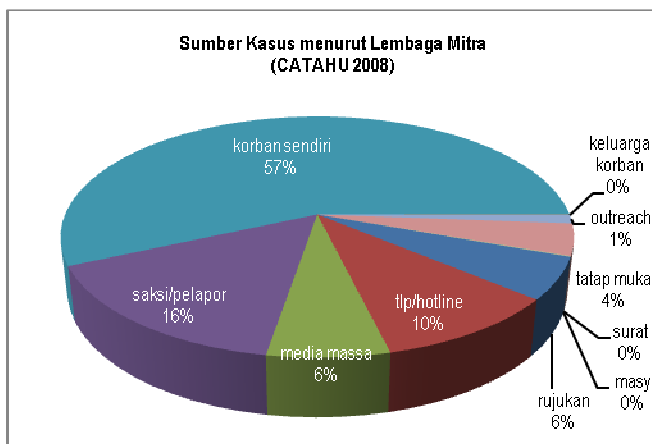
If we see in RESPONSE RATE, according to partner institutions category (see graph in next page), the Public Prosecutor at provincial level (hereafter *Kejati*) showed the highest response (67.4%) compared to other institutions. Court society (High Court, Religious Courts and District Court) give response between 15 – 25%. Service Unit of Women and Children –

hereafter *UPPA* (formerly *RPK* – Women Police Desk), a faithful partner institution which provide data every year is showing high response rate (28.15%) as well as hospital (20.69%).



In the year 2008, *Komnas Perempuan* has ease in accessing court's data (Religious Court and District Court) through the website. This is related to the Decree of the Supreme Court of Republic of Indonesia No. 144/KMA/SK/VIII/2007, about the information disclosure in court. Based on this decree, many Religious Courts have given access on data through its website.

Data Source: VAW Cases of Service-Provider Institutions' Record



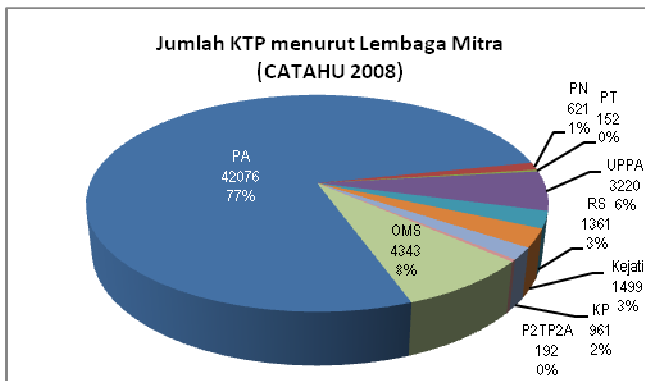
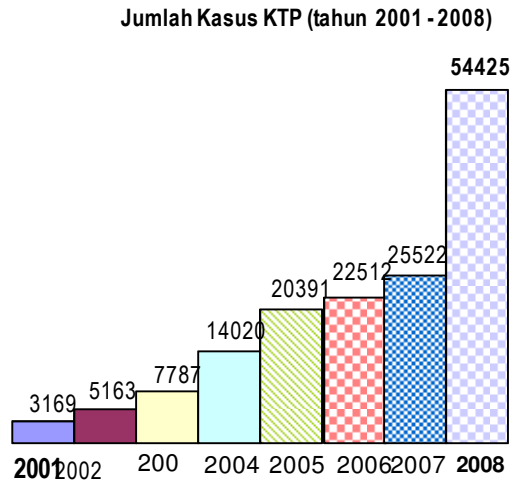
According to data reported by partner institutions, VAW cases obtained from a variety of sources, namely victims themselves (57%), witnesses/complainants (16%), telephone/hotline (10%), mass media and referral (each 6%), face to face, the victim's family, outreach, community, and through the mail. The most data on victims who came alone is recorded by the Religious Courts, *UPPA*, and Civil Society Organizations (hereafter *CSO*).

Thus the case reported by witnesses/complainants, they come mostly to *UPPA*, then to Religious Court and *CSO*. Meanwhile the reporting of cases by phone/hotline is mostly accepted by *Komnas Perempuan* and *CSO*. The handling cases that was followed-up based on mass media monitoring is mostly conducted by *CSO*. These service-provider institutions (*CSO*) along with *UPPA* are also doing outreach (go/look for VAW cases). Cases that originated from face to face is handled by *Komnas Perempuan* – in a group, the victims come to *Komnas Perempuan* to denounce the VAW cases they experienced.

OVERVIEW: VAW DATA COLLECTION

The trend of increased data

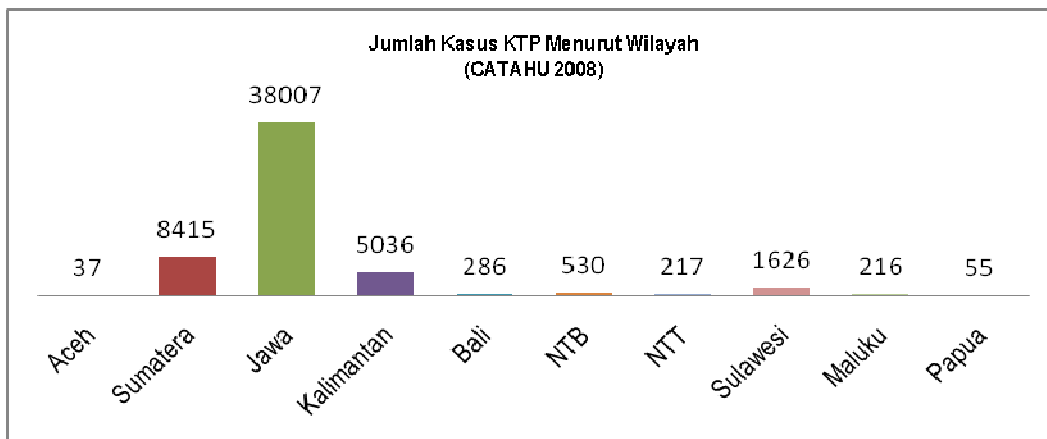
By studying up the VAW cases data records which handled by service-provider institutions from year to year since 2001 – 2008, there is an increasing tendency of (number) VAW. In 2008, the increase number of VAW is reached more than doubled compared to year ago in 2007, i.e. more than 213% or in number of 54,425 VAW cases. This increasing number of cases is thought to occur because of the ease of access to Religious Court's data as mentioned earlier (see also Diagram of VAW Cases according to Partner Institutions in the following pages)



Graph “Number of VAW according to Partner Institutions” shows that a lot of data (77%) was recorded by Religious Court, which are 42,076 of total number of 54,425 cases. And as mentioned earlier, this year *Komnas Perempuan* has ease of access to Religious Court's data through website.

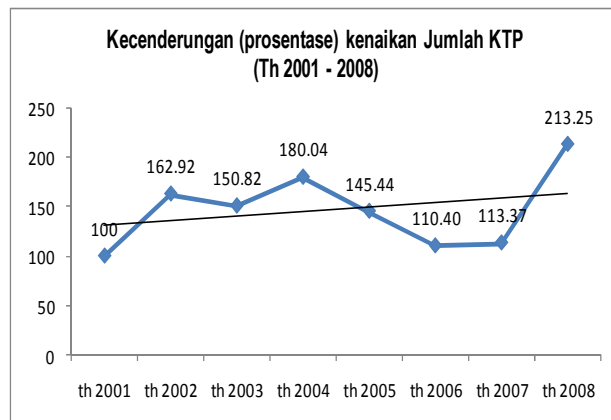
Meanwhile, if we see in number of VAW by region, then more than half of the recorded VAW is handled by partner institutions in Java Island (38,007 cases, 69.83%). The rest, handled by partner institutions in Sumatra (8,415 cases, 15.46%), and Kalimantan (5,036 cases, 9.25%). VAW in Sulawesi region reached more than a thousand cases (i.e. 1,626 cases, almost 3%), whereas in other regions recorded VAW in number around 30 to 550 cases (Aceh, Bali, East Nusa Tenggara, West Nusa Tenggara, Maluku and Papua).

Number of VAW per Regions (Annual Notes of 2008)



The Condition of Data Collection and the Trends of Increasing Percentage on the number of VAW

As in previous years, the annual notes data was compiled and analyzed from all cases data (quantitative) provided by partner institutions by filling the distributed form, and data (qualitative) obtained by *Komnas Perempuan* through its divisions. Quantitative data gives a broad image and complexity of VAW as well as its handling that been conducted partner institutions. While the qualitative data gives illustration on VAW cases and the policy/local regulation that developed in the relevant year.



THE CONDITION ON DATA COLLECTION IS highly dependent on the capacity of each institution in order to document and record the VAW cases (in each work area). This condition is of course also has affect on the number of VAW in which every year is included in the annual notes of *Komnas Perempuan* (as can be seen from the graph at left).

Although the number (quantity) of VAW is seems to increase, but the increasing percentage have fluctuated (not a straight line up). With this condition, it can be said that the actual increase in number (quantity) of VAW is happening not simply because of the increased cases, but it rather related to the increasing of (condition or capacity) data collection of partner institutions.

The capacity of human resource and facility (tool) of data collection that is always mentioned by institutions as a major constraint asserts that the condition and capacity of institutions in relation to data collection was supposed to be a concern in order to produce a reliable VAW data.

WOMEN ARE VULNERABLE TO VIOLENCE AND NEED TO BE CONSIDERED

If it valuated from VAW that occurred in 2008, there were four women categories that are vulnerable to violence and need to be considered, namely religious minority women, poor women, entertainment sector worker women, and women human rights defenders.

Religious Minority Women

In May 2008, *Komnas Perempuan* published the monitoring result of the condition of the *Abmadiyya* women. From the monitoring result, *Komnas Perempuan* finds discriminative treatments that eliminate protection of their basic rights in various aspects or their lives. This conflict which based on religion is also made women vulnerable to gender based violence. The threat of rape and sexual harassment during the attack and the evacuation, even in public area (market) is also susceptible to *Abmadiyya* women. And until now, *Abmadiyya* community, especially in NTB, still live in refugee camps, because they afraid to return to their villages.

In the year 2008, attacks on the *Ahmadiyya* community is continuing to occur, namely in January in Majalengka and in April in the Parakan Salak, Sukabumi. *Setara Institute* through the "Report on the Conditions of the Freedom of Religions/Beliefs in Indonesia in 2008" reported that during the year 2008, it is recorded that 265 violations of the freedom of religion or beliefs freedom incidents were happened, where as the highest incident occurred in June (103 incidents). The increasing number of incidents in 2008 caused by two things: first, the increasing of persecution by hardliners Islamic organizations against the *Ahmadiyya* as a form of insistence so that the government issued a presidential decree on the dissolution of *Ahmadiyya*; and two serious implications of the Joint Decree of Three Ministers No. 3 Year 2008, No. Ke-033/A/JA/6/2008 was issued on June 9th, 2008. The violation of freedom of religions/beliefs in the year 2008 is generally associated with the *Ahmadiyya* (193 incidents). Of these 193 incidents, in number of 48 incidents were occurred before the Joint Decree issued and 145 incidents were occurred after the Joint Decree on restriction of *Ahmadiyya*.¹

State, through its apparatus, has done violation in form of the prohibition of worship and religious activity, the prohibition has recorded occurred in Sukabumi, Tasikmalaya, Tangerang, Cianjur, and Mataram (NTB).² Even in Mataram, Mayor of Mataram, H.M. Ruslan had said that would expel *Ahmadiyya* community from Mataram, if Joint Decree of 3 Ministries has been set up.³ This made the refugees who are the subject of *Komnas Perempuan* monitoring in Mataram, NTB felt restless. Even though when clarified, Mayor of Mataram stated that he never said he would do the eviction.⁴ Criminal acts done by the community after the issuance of the Joint Decree were the act of destruction or the sealing of houses of worship. The destruction of houses of worship occurred in Riau and at least the destruction or the sealing of 35 mosques occurred in West Java. Act of violation of freedom of religions or beliefs, before and after the issuance of the Joint Decree, tended to increase, it is because the pressure to disband *Ahmadiyya*. This has proved the great implications of the Joint Decree to *Ahmadiyya* community, where as the Joint Decree has become a tool of legitimacy to reject and discriminate against *Ahmadiyya* community.

One of the most prominent incidents in 2008 related to prior to the issuance Joint Decree on *Ahmadiyya* was June 1st, 2008 incident, when National Alliance for Freedom of Religion and Beliefs (hereafter *AKKBB*) do long march, they were attacked by uniformed men and with the attribute of Islamic Defenders Front (hereafter *FPI*), which resulted in at least 29 people were injured and four others had to undergo inpatient care at two hospitals, namely the Gatot Subroto Army Hospital and Tebet Hospital.

At the local policy level, Joint Decree is also encouraging local government to issue policy on the prohibition of *Ahmadiyya*, such as the decree of Governor of South Sumatra No. 563/KPT/BAN.KESBANGPOL and LINMAS/2008 which are banning the *Ahmadiyya* sect, and the activity of adherent and/or members of the *Jemaah Ahmadiyah Indonesia* board in South Sumatra area that on behalf of Islam and contrary to the teachings of Islam.⁵

The whole sequence of incidents related to the *Ahmadiyya* community, Monas incident and the incident in the trial of Monas incident have illustrated that in 2008 there was a trend of the increase in violence and intolerance within community related to different beliefs, also

¹ "Berpihak dan Bertindak Intoleran : Intoleransi Masyarakat dan Restriksi Negara dalam Kebebasan Beragama/Berkeyakinan di Indonesia, Laporan Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia 2008", *Setara Institute*, Jakarta, January 2009, page 19 – 20.

² *Ibid*, page 28 – 29.

³ www.lombokfiles.com, "SKB 3 Menteri Keluar, Warga Ahmadiyah Resah", June 10th, 2008.

⁴ www.lombokfiles.com, "Jelang SKB 3 Menteri Pengungsi Ahmadiyah Mataram Pasrah", June 10th, 2008.

⁵ "Kejaksanaan Evaluasi SK Gubernur Soal Ahmadiyah", taken from <http://www.tempointeraktif.com/hg/nasional/2008/09/03/brk,20080903-133595,id.html>, Wednesday, September 3rd, 2008.

government that is weak in preventing the recurrence of violence again. The violence is once again put women as the vulnerable party to become victims.

Komnas Perempuan's monitoring results revealed that in conflict *Ahmadiyah*, *Ahmadiyah* women and children have become victims of multi-discrimination, either because of their position as women and their position as part of a religious minority group. In that conflict, women are also vulnerable to gender based violence, such as threats of rape and sexual violence. Various human rights violations are also experienced by this religious minority, such as violation of right to a fair trial, right to equality before the law, right to peaceful assembly, right of minority group, right to freedom of thought, conscience and religion, right to seek a living, right to education, family rights, reproductive rights, right to safety, discrimination against women, and the recovery of victims that have not been adequate.⁶

Poor Women

Year 2008 was marked by widespread phenomenon of mothers killing children or cases of mothers killing children, then killed her selves afterward. Case of mother murdered her child and then suicide were recorded, namely in Pekalongan, Bekasi, Medan, Malang, Bandung, Tangerang, and Magetan. The cause of these cases is that 90 percent of the oppression and economic pressure, where as victims feel unable to meet the needs of their children in the future because of economic limitations. Another prominent incident was the death of a mother and 2 children in Makassar (one of which is still in the womb). The death of the mother and children is indeed debatable whether caused by starvation or because of acute diarrhoea that they suffered. But it was clear that one of those child who survived, has positively malnourished.⁷ In September 2008, we were also surprised by the news of the death of 21 women, mostly elderly, when they were lining up for *zakat* (tithe) distribution in Pasuruan. The incident occurred a month after President Susilo Bambang Yudhoyono, in his official speech at the Plenary Meeting of the Parliament on August 15th, 2008, stated that the poverty rate in 2008 has decreased.

Although the government said it had lowered the poverty rate in 2008, but in reality, all incidents above have proved the contrary. One of the factors that aggravate poverty in the year 2008 was the government's decision to raise fuel price in the month of June 2008, with the pretext to reduce subsidies. Although accompanied by scheme of direct cash assistance (hereafter *BLT*), the policy had caused injustice to the poor people in general, and women in particular. The increase in fuel prices has been almost always followed by a domino effect, like the soaring price of the needs of basic materials. In the case of Indonesia, due to the increase of fuel price in 2008, the poverty was also increasing: as of October 1st, 2005 in the data of UN Development Program (UNDP) has estimated 65 million people. Of the poor population groups, 60 percent are women working in domestic or public sector, as workers, peasants, in the informal sector, to housewives. (Kompas, May 26th, 2008).

So when seen from the series of incidents that occurred in the year 2008, the entire process of impoverishment was to make women as the vulnerable party to become victims. It is because 60% of the managers of household expenditure structure are women, so the economic limitation is directly experienced by women. Women groups as the household managers are required to implement various strategies to overcome the economic limitations. Various ways applied by women to overcome economic limitations, one of it is for being

⁶ Human Rights Monitoring Report of *Komnas Perempuan* : *Ahmadiyah's* Women and Children: Victims of Multiple Discrimination, page 21 – 24, May 2008.

⁷ "Hamil, Mati Kelaparan" uploaded from http://www.surya.co.id/web/Headline/Hamil_Mati_Kelaparan.html, March 2nd, 2008.

migrant workers abroad. Initial findings result of *Komnas Perempuan* in the mapping of violence against women in the management of natural resources has revealed some strategies for women to be saved, among others are by getting married, as concubine, debt, to change profession, to change consumption, and spiritual (custom, prayed, surrender). From the incident of Pasuruan's *Zakat*, for example, even if it means sacrificing the lives, the way of lining up for the *zakat* is one of the women's strategies to maintain the viability of their selves and family.

Women's decision to leave their families to work abroad can not be separated from structural poverty which is closely surrounded them. The lack of decent employment opportunities from the government, the difficulty of getting a job due to low education, to the desire to improve economic and social status of their families have caused the productive young women left their village to seek fortune in other countries. Besides failing to provide needed jobs, the state also failed to provide protection for women who are trying to make a living in foreign countries. The efforts of women to escape from poverty by working as migrant workers have not received adequate protection from the state. In contrast, women migrant workers experience violence and multi discrimination, since the pre-departure phase, the work phase, until the post-work phase. Apparently policies related to migrant workers which issued by government until now can not touch the root causes, that is poverty. As the government can not overcome the root causes and provide solutions and proper protection, violations on rights and violence will continue experienced by women migrant workers.

Related to the specific violence of women, *Komnas Perempuan* received a complaint about a woman migrant worker who was pregnant as a result of being raped by her male employer in Saudi Arabia. He did not know of her pregnancy until she arrived in Indonesia and check her condition after the four (4) months of not getting a period. This case is just one of many similar cases that experienced by women migrant workers. However, such cases are difficult to handle, especially in terms of evidence, whereas the victims have already been in Indonesia. The legal handling requires the victim/prosecutor to be in the country where the incident happened, so the legal process will be executed. This has caused women migrant workers who become victims are not only difficult to find justice for their selves, but also difficult to demand the fulfilment of the child's rights inside her womb due to the rape. In fact, often the legal process is not upholding justice for the victims, but it makes the victim experience re-victimization.

Women Human Rights Defenders

Komnas Perempuan has identified cases that experienced by the Women Human Rights Defenders. *ND* is one of the creators of the National Alliance for Freedom of Religion and Beliefs (*AKKBB*), who fight for and defend pluralism in Indonesia. *AKKBB* is an alliance formed by several institutions which concerned with freedom of religion and belief, to conduct campaigns against violence in the name of religion, and advocate for groups that were suppressed in the name of faith and religious differences.

In conducting her activities, she often experienced terror, such as the threat through an anonymous letter, stigmatization of sexual abuse, intimidation, character assassination, attacks on the position and role as mothers and wives, and exclusion. The incident that she experienced was happened in the middle of the trial process of Monas incident, in September, in which she was sexually abused.

While in the context of natural resource conflict, *Komnas Perempuan* noticed the criminalization of women human rights defenders who are struggling to maintain their right to life. *Komnas Perempuan* received complaints from victims of land dispute of 86 hectares

between the villagers of Titi One Korarih with PT. Sri Rahayu Agung (hereafter PT. SRA) which happened since year 1984. The conflict continued with the community's lawsuit to the Court of Lubuk Pakam, while the trial is ongoing, PT. SRA continues to damage the crops of farmers in the land dispute. Unfortunately, the court's decision file in year 2003 until year 2007 had never received by community. When the community through their attorney asked again about the existence of such court files in the year 2008, the response they obtained was that the court is still looking for it.

The culmination was on February 4th, 2008, the garden's foreman along with the thugs and the police force who in amount to 60 people came to the land with tractors. In that clash, a mother (*MU*) who tried to block the tractor is experiencing violence such as being chase off, she was dragged and thrown into a 2 meter deep ditch in that land, and so with other mothers who tried to help to dispel the tractors, they experienced the same.

When the mothers reported the incident to the police Kotarih, their complaints are not responded by the police, but on February 26th, 2008, *MU* and *Tg* received a summons from the police of Serdang Bedagai, they were considered as suspects in joint criminal action of violence against people in public. The police action was based on reports filed by PT. SRA.

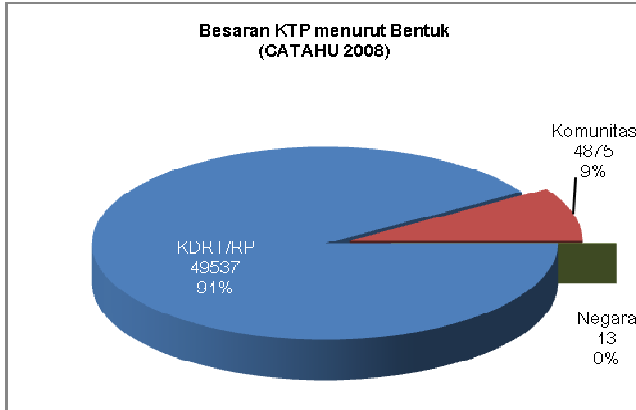
Women's Entertainment Sector Workers

In the middle of the debate about Law on Pornography in 2008, there were some efforts to ban *dangdut* artists, especially those who considered overdressed in their performance, by public officials in various regions in Indonesia. In April 2008, it was noted that an artist, Dewi Persik, was banned in various districts/cities in West Java, among others in Sukabumi, Tangerang and Bandung. Other artist who also banned was Julia Perez, namely in Balikpapan and South Sumatra. In South Sumatra, a ban and an appeal were issued in *MUI* South Sumatra's letter No. B-30/MUI-SS-IV/2008 on April 28th, 2008. However, the *MUI* South Sumatra's letter was not only banned Julia Perez, but also with 7 other artists, namely Dewi Persik, Annisa Bahar, Inul Daratista, Uut Permatasari, Trio Macan, Ira Swara and Nita Thalia, with the reasons were disturbing community and potentially damaging the morale of young generation. In Balikpapan, the banned artists were Dewi Persik, Julia Perez and Trio Macan. Julia Perez's album was also banned, because she inserted condom on her album which titled "Kamasutra". *Komnas Perempuan* argued that these measures are a limitation on the rights of expression and economic rights of the entertainment sector workers.

The reason for banning those artist which stated by the public officials of the region, among others, are to keep a conducive situation for local governments to actualize its vision and mission in creating society with *akhlakul karimah* (Sukabumi); to oppose the erotic appearance and dance which is contrary to the religious norms and ethics (Tangerang), to overcome the things that bother people and destruct the morals of young generation (South Sumatra); to prevent the increase of pornography and porn action (Balikpapan); and to fulfil people's aspirations and to be in line with the religious vision mission of the city (Bandung).

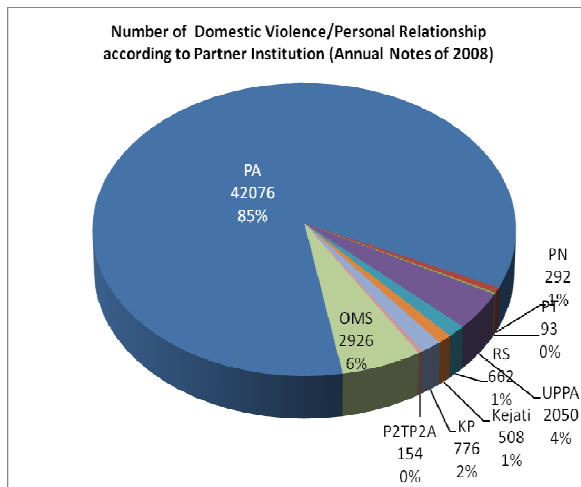
VAW PATTERN OF YEAR 2008: ECONOMIC AND SEXUAL VIOLENCE

Domestic violence/RP: Form of VAW that always dominate



If we look at the handling of data records from partner institutions, domestic violence/RP is a form of VAW that always dominate. This means that from year to year, the data of handling cases of domestic violence/RP is always in huge numbers and reaches more than 50%. *Diagram on Number of VAW based on its type* at right shows that the domestic violence/RP cases reach 91% of all forms of VAW that recorded by the institutions. Indeed in the year 2008, the accessibility

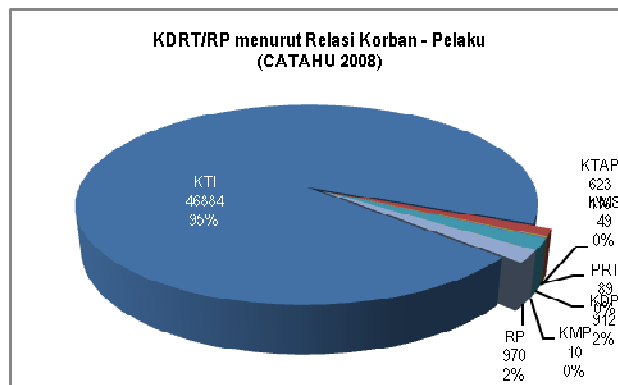
of religious courts' data contributes the most recorded cases, and VAW cases that recorded by the religious courts are mostly grouped in the domestic violence/RP.



Graph at right describe the numbers of domestic violence/personal relationship that handled by each partner institutions. The most cases handled by religious courts are domestic violence/RP cases (that is in number of 42,076). CSO and UPPA respectively handled domestic violence/RP in number of 2,926 and 2,050. Another service provider institutions handled cases lower than 1,000 cases: Komnas Perempuan (776), Hospital (662), Kejati (508), District Court (292), P2TP2A (154), and High Court (93).

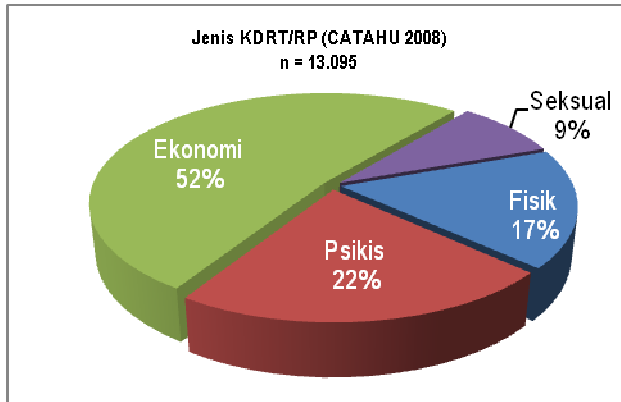
Meanwhile, when viewed by region, the most cases handled by service providing institution in Java are domestic violence/RP cases, namely: 35,398 cases and nearly half of this number were handled by service provider institutions in Central Java (15. 669 cases). The rest was handled by service provider institutions in West Java (8,323 cases) and East Java (6,706 cases). The number of domestic violence/RP cases handled by service provider institutions in other regions that below ten thousand cases: Sumatra (6,978), Kalimantan (4,892), Sulawesi (1,310), NTB (323), Bali (194), NTT (154), Maluku (126), and Papua (22).

If viewed on the relationship between victims and perpetrator, domestic violence/RP that occurs includes seven (7) forms of violence, namely violence against wives (hereafter *KTI*, 46,884 cases or 95%), personal relationship (hereafter *RP*, 970 or 2%), dating violence (hereafter *KDP*, 912 or 2%), violence against daughters



(hereafter *KTAP*, 623 cases), domestic workers (hereafter *PRT*, 89), violence by ex-husbands (hereafter *KMS*, 49), and violence by ex-boyfriend (hereafter *KMP*, 10).

KTI is the most dominant form of domestic violence/RP (95%) of all forms handled by the service provider institutions. *KTI* was widely noted by the religious courts and the type of violence includes physical violence, psychological (including in this category: adultery, polygamy and third-party interference), sexual violence, and economic violence.

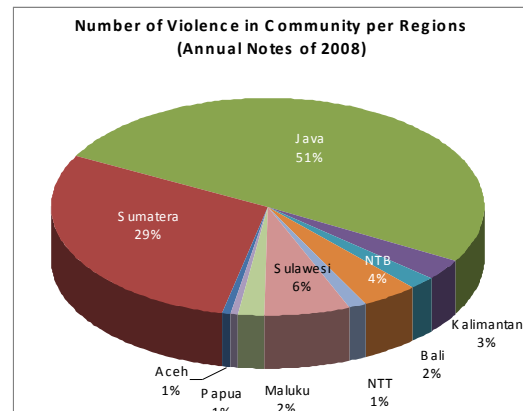
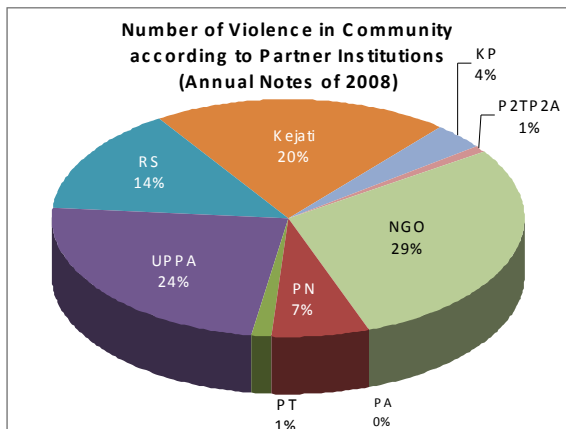


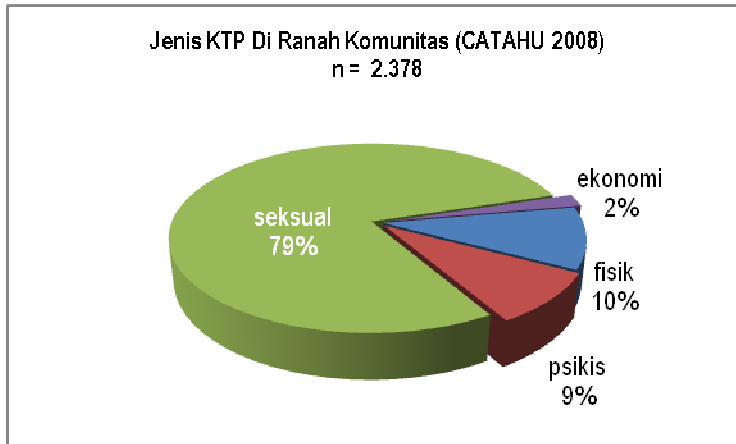
The diagram shows the *types of domestic violence/personal relationship*: economic violence (52%), psychological violence (22%), physical violence (17%) and sexual violence (9%). Data on economic violence were reported by many religious courts (nearly 84%) as the reason for divorce. Some other recorded reasons for divorce are also psychological and physical violence.

Sexual violence reached 9% of all types of domestic violence/RP in this year. And from this number, the service provider institutions in DKI Jakarta, Lampung, West Sumatra and West Kalimantan, are handling many domestic violence/RP cases in type of sexual violence (between 100 to 300 cases). Sexual violence cases are also handled by the service provider institutions in other region in less number (less than 100 cases).

Violence in Community

Violence in the community mostly was handled by the CSO (29%), *UPPA* (24%), *Kejati* (20%), and Hospital (14%). The other service provider institutions that also deal with violence in the community, but in a smaller number (between 1 - 7%) were religious court, high court, *P2TP2A*, and *Komnas Perempuan*. If it looked at the area of service provider institutions that recorded the handling of violence in the community, then the record will be obtained as seen from the diagram on the right. The most institutions that recorded the handling of violence in the community are service provider institutions in Java region (51%). Other institutions also noted the handling of this violence in the community, namely in the area of Sumatra (26%), Sulawesi (6%) and NTB (4%), others noted in fewer number (between 1 - 3%).





Types of violence against women in community can be seen from the diagram alongside. Sexual violence (79%) is the most type of violence recorded by the service provider institutions. Other types of VAW in community are physical violence (10%), psychological (9%) and economic violence (2%).

It seen from the annual notes of years ago, there was a consistent pattern of trends associated with

both types of violence. First, the types of economic violence is consistently high (at most) in the domestic realm (domestic violence/RP) since 2006. And second, at the same period of time (from 2006), the types of sexual violence is most often found in the realm of violence against women that occurred in the community.

Violence by State Apparatus

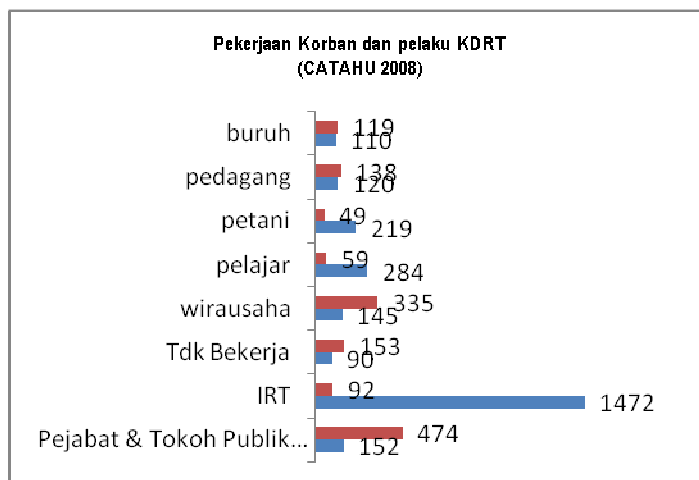
State violence recorded by *Komnas Perempuan* and the CSO (in Aceh), includes restrictions on freedom, arbitrary arrest, stigmatization, shootings, and humiliation. The number of state violence as mentioned earlier is in number of 13 cases.

Perpetrators

Observing the cases of violence against women that came to surface in 2008, *Komnas Perempuan* noted four important types of perpetrators who get attention, namely public officials, regional heads, legislators, and educators.

Public Official

During the year 2008, the number of reports that received by *Komnas Perempuan* on violence against women committed by public figures, public officials and educators reached to 784 cases. They consist of members of the civil servants, members of the parliament, TNI, Police, members of the Attorney General, *Bappeda*, Justice, Regent and educators. The victims were girlfriends, wives and domestic workers. These cases spread almost in all over Indonesia.



Regional Head

There are two cases reported directly to *Komnas Perempuan*, which is the case in Lampung (September) and Jeneponto - South Sulawesi (October). According to these complaints, the perpetrators are the regional heads meanwhile the victims are domestic workers. These cases are even more controversial when the regional heads were following the re-election as public officials.

For cases in Lampung, the victim (*DE*) is a domestic worker who works in perpetrator's house (*AS*). Although the sexual violence incident occurred in the year 2007, but the victim could report it to the police in June 2008, when she managed to escape from the perpetrator's house. The victim asked for police protection, whereas then the Police of Kota Besar Bandar Lampung immediately issued Warrant Protection. The victim needs protection from the police, because she experienced violence from the perpetrator's wife and children. Until now this case is still processed at the Attorney General office.

In the case of Jeneponto, although sexual violence incident occurred in the year 2006, but the legal process was not finished until the year 2008. The police then stopped the case (*SP3 – Surat Penghentian Penyidikan Perkara*), because the police valued that the presented witnesses, none of them were aggravated and they had not found new evidence. The victim demanded that the case remains under investigation, because of the sexual violence that she experienced; she gave birth to a daughter. The victim has reported the perpetrator to the police of South Sulawesi in February 2007. The police asked the victim and the perpetrator to do DNA tests, and performed it in different places.

Member of Parliament

Sexual harassment case committed by a member of the House of Representatives (hereafter *DPR RI*), from *PDI-P* faction, on behalf of *MM* (perpetrator) to his assistant, that is *DF* (the victim) became the most sensational case during the year 2008, although she has become the victim of sexual harassment since 2005. This case illustrates that sexual harassment can occur anywhere, including in government agencies and by anyone, because the perpetrator is a public government official. This incident is breaking the myth that sexual violence is only committed by people who are less educated or not, and also that case illustrates the difficulty and complicated journey of sexual violence victims to reveal the truth of the case that they experienced.

On June 5th, 2008, the Conduct Council (*Badan Kebormatan*) of *DPR RI* concluded that there were indications of violence. The members of Conduct Council acknowledged the difficulty of getting witnesses (other than the victim witnesses), or strong evidence. This is a common symptom in cases of sexual harassment where the perpetrator is a person in a position of power and the victim is a subordinate.

Educators

In year 2008, *Komnas Perempuan* noticed the phenomenon in which the perpetrators of violence against women are the educators in field of education institution, either formal or non-formal.

Non-formal Educational Institution

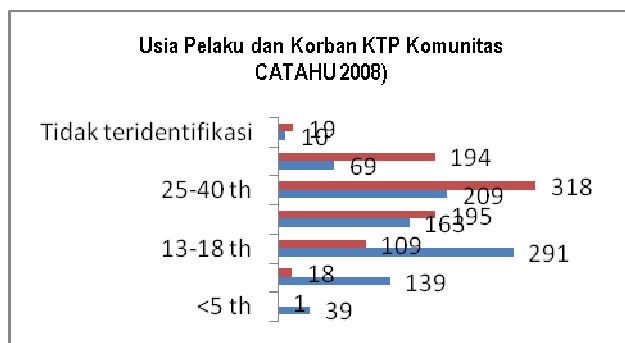
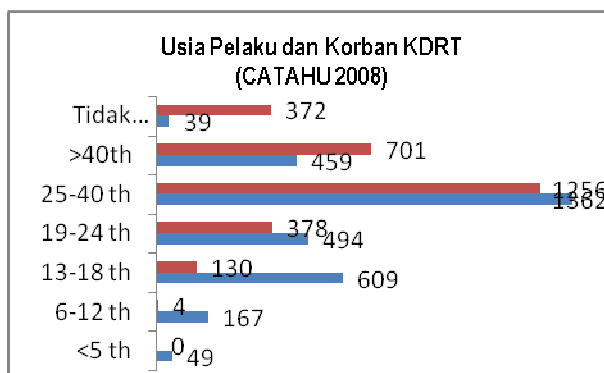
Komnas Perempuan received 4 violence cases in non-formal educational institutions. The perpetrator was a tutor and 3 (three) *kyai* in the Islamic boarding school (hereafter *pesantren*). In cases of sexual violence that occurred in the *pesantren*, the number of victims is at least 25

people and on average, they are the students who were still under age. One case of sexual violence occurred in *pesantren* of Yayasan Ya-Ibad Surabaya. The violence experienced by female students who are under age and this case has been on trial process in Surabaya District Court. While other cases conducted by a *pesantren* leader who committed sexual violence against one of his student with reason of *mut'ab* marriage. The unequal power relations between the victims, as a girl student with the perpetrator as leader and powerful people, has made such cases are very difficult to be reported, even handled.

Formal Educational Institution

In 2008, students began reporting cases of sexual violence that they experienced in the university environment. The case stick out in the mass media is a case of sexual violence committed by one educator staff of Faculty of Law in University of Indonesia. The lecturer was reported to the police on suspicion of rape and sexual harassment. This incident is initially reported by a student, but eventually some other students who also became victims were reported the same action to the police, so the number of victims is up to 12 victims. By the university, the lecturer is suspended from teaching and learning activities until his case had a permanent decision.

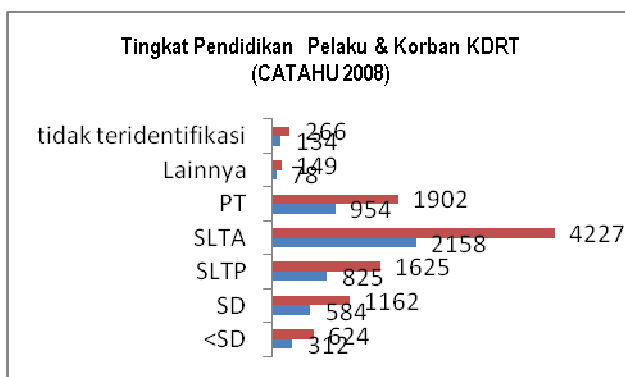
Data records on the handling of domestic violence cases illustrate the characteristics of perpetrators and victims of domestic violence such as the graph at right. Victims and perpetrators are of the most aged between 25 to 40 years (respectively 1,362 and 1,256 cases). The data also show that the perpetrators are also many over the age of 40 years (701 cases). While many victims are under the age of 5 years, between 6 – 12 years old and between 13 – 18 years (age of child), each: 49 cases, 167 cases and 609 cases.



number of victims in the age of the children, between 6 – 12 years old and between 13 – 18 years old. Conversely, the perpetrators were recorded at most between the ages of 25 – 40 years. From these data, it can be said that many victims of sexual violence in the community are children (under age of 18 years).

Whereas the most type of VAW that occurred in the community is sexual violence (79%). The service provider institutions that recorded this type of VAW in the community are *UPPA* (830) and *CSO* (726).

The interesting thing from the data record of victims and perpetrators characteristic from the aspect of age is the



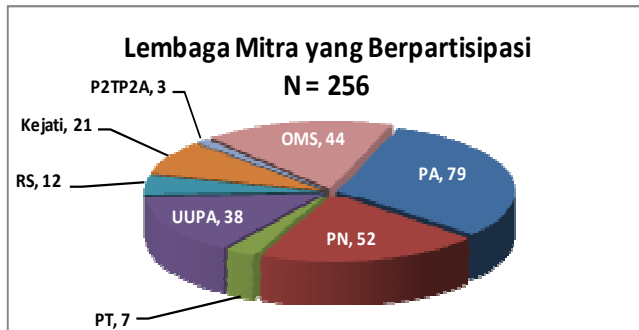
Graph at right shows the description of the education level of victims and perpetrators. The victims of domestic violence/RP were recorded at most in senior high school level (2,158 cases). Similarly with the perpetrators' educational level, it is in number of 4,227 cases. However, the data show both victims and perpetrators, there is or from

the lowest level (did not complete primary school) until the higher education level (university).

HANDLING: THE INSTITUTION'S CAPACITY AND THE IMPLEMENTATION OF LAW INSTRUMENTS

The Capacity of Service Provider Institutions

As mentioned earlier, there are some 256 partner institutions that participate in this Annual Notes of 2008, with the composition as can be seen in the following diagram.

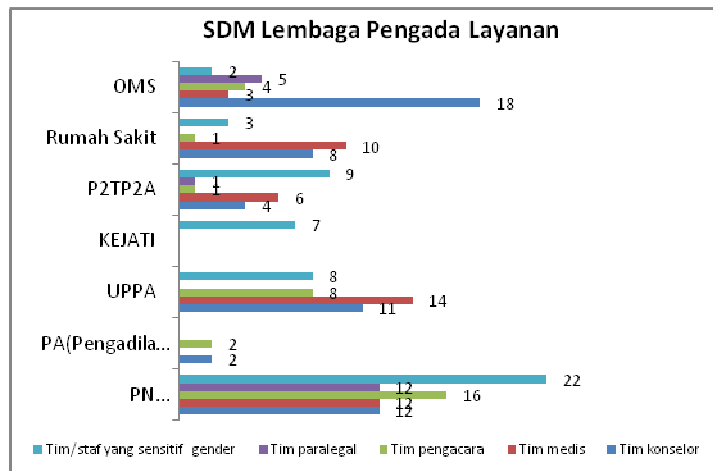


There are 8 categories of partner institutions, namely religious courts (79), district court (52), CSO (44), UUPA (38), *Kejati* (21), hospital (12), high court (7), and P2TP2A (3). In this year 2008, religious court is opening access to data through internet, so that some information/data needed in order to write this Annual Notes can be accessed more easily and quickly.

To see further the capacity and facilities of partner institutions in handling cases of violence against women. Here is presented the capacity of service provider institutions that being categorized into 3 groups related capacities: 1) HR (human resources that available to handle/accept cases that come directly to the relevant institution); 2) human resources and facilities associated with the data collection of cases (including the recording – intake and a recapitulation of the institution's data); 3) a special facility that presented for handling cases of violence against women.

The Human Resources of the Service Provider Institutions

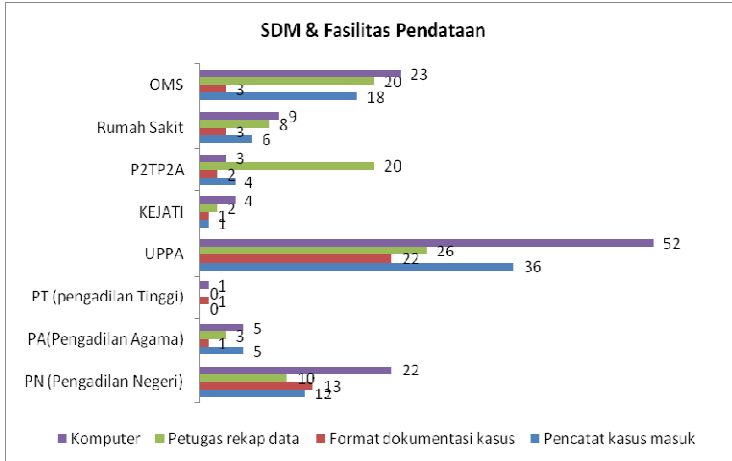
The human resources of the service provider institutions related to the handling of VAW cases can be seen from the number of team/staff who are gender-sensitive (in this case is including judge/prosecutor women, policewomen, a team of paralegal, lawyers, medical team, and counsellors. All personnel/staff are provided exclusively by each service providing institution for handling the VAW cases. Based on the data obtained, the counsellor team is the available human resources that



provided by nearly all institutions: 18 CSO, 8 hospitals, 4 P2TP2A, 11 UUPA, 2 religious courts, 12 district courts. The team of lawyers is nearly all institutions have it, unless for *Kejati*. In connection with the medical team, district court, UUPA, P2TP2A, hospital, and CSO provide this team to specifically handle the VAW cases. Meanwhile, regarding with the team/staff that are gender-sensitive, it is only religious court that does not have or provide it. It is interesting to be traced deeply about the availability of special team/staff that are gender-sensitive in handling the VAW cases, because one of the aspects that encourage victims to

come and denounce their cases related to human resources which already had sensitivity to gender issues.

Human Resources and Facility of Data Collection



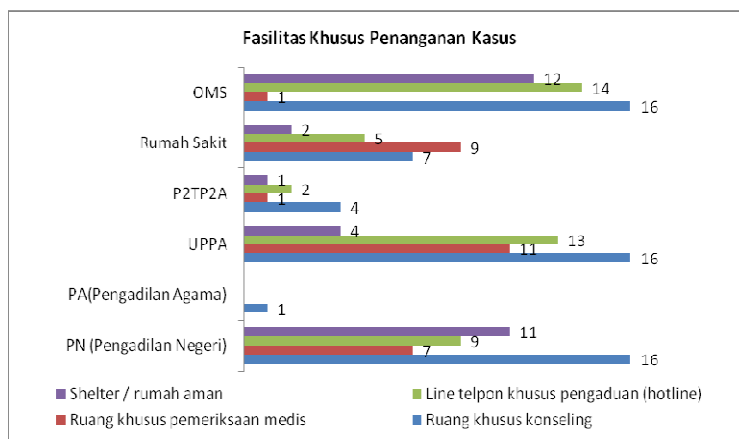
Human resources and facilities in connection with the data collection of VAW cases that provided by each service provider institutions include: 1) the recording of incoming cases, 2) the officers on data recapitulation, 3) the cases documentation format and 4) computer.

The information provided by the service provider institutions can be viewed on the graph at right. On average, the service

provider institutions provide human resources and facilitation related to the data collection as mentioned above, except for high court (only provide computer facilities and the cases documentation format).

It has been mentioned in Annual Notes years ago, one of the difficulties in integrating data from all partner service provider institutions that participate in the writing of Annual Notes is due to the documentation formats of each institution. The documentation format is needed in order to make record or documentation of all cases of data received/submitted into each institution, but because of each institution also has a different perception/understanding about the VAW, so the format that was developed by each institution is diverse. One of the expectations/objectives of *Komnas Perempuan* in writing and compiling an annual note of the VAW cases is to synchronize the perception and understanding of VAW of all existing service provider institutions. This is a process that takes time and perseverance in cooperation between partner institutions, and however, this similarity in perception is important to be forced so the handling of VAW cases can be conducted in better way for the sake of the importance of service for victims.

Special Facility for the Handling of VAW Cases



The definition of special facility for handling VAW cases include: the availability of shelter (safe house), a special phone line for complaints (hotline), a special room for medical examination, and a special room for counselling.

The average of all these special facilities owned by all categories of the service provider institutions, except for religious

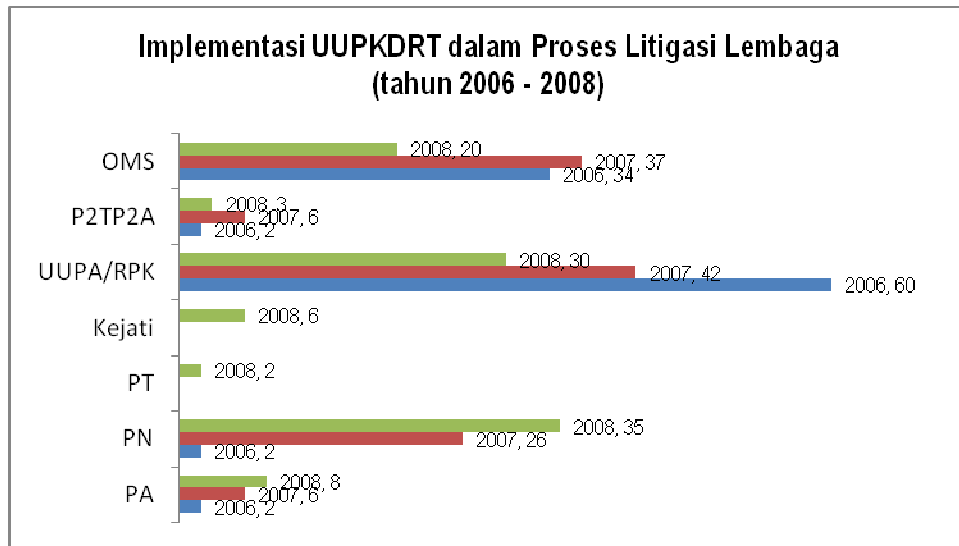
court which only provide counselling and it is only found in 1 (one) religious court. In

connection with this special room for counselling, many service provider institutions in all categories are provided it. And interestingly, there are quite a lot of service provider institutions that have shelter (safe house): there are 11 district court, 4 *UUPA*, 1 *P2TP2A*, 2 hospitals, and 12 CSO. In data collection for this annual note has not specifically traced what kind of facilities provided by the shelter owned by each institution. It identified the perception of these shelters is vary, so it could be that a place called as a shelter by one service providing institution does not have the same form and facilities that mentioned by other institutions.

Beside the facilities above, each category of institution is also recorded a medical examination room and hotline (special phone line for the complaints of VAW cases). Both types of these facilities are identified to be an important supporting aspect in order to motivate the victims in accessing the service provider institutions.

The implementation of *UU PKDRT* and other law instruments

Seeing the number of records of the handling cases of VAW that handled by religious court in particular, the data record on the implementation of *UU PKDRT* in litigation process of VAW cases needs to have thorough attention.



The graph above shows the tendency on using *UU PKDRT* by service provider institutions in litigation process (from year 2006 – 2008). In general, it can be said that the using of *UU PKDRT* by institution in court’s environment (religious court, district court, high court and higher prosecutor) is tend to increase. On the contrary, its usage by *UUPA*, *P2TP2A*, and CSO is tend to decrease or less/inconsistent.

Other legal devices that used by various service provider institutions in litigation process in *KUHP*/criminal code (142 institutions – mostly *UUPA*), *UU Perlindungan Anak* (Law on Child Protection) No. 39 Year 2004 (111 institutions – mostly *UUPA*), *UU Perkawinan* (Law on Marriage) No. 1 Year 1974 (36 institutions – mostly religious court), *UU Perlindungan Saksi dan Korban* (Law on Witness and Victim Protection) No. 13 Year 2006 (10 institutions – mostly *P2TP2A*), and Civil Law on the handling of VAW (10 institutions – mostly *P2TP2A*).

POLICY : PROGRESS AND SETBACK

In year 2008, there is a breakthrough on policy that conducive for the fulfilment of the rights of women victims of violence, particularly in the field of racial and ethnic discrimination, migrant women, services for women victims of violence, and problems on marriage confiscation. However, *Komnas Perempuan* also noted policy products that keep women away from the fulfilment of their rights, particularly in terms of guarantees of freedom of expression, women's access to justice, and political rights of women. Related to the settings on migrant workers, almost all legal products produced in the year 2008 led to policies that mutually contradictory and tend to weaken the protection of migrant workers.

Progress

Law on No. 40 Year 2008 on the Elimination of Racial and Ethnic Discrimination (*UU No. 40 Tahun 2008 tentang Penghapusan Diskriminasi Ras dan Etnis*)

Ten years after the Indonesian government ratified the International Convention on the Elimination of All Forms of Racial Discrimination (1965), through Law No. 29 Year 1999 on the Ratification of International Convention on the Elimination of All Forms of Racial Discrimination 1965, in the year 2008, the Indonesian government made a step forward by endorsing Law No. 40 Year 2008 on the Elimination of Racial and Ethnic Discrimination on November 10th, 2008.

In this Law shall be a few things, namely to:

1. providing protection to citizens who experience racial discrimination and ethnic;
2. implementation of protection of citizens from all forms of racial and ethnic discrimination organized by the government, local governments, and communities, and all citizens;
3. supervision of all forms of efforts to eliminate racial and ethnic discrimination by the National Commission on Human Rights;
4. right of citizens to get equal treatment in getting civil, political, economic, social, and cultural rights;
5. obligations and participation of citizens in an effort to eliminate racial and ethnic discrimination;
6. tort for any acts of racial and ethnic discrimination; and
7. criminal prosecution against any person who acts in form of:
 - a. treat any distinction, exclusion, restriction, or a selection based on race and ethnicity, which result in the removal or reduction of the recognition, acquisition, or implementation of human rights and fundamental freedoms in an equality in the field of civil, political, economic, social, and cultural; and
 - b. Show hatred or dislike ness to the people because of racial and ethnic differences by taking certain actions.

Religious Court's Decision on Marriage Confiscation (*marital beslag*)

On September 23rd, 2008, the Central Jakarta Religious Court fulfilled the marriage confiscation that was filed by Halimah Agustina Kamil against her property of marriage with

Bambang Tri Hatmodjo whom she married since 1981. Either Halimah's party in her reason for the request or the Panel of Judges in making the decision based on the Compilation of Islamic Law article 95 paragraph 1 which states "without alleviate to the provisions of article 24 paragraph 2 letter c of government regulation No. 9 of 1975 Article 136 paragraph 2, husband or wife may ask Religious Courts to put the confiscation of property collateral without the request for divorce, if one does something which is harmful and dangerous to property such as gambling, drinking, lavishing, and so on".

In this article, it is possible for both parties who are united in a marriage for undertaking marriage confiscation to the court if there are three indications made by both parties, namely gambling, drinking, and lavishing. In her request, Halimah can prove the occurrence of lavishing by her husband because of the third party. So if it is not confiscated by the Panel of Judges, she is worry that there will be reduction, depreciation, or the transfer of their property to other parties before the permanent legal decision of divorce.

Decision of the Central Jakarta Religious Court above, we considered as a legal breakthrough, because although it is possible in procedural law, but rarely used. The judges argued that the use of Article 95 of the Compilation of Islamic law gives equal rights to the wife or husband to apply for confiscation of property that is also called a guarantee confiscation (*conservatoir beslag*) on the property or may be called by marriage confiscation (*marital beslag*).⁸ There is expectation in the future that similar decisions may be given by other judges to the wife who filed marriage confiscation regardless of social status (position and status) of wife and husband.

Minimum Service Standards (MSS) Policy in the handling of victims of violence

In November 2008, the Ministry of Social Affairs issued a Ministry of Social Affairs Regulation Number: 129/HUK/2008 on Minimum Service Standard of Provincial Social Sector and Regional District/City. Earlier in the month of February 2008, the Ministry of Health of Indonesia also issued a Decree of the Minister of Health of Indonesia Number: 129/Menkes/SK/II/2008 on Minimum Service Standard of Hospital. The issuance of Minimum Services Standard of the social field and the hospital is a follow-up of Government Regulation No. 65 Year 2005 on Guidelines for Formulation and Implementation of Minimum Service Standards.

MSS of Hospital is providing Minimum Service Standard (MSS) of the type and quality of basic services⁹ which is an obligatory of the region that has to be obtained by every citizen minimally.

While MSS of social field, the type of services held by the Provincial and Regency/City Government are:

1. the implementation of social programs/events; the provision of social assistance, the implementation of services activities and social rehabilitation (social institutions)
2. the provision of social infrastructure; the provision of social institutions infrastructure, the provision of infrastructure outside the social institution
3. the management of disaster victims; social assistance, victims' evacuation

⁸ Verdict of Religious Court in Central Jakarta, page 106.

⁹ Basic service is a type of public service that founded and absolute for fulfilling community needs in social, economic, and government life – Government Regulation of Republic of Indonesia Number 65 Year 2005, Chapter I paragraph 8.

4. the implementation and development of social security for the physically and mentally disabled people, as well as un-potential elderly people who are neglected and come from vulnerable and incapable community; the implementation of social security

The presence of MMS from the Ministry of Social Affairs and the Ministry of Health opened up opportunities for poor families to obtain broader health and social services, but because of the service was provided by local governments, so it caused the service quality is different between one region to another region.

Other policy breakthroughs of services for women victims of violence, who were issued in the year 2008, are:

- Government Regulation of Indonesia No. 9 Year 2008 on Procedures and Mechanisms of Integrated Services for Witnesses and/or Victims of the Crime of Trafficking in Persons
- Decree of the Regent of Central Maluku No. 463-142 Year 2008 on the Establishment of the Integrated Service Centre for Women and Children (*P2TPA*) of Central Maluku District
- Decree of the Regent of Buru No. 463-116 Year 2008 on the Establishment of the Integrated Service Centre for Women and Children (*P2TPA*) of Buru District
- Decree of the Mayor of Ambon No. 390 Year 2008 about the Establishment of the Integrated Service Centre for Women and Children (*P2TPA*) of Ambon City
- Regulation of Police of Indonesia No. 3 Year 2008 on the Establishment of Special Assistance Room and the Procedures of Inspection and/or the Crime Victims

General Recommendation of CEDAW Committee No. 26 on Women Migrant Workers

In the 42nd session (October – November 2008), UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), issued a General Recommendation No. 26 on Women Migrant Workers. In response to the low willingness of the countries, especially the destination countries, in ratifying the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), CEDAW General Recommendation No. 26 may be a new standard for the protection of the rights of women migrant workers. Considering almost all countries in the world have become States Parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention in 1979), the implementation of these general recommendations is clearly the obligations of States Parties, including Indonesia and the destination countries of Indonesian women migrant workers, such as Malaysia, Saudi Arabia, South Korea, and so on.

In these recommendations, the CEDAW Committee emphasized the obligation of State Party of CEDAW Convention, either as countries of origin, transit countries and destination countries of women migrant workers, to eliminate discrimination and violence experienced by women migrant workers. Paragraph No. 23 General Recommendations No. 26 underlines shared responsibility of countries of origin and destination countries, which includes a comprehensive migration policy that is gender sensitive and rights-based with reference to the CEDAW Convention, the active involvement of women migrant workers and civil society in policy formulation, as well as research, data collection and quantitative and qualitative analysis about the problems faced by women migrant workers as a policy formulation material. States Parties are expected to conduct bilateral, regional cooperation and ratification of relevant

international human rights treaties, such as the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

Specifically, recipient countries must respect, protect and fulfil human rights of women citizens who migrate for work, including through eliminating the prohibition/restriction of migration, including the requirement of husband/male guardian's permits to obtain a passport/to travel, to develop materials/educational programs, to increase awareness and training, to adopt a system of regulation and monitoring of recruitment agents, to provide health services, legal and administrative assistance, the secure remittance distribution, to facilitate the return and reintegration, as well as to train and to supervise the diplomatic services and the councillor to protect the rights of women workers migrants abroad.¹⁰ Transit countries also have the responsibility to train, monitor and supervise the police and immigration officers at the border so will be gender sensitive and non-discriminatory in dealing with women migrant workers, and actively participate in preventing the occurrence of human rights violations related to migration, and prosecute and punish perpetrators.¹¹

The destination countries are obliged to ensure the non-discriminatory treatment for women migrant workers who work in their countries.¹² The destination countries, among others, have to revoke the ban/restriction on women migrant workers, including the prohibition of marrying their citizens, to be pregnant or have a secure and independent accommodation, to provide legal protection, access to a remedy, in form of solving the case legally and the provision of temporary protection place (shelter), the provision of legal protection for freedom of movement, family reunification scheme, to adopt the monitoring system of recruitment agencies and employers, to ensure the rights of women migrant workers in detention, and to ensure the protection of human rights of women migrant workers who are undocumented.

ASEAN Charter

On December 15th, 2008, the ASEAN Charter has been formally applied after it ratified by the member states. It became one of the important milestones in the history of ASEAN, because ASEAN is not only laid a stronger foundation for building this regional organization, but also because ASEAN has officially recognizes the human rights values of its people. Although not explicitly mention the rights of those who emigrated to other countries, but the recognition of human rights principles have implications for the rights of migrant workers, including people who immigrate to other countries as an integral part of human rights become more secure. Article 2 of the ASEAN Charter sets out principles which should be held by ASEAN and its Member States, in which one of them is "to respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice."¹³ Specifically, the ASEAN Charter is mandating the establishment of an ASEAN human rights body¹⁴, which is the implementation based on the Work of Reference (Terms of Reference/TOR) prepared by the Meeting of ASEAN Foreign Ministers.

¹⁰ General Recommendation of CEDAW Number 26 on Women Migrant Workers, paragraph 24.

¹¹ Ibid., paragraph 25.

¹² Ibid., paragraph 26.

¹³ Article 2, ASEAN Charter.

¹⁴ Article 14, ASEAN Charter.

Setbacks

Law on Pornography

On November 26th, 2008, Law No. 44 Year 2008 on Pornography was signed by President Susilo Bambang Yudhoyono amid controversy over the pros and cons that come from all circles: academics, activists, cultural activist, intellectual, and the government. By reason of protection of women, children and young people from the dangers of pornography, this law instead is potentially criminalizing women and limiting citizens' freedom of expression. In this context, the Law on Pornography threatens constitutional guarantees, such as: Article 28 B (2) is entitled to protection and discrimination, Article 28 D (1) security, protection and legal certainty, Article 28 E (2) freedom of belief, express thoughts and attitudes, according to his/her conscience, Article 28 F of freedom to communicate and obtain information for personal development and the environment, Article 28 H (2) facilities and special treatment, equality and justice before the law, Article 28 I (2) free from the discriminatory treatment and protection from it.

The existence of this Law is supported strongly by the government, so it accelerates its enactment. It can be seen from the release of joint regulation between the Minister of Women Empowerment, Minister of Youth and Sports, Minister of Communications and Information, Minister of Religious Affairs, and Police of Indonesia with No. 78/Men.PP/Dep.II/IV/2008, Number 0105, Number 73/Kep./M.Kominfo/4/2008, Number 2 Year 2008 on the National Action Plan to create a clean family of pornography. This joint regulation was signed on April 4th, 2008. In general, this national plan contains an action plan in 2008 – 2011, which begins at the individual level to the state/government in order to implement the norms, socialization of the regulation of pornography, the dangers and effects of pornography, and the efforts to prevent pornography that can be done by all circles as part of social control in the community to prevent the spread of pornography.

The articles which have multiple interpretations in the Law on Pornography also create legal uncertainty. Shortly after the Law on Pornography enacted by the Parliament, the police of Taman Sari in West Jakarta was immediately break into the area of Lokasari for searching the entertainment sector workers as the effort to implement this Law. A total of 10 dancers were dancers, whereas seven of them were waiting for their turns to dance.¹⁵ Until now, the Government has not issued the regulations for the implementation of this Law.

Verdict of the Supreme Court of Indonesia Number 01K/AG/JN/2008 on the Appeal Cases of *Jinayat* (criminal) of the Religious Court

On May 23rd, 2008, Supreme Court gave its verdict with Number 01K/AG/JN/2008 on the Appeal Cases of *Jinayat* of Religious Court, it rejected the appeal filed by one defendant, because she got whipped as punishment based on Local Regulation of NAD or *Qanun* No. 14 Year 2003 on *Khalwat* (*Mesum*). In the *Jinayat* case (criminal) on men and women (who already have husbands) whom have been doing dirty deeds, they are required by Article 5 jo Article 22 paragraph (1) that if they are not *mubrim* (*mabram*), and both of them are alone in a dark place inside a room that should be known, they have been doing dirty deeds/seclusion (*mesum/khalwat*), so it is unlawful and they will get punishment in form of whipping.

The case has received the verdict of *Shariah* Court Number 01/JN/2007/Msy-LSK dated July 9th, 2007, both of them was sentenced in form of whipping, also to pay the cost of the case. The defendant filed an appeal and received the verdict of the *Shariah* Supreme Court

¹⁵ 10 dancers were caught due to the Law on Pornography, Seputar Indonesia daily newspaper, November 3rd, 2008.

Number 09/JN/2007/Msy-Prof, dated September 25th, 2007 with the same punishment. Male defendant has explained in his memory on appeal that the allegations are unfounded.

Thus, the appeal verdict of the Supreme Court of the Republic of Indonesia has confirmed the *qanun* verdict which introduced one type of criminal punishment that is not regulated in our national positive law, namely whip punishment. The Supreme Court did not question that there is no whip punishment in the national legal system. Meanwhile, in reality, according to Law No. 14 Year 1985 which has converted into Law No. 5 Year 2004 article 30 (1) letter b, the Supreme Court, in the appeal level, has authorized in revoking the verdict or court's determination from the judicial environment, because it is wrong in implementation or it violate any applicable laws. In this case, the Supreme Court has limitation in treating the verdict of *Shariah* Court in Lhoksokun, NAD, without touching the substance of *qanun*.

The Verdict of Constitutional Court related to women's political rights

The verdict of Constitutional Court Number 22-24/PUU-VI/2008, dated December 19th, 2008 determines that Article 214 letters a, letter b, letter c, letter d, and letter e of Law No. 10 Year 2008 concerning General Election of the Members of the House of Representatives, Regional Representatives Council, and the House of Regional Representatives does not have binding legal force. This verdict was based on the legal assessment that, with open proportional system, people is freely to choose and determine the selected legislative candidates, namely the candidates who receive votes or the most people support. This verdict of Constitutional Court is eliminating the affirmative action measures to ensure women representation in legislative institutions.

This step is important, because the presence of female representatives in legislative institutions is still smaller than men. The fact is that during the three periods, since 1992 until 2004, the number of women in parliament has decreased from 12.15% to 8.80%¹⁶. The election result of 2004¹⁷ showed the number of women who are occupying seats in the *DPR*, *DPD* and the Assembly as much as 11% while the man as much as 89% of the 16 political parties which joined the election. From the comparison data on women and men's percentage in parliamentary bodies from year to year, it is indicating the involvement of women in politics is very low, it is not due merely by the reluctance of women to enter the political sphere, but as the impact of the social construction of gender bias on the role of women in community.

Circular Letter of the Consulate General of the Republic of Indonesia in Hong Kong No. 0356/IA/II/2008 about the Mechanisms and Conditions of the Extended Contract and Extension Contract for Indonesian Workers in Hong Kong

Consulate General of the Republic of Indonesia (Consulate General) Hong Kong issued Circular Letter No. 0356/IA/II/2008 about the Mechanisms and Conditions of the Extended Contract and Extension Contract for Indonesian Workers in Hong Kong. This Circular Letter was issued as a correction of the Circular Letter of Consulate General of the Republic of Indonesia No. 2258/IA/XII/2007 on Procedures of Changing Agency for Workers. The Circular Letter No. 2258/IA/XII/2007 get tough opposition from various parties, especially migrant workers' organizations based in Hong Kong, it considered very harmful for migrant workers. Based on the Circular Letter, it gives emphasis and special obligations exclusively to women migrant workers who would change their agents, to oblige notifying the Consulate

16 Source: Sekjen, MPR RI (Indikator Sosial Wanita Indonesia, 1999,BPS)

17 Source: Komisi Pemilihan Umum (2004)

General in Hong Kong, but not to other parties which related to the migration and placement process.

Pressure from various parties, including *Komnas Perempuan*, has produced a Circular Letter No. 0356/IA/II/2008 which mentions, among others, that the Indonesian labour (not just women Indonesian migrant workers only) who will move to other agent, they are no longer need to mention their reason to move to the Consulate General in Hong Kong, and when as the agents extend the employment contract, they must include a statement of assurance that they will not collect more than 10% salaries of migrant workers.

Decree of *Dirjen Binapenta Depnakertrans* No. 186 Year 2008

In mid 2008, at this time, the prospective migrant workers to Hong Kong who work as housekeepers, babysitters, and nurse of elderly/old people had a surprise with the issuance of the Decree of *Dirjen Binapenta Depnakertrans* Number 186 Year 2008, which stipulates that the amount of costs to be borne by the prospective Indonesian migrant workers is amounted to Rp. 15,550,000,- plus USD 15. Previously, only Rp. 9,132,000, - based on the *SK Binapenta* No. 653 Year 2004. For prospective migrant workers who are almost come from low income society, that number is very large. Until now, the decree is still in effect.

Regulation of the Minister of Manpower and Transmigration No. 22/MEN/XII/2008, dan No. 23/MEN/XII/2008

On the other hand, Minister of Manpower and Transmigration has issued a Regulation (hereafter *Permen*) of Minister of Manpower and Transmigration No. 22/MEN/XII/2008 on the Implementation of Placement and Protection of Indonesian Workers Abroad, and the Regulation of the Minister of Manpower and Transmigration No. 23/MEN/XII/2008 on Insurance of Indonesian Workers.

Unlike the earlier *Permen* (*Permen* No. 18/MEN/IX/2007), this *Permen* includes a comprehensive clause on protection for Indonesian migrant workers. The regulation includes protection since time of pre-placement, during placement, until post-placement, with also includes protection element in the placement stage for Indonesian migrant workers who experience violence and sexual abuse (Article 44). However, there are some weaknesses of the *Permen*. First, the protection that is meant to pre-departure stage is limited to the monitoring of the various documents of migrant workers. While related to the protection of sexual violence is mentioned only in the protection of the settlement of disputes with users/other party during the placement. Advocacy and assistance that intended in the protection in this stage is also limited to advocacy and assistance on rights of migrant workers as workers, not as someone who experienced human rights violation. Physical and psychological rehabilitation was only given when migrant workers returned to Indonesia. Another weakness of the *Permen* No. 22 Year 2008 is a limitation of the rights of women migrant workers, such as the requirement of permits from husband/wife/parent/guardian (Article 10).

Permen No. 23 Year 2008 requires that Indonesian workers should be included in an insurance program that includes pre-placement until post-placement, with the total insurance cost is Rp. 400.000,-. The breakthrough provided by this *Permen* is one of the risks that covered in the insurance program, namely a risk of physical violence and rape (Article 4).

After the establishment of National Board for the Placement and Protection of Indonesian Overseas Workers (hereafter *BNP2TKI*) early last year, so in this year the Minister of Manpower and Transmigration re-activates his department's role in matter of the placement of Indonesian migrant workers abroad, especially through the Directorate General of the

Development on Manpower Placement. The strengthening of the position of the Department of Manpower is also can be seen at *Permen* No. 22 and 23 Year 2008. During the year 2008, the debate between *BNP2TKI* and the Department of Manpower and Transmigration is quite prominent; especially it was triggered by lack of clarity on the limitation of responsibilities and authority of each institution in terms of placement and protection of Indonesian migrant workers. *BNP2TKI* entitled to mandate to coordinate in terms of placement and protection of Indonesian migrant workers. However, *BNP2TKI* has not given full authority in performing those tasks. The decisions remain in the authority of the Minister of Manpower and Transmigration; *BNP2TKI* only got the authority to give inputs to the Minister of Manpower and Transmigration. The reactivation of that Director General without any resolution on the institutional conflicts related to the clarity on authority between the two institutions is predicted to increase the complexities on the resolution of the comprehensive problems experienced by migrant workers.

As well as policies, the handling of cases of migrant workers who carried out so far by the government is still reactive. No handling mechanism of the cases which is comprehensive and sensitive to the needs of victims. The handling cases are still partial, not yet well coordinated. Each institution has their own mechanism, in accordance with the scope of their works. The character on handling of cases which is quite striking is the segregation between the victims who are undocumented and documented migrant workers. In fact, the handling of cases should be given to all migrant workers, regardless of their status. Beside that, the handling mechanism that is available at this time; is still not responsive to women victims, particularly victims of sexual violence. The real proof is the absence of state efforts to deal with the phenomenon of child with Arab faces in Cianjur, Karawang and Lombok, which in majority were born because their mothers were raped by their employers in Saudi Arabia.

This is not just happening in national level, but in the relationship between the national and regional, and inter-regional level.

The existence of *Permen* No. 22 Year 2008 also gives more responsibility to the region (the local office which in charge of employment in the province and district/city). If this thing does not balance with the strengthening of capacity at the Office of Manpower in the region, the coordination between the Office of Manpower with the local government, then its implementation is worried that will be not optimal and can cause new difficulties in coordination.

Regional Regulation of the Blitar District No. 16 Year 2008 on the Protection of Manpower of the Blitar District in Overseas

Government of the Blitar District issued Local Regulation No. 16 Year 2008 on the Protection of Manpower of Blitar District in Overseas. However, this local regulation still has some weaknesses, including the element of placement which is still strong, even though its title only contains elements of protection, some regulations that become consideration are no longer valid, the terms of manpower which mentioned before was meant to those "who can go abroad legally" (Article 1), the conditions of marriage books and licenses from the husband or wife as the required employment documents (Article 8). On the other hand, a breakthrough that should be noted from this legislation is the provisions to establish a protection commission of Manpower of the Blitar District, which the membership consist of NGOs, community leaders and competent professionals. This Commission is mandated among others to receive complaints related to violations of procedures and regulations on the recruitment and placement of the manpower of the Blitar District, to compose the rules regarding complaints and mediation mechanisms, to manage a shelter, and others. Beside that, the local regulation has given mandates to local governments to provide protection funds for the

manpower of the Blitar District. However, how the implementation of both these breakthrough remains to be seen later.

CONCLUSION

Pattern of violence:

1. Economic violence that occurred in the household and sexual violence that occurred in the community are two types of violence experienced by most women, if it observed from the cases of violence against women which handled by service provider institutions, hospital and law enforcer institutions. This trend applies consistently from year to year, since 2006 until 2008.
2. In 2008, the majority of women victims of economic violence in the household is wives; that as many as 6,800 cases (of 46,884 violence against wives cases), whereas, the majority of victims of sexual violence in the community are women under age, that as many as 469 cases (of 1870 cases).
3. Four categories of women victims of violence who require special attention this year are religious minority women, poor women, women's entertainment sector workers, and women human rights defenders, while, four figures of perpetrators of violence against women who need to be monitored are public officials, regional heads, legislative members, and educators.

Handling:

4. The capacity of the service provider institutions includes the availability of human resources that specifically handle cases and conduct data collection of VAW cases, and special facilities provided by institutions in order to handle VAW. There are many institutions that need to improve its readiness in order to handle the VAW cases by noticing the availability and the quality of capacity which includes three aspects that referred to.
5. Institutions that used *UU PKDRT* in handling cases of domestic violence have increased in the courts sphere, especially the District Court and Religious Court, when compared with previous years. This demonstrates the increasing of Judges' recognition of this Law.
6. The using of *UU PKDRT* is actually began to decline around the service provider institutions in the community and police in the year 2008, when compared with previous years. There is currently no definitive explanation of the reasons for this trend, but it might be associated with a complaint from police about the number of women victims of domestic violence who withdrew the complaint before the legal process begins. In the context of service provider institutions which managed by civil society organizations (CSOs), this decrease may be due to more frequent use of non-litigation approach in handling domestic violence cases.

Policies

7. In 2008, there were a number of policies which is conducive to the fulfilment of the rights of women victims of violence, particularly in the field of racial and ethnic discrimination, migrant women, services for women victims of violence, and matter on confiscation marital in divorce. However, *Komnas Perempuan* also noted that the policy products that keep away women from the fulfilment of their rights, particularly in terms of guarantees of freedom of expression (Pornography Law), women's access to justice (*Jinayat* case appeals from Aceh), and women's political rights (the verdict of Constitutional Court on the determination of selected candidates).

8. Related to the settings of migrant workers, almost all legal products that produced in the year 2008 led to policies that mutually contradictory and tend to weaken the protection of migrant workers.

RECOMMENDATIONS

1. Because of the highest type of domestic violence is economic violence, the Government and the victim's assistance of domestic violence need to make special efforts to increase economic independence for victims, in addition to facilitate psycho-social and medical recovery.
2. Government needs to develop an appropriate approach to support the recovery of underage girls who have become victims of sexual violence in the community.
3. Women's organizations need to develop a comprehensive draft policy on violence and sexual abuse, including the matter of legal protection and recovery for victims.
4. Government should immediately revoke all discriminatory policies against religious minority communities to prevent the growing casualties, and law enforcer institutions need to take stern action against all forms of violence and crimes against minority communities.
5. Anticipating the impact of the global economic crisis in Indonesia, Government needs to develop a special initiative to understand the needs of poor women in cities and rural areas, also to support its fulfilment.
6. Government should immediately create a comprehensive legal tool to protect human rights defenders, including women human rights defenders who have special vulnerabilities due to their feminine or because of gender equity issues that was stood for.
7. Society needs to improve monitoring of the behaviour of public officials and educators towards women who are under their authorities, particularly related to acts of harassment and sexual violence.
8. State agencies and educational institutions, both formal and non-formal, should develop a code of ethics enforcement mechanisms, including the implementation of the sanctions system, which responds to cases of harassment and sexual violence that occurred in their own environment.
9. The law enforcer institutions need to continue to improve the mainstreaming of knowledge on *UU PKDRT* in the context of human rights of women in all ranks, including in the current educational curriculum.
10. Society and government need to develop empirical and comprehensive knowledge about the treatment patterns of violence against women who live in the middle of the community, and assess its effectiveness for the fulfilment of the rights of victims to truth, justice and restoration.
11. Government and legislative institutions should immediately take concrete steps to make harmonization between regulatory and to revise/revoke the regulatory that is contradictory with the 1945 Constitution.
12. Government needs to make a real breakthrough to improve the effectiveness of protection mechanisms for women migrant workers and to improve access to the victims of exploitation and violence to justice and recovery.