



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

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INFORMATION OF THE CONFERENCE AND CALL PAPER

WORLD ISLAMIC UNIVERSITY
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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

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Nagoya University, Japan
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Indonesia, September 05th 2017

WORLD ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

International Conference

5
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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
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AND CALL FOR PAPER
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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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, 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

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RECONSTRUCTION ON CORRUPTION ACT AND SHIFTING BURDEN OF PROOF ON THE SETTLEMENT OF CORRUPTION IN INDONESIA

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ABSTRACT

The reversal burden of proof is a rule of law requiring someone to prove his wealth. Someone suspected of corruption or bribery case can deny the accusation if he is able to show the proof of the source of his wealth.

Generally, the reversal burden of proof is not applied in Indonesia since the Indonesian law does not follow the reversal burden of proof principle. Therefore, the cases of overweight piggy banks involving several officials that may be indicted in corruption or bribery scandals are only partially proven and largely free from lawsuits where one of the underlying reasons is insufficient evidence.

Actually, there is a special law regulating corruption i.e. by giving full authority to the Corruption Eradication Commission (KPK) to fight against corruption. However, the Indonesian law has not been effective to entrap corruptors though the Corruption Eradication Commission (KPK) has worked hard for seven years and Indonesia still becomes the most corrupt country in south-east Asia. This is the worst achievement made by the officials and it is still maintained by the Indonesian officials.

Keywords: corruption, crime, bribery, the reversal burden of proof.

INTRODUCTION

Corruption is one type of crime that is increasingly difficult to reach by the rule of criminal law, because the act of corruption profusely plural that requires the ability to think officers examination and law enforcement accompanied by such a pattern of conduct neatly. Therefore, legal change and development are the means to anticipate such corruption (Evi Hartati, 2007).

Corruption is related to the various complexities of the problem, such as moral issues or mental attitude, lifestyle and cultural issues, social environment, economic system, politics

and so on. In facing such characteristics, one way to eradicate corruption that has been known is through criminal law as a tool of criminal policy in preventing or reducing crime.

Corruption in Indonesia has evolved in 3 (three) stages: elitist, endemic, and systematic: in the elitist stage, corruption is still a typical of social pathology within the elite/officials. At the endemic stage, corruption reaches out to the broader society. Then, in a critical way, when corruption becomes systemic, every individual in the system contracts a similar disease. This corruption disease in Indonesia has reached a systematic stage. Criminal acts are a violation of the social and economic rights of the people, so that corruption can no longer be classified as ordinary crimes. In its eradication efforts it can no longer be done "in the usual way", but is required by the extra-ordinary enforcement (Surachim and Suhandi, 2011).

In 1971 Law no. 3 of 1971 on the Eradication of Criminal Acts of Corruption and then in 1999 promulgated Law no. 31 Year 1999 on the Eradication of Corruption, which defines a limited reversed system of evidence contained in Article 37 which allows the application of limited reversal of certain properties and the appropriation of corruption. UU no. 3 of 1971 and Law no. 31 of 1999 in principle still use the theory of negative proof, then in Law no. 20 Year 2001 on Corruption Eradication, namely in the form of System Reversal Burden of Consideration and Balanced. The set of reversed proofs is more clear in Article 12 B, 12 C, 37, 37A, 38 A, and 38 B. Legal basis for the emergence of outside regulations (Criminal Code).

Causes of Corruption

The Corruption in the Old Order

The result of this research shows that the existence of corruption in Indonesia was the small salary earned in the Old Order era and the state of Indonesia's system of governance was still not stable causing the number of acts of corruption. The benefits derived from corruption was not comparable with the punishment obtained by people who commit acts of corruption so as not to give deterrent effect and fear of corruption acts committed. Less supervision was also the cause of corruption because corruptors had the opportunity to monopolize the power. Cases of corruption that occurred in the Old Order era much due to lack of supervision by the government because of the condition of Indonesia was still not stable because the new state becomes independent.

Corruption during the New Order Era

The New Order era of corruption occurred because of the many monopolies of power exercised by persons in positions. Efforts made by the government of the Old Order era until the era of Reformation in addressing the problem of corruption that occurred is to make anti-corruption laws and establish anti-corruption agencies.

The New Order regime (1966-1998) was an era that ended with the demands of corruption eradication, collusion and nepotism that spread in the center of power to the region, related to the corruption that continues to this day, its tracks can be found far behind the history of Indonesia. (Irwan Santoso, Kompas).

Shortly after taking office, Soeharto immediately made a number of efforts against corruption. Soeharto on December 2, 1967 through Presidential Decree (Keppres) No. 228-1967 and based on Law No. 24 of 1960 formed the Corruption Eradication Team with the Chief Prosecutor General Sugih Arto. This team is in charge of helping the government to eradicate corruption with preventive and repressive measures.

Four years later, Commission Four was formed with Presidential Decree No. 12 dated January 31, 1970 with members of Wilopo, SH (chairman concurrently member), IJ Kasimo, Anwar Tjokroaminoto, Prof. Ir Johannes, and Maj. Gen. Sutopo Yuwono (Western-trained military intelligence officer).

Then there was the Anti-Corruption Committee in 1970 that brought together the 1966 army activists in order to provide moral support to the government and national figures to fight the increasingly rampant corruption, when the Suharto government was only four years old.

In 1977, the government formed Operation Orderly (Opstib) in Presidential Instruction No. 9 of 1977 with coordinator of Menpan and Pangkopkamtib operational operators.

The last step of the New Order era to eradicate corruption was the Corruption Eradication Team of 1982. Hendri F Isnaeni assessed that five New Order anti-corruption institutions were far from the maximum. "As if there was government attention to the eradication of corruption. In fact, the team only works to provide input to the authorities about the eradication of corruption. One of them is Team Four led by former Prime Minister

Wilopo. If there are cases that need to be investigated, it has never been followed up, "Hendri said.

These institutions are not authorized to take action. Nor was there any synergy and permanent organization such as the Police and the Attorney General's Office.

Corruption that flourished during the New Order era, continued Hendri, proves that corruption eradication is not effective.

Currently, Joko Widodo government has many instruments to eradicate corruption, such as prosecutors, police, and also the Corruption Eradication Commission (KPK). Revamping the personnel of these strategic institutions, the task of supervision and prevention of corruption, should be put forward to break the legacy of systemic corruption.

Corruption is Crueler than Murder

Cannot be denied, Indonesia is including a country with a high level of corruption in the world, although the efforts to eradicate corruption is well prepared, but the corruptors remain easy to find way to corrupt.

Since reformation era until now, corruption even become more and more often done in congregation. It seems like an expression for certain people who in the past could not corrupt, because at time corruption could only be done by people close to Mr. Suharto.

The materialistic mindset and the weakness of legal action in Indonesia also trigger the rise of corruption cases, especially when the current remission and pardon for the corrupt is very surprising, with humanitarian reasons.

If we think carefully that corruption can be crueler than murder or even from murderers, why not for corruption, corruptors are able to kill thousands of people slowly, spreading the virus starving, 3 kg green bomb. The difficulty of life that cause stressful strife in the community because difficult to find a meal. Furthermore, it leads to the disease of hungry busk and many who eventually committed suicide even to the point that his son was invited to commit suicide.

Comparison of Positive Law and Islamic Law

Comparison between Positive Law and Islamic Law against Corruption Eradication. The similarity between positive law and Islamic law against corruption is the Indonesian Government has done many steps to eliminate corruption with evidence that the government has issued many regulations/laws, among others; Law Number 31 Year 1999, Law Number 20 Year 2001. Likewise from Islamic law has long been a prohibition of corruption has existed, as in the Word of God has been explained that: "And do not some of you eat some other property among you by a foolish way, and bring not the treasure unto the judge, that ye may eat of the possessions of others with sin, when ye know. "(Al-Baqarah, 188). "... Whoever betrays in the affairs of war spoils, on the Day of Resurrection he will come with what he betrays ..." (Ali 'Imran: 3). Islam has also set very tough sanctions against corruption (thieves) by enforcing hand-cutting, in the Qur'an Allah says:

Meaning: "The man who stole and the woman who stole, cut off the hands of both (as) vengeance for what is and as the punishment of God. And Allah is Mighty and All-Wise "(Surat al-Maidah: 38).

Constitutionally, Perpu is recognized as one form of legislation. The recognition may be read in article 22 of the 1945 Constitution which determines: (1) in the case of the interests of force, the President shall be entitled to determine the government regulation in lieu of law, (2) the government regulation shall be approved by the House of Representatives in the following hearing, and (3) if it is not approved, then the government regulation should be revoked.

If we read the amendments, Article 22 of the 1945 Constitution is one of the few articles that have not changed. Perpu is part of the needs of the State administration. From the hierarchy of legislation, during the administration of the State under the 1945 Constitution except in the MPR Decree No III / MPR / 2000 which is no longer valid - the perpu law level. In fact, in Article 9 of Law No 10/2004 on the Establishment of Laws and Regulations affirmed, the matter of charge of perpu is the same as the content of the Act.

However, the problem is not in existence. The problem lies in the reasons that justify the presence of the perpu as an emergency law. This reason becomes very important because Article 22 Paragraph (1) of the 1945 Constitution requires conditions or matters of compelling interests. In view of (Jimly Asshidiqie, 2002), this requirement of "coercive interests" often

results in widespread interpretation. During this time, many government-appointed perpu, but the circumstances of interest to force the basis of its determination is not clear.

In view of Law Number 31 Year 1999 and Law Number 20 Year 2001, the criminal act of corruption is seen from 2 (two) aspects, namely active and passive corruption. What is meant by active and passive corruption is as follows:

1. Unlawfully enrich themselves or others or corporations, which may harm the state's financial or state economy (Article 2 of Law Number 31 Year 1999)
2. In order to benefit himself or others or a corporation abusing the authority, opportunity or means available to him because of his position or position which could harm the state's finances or the state's economy (Article 3 of Law Number 31 Year 1999).
3. Giving or promising something to a civil servant or state organizer in order to do or not to do something in his / her position that is contrary to his / her obligations (Article 5 paragraph (1) sub-paragraph a of Law Number 20 Year 2001).
4. Give something to a civil servant or a state administrator because of or in connection with something that is contrary to his obligations carried out or not done in his position (Article 5 paragraph (2) letter b of Law Number 20 Year 2001).
5. A civil servant or other person other than a civil servant who is given the duty of carrying out public office on a continuous or temporary basis intentionally implements, destroys, damages, or makes unusable goods, deeds, letters, or lists used to convince or to prove in advance the authorized official, who is controlled for his position, or to allow others to remove, destroy, damage or make unacceptable such goods, deeds, letters or lists (Article 10 of Law Number 20 Year 2001).

There have been many theoretical and practical steps taken by the government to fight against corruption. In the era of Soeharto, two attempts have been made to eradicate corruption, among others, the law of the State of Danger with its products, Paran (State Apparatus Retooling Committee) in charge of collecting the wealth of officials. Also "Operation Budhi" is in charge of investigating in depth about corruption in state institutions prone to corrupt practices such as Pertamina. All failed because the relevant officials are reluctant to be examined.

In the reform era, the government issued Law Number. 28 of 1999 on the administration of a clean and free State of KKN. It is followed up the establishment of

KPKPN and the Ombudsman Institution. Unfortunately, the two bodies were like toothless tigers. Therefore, for the work of the corruption eradication agency not stagnant, an independent anti-corruption special agent is required. According to Robert Klitgaard, this agent must keep his kingdom from the interference of all parties and the people involved in it must be clean and trusted by the public. That way, public confidence in their performance will be easy to obtain.

The findings of the agents should be immediately followed up by the government apparatus with firm and swift action. Example: like the bold and courageous experience of the Philippine government punishing the corrupt people in the country, the vengeful Vietnam punishes a corrupt minister, or North Korea who does not hesitate to punish its former prime minister, and China who has executed death more 4,300 corruptors in 2002, a firmness and discipline that is worthy of being copied and contemplated.

In order to eradicate KKN, Islam explicitly and clearly sees the importance and unity between faith and charity, ritual worship and social practices, the implementation of shari'ah and morals in the individual order in society. Therefore, the empowerment and functionalization of ritual worship (such as prayer, zakat, fasting, hajj, zikr and prayer) is absolutely necessary and contextualized in social life. The Qur'an teaches how one should perform the prayers well. In addition to having to meet the requirements and formal relationships, prayer should also be followed up with a commendable moral behavior. Therefore, the Prophet Muhammad also cautioned his followers: "It is not considered the prayer of a person whose prayer does not prevent the cruel and unjust acts." (Narrated by al-Bukhari and Muslaim).

Because the socio-political component of the state is made up of leaders and people, then in anticipation of action with KKN (corruption, collusion and nepotism), it is necessary to reform both the priests and the moral of the two components of the nation. The reformation of faith and morals is the renewal and empowerment of the value of faith (belief in the truth of the Divine Essence of God) in a more functional way of life. During this time, new faith is just "cosmetics and individual rhetoric", even according to some circles, faith is the personal matter of man with God. This individual (tauhid) faith seems to be dry meaning, or is not functional in giving birth to moral charity. Leaders and the people's faith should lead to the following values. Since faith requires a testimony of the truth (Al-Haqq) tauhid between al-Khaliq (creator) and His creatures, then believers should have a unity of vision in carrying the

mandate of life (including social life, politics and economy), so that from the mandate that must be accounted before the people and God arises good faith and strong commitment to socialize the security and peace in this life. In the shift of faith combined with the mental attitude of trust and the spirit of bringing about security gives birth to attitudes and behaviors that are full of moral considerations: honesty, fairness, openness, togetherness, equality, brotherhood, unity, and so on.

In the hadith has been explained the ban on bribery and received the gift of "Hadith Abu Humaid al-Sa'idiy that the Messenger of Allah, employed one employee, then the employee came to him when finished from his job. Later, he (the Prophet) said to him: "do you live in the house of your father and your mother, and you notice whether you give a gift or not? Then Allah's Messenger (peace and blessings be upon him) stood up after praying in the day. Then he reads the creed and praises God for all that is worthy of Him. Then he said: 'Amma ba'du, what is (the pushing factor) of the employee we ordered and said "this (wages) of your work, and this is a present for me, when he lives in the house of his father and mother. Then he wondered if he was rewarded or not? So, for the sake of the One who controls the soul of Muhammad, let no one of you betray (by taking) something of a gift.

Conclusion

The problem of corruption from the old order to the reform order era is still the same, if there is any difference, it is not significant. The eradication has not fulfilled the hopes that the Indonesian people aspire to.

Recommendation

In order to eradicate corruption and to obtain maximum results and efficient, according to the authors, the government needs to take several steps as follows:

- a. That in eradicating corruption, the government must combine positive law with Islamic law simultaneously because the merging of positive law with Islamic law will be an effective regulation to eradicate the corruption that is happening in Indonesia.
- b. The maximum penalty for corruptors, in addition to causing a deterrent to the perpetrators, it must also have a further impact on the development of social and moral sanctions, resulting in the embarrassment and fear of corruption.

- c. Corrupt-minded officials should be removed from government, because it is feared will affect other government officials.
- d. Provide information and legal counseling to the community, so that the public is aware of the dangers caused by corruption for the sustainability of the National development, and with the intention that community members also assist in the eradication of corruption through legal channels.

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