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# **THE 5 th INTERNATIONAL AND CALL PAPER**

## **Legal Reconstruction in Indonesia Based on Human Rights**

**Imam As Syafei Building**

**Faculty of Law, Sultan Agung Islamic University**

**Jalan Raya Kaligawe, KM.4 Semarang, Indonesia**

**UNISSULA PRESS**

# The 5<sup>th</sup> PROCEEDING

## *“Legal Reconstruction in Indonesia Based on Human Right”*

**IMAM AS SYAFEI BUILDING**

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

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*“Legal Reconstruction in Indonesia Based on Human Right”*

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## PREFACE

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, HilaireTegnan, Ph.D from Sorbone 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

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## Deconstruction of the Principle of Legal Thinking

Sriyati  
Abstrac

*The enforcement of human rights in Indonesia uncertain experiences ups and downs. This is due to the many national problems that overlap each other. The legislator's point of view in formulating laws, political situations, economic flows and the diversity of ideologies that influence one another. The release of philosophy as a point of view of exploring values Becomes a cause that requires serious study. The straightforwardness of human rights in Indonesia requires stability in other fields simultaneously. So that concludes, that enforcement requires devices outside the area of human rights itself. That the Law is a container of moral values, must be explored together with a complete perspective. Law as a branch of ethical philosophy can not be ignored. Determining the roots of the human rights problem in Indonesia has an impact on the technical resolution that must be done. Fair since in law, does not guarantee that justice is created too. The enforcement of human rights is not only the responsibility of the legal commission, human rights Activists, Officials or related institutions. In developing countries like Indonesia, a problem is Often the caused by another problem. Then the solution must be Formulated together with the problems that form a series of cause and effect.*

**Keyword: Human rights, Viewpoint**

### A. PRELIMINARY

History alive in the man is dead. Various types of human rights violations occur and evolve patterns from generation to generation. Efforts continue to be made to address the problems that seem timeless. State laws such as Indonesia, looks very promising for human rights, to be grown in fertile soil that is claimed. Community promised abundant harvest happiness, after suffering oppression for hundreds of years old.

Artificiality reality of the great ideas that are built, become excoriation to every ruler in his tenure. Independence is simply the release of a nation of armed foreign tourist. After the "native" powerful, flesh and blood of the motherland became the victims of life's happiness monopoly holders throne relay. Legal institutions established, as the houses of humanity. Human rights seminars intensively conducted. Activists continue to be born.

Countless blueprint for human development archived. But the reality remains the same. Old problems still to be new. Such as cutting down the cassava, as long as the roots are not uprooted, it will continue to grow.

Law Enforcement and Human Rights, proclaimed in earnest. How serious is human rights enforcement is done? The news is quite serious and tense. Tense as a mission to destroy the wall with his head. Which according to a person must use the knee, the head alone is not enough.

These problems would require to search for his roots. The roots are not visible to the eye, but the logical existence. Evidenced by digging the ground to see the truth. That's the principles established reality. So that the formulation of human rights enforcement should have found the formulation of the core to provide answers, "Why do human rights stand while lying on the ground?"

### RESEARCH METHODS

The method of writing this research

using descriptive-correlation approach. Descriptive approach used to make it easier to explain the circumstances of an object and its development. Correlative approach is used to find common ground among the many variables presented.

## **B. DISCUSSION**

### **Aligning Form Positive Law and Conceptions of Nature and Nurture**

History as formulating a value standpoint, it has a lot to create social patterns in human life. Many phenomena that have occurred, leading humans closer to the core of truth, goodness and beauty. Values that have awakened gave birth to the value system, which is from her womb discourse created a complex life. In the laboratory this history, the various phenomena of discourse was extracted, sari-sari is an invaluable material, in discovering the identity of humanity and civilization. Economic, Social and Cultural Rights is part of the product and the value system of her childbearing value system including Human Rights (HAM).

Human rights as a fundamental value that must be met. So its status is referred to as negative rights, which is a value that is their fundamental law does not require, as a container to be called there. But to live in the realm of reality, human rights law requires recognition that not only live in the nature of morality. Therefore, the law is referred to as a tool of social engineering. Technically, the law restricts human behavior to stimulate thinking on choice behavior. Thus, law enforcement is part of the education that impacts the human expression in society. A subconscious level to affect the performance of consciousness.

Enforcement of Human Rights can not stand alone. As history, the birth of the concept of human rights caused by socio-human conflict Regional and International. Human rights are closely related, be cause and a consequence of the current economic, political, social and cultural. That said, the tree

analogy, human rights are the fruit of the root fibers of the currents are. At the time of the jungle, the murder may happen between two people or two tribes were fighting a biological interest. Competition for land foraging territory at the same time. But the times, the murder may occur for reasons that are not as simple as that. Reasons Kennedy or killed Munir, backed by greater flows of biological problems. In fact that is clearly committed suicide, there can be factors rights violations that are the cause of his death. At the time of the jungle, hunted man stealing other people, just to fill an empty stomach. But now, the extraction of resources by foreign investors, could be regarded as the cause that has a systemic impact on the enjoyment of rights of a nation. At the time of the jungle, people might be able to argue without any laws restricting. In this digital era, it is man constrained by a group understanding of ideology. That is, human rights need to be understood as a social concept that is not standardized. He continues to grow as the emergence of the phenomenon of humanity and science. Identification of any possible human rights violations will be shifted over the development of social science, science, economics, education, culture or the law itself. Thus, the variables of human rights are also always evolving. Which it is to be understood as a content development legislation. hunted man stealing other people, just to fill an empty stomach. But now, the extraction of resources by foreign investors, could be regarded as the cause that has a systemic impact on the enjoyment of rights of a nation. At the time of the jungle, people might be able to argue without any laws restricting. In this digital era, it is man constrained by a group understanding of ideology. That is, human rights need to be understood as a social concept that is not standardized. He continues to grow as the emergence of the phenomenon of humanity and science. Identification of any possible human rights violations will be shifted over the development of social science, science, economics, education, culture or the law itself. Thus, the variables of human rights are also always evolving. Which it is to be

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always evolving. Which it is to be understood as a content development legislation. the variables of human rights are also always evolving. Which it is to be understood as a content development legislation. the variables of human rights are also always evolving. Which it is to be understood as a content development legislation.

The general concept, defining human rights as the claimed rights owned by all people without regard to the state of race, ethnicity, culture, age and gender. Rights that are universal and fundamental in human beings from birth. Birth of Human Rights, is a recognition of the rights of the basic moral values of human dignity. Began in Ancient Greece, Ancient Rome and developed rapidly since the Middle Ages to the postmodern.

However, to understand human rights as a whole, needed glasses to clarify the value philosophy, reality, foundation and conception. So as not to dwell enforcement of human rights in the rule itself. Because nothing in this world conception, originated from an idea that has a background that should be understood as a whole. If human rights are part of the values of truth, then he should be tested epistemology to be called part of the idea. Before measured *keselarasan* between *Das* and *Das sollennya sein*. This is important, because human rights enforcement methods are influenced by the basic idea that has a special interest in the value of human life. The idea was not born out of a vacuum or mere contemplation of a single sense. But the shape of the response to the reality of what happened, taking into account the values that have formed.

How can human rights upright, if there are differences of opinion on human rights content itself? Let's consider the issue of feminism. In which there is considerable scope view polarizing differences in values of human rights. It is of course greatly affect the country in drafting legal instruments in order to uphold human rights. Especially in Indonesia, with a multiplicity in various sectors

of life.

Feminists build discourse of gender equality as one of the principles of human principles of life. They start with a definition to distinguish between sex and gender, which are generally two terms are considered equal. Sex is defined as the original form of nature, which differentiates men and women is gender. While gender is defined as an attribute or sexual behavior culturally formed in men (masculine) and women (feminine). What distinguishes men and women are biologically merely reproductive organs and hormones (nature). But the biological differences that could not be the basis to differentiate the nature of masculine and feminine shaped culturally (nurture). So for feminism, restricting behavior and authority of women with sex, rated as pengkebirian rights of women.

Lesbian, Gay, Bisexual and Transgender (LGBT), considered to deviate from the law of nature. While their desire to gain pleasure status is the right principle. This creates a polarization of views between a recognized religion in Indonesia and the state is obliged to protect the rights of every citizen principle. Simply put, LGBT wanted to say, "we deviate sexual behavior and does not affect the rate of regeneration of mankind". Nature, of the sexual relationship was between the opposite sex. Then prohibit sexual intercourse opposite sex is natural principle of human rights violations. But if a man has a biological hormone abnormalities, then behave in accordance with the abnormality is the right principle.

HAM when viewed from naturalitas humans, then the contents of only one of human rights. Namely the right not to be killed. Because it is directly related to their natural side of life. Thus, the rights in addition, included in the area of social rights (nurture). Formulated from a sociological journey of mankind.

In the conception of classical Islamic law, the penalty kill is killed. It is a form of

legal rigor is concerned with the natural rights of man. Although the international interpretation, penalty kill with death, is part of human rights abuses. Because both loss of life. Or in the context of LGBT, considered unnatural behavior. But in nurture, LGBT behaviors are rights that need to be given. Because of such deviant behavior, born of a biological or psychological disorders. During these abnormalities still exist, the right principle also exist to cause behavior change natural. Thus, in formulating a legal product, has a humanitarian challenges. Especially in Indonesia, which contains a lot of conceptions in understanding the flow of life. Thus, enforcement of human rights anywhere, especially in Indonesia, need to examine the nature and nurture itself. In order to uphold human rights, lasting harmony and proportion. Because in human rights, it is often a nation caught in a dilemma. Dark is just the bias of light. Each justice is upheld human rights, at the same time human rights violations in the enforcement. One of the principle rights of Indonesian citizens are getting an education, but the education system is an obstacle to learners to achieve the essence of education itself. Getting it right for humans wage work. However, nominal wages was not worth the time and psychological pleasure sacrificed. This was due, the formulation of the law, does not consider the basic values of human life. As general background of human rights was born. Therefore, enforcement of human rights can be deduced, not only on prosecuting cases of human rights violations. Establish the defendant and to prove the offense. However, the establishment of the institutional system of the country, which serve as pivots fulfillment of citizens as a human rights principle, established in line with the noble values of human rights itself. The system is built by applicable law, the build system and the legal right product, making law enforcement of human rights in Indonesia could go latent. As a result, for the sake of the ongoing human rights in national life berbhineka, the necessary legal products in all relevant sectors that support the mission. Because human

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### **Legal, Political Ideology and Practical**

Everyone agreed that the enforcement

of human rights requires a comprehensive legal product, professional apparatus, the sovereignty of the government, and net of practical political intervention. Of the purposes, of a clear solution that steps must be taken. If these simple steps are clear, why they occur fairly massive human rights violations? The answer is, because these simple steps, not simple to achieve. Every step was very sensitive.

Democratic countries such as Indonesia, provide ample scope to perform in the competition of ideas-ideas *memperjuangkan*. Of course with the appropriate legal channels to existing procedures. On the other hand, Indonesia has a diverse group of people who had a different life. And many of these groups, each vying want to “endorse” the idea of ideas, even his faith in the law. In fact, the phenomenon of the present moment, record the movement of groups of people who brought the idea of the basic changes in the country through constitutional path. Because Indonesia is a country of law, then it is considered valid. Points of this phenomenon is the political activities run the gamut in competition across these interests. So that improvement priorities, particularly in improving the human rights regulations, become dormant. In fact, sometimes, human rights law precisely manufactured and not for the benefit of humanity. It is legitimate, if it says banning LGBT in Indonesia, not a product of the law to fight for human rights. Many studies assessing that, the ban is also part of human rights violations themselves. From the point of view, the social rights that is nurture. Because the legal limit and force people’s behavior with regard to the ethical community. While LGBT behavior is private. Countries have tanggungjawab provide rehabilitation room and not prohibit behaviors deviate hormone and psychological. The ban, prohibiting the same as for the insane. Forbid people to poor. The question is, why are these laws enforced? Due to political interests in order to accommodate the support and interest of specific groups, as a form of political config-



uration that is responsive to public demand. Law as political determinants, which means that political activities should be subject to the law. And legal ideal, ditelurkan of values that protect the rights of proportionally without discrimination. In Indonesia, religious groups, political movements do to enter the territory of the regulation. While between positive law and legal interpretations of religious groups, can not be harmonized in the discussion of human rights. Existing studies, show that the law and politics in Indonesia, has a configuration relationship authoritarian, human rights law ditelurkan products tend to be conservative. In the modern era, Religion never be blasted with Science because in principle considered to be aligned. Istinbath method that can not be met. However, with the achievement of science and technology, religion inch-by-inch to harmonize local views without leaving wisdomnya. At least, "useful" in order not swallowed by the times. Instead now, Religion and Science collaborate in shaping civilizations logical, reasonable, full of ethical and beautiful. Perhaps, if religion back open in aligning prinsip principles of law, it will create a human order which opens wide space, in the pursuit of happiness for all people without discrimination.

### **punishing Power**

That the ruling in a country is not a man, but a fair mind (Plato). Thus, the highest authority in a country is the law, not the other. Because the law is manifestasi of justice itself. From here, it can be concluded, the powers that be realized unfairly, have an impact on the legal products and technical content tends to be unfair. During the election is not free from money politics will be born during the same power structures tend to be dirty. During the economic strength of the community is weak, during the same money politics in developing countries such as Indonesia, will remain stable. And during it all, the problems of old, will remain as new.

It should be underlined that human rights violations are the result of the organi-

zation of power, which formed a long chain of causation in various sectors of life. Hungry people in the jungle, searching for food ingredients straight from nature, now, a hungry person does not find rice, but find the money. And the success rate depends on the map a very industrial employment. First, considered a fool for not getting an education. Now, many found the "educated" are still ignorant. The slaves work without pay. But independent labor, working with inadequate wages. Civilians killed in the war, because it is not recognized its independence. But in a sovereign nation, found the murder by a legitimate authority. A lot of people put to death for murder, but at the same time, many are dying because of voicing human rights. Contradictions in Indonesia this phenomenon, caused by a power that is not optimal, or failure in carrying out its duties and authorities as a legal state. Rule of law and influence each other. Tegakknya reflection of the rule of law. And power upright is a fair reflection of the law. Reconstruct human rights law in Indonesia, unconsciously, contains a logical consequence reconstruct power systems and how to organize the administration in many important aspects.

The security of a nation, do not count on how many soldiers physically. But how strongly the law as a soldier on guard in the unconscious. State responsible for creating these soldiers, to give birth to the social order. Where everyone, without exception, have the space to express happiness and gain access to the necessities of life for sure.

What is the reason the separatist movement in Papua broke? racism, social discrimination, exploitation of resources, lack of development and human systems, which are things that are the responsibility of the state that the system acts as a puppeteer, *das sein*. Not as a starter, *das sollen*. Tegakknya Human Rights, reflected in the agenda of the government in terms of office. If rights has been established, the government is filled *dicermin* murky.

## **Industry Education and Enforcement of Human Rights Illusion**

In the spring of 1940, when the Nazis invaded France, tens of thousands of Jews fled to the border of Spain and Portugal. They surrounded the Spanish consulate in Bordeaux to get a visa in order to survive the Nazi massacre. The Portuguese government has prohibited the consul in France to issue a visa prior to approval of the foreign ministry. But the consul in Bordeaux, Aristedes de Sousa Mendes decided to ignore the order. Without the worry of a career that has been running since the 30 years. As Nazi tanks started to approach Bordeaux, Sousa Mendes and his team, working day and night for 10 days, almost without sleep, only for tens of thousands of stamped sheet visa for publication. The Portuguese government then picked mendes Sousa and his team return, then took off his post as consul abroad. However, the officials are less concerned about the fate of tens of thousands of human lives that, while respecting the tens of thousands of paper documents and visas issued Sousa Mendes. The bureaucrats French, Spanish and Portuguese helped save about 30 thousand lives out of the device Nazi death. Sousa Mendes, armed with nothing more than a rubber stamp, responsible for the largest rescue operation which was later called the Holocaust. Paper containing the text and the stamp of legality, has saved 30 thousand lives from death. These papers are comparable with antibiotics that saves people from genocide natural causes smallpox. respecting the tens of thousands of paper documents and visas issued Sousa Mendes. The bureaucrats French, Spanish and Portuguese helped save about 30 thousand lives out of the device Nazi death. Sousa Mendes, armed with nothing more than a rubber stamp, responsible for the largest rescue operation which was later called the Holocaust. Paper containing the text and the stamp of legality, has saved 30 thousand lives from death. These papers are comparable with antibiotics that saves people from genocide natural causes smallpox. respecting the tens of

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Post-industrial revolution, paper and seals back into the savior of “life” of the Indonesian nation. Perhaps the story of Mendes earlier, inspire Indonesian educational institutions to save hundreds of millions of lives. That which may encourage the creation of education industry in order to save the lives of “threat of death” because of unemployment, which have a systemic impact on the direction and stability of life of many people. Only armed with paper visa, 30 thousand Jews survived the Nazi massacre. In Indonesia, the diploma paper is projected to save hundreds of millions of lives from starvation.

Education as the main room, as a prerequisite for the implementation of human rights in a latent, directed to the formation of industrial generation. Our education system, constructed to be part of the economic system of capital. Not only affect the fulfillment of the purpose nature of education itself, the education industry scoring potential victims

of human rights violations in the world of industry. This certainly adds to a long record, that inhibit the improvement of human rights and technical ideas. Both in the practice as a human being in society. Or in the process of legalization of the laws.

## **CONCLUSION**

That the reconstruction of human rights in Indonesia, can not be done with a single track. Tegakknya human rights, not only because of imperfect human rights law, personnel and legal institutions. HAM is a problematic circuit, which requires the completion of other issues that make up the working system problems.