

August 29th 2018

THE 4th 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

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INFORMATION OF THE CONFERENCE AND CALL PAPER

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THE 4th 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.
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This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

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Faculty of Law, Sultan Agung Islamic University

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

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AND CALL FOR PAPER**

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

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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, 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 31th 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 29th 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 31th 2018

Dean,

A handwritten signature in black ink, consisting of a long horizontal stroke with a small upward tick at the end, and a longer, sweeping stroke underneath that starts from the left and ends under the first stroke.

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

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

A MALAYSIA OF CITIZENS: ETHNICITY, MEMBERSHIP AND POLITICS OF MERGER	
O. Argo Victoria.....	194
THE DOCTRINE OF PUBLIC POLICY AS A GROUND FOR THE ANULLMENT OF ARBITRAL AWARD IN INDONESIA	
Anang Shophan Tornado, Yati Nurhayati , Ifrani	204
RECONSTRUCTION OF SAVING FINANCIAL STATE LOSSES IN HANDLING CRIMINAL ACTION IN INDONESIA THROUGH JUSTICE-VALUE BASED	
Bastian Lubis	211
IMPLEMENTATION OF RISK MANAGEMENT ON SHARIA BANKING	
Faisal	222
CRIMINAL POLICY TOWARDS INSULTING AND DEFAMATION THROUGH SOCIAL MEDIA BASED ON JUSTICE VALUE	
Gomgom TP. Siregar.....	236
IMPLEMENTATION OF THE CORRECTIONAL SYSTEM IN INDONESIA BASED ON JUSTICE VALUE	
Syawal A Siregar.....	244
COMMUNITY PARTICIPATION IN THE SETTLEMENT OF CHILDREN CONFLICT WITH LAW THROUGH DIVERSION BASED ON JUSTICE VALUE	
Muhammad Ansori Lubis.....	251
GOVERNMENT OFFICIAL DISCRETION POLICY IN DECIDING PUBLIC POLICY BASED ON JUSTICE VALUE	
Mhd. Taufiqurrahman	262
COMPLETION OF BAD CREDITS IN BANKING FINANCIAL INSTITUTIONS BASED ON JUSTICE VALUE	
Muhammad Yasid	268
AUTHORITY OF YUDISIAL COMMISSION IN ENHANCING JUDGE CODE OF ETHICS BASED ON JUSTICE VALUE	
Maurice Rogers	277
NON-CASH PAYMENT SYSTEM IN ECONOMIC SYSTEM IN INDONESIA BASED ON JUSTICE VALUE	
Jonner Lumban Gaol	284
LEGAL ENFORCEMENT TOWARDS THE VIOLATION OF SPATIAL LAW IN SET BACK BUILDING (GSB) BASED ON JUSTICE VALUE	
Darwin Sinabariba.....	294

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

SOCIOLOGICAL JURIDICAL REVIEW OF THE CHILD COMMITTING THEFT CRIME AT THE DEMAK STATE COURT	
Achmad Sulchan, Bambang Agus Rianto	449
FUNCTIONALIZATION THE CUSTOMARY INSTITUTION AS LAW ENFORCEMENT EFFORTS IN WEST SUMATERA	
Otong Rosadi, Fitriati Fitriati	457
THE VERIFICATION OF CLOSE CIRCUIT TELEVISION (CCTV) STANDING IN INDONESIA POSITIVE LAW PERSPECTIVE AND ISLAMIC VALUES	
Ira Alia Maerani, Nuridin Nuridin.....	464
COMPARATIVE STUDY OF GUARANTEE LAWS ACCORDING TO ISLAMIC LAW AND CIVIL LAW IN POSITIVE LAW IN INDONESIA	
Lathifah Hanim, Aryani Witasari, Peni Rinda Listyorini.....	470
EXISTENCE AND FORMULATION OF REGIONAL LAWS ON INTELLECTUAL PROPERTY PROTECTION OF TRADITIONAL COMMUNITY IN INDONESIA	
Ariy Khaerudin.....	477
RISK OF THE USE OF FOREIGN WORKER	
Rahmatsyah Rahmatsyah.....	484
OVERVIEW THEORY OF LEGAL PROTECTION AGAINST THE DRIVER RESPONSIBILITY PARTNERS (PARTNERS PT. GO-JEK INDONESIA) UNDER LAW NO. 8 OF 1999 ON CONSUMER PROTECTION	
Aryani Witasari, Wahyu Ibnu Musthofa	492
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)	
Mohammad Abdul Hakam	499
RECONSTRUCTION OF THE PROVISIONS OUTSOURCING	
Muhammad Andri	507
THE ROLE OF INDIGENOUS PEOPLES AND CUSTOMARY LAW IN THE DEVELOPMENT OF NATIONAL LAW THE PARADIGM OF PANCASILA	
Lathifah Hanim, MS. Noorman.....	515
THE ANALYSIS OF LEGAL PROTECTION ASPECTS FOR WOMEN AS VIOLENCE’S PERPETRATOR BASED ON JUSTICE VALUE	
Hadjar Handokojati	522
THE WEAK OF THE REGIONAL REPRESENTATIVES IN MAKING LAWS	
Herlina Hanum Harahap.....	530

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

MORALITY AS A BASE IN POLITICS AND LEGAL ENFORCEMENT COMES FROM THE VALUES THAT LIVING IN THE SOCIETY (Reconstruction in Thinking and Behavior) Andi Aina Ilmih.....	634
LEGAL PROTECTION OF INDUSTRIAL DESIGNS BASED ON LAW NUMBER 31 OF 2000 CONCERNING INDUSTRIAL DESIGN Ali Ashadi.....	642
STUDY ON THE LEGAL PHILOSOPHY OF MARRIAGE LAW NUMBER 1 OF 1974 Bagus Gani Setiana.....	647
THE GOVERNOR GENERAL OF THE NETHERLANDS 'POLITICS OF LAW TO APPLY EUROPEAN LAWS TO PRIVATE PEOPLE (TOEPASSELIJK VERKLARING) Bambang Rudi Hartoko.....	653
THE LEGAL POLITICS OF THE RELIGIOUS JURISDICTION IN INDONESIA Bobby A. Rachman	659
ANALYSIS OF NOTARY OBLIGATIONS IN REPORTING TAX PAYMENTS AS TAXABLE ENTREPRENEURS Fani Pratama.....	663
THE ROLE OF THE CODE OF CONDUCT TO IMPROVE THE PROFESSIONALITY OF THE NOTARY Damar Dwi Kuncoro	667
THE LEGALITY OF MAKING NOTARY ACTIONS USING ELECTRONIC MEDIA Yodha Dhia Hogantara.....	671
EXISTENCE OF NOTARY DECTS RELATED TO THE PROCEDURE OF PAILIT PROPERTY RESERVATION Fikrina Setyo Rini.....	675
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.....	684
ROYA MECHANISM OF LAND RIGHTS AS COLLATERAL FOR BANKING BANKS BANNED BY AUCTION OFFICERS BECAUSE THEIR CREDITS ARE PROBLEMS Ade Alfriyan Rumrijono.....	689

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

ROLE OF NOTARY IN PROVIDING LEGAL PROTECTION AGAINST HOME OWNERSHIP CREDIT CONSUMERS THROUGH STANDARD AGREEMENTS

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

ABSTRACT

The research objectives are to find out and explain the role of a notary in providing legal protection for housing loan consumers based on Law Number 8 of 1999 concerning Consumer Protection, to find out and explain the obstacles and solutions to the standard housing loan agreement with the exonation clause not being fulfilled by consumers. This research is a qualitative research with a normative juridical approach.

Based on the results of research and discussion it can be seen that the role of the notary in providing legal protection for housing loan consumers based on Law Number 8 of 1999 concerning Consumer Protection, before the KPR agreement deed is read and explains what is meant in the articles of the KPR agreement, the notary examines the contents of the agreement, whether there are clauses which may be unbalanced, harm consumers and can be categorized as violating the UUPK. If the notary finds such a thing, the notary must provide input to the bank, that it violates the UUPK. Constraints and solutions for the standard housing loan agreement with the exonation clause were not fulfilled by consumers. The Housing Loan Agreement of Perumnas Teluk is one-sided or unbalanced which often benefits the seller and disadvantages the prospective buyer, there is no opportunity for prospective buyers to bargain, so that prospective buyers do not have much opportunity and time to find out the contents of the Ownership Credit Agreement The house of the Perumnas Teluk. It is impossible for a party with a weak economic position to bargain to make a standard agreement or document so that for him there are only 2 choices, namely to accept or reject. The solution that can be done according to Article 1267 of the Civil Code is first to force the fulfillment of the agreement and second to cancel the agreement along with compensation. Therefore, in order to fulfill the conditions for cancellation, there must be: (1) a reciprocal agreement; (2) one of the parties has been proven to have defaulted; and (3) must be mediated by a judge.

Keywords : the role of a notary, providing legal protection for consumers

A. INTRODUCTION

The rapid population growth in Indonesia has resulted in the great need for a community for a proper settlement. Because as we already know that a place to live is a basic need for every human being. This is what gives extra momentum for business actors to include standard clauses containing exoneration clauses in housing sale and purchase agreements which are detrimental to housing consumers, in this case business actors are smart in reading the psychological conditions of consumers with low economic capacity and are pressed for vital needs.

In running their business, they are often real estate entrepreneurs. unilaterally apply the standard agreement. Standard agreement is an agreement that becomes a benchmark used as a benchmark or guideline for every consumer who has a legal relationship with an entrepreneur, which is standardized or standardized, is a model, formula, and measure.

The characteristics of a standard agreement are as follows:¹

¹ Abdul Kadir Muhammad, 2002, *Hukum Perjanjian*, Alumni Bandung, Bandung, p.6

- a. The contents are determined unilaterally by the creditor whose position is relatively stronger than the debtor;
- b. The debtor in no way determines the contents of the agreement;
- c. Driven by necessity, the debtor is forced to accept the agreement;
- d. The form is written.

These characteristics reflect the economic principles and legal certainty in force in the countries concerned. Economic principles and legal certainty in standard agreements are seen from the interests of entrepreneurs, not from those of consumers. By standardizing the terms of the agreement, the economic interests of the entrepreneurs will be more secure because consumers only agree to the terms offered by the entrepreneurs. The standard agreement itself is usually made in writing by the real estate business actor.

One of the most basic housing problems is the sale and purchase agreement made in the form of a standard contract or also known as a standard contract. It is said to be standard in nature because this agreement is made unilaterally, namely by a business actor and contains generally accepted provisions (mass), so that the other party (the consumer) only has two choices: approve or reject it. In this contract, it often contains an exoneration clause which contains the transfer of responsibility of the business actor so as to harm the consumer. The standard agreement is used in the housing loan agreement above where the real estate business actor has prepared the clauses in the agreement in advance and the consumer can only agree to it without having the opportunity to negotiate changing the clauses that have been made by the real estate business actor. The agreement occurs based on the principle of freedom of contract between parties who have a balanced position, this principle can be concluded from Article 1338 of the Civil Code which states that: "all agreements made legally, apply as law for those who make them", whereas in a standard agreement.

Article 15 (1) Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the position of Notary Public mentioned: The notary is authorized to make authentic Deeds regarding all actions, agreements, and stipulations required by laws and regulations and / or those interested in being stated in the authentic Deed, guarantees the certainty of the date of making the Deed, keeps the Deed, provides grosse, a copy and an excerpt of the Deed , all of this as long as the making of the Deed is not assigned or excluded to other officials or other people as stipulated by law.

Based on the background of the problems raised above, the existence of a standard agreement model is still a legal issue, especially civil law in the field of agreements and on the other hand, the new agreement model deals with consumer rights and is even suspected of violating consumer rights as regulated in the Law. consumer protection law is deemed very important to conduct research with the title "The Role of Notaries in Providing Legal Protection for Home Ownership Credit Consumers through Standard Agreements.

From the description above, the following problems can be formulated.

1. What is the role of a notary public in providing legal protection for housing loan consumers based on Law Number 8 of 1999 concerning Consumer Protection?
2. What are the obstacles and the solution to the standard housing loan agreement with the exonation clause not being fulfilled by consumers?

B. DISCUSSION

1. The role of notaries in providing legal protection for housing loan consumers is based on Law Number 8 of 1999 concerning Consumer Protection.

The role that notaries can play in assisting KPR debtors as bank consumers is implied by the provisions of Article 16 paragraph (1) letter a of the UUJN which mandates that in carrying out their positions, Notaries are obliged to act honestly, thoroughly, independently, not taking sides and protecting the interests of the parties involved in legal action.

These provisions may not or must also be implemented. This is also in accordance with the Notary Code of Ethics. Article 1 paragraph (1) of the Notary Code of Ethics states that in carrying out its duties, a Notary is obliged to:

- a. Always uphold the laws and principles of the state and act in accordance with the meaning of the oath of office.
- b. Prioritizing his service to the interests of society and the state.

By adhering to the juridical foundation of UUJN and the Notary's Code of Ethics alone, notaries actually already have a strong and clear basis to participate in upholding consumer rights in accordance with the UUPK. This can be applied, among others:

- a. The notary does not fully accept and then states in its entirety in his deed the contents of the KPR Agreement which is usually proposed by the bank to be included in the KPR agreement deed. Before the KPR agreement deed is read out, the notary examines the contents of the agreement again, whether there are clauses that may be unbalanced, harm consumers and could be categorized as violating the UUPK.
- b. As mandated in Article 16 paragraph (1) letter l UUJN concerning the obligation of a notary in reading the deed, which at the time of reading the notary, the Notary must explain what is meant in the articles of the KPR agreement to the debtor as a consumer. Since most of the articles in the KPR Agreement are in legal language that is difficult for the debtor to understand, the Notary has the obligation to read the deed in front of the consumer. Reading the deed and understanding clearly and clearly is one form of Notary protection for consumers, so that consumers understand the contents of the deed and what has been agreed. If the deed has been signed, the consumer is deemed to understand and agree on what has been agreed.
- c. If the Notary finds a clause that is irrelevant to the rights and obligations of the parties in the KPR agreement, the Notary may *renvoi* this provision. However, these changes or convoys must go through the agreement of the parties.
- d. If there is a KPR agreement clause that is not reasonable, then the Notary Public must provide input to both parties, that it is not reasonable.

2. Constraints and solutions for the standard housing loan agreement with the exonation clause were not fulfilled by consumers.

The standard barriers to the credit agreement for the Housing Ownership of Perumnas Teluk are one-sided or unbalanced which often benefits the seller and disadvantages the prospective buyer, namely:² Lack of or even absence of opportunity for either party, in this case the prospective buyer to bargain. bidding, so that prospective buyers do not have much opportunity and time to find out the contents of the Perumnas Teluk Housing Loan Agreement. Moreover, there is a clause in the Bay Housing Ownership Credit Agreement which is written in words that are difficult to understand. Because the preparation of the Perumnas Teluk House Ownership Credit Agreement was carried out unilaterally,

The solution that can be done according to Article 1267 of the Civil Code is first to enforce the fulfillment of the agreement and second to cancel the agreement along with compensation. Therefore, in order to fulfill the conditions for cancellation must: (1) have a reciprocal agreement; (2) one of the parties has been proven to have defaulted; and (3) must be mediated by a judge.

From the results of the research conducted that the developer always includes a unilateral cancellation condition in the standard housing sale and purchase agreement, regarding the unilateral cancellation in the standard sale and purchase agreement if up to 30 days from the due date of payment it turns out that the second party has not completed the payment obligation for any reason. then this agreement is automatically canceled without any written notification from the first party to the second party is required.

² Wawancara dengan Notaris Priaan Ristiano, S.H.

Housing developers, as well as property sellers, in general, according to civil law, have 2 obligations, namely surrendering the material to the buyer and bearing what is delivered, which will later become the property of the buyer, does not contain hidden defects (*vrijwaring*). According to Article 1504 of the Civil Code, the seller is obliged to bear hidden defects in the goods sold which cause the goods cannot be used for the intended purpose or thus reduce the use so that if the buyer finds out about the defect he will not buy the goods at all or will not buy them other than by less price.

C. CLOSING

Based on the results of research and discussion on the role of notaries in providing legal protection for housing credit consumers based on Law Number 8 of 1999 concerning Consumer Protection, conclusions can be drawn as follows:

1. The role of notaries in providing legal protection for housing loan consumers is based on Law Number 8 of 1999 concerning Consumer Protection. Basically, the notary already has a strong and clear basis to participate in enforcing consumer rights in accordance with the UUPK. This can be applied, among others, by: The notary does not accept the contents of the KPR Agreement which is usually proposed by the bank to be included in the KPR agreement deed. Before the KPR agreement deed is read out and explains what is meant in the articles of the KPR agreement, the notary will re-examine the contents of the agreement, whether there are clauses that may be unbalanced, harm consumers and can be categorized as violating the UUPK. If the Notary finds this, the Notary must provide input to the bank, that it violates the UUPK. If the Notary finds things like the above, then the Notary Public must use the mandate given by the Law to him, namely he is obliged to act honestly, thoroughly, independently, not taking sides and safeguard the interests of the parties involved in legal actions, by providing legal counseling that will protect interests and provide legal certainty for both parties.
2. Constraints and solutions for the standard housing loan agreement with the exonation clause were not fulfilled by consumers. The Housing Loan Agreement of Perumnas Teluk is one-sided or unbalanced which often benefits the seller and disadvantages the prospective buyer, namely: Lack of or even absence of opportunity for either party, in this case the prospective buyer to bargain, so that the candidate party buyers do not have much opportunity and time to find out the contents of the Perumnas Teluk Housing Loan Agreement. It is impossible for a party with a weak economic position to bargain to make a standard agreement or document so that for him there are only 2 choices, namely to accept or reject. By signing an agreement, it is evident in fact that even parties whose bargaining position is weak is considered by the business actor to agree on all the contents of the intended agreement. Accepting means being willing to fulfill all the conditions which tend to only benefit the business actor and disadvantage for those whose bargaining position is weak. Thus, the contents of the agreement that are not understood by the consumer means the cause which is a valid condition of the agreement as an objective requirement as stipulated in Article 1320 paragraph (4) of the Civil Code is not fulfilled so that this agreement is legally null and void. The solution that can be done according to Article 1267 of the Civil Code is first to enforce the fulfillment of the agreement and second to cancel the agreement along with compensation. Therefore, in order to fulfill the conditions for cancellation, there must be: (1) a reciprocal agreement; (2) one of the parties has been proven to have defaulted; and (3) must be mediated by a judge.

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