

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 Tegnau

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>th</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 Arpangi.,S.H.,M.H	(Vice Dean I) (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 horizontal stroke with a small upward tick at the end, and a shorter horizontal stroke below it.

**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 INDONESIAN'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>CRIMINAL POLICY TOWARDS INSULTING AND DEFAMATION THROUGH SOCIAL MEDIA BASED ON JUSTICE VALUE</b>	
Gomgom TP. Siregar.....	236
<b>IMPLEMENTATION OF THE CORRECTIONAL SYSTEM IN INDONESIA BASED ON JUSTICE VALUE</b>	
Syawal A Siregar.....	244
<b>COMMUNITY PARTICIPATION IN THE SETTLEMENT OF CHILDREN CONFLICT WITH LAW THROUGH DIVERSION BASED ON JUSTICE VALUE</b>	
Muhammad Ansori Lubis.....	251
<b>GOVERNMENT OFFICIAL DISCRETION POLICY IN DECIDING PUBLIC POLICY BASED ON JUSTICE VALUE</b>	
Mhd. Taufiqurrahman .....	262
<b>COMPLETION OF BAD CREDITS IN BANKING FINANCIAL INSTITUTIONS BASED ON JUSTICE VALUE</b>	
Muhammad Yasid .....	268
<b>AUTHORITY OF YUDISIAL COMMISSION IN ENHANCING JUDGE CODE OF ETHICS BASED ON JUSTICE VALUE</b>	
Maurice Rogers .....	277
<b>NON-CASH PAYMENT SYSTEM IN ECONOMIC SYSTEM IN INDONESIA BASED ON JUSTICE VALUE</b>	
Jonner Lumban Gaol .....	284
<b>LEGAL ENFORCEMENT TOWARDS THE VIOLATION OF SPATIAL LAW IN SET BACK BUILDING (GSB) BASED ON JUSTICE VALUE</b>	
Darwin Sinabariba.....	294

<b>RECONSTRUCTION OF SALES RIGHTS OWNERSHIP BASED ON JUSTICE IN PUBLIC MARKETS MANAGED BY REGIONAL COMPANY IN CITY MARKET, MEDAN REGIONAL</b>	
Novi Juli Rosani zulkarnain .....	300
<b>PROVISION OF SANCTIONS ON THE APPLICABILITY OF DECREASING PERMIT ESTABLISHING BUILDING BASED ON THE JUSTICE VALUES</b>	
Paterson Hasiholan Pardomuan Sibarani .....	309
<b>LEGAL POLICY ON THE DYNAMICS OF DEMOCRACY IN INDONESIA BASED ON THE VALUE OF JUSTICE AND LEGAL CERTAINTY</b>	
Arifin Sihombing.....	320
<b>LEGAL PROTECTION ON CHILD VICTIMS OF PEDOFILIA IN INDONESIA BASED ON JUSTICE VALUES</b>	
Sarma Siregar .....	329
<b>THE SETTLEMENT OF BUSINESS DISPUTES IN ELECTRONIC TRANSACTIONS (E-COMMERCE) BASED ON JUSTICE VALUES</b>	
Sarman Sinaga.....	346
<b>POLICY OF COSMETICS DISTRIBUTION IN INDONESIA BASED ON JUSTICE</b>	
Ria Sintha Devi .....	365
<b>THE PROBLEMS IN MULTIPARTY SYSTEM IN THE INDONESIAN PRESIDENTIAL GOVERNMENT SYSTEM</b>	
Widayati and Winanto.....	381
<b>LEGAL ENFORCEMENT OF LAND FUNCTION CONVERSION (CASE STUDY IN KUNINGAN DISTRICT)</b>	
Haris Budiman.....	391
<b>CONSTRUCTION WORK CONTRACT IN GOVERNMENT BASED VALUE OF BENEFIT</b>	
Herwin Sulistyowati, Sumarwoto .....	399
<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 .....	415
<b>JURIDICAL REVIEW OF THE IMPOSITION OF ADDITIONAL PENALTIES FOR PERPETRATORS OF CORRUPTION IN INDONESIA</b>	
Sumarno .....	425
<b>REFORM OF LEGAL EDUCATION AS AN EFFORT TO PREVENT CORRUPTION</b>	
Yasmirah Mandasari Saragih, Ariansyah .....	433

<b>SOCIOLOGICAL JURIDICAL REVIEW OF THE CHILD COMMITTING THEFT CRIME AT THE DEMAK STATE COURT</b>	
Achmad Sulchan, Bambang Agus Rianto .....	449
<b>FUNCTIONALIZATION THE CUSTOMARY INSTITUTION AS LAW ENFORCEMENT EFFORTS IN WEST SUMATERA</b>	
Otong Rosadi, Fitriati Fitriati .....	457
<b>THE VERIFICATION OF CLOSE CIRCUIT TELEVISION (CCTV) STANDING IN INDONESIA POSITIVE LAW PERSPECTIVE AND ISLAMIC VALUES</b>	
Ira Alia Maerani, Nuridin Nuridin.....	464
<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.....	470
<b>EXISTENCE AND FORMULATION OF REGIONAL LAWS ON INTELLECTUAL PROPERTY PROTECTION OF TRADITIONAL COMMUNITY IN INDONESIA</b>	
Ariy Khaerudin.....	477
<b>RISK OF THE USE OF FOREIGN WORKER</b>	
Rahmatsyah Rahmatsyah.....	484
<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, Wahyu Ibnu Musthofa .....	492
<b>ANALYSIS OF THE INDONESIAN CRIMINAL CODE ARTICLE NO. 359 IMPLEMENTATION ON MEDICAL MALPRACTICE CASE (Case Study on the Supreme Court Verdict No.: 365-K/Pid./2012)</b>	
Mohammad Abdul Hakam .....	499
<b>RECONSTRUCTION OF THE PROVISIONS OUTSOURCING</b>	
Muhammad Andri .....	507
<b>THE ROLE OF INDIGENOUS PEOPLES AND CUSTOMARY LAW IN THE DEVELOPMENT OF NATIONAL LAW THE PARADIGM OF PANCASILA</b>	
Lathifah Hanim, MS. Noorman.....	515
<b>THE ANALYSIS OF LEGAL PROTECTION ASPECTS FOR WOMEN AS VIOLENCE’S PERPETRATOR BASED ON JUSTICE VALUE</b>	
Hadjar Handokojati .....	522
<b>THE WEAK OF THE REGIONAL REPRESENTATIVES IN MAKING LAWS</b>	
Herlina Hanum Harahap.....	530



<b>REVIEW THE PRODUCTIVITY OF THE PEOPLE'S REPRESENTATIVE IN MAKING LAWS</b>	
Muhammad Ridwan Lubis .....	538
<b>HONEST AND FAIR GENERAL ELECTIONS TO ORGANIZE THE LAW</b>	
Kasmudin Harahap .....	545
<b>REGULATION FOR THE POLITICAL PARTY FUNDING IN INDONESIA</b>	
Sudimun Sudimun .....	552
<b>REGULATION OF CORRUPTION IN INDONESIA</b>	
Danial Syah .....	559
<b>LAND REDISTRIBUTION ARRANGEMENTS AND ITS CHALLENGES</b>	
Raja Induk Sitompul.....	567
<b>MANAGEMENT OF POLITICAL PARTIES FOR PREVENTION OF CORRUPTION</b>	
Muhammad Evin Barus.....	574
<b>STRENGTHENING THE CORRUPTION ERADICATION COMMISSION TO ELIMINATE CORRUPTION CRIMINAL ACTION</b>	
Tajuddin Noor .....	580
<b>LEGAL CODIFICATION RELEVANCE WITH THE NATIONAL LEGAL SYSTEM</b>	
Khomaini Khomaini .....	588
<b>DRAFT LAW ON CRIMINAL CODE AND LEGAL DEVELOPMENT IN INDONESIA</b>	
Syaiful Khoiri Harahap.....	595
<b>DYNASTIC POLITICAL TRADITION IN CONSTITUTION</b>	
Ahmad Rusly Purba.....	602
<b>RULES FOR ERADICATION OF TERRORISM AND STATE SECURITY</b>	
Elawijaya Alsa.....	608
<b>REFORM OF THE IMPLEMENTATION OF PROTECTION AND RECOVERY RAPE VICTIM'S CHILD RIGHTS</b>	
Fatin Hamamah, Teguh Prasetyo, Anis Mashdurohatun.....	614
<b>JUSTICE REPOSITIONING IN THE LEGAL POLITICS OF HEALTH INSURANCE</b>	
Himawan Purwo Handuto, Teguh Prasetyo, Maryanto Maryanto .....	621
<b>RECONSTRUCTION OF EFFECTIVE YEAR AUTOMATIC VEHICLE TAX PAYMENT TERMS</b>	
Sami'an Sami'an .....	628

<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.....	634
<b>LEGAL PROTECTION OF INDUSTRIAL DESIGNS BASED ON LAW NUMBER 31 OF 2000 CONCERNING INDUSTRIAL DESIGN</b> Ali Ashadi.....	642
<b>STUDY ON THE LEGAL PHILOSOPHY OF MARRIAGE LAW NUMBER 1 OF 1974</b> Bagus Gani Setiana.....	647
<b>THE GOVERNOR GENERAL OF THE NETHERLANDS 'POLITICS OF LAW TO APPLY EUROPEAN LAWS TO PRIVATE PEOPLE (TOEPASSELIJK VERKLARING)</b> Bambang Rudi Hartoko.....	653
<b>THE LEGAL POLITICS OF THE RELIGIOUS JURISDICTION IN INDONESIA</b> Bobby A. Rachman .....	659
<b>ANALYSIS OF NOTARY OBLIGATIONS IN REPORTING TAX PAYMENTS AS TAXABLE ENTREPRENEURS</b> Fani Pratama.....	663
<b>THE ROLE OF THE CODE OF CONDUCT TO IMPROVE THE PROFESSIONALITY OF THE NOTARY</b> Damar Dwi Kuncoro .....	667
<b>THE LEGALITY OF MAKING NOTARY ACTIONS USING ELECTRONIC MEDIA</b> Yodha Dhia Hogantara.....	671
<b>EXISTENCE OF NOTARY DECTS RELATED TO THE PROCEDURE OF PAILIT PROPERTY RESERVATION</b> Fikrina Setyo Rini.....	675
<b>COMPARISON STUDY OF THE ROLE OF NOTARY IN THE PERSPECTIVE OF ISLAMIC LAW AND POSITIVE LAW IN RELATIONSHIP WITH SERVICE TO THE COMMUNITY</b> Ardiansyah Alrawi.....	684
<b>ROYA MECHANISM OF LAND RIGHTS AS COLLATERAL FOR BANKING BANKS BANNED BY AUCTION OFFICERS BECAUSE THEIR CREDITS ARE PROBLEMS</b> Ade Alfriyan Rumrijono.....	689

<b>THE ROLE OF LAND ASSET OFFICERS ON THE INSTALLATION OF LIABILITY RIGHTS WITH THE NAME OF THE DEAD OF THE WORLD OF DECLARATION OF DECLARATION OF DECLARATION PROCEDURES TO THE HERITAGE EXPERT</b>	
Indana Fawaizah.....	694
<b>ROLE OF NOTARY IN PROVIDING LEGAL PROTECTION AGAINST HOME OWNERSHIP CREDIT CONSUMERS THROUGH STANDARD AGREEMENTS</b>	
Muhammad Muamal .....	699
<b>IMPLEMENTATION OF PROPORTIONALITY PRINCIPLES IN MAKING NOTARY OF COLLABORATION AGREEMENT BY NOTARY</b>	
Ahmad Tsekhudin .....	704
<b>LEGAL ASPECTS OF AUCTION CONCERNS AS ASSETS AUTHENTIC IN THE EXECUTION AUCTION OF LIABILITY RIGHTS</b>	
Etik Kuswanti .....	709
<b>GOVERNMENT REGULATION IMPLICATIONS CONCERNING PPAT OFFICES TOWARD PPAT AREAS / WORKING AREAS</b>	
Angga Wisnu Firmansyah .....	714
<b>NORMATIVE STUDY OF DISTRIBUTION LAND STATUS FOR BUSINESS RIGHTS</b>	
Daniel Budi Hardwianto.....	721

# COMPARISON STUDY OF THE ROLE OF NOTARY IN THE PERSPECTIVE OF ISLAMIC LAW AND POSITIVE LAW IN RELATIONSHIP WITH SERVICE TO THE COMMUNITY

Ardiansyah Alrawi  
[bumbpt@yahoo.co.id](mailto:bumbpt@yahoo.co.id)

Students of Master of Notarial Law, Faculty of Law, Univeristas Islam Sultan Agung

## Abstract

Research This aims to identify and explain the role of the notary in the perspective of Islamic law and positive law and at the same time analyze the comparison of the two perspectives in relation to service to the community. This study uses a normative juridical approach.

In carrying out his role in society, a Notary Public must act professionally based on a noble personality by always implementing the law while upholding the Code of Ethics for his profession. A notary is expected to be able to act honestly, thoroughly, independently, and to protect the interests of the parties involved in legal actions. In addition, Notaries as public officials must be able to follow legal developments so that in providing their services to the community, in helping to overcome and meet the growing legal needs, they can provide solutions justified by law. (3) Comparison of the role of the notary in the perspective of Islamic law with positive law in relation to service to the community,

Keywords: Role, Notary, Service to Society

## A. INTRODUCTION

The Republic of Indonesia is a constitutional state where power is subject to the law. The law regulates all relationships between individuals or individuals and individuals with groups or communities or individuals with the government. The principle of a rule of law guarantees certainty, order and protection of the law which has the essence of truth and justice. The role of a notary is very important in helping to create legal certainty and protection for the public, because a notary as a general official has the authority to make authentic deeds, as long as the making of the authentic deed is not specific to other public officials. Legal certainty and protection can be seen through the authentic deed which he makes as perfect evidence in court. The proof is perfect because authentic deeds have three evidentiary powers, namely the power of proof (*uitwendige bewijskracht*), the power of formal proof (*formele bewijskracht*) and the power of proof of material (*material bewijskracht*).<sup>1</sup>

Based on the description above, this paper will discuss the problem of how is the role of the notary in the perspective of Islamic law in relation to service to the community ?; How is the role of the notary in a positive law perspective in relation to service to the community? And how is the comparison of the role of the notary according to the perspective of Islamic law with positive law in relation to service to the community?

## B. DISCUSSION

### 1. The role of the notary in the perspective of Islamic law is related to service to the community

Notary seen in the perspective of Islamic Law, a Notary in carrying out his position there are several elements that must be adhered to, namely Justice, justice based on QS Al Baqarah verse 282, it is stated "O people who believe, if you are not in cash for a specified time, let you be. Write it down correctly and don't be reluctant to write it down as Allah teaches it, so let him write and let

---

<sup>1</sup> G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, cet. V, (Jakarta: Gelora Aksara Pratama, 1999), p. 55-59.

the person in debt imitate (what is to be written), and let him fear Allah (his Lord) and let him not reduce at all from his debt". Furthermore, in the hadith it is explained as follows: From Ubadah Ibn Shamid ra, that the Prophet Muhammad SAW said: "Indeed, the first time that was created by Allah was al kalam or pen. Allah commanded the pen "Write". The pen asked; Oh my God, what shall I write down? Allah answered; "Write down everything that is there until the Day of Resurrection." (Narrated by Al Baihaqi, Turmudzi and Abu Dawud).

Benefit, according to Imam Al-Ghazali, benefit is to take advantage and reject harm in order to maintain the goals of syarak. If a person guards and maintains religion, soul, mind, descent, and property, then the goal of the syarak has been fulfilled masalah. As Allah SWT says in Surah Al Baqoroh verse 179: "and in that qishas there is a guarantee of survival for humans". According to Al-Thufi as quoted by Zamakhsyari, this verse contains the meaning of maintaining the benefit of humans, namely their souls, assets and honor.<sup>2</sup> Sadd Al-Zahri'ah, recording (notary) is part of muamalah which covers the activities of leasing, buying and selling, accounts payable and so on. Muamalah law in Surah Al-Baqarah verse 282 states: "O you who believe, if you are not in cash for a specified time, let you write it". According to Imam Jalaluddin Al-Mahalli and Jalaluddin As-Sayuti in Tafsir Jalalain, explained that in muamalat it should be written for inauguration and eliminating later disputes.<sup>3</sup>The phrase "eliminate disputes" is in accordance with the intent of Sadd Al Zari'ah (preventive theory). In Arabic, the word Al Zari'ah means wadhilah or path that conveys to its destination. The path that conveys to the goal which is haram then the law becomes haram, while conveying to the goal which is lawful the law becomes halal<sup>4</sup>Morals, Notary code of ethics or as the translation of surah Al-Baqarah verse 282 implies that a writer or notary who is regulated in the Notary code of ethics is required to have morals and character. Etymologically, morality is the plural form of khuluq which means character, temperament, behavior or character, which is rooted in the word khalaqa which means to create. Thus a person's behavior towards people and their environment only contains intrinsic moral value if the action or behavior is based on God's will. Meanwhile, etymologically, akhlak is not only the rules or norms of behavior that govern the relationship between fellow human beings but also the norms that govern the relationship between humans and God and even with the universe.<sup>5</sup>

## 2. The role of the notary in a positive law perspective is related to service to society

Notary is a public official who is regulated by law arises because of the needs of the community, who has the authority to make authentic deeds regulated in the Notary Position Law number 2 of 2014. Notary is a profession of trust and is different from other professions where a Notary in carrying out his / her position does not. take sides. Therefore, in his position, the person concerned is entrusted with making evidence that has authentic power, the regulations or laws governing the office of a Notary have been made so strict that they can be guaranteed the authenticity of the deeds drawn up before him.

Authority The notary mentioned in Article 15 from paragraph (1) to paragraph (3) UUJN, which can be divided into:<sup>6</sup>

1. Notary Public Authority.
2. Notary Special Authority.
3. Notary's authority will be determined later.

Some of the characteristics that must be possessed by a notary as a professional are:

<sup>2</sup> Zamakhsyari, 2013, *Teori-Teori Hukum Islam dalam Fiqih dan Ushul Fiqih*, Medan: Cipta Pustaka Media Perintis, p. 150.

<sup>3</sup> Imam Jalaluddin Al-Mahalli and Imam Jalaluddin Al-Suyuti, Tafsir Jalalain, Juz I, (Bandung: Sinar Baru Algesindo, 2003), p. 156-157.

<sup>4</sup> Zamakhsyari, Op. Cit. p. 151.

<sup>5</sup> Muhklis Lubis dan Zulfahmi Lubis, *Ahlak Islam*, (Medan: Pesantren Al Manar, 2009), p. 1

<sup>6</sup> Habib Adjie. *Hukum Notaris Indonesia, Tafsir Tematik Terhadap UU No.30 Tahun 2004 Tentang Jabatan Notaris*. (Bandung: Rafika Aditama. Bandung. 2008), p. 78



1. Have solid moral integrity.  
In all his actions, a notary must have moral considerations. This means that all of his actions must not conflict with the values prevailing in society, even though he will get a high reward for services.
2. Honest and knows his own limits.  
In all his actions, a Notary must be honest with himself and also to his clients. He must know where his limits are by not acting beyond his own means just to please the client who uses his services.
3. Be aware of the limits of his authority.  
The authority of a notary is limited by the provisions stipulated in law. A Notary Public must know and comply with applicable legal provisions regarding how far he can act and what he can and what he cannot do.
4. Not oriented solely on closeness to clients.  
A notary gets clients because of friends or close relationships. However, to carry out the notary profession. It should be remembered that the main motive of a profession is a motive of service to the community, so that a notary should not be influenced by friendship and close relationships. He must stick to professional ethics and a sense of justice to create legal certainty.

### **3. Comparison of the role of the notary according to the perspective of Islamic law with positive law in relation to service to society**

In principle, the notary in carrying out his role in serving the community both according to the perspective of Islamic law and positive law is not much different when seen from the main task of the position, namely as a registrar in a civil / muamalah activity.

In carrying out his role, a notary according to Islamic law is guided by the letter Al Baqoroh verse 282: "O people who believe, if you do not pay cash for a specified time, you should write it down. And let a writer among you write correctly. And the writer should not be reluctant to write it down as Allah taught him, so let him write and let the person in debt imitate (what is to be written), and let him fear Allah (his Lord) and let him not reduce any of his debts ". In this verse it shows that Muslims are commanded to study, Practicing and maintaining the habit of writing (making agreements and bookkeeping) Furthermore, in the Islamic perspective, the ethics or morals of the Notary in relation to the registration are also regulated. From this verse, there are several important points about the code of ethics of a writer (Notary), this indicates that in Islam to carry out a profession there are rules of conduct that must be considered by the profession. As a profession, based on Islamic Law, Notary in carrying out services to the community has the following legal bases:

1. Justice, justice based on QS Al Baqarah 282 states: "O you who believe, if you are not in cash for a specified time, you should write it down. and let a writer among you put it right. and the writer should not be reluctant to write it down as Allah taught him, they let him write, and let the person in debt imitate (what is to be written), and let him fear Allah his God, and let him not reduce anything less than what he owes. if the person in debt is a person who is weak in mind or weak (his condition) or he himself is not able to condemn it, then let the guardian do it honestly. and witness with two witnesses from men (among you). if there weren't two men, So (it is permissible) a man and two women from the witnesses that you are pleased with, so that if someone forgets then someone reminds him. do not let the witnesses be reluctant (give testimony) when they are summoned; and do not be tired of writing down the debt, both small and large, until the deadline to pay it. that way, is more just in the sight of Allah and strengthens the testimony and is closer to not (raising) your doubts. (Write your mu'amalah), unless mu'amalah is a cash trade that you carry out among you, then there is no sin for you, (if) you do not write it down, and witness it when you buy and sell; and let the writer and the witness not find it difficult to confuse each other if you do (that), then actually it is a

wickedness in you, and fear Allah; Allah teaches you; and Allah knows all things. " Write fairly, that is correctly and do not violate the provisions of Allah, do not harm one of the parties who are muamalah, as understood from the word fair and among you. Thus, based on Islam the criteria for a notary are having the ability to write, have knowledge of the rules and procedures for writing agreements, and honesty.<sup>7</sup> As a third party in the notary process, a Notary is also a witness. Therefore, the demand for a notary to always uphold the truth and be a fair witness is found in the Qur'an surah Al Maidah verse 8 as follows: "O people who believe, let you people who always uphold the truth because of Allah, be a just witness, and do not let your hatred of one people encourage you to be unjust. Be fair, because fair is closer to piety and fear Allah, in fact Allah knows what you are doing "and Surah An Nahl verse 90 is as follows:" Verily Allah orders to be fair, and to do good, as well as providing assistance to relatives and prohibiting rather than committing heinous and evil deeds and injustice. He teaches you (with His orders and prohibitions), that you take warnings to obey Him. " A fair attitude for notaries, more specifically mentioned through surah Al Baqarah verse 282: "and let there be a fair writer among you".

2. Benefit, benefit is to take advantage and reject harm in order to maintain the goals of syarak. If a person guards and maintains religion, soul, mind, descent, and property, then the goal of the syarak has been fulfilled masalah. As Allah SWT says in Surah Al Baqoroh verse 179: "and in that qishas there is a guarantee of survival for humans". According to Al-Thufi as quoted by Zamakhsyari, this verse contains the meaning of maintaining the benefit of humans, namely their souls, assets and honor.<sup>8</sup>
3. Sadd Al-Zahri'ah, recording (notary) is part of muamalah which covers the activities of leasing, buying and selling, accounts payable and so on.
4. Morals, Notary code of ethics or as the translation of surah Al-Baqarah verse 282 implies that a writer or notary who is regulated in the Notary code of ethics is required to have morals and character. Etymologically, morality is the plural form of khuluq which means character, temperament, behavior or character, which is rooted in the word khalaqa which means to create. Thus a person's behavior towards people and their environment only contains intrinsic moral value if the action or behavior is based on God's will. Meanwhile, etymologically, akhlak is not only the rules or norms of behavior that govern the relationship between fellow human beings but also the norms that govern the relationship between humans and God and even with the universe.<sup>9</sup>

In Arabic, notary is known by the name "katib al-adl" which means fair writer. it is hoped that these tasks can be carried out fairly, trustfully and objectively.

Thus, a Notary in an Islamic perspective can be interpreted as a whole notary activity which includes the scientific, organizational and professional fields of a Notary based on Sharia principles. The characteristic of an Islamic notary lies in the necessity to use the sources of Islamic law. Namely, the Koran, As-Sunnah and ijtihad as the legal basis.

In carrying out its role in Indonesia, the activities of a Notary including Islamic Notariat refer to the laws and regulations and other provisions as follows:

1. The 1945 Constitution, Articles 20, 21, and 24 which state that: The Republic of Indonesia is a State of Law. The principle of a rule of law guarantees certainty, order and protection of the law, which has the essence of truth and justice.
2. Article 1868 Civil Code. An authentic deed is a deed made in a form determined by law by or before a public official who is competent for it at the place where the deed was made.
3. Law No. 30 of 2004 concerning the Position of Notary. Article 1 states that a Notary is a public official who has the authority to make authentic deeds and other powers as referred to in this law.

<sup>7</sup> Zamakhsyari, Op. Cit, p. 95.

<sup>8</sup> Ibid., p. 150.

<sup>9</sup> Muhklis Lubis dan Zulfahmi Lubis, *Ahlak Islam*, (Medan: Pesantren Al Manar, 2009), p. 1

4. Presidential Instruction No. I of 1991 concerning KHI in Article 195-199 states that making a will and its amendments can be made before a notary.
5. Decree of the Minister of Negraria Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number: 98 / KEP / M.KUKM / IX / 2001 Concerning Notaries as Cooperative Deed makers.
6. Law No. 41 of 2004 concerning waqf and Government Regulation no. 42 regarding its implementation, especially Article 37 paragraph 4, that waqf can make a wakaf pledge deed before a notary public.
7. Law No. 16 of 2001 concerning Foundations and Law No. 28 of 2004 junto Government Regulation no. 63 of 2008 concerning the implementation of the Law on Foundations, Article 9 paragraph 2 and Article 19 paragraph 3, that foundations can be established and amended by their articles of association before a notary public.

### C. CLOSING

Based on the above discussion, it can be concluded:

1. Whereas the role of the notary in the perspective of Islamic law is related to service to the community, in carrying out his profession based on: justice, benefit, sadd al-zahri'ah and morals. Besides that, ethics and morals are also regulated in relation to recording based on QS Al Baqoroh verse 282, where in this verse the criteria for a notary are defined as having the ability to write, have knowledge of rules and procedures for writing agreements and honesty.
2. Whereas the role of a Notary in a positive legal perspective is related to service to the community, the Notary Profession has an important meaning because a Notary is a public official who has the authority to make authentic deeds. Authentic deeds as the strongest and most fulfilled evidence have an important role in every legal relationship in people's lives. Nowadays the need for authentic deeds is increasing in line with the growing demands for legal certainty in various economic and social relations.
3. The comparison of the role of the Notary in the perspective of Islamic law with positive law in relation to services to the community, in principle, is not much different, especially with regard to the main task of the Notary as an authentic deed maker, what distinguishes is the obligation to base the legal source of the Qur'an for Notaries.

### BIBLIOGRAPHY

- G.H.S. Lumban Tobing, 1999, *Peraturan Jabatan Notaris*, cet. V, Jakarta: Gelora Aksara Pratama
- Habib Adjie. 2008, *Hukum Notaris Indonesia, Tafsir Tematik Terhadap UU No.30 Tahun 2004 Tentang Jabatan Notaris*. Bandung: Rafika Aditama
- Imam Jalaluddin Al-Mahalli dan Imam Jalaluddin Al-Suyuti, 2003, *Tafsir Jalalain*, Juz I, Bandung: Sinar Baru Algesindo
- Muhklis Lubis dan Zulfahmi Lubis, 2009, *Akhlak Islam*, Medan: Pesantren Al Manar
- Sudarsono, 2007, *Kamus Hukum*, Cet. V, Jakarta: Rineka Cipta
- Zamakhsyari, 2013, *Teori-Teori Hukum Islam dalam Fiqih dan Ushul Fiqih*, Medan: Cipta Pustaka Media Perintis