



THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

“Legal Development in Various Countries”



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

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INFORMATION OF THE CONFERENCE AND CALL PAPER

WORLD ISLAMIC UNIVERSITY
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Welcome to Participants on International Conference

"LEGAL DEVELOPMENT IN VARIOUS COUNTRIES"

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

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

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

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Nagoya University, Japan
2. Prof. Dr. Ruzian Markom
Universitas Kebangsaan Malaysia, Malaysia
3. Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M
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Indonesia, September 05th 2017

WORLD ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

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Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : **Faculty of Law UNISSULA**
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5
September
2017

FACULTY OF LAW
Sultan Agung Islamic University

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Nagoya University, Japan
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Sultan Agung Islamic University, Indonesia

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

Day: Tuesday

Date : September 5th 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3rd Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584 Fax.(024)6582455
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AND CALL FOR PAPER
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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PREFACE

Assalamu'alaikum, Wr. Wb

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

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

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

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

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

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,



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

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.


Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

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

Wassalamu'alaikum Wr. Wb.

Semarang, September 5th 2017

Dean,



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

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THE CONSTRUCTION OF RESIDENTIAL SERVICES AND CIVIL REGISTRATION BY THE GOVERNMENT OF PEMATANGSIANTAR CITY IN PERSPECTIVE OF PUBLIC SERVICES LAW NO: 25 2009

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ABSTRACT

Populations are the whole number of people who live in a geographical area in one Country for approximately six months or less than six months but aims to settle permanently.

Population concept according to Population and Civil Registration Agency: the population means those who have Identity Card (KTP) and Family Card (KartuKeluarga). Civil Registration Agency is a Board that record people identity which relates to legal position. So, there is a certificate that can be used as a proof or legal position of personal. Legal certainty of someone can be seen from whether someone has been listed in Civil Registration Agency.

Regional Autonomy in Indonesia is an autonomous region which has right, power and obligation to regulate and takes its government business and local community purposes based on the legislation. That Act No.22 of 1999 on Local Government is replaced with the Act No. 32 2004. Act No.32 of 2004 on Local Government no longer compatible with the State that need to be replaced, and there were many changes, one of them is the Act No.12 of 2008 on the second amendment of Act No.32 of 2004.

According to the Act No.25 of 2009 concerning on public services is the activity or the series of activities in terms of services provided in accordance with the constitution for each citizen and residents for properties, services and administrative services that provided by Public Services. According to Minister of State Apparatus Empowerment (Kepmenpan) decree No. 63 of 2003, public services are all activities service which held by government to meet the needs of community and in the context of applying the constitution. Based on the above definition, Public Service is a series of activities in terms of services provided in accordance with the constitution.

A. INTRODUCTION

Indonesia is a Legal State inspired by the rule of law and basic rechtsstaat, considering that Republic of Indonesia was born of Legal State that is based upon Pancasila and the

Constitution of the Republic of Indonesia year 1945 contains concept of rechtsstaat and rule of law. The meaning of Legal State in explanatory of the 1945 Constitution is in the State and Society of Indonesia those who has power is not mankind but laws and regulations that applied and be the basis in carrying out governance procedures¹

The explanation of the 1945 Constitution explain about Indonesia is based on Legal principle (rechtsstaat) not based on power (machsstaat). So, it is clear that the purpose of Indonesia is as a Legal Country base on the 1945 Constitution, laws covered is not set solely on the basis of power that can be lead to absolute power or authoritarian. Because it is not justice (just law) for Indonesian. Relates to it, legal development can be seen in Constitution No 25 2004 on national development programs (Propenas) in 2000 until 2004 which states that legal development program includes:

1. The formation of legislation program
2. The empowerment of the judiciary and other law enforcement agencies
3. The eradication of corruption, collusion, Nepotism case and Human Right abuses
4. The increasing and development of law awareness and law culture²

Since 1996 the New Order Era Government managed to build a strong national government by placing political stability as a foundation to speed up Indonesia economy development. In the form of structure centralization political power and administrative authority formed the Act No 5 of 1974 on the core of regional government. This is the origin of autonomous right in District/Region level. An autonomous area is a unity of legal people having authorities in certain boundaries area to regulate and manage their own household in the bond of Republic of Indonesia, in accordance with Laws³

The Act No 5 of 1974 put the foundation of Central and Regional relations with 3 principles:

1. Decentralization means the transfer of Government Affairs by the central government to autonomous regions based on the principle of autonomy and become its affairs.
2. De-Concentration is the transfer most of Administration under the authority of the Central Government to the governor as the representative of the Central Government, the vertical institutions in certain areas or to governors and regents.

¹ The 1945 Constitution Chapter.1.Paragraph.3.

² The 1945 Constitution No.25.in.2004. about National Development Program.

³ The assistance (medebewind), is the assignment of the central government to autonomous regions to implement most of administration under the authority of the Central Government or local government to the province of districts/cities⁴

The implementation of regional autonomy in Indonesia becomes an important focus to improve people welfare. The development of an area can be adapted by Local Government based on their potential and typical of each area. Regional autonomy issued in Indonesia based on the Act of No 22 of 1999 on Local government. In 2004, the Act No 22 of 1999 has been deemed no longer compatible with the development of the state, political

subdivision, and the demands of the regional administration that need to be replaced. Hence, the Act No 22 1999 was replaced by the Act No 32 in of 2004 on Local Government. It is an opportunity for local governments to prove their ability to regulate and implement each local authority.

The purposes of regional autonomous based on the Act No 32 of 2004

1. Increasing communities welfare in autonomous area
2. Increasing public services
3. Increasing regions competitiveness⁵

Meanwhile in the explanation of the Act of Republic Indonesia No.23 of 2014 on local government explain about the regional administration is directed to accelerate the realization of the welfare of the community through service improvement, empowerment and community participation as well as improving the competitiveness of the region by taking into account the principles of democracy, equality, justice and the peculiarities of an area within the Unitary State of the Republic of Indonesia. To set and take care of people' life, so the central government in forming policy must consider local wisdom and otherwise when regional government forming policy of local regulations or other regulations should consider the national interest. Thus there will be the balance between national interests by noticing to conditions, specification and local wisdom in government implementation.

CHAPTER XIII Based on the Act No 23 of 2014 on Local Government in Article 344

- 1) Local Government should guarantee the conduction of public services based on government affairs and become local government authority
- 2) Public Services are applied based on these principles:
 - a. Public interest;
 - b. Legal certainty;
 - c. Right equality;
 - d. Balancing of right and obligation;
 - e. Professionalism;
 - f. Participation;
 - g. The equality of treatment/no discrimination;
 - h. Openness;

³ The Act No.5.of 1974. on Point of Local Government Part I,Articel1,point e

⁴ The Act No.5.of 1974. on Point of Local Government Part I,Articel1,point e

⁵ The Act No.32.of 2004. on Local Autonomy

- i. Accountability;
- j. Facilitation and special treatment for crisis group;
- k. Exact time; and
- l. Acceleration, the ease and achievable.⁶

In that article is clearly mentioned about obligation in conducting public services by government, what is become the interest and the need of citizen can be served well. The government or leaders of a country or regionalis aimed to serve the people, not the community servesthe government. To fulfill the needs of societies, the local government given authority to regulate and administer government affairs and public interest at its own affairs based on the aspiration of the people in the Unitary System of Republic of Indonesia. This clearly can be seen in article 345 paragraph 2 on local government legislation: public services management as referred to paragraph 1 includes;

- A. The implementation of service
- B. The Management of public complaints
- C. Management of information
- D. Internal monitoring
- E. Community counseling
- F. Consultation service
- G. Other public service based on legislation

To guarantee on timing service and certainty to the community as well as the payment that should be fulfilled by community, local government must stand on article 347 paragraph 2. This article consists of;

- a. Types of provided Services ;
- b. Qualifications, procedure, budget and time;
- c. Right and obligation of local government and community;
- d. Team work and unit responsible to conduct these services

The Act No 25 of 2009 consisting of IX Parts and 62 article on public service has set up specifically about public services which conducted by Government for communities' interest. Public services which is conducted by government as the organizer in serving community's need and interests in the form of providing goods, services or administration.

⁶The Act No.23of 2014 on Local Government

B. EXPLANATION

Population is people who live or settled in an area that is bound by the rules that applied and interact to one another continually. Meanwhile, the meaning of population is related to the number, structure, age, sex, religion, birth, marriage, pregnancy, death, distribution, mobility, quality and also its resistant relates to political, economy, social and culture.

Population is an important aspect in the development and the welfare of community itself. The occurrence of paradigm shift which put community development in priority and has consequence. The development should be adjust to the condition and potential of resident, give priority to human resources⁷. Human being is social beings that having needs that relates to one another (homo humoni lupus). In daily life human beings need regulations or legislation to regulate human beings or residents to live in peace and in order, furthermore there is a need for a leader not only to direct or control but also provide what is needed.

The concept of residents based on Population and Civil Registration Agency: residents are those who have ID Card (KTP) and Family Card (KartuKeluarga). Residents are they, a group of people who live or settle in an area or country but only for temporary not to live permanently

Governments are those who organize to reach up what the goals of a country, they work for the community's welfare and interests. The agencies or Boards of a country who conduct the administration can be also named government.

In an effort to create legal protection for citizens, the population and civil registration institution, which is named Population and Civil Registration Agency composing systems or procedures. The establishment of some group in this agency means to ease their task, by dividing task based on the needs of communities. The needs such as proposing birth certificate, legalizing in adopting a child, divorce, death and residents registration to get Identity and Family card.

Civil Registration agency is an agency that record identity of a person which concern about legal position so that a certificate can be used as a proof and legality of someone legal position. The law certainty of someone can be seen from has someone registered or not in Population and Civil Registration Agency.

The status or identity of someone become clear when they get certificate, whether it is birth certificate, legacy of adopting children, divorce or death. So, Population and Civil Registration Agency is a formal Institution established by the government in particular to handle Population and Civil Registration (Identity and Status of someone) which aims to

⁷ Demography Mosaic, a range of ideas on population and the development. Published by SalembaEmpat Page:14.

write down, register and also register completely of identity and status population of someone.

By holding certificates which published by Population and Civil Registration Agency, those become the strongest and authentic proof that giving legal certainty. This means someone position is certain based on the proof of background. The existence or status of someone such as birth, death, divorce, recognition, ratification and a names' change of children that already listed, published and recorded as government's document.

The governments of district or regency have been given authority to conduct government autonomously. They manage human resources and natural resources in accordance with the geographical existence, culture and customs, habitual of its people.

In fact, all Indonesian people desire autonomy. It is a right to freely managing and setting potential of natural and human resources in their area to fulfill, overcome, resolve problem and hold all the needed interest "sovereignty" without any intervention from higher government level.

The spirit of severignityin early 2001 has prompted a very important change on centralization system to become decentralization through Constitution No.22 and 25 1999. By giving unlimited power to local government, provinces, regency, cities have arisen (mudharat). This constitution was revised for the first time through Constitution No.32 in 2004 about district autonomy, then it was revised for the second time with Constitution No.12 in 2008 about local government..⁹

With authority delegation the government in regencies, cities be allowed to take policy or initiative in ruling the government to develop, to give solution or to give way out of the facing problem in each districts. The form of autonomouregion is by providing personnel, equipment, financing as the basic or instrument in running the government in all level.

De-Concentration is authority delegation of government from Center Government to Governor and governor to vertical institution in its area. The vertical institutions in certain areas and/or to governors and regents/mayors in charge of government affairs public.¹⁰

In Article 3 paragraph (1) the Act No 43 of 1999 stated that the domicile of Civil Servant/Civil Staff as a country element as part of administrator that responsible to provide services to communities professionally, honest, just and equitable in running duties of government and the development of Indonesian people.

⁸ MininDarwinsyah, The application of Region Autonomous, Reinventing Government in realizing Good Governance in Indonesia, Prima Jaya June 2011 Page: 1,2.

⁹ MininDarwinsyah.Ibid,Page: 2,3

¹⁰ MininDarwinsyah.Ibid,Page: 55

Article 3 paragraph (2) suggests that Civil Servant must be neutral from the influence of all groups and parties, no discrimination in giving public services. The substance of the article can be concluded that previously duties of Civil Servant oriented on government (government oriented). But due to dynamic and globalization in all field of human life, so the Civil Servant must be able to adopt aspiration and ready to serve the more complex of communities' need. Thus the task of a Civil Servant not only government oriented but also people oriented.¹¹

According to the Act No.25 of 2009 Article 1 paragraph (1) about public services:

(1) Public Service is an activity or some activities that means to fulfill services' need according to applied regulations for every citizens and people about properties, service, administrative services which provided by the public service organizers.

In Indonesia, government have responsibility to give various public services that required by its people, started to give services of goods, service and administration economically, effectively, efficiently and accountable to meet the needs of people in the field of education, health, utilities and so on.

Meanwhile, based on the decree of the Minister of State Apparatus Empowerment No:63/KEP/M.PAN/7/2003 as follows:

Public services is every services provided by public service organizers in order to fulfill the needs of people and to apply the regulation of Constitution. The Minister of State Apparatus Empowerment in decree No.63 in 2003 about general guidelines of public service, stated that Public Servicemeans given service to communities as the actualization of government responsibility as public servant. This statement insists that Government through Institutions that provide public services responsible to provide excellent service to the community. Thus public service is the fulfillment and needs of communities by the state organizers.

There are some steps to realize the excellent service by government as the implementer of public services. Herewith are the steps:

1. Implementation Constitution Socialization No.25 of 2009.
2. The changing of paradigm and mindset of government agencies
3. Determining services edict and consistent in applying them
4. Arranging and applying the standard public service standard
5. Composing Standard Operational Procedure

¹¹Public service management in Indonesia by DRS.Moenir.Kurniawan.2005.page 7.

6. Carrying out monitoring and evaluation to every policies taken by central Or local government in providing public service to communities
7. Implementing survey about communities satisfactory to know the level of performance of services unit periodically. This survey result using as consideration to setting out policies and public service quality
8. Implementing monitoring and evaluation of OSS/PTSP-SA implementation
9. Giving reward to public services administrator that have satisfactory achievement ingiving service to community.
10. Optimizing the using of IT to do continually innovation
11. Arranging instrument of performance evaluation to monitor the performance of the Act No.25 in 2009.
12. Recording complains and expectations of community and doing improvement immediately

Public Service according to Moenir (Kurniawan 2005:7) are activities that are done by someone or a group of people with the material factor as the basis through system, procedure, method which aims to fulfill others need in accordance with their rights. In giving public services by government agencies to communities exactly as an implication of the function of government agencies.¹²

Meanwhile according to Sinambela, public services is any activities that is carried out by government for every person which every activities possessed profit for group or personally and the activities also offer power even though the result is not attached to a product physically.¹³

According to Wasistono (Hardiyansyah 2011:11), Public Service means giving good service by government, private sectors on behalf of government or private sector to community, with or without payment to achieve the community needs and interests.¹⁴

To reach the satisfactory goal or result in public services that undertaken by governments as well as as an organization to communities or individual, it is supposed to be based on Just and fair principle for both sides, for government as the organizer or for the

¹² Public Service Reform: Theory of policy and implementation, LinjauPoltakSinambela Publishedby: Bumi Aksara.2008.page: 128.

¹³ Quality public Services (Hardiansyah.2011).Page: 4.

¹⁴ Hans Kelsel, Pure theory .Prof.DR.JimlyAsshiddiqie,S.H.danDr.M.Ali safa`at,S.H.Page:15.

communities as the recipient. That is why Hans Kelsen in his opinion about the pure theory of law said that positive theory of law is not positive law instead a general legal theory. As a theory, the main purpose is the knowledge of its subject so it will be able to answer the questions of what is law and how it was made. Not the question of what the law ought to be or ought to be made.¹⁵

While, based on Fran MagnisSuseno stated that Justice means human beings are treated fairly in accordance with their right danresponsibilities.

Meanwhile, Plato said Justice is beyond the capacity of human, Justice exist in regulations and legislation which was made by expert.

If justice is understood as social happiness, it will be achieved if individual needs fulfilled. Fair regulation is regulation which can ensure the fulfillment of these needs. But, couldn't be avoided the fact of someone wishes of happiness can be contrary with others wishes. So justice is the most important thing in achieving people need.¹⁶

C. CLOSING

CONCLUSION

1. By reviewing the above explanation, can be concluded that public service is an activity to fulfill resident's need whether personal or organization such as service, goods, administration in accordance with law, regulation or constitution.
2. The need of physic and mental preparation of public service implementer that deals directly with community in group or personal. They should behave politely, friendly, slow to anger. In other hand, there should be rotation for them to avoid boredom in doing their task
3. Qualified human resources is a must qualification for the administrators of public service, so that they could be easily know and understand themain tasks and functions. They have to master the applied legislation and be able to apply the local wisdom of residents.

SUGGESTION

1. The need of infrastructure, including software such as computer or Wi-Fi and hardware such as transportation
2. The need of giving reward for them who directly serve or give public service to community in general or personal.
3. The need of Constitution or legal protection for public service implementer from accidents in working hour which is caused by something out of their control. The need of law that easy to access to be understood by them as implementer or by community.

¹⁵ Hans Kensel.Ibid, Page:17.

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