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Legal Reconstruction in Indonesia Based on Human Rights

Imam As Syafei Building

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“Legal Reconstruction in Indonesia Based on Human Right”

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PREFACE

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.

PROCEEDINGS

The 5th International Conference and Call for Paper Faculty of Law 2019 Legal Reconstruction in Indonesia Based on Human Right

Table of Contents

<i>FRONT PAGE</i>	<i>I</i>
<i>Information of The International Seminar</i>	<i>III</i>
<i>Committee Composition</i>	<i>IV</i>
<i>PREFACE</i>	<i>V</i>
Fulfillment Of Teacher Protection Rights	
<i>Yenny AS, Rini Setiawati</i>	<i>1</i>
Legal Reconstruction Of Laws Regarding Human Rights Through Judicial Review To The Constitutional Court	
<i>Umar Ma'ruf</i>	<i>13</i>
Legal Analysis Of Social Security Transformation And The Reality Of Its Implementation In The Community In Indonesia	
<i>Siti Ummu Adillah, I Gusti Ayu Ketut Rachmi Handayani ,Adi Sulistiyono</i>	<i>29</i>
Increasing Voluntary Compliance Of Tax Payments In Micro Small And Medium Enterprises (Msmes) Post-Issuance Of Government Regulation Number 23 Of 2018 (Case Study In Semarang City)	
<i>Amin Purnawan, Akhmad Khisni, Aryani Witasari</i>	<i>40</i>
Legal Analysis Of Racist Exams In Surabaya Papua Dormitory	
<i>Ma'aruf Akib</i>	<i>49</i>
Reconstruction Of Misdemeanor Settlement Based On Pancasila Value	
<i>S. Andi Sutrasno</i>	<i>56</i>
Urgency Of Legal Assistance For Poor People As A Request Of Human Rights	
<i>Adhi Budi Susilo, Indra Yuliawan</i>	<i>62</i>
Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice	
<i>Rahmatsyah</i>	<i>66</i>
Problematic Presidential Electoral Threshold In The Operation Of Value-Based Simultaneous Justice	
<i>Widayati , Winanto</i>	<i>72</i>

Reconstruction Of Learning Methods In Criminal Law Subjects Using Inquiry Methodsbased On Human Rights And Islamic Values <i>Ira Alia Maerani, Eko Soponyono, Nuridin</i>	81
Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic's Victims Based On Religious Justice <i>Carto Nuryanto, Gunarto, Anis Mashdurohatun</i>	91
Study of the theory of Legal Protection Against Online High Yield Investment Program Contracts in Indonesia (HYIP) <i>muhamad Iqbal al Hakiem,aryani witasari</i>	96
Reconstruction Completion Of The Crime Of Light On Value Pancasila <i>Andi S. Sutrasno</i>	102
Law Reconstruction Of Registration On Fiduciary Obligation Based On Justice Value <i>Wieke Dewi Suryandari ; Gunarto; Amin Purnawan</i>	108
Reconstruction Of Transport Regulatory On Marine Toll To Support Sea Connectivity Based On Pancasila Justice <i>Hartanto, Gunarto, Anis Mashdurohatun</i>	114
Reconstruction Of Scientific Investigation In Indonesia Based On Justice <i>Teguh Prihmono; Gunarto, Sri Endah Wahyuningsih</i>	120
Legal Construction On Training Ship Management Belongs To Human Resources Development Of Transportation (Bpsdmp) Based On Dignity Justice Value <i>Wahyu Wibisono, Gunarto, Anis Mashdurohatun</i>	126
Protection Of Law Refugees/Asylum Seekers In Indonesia (As A Transit State) No Ratify 1951 Convention Of And The 1967 Protocol <i>Muhammad Djamir</i>	133
Reconstruction Of Legal Policy On Decency Crime In Indonesia Based On Pancasila Value (Lgbt Rehabilitation Institute For Children) <i>Cucuk Kristiono, Gunarto, Anis Mashdurohatun; Suparji</i>	144
Legal Protection Against Indonesian Workers (Tki) In Abroad <i>Yaya Kareng (Sripatum UniversityOng Argo Victoria ,Sri Yulianingsih</i>	149
Reconstruction Of Auction Execution Of Mortgage Object In Determine The Auction Price Based On Justice <i>Moh Djarkasih**</i>	158

Reconstruction Policy Of Sanctions Against Destruction Of Evidence Illegal Fishing Based Small Fishing Welfare Values <i>R. Juli Moertiyono</i>	165
Reconstruction Of Legal Policy Interfaith Marriage In Indonesia <i>Moh. Zeinudin, Dian Novita</i>	179
Reform Of Couple Sexual Rights Protection In Case Of Diseases Hiv / Aids In Indonesia <i>Nana Ruhyana</i>	186
Legal Protection Against Disability In Getting Work <i>Oktavianto Setyo Nugroho</i>	193
Reconstruction Of Authority To Arrest In Doing Judge Accused Of Value-Based Justice <i>Agus Sugiarto</i>	203
Enforcement Of Criminal Law In False News (Hoax) Management According To Law No. 11 In 2008 That Has Been Amended To Be Law No.19 Of 2016 Concerning Electronic Information And Transactions In Islamic Law And Positive Laws <i>Yanto Irianto</i>	208
Reconstruction Validity Legal Deeds Are Dealing With Children In The Process Of Law Criminal Justice System Based Child Justice <i>Asep Hermawan</i>	220
Reconstruction Of Performance Assessment Of Drinking Water Companies (Pdam) Based On Consumer Protection <i>Bustaman</i>	225
Reconstruction Legal Rights Associated With A Warranty Not A Bank Debt <i>Euislistianti</i>	229
Reconstruction Of Operational System As A Community Economic System Based On Welfare <i>Abbas Ibrahim Idris</i>	234
Reconstruction Of Criminal Responsibility For Actors Prostitutorial Criminal Justice In The Criminal Justice Based On Value <i>Iwan Rasiwan</i>	242
Reconstruction Of Legal Drinking Water Management Company (Pdam) Based On Justice <i>Suharyadi</i>	248

Reconstruction Of Private Criminal System Implementation In The Commitment Values In Indonesia Justice

<i>Sumanto</i>	252
Reconstruction Of Justice Law Protection Law Protection	
<i>Wamyani</i>	260
Criminal Code Draft Law And Development In Indonesia	
<i>Nany Pujianti Suwigjo</i>	265
Deconstruction of the Principle of Legal Thinking	
<i>Sriyati</i>	270
Development Of The Law Of Complete Systematic Land Registration (Ptl) And Effect Of Conduct Values of Land Based On Dignify Justice In The District Of Kendal, Central Java	
<i>Desy Dwi Nurhayati Hartanti</i>	279
Interpretation Teaching Of Human Rights Laws Against Material In Corruption Provisions	
<i>Burham Pranawa, Hartiwiningsih, Hari Purwadi</i>	293
Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice	
<i>Rahmatsyah</i>	301
Law Due To Delay The Registration Under Fiduciary Guarantee Pmk No 130 / Pmk.010 / 2012	
<i>Jaenudin Umar</i>	307
The Effectiveness Of The Handling Of The Criminal Acts Of Light Tend To Be Settled Judicial Custom	
<i>Supena Diansah</i>	313
Urgency Of Legal Assistance For Poor People As A Request Of Human Rights	
<i>Adhi Budi Susilo, Indra Yuliawan</i>	327
Independence Institute Of Justice And Judge In Perspective Judicial Reform Blueprint 2010 - 2035	
<i>Ahmad Agus Bahauddin</i>	331
Policies Against Crime Criminal Law Made By Children	
<i>Achmad Arifulloh</i>	340
Law Enforcement Of Law Number 23 Of 2004 In Preventing Efforts Human Rights Violations In Indonesia	
<i>Andri Winjaya Laksana , Lathifah Hanim</i>	350

Urgency Of Legal Assistance For Poor People As A Request Of Human Rights

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Abstract

Realizing constitutional rights (equality before the law) and access to justice (access to law and justice) as one of the manifestations of Community Rights for the poor granted by the state is the mandate of the constitution. The regulation regarding legal aid has been issued by the state with the emergence of Law

The Constitution of Legal Assistance No. 16 year of 2011 concerning legal aid and is strengthened through the 1945 Indonesia Constitution in Article 28D paragraph (1) of the 1945 Constitution which states that guarantees that everyone including those who are unable to have the right to get access to justice so that their rights to recognition, guarantees, protection and legal certainty that are fair and the same treatment before the law can be realized. Normally regulations have been made for recognition, guarantees, legal protection, but the regulations made have not been effectively implemented so that the meaning of equality before the law and access to law and justice is unsure. The ineffectiveness of the application in providing legal aid is a legal issue that needs to be studied in order to find out the problem causing why the ineffectiveness of legal aid provision that can later be used as a facilitator for optimizing the provision of legal aid This article will explain systematically and scientifically using juridical-empirical methods that taking location in Semarang Regency, the sample includes the Social Service, the district court, the legal section of the Semarang Regency secretariat and advocate organizations.

Based on the results of the study there are problems in the application of providing legal aid in the community, which makes the provision of legal assistance to the community to be ineffective, due to the absence of local regulations as a facilitator of optimizing the provision of legal aid in order to realize the citizens' constitutional rights (equality before the law) and Access justice (access to law and justice) for the poor

Keywords: Legal Aid, access to law and justice, People

INTRODUCTION

Legal aid is a legal services that aims to provide protection law in order to realize constitutional rights (equality before the law) citizens and justice access. Protection and recognition

for human rights of individuals and citizens is consequence from Indonesia as a legal state⁵⁶⁵ according to UUD 1945 Clause 27 (1) states: "Every citizen are equal in law, and the government and shall abide by the law and the government without exception". Legal aid became essential instrument for the reali-

⁵⁶⁵ Sri Rahayu Wilujeng, Vol. 18 No. 2 July-December 2013 Edition, "*Human Rights: An Overview of the Historical and Juridical Aspects*", *Journal of Humanica*, Faculty of Cultural Sciences UNDIP: Semarang, page. 162.

zation of *access to law and justice* because it is part of protection Human Rights (HR) for every individual, including the right to legal aid.

Arrangements regarding legal aid expressly provided for in Law No. 16 Year 2011 on Legal Aid is expected to protect the constitutional right of every individual to receive legal aid but it is also expected to accommodate the protection of the poor in the face of legal cases⁵⁶⁶. Speaking about the principle of equality before the law, human rights, and access to law and justice is an easy thing, but when the level of practice the reality of society is not in accordance with what was discussed and all are not nearly done because the lack of optimization of the regulation on aid law in the area in the form of local regulations and the need for socialization as a service to foster public awareness of legal aid or access to law and justice, Based on this, whether the application of legal aid for the poor has been effective and optimal as embodiment access to Law and justice as a commthe fulfillment of the constitutional rights of the right to legal aid which is realized by establishing a Regional Regulation on Legal Aid for the poor in the District of Semarang. Those requirements are based on the reality of the poor and vulnerable with law problems. Data troubled by poor people in the district according to the figures presented in the table

Jumlah Penduduk Miskin Menurut Kabupaten/Kota
Provinsi Jawa Tengah Tahun 2011 - 2018

Kabupaten / Kota	Jumlah Penduduk Miskin					
	2011	2012	2013	2014	2015	2016 ^{***})
(1)	(2)	(3)	(4)	(5)	(6)	(7)
01 Kab. Cilacap	281.950	285.885	255.749	239.750	243.470	230.181
02 Kab. Banyumas	328.510	309.777	296.807	283.480	285.850	277.864
03 Kab. Purbalingga	196.000	184.907	181.141	178.040	178.490	171.777
04 Kab. Banjarnegara	177.313	167.030	166.823	159.480	165.360	158.200
05 Kab. Kebumen	279.415	262.810	251.129	242.310	241.940	235.831
06 Kab. Purworejo	121.941	114.788	108.995	102.110	101.250	99.071
07 Kab. Wonosobo	182.951	172.378	170.127	165.830	168.410	160.125
08 Kab. Magelang	179.581	169.389	171.022	160.480	162.380	157.734
09 Kab. Boyolali	139.516	131.455	126.468	118.580	119.970	116.976
10 Kab. Klaten	203.052	191.285	179.480	168.180	172.300	168.013
11 Kab. Sukoharjo	81.988	85.675	84.054	78.850	79.940	78.908
12 Kab. Wonogiri	146.372	137.983	132.198	123.850	122.980	124.377
13 Kab. Karanganyar	124.493	117.383	114.394	107.290	106.430	108.873
14 Kab. Sragen	154.280	145.316	139.040	130.280	130.420	125.487
15 Kab. Grobogan	227.778	214.617	198.967	186.530	184.490	186.895
16 Kab. Blora	134.931	127.059	123.755	115.980	115.050	113.938
17 Kab. Rembang	140.377	132.370	127.984	119.990	119.110	115.811
18 Kab. Pati	175.124	164.987	157.904	148.050	147.050	151.478
19 Kab. Kudus	73.591	69.332	70.081	65.800	64.100	66.588
20 Kab. Jepara	113.349	108.980	106.853	100.480	100.810	103.762
21 Kab. Demak	182.465	181.521	172.465	161.950	160.890	158.003

FORMULATION OF THE PROBLEM

Based on this background, the problem can be formulated to research and study to answer these problems, namely how urgency of legal aid for the poor as the realization of human rights in the Semarang District.

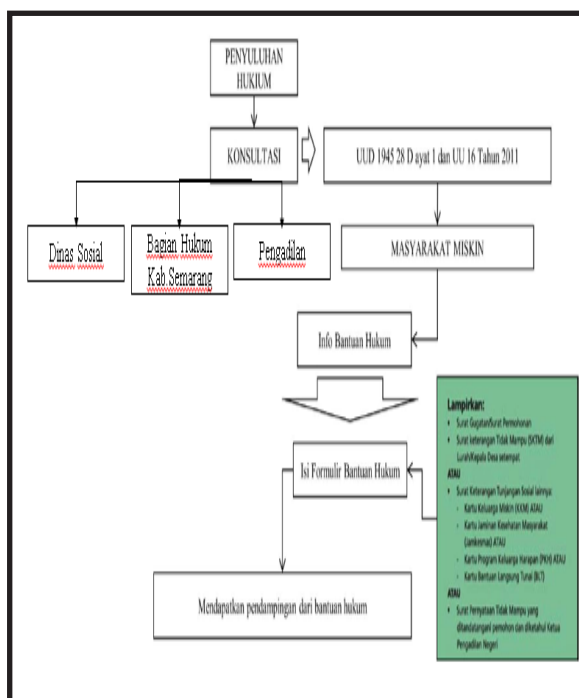
RESEARCH METHODS

This reserch uses normative-empirical approach (Law applied research)⁵⁶⁷, With secondary data through library research on legal aid for the poor which took place in the district of Semarang, the sample includes Social Office, the district court, the legal department secretariat Semarang district Electoral these locations as a sample to answer the urgency of the delivery of legal aid in the districts of Semarang

TOORDER THEORIES

⁵⁶⁶ Nasution, Isnandar Syahputra. Vol. 4 No. 1 March 2015 Edition, "*Urgency of the Role of the Court in Providing Legal Aid Services to the Poor in Accordance with Act 16 of 2011 concerning Legal Aid*", *Journal of Law and Justice*,, Supreme Court of the Republic of Indonesia: Jakarta, page. 171–188

⁵⁶⁷ Abdulkadir Muhammad, 2004, *Law and Legal Research*, Bandung: Citra Aditya Bakti,, page 134



RESULT AND DISCUSSION

The legal principle of Equality before the law and equal access to justice which affirms that everyone should receive equal treatment before the law and that everyone should have equal opportunity to obtain justice.⁵⁶⁸ This is in accordance with the requirements for a state of law with guarantees for human rights which is based on Article 34 paragraph (1) of the 1945 Constitution which states that “The poor and displaced children are maintained by the state”. In this case, the state recognizes the right of citizens to get the same treatment that the poor are examples of groups that are vulnerable to injustice in society⁵⁶⁹

Law No. 16 of 2011 on Legal Aid is a means representation state in its function as a legal state, where the state has the authority to determine the means of the important aspects of legal aid for the poor or a certain group of people. These aspects are aspects of

⁵⁶⁸ Bachtiar, 2018, *Organizing Legal Aid for the Poor by Local Governments*, Journal: *Legal Supremacy*, Vol 14 Number 1

⁵⁶⁹ Poverty or inadequacy can be interpreted as the inadequacy of a person to be able to meet his primary needs such as food, clothing and shelter for survival and improve his socioeconomic position. But the problem is that the material resources of the poor are very limited and can only be used to maintain their physical life and make it impossible to improve their welfare.

⁵⁷⁰ 2012 Constitutional Court “*Decision Number 88 / PUU-II / 2012*” *Legal considerations*, page. 146.

the formulation of the rule of law, oversight aspects of the legal aid delivery mechanisms and aspects of public education for the rule of law that has been created can be internalized⁵⁷⁰

Regional Regulation of Semarang District 7 in 2018 on Poverty Reduction Semarang district social services through integrated services and Referral System Integrated (RSI) and the Movement of Society Mandiri Sejahtera only accommodate all the aspirations of the community, especially for the poor who are in legal matters. In the form of assistance in the form of legal guidance, provision of data, and efforts to find a solution for the poor was problematic of this law. Legal aid is given only limited assistance efforts have not been in the direction of the defense, so the procedure and implementation of defense in the courts context of legal aid has not been implemented.

On the Legal Division of the District Government of Semarang in His ministry is limited in the form of mentoring, consulting, and outreach to the community, against attempts sustainability efforts of legal issues that plagued these communities is directed to the Institute of General Jurisdiction who was in court, because there is no Legal Aid Post in the District Government of Semarang , Going forward Semarang regency Legal Bureau in the process of discussion on the preparation of Academic Paper for Local Rule Making on Legal Aid.

As has been said above relating to legal aid for the poor in Semarang District recently held at the Institute of General Jurisdiction Semarang District Court. through. Posbakum District Court Ungaran who provide services in the form of information, consultation and legal advice, as well as the making of legal documents required in accordance with the legislation. which is based the Rules of the Supreme Court No. 1 of 2014 on Guidelines

for Providing Legal Services to the People Disadvantaged in court. Formally organizing legal aid for the poor in the district of Semarang organized by the District Court of the District of Semarang, Under these circumstances, local governments should participate and assume responsibility for the state to guarantee and protect the right of every citizen to get access to justice through the application of legal aid program that is poured into a regional regulation. As a form of (legal services) that aims to provide protection law in order to realize constitutional rights (equality before the law) citizens and justice access. on the community can not afford in the region

Uregensi legal aid services for poor people in the county have not been done effectively Semarang caused by limited in the form of mentoring, consulting, and outreach to the community, against attempts sustainability efforts of legal issues that plagued these communities are still directed to the Institute of the General Court which is in court

ADVICE

Local Government have to immediately establish local regulations are expected presence of the Regulation at least answer the high expectations of the public will be the completion of the issue of legal aid in the area, where until now there are still poor people who do not have access to legal aid.

CONCLUSION

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