

August 29th 2018



THE 4th INTERNATIONAL AND CALL FOR PAPER

Legal Construction and Development in Comparative Study
The Role of Indigenous and Global Community in Constructing National Law



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

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INFORMATION OF THE CONFERENCE AND CALL PAPER

UNISSULA
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Welcome to Participants on

THE 4th INTERNATIONAL AND CALL FOR PAPERS

"Legal Construction and Development In Comparative Study"
The Role of Indigenous and Global Community in Constructing National Law

29-30 August 2018

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

INVITED SPEAKERS :

- 1. Prof. Henning Glaser
Thammasat University, Thailand
- 2. Dr. Hilaire Tegnau, LL.M.
Faculty of Law, Sorbonne University
- 3. Prof. Shimada Yuzuru
Nagoya University, Japan
- 4. Prof. Dr. Topo Santoso, S.H., M.H.
Indonesia University (UI), Indonesia
- 5. Dr. Hj. Sri Endah Wahyuningsih, S.H., M.Hum
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Faculty of Law, Sultan Agung Islamic University

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584

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AND CALL FOR PAPER**

“Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)”

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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, 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.

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

Wassalamualaikum, Wr. Wb

Semarang, August 31th 2018

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 is an absolute act that we must say after conducting the International Conference and Call for Paper by theme : “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” which was held by Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang, on August 29th 2018.

This conference tried to reviews different theories of legal development focusing on The Role of Indigenous and Global Community in Constructing National Law in order to highlight their similarities and differences. In the field of law, the substance of the discussion does not lie in 'whether the law is traditional because of the heritage of the past or not', but on the meaning of justice contained in the law. Often in discussing legal matters, we are caught up in the understanding of law in a procedural sense, not a law in a substantive sense-that satisfies the sense of justice. So it is not realized, there is a reduction of the meaning of the law substantively (which meets the sense of justice) becomes law procedurally. Especially when human life enters the era of globalization characterized by modern, as well as loaded with contemporary challenges and issues.

Globalization, in general people understand it is a process in the life of mankind to a society that covers the whole globe. This process is possible and facilitated by advances in technology, especially communication and transportation technology. Such understanding is not much different from the understanding of globalization as a process that refers to "a single interdependent world in which capital, technology, people, ideas, and cultural influences flow across borders". With such understanding, we are gradually going to live in a one world where individuals, groups and nations become more interdependent. In the global human society there will be patterns of social relationships that are different from before. And that too is a portrait of social life not found before.

Therefore, to discuss more about legal construction and development, Faculty of Law, Sultan Agung Islamic University was confidence to conduct a conference by the theme “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” 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 had contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, August 31th 2018

Dean,

A handwritten signature in black ink, consisting of a long horizontal stroke with a small upward tick at the end, followed by a shorter horizontal stroke.

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

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LEGAL'S ROLE POLITICS AND THE EFFECT OF POLITICAL PARTIES IN GOVERNMENT

Legal Politics of the Role and Interest of Political Parties in Government

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ABSTRACT

Legal Policy in the basic foundation in shaping and policies in governance. The government has state equipment in charge of running the government properly in according with their respective portions. The principal state equipment is executive, legislative, and judicial. Executive and legislative power is run by cadres of political parties elected in the election. Indirectly political parties are state equipment who have an important role in government. Political parties can also influence government in the policy making process. In its development, political parties experienced changes from time to time until now. Political parties become a container through their roles in the political system in society, namely as a place to channel the aspirations of the community to the participation of the community in becoming cadres of political parties. These cadres then sit and become party representatives as well as representatives of the people to convey the aspirations and interests of the community and take policies for the welfare of society.

Keywords : Legal Policy, Political Parties and policy making process

INTRODUCTION

Political development in Indonesia has undergone a fundamental change since the reformation began after the new order ended. Political power which in the past was controlled by the political elite has shifted to public consumption marked by increasing public participation, the mass media and all levels of society from all walks of life participate in political life.

Political democratization is marked by the strengthening of the role of political parties in the social life of society as a form of changes in constitutional dynamics. The existence of political parties experienced a long history on their journey. In post-colonialism, political parties emerged and played a role when the Indonesian State gained its independence. In the New Order era, Indonesia's political system was characterized by a variety of government policy with the aim of maintaining political stability. The political policies of the New Order

era included the emergence of two functions of the Indonesian Armed Forces and various other policies to reduce the political parties.

Simplification of political parties by combining several political parties in accordance with Law No. 3 of 1975 issued by President Soeharto at that time. Based on the Act, several parties were combined to support new political parties, including:

1. The United Development Party (PPP) is the result of the merger of 4 Islamic-based parties such as the Nadhatul Ulama Party (NU), the Indonesian Muslim Party (Parmusi), the Indonesian Sarekat Islam Party (PSII) and the Indonesian Tarbiyah Union Party (Perti)
2. The Indonesian Democratic Party (PDI) is the result of the merger of the Indonesian National Party (PNI), the Indonesian Christian Party (Parkindo), the Catholic Party, the Indonesian Supporting Party of Independence (IPKI) and Murba
3. Golongan Karya (Golkar) Party

The political system changed again as the fall of President Soeharti's leadership to BJ Habibie, a political party which in the New Order period was only as a complement and then returned its role and function as a means of collecting and channeling people's aspirations. In addition, changes in regulations governing political parties also develop according to changes in the condition of the political system in Indonesia, with the following changes:

1. Act Number 7 Pnps Year 1959 concerning Terms and Simplification of Parties
2. Law Number 13 of 1960 concerning Recognition, Supervision and Dissolution of Parties
3. Law Number 3 of 1975 concerning Political Parties and Working Groups
4. Law Number 3 of 1985 concerning Amendments to Law Number 3 of 1975 concerning Political Parties and Working Groups
5. Law Number 2 of 1999 concerning Political Parties
6. Law Number 31 of 2002 concerning Political Parties
7. Law Number 2 of 2008 concerning Political Parties
8. Law Number 2 of 2011 concerning Political Parties¹

The more open space for democracy makes the opportunity to establish new parties more open in accordance with the rules. Political parties are formed without goals and interests as expressed by Miriam Budiardjo that Political Parties are an organized group

¹ <https://media.neliti.com>

whose members have the same orientation, values and ideals, the purpose of this group is to gain political power and scramble for (usually) political position in a constitutional way to carry out their policies². The definition of political parties is also explained in the book *Economie et Societe* written by Max Weber which was quoted again by Firmanzah. Political parties are defined as public organizations that aim to bring their leaders to power and allow their supporters (politicians) to benefit from such support³

Political parties have an important role in the course of a country's democracy through representative democracy. Political parties prepare their cadres to be able to sit in the representative or legislative institutions representing the people to voice, channel and fight for the interests of the people through elections, in accordance with Article 6A of the 1945 Constitution stipulating that political parties or joint political parties play a role in proposing presidential candidates and vice president. Article 22E states that political parties are the participants in the Election of Members of the People's Legislative Assembly (DPR), Provincial Regional Representatives (DPRD), and Regency/City DPRD.⁴

Representation of elected political party cadres who hold good legislative seats at the Regency/City DPRD, Provincial DPRD and DPR RI through elections has an important role for the government and society. This political cadre represents the aspirations and voices of the people in taking policy. However, it cannot be denied that political cadres not only represent the voice of the people but also represent a voice for the sake of the interests and benefits of the bearer political party. This then became the focus of the author's discussion, namely "The Legal Politics of the Role and Interest of Political Parties in Government".

DISCUSSION

Legal politics is a legal policy or official line of law that will be applied either by new legal actions or by replacing old law, in order to achieve legal objectives.⁵ Legal politics is the basic foundation in shaping and generating policy policies in the governance process. The Government itself has state equipment that is tasked with running the government well and in accordance with their respective portions. The government in a broad sense includes all state

² Budiardjo, Miriam (selanjutnya disebut Budiardjo Miriam I) 2008, *Dasar-Dasar Ilmu Politik*. Pustaka Utama, Jakarta, p.160

³ Firmanzah, 2011, *Mengelola Partai Politik*, Yayasan Obor Indonesia, Jakarta, p.67

⁴ Ramlan Surbakti, 2015, *Peta Permasalahan Dalam Keuangan Politik Indonesia*, Kemitraan, Jakarta p.19

⁵ Moh.Mahfud MD, 2011, *Politik Hukum di Indonesia*, Jakarta, Rajawali Pers p.1

apparatuses which essentially consist of branches of executive, legislative and judicial power, or other state apparatus acting for and on behalf of the state.⁶

If seen more in the branch of legislative power is the representatives of the people who sit in the Regency/City DPRD, the Provincial DPRD and the DPR RI/Center through general elections coming from political party parties. Indirectly a political party is a state instrument that has an important role in the running of government. Political parties have a role and function in a democratic state life, namely: the function of the articulation of interests, the function of the Aggregation of Interests, the Social Political Function, the Function of Political Recruitment and the Functions of Political Communication.⁷

1. The Articulation Function of Interest

Articulation of interests is the process of accommodating people's aspirations in the name of the interests of the people. It is this people's interest which then becomes the duty of political parties to propose and articulate the interests of the people into the formulation of public policies.

2. Interest Aggregation Function

The function of the aggregation of interests combines several various interests, so that they can be accommodated into one policy which represents all the interests desired by the people. This function demands the political party cadres to be wise and wise in formulating policies.

In a broad modern society, the opinions and aspirations of a person or group will disappear without trace like a voice in the sand, if not accommodated and combined with the opinions and aspirations of others who are similar. This process is called interest aggregation.⁸

3. Political Recruitment Function

Every political party needs quality political cadres to develop the vision and mission of political parties, which makes political parties a means of political recruitment. These political cadres are not only as the people's representatives, but also become party representatives in proposing national leaders.

This political recruitment is expected to produce cadres who can represent the people and parties to be able to occupy important positions in government.

4. Political Communication Functions

⁶ Bagis Manan dan Kuntana Magnar, 1997, *Beberapa Masalah Tata Negara Indonesia*, Bandung, Alumni p.158

⁷ Metera, I Gede Made, 2011, *Peran Partai Politik dalam Mewujudkan Demokrasi yang Santun dan Kesejahteraan Rakyat*, Widyatech Jurnal Sains dan Teknologi, p.47

⁸ Budiardjo Miriam I, *Op.Cit*

The most important task of political parties is to channel the votes and aspirations of the community. In addition, political parties also function as responsible speakers to provide information to the wider community regarding government policies. In this political communication function, political parties become a bridge between the government and the community regarding the government's policies and plans in running the government.

In addition to the role and function of political parties in general, political parties also play an important role in the process of making and implementing policies in Indonesia. Political parties are an important part of a political system in Indonesia, Gabriel Almond argues that there are two important elements in the process of making and implementing policies, namely interest groups and political parties.⁹

1. Policy Making Process

Political parties have an important role in the policy-making process through 2 state institutional tools, namely the legislative and executive. Legislative institutions are representative institutions where members are members of political parties chosen by the people through elections. This was mandated in Article 20 paragraph 1 of the 1945 Constitution which stated that the House of Representatives held the power to form the Law. Indirectly political parties can influence the policy making process through the legislature.

Like the legislative, the executive has an equally important role in the policy-making process namely the role of the President as an executive who is also directly elected by the people through elections carried by political parties. In carrying out his administration, the president is also more or less influenced by the policies of his party. The President has the same role as the legislature in the policy-making process as stated in Article 5 paragraph 1 of the 1945 Constitution, the President has the right to submit a draft law to the House of Representatives and in article 20 paragraph 4, the President approves a draft law. It can be concluded that both the executive and legislative institutions have the same role in the policy-making process and can both be influenced by its supporting political parties.

2. The Process of Implementing Policies

In the previous discussion, political parties are a means/bridge that connected the government and the community. Political parties become "mouthpieces" or speakers for government policies. Both pro and contra policies. Political parties are a means of criticizing government policies that are considered not in favor of the people. This then makes political

⁹ Nunogroz.wordpress.com

parties have a supervisory function on policies issued by the government, supervision is carried out so that the policies issued by the government must be in accordance with the needs of the people and side with the people, not favoring one group.

The importance of the function of political party parties in the context of democratic countries is especially those relating to integrating and bringing closer various interests and reconciling differences in times of disagreement. According to Larry Diamond and Richard Gunther there are institutional development of political parties to be put forward, one of which is the resilience of the organization. Political parties have goals and interests to reach constituents in order to develop their political legitimacy.¹⁰ Therefore, it can be concluded that political parties influence through legislative and executive cadres in the process of policy making and application.

CONCLUSION

1. Summary

Based on the above discussion, it can be seen that political parties are an important part of the political system in Indonesia. The presence of political parties in government has several roles and functions in a democratic state life, namely: Functions of articulation of interests, Function of Aggregation of Interests, Social Political Functions, Functions of Political Recruitment and Functions of Political Communication. Besides that, political parties also play a role in the process of policy making and the process of its implementation, not only that political parties can also influence the results of policy making and its application.

2. Suggestions

The existence of political parties for the government and society is very important, seen from the roles of political parties. In its development political parties are expected to become organizations that promote the interests of the people above personal and group interests. In addition, political parties must always improve themselves in order to provide good political education to the community and make their cadres as representatives of the people who really put forward the interests of the people.

¹⁰ Agustino, Leo, 2007, *Perihal Ilmu Politik*, Graha Ilmu, Yogyakarta, p.107

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