

August 29<sup>th</sup> 2018



# THE 4<sup>th</sup> INTERNATIONAL AND CALL FOR PAPER

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



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

**UNISSULA PRESS**

ISBN. 978-602-5995-94-1

August

**29<sup>th</sup>**

2018

# The 4<sup>rd</sup> PROCEEDING

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

**IMAM AS SYAFEI BUILDING**

Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :  
**UNISSULA PRESS**

**ISBN. 978-602-5995-94-1**

## The 4<sup>rd</sup> PROCEEDING

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

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

Dr. Hilaire Tegnan

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

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-xii, 1-447

**Cetakan Pertama Tahun 2018**

**Penerbit UNISSULA PRESS**

Jl. Raya Kaligawe Km. 4 Semarang 50112

PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

**ISBN. 978-602-5995-94-1**

## INFORMATION OF THE CONFERENCE AND CALL PAPER

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

**Welcome to Participants on**

**THE 4<sup>th</sup> INTERNATIONAL AND CALL FOR PAPERS**

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

**29-30 August 2018**

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

**INVITED SPEAKERS :**

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

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia  
www.fh.unissula.ac.id

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

**THE 4<sup>th</sup> INTERNATIONAL AND CALL FOR PAPERS**

**29-30 August 2018**

**"LEGAL CONSTRUCTION AND DEVELOPMENT IN COMPARATIVE STUDY"**  
*The Role of Indigenous and Global Community in Constructing National Law*

**INVITED SPEAKERS :**

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

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

Organized by : Faculty of Law UNISSULA Semarang-Indonesia  
www.fh.unissula.ac.id

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

Day : Wednesday

Date : August 29<sup>th</sup> 2018

Time : 08:00 - 15:00 pm

Place : Imam As Syafei Building

Faculty of Law, Sultan Agung Islamic University

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

Fax. (024) 6582455 Semarang 50112

**COMMITTEE OF THE 4<sup>rd</sup> INTERNATIONAL CONFERENCE  
AND CALL FOR PAPER**

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

---

Responsible Person : Prof. Dr. H. Gunarto.,S.H.,SE.,Akt.,M.Hum (Dean)  
Advisory : Dr. Hj. Widayati.,S.H.,MH (Vice Dean I)  
Arpangi.,S.H.,M.H (Vice Dean II)

Chairwoman : Dr. Hj. Anis Mashdurohatun,S.H,M.Hum (Head of PDIH)  
Secretary : Dr. Hj. Sri Endah Wahyuningsih,S.H,M.Hum (Secretary of PDIH)  
Treasurer : Anita.,S.S.,M.H

Drafting Team : Dr. H. Amin Purnawan.,SH.,CN.,M.Hum H  
Dr. Hj. Aryani Witasari.,S.H.,M.H  
Dr. H. Umar Ma’ruf.,S.H.,Sp.N.,M.Hum  
Dr. Hj. Sri Kusriyah.,S.H.,M.Hum

Secretariat and Supplies  
Division  
Coordinator : M. Abdul Hadi.,SE  
Member : Slamet Ariyanto  
Dyan Teguh Aryanto, Amd  
M. Ngaziz.,S.H.,M.H  
A.J Pamungkas.,S.Psi.,S.H.,M.Kn

Publication and  
Documentation Division : Nailul Mokorobin.,S.Psi  
Member Agus Prayoga

Consumption Division : Shinta Pratiwi  
Member Siti Pardiyah  
Marsela Dinda Amalia.,S.Kom

General Assistant : Riswanto

Security : Rohmani

Driver : Ismail  
Irwanto

## PREFACE

---

**Assalamu'alaikum, Wr. Wb**

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, HilaireTegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.**

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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

**Wassalamualaikum, Wr. Wb**

Semarang, August 31<sup>th</sup> 2018

**Chairman of the Committee,**



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

## **GREETING FROM THE DEAN OF FACULTY OF LAW**

*As-salamu'alaikum Wr. Wb.*

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

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

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

Therefore, to discuss more about legal construction and development, Faculty of Law, Sultan Agung Islamic University was confidence to conduct a conference by the theme “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who had contributed in this event, so that this international seminar ran well.

*Wassalamu'alaikum Wr. Wb.*

Semarang, August 31<sup>th</sup> 2018

Dean,

A handwritten signature in black ink, consisting of a long, sweeping horizontal line that curves upwards at the right end, ending in a small arrowhead.

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



## TABLE OF CONTENTS

---

Front Page .....	i
Information of the International Seminar .....	ii
Committee Composition .....	iv
Preface .....	v
Greeting From The Dean Faculty of Law .....	vi
 <b>DEVELOPMENT OF THE CONSTITUTION AND CONSTITUTIONALISM IN JAPAN: TRADITIONALISM VERSUS MODERNISM (FIRST DRAFT, PLEASE NOT QUOTE WITHOUT THE CONSENT OF THE AUTHOR)</b>	
Shimada Yuzuru .....	1
 <b>COMPARATIVE LAW, LEGAL REFORM AND LEGAL POLICY: HOW TO HANDLE ECONOMIC CRIMES IN GLOBALIZATION ERA?</b>	
Topo Santoso .....	13
 <b>THE IMPLEMENTATION OF FLEXIBILITY PUNISHMENT PRINCIPLES IN ISLAMIC LAW IN THE RENEWAL OF INDONESIA'S CRIMINAL CODE</b>	
Sri Endah Wahyuningsih.....	24
 <b>THE ROLE OF INDIGENOUS AND GLOBAL COMMUNITY IN DEVELOPING NATIONAL LAW IN FRANCE</b>	
Hilaire Tegnau.....	34
 <b>INDIGENOUSNESS AND THE GLOBAL IN THE CONSTRUCTION OF MODERN STATE AND LAW IN THAILAND</b>	
Henning Glaser.....	41
 <b>THE ROLE OF INVESTIGATOR IN CRIMINAL OFFENCE COMMITTED BY SOMEONE INDICATED BY MENTAL DISORDERS</b>	
Kadek Pande Apridya Wibisana.....	56
 <b>EFFECTIVENESS OF NARCOTIC ADDICT REHABILITATION SHARE TO SUPPRESS CRIME NARCOTICS (STUDY IN LOKA REHABILITATION OF THE NATIONAL NARCOTICS AGENCY RIAU ISLANDS PROVINCE)</b>	
Alwan Hadiyanto.....	64
 <b>THE IMPACT OF GLOBALIZATION ON THE PREVENTION AND THE SUPPRESSION OF AIRCRAFT HIJACKING IN INDONESIA</b>	
Adya Paramita Prabandari, Agus Pramono, Supanto.....	81

<b>THE COUNTERMEASURES OF THE PROLIFERATION OF RADICALISM IN INDONESIA IN THE NATIONAL SECURITY PERSPECTIVE</b> Airlangga Surya Nagara, Isharyanto, Hartiwiningsih .....	89
<b>THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA: THE BASIS OF THE HIGHEST NORMATIVE ARRANGEMENT OF MASS ORGANIZATIONS IN INDONESIA</b> Elizabeth Ayu Puspita Adi, I Gusti Ayu Ketut Rachmi Handayani, Supanto.....	96
<b>INVESTIGATION PROCESS OF FIDUCIARY CRIMINAL ACT IN SPECIAL CRIMINAL UNIT, POLRESTABES OF SEMARANG CITY</b> Bambang Purwanto .....	102
<b>REINFORCEMENT OF REGIONAL REGULATION ON ERADICATION OF PROSTITUTION CONDUCTED BY SATPOL PP, BATANG REGENCY</b> Bibet Wiwia Reno .....	111
<b>ADULTERY LEGAL REVIEW IN ISLAMIC CRIMINAL LAW AND INDONESIAN CRIMINAL LAW</b> Fahri Sundah .....	121
<b>IMPOSITION OF SANCTIONS ON INVESTIGATORS WHO COMMIT VIOLENCE IN THE INVESTIGATION PROCESS AT KUDUS POLICE STATION</b> Fenny Wulandary .....	133
<b>EFFECTIVENESS OF THE IMPLEMENTATION OF THREATS OF ADDITIONAL CRIMINAL SANCTIONS TO RETURNS THE STATE FINANCIAL LOSSES IN CORRUPTION CRIMINAL ACT</b> Kasmanto.....	143
<b>LEGAL'S ROLE POLITICS AND THE EFFECT OF POLITICAL PARTIES IN GOVERNMENT (Legal Politics of the Role and Interest of Political Parties in Government)</b> Moureta Vitria Loreent.....	153
<b>THE EFFECTIVENESS OF LEGAL ENFORCEMENT ON BLESPEMNY OF RELIGION IN CIREBON POLICE AREAS</b> Mustamid.....	160
<b>ACHIEVING ETHNICS ORIENTED BUSINESS THROUGH LAW ENFORCEMENT</b> Syafudin Makmur .....	169
<b>LEGAL PROTECTION FOR DEBTORS IN SELLING OF IMMOVABLE GUARANTEED OBJECTS BELOW THE MARKET PRICE IN INDONESIAN POSITIVE LAW</b> Redy Handoko.....	186

<b>A MALAYSIA OF CITIZENS: ETHNICITY, MEMBERSHIP AND POLITICS OF MERGER</b>	
O. Argo Victoria.....	194
<b>THE DOCTRINE OF PUBLIC POLICY AS A GROUND FOR THE ANULLMENT OF ARBITRAL AWARD IN INDONESIA</b>	
Anang Shophan Tornado, Yati Nurhayati , Ifrani .....	204
<b>RECONSTRUCTION OF SAVING FINANCIAL STATE LOSSES IN HANDLING CRIMINAL ACTION IN INDONESIA THROUGH JUSTICE-VALUE BASED</b>	
Bastian Lubis .....	211
<b>IMPLEMENTATION OF RISK MANAGEMENT ON SHARIA BANKING</b>	
Faisal .....	222
<b>THE PROBLEMS IN MULTIPARTY SYSTEM IN THE INDONESIAN PRESIDENTIAL GOVERNMENT SYSTEM</b>	
Widayati and Winanto.....	236
<b>LEGAL ENFORCEMENT OF LAND FUNCTION CONVERSION (CASE STUDY IN KUNINGAN DISTRICT)</b>	
Haris Budiman.....	246
<b>CONSTRUCTION WORK CONTRACT IN GOVERNMENT BASED VALUE OF BENEFIT</b>	
Herwin Sulistyowati, Sumarwoto .....	254
<b>STUDY OF LAW NO. 11 OF 2008 CONCERNING ELECTRONIC INFORMATION AND TRANSACTIONS IN PROTECTING THE TRADE MARKET THROUGH ELECTRONICS BASED ON THE DEVELOPMENT OF CYBER CRIME IN INDONESIA VIEWED FROM THE PERSPECTIVE OF FREEDOM OF CONTRACT</b>	
Putri Maha Dewi, Setiono, M. Hudi Asrori S .....	270
<b>JURIDICAL REVIEW OF THE IMPOSITION OF ADDITIONAL PENALTIES FOR PERPETRATORS OF CORRUPTION IN INDONESIA</b>	
Sumarno .....	280
<b>REFORM OF LEGAL EDUCATION AS AN EFFORT TO PREVENT CORRUPTION</b>	
Yasmirah Mandasari Saragih, Ariansyah .....	289
<b>SOCIOLOGICAL JURIDICAL REVIEW OF THE CHILD COMMITTING THEFT CRIME AT THE DEMAK STATE COURT</b>	
Achmad Sulchan and Bambang Agus Rianto .....	304
<b>FUNCTIONALIZATION THE CUSTOMARY INSTITUTION AS LAW ENFORCEMENT EFFORTS IN WEST SUMATERA</b>	
Otong Rosadi and Fitriati .....	315

<b>COMPARATIVE STUDY OF GUARANTEE LAWS ACCORDING TO ISLAMIC LAW AND CIVIL LAW IN POSITIVE LAW IN INDONESIA</b> Lathifah Hanim, Aryani Witasari, Peni Rinda Listyorini .....	324
<b>THE VERIFICATION OF <i>CLOSE CIRCUIT TELEVISION (CCTV)</i> STANDING IN INDONESIA POSITIVE LAW PERSPECTIVE AND ISLAMIC VALUES</b> Ira Alia Maerani and Nuridin .....	338
<b>EXISTENCE AND FORMULATION OF REGIONAL LAWS ON INTELLECTUAL PROPERTY PROTECTION OF TRADITIONAL COMMUNITY IN INDONESIA</b> Ariy Khaerudin.....	351
<b>RISK OF THE USE OF FOREIGN WORKER</b> Rahmatsyah .....	358
<b>OVERVIEW THEORY OF LEGAL PROTECTION AGAINST THE DRIVER RESPONSIBILITY PARTNERS (PARTNERS PT. GO-JEK INDONESIA) UNDER LAW NO. 8 OF 1999 ON CONSUMER PROTECTION</b> Aryani Witasari and Wahyu Ibnu Musthofa .....	369
<b>ANALYSIS OF THE INDONESIAN CRIMINAL CODE ARTICLE NO. 359 IMPLEMENTATION ON MEDICAL MALPARTICE CASE (Case Study on the Supreme Court Verdict No.: 365-K/Pid./2012)</b> Mohammad Abdul Hakam .....	373
<b>RECONSTRUCTION OF THE PROVISIONS OUTSOURCING</b> Muhammad Andri .....	384
<b>MORALITY AS A BASE IN POLITICS AND LEGAL ENFORCEMENT COMES FROM THE VALUES THAT LIVING IN THE SOCIETY (Reconstruction in Thinking and Behavior)</b> Andi Aina Ilmih .....	393
<b>THE ROLE OF INDIGENOUS PEOPLES AND CUSTOMARY LAW IN THE DEVELOPMENT OF NATIONAL LAW THE PARADIGM OF PANCASILA</b> Lathifah Hanim and MS.Noorman.....	400
<b>THE ANALYSIS OF LEGAL PROTECTION ASPECTS FOR WOMEN AS VIOLENCE'S PERPETRATOR BASED ON JUSTICE VALUE</b> Hadjar Handokojati .....	413
<b>THE WEAK OF THE REGIONAL REPRESENTATIVES IN MAKING LAWS</b> Herlina Hanum Harahap.....	425
<b>REVIEW THE PRODUCTIVITY OF THE PEOPLE'S REPRESENTATIVE IN MAKING LAWS</b> Muhammad Ridwan Lubis .....	431

<b>HONEST AND FAIR GENERAL ELECTIONS TO ORGANIZE THE LAW</b> Kasmudin Harahap .....	437
<b>REGULATION FOR THE POLITICAL PARTY FUNDING IN INDONESIA</b> Sudimun .....	443
<b>REGULATION OF CORRUPTION IN INDONESIA</b> Danial Syah .....	449
<b>LAND REDISTRIBUTION ARRANGEMENTS AND ITS CHALLENGES</b> Raja Induk Sitompul.....	455
<b>MANAGEMENT OF POLITICAL PARTIES FOR PREVENTION OF CORRUPTION</b> Muhammad Evin Barus.....	461
<b>STRENGTHENING THE CORRUPTION ERADICATION COMMISSION TO ILIMINATE CORRUPTION CRIMINAL ACTION</b> Tajuddin Noor .....	467
<b>LEGAL CODIFICATION RELEVANCE WITH THE NATIONAL LEGAL SYSTEM</b> Khomaini.....	475
<b>DRAFT LAW ON CRIMINAL CODE AND LEGAL DEVELOPMENT IN INDONESIA</b> Syaiful Khoiri Harahap .....	480
<b>DYNASTIC POLITICAL TRADITION IN CONSTITUTION</b> Ahmad Rusly Purba .....	486
<b>RULES FOR ERADICATION OF TERRORISM AND STATE SECURITY</b> Elawijaya Alsa.....	493
<b>REFORM OF THE IMPLEMENTATION OF PROTECTION AND RECOVERY RAPE VICTIM'S CHILD RIGHTS</b> Fatin Hamamah .....	500
<b>JUSTICE REPOSITIONING IN THE LEGAL POLITICS OF HEALTH INSURANCE</b> Himawan Purwo Handuto .....	510
<b>RECONSTRUCTION OF EFFECTIVE YEAR AUTOMATIC VEHICLE TAX PAYMENT TERMS</b> Sami'an.....	522
<b>INTERNATIONAL SEMINAR PHOTOS .....</b>	I

# THE PROBLEMS IN MULTIPARTY SYSTEM IN THE INDONESIAN PRESIDENTIAL GOVERNMENT SYSTEM

Widayati<sup>1</sup> and Winanto<sup>2</sup>

[widayati@unissula.ac.id](mailto:widayati@unissula.ac.id)

[winanto@unissula.ac.id](mailto:winanto@unissula.ac.id)

Lecturers Of Faculty Of Law, UNISSULA, Semarang

## ABSTRACT

The presidential system of government is deemed incompatible when compared with a multiparty system because it will cause government instability. The elected president is likely to not get parliamentary support. Indonesia is one of the countries with a multi-party presidential system. The existence of political parties cannot be avoided, because Indonesian society consists of various ethnic groups, religions, races and cultures. Political parties are diverse, there are religious parties, nationalist parties, and nationalist-religious parties. Simplification of political parties is needed to ensure the stability of government. Permanent political party coalitions can be an alternative solution.

**Keywords : presidential, multiparty system**

### A. Introduction

The MPR in making amendments to the 1945 Constitution made an agreement, one of the agreements was to affirm the presidential system of government. The agreement was realized, one of them is by changing the provisions of Article 1 paragraph (2) of the 1945 Constitution. The sovereignty is in the hands of the people and it is carried out according to the constitution. The 1945 Constitution of the Republic of Indonesia is no longer familiar with the highest state institution which was originally at the MPR institution. MPR's position is equal to other state institutions. The MPR is no longer the actor of the full sovereignty of the people, because the sovereignty of the people is reflected in the functions of each state institution that exercises executive, legislative and judicative powers.

Efforts to reinforce the presidential system of government are also carried out by changing the way in which the positions of President and Vice President are filled. Before the 1945 Constitution amendment the President and Vice President were appointed and dismissed by the MPR as the highest state institution, after the amendment to the 1945 Constitution the President and Vice President were directly elected by the people through general elections. Article 6A paragraph (1) determines that "the President and Vice President are elected in one pair directly by the people". Article 1 paragraph (2) and Article 6A paragraph (1) of the 1945

---

<sup>1</sup> Lecturer at Post graduate program, Faculty of Law, UNISSULA Semarang

<sup>2</sup> Lecturer at Faculty of Law, UNISSULA Semarang

Constitution of the Republic of Indonesia constitute a fundamental change to the Indonesian government system which initially adopted a presidential quasi system to become a presidential system.

With regard to political parties, in fact the 1945 Constitution of the Republic of Indonesia does not explicitly determine the party system, whether it is a single, bi-party or multi-party party. However, the 1945 Constitution of the Republic of Indonesia implies that Indonesia adheres to a multi-party system. We can know this if we look at the provisions of Article 6A paragraph (2) of the Constitution of the Republic of Indonesia in 1945, it states that "The candidate pairs of President and Vice President are proposed by political parties or joint political parties participating in general elections before the election", indicating that The 1945 Constitution of the Republic of Indonesia adheres to the multi-party system. The proposer of a candidate pair of President and Vice President is a political party or a combination of political parties, the word "joint political party" shows that there are at least two political parties that join themselves to nominate a pair of President and Vice President to compete with other Presidential and Vice Presidential candidates proposed by other political parties.

Combining a presidential system with a multi-party system is considered unsuitable, because it can lead to an unstable government. The possibility of an elected president is a president who comes from a political party or coalition of political parties that is not supported by a majority in the parliament, so that the President's policy may be difficult to get parliamentary support. Theoretically, a multiparty system is not conducive to a presidential system of government.

Various studies show that there are problems when combining a presidential system of government with a multiparty system. Juan Lins and Arturo Velenzuela (1994) argue that a presidential system of government that is applied side by side with a multiparty system (presidential-multiparty) tends to create conflict between the President's institution and parliament, and presents an unstable democracy. This view is also reinforced by Scott Mainwaring and Matthew Soberg Shugart (1997) that presidential-multiparty parties will give birth to minorities (divided minority presidents) and divided government, conditions in which the President has difficulty obtaining political support in parliament.<sup>3</sup>

## **B. Presidential Government System**

---

<sup>3</sup> <https://nasional.kompas.com/read/2010/07/28/03092245/Kerentanan.Presidensial.Multipartai>.

Presidential government system is a system of government, where the President is the head of state as well as the head of government. The position of the President as executive is not dependent on parliament, because the President is directly elected by the people. The President as the head of government will appoint his assistants (ministers) who will lead their respective ministries, and the ministers are accountable to the President. The formation of the cabinet is not dependent and does not require the support of trust from the parliament. Therefore, the minister cannot be dismissed by the parliament, although for example the parliament does not approve the policy made by the minister. The popular presidential system is a presidential system in the United States.

In a presidential system of government, the executive body does not depend on the legislative body, and the executive institution has a certain term of office. The freedom of the executive institution towards the legislative body results in the position of the executive body stronger in the face of the legislative body. Ministers in the presidential cabinet are elected by the president as prerogative rights, without being influenced by political parties, the president's choice of candidate ministers can be based on expertise and skills and other factors that are considered important.<sup>4</sup>

Executive power is with the President, and the ministers chosen by the President are responsible to the President, not to the legislature. Therefore, ministers cannot be dismissed by the legislature.<sup>5</sup> In a presidential system of government, the President is usually directly elected by the people, and is responsible to the voters.

Earl of Balfour argues about the presidential system applies the following presidential and vice presidential elections: under the Presidential system, the effective head of the national administration is elected for a fixed term. He is practically irremovable. Even if he is proved to be inefficient, even if becomes unpopular, even if his policy is unacceptable to his country, he and his methods must be for the new election.<sup>6</sup>

The presidential system that is often a reference is the presidential system in the United States that defends Montesquieu's teachings. In the *trias politica* Montesquieu's teachings, the three powers of the state, namely the executive, legislative, and judiciary are sharply separated from each other and have a balanced position, so that they supervise each other (check and balance). Power forms the Act in the hands of Congress, and the President

---

<sup>4</sup> Miriam Budiardjo, Dasar-dasar Ilmu Politik, Gramedia, Jakarta, Cetakan IX, Maret 1985, page 212

<sup>5</sup> Moh. Kusnardi dan harmaily Ibrahim, Hukum Tata Negara Indonesia, Pusat Studi Hukum Tata Negara, Fakultas Hukum Universitas Indonesia dan Sinar Bakti, Jakarta, Cetakan Kelima, 1983, page 176

<sup>6</sup> H.M. Laica Marzuki, Berjalan-jalan di Ranah Hukum, Buku Kesatu, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, Jakarta, 2006, page 39



has veto power over the Law that has been made. Executive power is with the President, and because the President is elected by the people, he is not responsible to the parliament, but is accountable to the voters, namely the citizens.<sup>7</sup>

A President in a presidential system of government is the chief executive, he cannot be dropped because of differences of opinion with Congress. The President cannot be contested as long as his term has not expired, except in certain cases.

The judiciary is carried out by judicial bodies which cannot be influenced by other powers in principle. The judge was appointed for life as long as his behavior was not reprehensible.

Allan R. Ball calls the presidential government system the presidential type of government, while C.F. Stong calls it the non-parliamentary or fixed executive. The hallmark of the United States model of the presidential system is:<sup>8</sup>

- a. President as head of state and head of government
- b. The president is not elected by a representative body, but by the electoral council
- c. The president is not part of the legislative body
- d. The president cannot be imposed by the legislature, except through charges, which are usually rare.
- e. The president cannot dissolve the legislature and then order new elections
- f. Usually presidents and legislative bodies are elected for a definite term.

### **C. Multi-party system**

The multi-party system is a political system in which there is no one particular political party that may be an absolute majority in a country to be able to control the representative institution, or form a government without coalition with other political parties. The multi-party system has advantages, especially for countries that have heterogeneous community structures. But on the other hand a multiparty system has weaknesses in the resulting government side, which tends to be unstable because there are no dominant political parties, especially in countries with a parliamentary government system. A multi-party system is usually reinforced by a system of proportional representation that gives wide opportunities for the growth of small political parties.<sup>9</sup>

---

<sup>7</sup> Moh. Kusnardi dan Harmaily Ibrahim, op.cit. page 176

<sup>8</sup> Ni'matul Huda, Ilmu Negara, Rajawali Press, Jakarta, 2012, page 254

<sup>9</sup> Muchamad Ali Safa'at, Pembubaran Partai Politik, Pengaturan dan Pembubaran Partai Politik dalam Pergulatan Republik, Rajawali Pers, RajawaliGrafindo Persada, Jakarta, 2011, page 62

Multi party systems are usually applied in countries with many and heterogeneous populations. There are many tribes, religions, races and cultures in the country concerned. Each of these community groups will establish a political party to be able to participate in general elections and can put their cadres in government. They hope that the interests of the group can be accommodated in the political policy making of the government.

In a multi-party system there is usually no political party that gets a majority in general elections, so it is not strong enough to form a self-government. This opens up opportunities for political parties to form coalitions, although there is a possibility that political parties will coalition and then withdraw their support.

In a multi-party system, parties that lose the general election and not coalition with the ruling government play less role as opposition parties. Even at times they can be invited to join the ruling political parties to form a new coalition. This also causes political policies to sometimes change along with the changing coalition of political parties. Unstable political party coalitions will affect the course of government.

In explaining the party system, actually it is not enough to just take into account the number of political parties that exist in the political dynamics of a country. Although the problem of the number of political parties is important, there are other aspects that need to be considered. In this case, Giovanni Sartori stated that the ideological distance between political parties in the system is very important to understand the behavior of political parties. With this ideological distance between parties, a special polarization of political parties emerged. Based on these considerations, Giovanni Sartori classified the party system into three groups, namely:<sup>10</sup>

- a. Predominant party system is a party system that describes the lack of sharp ideological differences between political parties that interact, or even there can be no ideological differences in opinion, so that the political parties that have a (dominant) function perspective are built. The predominant party system provides an opportunity for many political parties that will compete in general elections, but because there are no significant ideological differences, the political parties that win the general election will still accommodate other political parties. So that in the end the predominant party system prioritizes political consensus compared to ideological interests. Therefore, in predominant party systems, the existing political system tends to maintain the status quo.

---

<sup>10</sup> Ni'matul Huda dan Imam Nasef, *Penataan Demokrasi & Pemilu di Indonesia Pasca Reformasi*, Fajar Interpratama Mandiri, Jakarta, 2017, page 37

- b. Moderate pluralism system is a party system that provides space for more than two political parties to compete in general elections. The advantage of moderate pluralism systems compared to predominant party systems is that there are ideological polarities, although relatively few.
- c. Polarized pluralism system is a party system which generally develops in culturally pluralistic countries, so that many political parties emerge. In a polarized pluralism system, there is the potential for conflict between one political party and another. Therefore, polarized pluralism systems have a low tendency to consensus, even at the extreme point of the potential to trigger political divisions (centrifuges).

#### **D. Multiparty in the Indonesian Presidential Government System**

The system of government which is desired by the 1945 Constitution of the Republic of Indonesia is a presidential system of government, so that the head of government is the President who is directly elected by the people through the General Election. In a presidential system of government, in addition to being the head of government, the president is also the head of state. The presidential system is considered the best to produce a strong and productive government, so as to realize the mandate of the Preamble of the 1945 Constitution of the Republic of Indonesia, which is to protect the entire Indonesian nation and the whole of Indonesia's bloodshed, promote public welfare, and educate the lives of the nation.

The Indonesian state adheres to a presidential system of government and the party system that is implemented is a multiparty system. The President and the DPR are elected directly by the people through elections. Presidential candidates are proposed by political parties or joint political parties, and candidates for DPR members are proposed by political parties. Both institutions have high legitimacy in exercising their authority, because both are directly elected by the people. The President cannot dissolve the DPR, nor can the DPR bring down the President. Dismissal of the President within his term of office can only be carried out if the President violates the law in the form of treason against the state, corruption, bribery, other serious crimes, or a disgraceful act or if proven no longer qualifies as President. Moreover, to dismiss the President is not only through the political process in the DPR and MPR, but also through legal proceedings in the Constitutional Court.

The elected President and Vice President may come from minority parties, for example the party's coalition is few (to meet the Presidential nomination threshold of 20% of the parliament or 25% of the national legitimate vote), so there is no synergy between

coalitions of political parties supporting the President with coalitions of political parties the (maybe) majority in the DPR who are not supporters of the President. That is, a multiparty system will become an obstacle in the running of a presidential system of government, so that it becomes less relevant if there is a combination of a presidential system of government and a multiparty system.

According to Scott Mainwaring, there are three reasons why the combination of presidential systems with multiparty systems is irrelevant, namely: 1) multiparty-based presidential systems tend to produce immobility due to executive-legislative deadlock, the impasse will lead to democratic instability. 2) a multiparty system produces ideological polarization rather than a dual party system so that it often causes complications problems when combined with presidential systems. 3) a combination of presidential systems with multiparty systems complicates the difficulties of building inter-party coalitions in presidential democracies, which has implications for the destruction of democratic stability.<sup>11</sup>

The presidential system requires the presence of the support of the majority political parties in parliament, while the multiparty system makes it difficult for the majority parties to be present in parliament so that a combination of such a system can result in divided government.

Indonesia's presidential government system will be stable and effective if the President receives the support of a majority of DPR members. A presidential system of government coupled with a multi-party system requires a coalition of political parties, although this coalition of political parties is unusual in the presidential system of government. The coalition of political parties is a fundamental necessity and is difficult to avoid in a presidential system of government that is paired with a multiparty system. The coalition of political parties was conducted so that the elected President would later make policies and work programs that would be included in the law, and also the APBN would get approval and support from the DPR. If the President's policies and work programs do not get the approval and support of the DPR, it is feared that it will disrupt the stability of the government.

A presidential system of government that is in tandem with a multiparty system will become a problem too when there is a change in coalition of political parties. As we know, that in politics there is no eternal friend or opponent, but that there is eternal interest. The coalition that was built could be pragmatic, very fragile, very fluid, and easily cracked. It could happen, political parties that coalition and support the President, over time due to

---

<sup>11</sup> <https://padebooks.com/mencari-format-ideal-sistem-kepartaian-dan-sistem-pemilu-di-indonesia>

differences in interests, the coalition will change. It is possible that a political party can have a coalition with the President, then get out of the coalition, or it could be that a political party that was not a coalition with the government then entered the government coalition. In fact, if there are political parties that were not coalition then coalition with the government, it can be ascertained that the political party demands that its party cadres be able to sit in the ranks of ministers, or other government positions. This will lead to the dismantling of cabinet and other government positions, which will have an impact on government instability. The President may be held hostage by the interests of the political party partners. So the implementation of a presidential government system in conjunction with a multiparty system is deemed inappropriate or less compatible.

Inaccurate implementation of a presidential system and a multi-party system needs to find a solution to create a stable government. The ideal combination that is possible to guarantee a stable government is a presidential system of government, and the party system is a party or two parties. With this system, political parties winning the election will run the government, while political parties that lose the election will become opposition. The elected president will be able to form his own cabinet without having to coalition, and without having to unload the cabinet. For this reason, there should be a simplification of political parties. With a small number of political parties that will be effective in supporting the establishment of a presidential government system.

Actually the electoral system implemented in Indonesia has sought to suppress and limit the number of political parties, for example with the existence of an electoral threshold, parliamentary threshold, and also the presidential threshold. However, this model has not been fully effective. In every general election, even though there are political parties that dissolve themselves, or political parties that fuse or join other political parties. There are also new political parties that are established and become participants in the general election. Therefore, if the political parties participating in the general election are difficult to simplify, at least the political parties in the DPR are simplified. The trick is to create a more permanent political party coalition, which is likely to be realized if the coalition is based more on value than the interests of the chair or power, so there are only two coalition groups in the DPR. One coalition group as a supporter of the government, and one coalition group outside the government. In this way it is hoped that the political process will become more efficient and can guarantee the stability of the government, so that the President can focus on managing the government without being disturbed by political party negotiation matters.

Efforts to simplify political parties can be done by means of <sup>12</sup>1) applying a district electoral system (plurality/majority system) or a mixed electoral system (mixed member proportional). The application of the district system, based on the experience of several countries, it was proven to reduce the number of political parties. 2) Reduce the magnitude of the district (district magnitude). 3) Raising the seat threshold in the parliament (parliamentary threshold). 4) Need to simplify the number of fractions through tightening the minimum threshold requirements for the formation of fractions (fractional threshold). 5) If the faction in parliament is still more than two, the parliamentary faction needs to be engineered and "forced" constitutionally to become two political blocs through the regulation of permanent coalitions.

### **E. Conclusion**

Indonesia implements a multiparty presidential system. The combination of the two systems will cause government instability, because the elected President is not necessarily supported by the majority of the DPR. In order for the elected President to have the support of the majority of the DPR, a coalition of political parties is needed. The problem is that political parties with a coalition are pragmatic, so there is a possibility that a political party coalition will be very fragile, very fluid, and easily broken. The coalition of political parties is not solid, will change depending on the interests of political parties. Multi-party in Indonesia is difficult to avoid, for this reason, in order to maintain the stability of government, a permanent coalition is needed in the DPR. It is hoped that in the DPR there are only two coalition groups of political parties, political parties as supporters of the government, one other group is outside the government and is in charge of controlling government policy.

---

<sup>12</sup> Penulis sepakat dengan pendapat Hanta Yuda AR: Kerentanan Presidensial-Multipartai", <https://nasional.kompas.com/read/2010/07/28/03092245/Kerentanan.Presidensial.Multipartai>

## REFERENCES

- H.M. Laica Marzuki, *Berjalan-jalan di Ranah Hukum*, Buku Kesatu, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, Jakarta, 2006
- Miriam Budiardjo, *Dasar-dasar Ilmu Politik*, Gramedia, Jakarta, Cetakan IX, Maret 1985
- Moh. Kusnardi dan Harmaily Ibrahim, *Hukum Tata Negara Indonesia*, Pusat Studi Hukum Tata Negara, Fakultas Hukum Universitas Indonesia dan Sinar Bakti, Jakarta, Cetakan Kelima, 1983
- Muchamad Ali Safa'at, *Pembubaran Partai Politik, Pengaturan dan Pembubaran Partai Politik dalam Pergulatan Republik*, Rajawali Pers, RajawaliGrafindo Persada, Jakarta, 2011
- Ni'matul Huda, *Ilmu Negara*, Rajawali Press, Jakarta, 2012
- \_\_\_\_\_ dan Imam Nasef, *Penataan Demokrasi & Pemilu di Indonesia Pasca Reformasi*, Fajar Interpratama Mandiri, Jakarta, 2017
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- <https://nasional.kompas.com/read/2010/07/28/03092245/Kerentanan.Presidensial.Multipartai>.
- <https://padebooks.com/mencari-format-ideal-sistem-kepartaian-dan-sistem-pemilu-di-indonesia>