



# THE 3<sup>rd</sup> 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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# **The 3<sup>rd</sup> PROCEEDING**

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“Legal Development in Various Countries”

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## INFORMATION OF THE CONFERENCE AND CALL PAPER

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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

**SPEAKERS :**

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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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5. Dr. Anis Mashdurohatus, S.H., M.Hum  
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Indonesia, September 05<sup>th</sup> 2017

**WORLD ISLAMIC UNIVERSITY**  
**UNISSULA**  
SULTAN AGUNG ISLAMIC UNIVERSITY

# International Conference

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Organized by : **Faculty of Law UNISSULA**  
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**FACULTY OF LAW**  
Sultan Agung Islamic University

5  
September  
2017

**SPEAKERS :**

1. Prof. Shimada Yuzuru  
Nagoya University, Japan
2. Dr. Hilaire Tegnau, LL.M.  
Faculty of Law, Sorbonne University
3. Prof. Dr. Ruzian Markom  
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4. Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M  
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5. Assoc Prof. Dr. Ahmad Zaharuddin S.  
Universitas Utara Malaysia, Malaysia
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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 5<sup>th</sup> 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3<sup>rd</sup> 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

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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 5<sup>th</sup> 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 5<sup>th</sup> 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 5<sup>th</sup> 2017

Dean,



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

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# INDEPENDENCY AND IMPARTIALITY OF AD HOC JUDGE INDUSTRIAL RELATIONS COURT (PHI) IN RESOLVING DISPUTES

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## ABSTRACT

This study aims to analyze and to discover how the principle of Independence and Impartiality of Ad Hoc Judges of Industrial Relations Court (PHI) in resolving disputes. The research method used empirical juridical research method with constructivism paradigm. Primary data were primary legal materials which consisted of legislation. This research used secondary law materials, namely court decision and tertiary law materials. The data were analyzed by using analytical descriptive analysis. The study found: (1) Differences between career judges and Judge of Hoc Law of the Republic of Indonesia Number 2 Year 2004 on Industrial Relations Dispute Settlement (PPHI Law) which is not followed by strict provisions on the obligation to maintain independence and impartiality that are significant to the principle independence or freedom. Judicial Power to the Ad-Hoc judges to the IRC (Industrial Relations Court) and the Ad-Hoc Judge of the IRC to the Supreme Court which appoints him on the proposal of two elements: trade unions and employers' organizations. Article 67 Paragraph (1) Sub-Paragraph f of the PPHI Law that "Ad-Hoc IRC judges and Ad-HocPHI Judges to the Supreme Court are dismissed with respect from their positions because at the request of employers 'or workers' organizations proposing" one of the factors that may affect the independence and impartiality of the Judge in its performance as a disputant dispute in the IRC. The fact that the Ad Hoc Judges were appointed after being nominated and representing the trade unions and employers' organizations in the proceedings shall not reduce the independence of the Ad Hoc Judges of the IRC and as well as their impartiality in deciding industrial relations disputes. They can resolve disputes fairly, benefit, and make decisions that have the legal force and justice. The decision results can be executed, useful for justice seekers.

**Keywords: Ad Hoc Judge, Industrial Relations Court (PHI), Independence, Impartiality.**

## Background

Industrial Relations Dispute Settlement is regulated in Law Number 2 Year 2004 hereinafter referred to as PPHI Law, which is in General Explanation of PPHI Law mentioned that:

"It is a linkage of interests between workers/employers and employee, it has the potential to cause dissent, even disputes between two parties. Disputes in the field of industrial relations are known to occur about the rights that have been established, or

about the employment conditions that have not been established either in the work agreement, company regulations, collective labor agreements and legislation. "

Reviewed in terms of Article 55 of the PPHI Law, the Industrial Relations Court is a Special Court within the General Courts.

In connection with the duties as a judge, the independence of judges still must be complemented by the attitude of impartiality and professionalism in the field of law. <sup>1</sup>

Article 1 of Law Number 48 Year 2009 on Judicial Power, hereinafter referred to as the Judicial Power Law states that:

"Judicial Power is the power of an independent state to administer the judiciary to uphold law and justice pursuant to Pancasila and the Constitution of the State of the Republic of Indonesia Year 1945, for the implementation of the State of the Republic of Indonesia".

The ontological of the independent and free Judiciary Power according to Mochtar Kusumaatmadja is "Judge in examining and deciding cases, free from interference by other parties either by the executive, legislative or by society". By thus meaning, law and judicial bodies will be able to function as a community mobilizer in legal development and guidance of law. <sup>2</sup>

The Judge's impartiality is seen in the idea that the Judge will base his judgments on the law and the legal facts in the court. Accountability and transparency are as a counterweight to Independence, and a form of responsibility in accountability mechanisms.

Therefore, the author conducted research on the Decisions of the Dissenting Opinion of Ad hoc Judges of the Industrial Relations Court with the title: "Independence and Impartiality of Ad Hoc Judges of Industrial Relations Court (PHI) in Resolving Disputes".

## **Problem Formulation**

From the background problems above, the authors formulated the problem, namely: How the principle of Independence and Impartiality of Ad Hoc Judges Industrial Relations Court (PHI) in deciding disputes?

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<sup>1</sup> Ahmad Kamil, 2012, **Filsafat Kebebasan Hakim**, Kencana, Jakarta, hlm. 167.

<sup>2</sup> Piatur Pangaribuan dan Arie Purnomosidi, 2014, **Negara Hukum Pancasila dalam Kerangka NKRI**, Cakrawala Media, Surakarta, hlm.342.

## Research methods

This study used constructivism paradigm. The paradigm will also outline benchmarks, define the standards of accuracy required, specify methodology that will be chosen to apply, or the way in which the results will be interpreted<sup>3</sup>. Approach method in this research is juridical normative. Judicial legal research means research that refers to the study of existing literature or to the secondary data used.

The specification of this research is analytical descriptive research. It is a research which aims to give detailed, systematic and comprehensive description about everything related to the issue of Independence and Impartiality of Ad hoc Judges of the IRC in deciding disputes. It is done by describing the applicable laws and regulations relating to employment and power Independent, as well as impartial judiciary. They are associated with legal theories and practice of its implementation.

This research is qualitative research which used primary and secondary data. Primary data is data obtained in the field, while secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials, namely:

1. Primary legal materials covered legislation (Civil Procedure Law, Industrial Dispute Event Law, Labor Law, Labor Union Act, Labor Regulations and Decisions Dissenting Opinion Industrial Relations Court ;
2. Secondary legal materials included doctrines, textbooks, journals, magazines, newspapers, internet and other sources relating to labor law;
3. The tertiary legal matter in this case consists of encyclopedias, legal dictionaries and general dictionaries, bibliography. This method was used to obtain data in the form of documents that were needed for this research. <sup>4</sup>

## DISCUSSION

### Research result

The answer of the question of how the principle of independence and impartiality of the Ad hoc Judges of the IRC in deciding disputes can be found by conducting an in-depth study of the legal principles and rules governing the settlement of industrial relations in

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<sup>3</sup> Erlyn Indarti, 2010, **Diskresi dan Paradigma: Suatu Telaah Filsafat Hukum**, Pidato Pengukuhan Guru Besar Universitas Diponegoro, Badan Penerbit Universitas Diponegoro, Semarang, hlm. 4.

<sup>4</sup> Suharsimi Arikunto, 1998, **Prosedur Penelitian, Suatu Pendekatan Praktek**, Rineka Cipta, Jakarta, hlm. 236.

Indonesia. It can be argued, in principle, the attempt to understand the principle of independence of the judicial authority, namely an independent judiciary and the related principle, the principle of impartiality of an ad hoc judge on the Industrial Relations Court cannot be separated from the understanding of the whole and comprehensive on the principles and rules of law as stipulated in Law of the Republic of Indonesia Number 2 Year 2004 on Industrial Relations Dispute Settlement, or hereinafter abbreviated as UU-PPHI.

As a legal product in Pancasila Legal System, certainly the PPHI Law is not released with Pancasila as the source of all sources of law. It is proven that, similar to other Laws in Pancasila Law System, the existence of UU-PPHI contains the recognition. The recognition is that the existence of the law is a mercy from God Almighty. This principle has a strong philosophical basis in the First point of Pancasila, as defined in the Preamble of the 1945 Constitution of the State of the Republic of Indonesia. In the context of the discussion on the independence of judicial power, in particular the ad hoc judges on the Industrial Relations Court in deciding industrial relations disputes, the principles of judicial independence and the impartiality of judges are also obliged to be subordinated to the First Precept of Pancasila, namely Belief in the One God.

In other words, the principles of judge freedom as well as the impartiality of ad hoc judges in industrial relations courts are principles that recognize the power of God Almighty. A principle that proves every rule and legal principles prevailing in the Pancasila Legal System cannot be separated from the soul that recognizes the power of God Almighty.

Explained in the Explanation of UUPPHI, Industrial Relations is a linkage of interests between workers/laborers and employee, it has the potential to cause dissent, even disputes between two parties. Disputes in the field of industrial relations are known to occur about the rights that have been established, or about the employment conditions that have not been established either in the work agreement, company regulations, collective labor agreements and legislation.

Industrial relations disputes may also be caused by termination of employment. The provisions on termination of employment has been regulated in Law Number 12 Year 1964 concerning Termination of Employment in Private Companies. It is not effective to prevent and to cope with cases of termination of employment. This is because the relationship between the worker/laborer and the entrepreneur is a relationship based on the agreement of the parties to engage in an employment relationship. In case that one of the parties does not



wish to be bound in the working relationship, it is difficult for the parties to maintain a harmonious relationship.

Therefore, it is necessary to find the best solution for both parties to determine the settlement. So, the Industrial Relations Court regulated in Law will be able to settle cases of termination of employment well. In line with the era of openness and democratization, in industrial world embodied by the freedom of workers to create an organization/union, the organization in a company cannot be banded. The competition among labor unions in one company may result in disputes between labor unions which are generally concerned with membership issues and representation in collective bargaining negotiations. Laws regulating the settlement of industrial relations disputes so far have not yet realized the settlement of disputes quickly, precisely, fairly, and cheaply. Law No. 22 of 1957 which has been used as a legal basis for the settlement of industrial relations disputes is no longer able to accommodate developments. It is caused the rights of private workers have not been accommodated to become parties to industrial relations disputes.

The provisions of Article 178 paragraphs (2) and paragraph (3) of the HIR clearly stipulate that although the Panel of Judges is obliged to adjudicate the whole part of the lawsuit, however the Panel of Judges is not allowed to issue a decision relating to what the litigant does not prosecute. In case that the Panel of Judges decides on something that is not prosecuted or not requested by the litigants, the Panel of Judges has decided the Ultra Petita case.

The prohibition for the Panel of Judges to render judgments relating to what is not prosecuted or not requested by the litigant party has also been upheld by the Supreme Court in various Jurisprudence of the Supreme Court of the Republic of Indonesia. "Whereas Article 57 of the Law of the Republic of Indonesia Number 2 Year 2004 regarding Industrial Relations Disputes states that "the law of procedure applicable to the Industrial Relations Court is the Civil Procedure Code applicable to the Courts within the General Courts, except as specifically regulated in This Act ".<sup>5</sup>

Furthermore, according to the Civil Procedure Code applicable to the Courts within the General Courts, namely Article 178 Paragraph (3) of HIR, it is stated that "The Judge is prohibited from passing judgments on unsolicited/sued or granting more than what is

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<sup>5</sup>Putusan Mahkamah Agung Nomor 77 K/Pdt.Sus-PHI/2015.

required"<sup>6</sup>. In the a quo verdict of Judex Facti Court of Industrial Relations Court in Medan District Court, it decided more than the request of the Defendant Cassation/Plaintiff clearly violated the provisions of Article 57 of the Law of the Republic of Indonesia Number 2 Year 2004 on Industrial Relations Dispute Settlement juncto Article 178 Paragraph (3) HIR. Juncto Supreme Court decision dated May 24, 1991 Number 29 K / Sip / 1950. The Judex Facti Judgment of the Industrial Relations Court at Medan District Court decided more than the petition of the Cassation Defendant/Plaintiff has also violated the ultra petita principle ".

The subject of the above Supreme Court ruling is a permanent and recurrent jurisprudence, as it appears in the Decision of the Supreme Court of the Republic of Indonesia Number 1001 K / Sip / 1972 juncto Supreme Court Decision of the Republic of Indonesia dated 6 August 1973 Number 663 K / Sip / 1971 juncto Supreme Court Decision of the Republic of Indonesia dated August 1, 1973 Number 1038 K / Sip / 1972, which essentially prohibits the Judge from dropping the unsolicited or exceeding what is required in the Plaintiff's lawsuit petition.

Furthermore, the legal doctrine advanced by jurists also corresponds to the above description, ie there is a rule that the judge should not exceed the limits of truth put forth by the parties in the proceedings. Thus, the judge simply makes a decision based on the formal truth<sup>7</sup>. It is explained that "In such a System of Evidence, if the defendant admits the plaintiff's argument, even if it is false and false, the judge must accept the truth by the conclusion that on the basis of the confession the defendant is deemed to have declared his civil rights to the foreseeable.

Although the judge believes the truth of the argument of the defendant recognized by the defendant is half true and half false, theoretically and juridical, the judge must not exceed the limits of truth put forth by the parties in the hearing<sup>8</sup>. The same legal doctrine, stated by Retnowulan Sutantio, and Iskandar Oeripkartawinata<sup>9</sup>, "In paragraph 3 of article 178 HIR. The judge is prohibited from passing judgments on unsolicited/sued or granting more than what is required<sup>10</sup>. If the Plaintiff forgets to, in the petitum, mentions that the defendant shall

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<sup>6</sup>Putusan Mahkamah Agung tertanggal 24 Mei 1991 Nomor 29 K/Sip/1950.

<sup>7</sup>M. Yahya Harahap, 2015, **Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan**, Cet. IX., Sinar Grafika, Jakarta, hlm. 498.

<sup>8</sup>Putusan Mahkamah Agung Nomor 3136K/Pdt/1983.

<sup>9</sup>Retnowulan Sutantio, dan Iskandar Oeripkartawinata, 2002, **Hukum Acara Perdata dalam Teori dan Praktek**, Cet. IX., Mandar Maju, Bandung, hlm., 112.

<sup>10</sup>Putusan Mahkamah Agung tertanggal 24 Mei 1951 No. 29 K/Sip/1950, termuat dalam Hukum, Majalah PAHI, 1951 Nomor 1, hlm., 25.

be liable to pay the court fee, if the plaintiff wins, it is not permitted, to punish the defendant to pay the court fee.

The foregoing has not been requested by the Plaintiff and it is, therefore, prohibited to be granted. If it is only required in the form of payment of principal debt, it is not allowed to add with interest. The interest applied by law is 6% a year, it cannot be granted the promised interest rate is 5% a month. Due to this provision, the Plaintiff shall endeavor to establish a complete petitum ".<sup>11</sup>

The weaknesses to the regulation of Independence Principles and Impartiality of Ad Hoc Judges of the IRC in deciding industrial relations disputes can be seen from the fact that although the principle of Independence and Impartiality of Judges is known in the Law of Judicial Power and UUPPHI, but the recognition is new implied or still bias. It is said that there is a lawlessness considering that the Legislation in the UUPPHI does not strictly regulate the recognition that these two principles are the principles that must be obeyed by either the Career Judge or by any Ad Hoc judge of the IRC in examining, hearing and deciding industrial relations disputes accompanied by strict sanctions if there is a violation by the Judge of either Career or Ad Hoc to the provision concerned.

## **Conclusion**

1. The principle of Independence and Impartiality of Ad Hoc judges of the Industrial Relations Court in deciding industrial relations disputes is known in the Pancasila Legal System. Both principles can be found in the Law on Judicial Power and Law No. 2 of 2004 on Industrial Relations Dispute Settlement (UUPPHI).
2. Whereas there are a number of weaknesses to the regulation of Independence and Impartiality of Ad Hoc Judges of the IRC in deciding industrial relations disputes. Especially the fact that although the principle of Independence and Impartiality of Judges is known in the Law on Judicial Power and UUPPHI. It is only implied or still bias. It is said that there is a lawlessness considering that the Legislation in the UUPPHI does not strictly regulate the recognition. These two principles are the principles that must be obeyed by either the Career Judge or by any Ad Hoc judge of the IRC in examining, hearing and deciding industrial relations disputes accompanied by strict sanctions if there is a violation by the Judge of either Career or Ad Hoc to the provision concerned.

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<sup>11</sup>**Ibid.**

## **Suggestion**

The Government and the People's Legislative Assembly should take concrete steps in the form of submitting a draft amendment to UUPPHI by stating strict provisions that the Ad Hoc Judge of the IRC has the same Independence and Impartiality as the Career Judge in deciding an equitable industrial relations dispute based on the noble values of Pancasila. In addition, it is also necessary to formulate a strict provision that the IRC judges, whether Ad Hoc judges or career judges are obliged to uphold the independence of the Judicial Authority and may terminate industrial relations disputes impartially with the strict sanctions for the Judge and the offending parties against the two principles of the law.

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