



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

UNISSULA PRESS

ISBN. 978-602-1145-67-8

September



2017

The 3rd PROCEEDING

“Legal Development in Various Countries”

IMAM AS SYAFEI BUILDING

Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :
UNISSULA PRESS

ISBN. 978-602-1145-67-8

The 3rd PROCEEDING

“Legal Development in Various Countries”

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

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

Dr. H. Ahmad Khisni., S.H., M.H

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-x, 1-391

Cetakan Pertama Tahun 2017

Penerbit UNISSULA PRESS

Jl. Raya Kaligawe Km. 4 Semarang 50112

PO BOX 1054/SM,

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

ISBN. 978-602-1145-67-8

**COMMITTEE OF THE 3rd INTERNATIONAL CONFERENCE
AND CALL FOR PAPER
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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 Dr. Hj. AnisMashdurohatun,S.H,M.Hum Dr. H. Ahmad Khisni.,S.H.,M.H Dr.H. Umar Ma'ruf, SH.,Sp.N.,M.Hum Kami Hartono.,S.H.,M.H	(Vice Dean I) (Vice Dean II) (Head of PDIH) (Head of M.Kn) (Head of MIH) (Head of S1)
Chairwoman	: Dr. Hj. AnisMashdurohatun,S.H,M.Hum	(Head of PDIH)
Secretary	: Dr. Hj. Sri Endah Wahyuningsih,S.H,M.Hum	(Secretary of PDIH)
Treasurer	: Dr. Hj. Sri Kusriyah.,S.H.,M.Hum	(Secretary of MIH)
Drafting Team	: Dr. H. Amin Purnawan.,SH.,CN.,M.HumH Denny Suwondo.,S.H.,M FaisolAzhari.,S.H.,M.Hum Hj. AryaniWitasari.,S.H.,M.H	
Event Division	: Anita.,S.S.,M.H	
Secretariat and Supplies Division		
Coordinator	: M. Abdul Hadi.,SE	
Member	: Slamet Ariyanto Dyan Teguh Aryanto, Amd M. Ngaziz.,S.H.,M.H Hendro Widodo.,S.H.,M.H NailulMokorobin.,S.Psi AgusPrayoga	
Publication and Documentation Division	: Ikrom.,S.H	
Member	Ahmad Mutohar.,S.H Achmad Arifullah.,S.H.,M.H	
Consumption Division	: Shinta Pratiwi	
Member	Latifah Rosdiyati.,S.E Siti Pardiyah Laili Rohmah.,S.E Laila Najihah.,S.H	
Receptionist	: Riftia Anggita W.S.,S.H Auliana	
General Assistant	: Riswanto NurAlamsyah Rofiq	
Security	: Rohmani Arif	
Driver	: Ismail	
Irwanto		

TABLE OF CONTENTS

Front Page	i
Information of the International Seminar	ii
Committee Composition	iii
Preface	iv
Greeting From The Dean Faculty of Law	vi
THE IMPACT OF ARTICLE 3(1) OF MALAYSIAN CONSTITUTION TOWARDS JUDGMENT MADE IN CIVIL COURT	
Ahmad Zaharuddin Sani Sabri	1
INTANGIBLES INTELLECTUAL PROPERTY DEVELOPMENT CONCEPTS AS BANKING PRINCIPLES IN INDONESIA	
Anis Mashdurohatun	11
THE HISTORICAL DEVELOPMENT OF THE FRENCH LEGAL SYSTEM	
Hilaire Tegnan	23
JAPANESE CONSTITUTION AND STATE SYSTEM	
Shimada Yuzuru	29
POWER AND PROCESSES UNDER THE THAI CONSTITUTION 2017”	
Henning Glaser	38
JURIDICAL NORMATIVE REVIEW OF DIFFERENT RELIGIOUS MARRIAGE	
Doni Adi Supriyo	38
THE IMPLEMENTATION OF ROLES AND FUNCTIONS OF REGIONAL HOUSE OF REPRESENTATIVES (DPRD) BASED ON LAW STATE FRAMEWORK TO ACHIEVE GOOD GOVERNANCE	
Agus Sukadi	65
OPTIMALIZATION OF THE ROLE OF THE DPRD (Regional House of Representative) IN THE PREPARATION OF REGIONAL REGULATIONS	
Budi Alimudin	81
THE PROGRESSIVE LEGAL THEORY IN THE IMPLEMENTATION OF LAW ENFORCEMENT BY THE LAW ENFORCER (POLICE, PROSECUTOR, JUDGE)	
Teguh Santoso	99

CRIMINAL POLICIES IN LEGAL ACCOUNTABILITY AGAINST FACILITATION OF HEALTH SERVICES AND HEALTH PERSONNEL IN DISTRIBUTION AND SALES OF HARD DRUGS FOR SALE WITHOUT PRESCRIPTION DOCTORS Teguh Santoso	99
CRIMINAL POLICIES IN LEGAL ACCOUNTABILITY AGAINST FACILITATION OF HEALTH SERVICES AND HEALTH PERSONNEL IN DISTRIBUTION AND SALES OF HARD DRUGS FOR SALE WITHOUT PRESCRIPTION DOCTORS Yadi Supriyadi.....	111
RECONSTRUCTION OF PATIENT LEGAL PROTECTION HOSPITAL IN USE OF X-RAY IN THE HEALTH BASED FIELD OF JUSTICE Andhika Yuli Rimbawan.....	127
CORRUPTION ASSET RECOVERY THROUGH STATE CIVIL LAWSUIT Sujono.....	139
THE EFFECTIVENESS OF GUIDANCE OF CHILD PRISONERS IN ADULT PRISON Wilsa	147
URGENCY OF VOTERS PARTICIPATION ON THE REGIONAL HEAD ELECTION IN THE STATE OF DEMOCRACY (Study: Voters Participation On Governor and Vice Governor Election in Indonesia in2015) Dewi Haryanti	152
COMPARATIVE RULES ON DETENTION IN SOME COUNTRIES Dewi Haryanti	158
THE DEVELOPMENT OF LAW OF BUYING AND SELLING LAND IN INDONESIA Lilik Warsito	169
INDONESIAN LEGAL DEVELOPMENT PROGRESSIVE LAW APPROACH TO BUILD THE LAW IN INDONESIAN SENSE Wendra Yunaldi	179
REMOTE SENSING TO THE INDONESIAN SURFACE OF THE FOREIGN SATELLITE AND THE SOVEREIGNTY OF INDONESIA Ruman Sudradjat.....	186
THE CONSTRUCTION OF THE RAHN SYARIAH LAW IN THE LEGAL SYSTEM OF WARRANTIES OF INDONESIA Suryati	194
THE DEVELOPMENT OF ISLAMIC LAW IN THE LEGAL SYSTEM IN INDONESIA Sumarwoto	194

CONTRACT ABOLITION DUE TO UNDUE INFLUENCE (LAW RECONSTRUCTION OF OBLIGATION THE CIVIL CODE IN INDONESIA) Bahmid	210
FIDUCIARY GUARANTEE PROBLEMATIC WITH OBJECTS INVENTORY IN CREDIT AGREEMENT LathifahHanim and MS.Noorman	214
LEGAL POLICY OF INVESTIGATOR IN CASE SETTLEMENT CRIMINAL VIOLENCE IN THE HOUSEHOLD Anwar Sanusi Simanjuntak.....	222
INDUSTRIAL RELATIONS COURT’S VERDICT IN THE CASE OF CERTAIN TIME WORKING AGREEMENT (PKWT) BECOME UNCERTAIN TIME WORKING AGREEMENT (PKWTT) (Analysis of Industrial Relations Court’s Verdict Number : 37/G/2011/PHI.Mdn) MangarajaManurung	222
DOMESTIC COMPANY LAW "PMDN" AFTER SHARE PURCHASED (ACQUIRED) BY FOREIGN CITIZENS OR FOREIGN LEGAL AGENCIES M. IrfanIslamiRambe	245
GUARANTEE OF RICE FARMS HAVE NOT YET BEEN HARVESTED IN SIMALUNGUN REGENCY RiduanManik.....	245
LEGAL PROTECTION OF CONSUMERS IN CONSUMER FINANCING AGREEMENTS Imelda Mardayanti	267
THE AUTHORITY OF PERFORMING A DEATH PENALTY ACCORDING TO THE DOCTRINE OF LOVE OF JESUS CHRIST IN THE BIBLE Dame Pandiangan.....	278
CRIMINAL ACCIDENT OF NARCOTICS, APPLICATION OF LAW NUMBER 35 YEAR 2009 AND JUDICIAL DECISIONS IN THE COURT COUNTRY KISARAN Muhammad SalimFauziLubis	283
ISLAMIC LAW STUDY ABOUT DAM TAMATU' HAJJ FOR INDONESIAN JAMAAH HAJJ FOR PEOPLE’S CONSULTATION Muthoam	290
IS RICH AND POOR UNIFORM IN PATENT LAW AbdThalib.....	299

PREVENT VIOLENT ONLINE VIDEO GAMES THROUGH LEGAL CONSTRUCTION Yenny AS, Charlyna S. Purba, Hendrik.....	309
COMMUNITY PARTICIPATION IN THE FORMATION OF LOCAL REGULATION BASED ON JUSTICE (Analysis of Political Interaction and Law) NursidWarsonoSetiawan.....	314
THE ROLE OF POLITICAL PARTIES IN RECRUITMENT OF CANDIDATES FOR REGIONAL HEAD AND DEPUTY REGIONAL HEADS BASED ON LAW NO. 32 YEAR 2004 (CASE STUDY IN PURBALINGGA AND CILACAP) Anton Budiarto.....	324
THE BASICS AND THE FUNCTIONS OF FINGERPRINTS OF MURDER PERPETRATORS AchmadSulchan, Annisa.....	343
RECONSTRUCTION OF DIFFERENT TYPES OF MENS REA TO PROVE CORRUPTIONBASED ON JUSTICE VALUES ArifAwaludin.....	349
PRINCIPLES OF FAIR LAND REGISTRATION (STUDY OF PUBLIC SERVICE OF LAND REGISTRATION IN INDONESIA) Shalman.....	355
INDEPENDENCY AND IMPARTIALITY OF AD HOC JUDGE INDUSTRIAL RELATIONS COURT (PHI) IN RESOLVING DISPUTES ResyDesifaNasution.....	378
CONSTRUCTION WORK CONTRACT IN GOVERNMENT BASED VALUE OF BENEFIT MokhamadHilman.....	387
SHARIA ECONOMICS DISPUTE RESOLUTION IN RELIGIOUS COURT INSTITUTIONS Amanah.....	400
WOMEN PROTECTION POLICY FROM PHYSICAL VIOLENCE BASED ON JUSTICE VALUES HadjarHandokojati.....	417
LEGAL ANALYSIS ON THE IMPLEMENTATION OF DIRECT APPOINTMENT OF PROCUREMENT SERVICESOF GOVERNMENT’S PROJECT HumalaSitinjak.....	424
RECONSTRUCTION ON CORRUPTION ACT AND SHIFTING BURDEN OF PROOF ON THE SETTLEMENT OF CORRUPTION IN INDONESIA IbnuHadjar.....	434

COMPARATIVE RELIGIOUS APPROACH IN THE DEVELOPMENT OF NATIONAL CRIMINAL LAW SYSTEM Sri EndahWahyuningsih.....	443
LEGAL STUDY OF DECISIONSSUPREME COURTS NUMBER: 85 K / Pid.Sus / 2012Contract Abolition Due to Undue Influence (Law Reconstruction of Obligation the Civil Code in Indonesia) Ismail.....	449
THE EXISTENCE AND RECONSTRUCTION OF SALE AND PURCHASE FIQH MADHAB SYAFI'I IN GLOBALIZATION ERA (Sale and Purchase Practice Study in PondokPesantrenTahfidzul Qur'an Al-Asy'ariyahWonosobo Central Java and PondokPesantren Al-Munawir Krapyak Jogjakarta) Machfudz.....	457
RECONSTRUCTION OF LEGAL SANCTIONS ON BUILDING FAILURE IN LAW NO.2 YEAR 2017 ON CONSTRUCTION SERVICES BASED ON THE VALUE OF BENEFIT SubhanSyarief	466
THE CONSTRUCTION OF RESIDENTIAL SERVICES AND CIVIL REGISTRATION BY THE GOVERNMENT OF PEMATANGSIANTAR CITY IN PERSPECTIVE OF PUBLIC SERVICES LAW NO: 25 2009 PandapotanDamanik.....	485
CRIMINAL RESPONSIBILITY AND CIVIL RESPONSIBILITY ACCORDING TO COMMON LAW FOR A MAN WHO HAS SEXUAL INTERCOURSE BEFORE LEGAL MARRIAGE MangembangPandiangan	485
INTERNATIONAL SEMINAR PHOTOS	512

Japanese Constitution and State System

SHIMADA Yuzuru

Professor

Graduate School of International Development

Nagoya University, Japan

shimadayuzuru@gsid.nagoya-u.ac.jp

1. History of Japanese Constitution

(1) Pre-Constitutionalism

In 1868, Japanese state system transformed from feudal regime to the monarchy. This transition is called "Meiji Restoration" (Meiji Ishin). By this transition, Shogun (Military commander) in Edo (now, Tokyo) agreed to move the supreme authority of the state which had been held for 265 years to the Emperor in Kyoto¹. Since Meiji Restoration, political power was, in fact, in the hand of aristocrats and higher echelons officers exclusively. However, since 1874, the democratic rights movement, (*Jiyuu Minken Undou*) occurred. People who joined this movement were composed of:

- a. Politicians who lost in political competition in the central government;
- b. People from the region which sided to the feudal (Shogun) government before the Meiji Restoration (People who opposed the Emperor's government)²; and
- c. Large land holders in agricultural area (they complained to government policy raising tax from agriculture).

The primary goal of this movement was to establish parliament and make the Constitution.

(2) The Constitution of 1889 (Meiji Constitution or Dainihon Teikoku Kenpou)

In 1876, the Emperor ordered the government to prepare a draft Constitution. And also, in 1881, the Emperor announced the decree that declare the establishment of the parliament in 1890.

Since 1882, some aristocrats began survey of the Constitutions in some Western countries and, finally, they decided to take the German Constitution (German Imperial Constitution, or Bismarck's constitution) as the model for new Constitution of Japan. This German Constitution is the monarch constitution and limited the citizen's rights³

¹ During feudal age, even though the emperor remained in Kyoto and maintain their tradition, the emperor did not have any significant power. Indeed, the imperial family sometimes suffered severe economic difficulty.

² In transition, civil war occurred between pro-emperor regions and pro-Shogun regions (*Boshin war*, 1868).

³ Another reason was the influence of German law over Japanese law in general. Basic laws such as civil code, penal code, civil and penal procedure codes modeled German laws (then Prussia).

In 1889, the Constitution of 1889 was promulgated and implemented in 1890. The Constitution of 1889 was the monarch Constitution, and the Emperor held the highest power (the Emperor as the supreme god). Citizens were considered as the subjects of the Emperor, and their rights are heavily limited. Even though there were articles on the citizen's rights, those rights can be easily restricted by law. The concept of the separation of power was very weak. The cabinet was responsible not to the parliament but to the Emperor. Imperial decree was higher than parliamentary law. The judiciary did not have the power of judicial review and the chance for administrative litigation was very narrow. The head of local government was the officer of the ministry of interior who are appointed by the Emperor, therefore no local autonomy.

In summary, the Constitution of 1889 was far less than constitutional democracy. However, this constitution still has the significance as the second modern constitution in Asia after the constitution of Ottoman Empire (Turkey) in 1876.

(3) The Constitution of 1947 (Showa constitution, or *Nihon-koku Kenpou*)

On 15th August 1945, Japanese government accepted the Potsdam declaration and unconditional surrender to the United States and other allied states. The World War Second was over. In the Potsdam declaration, there were articles which demanded democratization of Japan, human rights protection and disarmament. The allied nations, especially the United States, supposed that the reason of the Japanese militarism which resulted in the war was the Constitution which could not limit the executive power. Therefore, the United States ordered the Japanese government to prepare new Constitution which respect for democratic principles, the fundamental human rights and the peace (pacifism).

Under the strict control of the US military (General Head Quarter of the allied force, GHQ), in 1946, Japanese government announced the new Constitution and implemented it in the next year.

Important points of the Constitution of 1947 are:

- a. The Emperor as a symbol of the unity of people (weak constitutional-monarchy)⁴
- b. Denying military force and renunciation war (pacifism)⁵

⁴ The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power. (Article 1)

With the advice and approval of the Cabinet, the Emperor can act:

Article 6

(1) appoint the Prime Minister as designated by the Diet; (2) appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

Article 7

(1) proclaiming the Constitution, law, government regulation and international treaty, (2) Convocation of the parliament, (3) dissolution of the house of representatives, (4) Proclamation of general election of members of the Diet. (5) Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers; (6) Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights; (7) Awarding of honors; (8) Attestation of instruments of ratification and other diplomatic documents as provided for by law; (9) Receiving foreign ambassadors and ministers; (10) Performance of ceremonial functions. (Article 7)

c. Sovereignty of the people⁶

These points were widely supported by people who were suffered difficult life during the war. However, because of the drafting process of the Constitution of 1947, there are opinions that the Constitution is not the own Constitution of Japanese people (the externally imposed Constitution) until today.

Of course, there are influence of the US constitutionalism. For example, the judicial review of law, separation of the power, direct election of the local head, fundamental human rights and liberalism.

However, the Constitution of 1947 has some similarities with the Constitutions of other countries in same age, such as the West Germany (Bonn Constitution, 1949), Italy (1948). One of the similarities is enlarged role of government to secure social rights (welfare social state constitution).

2. State system of Japan under the Constitution of 1947.

The Constitution of 1947 provides three highest state powers, namely, executive power held by the Cabinet (Naikaku), legislative power held by the Parliament (Kokkai) and judicial power held by the Supreme Court (Saikou-Saibansho). These three powers are equal in the Constitution. One of evidence of this equality is their salary. The salary of the prime minister, the chairman of the parliament and the Chief of the Supreme Court are same. (In same context, salary of ministers, vice-chairpersons of parliament and supreme court judges are also same.)

The relationship among the three highest powers is the relationship of the checks and balances.

(1) Separation of powers (checks and balances)

A. Relationship between the executive power and the legislative power

The prime minister can dissolve the House of Representatives (article 7 (3))

The House of Representatives can adopt the motion of non-confidence (article 69)

The parliament can conduct investigation in relation to administration (article 62)⁷

B. Relationship between the judicial power and the legislative power

Judiciary has the right to judicial review against law and regulation (article 81)

⁵ Article 9

(1) Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

(2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

⁶ Article 1 (see note 4)

⁷ To conduct investigation, the parliament may summon witnesses, and demand a testimony and relevant documents from the witness.

The parliament shall set up an impeachment court for the purpose of trying those judges whom removal proceeding has been instituted (article 64)

The parliament can make a law regarding the judiciary.

C. Relationship between the executive power and the judicial power

The Cabinet shall nominate the chief judge of the supreme court and appoint other judges of the supreme court (article 6 and article 79)

The Cabinet shall appoint the judges of lower courts from a list of persons nominated by the Supreme Court (article 80)

The court has jurisdiction over the administrative litigation.

(2) bicameral system (the relationship between the house of representatives and the house of councilors)

In principle, the House of Representative has the competence stronger than the House of Councilors, as follows:

- The House of Representatives shall deliberate the budget first (Article 60 (1))
- When the house of Councilors has different consideration from the House of Representatives in the deliberation of the budget, the consideration of the House of Representatives shall be the decision of the parliament. (article 60 (2))
- Only the House of Representatives can make the motion of non-confidence against the Cabinet.
- When the house of representatives adopts a bill but the house of Councilors rejects the bill, the house of representatives shall pass the bill again by the two-third majority of the members present. (Article 59 (2)).
- When the House of Councilors failed to take final action within 60 days after receipt of a bill and the international treaty passed by the House of Representative, the bill shall be enacted automatically (article 59 (4) and article 61)

(3) Local autonomy

The head of local government (governor and mayor) and the local parliament are elected by the people of this region (article 93). Because of this, the relationship between the local head and the local parliament is similar to the relationship between the President and the Congress in the US. It is contrasting to the central government which adopts the Cabinet-Parliamentary system modeled the UK. In the local autonomy, there is a recall system as well. The people can submit the motion of referendum to dismiss the local head or parliament. The separation of powers, and checks and balances are clearer in the local autonomy. Because of this, the local autonomy in Japan is often referred as "the school of democracy." The details of the local autonomy are provided by the Local Autonomy Law which was enacted on the same day of the proclamation of the current Constitution.

3. The fundamental Human Rights in the Constitution

The chapter III of the Constitution is titled "rights and duties of citizens."

The human rights specifically guaranteed by in the Constitution are as follows:

- Rights to equality, or not to be discriminated by race, thought, sex, social status and origin (article 14);
- Right to vote and universal suffrage (article 15)
- Right to submit petition (article 16)
- Right to demand compensation for tort by the civil servant (article 17)
- Prohibition of slavery (article 18)
- Freedom of thought and conscience (article 19)
- Freedom of religion and the separation of the government and religion (article 20)
- Freedom of expression and communication (article 21)
- Freedom of selecting job, move and place of residence (article 22)
- Freedom of academic (article 23)
- Equality of man and woman in marriage and family relation (article 24)⁸
- Right to maintain the minimum standards of wholesome and cultured living (article 25)⁹
- Right to education and free basic education (article 26)
- Right to work, including adequate working condition and prohibition of child labor (article 27)
- Right to organize a labor union (article 28)
- Right to private property (it can be limited for public welfare) (article 29)
- Duty for tax (article 30)
- Right to personal liberty (article 31)
- Right to seek justice (article 32)
- Rights to "due process" (article 33 to article 40)¹⁰

4. The amendment of the Constitution

The Constitution of Japan is the rigid constitution. The procedure to amend the Constitution is far more difficult than to change ordinary law. Until today, the Constitutional amendment is one of the critical issues demanded by the right wing. Because of the history of drafting, the right wing considers that the current constitution is imposed by the US and not reflect the aspiration of Japanese people.

In other words, in Japan, the conservatives are pro-amendment group. They consider the constitution does

⁸ Under the old civil code before the World War II, a woman must have permission of the head of family (usually, the father) for marriage. A husband has a status of the head of family, and a woman did not have any legal capacity.

⁹ Because of this article, the system for supporting the poor (social security) is the right of citizen.

¹⁰ For example, principles of " nullum crimen sine lege", "presumption innocence" and so on.

not accommodate the mythos of Japanese people. They also tend to insist that the article 9 which provides the principle of pacifism should be abolished, and Japan should be a "normal state" with military power.

In contrast, anti-amendment group is mainly the liberal. They insist that the pacifism is very important principle and guarantee the life of Japan in the international relation. They consider that the Japanese people who suffered the war and poverty strongly supported the current constitution. That why, even though the draft was influenced by the idea of the US military, the constitution accommodates the people's will.

The map of pros and cons above mentioned is getting vague since the end of the Cold War and transformation of Japanese political environment since the 1990s. However, there still a lot of debate about the Constitution and its amendment.

The article 96 (1) provides about the amendment:

To initiate the amendment process, two third of the member of parliament in each house have to agree to the motion of amendment. After the motion is adopted in both houses, the Parliament set the national referendum specially designated for the amendment. To amend the constitution, there must be more than 50% voter of the referendum supporting the amendment.

5. Pacifism and the Self-Defense Force (*Jieitai*)

The Potsdam Declaration and the instruction of the General Head Quarter of the US military ordered Japanese government to dismiss all military forces. This instruction became the article 9 of the current Constitution. Therefore, Japan decided to be a state based on the pacifism. However, the situation of the Cold War getting worse in 1950s, the US military changed its initial policy. The US regarded Japan as the front line in Asia against the socialist states (USSR and PRC).

When the Korean War broke out in 1950, the GHQ ordered Japanese government to set up an armed unit as a special part of the national police. Then, in 1952, this unit was separated from the police and independent force named *Hoantai* (security force). Finally, this security force was reorganized to the self-defense force (*jieitai*) and located under the National Defense Agency. The self-defencing force equipped land, sea and air forces.

Of course, the establishment of the self-defense force brought about heated controversy among the Japanese society, whether the self-defense force is compatible with article 9 or not.

LDP government defends the existence of the self-defense force by the reason that the purpose of the force is only to protect the territory of Japan, and therefore the equipment of the force is not considered as a military force. According to this legitimation, the area of activity of the self-defense force must be within the territory of Japan.

But, so far, one of the important missions of the self-defense force is the peace-keeping operation (PKO) by the UN. Furthermore, the LDP government enacted new law which allows the collective self-defense.

Under the collective self-defense, Japan may assume the attack against the allied country, namely the US, as the attack against Japan. So, the self-defense force can use its military arm even though there is not direct attack against it.

This is a great change from the initial nature of the self-defense force. Therefore, there is a strong opinion that without the Constitutional amendment, this law is unconstitutional.

Appendix I

Susunan UUD Jepang 1947

- I. Kaisar (1-8)
- II. Penolakan Perang (9)
- III. Hak dan Tugas Rakyat (10-40)
- IV. Diet (41-64)
- V. Kabinet (65-75)
- VI. Peradilan (76-82)
- VII. Keuangan (83-91)
- VIII. Pemerintah Mandiri Daerah (92-95)
- IX. Amendemen (96)
- X. Hukum Tertinggi (97-99)
- XI. Ketentuan Tambahan (100-103)

