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Faculty of Law 2019
Sultan Agung Islamic University
Legal Reconstruction in Indonesia Based on Human Rights

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

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbonne University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

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

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.
PROCEEDINGS
The 5th International Conference and Call for Paper Faculty of Law 2019
Legal Reconstruction in Indonesia Based on Human Right

Table of Contents
FRONT PAGE .......................................................................................................................... I

Information of The International Seminar ............................................................................. III

Committee Composition .......................................................................................................... IV

PREFACE .................................................................................................................................. V

Fulfillment Of Teacher Protection Rights
Yenny AS, Rini Setiawati ......................................................................................................... 1

Legal Reconstruction Of Laws Regarding Human Rights Through Judicial Review To The Constitutional Court
Umar Ma’ruf ............................................................................................................................ 13

Legal Analysis Of Social Security Transformation And The Reality Of Its Implementation In The Community In Indonesia
Siti Ummu Adillah, I Gusti Ayu Ketut Rachmi Handayani, Adi Sulistiyono ......................... 29

Increasing Voluntary Compliance Of Tax Payments In Micro Small And Medium Enterprises (Msmes) Post-Issuance Of Government Regulation Number 23 Of 2018 (Case Study In Semarang City)
Amin Purnawan, Akhmad Khisni, Aryani Witasari .............................................................. 40

Legal Analysis Of Racist Exams In Surabaya Papua Dormitory
Ma’aruf Akib .......................................................................................................................... 49

Reconstruction Of Misdemeanor Settlement Based On Pancasila Value
S. Andi Sutrasno ...................................................................................................................... 56

Urgency Of Legal Assistance For Poor People As A Request Of Human Rights
Adhi Budi Susilo, Indra Yuliawan ........................................................................................ 62

Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers’ Rights Based On Justice
Rahmatsyah ............................................................................................................................ 66

Problematic Presidential Electoral Threshold In The Operation Of Value-Based Simultaneous Justice
Widayati, Winanto .................................................................................................................. 72
Reconstruction Of Learning Methods In Criminal Law Subjects Using Inquiry Methods Based On Human Rights And Islamic Values
Ira Alia Maerani, Eko Soponyono, Nuridin

Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic’s Victims Based On Religious Justice
Carto Nuryanto, Gunarto, Anis Mashdurohatun

Study of the theory of Legal Protection Against Online High Yield Investment Program Contracts in Indonesia (HYIP)
muhamad Iqbal al Hakiem, aryani witasari

Reconstruction Completion Of The Crime Of Light On Value Pancasila
Andi S. Sutrasno

Law Reconstruction Of Registration On Fiduciary Obligation Based On Justice Value
Wieke Dewi Suryandari ; Gunarto; Amin Purnawan

Reconstruction Of Transport Regulatory On Marine Toll To Support Sea Connectivity Based On Pancasila Justice
Hartanto, Gunarto, Anis Mashdurohatun

Reconstruction Of Scientific Investigation In Indonesia Based On Justice
Teguh Prihmono; Gunarto, Sri Endah Wahyuningsih

Legal Construction On Training Ship Management Belongs To Human Resources Development Of Transportation (Bpsdmp) Based On Dignity Justice Value
Wahyu Wibisono, Gunarto, Anis Mashdurohatun

Protection Of Law Refugees/Asylum Seekers In Indonesia (As A Transit State) No Ratify 1951 Convention Of And The 1967 Protocol
Muhammad Djamir

Reconstruction Of Legal Policy On Decency Crime In Indonesia Based On Pancasila Value (Lgbt Rehabilitation Institute For Children)
Cucuk Kristiono, Gunarto, Anis Mashdurohatun; Suparji

Legal Protection Against Indonesian Workers (Tki) In Abroad
Yaya Kareng (Sripatum University Ong Argo Victoria, Sri Yulianingsih

Reconstruction Of Auction Execution Of Mortgage Object In Determine The Auction Price Based On Justice
Moh Djarkasih**
Reconstruction Policy Of Sanctions Against Destruction Of Evidence Illegal Fishing Based Small Fishing Welfare Values
R. Juli Moertiyono ................................................................. 165

Reconstruction Of Legal Policy Interfaith Marriage In Indonesia
Moh. Zeinudin, Dian Novita .................................................. 179

Reform Of Couple Sexual Rights Protection In Case Of Diseases Hiv / Aids In Indonesia
Nana Ruhyana ...................................................................... 186

Legal Protection Against Disability In Getting Work
Oktavianto Setyo Nugroho ...................................................... 193

Reconstruction Of Authority To Arrest In Doing Judge Accused Of Value-Based Justice
Agus Sugiarto ...................................................................... 203

Enforcement Of Criminal Law In False News (Hoax) Management According To Law No. 11 In 2008 That Has Been Amended To Be Law No. 19 Of 2016 Concerning Electronic Information And Transactions In Islamic Law And Positive Laws
Yanto Irianto ........................................................................ 208

Reconstruction Validity Legal Deeds Are Dealing With Children In The Process Of Law Criminal Justice System Based Child Justice
Asep Hermawan ................................................................. 220

Reconstruction Of Performance Assessment Of Drinking Water Companies (Pdam) Based On Consumer Protection
Bustaman ............................................................................ 225

Reconstruction Legal Rights Associated With A Warranty Not A Bank Debt
Euislistianti .......................................................................... 229

Reconstruction Of Operational System As A Community Economic System Based On Welfare
Abbas Ibrahim Idris ................................................................. 234

Reconstruction Of Criminal Responsibility For Actors Prostitutional Criminal Justice In The Criminal Justice Based On Value
Iwan Rasiwan ....................................................................... 242

Reconstruction Of Legal Drinking Water Management Company (Pdam) Based On Justice
Suharyadi ............................................................................... 248
Reconstruction Of Private Criminal System Implementation In The Commitment Values In Indonesia Justice
Sumanto ................................................................. 252

Reconstruction Of Justice Law Protection Law Protection
Wamyani ................................................................. 260

Criminal Code Draft Law And Development In Indonesia
Nany Pujianti Suwigjo ................................................. 265

Deconstruction of the Principle of Legal Thinking
Sriyati ................................................................. 270

Development Of The Law Of Complete Systematic Land Registration (Ptsl) And Effect Of Conduct Values Of Land Based On Dignify Justice In The District Of Kendal, Central Java
Desy Dwi Nurhayati Hartanti ........................................... 279

Interpretation Teaching Of Human Rights Laws Against Material In Corruption Provisions
Burham Pranawa, Hartiwiningsih, Hari Purwadi ................................. 293

Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers’ Rights Based On Justice
Rahmatsyah ................................................................. 301

Law Due To Delay The Registration Under Fiduciary Guarantee Pmk No 130 / Pmk.010 / 2012
Jaenudin Umar ................................................................. 307

The Effectiveness Of The Handling Of The Criminal Acts Of Light Tend To Be Settled Judicial Custom
Supena Diansah ................................................................. 313

Urgency Of Legal Assistance For Poor People As A Request Of Human Rights
Adhi Budi Susilo, Indra Yuliawan ......................................... 327

Independence Institute Of Justice And Judge In Perspective Judicial Reform Blueprint 2010 - 2035
Ahmad Agus Bahauddin ................................................... 331

Policies Against Crime Criminal Law Made By Children
Achmad Arifullah ................................................................. 340

Law Enforcement Of Law Number 23 Of 2004 In Preventing Efforts Human Rights Violations In Indonesia
Andri Winjaya Laksana, Lathifah Hanim ........................................... 350
Legal Reconstruction in Indonesia Based on Human Right
Reconstruction Of Private Criminal System Implementation
In The Commitment Values In Indonesia Justice

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Abstract

56 years after the inauguration of the Penitentiary system by Sahardjo, the implementation of
Imprisonment in the Penitentiary system has not lost the color of past incarceration, marked by various
cases that surfaced, this condition requires the reconstruction of the pattern of Imprisonment in prison.

Keywords: Reconstruction, Criminal, Prison, Correctional System, Justice

A. Preliminary

Crime (crime) constitute unlawful behavior and violate social norms, so that the public opposed it.427 In the social context, the crime is a social phenomenon that occurs in every place and time.428 This shows that crime is not only a problem for a particular community scale, locally and nationally, but also the problems faced by all societies in the world, past, present and future, so it can be said that crime as a universal phenomenon.429

According to Bonger, evil sense in light of the formal (legally) is an act by the public (in this case the state) by a criminal. Furthermore, he also said that when viewed more deeply, a crime are some of the acts that are contrary to morality.430 Concluded that the crime are very anti-social acts are challenged with conscious of the state form of suffering (punishment or action).431

Imprisonment is a reaction to the country as a result of a crime and formulated into legislation criminal law. in some countries that embrace liberalism, imprisonment became principal prioritizes criminal exile as well as in Indonesia. However, Indonesia as a country based on Pancasila constantly new ideas about the function of punishment which is no longer simply a deterrent but an attempt rehabilitation (repair, healing), the idea was poured Sahardjo when receiving the title of Doctor Honoris Causa at the University of Indonesia on July 5, 1963, with the title “Banyan Tree Legal Pengayoman Pan-

426 The author is a member of the National Police in Cirebon Police, Lecturer, is completing the Doctoral Program at the Law Faculty of Law, University Islam Sultan Agung Semarang.
430 WA Bonger, 1981 Introduction On Criminology. PT Pembangunan Ghalia Indonesia, Jakarta, p. 21
431 Ibid, p. 25.
432 Criminal lost independence became the principal criminal everywhere until the whole world, which is increasingly affected by the flow of the individualist-liberalist. Penal system lost independence that began with the closure together day and night, changing closed alone day and night, then lunch together and nights alone. But still tightly confined in the four walls, RA, Koesnoen, 1961, the National Prison Politics, Wells Bandung. Bandung, p. 8, in Peter Irwan Panjaitan, and Mandy Sri Widiarty 2008, Thought Reform Dr. Regarding Sahardjo: Penitentiary Convicts, CV. Indhill Co., Tebet Jakaera, p. 13.
casila Manipol / Usdek” 433. Who gave birth to a guidance system called the penal system.

The enactment of Law No. 12 Year 1995 on Penal as a concept that is very humane, even no assessment of the idea was too advanced, it was not enough to bring improvements to people in prison, even events like the flight of prisoners, the riots at the Correctional Institution (prisons) as well as prison conditions are alarming because the number of inmates exceeds the capacity and inmates infected with HIV, reflecting the correctional system is not running properly, still overshadowed system penal system. Based on the background of the problem, formulated the research problem as follows:

1. Why is the implementation of imprisonment in the penal system in Indonesia has not been based on the values of justice?

2. What are the weaknesses of imprisonment in the penal system in Indonesia at this time?

3. How is the reconstruction of the implementation of the criminal justice penal system worth?

This study uses empirical juridical approach, which is a method used to solve the problem by first examining the primary data in the field followed by a study of the data of the existing secondary 434, This study will generate data descriptive data in the form of written or spoken of the research object holistic (whole), which deals with the problems examined

B. Results and Discussion

relative theory pivot 435 on three main goals of punishment, namely; lead to action and remedies (preventive), deterrence, and reformative 436, Preventive purpose of sentencing is to protect the public by placing separate offenders from society, or placed in a particular place in this case is a prison.

The legal system according to Bellefroid, is as a continuum of legal regulations that are arranged in an orderly according to its principles 437, While Sudikno Mertokusumo states, the legal system is a unit consisting of the elements that have interaction with each other and work together to achieve this unity 438, The legal system according to Lawrence M. Friedman is composed of three elements, namely the structural elements of the law (legal structure), the substance of the law (legal substance), and the legal culture (legal culture) 439.

The theory of the legal system related to the implementation of the system pemayarakatan imprisonment, has not happened continuum (cooperate) of elements from one another that the element of correctional officers, correctional law, the correctional culture that is still running for prison culture. Thus in the correctional system its only law that has become Penal Law, while

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435 According to this theory a crime mutlaq not be followed by a criminal, untukitu the existence of a crime is not enough but must be questioned as well and criminal manfaatnaysasuatu for the community or for the villain was sendiri.tidak only be seen from the past, but also the future, then there must be a further purpose than just menjatuhkanpidana only. thus this theory also called theory of interest “doel Theorien”.
436 Especially with regard to the purpose of prevention and deterrence, one of the leading classical flow, Jeremy Bentham known as the doctrine of utilitarianism its ever filed four tujuanumata of criminal law: (1) Prevent all violations, (2) Prevent violations palungkahat, (3) Suppress crime, and (4) Pressing any damages or costs as small as possible. See Muladi and Bardi Nawawi Arif, 1984, Theories and Criminal Policy, Alumni, Bandung, p. 25-26.
439 Lawrence M. Friedman, Law and Society, an introduction, (New Jersey: Prentice Hall, 1977), p. 7. (Hereinafter referred to Lawrence M. Friedman I) In principle, according to Friedman that the legal system consists of the legal structure, the substance of law and cultural. The legal structure concerning its institutions, the substance of the law covers all legal regulations, while the legal culture includes an overview of the attitudes and behavior of law, and the factors that determine the acceptance of a particular legal system in a society.
the clerk and culture is still a prison affair. This gives rise to injustice to convict as Citizens Patronage of Corrections (WBP).

Law and justice are like two pieces sides of the coin and is the inseparable unity. Justice comes from the base affixes to the fair to get late, become justice. Justice means being able to put things in proportion, and equality in accordance with the capacity and ability to do something problem.

In tune with the development of the legal field today has evolved various establishments of the sajana about the law, one of which is thought of Satjipto Rahardjo regarding Progressive Law. Progressive law is one of the most interesting ideas in the legal literature Indonesia at this time, because the Progressive Law has sued the existence of modern laws which have been considered to be established.

Through this progressive legal thought Satjipto Rahardjo then perform in-depth elaboration on the role of the law and how the law should be played in regulating the life of Indonesian society. The idea of a progressive law that sparked Satjipto Rahardjo delivered in a variety of seminars, discussions and scientific meetings and has invited comments from various groups in criticizing the progressive legal thought.

The basic assumption of progressive law is the view of the relationship between law and human. There affirmation principle that “the law is for man” and not vice versa. In line with the theory of progressive law prisoners can not be the object of a penal system because the system correctional precisely for WBP, so the implementation of imprisonment in the penal system in Indonesia should be based on the values of justice, to correct the weaknesses of imprisonment in the penal system in Indonesia today, it must be done reconstruction of criminal enforcement in the correctional system so valuable justice.

C. Conclusions and suggestions

1. knot

a. Implementation of imprisonment in Indonesia has not been

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443 Progressive Legal Theory outlook by Satjipto Rahardjo, the brainchild of the core 9 (Nine) principal idea as follows;

1) The law rejecting the tradition of analytical jurisprudence or rechtsdogmatik and understand the various streams such as legal realism, freirechtslekre, sociological jurisprudence, interressenjuriprudenz in Germany, the theory of natural law and critical legal studies.

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ibid, h. 88-89.

based on the values of justice due to the implementation of correctional still use the prison culture.

b. The weaknesses of imprisonment in the penal system in Indonesia when this happens because not happened continuum (cooperate) of the elements of the correctional system

c. Reconstruction of the implementation of the criminal justice system valuable correctional needs to be done in the correctional system.

2. Suggestion

a. Pembinian patterns in prisons should no longer use the pattern for prison.

b. PLT should be treated as a convict who is undergoing training to be promoted back.

c. Law should be reconstructed into a criminal imprisonment pemasyarakatan.

D. REFERENCES


Legal Reconstruction in Indonesia Based on Human Right 255
Reconstruction Of Private Criminal System Implementation In The Commitment Values In Indonesia Justice

Sumanto*445
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Abstract

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C. Conclusions and suggestions

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c. Reconstruction of the implementation of the criminal justice system valuable correctional needs to be done in the correctional system.

2. Suggestion

a. Pembinan patterns in prisons should no longer use the pattern for prison.

b. PLT should be treated as a convict who is undergoing training to be promoted back.

c. Law should be reconstructed into a criminal imprisonment pemasyarakan.

D. Daftar Pustaka

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