



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 CLASS 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 CLASS ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

International Conference

5
September
2017

"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

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

Organized by : Faculty of Law UNISSULA Semarang-Indonesia

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

FACULTY OF LAW
Sultan Agung Islamic University

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 |

INDONESIAN LEGAL DEVELOPMENT
PROGRESSIVE LAW APPROACH TO BUILD THE LAW IN INDONESIAN SENSE

Wendra Yunaldi

wendrayunaldi78@gmail.com

Students of Doctoral Program in Law Science, Faculty of Law, UNISSULA

Gunarto

gunarto@unissula.ac.id

Lecturers Of Faculty Of Law, UNISSULA, Semarang

Abstract

Law is a social tool that is used to realize the order of life of society and state fairly and humanity. Indonesia's current legal problems are its culture and systems are dominated by colonial law which is unable to strengthen the national identity in facing the future. Issues arising from the arbitrariness of law are enforcement officers, unfair trials, legal uncertainties, the loss of humanity in the law, and the law as a tool of human rights violations. It all occurs due to influence: 1) the dominance of power, 2) The interests of stability, and 3) contrary to Indonesia's own national identity. As a result, any method for formulating law products and enforcement efforts is ambiguous and inhumane. The law stands by itself, while society becomes the object. Progressive law as a new paradigm that puts forward the humane ideals of law, is a model of a new approach that in the sense of Pancasila and constructive to amputate the "crime law" itself. Indeed, in order to build a legal product with Pancasila's sense, we must do a "legal revolution" by using a progressive approach.

Keywords: Legal Development, Progressive Law and Indonesian Sense Law.

INTRODUCTION

After 72 years of Indonesian independence, the law is still a dilemma in providing justice to the justice seekers. The law that truly serves as a tool for the transformation of society's social life into a high and dignified civilization is trapped into the paradigm of orderliness and obedience. At the same time the regularity and compliance stem from the values and principles of Dutch colonialism. This can not be denied, as seen in law studies in faculty of law, is still dominated by legal lessons and legal rules born by the Dutch.

Pancasila as welstanchaung of Indonesia should be the legal basis. Construction of philosophical and welstachaung values with divine, humanitarian, unity, wisdom and wisdom, and justice principles must be implemented into legal philosophy and legal products.

When Satjipto Rahardjo presented the Progressive Law paradigm that was very accommodating to Pancasila, the courage of legal experts and legal practitioners was required to "sue" the legal paradigm that has been misguided in protecting the interests of the Indonesian people. Law is a virtue that will direct and bridge the interests of a nation to move forward and be civilized. Ubi societas, ibi ius is statement for there is society there is a law. Law is not born by itself, it was born by society. Therefore, the law should become a tool for the people to realize the ideals of the nation.

LITERATURE REVIEWS

Several studies that have studied Indonesian legal development with a taste of Indonesia can be summarized in three paradigms; 1) the paradigm of Pancasila law¹, 2) Progressive legal paradigm², and 3) integrative legal paradigm³. These three paradigms are post-reformation and began to be studied intensively not only by the legal academics, but also by groups of people who care about the future of Indonesian Law. They conducted studies to provide solutions to the legal problems that occur in Indonesia today.

RESEARCH METHOD

This study used normative legal research method of doctrinal legal research, which is the study against norms that prevail in the community, so that it can offer a problem solving or solution to the problems faced by the community, whether concrete or potential⁴. The concrete problem is in the form of legal ideals which corresponds to Indonesia, while the potential problem is legal capacity to provide a sense of happiness to the community. The nature of this research is the analytical descriptive that describes the facts, certain

¹ The idea of Pancasila law is already in the beginning of the New Order era, but because of its dominant political influence on the law, the study of the paradigm of Pancasila law then deviates from the expected substance. Last idea reiterated by Prof. Dr. Asep Warlan Yusuf, Guru Besar FH Unpar dan Prof. Dr. Syaiful Bakhri Rektor UMJ.

² This idea was first put forward in an article in Kompas Daily with the title "Indonesia Butuhkan Penegakkan *Hukum Progresif*". 15 Juni 2002 oleh Prof. Dr. Satjipto Rahardjo

³ While the integrative legal notion put forward by Prof. Dr. Romli Atmasasmita dalam bukunya *Teori Hukum Integratif, Rekonstruksi Terhadap Teori Hukum Pembangunan dan Teori Hukum Progresif*.

⁴ Soenarti Haryono, *Penelitian Hukum di Indonesia Pada Akhir Abad ke 20, 1994*, Bandung, Alumni, page. 74

circumstances and traits⁵. Analytical nature means that this research can describe the various findings of legal materials to clarify the concept of Indonesian sense law, so that it can be a solution in the existing legal problem. In order to analyze the accumulated legal material, normative qualitative analysis was conducted, where the existing legal materials were collected⁶, then arranged in order to form a systematic, concrete and clear sequence so as to produce a conclusion to be formulated.

INDONESIAN LEGAL DYNAMICS

The history of legal growth in Indonesia has begun since the first kingdom stood in Indonesia⁷, more or less in 130 AD. The various great and small kingdoms grew up in various parts of the archipelago, ranging from Hindu and Islamic kingdoms. Up to the arrival of the invaders and ended, when the proclamation of 17 August 1945 was announced. The people of the archipelago already live in the state of implementing legal norms to regulate the social order and the kingdom, from ancient to modern era, there were many legal norms underlying the life of the Indonesian nation.

Configuration of Western law, customs and Islam that developed in the early modern century in Indonesia, further reinforced what kind of legal formulation would be realized by Indonesia to reconstruct this nation in the future. The development of legal infrastructure in systemic models, courts, police institutions, and other legal institutions living in the community are certainly a momentum to encourage the realization of legal certainty, both as a norm and a law as a product of legislation. However, Romli stated that "since independence, the development of Indonesian law is very backward⁸". After seeing the dynamics of Indonesian law today, there are three main issues that are very dominant in influencing the legal development, namely; 1) the dominance of power, 2) the interests of stability, and 3) contrary to Indonesia's own national identity.

1) Dominance of Power

The legal product is a political product of the legislative body. The legal product must be more impartial to the interests of the law itself rather than the maker of political

⁵ Suryabrata, *Metode Penelitian*. 1993, Jakarta, Rajawali, page.19.

⁶ Satjipto Rahardjo, *Ilmu Hukum*, 1991, Bandung, PT. Citra Aditya Bakti, page. 95

⁷ Dewawarman menerima tongkat kekuasaan. Tahun 130 Masehi ia kemudian mendirikan sebuah kerajaan dengan nama Salakanagara (Negeri Perak) beribukota di [https://id.wikipedia.org/wiki/ Kerajaan Salakanagara](https://id.wikipedia.org/wiki/Kerajaan_Salakanagara) downloaded on 18 August 2017

⁸ Romli Atmasasmita, *op.cit.* page. 1

institutions. Mahfud MD's thesis has proved this, from the Political Law to the Law on Regional Government, all of which is full of political determination against the law⁹. Likewise with the Act on ASN, the preferred interest is not for the development of personnel professionalism, but rather for the sake of voting for elections¹⁰. On behalf of the authority possessed by Patrialis Akbar as a judge of the Constitutional Court who later became entangled in bribery test cases of animal husbandry and animal health.¹¹

The Century Bank case, the Jakarta Bay Reclamation, the Tax, the Regional Head are all due to the existence of legal products made not for the benefit of the law itself.

The dominance of police, judicial and prosecutorial powers that often "sell chapters" and act in favor of "pro justice" often sacrifices rules for the sake of individual interests is not uncommon even "congregation" violates the law.

2) The importance of Stability

The interests of national stability, both the interests of development and the political interests of the state elite, the law becomes a shield and a tool to legitimize the interests of the authorities. In the era of the old order to the new order and even in the order of reform, the law was played by the authorities to take any action in order to safeguard the interests of the stability of national development. Hate Speech as a Chief of Police Chief which is considered by many to be a tool of silencing the freedom of opinion and Organization Regulation which has banned several Islamic organizations, all made with the consideration of the importance of maintaining stability.

3) Contrary to National Identity

What kind of building of our national identity to this day is still a big question. The same thing is also experienced by the law, such as whether the law of national identity. Therefore, it is not surprising, if the legislators are completely ignorant of the philosophy and values that deserve and deserve in the product of law. Stuck with the interests of the law must exist, with no consideration of national identity, the strength of the necessity of order without considering the interests of the nation's morality makes the various laws and regulations that are born to be barren and momentary. One case can be read from the Health Act no. 36 of 2009, with consideration of human rights and economics, this law needs to exist. Is the nation's humanity and morality for health only focused on getting health care and economic

⁹ Moh. Mahfud MD, *Hukum dan Pilar-Pilar Demokrasi*, 1999, Yogyakarta, Gama Media, page. 155-156

¹⁰ <http://nasional.kompas.com/read/2017/01/31/18334571/revisi.uu.asn.sarat.kepentingan> politik, downloaded on 20 August 2017

¹¹ <https://news.detik.com/berita/d-3509434/patrialis-akbar-segera-jalani-sidang-soal-kasus-suap>

interests? The health service is very closely with the professionalism of medical personnel and empathy attitude that must be prioritized to serve patients.

Of the three frameworks of this issue, it appears that the legal product that was born was still far from the substance of legal interest. Any law and other regulations are often regarded as legal products, however, between the contents of the rules are contradictory and contrary to the content and substance of the law itself.

NEW LEGAL PARADIGM WITH INDONESIAN SENSE

The law developed in accordance with the development of society. The law must become virtue, and virtue of the law must refer to Pancasila as the nation's philosophy. Roeslan Abdulgani in Resappoint and Preach Pantjasila writes: "Pancasila is the subject of the mind of a legal ideal"¹². The misconception of the law as a formulation of the righteous law even though empty of the spirit remains recognized as law. Yet as Satjipto conveyed "the law is made not only contains articles, but has spirit or spirit as well"¹³. On another occasion, Satjipto said "the behavior and practice of the law of a nation is too great to be merely inserted into the articles of the law for granted. It may be that the law says so or so, while other behaviors show, in the end, the picture of our real state of law appears through the behavior of the law, not the article of the law. "¹⁴

As Romli Atmasasmita notes, the development of law compared with economics and politics is very backward¹⁵. Indonesian law is trapped into a seal to merely legalize every progress of various development infrastructures. Frederic Bastiat saw that the law had been used to destroy itself. ¹⁶

The ideology of the Pancasila nation with its principles has the power of virtue and virtue that can interpret the law of Indonesian flavor. This will be realized of course by changing the paradigm used so far. Satjipto refers to Pancasila as "these values are the roots

¹² Roeslan Abdulgani, Resapkan Pantjasila, t.tp, Jakarta, Prapatja, page. 88-99

¹³ Satjipto Rahardjo, Sisi-Sisi Lain dari Hukum di Indonesia, 2006, cet, ke-2, Jakarta, Kompas page. 86

¹⁴ Ibid., page. 122

¹⁵ Romli Atmasasmita, loc.cit.

¹⁶ Frederic Bastiat, Hukum Rancangan Klasik untuk Membangun Masyarakat Merdeka, terjemahan, 2010, Jakarta, Freedom Institute, page. 5

of our legal culture"¹⁷. However, he further said "if our formal system is still referring to liberal legalism will certainly cause problems".¹⁸

In order to realize the Law in Indonesian sense, it can only be done with, first; strengthen the position of Pancasila as the law moral and normative basis. Second; Pancasila can only be ad home with to Indonesian if the paradigm used to formulate the values of Pancasila in various positive legal norms using the rationality of Indonesia itself. The combination of values and principles which contains Indonesian culture with methods and approaches that also has sense of Indonesia will be able to realize the law flavored Indonesia.

CONCLUSION

A. Summary

Indonesia's independence should also be enjoyed by our law by freeing the Indonesian legal system from the influence of Dutch colonialism and liberal legalism. To realize this notion, it needs a close combination of Pancasila entity with a progressive approach so that the birth of the law flavored Indonesia.

B. Suggestions

1. Colleges must perform creative designing to formulate legal constructs of Indonesian flavor.
2. It takes courage of law colleges and law enforcers to perform "mental revolution" in order to see the potential of Indonesian Law as an advantage and wealth.

REFERENCES

- Abdulgani, Roeslan, Resapkan Pantjasila, t.tp, Jakarta, Prapatja
- Atmasasmita , Romli Teori Hukum Integratif, Rekonstruksi Terhadap Teori Hukum Pembangunan dan Teori Hukum Progresif.
- Bastiat, Frederic, Hukum Rancangan Klasik untuk Membangun Masyarakat Merdeka, terjemahan, 2010, Jakarta, Freedom Institute
- Haryono, Soenarti, Penelitian Hukum di Indonesia Pada Akhir Abad ke 20, 1994, Alumni, Bandung

¹⁷ Satjipto Rahardjo, op.cit., page. 10

¹⁸ Ibid.

<http://nasional.kompas.com/read/2017/01/31/18334571/revisi.uu.asn.sarat.kepentingan>

politik, diunduh tanggal 20 Agustus 2017

https://id.wikipedia.org/wiki/Kerajaan_Salakanagara di unduh tanggal 18 Agustus 2017

<https://news.detik.com/berita/d-3509434/patrialis-akbar-segera-jalani-sidang-soal-kasus-suap>

MD, Moh. Mahfud, Hukum dan Pilar-Pilar Demokrasi, 1999, Yogyakarta, Gama Media

Rahardjo, Satjipto, Ilmu Hukum, 1991, Bandung, PT. Citra Aditya Bakti

_____, Sisi-Sisi Lain dari Hukum di Indonesia, 2006, cet, ke-2, Jakarta, Kompas

Suryabrata, Metode Penelitian. 1993, Jakarta, Rajawali