The 2nd Proceeding
“Indonesia Clean of Corruption in 2020”

"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe”

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front Page</td>
<td>i</td>
</tr>
<tr>
<td>Information of the International Seminar</td>
<td>ii</td>
</tr>
<tr>
<td>Committee Composition</td>
<td>iii</td>
</tr>
<tr>
<td>Preface</td>
<td>iv</td>
</tr>
<tr>
<td>Greeting From The Dean Faculty of Law</td>
<td>vi</td>
</tr>
<tr>
<td><strong>INDONESIA’S KPK AND NSW’S ICAC: COMPARISONS AND CONTRASTS</strong></td>
<td></td>
</tr>
<tr>
<td>Prof. Simon Butt</td>
<td>1</td>
</tr>
<tr>
<td><strong>CAN INDONESIA FREE ITSELF FROM CORRUPTION IN 2020?</strong></td>
<td></td>
</tr>
<tr>
<td>Prof. Dr. Hikmahanto,,S.H.,LLM</td>
<td>4</td>
</tr>
<tr>
<td><strong>AN ACT TO ESTABLISH THE ANTI-CORRUPTION AGENCY, TO VEST POWERS ON OFFICERS OF THE AGENCY AND TO MAKE PROVISIONS CONNECTED THEREWITH.</strong></td>
<td>7</td>
</tr>
<tr>
<td>Rohimi Shapiee</td>
<td></td>
</tr>
<tr>
<td><strong>STRATEGY TO CREATE INDONESIA FREE CORRUPTION IN 2020</strong></td>
<td></td>
</tr>
<tr>
<td>Dr. Jawade Hafidz,,S.H., M.H</td>
<td>11</td>
</tr>
<tr>
<td><strong>THE NETHERLANDS INGLOBAL CORRUPTION</strong></td>
<td></td>
</tr>
<tr>
<td>Siti Malikah Marlou Feer,,M.A.</td>
<td>28</td>
</tr>
<tr>
<td><strong>ROBUST YET FRAGILE: EFFORTS IN COMBATING CORRUPTION IN INDONESIA</strong></td>
<td></td>
</tr>
<tr>
<td>Laras Susanti,,S.H., LLM</td>
<td>33</td>
</tr>
<tr>
<td><strong>LEGAL STATUS OF AKTOR’S FOR CORRUPTION</strong></td>
<td></td>
</tr>
<tr>
<td>(In the Perspective of Islamic Law)</td>
<td>37</td>
</tr>
<tr>
<td>Sumarwoto Umar</td>
<td></td>
</tr>
<tr>
<td><strong>THE ROLE OF LAW IN THE POVERTY REDUCTION STRATEGY</strong></td>
<td></td>
</tr>
<tr>
<td>Lantik Kusuma Aji</td>
<td>46</td>
</tr>
<tr>
<td><strong>THE INDEPENDENCY OF THE INSTITUTION FOR THEPROTECTION AND THE ESTABLISHMENT OF HUMAN RIGHTS TOWARDS THE GLOBALIZATION ERA 2020</strong></td>
<td>55</td>
</tr>
<tr>
<td>Khalid</td>
<td></td>
</tr>
<tr>
<td><strong>THE URGENCY OF ANTI CORRUPTION EDUCATION FOR COLLEGES IN INDONESIA</strong></td>
<td></td>
</tr>
<tr>
<td>Siska Diana Sari</td>
<td>62</td>
</tr>
<tr>
<td><strong>THE PROBLEMS OF DIVORCE IN CUMULATION AT THE RELIGIOUS COURTS BASED ON THE PRINCIPLES OF SIMPLE, FAST AND LOW COST</strong></td>
<td>78</td>
</tr>
<tr>
<td>Elis Rahmahwati</td>
<td></td>
</tr>
<tr>
<td><strong>DISPARITIES DECISION RELATED TO INTERPRETATION OF ARTICLE 2 AND 3 CORRUPTION ERADICATION ACT</strong></td>
<td>87</td>
</tr>
<tr>
<td>Agung Widodo</td>
<td></td>
</tr>
<tr>
<td><strong>DIVERSITY ADULT AGE LIMITS POSITIVE LAW IN INDONESIA</strong></td>
<td></td>
</tr>
<tr>
<td>(Studies in Multidisciplinary Perspective)</td>
<td>102</td>
</tr>
</tbody>
</table>

"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"
THE APPLICATION OF BALANCE IDEA IN SETTLEMENT
OF DOCTOR MALPRACTICE CASE THROUGH PENAL MEDIATION
Yati Nurhayati ........................................................................................................ 111

MODERNIZATION LAW AS A CRIME CORRUPTION VERY EXCEPTIONAL
THROUGH ENFORCEMENT OF ETHICS
Dr. Sukresno, SH, M.Hum .......................................................... 118

CORRUPTION POTENCIES IN LAND USE POLICY
(A Case Study in Kuningan Regency)
Haris Budiman ........................................................................... 126

CORRUPTION PREVENTION AND CONTROLS
INP Budiartha ........................................................................... 133

ISLAMIC LAW VALUES TRANSFORMATION IN THE RECONSTRUCTION
OF THE LEGALITY PRINCIPLE OF INDONESIAN CRIMINAL CODE
Sri Endah Wahyuningsih .......................................................... 145

JUSTICE AND CHARITY IN JAKARTA’S NORTH COAST RECLAMATION PROCESS
THAT WILL LEAD TO INDONESIA CLEAN OF CORRUPTION
Untoro ...................................................................................... 155

CORRUPTION CRIMINAL SANCTIONS WITH VALUES OF JUSTICE-BASED
Zulfiani .................................................................................... 162

THE REFLECTION OF ISLAMIC BANKING IN THEORY AND PRACTICE
Anis Mashdurohatur .............................................................. 171

THE IMPLEMENTATION OF LOCAL WISDOM SIRI’NA PACCE AS AN EFFORT
OF CORRUPTION ERADICATION IN INDONESIA
Muh. Afif Mahfud ................................................................. 181

DISCOURSE POLITICAL LAW IN INDONESIA
ON A COMPLETION OF PLATO PHILOSOPHY
Adrianus M. Nggoro, SH, M.Pd ............................................. 189

STUDY OF INDONESIA’S PARTICIPATION IN ICSID
Agus Saiful Abib ................................................................. 202

NOTARY ROLE IN THE IMPLEMENTATION OF EXECUTION PROCUREMENT
OF GOODS AND SERVICES ARE FREE OF CORRUPTION BASED
ON THE PRINCIPLE OF GOOD GOVERNANCE
Aris Yulia ................................................................. 211

ANALYSIS WIRETAPPING AUTHORITY UPPER KPK LAW ENFORCEMENT
IN THE PERSPECTIVE OF HUMAN RIGHTS
Arriyanto, SH, MH ............................................................. 221

SOCIAL WORKING PENALTY AS SOLUTION
IN ERADICATING CORRUPTION IN INDONESIA
Desy Maryani ................................................................. 232

LEGAL POLITICSOIF EMPLOYMENT IN TERM OF PART OF TASK HANDOVER
TO OTHER COMPANIES IN INDONESIA
Endah Pujiastruti ............................................................. 244
RESOLUTION OF DISPUTES OF OUTSOURCING WORK FORCE IN THE COMPANY EMPLOYING OUTSOURCING SERVICE
Pupu Sriwulan Sumaya ........................................................................................................ 256

THE APPLICATION OF CORRUPTION LAW TO WARD CRIMINAL ACT IN THE FIELD OF FORESTRY
Ifrani ........................................................................................................................................ 267

THE EFFORTS OF ERADICAT ION OF CORRUPTION THROUGH INSTRUMENTS OF MONEY LAUDERING LAW AND RETURN ACTORS’ ASSETS
Yasmirah Mandasari Saragih............................................................................................ 276

AFFIRM ROLE OF EXISTEN CE RECHTSVERWERKING TO ACHIEVING LEGAL CERTA INTY IN LAND REG ISTRAT ION
Rofiq laksamana, Setiono, I Gusti Ayu Ketut Rachmi Handayani, Oloan Sitorus................. 287

ANTI-CORRUPTION EDUCAT ION AT AN EARLY AGE AS A STRATEGIC MOVE TO PREVENT CORRUPTION IN INDONESIA
Ida Musofiana.................................................................................................................. 304

FREED INDONESIA’S CORRUPTION BETWEEN HOPE AND REALITY
Dr. Tongat, SH., MHum., Said Noor Prasetyo, SH., MH...................................................... 313

UTILIZAT ION OF INDONESIA MARINE RESOUR CES IN AN EFFORT TO REALIZE INDONESIA TO WARDS THE SHAFT OF THE MARITIME WORLD
Dr.Lathifah Hanima, SH.M.Hum., M.Kn. and Letkol (mar) MS.Noorman, S. Sos., M.Opsla..... 319

POTENTIAL CORRUPTION IN THE VALIDATION POLICIES ON ACQUISITION TAX OF LAND AND OR BUILDING
Lilik Warsito...................................................................................................................... 325

THE EFFORT OF LAW ENFORCEMENT IN COMBATING CORRUPTION IN SOUTH SUMATERA
Sri Suatmiati..................................................................................................................... 334

ETHICAL PERSPECTIVE AND THE MAPPING OF NORM IN CORRUPTION ACT
Siti Zulaekhah.................................................................................................................. 344

AN EXPANSION OF CONCEPT THE STATE ECONOMIC LOSS IN CORRUPTION IN INDONESIA
Supriyanto, Hartwiningsih, Supanto.................................................................................. 354

JURIDICAL STUDIES ON SUBSTANCE AND PROCEDURE OF THE DISMISSAL OF THE PRESIDENT AND/OR VICE-PRESIDENT AFTER THE REFORMAT ION
Siti Rodhiyah Dwi Istinah.................................................................................................. 364

THE ROLE OF THE SHARIA SUPERVISORY BOARD IN THE FRAMEWORK ENFORCING SHARIA PRINCIPLES AT THE INSTITUTE OF ISLAMIC BANKING IN SEMARANG
Aryani Witasari................................................................................................................ 376

SEMARANG CITY GOVERNMENT ROLE IN CONSERVATION AND ENVIRONMENTAL PROTECTION TO THE CAPITAL OF THE NATIONAL HERITAGE IN INDONESIA
Achmad J Pamungkas (Indonesia), Carlito Da Costa (Timor Leste) ............................... 390
STUDYING THE WISDOM OF ZAKAT
Moch. Gatot Koco (Indonesia), Basuki R Suratno (Australia) ......................................................... 398

HOMOLOGATION RECONSTRUCTION IN BANKRUPTCY THAT IS BASED ON
DIGNIFIED JUSTICE
Agus Winoto ........................................................................................................................................... 410

RECONSTRUCTION OF EXECUTIVE AND LEGISLATIVE AUTHORITY
IN MAKING GOOD GOVERNANCE (GOOD GOVERNANCE) VALUES BASED ON
WELFARE
Mohamad Khamim ............................................................................................................................... 420

THE TASK RECONSTRUCTION AND BPKP’S AUTHORITY IN THE CASE
OF JUSTICE VAUE BASED CORRUPTION
Sarbudin Panjaitan .................................................................................................................................. 429

THE RECONSTRUCTION OF MADLIYAH AND IDDAH MAINTENANCE
AND MUT’AH IN DIVORCE CASE FOR JUSTICE AND WELFARE
Mustar .......................................................................................................................................................... 438

JURIDICAL ANALYSIS OF THE ALLEGED CRIMINAL OFFENSE TO MANUFACTURE
A NOTARY DEED
Subiyanto .................................................................................................................................................. 446

REVITALIZATION DEAL IN AKAD HYBRIDS IN SHARIA BANKING VALUE BASED
ISLAMIC JUSTICE
Masduqi ..................................................................................................................................................... 452

RECONSTRUCTION OF LEGAL PROTECTION DISTRICT HEAD IN THE ELECTION
IMPLEMENTATION OF VALUE-BASED JUSTICE
Kukuh Sudarmanto Alugoro ...................................................................................................................... 462

ABUSE OF AUTHORITY OFFENSE THEOLOGICAL RECONSTRUCTION LAW
ERADICATION OF CORRUPTION (LAW NUMBER 31 OF 1999
JO. LAW NUMBER 20 OF 2001) BASED ON VALUE OF JUSTICE
As’adi M. Al-ma’ruf .................................................................................................................................... 472

RECONSTRUCTION OF THE DAILY PAID WORK AGREEMENT IN THE EMPLOYMENT
LAW BASED ON JUSTICE
Christina N M Tobing .............................................................................................................................. 479

THE LAW AND THE IMPACT OF MARRIAGE SIRRI
Sahal Afhami ............................................................................................................................................ 489

CRIMES AGAINST CHILDREN AS ACTORS
Muhammad Cholil ....................................................................................................................................... 503

RECONSTRUCTION OF CRIMINAL PROCEDURAL LAW
(KUHAP) ABOUT THE DETENTION
Muhammad Khambali ............................................................................................................................ 512
<table>
<thead>
<tr>
<th>Title</th>
<th>Author</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>BASED ON JUSTICE PROBLEMS OF DISPUTE RESOLUTION REGIONAL CHIEF ELECTION (GOVERNOR, REGENTS AND MAYOR)</td>
<td>Esti Ningrum</td>
<td>520</td>
</tr>
<tr>
<td>RECONSTRUCTION REGIONAL MINIMUM WAGE (UMR) IN RENEWAL OF EMPLOYMENT LEGAL REMEDIES BASED INDONESIA THE VALUE JUSTICE PANCASILA</td>
<td>Urip Giyono</td>
<td>531</td>
</tr>
<tr>
<td>IMPLEMENTATION OF LAW AS TO MAINTAIN SECURITY IN THE CONTEXT OF PROFESSIONAL POLICE POLMAS (CASE STUDY IN LAMPUNG POLICE)</td>
<td>Muhammad Yaman</td>
<td>539</td>
</tr>
<tr>
<td>RECONSTRUCTION OF CRIMINAL SANCTIONS PENAL CODE ACTORS ON ABORTION CRIME BASED ON THE VALUE OF JUSTICE</td>
<td>Hanuring Ayu Ardhani Putri</td>
<td>549</td>
</tr>
<tr>
<td>REGISTRATION FIDUCIARY GUARANTEE REALIZE LEGAL PROTECTION OF CREDITORS AND DEBTOR</td>
<td>Ansharullah Ida</td>
<td>556</td>
</tr>
<tr>
<td>RECONSTRUCTION OF LEGAL DISPUTES MEDIATION IN HEALTH CARE FOR PATIENTS HOSPITAL BASED ON THE VALUE OF JUSTICE</td>
<td>Teguh Anindito</td>
<td>569</td>
</tr>
<tr>
<td>RECONSTRUCTION OF CRIMINAL SANCTIONS AGAINST CRIME OF ACTORS AND MURDER MURDER IN PLAN BASED ON VALUE OF JUSTICE CRIMINAL CODE</td>
<td>Maria Marghareta Titiek Pudji Angesti Rahayu Teguh Anindito</td>
<td>579</td>
</tr>
<tr>
<td>IMPLEMENTATION OF PENAL MEDIATION IN CRIMINAL LAW</td>
<td>Aji Sudarmaji</td>
<td>587</td>
</tr>
<tr>
<td>FAIR SETTLEMENT RECONSTRUCTION OF PROBLEMATIC CREDIT DISPUTE AT BANK RAKYAT INDONESIA (STUDY CASE AT MEDAN-SINGAMANGARAJA BRI BRANCH OFFICE)</td>
<td>Bachtiar Simatupang</td>
<td>594</td>
</tr>
<tr>
<td>RECONSTRUCTION OF THE WASTE MANAGEMENT LAW BASED ON WELFARE VALUE</td>
<td>M. Hasyim Muallim</td>
<td>616</td>
</tr>
<tr>
<td>RECONSTRUCTION LAW OF PUNISHMENT AGAINST CHILDREN NARCOTICS ABUSE-BASED PROGRESSIVE LAW</td>
<td>Salomo Ginting</td>
<td>625</td>
</tr>
<tr>
<td>LEGAL PROTECTION PROBLEM OF WIFE AND CHILDREN OF POLYGAMY SIRRI IN INDONESIA</td>
<td>Muhlas</td>
<td>639</td>
</tr>
</tbody>
</table>
IDEAL RECONSTRUCTION OF REHABILITATION PUNISHMENT FOR NARCOTICS ADDICTS AND ABUSER'S VICTIMS JUSTIFIED BASED ON THE LAW OF THE REPUBLIC OF INDONESIA NO. 35 YEAR 2009 (CASE STUDY IN SUMATERA UTARA PROVINCE)
Ahmad Zaini ................................................................. 648

IMPLEMENTATION OF ACCELERATION SYSTEMATIC LAND REGISTRATION FULL IN HUMBANG HASUNDUTAN DISTRICT
Ruslan ........................................................................... 658

RECONSTRUCTION OF STATUS AND AUTHORITY OF THE SHARIA COURT IN THE NATIONAL JUDICIAL SYSTEM BASED ON JUSTICE
Jufri Ghalib ....................................................................... 667

RECONSTRUCTION OF LIABILITY NOTARY PUBLIC OFFICERS TO ACT AS A VALUE-BASED JUSTICE
Elpina ............................................................................ 679

RECONSTRUCTION OF CONSUMER PROTECTION LAW IN MAKING THE BALANCE BUSINESS BASED BUSINESS AND CONSUMER VALUE OF JUSTICE
Ramon Nofrial .................................................................. 693

RECONSTRUCTION OF LAND USED RIGHT EIGENDOM VALUES BASED ON JUSTICE AND LEGAL CERTAINTY
Hakim Tua Harahap ........................................................... 706

RECONSTRUCTION OF DIVERSION CONCEPT IN CHILD PROTECTION OF CONFLICT WITH THE LAWS BASED ON THE VALUE OF JUSTICE
Ulina Marbun ..................................................................... 726

RECONSTRUCTION OF PARATE EXECUTION MORTGAGE RIGHTS TO LAND BASED ON THE VALUE OF JUSTICE
Zaenal Arifin ..................................................................... 740

THE RECONSTRUCTION OF DIVORCE DUE TO MARITAL STATUS UNDER THE UNAUTHORIZED GUARDIAN AS VALUE OF JUSTICE
Abdul Kholiq .................................................................... 751

THE RECONSTRUCTION OF LEGAL AID LAW FOR CHILDREN WHO GET CONFLICT WITH LAW IN PROCESS OF JUSTIFICATION FOR CHILDREN BASED ON THE VALUE OF PANCASILA
Adi Mansar ....................................................................... 767

MEDIATION RECONSTRUCTION AS ONE OF THE ALTERNATIVE SETTLEMENT OF DECLINE IN THE COURTS BASED ON THE VALUE OF JUSTICE (Study at the Simalungun District Court)
Mariah S.M. Purba ............................................................. 778

POLYGAMIC POLICY IN INDONESIA (Analysis of Polygamic Arrangements and Practices 1959-2015)
Warman ........................................................................... 790
LAW ENFORCEMENT AGAINST CORRUPTION
IN PERSPECTIVE OF HUMAN RIGHTS IN INDONESIA
Sekhroni .................................................................................................................. 798

THE PRINCIPLE OF NATURAL JUSTICE AND HUMAN’S RIGHT PROTECTION FOR
CITIZENS IN ERADICATION OF CORRUPTION IN INDONESIA
Indriyana Dwi Mustikarini ....................................................................................... 809

PREVENTING LAND MAFIA USING POSITIVE LAND
REGISTRY SYSTEM
Bambang Sulistyo Widjanarko ................................................................................. 816

UNRULY PASSENGER IN AVIATION:
THE REGULATIONS AND CASES IN INDONESIA
Adya Paramita Prabandari ...................................................................................... 826

EDUCATION ANTI-CORRUPTION IN INDONESIA: PROBLEMS, CHALLENGES AND
SOLUTIONS
Alwan Hadiyanto .................................................................................................. 839

SPIRITUAL URGENCY OF RELIGIOUS AND EXPENSES OF EVIDENCE IN COMBATING
CORRUPTION IN INDONESIA
Sulistyowati ......................................................................................................... 852

SUE FOR THE STATE ADMINISTRATION OF JUSTICE IN INDONESIA
Sarjiyati .................................................................................................................. 863

CONSISTENCY MODEL OF COURT DESIGNATION TO
FOSTER PARENT RIGHTS AUTHORITY
DUE TO DIVORCE ON CHILDREN
Erna Trimartini .................................................................................................... 873

AN INVESTIGATION AUTHORITY OF CRIMINAL ACT ON CORRUPTION IN CRIMINAL
JUSTICE SYSTEM IN INDONESIA
Sukmareni ........................................................................................................... 885

PRO CONS THE EXISTENCE OF DEATH PENALTY IN CORRUPTION ACT OF 1999 IN
INDONESIA
Anis Rifai ............................................................................................................... 903

PENAL MEDIATION IN SOLVING MEDICAL MALPRACTICE CASES AS AN ALTERNATIVE
OF PENAL SANCTIONS BASED ON LOCAL WISDOM
Sri Setiawati .......................................................................................................... 913

SPECIAL PROTECTION OF CHILDREN IN CRIMINAL JUSTICE SYSTEM
Achmad Sulchan .................................................................................................... 922

MORAL REFORM BUREAUCRACY AS PREVENTION OF ILLEGAL PAYMENTS TO
INDONESIA CLEAN OF CORRUPTION
Herwin Sulistyowati .............................................................................................. 932

STANCE AND AUTHORITY OF PEOPLE’S CONSULTATIVE ASSEMBLY DURING
REFORMATION ERA 1945
Ahmad Mujib Rohmat ............................................................................................ 944
TAXES AND ALMS SEEN FROM ISLAMIC LAW
Mohammad Solekhan .............................................................................................................. 954

DIVERSION IN COURT (Case Studies in Karanganyar District Court)
Anita Zulfiani ......................................................................................................................... 964

International Seminar
Photos..................................................................................................................................... 971
I. Introduction

Life is a gift given by God Almighty that must be respected by everyone. Life is given to every human being is a human rights that can only be revoked by the Giver of life.

The right to life is one of the human rights that are set out in the Constitution of the State, as described in Article 28 (a) of the Constitution of the Republic of Indonesia in 1945 which states that "Everyone has the right to live and to defend life and living". With the right to life of the country will preserve and protect the right to life of every citizen so that the state through the state law enforcement tool will act if there is known to occur and the removal of the right to human life.

Abortion (abortion) is always a conversation, either in forumresmi and unofficial concerning the fields of medicine, law and other disciplines. Abortion is not a new issue, abortion is an old problem that is always controversy. One of the controversies about abortion are the priority discourse of human rights as an excuse or reason for the pro-abortion cons of abortion.

Lately case of abortion the fruit simalakama in Indonesia. On the other hand non-medical abortion with reason is strictly prohibited in Indonesia but on the other side of illegal abortions increase the risk of death due to lack of medical facilities and infrastructure, even illegal abortions mostly done by traditional means which increase the risk of death.

In Indonesia alone, although abortion is prohibited, but still many women who have abortions. Well done based on specific medical indication or performed by non-medical indications. Experts religion sees that whatever the reason, abortion is an act contrary to the religion, because it is taking the life of the fetus, which means murder, though no one argues that the life of the fetus did not exist before 90 days.
Based on consideration of moral and social side, it's hard to let a mother who must care for unwanted pregnancies mainly as a result of rape, the result of commercial sex (with commercial sex workers) and women who know that the fetus has severe physical disabilities.

Children born in the conditions and environment such that, in the future will most likely be knocked out of the social life is normal, lack of protection and affection that should be obtained by a child who had grown up in an environment that is fair, so it was likely the child will an outcast.

On the other hand, in terms of religion, any religion would not allow men to commit acts termination of pregnancy for any reason, while in terms of the law, there are still debates and contradictions of the pros and cons about the perception or understanding of the laws that exist to date.

Today many women became pregnant and had an abortion as a sign of moral degradation. Unwanted pregnancy is not a reason to kill the fetus. The fetus is a creature of Allah SWT. Why should be killed? What is wrong is not a rapist penzinanya or her fetus. The fetus also has the right to life. Legalize abortion is not the solution to reduce the number of maternal deaths. The amount will actually increase because there is the possibility of fetal owner claimed to be raped in order to be aborted.

In consideration of hunger, abortion is permitted with some conditions. First, the fetus was detected suffering from a genetic defect that is born later is difficult to cure. Then, pregnancy due to rape were determined by a team competent in it, among others, the victim, a team of doctors and scholars. Terms of abortion due to rape, the age of the fetus can not be longer than 40 days.

Criminal punishment against criminal abortion should be through the criminal justice procedure as formal criminal law or the law of criminal procedure. Criminal procedure law that can be formulated as a law establishing how the state uses its right to carry out criminal. Also commonly referred to as Concreto In criminal law, since it contains the rules of how the criminal law or criminal law materiel In Abstracto poured in reality.

As known, the setting is a criminal offense in the Criminal Code a criminal abortion contained in the Penal Code Book II Chapter XIV On Crimes Against Life, in Article 299, Article 346, Article 347, Article 348, Article 349. To simplify and ease in this study, the focus directed primarily to the criminal sanctions to abortion.
II. Formulation of the problem

Based on the description of the background of the aforementioned problems, then according to the author, the problem in this study can be formulated as follows, among others.

1. How does the application of criminal sanctions by the judge of the criminal abortion in Indonesia?
2. Why is the criminal sanctions imposed by the judge to criminal abortion in Indonesia is not based on values of justice?
3. How is the reconstruction of criminal sanctions in the Criminal Code against criminal abortion based on the value of justice?

In this study, it is not necessary to propose any theory (either directly or indirectly) related to the field of law, but only a few are incidentally used.

1. Grand theory used in this research is Theory of Justice The Dignity.
2. Middle theory used in this research is the Theory of Human Rights.
3. Applied theory used in this dissertation research is the theory of the law enforcement.

III. Discussion

In terms of choosing with paradigm study, researchers interested in lifting this study with research paradigm constructivism. In this paradigm, the law is seen as something relatively established and understood transactional, subjective and dialectic.

Constructivism flows legal theories are more empirical. Roscoe Pound came up with the concept of "social jurisprudence" which is then followed by Karl Llewellyn and Jerome Frank with "realistic jurisprudence" (legal realism). Roberto Unger also appeared with the "critical legal studies" it. Thought this alternatif emerged as a reaction to the view that sees positive law works mechanically, deterministic, and separate and things outside the law, as introduced by the Dean of Harvard Law School, C. Langdell in 1870. She likens the law to a science in which the jurists working in the library as a laboratory.

The method used in this research is normative juridical method. Normative juridical method is legal research using secondary data only. Examines the effectiveness of a Law and Research wants to find a relationship (correlation) between the various symptoms or variable as a means of collecting data consisted of a study document.

The author has analyzed the problems related to the application of criminal sanctions against the perpetrators of the crime of abortion in Indonesia as described above, the authors present his conclusions were a response to the problems in this study, as follows.
1. The application of criminal sanctions by the judge of the criminal abortion in Indonesia today is still very low compared to a penalty contained in the Criminal Penal Code which carries a maximum of only four years in prison or a maximum fine of three thousand rupiah (Article 299 Penal Code), the longest four years' imprisonment (Article 346 Penal Code), Oldest twelve years' imprisonment (Article 347 Penal Code), and a maximum of five years and six months' imprisonment (Article 348 Penal Code). And the sanctions have not reflect the value of the maximum penalty in the Criminal Code of Justice in applying criminal sanctions against perpetrators of the crime of abortion in Indonesia have not dug the values contained in chapter chapters contained in the Criminal Code. Among others the value contained in the Criminal Code Article 299, namely the values of humanity, certainty of value, the value of protection. From the above values can not produce norms which could not meet justice. Regarding the legalization of abortion, in the view of the public should not be made except for emergency medical indications, because the fetus in the womb has a right to live and if abortion is legalized it will shift values and norms in society.

2. Criminal sanctions imposed by the judge to the criminal abortion in Indonesia is not based on the value of justice as meted out regardless of background does the crime of abortion and the person who committed the crime of abortion such as all those perpetrators and rescuers abortion. This is stipulated in Article 346, 347, 348, and 349 Criminal Code. Due also judge has not considered the values contained in the article and yet to consider the wisdom of local and international wisdom. A judge of abortions performed by rape victims are things you can do if it is later born child will bring psychological pressure on the woman and the abortion is fine to do because it does not harm other people because the pain is the woman. While the fetus resulting from rape are not guilty and still have the right to live and be protected. The child must still be born, and if indeed the child will remind the mother in the rape of these children could be kept away from the mother.

3. Reconstruction of the Criminal Code of Criminal Sanctions Against Perpetrators of the Crime of Abortion Based On Value of Justice, by shifting values, basing on the wisdom of local and international wisdom. The value of local wisdom among others the values of justice, the equilibrium value, and the value of protection.
The reconstruction of the law was to improve the Code Article 299 Penal Code by changing a few sanction the article mentioned above so as to be as follows. Article 299 before the reconstructed reads.

a. Whoever intentionally treating a woman or tell him so treated intentionally inflicted notify or hope, that because the treatment can be aborted the pregnancy, threatened imprisonment of four years or a maximum fine of three thousand rupiahs.

b. If the guilty do so for profit or to make such actions as search or habit or if he is a physician, midwife, or interpreter drugs, plus one-third of the criminal.

c. If guilty, committed the crime in carrying out a search, the inalienable right to conduct a search.

Proposed reconstruction of promovendus is changing criminal sanctions in Article 299 Issuer so after reconstructed it reads.

a) any person who treat a woman and because of the treatment of the pregnancy can be terminated, for imprisonment for a minimum of 2 years and a maximum of seven years imprisonment, subject to criminal social work in the form of service in remote areas and fined Rp. 3.000.000, - (three million rupiah).

b) If you are doing it is a medic, physician, scribe medicine, shaman, is coupled with the criminal punishment in the form of social work service in remote areas in Indonesia.

IV. CONCLUSION

From these results, the authors provide suggestions above suggestions, among others.

1. Criminal sanctions that should be imposed by the judge to criminal abortion promoting humanitarian values, the values of justice, protection value, the value of certainty, the equilibrium value.

2. It should be criminal sanctions in drop by Justice should not only imprisonment but also must be equipped with a criminal social work and criminal penalties.

3. The judge in deciding criminal sanctions should also explore the value of local wisdom and values of international wisdom. So that the sanctions imposed sense of fairness to all parties.

4. Criminal Law is ultimium Remedium means of criminal law should be used as the last drug or the final step when the way - another way of settlement which could not meet the agreement or way out.
5. The law used to consider when facing a judge in criminal cases abortion should not only written law, but also live in a society of law or unwritten law.

6. In the verdict, the judge, based on two items of evidence, namely the testimony of witnesses and the testimony of the defendant, and based on the facts revealed in court, the judge considered that the defendant is guilty of the crime of abortion. While according to the author, these considerations are not the proper judge because the judge did not consider all the elements are there, the judge only consider the elements contained in that article, judges only decide based on the Criminal Code and Health Law. Of sanctions imposed by the judge can not necessarily provide a deterrent for criminal abortion and not necessarily able to give lessons to the public.

The implications of the research findings include two things, namely the theoretical and practical implications. The theoretical implications associated with its contribution to the development of theories of punishment and the practical implications of research findings related to its contribution to the implementation of the application of criminal sanctions against perpetrators of the crime of abortion in Indonesia. As a research that has been done, the conclusion drawn naturally has implications in the field of law as well as subsequent studies, based on the research that has been done, the theoretical implications of this study showed that in applying criminal sanctions related to the theory of law and theory of rights human rights in general and closely related to the theory of justice with dignity in particular. The results of this study reinforce the theory of justice bermartbat for humanitarian values form the basis for criminal sanctions for the crime of abortion, especially in Indonesia. In applying criminal sanctions in particular to the perpetrators of criminal acts could be more humanizing. Because of the criminal sanctions should contain the values of justice, certainty values, human values, the value of legal protection,

The practical implications of this research result is used as input in deciding judges and for prosecutors in prosecuting a criminal abortion. Fixing the cultures in the application of criminal sanctions in connection with the rise of the crime of abortion by women in Indonesia, with regard to criminal sanctions imposed by the judge.
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