



THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

"Legal Development in Various Countries"



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

UNISSULA PRESS

ISBN. 978-602-1145-67-8

September



2017

The 3rd PROCEEDING

“Legal Development in Various Countries”

IMAM AS SYAFEI BUILDING

Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :
UNISSULA PRESS

ISBN. 978-602-1145-67-8

The 3rd PROCEEDING

“Legal Development in Various Countries”

Reviewer:

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

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

Prof. Henning Glaser

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

Prof. Shimada Yuzuru

Prof. Associate Dr. Dr. Ahmad Zaharudin Sani

Editor:

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

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

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

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

M. Abdul Hadi., SE

Hak Cipta © 2016, pada penulis

Hak Publikasi pada penerbit UNISSULA PRESS

Dilarang memperbanyak, memperbanyak sebagian atau seluruh isi dari buku ini dalam bentuk apapun, tanpa izin tertulis pada penerbit.

Hal i-x, 1-391

Cetakan Pertama Tahun 2017

Penerbit UNISSULA PRESS

Jl. Raya Kaligawe Km. 4 Semarang 50112

PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

ISBN. 978-602-1145-67-8

INFORMATION OF THE CONFERENCE AND CALL PAPER

WORLD ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

Welcome to Participants on International Conference

"LEGAL DEVELOPMENT IN VARIOUS COUNTRIES"

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

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

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

SPEAKERS :

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

Indonesia, September 05th 2017

WORLD ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

International Conference

"Legal Development In Various Countries"

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

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

Organized by : **Faculty of Law UNISSULA**
Semarang-Indonesia

5
September
2017

FACULTY OF LAW
Sultan Agung Islamic University

SPEAKERS :

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

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

Day: Tuesday

Date : September 5th 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3rd Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584 Fax.(024)6582455
Semarang 50112

**COMMITTEE OF THE 3rd INTERNATIONAL CONFERENCE
AND CALL FOR PAPER
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

Responsible Person	: Prof. Dr. H. Gunarto.,S.H.,SE.,Akt.,M.Hum	(Dean)
Advisory	: Dr. Hj. Widayati.,S.H.,MH Arpangi.,S.H.,M.H Dr. Hj. AnisMashdurohatun,S.H,M.Hum Dr. H. Ahmad Khisni.,S.H.,M.H Dr.H. Umar Ma'ruf, SH.,Sp.N.,M.Hum Kami Hartono.,S.H.,M.H	(Vice Dean I) (Vice Dean II) (Head of PDIH) (Head of M.Kn) (Head of MIH) (Head of S1)
Chairwoman	: Dr. Hj. AnisMashdurohatun,S.H,M.Hum	(Head of PDIH)
Secretary	: Dr. Hj. Sri Endah Wahyuningsih,S.H,M.Hum	(Secretary of PDIH)
Treasurer	: Dr. Hj. Sri Kusriyah.,S.H.,M.Hum	(Secretary of MIH)
Drafting Team	: Dr. H. Amin Purnawan.,SH.,CN.,M.HumH Denny Suwondo.,S.H.,M FaisolAzhari.,S.H.,M.Hum Hj. AryaniWitasari.,S.H.,M.H	
Event Division	: Anita.,S.S.,M.H	
Secretariat and Supplies Division		
Coordinator	: M. Abdul Hadi.,SE	
Member	: Slamet Ariyanto Dyan Teguh Aryanto, Amd M. Ngaziz.,S.H.,M.H Hendro Widodo.,S.H.,M.H NailulMokorobin.,S.Psi AgusPrayoga	
Publication and Documentation Division	: Ikrom.,S.H	
Member	Ahmad Mutohar.,S.H Achmad Arifullah.,S.H.,M.H	
Consumption Division	: Shinta Pratiwi	
Member	Latifah Rosdiyati.,S.E Siti Pardiyah Laili Rohmah.,S.E Laila Najihah.,S.H	
Receptionist	: Riftia Anggita W.S.,S.H Auliana	
General Assistant	: Riswanto NurAlamsyah Rofiq	
Security	: Rohmani Arif	
Driver Irwanto	: Ismail	

PREFACE

Assalamu'alaikum, Wr. Wb

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

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

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

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,



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

NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.


Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, September 5th 2017

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

TABLE OF CONTENTS

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

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

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

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

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

LEGAL STUDY OF DECISIONS
SUPREME COURTS NUMBER: 85 K / Pid.Sus / 2012
Contract Abolition Due to Undue Influence
(Law Reconstruction of Obligation the Civil Code in Indonesia)

Ismail
Hutabarat_dany@yahoo.com
The Student of Law Doctoral Programme UNISSULA

ABSTRACT

The norms and norms that live within the community serve to fortify the behavior of the community in their daily deeds, but over time the change in public behavior becomes more visible, the norms previously obeyed by society are increasingly abandoned, the behavior of society when it reflects the culture of society.

One of the facts can be seen in the case of the Supreme Court Decision No: 85K / Pid. Sus / 2012, in this case there has been a Crime of Corruption committed by Hidayat Bin H. Abu Mukmin and decided by the Blangkejeren District Court, Hidayat's actions are not proven legally and convincingly guilty of committing a criminal act of corruption and releasing him.

In this study the authors intend to examine the Supreme Court Decision No: 85k / Pid.Sus / 2012 has fulfilled the purpose of law as disclosed by Gustav Radbruch. The research method is analytical descriptive with normative juridical approach method that is research with library concept, data obtained through library study so that the data is in the form of secondary data.

From this research can be concluded that the decision is far from the value of justice and *kemamfaatan*, but provide legal certainty against the defendant and his family.

Keywords: Supreme Court Decision No: 85K / Pid.Sus / 2012

I. PRELIMINARY

A judge consistent with his conscience and sound reason, supported by a transparent judicial and judicial power system will undoubtedly bring forth a fair and beautiful verdict. It contains the breath and spirit of truth, justice, and a keen sense of the sense of justice and responsive to the suffering of the people's unjust (Maqoddas, 2006: v) the ideal condition is reflected in the verdict uttered in the court rooms as the ever-emitting institution of light truth. Conversely, if the light fades, it can be made the Court Decision is a meaningless sheet of paper without giving justice, expediency and legal certainty as revealed by Gustav Radbruch.

The fulfillment of the above legal objectives becomes the judge's only choice in deciding the case embodied in his verdict as the crown judge. Frame Lopy points out that the judge's verdict is a crown, reflecting everything to the judge, his responsibilities, his honesty, his scholarship, his morality, his sincerity, his piety, and so on (Asikin, 2011: 63). If the crown does not reflect the purpose of law as expressed by Gustav Radbruch, then the crown has lost its meaning and honorable position, the general view of the judge and justice is like the heavens and the earth. The judge's verdict was only sharp down but blunted upwards. So it is not excessive as Eman Suparman's view if to say justice is a sweet phrase to be heard only, it is only a figment because the court is considered the most intelligent in turning the justice. The situation has even become a public secret in this country (Suparman, 2012: vii). Similarly, the value of benefit and legal certainty in the judge's ruling is difficult to implement and often there is a difference of direction with each other.

The majesty of the judge's verdict is reflected by containing the three elements of Gustav Radbruch's law objective so that it will sustain the dimension of legal studies. The dimensions of this legal review will meet the spaces for the need to improve the quality of human life. Axiology which is one branch of philosophy which means the contribution of science to improve the quality of human life. Through the dimension of legal studies will multiply the meaning of the essence of the Judge's own ruling, especially justice and usefulness.

The gap between Gustav Radbruch and the elimination of the dimension of the study of law as reflected in the Supreme Court Decision No: 85 / Pid.Sus / 2012 This ruling releases the convict in the bondage of law is very unfortunate present in the life of the Indonesian people who try to realize the ideals as set forth in Of the 1945 Constitution of the Unitary State of the Republic of Indonesia. This ruling is compelling to be analyzed not only by the clash of Gustav Radbruch's theories, but also shocking the general public as if dreams were

hollowed out by so many irregularities that diminished the figure of the judge ideal at the Supreme Court of Justice, the Supreme Court.

One aspect of the controversy in this Decision is the Decision of Blangkejeren District Court which stated that Defendant Hidayat was not legally and convincingly proven to commit the Corruption Crime and free the defendant from the lawsuit.

II. FORMULATION OF THE PROBLEM

Based on the above explanation, the formulation of the issues raised in this legal review is Does the Supreme Court Decision No: 85 K / Pid.Sus / 2012 have fulfilled the legal objectives as disclosed by Gustav Radbruch?

III. LITERATURE REVIEW

In the process of birth Judge Decision takes place what is called Law Reasoning. Kennet J. Vandeveld stressed two things whenever people talked about legal reasoning or thinking as jurists. According to The Phrase to think like a lawyer encapsulates a way of thinking that is characterized by both goal pursued and method used. Maria Farida states that the first pursued (goal pursued) axiological dimension while the second (method used) dimension epistemologi. The Axiological dimension encourages the judge's verdict to provide the true benefit to science and man, while the epistemology dimension will focus on the origin or source, structure, method and validity of knowledge.

The axiologist according to the philosophical dictionary comes from the Greek Axios (decent, proper) and Logos (science). Simply axiology is a branch of philosophy that studies the value and usefulness of science. In relation to the Judge's Decision, the axiological dimension will embody the Judge's Verdict which gives the perfection of human life rather than revealing frictions that lead to the loss of the spirit of the purpose of law.

Gustav Radbruch's view generally means that legal certainty does not always have to be given the priority of fulfillment in every positive legal system as if the legal certainty must exist first, then justice and expediency.

Gustav Radbruch then rectify the theory of the three goals of equal law. The change of view was influenced by the fact that by its theory Germans under Nazi rule legalized the inhumane practices during World War II by enacting laws that legitimize the practices of the atrocities of war in those days. Radbruch was finally rectify the above theory by placing the goal of justice above the other legal objectives, the justice berupuran occupy the first position,

and further aspects of assurance of certainty and *kemamfaatan*. Nevertheless Gustav's legal goals are regarded as a unity that supports each other.

Justice is generally interpreted as a fair deed. While fair is not one-sided, impartial and side to the right. Justice according to the study of philosophy is when in fulfilling the two principles of the first does not harm a person and the second treatment to each person what his rights. If these two principles are met then it is said to be fair. Both principles are like two sides of the same coin can not be separated from one another, because one with another has a close relationship. Conversely, if the two principles are interpreted separately will cause a principal difference. Justice must guarantee the absence of any losses on the part of the party and also ensure everyone gets his rights.

Aristotle's view of justice in *Rhetorica* is *ius cuique tribuere*. Justice should not be regarded equally meaning with generalization. Justice does not mean that everyone gets the same share (apeldorn: 2008: 11). But justice gives one according to the right and how far to fulfill its obligations.

Socrates stated that the nature of the law is justice. The law serves the needs of community justice. The law points to a rule of life that conforms to the ideals of coexistence of justice. Plato designed a order in which only the public interest would take precedence, namely the participation of all people in the idea of justice. More precisely he launched a country where justice is achieved perfectly (wiko, 2009: 11).

Gustav Radbruch's theory of law objectives is unfortunately often different from the facts that occur with law enforcement. Justice for example is not necessarily going to provide the value of *mamfaat* for the community, as well as legal certainty may not be able to guarantee the values of justice.

IV.ANALISIS

In every criminal case, the existence of free judgments has always been a controversial attention, if the decision is public issue (public attention) because every case that approaches the urgency of society will always be encountered political atmosphere (political *nuasa*) which actually cover the case itself legally (adji & adji, 2007: 113). This view is at least reflected in the Supreme Court Decision No.85 K / Pid.Sus / 2012 for releasing the convicted of all lawsuits.

Blangkejeren District Court Decision No.18 / Pid.Sus / 2011 / PN.BKJ dated June 20, 2011 stating that the act of accused to the Defendant is not legally and convincingly proven to commit an act of corruption, so the right of defendant in the ability and honor his dignity was

restored. The verdict was terminated in a deliberation meeting of the judge's decision dated June 20, 2011. Then the Blangkejeren State Attorney made a Cassation Appeal to the Supreme Court, while the Supreme Court Decision is to state the request of the Public Prosecutor's Cassation is unacceptable. so the Supreme Court Decision No: 85 K / Pid. Sus / 2012 shocked the Widespread Community because it reinforced the Balngkejeren District Court Decision and rejected the appeal request from the Public Prosecutor.

The chronology of the case is that the defendant Hidayat Bin H. Abu Mukmin in the position of the Chief Director of CV. Electricity of Works in accordance with the Power of Attorney of Director Number 102 made and signed in the presence of Notary Sarlinawati, SH Notary in kutacane dated October 31, 2009 which has the duty and authority as the Director of CV. Electricity of Work at the time and place of the Youth and Sports Education Service of Gayo Lues District, but misuses the opportunity or means given to him by the defendant intentionally without the authority or means given to him that is acting as if he has obtained the brush letter of the Director of CV. Electric Works on the defendant did not get it, and on 05 October 2009 asked the witness Metti who is the owner of Asia Computer Shop located in Medan to provide a letter of support for CV. Electric Works participated in the tender auction of Notes book activity while the defendant did not get the Power of Director from CV Karya Listrik and also the defendant knew that the Asia Computer Shop is not an Agent / Distributor but the defendant still attaches in one of the CV offer files. Electricity Works.

In addition, the defendant was also the second party (provider of goods and services) in contract No. 642 / 855.3 / Otsus- Dikpora / 2009 dated November 10, 2009 between witness Drs. Syamsul Bahri as a user of goods / services (first party) and defendant Bin H. Abu Mukmin as a provider of goods / services with a contract value of Rp 2.115.000.000, (two billion one hundred and fifteen million rupiah) for the procurement of note book as much as 150 (one hundred fifty units) that note book specification contained in contract documents that can not be separated has done misuse of the means / opportunity given to him for self-interest of the defendant in the form of buying the note book is not in accordance with the specification or without any addendum to the change of the specification of the goods the type of note book processor purchased by the defendant is T6600 for 1 (one) unit of Rp 9,500,000, (nine million five hundred thousand rupiah) whereas according to the contract is T6570 with an offer price of Rp 14.100.000, (fourteen million one hundred thousand rupiah) so that the state loses Rp 478,500,000, (four hundred seven eight million five hundred ri and based on the results of the state loss audit Number: SR-717 / PW.01 / 5/2010 dated 30 December 2010 by the BPKP Auditor team of the Nanggroe Aceh Darussalam Provincial

Representative states the audit results of the investigation that the State's losses on Notebook activities in the Education Office of Youth and Olah raga Gayo Lues district in 2009 amounted to Rp 478,500,000, (four hundred seventy eight million five hundred thousand rupiah).

Supreme Court Justice's consideration in the appeal of the Prosecutor / Public Prosecutor is that the Prosecutor / Prosecutor can not prove that the Liberation of the Accused is a Pure Liberation and in addition does not find the Blangkejeren District Court Decision has exceeded the authority, therefore Judicially Agung rejected the appeal of the Prosecutor / Public Prosecutor on the grounds that based on Article 244 of Law no. 8 of 1981 on the Criminal Procedure Code (KUHAP).

View of Aspect Aspect of Supreme Court Decision. 85 K / Pid.Sus / 2012 value kemamfaatannya far from expectations, because kemaamfaatan Verdict above only the party berpekara only, while kemamfaatan to the community is not visible. It is precisely this ruling raises a public upheaval that is not satisfied with the Judges' Decision. Adapting the view of Fence, in a small scope, the usefulness of the law is highly correlated with the purpose of punishment, especially preventive measures in order to avoid the same deeds in the future. Judges' ruling should have a deterrent effect in order that similar cases do not happen again in the future will not be realized because the convicted person is released from the law. Ultimately the law that should encourage the benefit of returning the life order of society to the ideal conditions would encourage the creation of the opposite condition.

A good Judge's verdict can be ascertained to contain three legal objectives of legal certainty, justice and expediency, otherwise an unfavorable verdict will only tend to put forward a single legal objective without comparing the other objectives of the law.

V. CONCLUSION

This paper is expected to be able to answer the above problem formulation that questioned the element of legal purpose as disclosed by Gustav Radbruch in the Supreme Court Decision Number: 85 K / Pid.Sus / 2012 The author concludes that the decision is far from the value of justice and kemamfaatan, but provide legal certainty against the defendant and his family.

The above contradiction shows that this decision is also far from the axiological dimension, the usefulness of a value born in a legal decision. This ruling does not encourage the usefulness of value in the framework of improving human quality in realizing justice otherwise tend to be Normative so as to provide legal certainty alone.

Judges' ruling should have a deterrent effect for similar cases not to occur in the future. That hope happens because the verdict can be a justification for a similar case in the future to become Jurisprudence in other cases.

The judge has an obligation in deciding cases by emphasizing the principle of expediency. However, it is not seen in the above verdicts that decide to release the convicted of any lawsuit so that it is felt far from the value of expediency and justice.

BIBLIOGRAPHY

Adji, oemar Seno & Indriyanto Seno Adji, April 2007, Peradilan bebas Contempt of cour, cetakan 1, Jakarta: Diadit Media

Apeldoorn, L.J. Van. 2008. Pengantar Ilmu Hukum, cetakan ketiga puluh dua, jakarta: pradnya paramita.

Asikin, 2011. Rekonstruksi Teori Pemerataan Keadilan, Varia Peradilan, Jakarta: IKAHI Mahkamah Agung Republik Indonesia.

Muqoddas, Busyro, 2006. Kata pengantar ketua Komisi Yudisial, Bunga rampai Refleksi satu tahun komisi Yudisial. Jakarta : Komisi yudisial Republik Indonesia.

Wiko, garuda 2009, pembangunan sistem hukum berkeadilan, buku memahami hukum dari konstruksi sampai Implementasi, Jakarta: PT. Raja Graafindo persada.