



# THE 3<sup>rd</sup> 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

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# **The 3<sup>rd</sup> PROCEEDING**

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## **The 3<sup>rd</sup> PROCEEDING**

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## INFORMATION OF THE CONFERENCE AND CALL PAPER

**WORLD CLASS ISLAMIC UNIVERSITY**  
**UNISSULA**  
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# 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 :**

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Nagoya University, Japan
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Indonesia, September 05<sup>th</sup> 2017

**WORLD CLASS ISLAMIC UNIVERSITY**  
**UNISSULA**  
SULTAN AGUNG ISLAMIC UNIVERSITY

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**FACULTY OF LAW**  
Sultan Agung Islamic University

5  
September  
2017

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

Day: Tuesday

Date : September 5<sup>th</sup> 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3<sup>rd</sup> Floor

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

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AND CALL FOR PAPER  
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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## PREFACE

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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 5<sup>th</sup> 2017

**Chairman of the Committee,**



**Dr. Anis Mashdurohatun, S.H., M.Hum**  
**NIDN : 06-02105-7002**

## GREETING FROM THE DEAN OF FACULTY OF LAW

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*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 5<sup>th</sup> 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 5<sup>th</sup> 2017

Dean,



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

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# THE EFFECTIVENESS OF GUIDANCE OF CHILD PRISONERS IN ADULT PRISON

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## ABSTRAK

Law Number 12 Year 1995 on Penitentiary states that “The guilty child, Children who are guilty, then the guidance will be held on child prisoners.” The placement of a child who is guilty into a Child Prisoners is carried out separately in accordance with their respective status that is criminal children, state children and civil children. These status differences become the reasons for guidance which held to them. However, there are still child prisoners who placed in adult penitentiary. This research is normative, because this research is a legal research which conducted by examining library materials or secondary data. This research aims to examine the extent of specific legislation, either vertically or horizontally, and includes laws that are equal or belong to the same field which regulates the fostering of child prisoners in Penitentiary. From the results of research on the Guidance of the Rights of Child Prisoners in Adult Prison, The pattern of guidance of Prisoners has been established in the Decree of the Minister of Justice of the Republic of Indonesia No. M.02-PK.04.10 of 1990. In this letter explained that the pattern of guidance of prisoners of both child prisoners and adult inmates must be implemented in an integrated manner that is personality guidance and independence building for child prisoner. The obstacle that’s in the fostering of child prisoners in adult prisons is the absence of special staff to handle child prisoners. This is because most of the prison officers are law graduates, while the balance of handling in guidance is very important to realize maximum guidance of child prisoners. Adult penitentiaries are far from viable means, as neither the building physical nor cleanliness does not support the lives of children in adult prisons.

**Keywords: Coaching Effectiveness, Child Prisoner, Adult Prison.**

## Background

Children are part of the young generation who have a strategic role as the next generation of a nation. As a potential power and foster the continuation of life of a nation, it requires continuous coaching, physical, mental and social growth and development and protection from all possibilities that will harm them in the future. Based on Law Number 12 of 1995 on Penitentiary states that “the guilty child, children who are guilty, then the guidance will be held on child prisoners.” The placement of a child who is guilty into a Child Prisoners is carried out separately in accordance with their respective status that is criminal children,

state children and civil children.<sup>1</sup> Development of children consists of 3 (three) main activities, that is: Guidance, Development and Protection. Child guidance is an effort to provide the best for growth. Development is to grow all the abilities and talents contained in the child.<sup>2</sup> Based on the data recapitulation of prisoners in the Year 2017 in Indonesia, child prisoners are still placed in adult prisons.<sup>3</sup> Child prisoners who have been convicted and placed in adult prisons are essential for legal review as well as psychologically and socially. This means that child prisoners should be placed in a juvenile penitentiary, and how the future of child prisoners if the guidance is placed in adult prisons.

## **Research Purposes**

The purpose of this paper is to find out how the implementation of the guidance of the rights of child prisoners who placed in adult penitentiary and what kind of efforts are made to overcome obstacles in the process of fostering children in adult prisons.

## **Method**

This research is normative, because this research is a legal research which conducted by examining library materials or secondary data. This research aims to examine the extent of specific legislation, either vertically or horizontally, and includes laws that are equal or belong to the same field which regulates the fostering of child prisoners in Penitentiary.

## **Research and Discussion**

### **1. Fostering the Rights of Child Prisoners in Adult Penitentiary**

Provisions on the Establishment of Prisoners as stipulated in the Government Regulation of the Republic of Indonesia in Law Number 32 Year 1999 aims to replace the old provisions. All the rules that are still fundamental to the prison system are altered and adapted to new matters deemed more in line with the principles of Pancasila and the 1945 Constitution of the Republic of Indonesia.

The pattern of guidance of Prisoners has been established in the Decree of the Minister of Justice of the Republic of Indonesia No. M.02-PK.04.10 of 1990. . In this letter explained that the pattern of guidance of prisoners of both child prisoners and adult inmates must be implemented in an integrated manner that is personality guidance and

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<sup>1</sup> General explanation of Law Number 12 Year 1995 on Penitentiary

<sup>2</sup> Mahmul Siregar, Marlina, Rosmalinda, Azmiati Zuliah, 2007, Pedoman Praktis Melindungi Anak dengan Hukum Pada Situasi Imergensi dan Bencana Alam, Pusat Kajian dan Perlindungan Anak, Medan, p. 71

<sup>3</sup> <http://smlap.ditjenpas.go.id/public/grl/current/monthly>, access on, Agustus, 27<sup>th</sup>, 2017

independence building for child prisoner.<sup>5</sup> Personality guidance that includes the promotion of religious awareness, the formation of nation, states guidance, the development of intellectual ability (intelligence), and legal awareness counselling. It aims to shape the personality of the prisoner in order to be better than the previous personality. Meanwhile, the independence development as determined in the Decree of the Minister of Justice of the Republic of Indonesia Number M.02-PK.04.10 of 1990, is provided through the programs of Skills to support independent businesses; handicrafts, small businesses to support small industry enterprises; (industry skills, household, machine repair and electronic equipment) skills support small industry enterprises (making household furniture, managing snacks, brick making) appropriate skills according to their respective talents (art, sport) supporting industry or agriculture with medium/high technology (leather, shoes, textiles).

It is known that this form of self-reliance is not working as expected because the maximum threat of juvenile punishment is half of the maximum adult punishment penalty.<sup>6</sup> Thus, the average penalty is between 8 months to 1 year 2 months, other than that the child so that the guidance of the personality of child prisoners in adult prisons is not fully implemented.

## **2. Constraints in Fostering Child Prisoners in Adult Penitentiary**

Penitentiary is a place to educate/nurture prisoners. For this implementation, penitentiary officers must have skills and abilities in the field of guidance or education of prisoners, especially guidance on child prisoners who placed alongside adult prisoners. As is known, the purpose of prisoner education in penitentiary is not to make the prisoner more merely skilled, but the prison officer can also alert the prisoner to repentance to the deeds for what he has committed. All this is badly needed penitentiary officers who can animate the character/personality of child prisoners. This is because adult prisons do not place special staff to handle child prisoners, because most of the prison staff is law graduates, while the professionalism of guidance handling is very instrumental to realize maximum guidance on child prisoners.

as well as health and food services, where the development of health is very influential on the physical child prisoners. Furthermore, facilities and infrastructure in

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<sup>5</sup> A. Josias Simon R., Thomas Surnarto, 2011, Study Kebudayaan Lembaga Pemasyarakatan Di Indonesia, Lubuk Agung, Bandung, p. 75

<sup>6</sup> according to Law No. 11 of 2012 on the Child Criminal Justice System, Article 81 Paragraph (2).

handling child prisoners placed in adult prisons is not feasible, because neither the building's physical nor cleanliness does not support the child's life in adult prisons. This is because even though they are placed in different cells with adult inmates, but at recess they are join and interact with adult inmates, so it is not impossible they will imitate adult criminal behaviours. This will have a fatal impact on child prisoners who allow them to commit crimes again after completing their sentence.

Another thing that is an obstacle for child prisoners who are placed in adult prisons is the health and food services, where their food is equated with adult inmates while their diet should be extra to increase the nutrition of children as they are still growing. This is in accordance with Article 1 Sub-Article b of Law No. 4 of 1979 concerning the Welfare of Children, which aims to ensure the realization of the welfare of children, especially the fulfilment of the basic needs of the future of the nation, because the child is the next generation of the nation

## **CONCLUSION**

1. Guidance on the Rights of Child Prisoners in Adult Correctional Institutions namely Prisoners' Practice Pattern has been stipulated in the Decree of the Minister of Justice of the Republic of Indonesia No. M.02-PK.04.10 of 1990, where the guidance patterns of the guarded citizens of both child prisoners and convicted adults must be implemented in an integrated manner. The guidance which held is in the form of personality guidance and independence building to child prisoners who aim to form the personality of the prisoner to be better than the previous personality.
2. Adult prisons do not place special staff for child prisoners, as most of the prison staff are law graduates, while the handling of child prisoners is very important to promote maximum guidance to child prisoners. guidance of child prisoners in adult prisons as if only spent time of criminal only, does not indicate the existence of a serious coaching for the prisoners of children, because the facilities and infrastructure is not appropriate for child prisoners. So placing child convicts in adult prisons is an incorrect policy because it does not guarantee the child does not repeat the crime after completing his or her term.

## **RECOMMENDATION**

It is recommended to the government from both the central government and local government to be responsive in handling the problem of misbehaving children under their supervision/leadership. It is recommended to the government from both the central government and local government to be responsive in handling the problem of misbehaving



children under their supervision/leadership. it is advisable that every district/city should be made available to the special prisons of the child as well as child prisoners who need assistance in the formation of personality and independence, In order for children who are child prisoners can be well established without violating their basic rights in accordance with the rules of minimum standards that reflect the prison principles.

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