

August 29<sup>th</sup> 2018

# THE 4<sup>th</sup> INTERNATIONAL AND CALL FOR PAPER

Legal Construction and Development in Comparative Study  
The Role of Indigenous and Global Community in Constructing National Law

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

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

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## INFORMATION OF THE CONFERENCE AND CALL PAPER

**UNISSULA**  
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**Welcome to Participants on**

**THE 4<sup>th</sup> INTERNATIONAL AND CALL FOR PAPERS**

**"Legal Construction and Development In Comparative Study"**  
*The Role of Indigenous and Global Community in Constructing National Law*

**29-30 August 2018**

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

**INVITED SPEAKERS :**

1. Prof. Henning Glaser  
Thammasat University, Thailand
2. Dr. Hilaire Tegnau, LL.M.  
Faculty of Law, Sorbonne University
3. Prof. Shimada Yuzuru  
Nagoya University, Japan
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**THE 4<sup>th</sup> INTERNATIONAL AND CALL FOR PAPERS**

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

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Faculty of Law, Sultan Agung Islamic University

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AND CALL FOR PAPER**

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

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## PREFACE

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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, HilaireTegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.**

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

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

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

**Wassalamualaikum, Wr. Wb**

Semarang, August 31<sup>th</sup> 2018

**Chairman of the Committee,**



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

## **GREETING FROM THE DEAN OF FACULTY OF LAW**

*As-salamu'alaikum Wr. Wb.*

Thank to Allah is an absolute act that we must say after conducting the International Conference and Call for Paper by theme : “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” which was held by Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang, on August 29<sup>th</sup> 2018.

This conference tried to reviews different theories of legal development focusing on The Role of Indigenous and Global Community in Constructing National Law in order to highlight their similarities and differences. In the field of law, the substance of the discussion does not lie in 'whether the law is traditional because of the heritage of the past or not', but on the meaning of justice contained in the law. Often in discussing legal matters, we are caught up in the understanding of law in a procedural sense, not a law in a substantive sense-that satisfies the sense of justice. So it is not realized, there is a reduction of the meaning of the law substantively (which meets the sense of justice) becomes law procedurally. Especially when human life enters the era of globalization characterized by modern, as well as loaded with contemporary challenges and issues.

Globalization, in general people understand it is a process in the life of mankind to a society that covers the whole globe. This process is possible and facilitated by advances in technology, especially communication and transportation technology. Such understanding is not much different from the understanding of globalization as a process that refers to "a single interdependent world in which capital, technology, people, ideas, and cultural influences flow across borders". With such understanding, we are gradually going to live in a one world where individuals, groups and nations become more interdependent. In the global human society there will be patterns of social relationships that are different from before. And that too is a portrait of social life not found before.

Therefore, to discuss more about legal construction and development, Faculty of Law, Sultan Agung Islamic University was confidence to conduct a conference by the theme “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

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

*Wassalamu'alaikum Wr. Wb.*

Semarang, August 31<sup>th</sup> 2018

Dean,

A handwritten signature in black ink, consisting of a long, sweeping horizontal line that curves upwards at the right end, ending in a small arrowhead.

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



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# NORMATIVE STUDY OF DISTRIBUTION LAND STATUS FOR BUSINESS RIGHTS

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## ABSTRACT

This study aims to examine and analyze normatively the authority and mechanisms of abandoned land, the utilization of abandoned land, and the roles and responsibilities of notaries / land deed-making officials and government agencies in controlling and exploiting abandoned land and the company licensing process.

This research was conducted with a normative juridical approach, in collecting data from primary materials, laws and regulations, examining legal principles and theories of legal science as well as interviews with parties related to this research problem.

The research concludes in essence: (1). Regulations on Abandoned Land Control are in Government Regulation (PP) Number 11 of 2010 concerning Control and Utilization of Abandoned Land which is followed up by Regulation of the Head of the National Land Agency Number 4 of 2010 concerning Methods of Control of Abandoned Land. Abandoned Land is land that has been granted rights by the state in the form of Property Rights, Business Use Rights, Building Use Rights, Use Rights, and Management Rights, or land tenure rights that are not cultivated, not used, or not utilized in accordance with its condition or nature and the purpose of granting rights or the basis of control. (2). Neglected land control is the process of restructuring abandoned land so that it can be used optimally for the benefit of the community and the state. The control of abandoned land is carried out by the stages of an inventory of land rights or the basis of control over land that is indicated as neglected, identification and examination of indicated abandoned land, warning to rights holders, determination of abandoned land and an inventory of lands with indications of neglect. (3). The responsibility of the Government, in this case the Regional Office of the National Land Agency, the Land Office, the Regional Government and the related institutions that are members of the Committee C, must be responsible and serve in accordance with Government Regulation No. 11 of 2010 and Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 4/2010 in order to control abandoned land, then notary / PPAT plays a role in company licensing, company establishment, GMS, amendments to AD / ART, and transfer of land rights requested by the company.

Keywords: Normative Studies, Abandoned Land Control, Business Use Rights, Sambas Regency.

## A. INTRODUCTION

In the study of agraria law, we know that control of land by the state is interpreted as the authority of the state to regulate the designation and use of the land, so that it can provide maximum benefits for the welfare of the people at large. With the occurrence of land registration by land rights holders, in this case the land use rights holders, through Article 12 PP Number. 40 of 1996, states:

- (1) Holders of land use rights are obliged to:
  - a. Paying income to the State
  - b. Carrying out farming, plantation, fishery, and / or livestock businesses according to the designation and requirements as stipulated in the decision to grant their rights;
  - c. Cultivate land use rights for business properly in accordance with business feasibility based on the criteria determined by the technical agency;
  - d. Build, maintain environmental infrastructure and land facilities in the area of land use rights

- e. Maintaining soil fertility, preventing damage to natural resources, and preserving the ability of the environment in accordance with applicable laws and regulations;
  - f. Submit a written report at the end of each year regarding the use of land use rights.
  - g. Submitting land granted with land use rights to the state after the land use rights are abolished.
- (2) Holders of land use rights are prohibited from surrendering exploitation of land use rights to other parties, except in cases permitted under the prevailing laws and regulations.

Legal products are in the form of Government Regulations, namely through Government Regulation Number. 11 of 2010, concerning Control and Utilization of abandoned land, which is followed up by the decision of the head of the National Land Agency of the Republic of Indonesia Number 4 of 2010 concerning Procedures for Control of Abandoned Land. In PP Number. 11 of 2010 which is referred to by this, there is not a single article that states the boundaries of abandoned land, it's just that it is stated in Article 2, which states:

"The object of control over abandoned land includes land that has been granted rights by the State in the form of ownership rights, business use rights, building use rights, use rights, and management rights, or land control bases that are not exploited, not used, or are not used according to the circumstances or the nature and purpose of granting rights or the basis for their control. "

And further Article 3 states:

Not included in the object of controlling abandoned land as referred to in Article 2 are:

- a. Freehold land or building use rights in the name of an individual which are not deliberately used in accordance with the circumstances or nature and purpose of granting the right; and
- b. Land that is controlled by the government, either directly or indirectly, by the State / Region which is not deliberately used in accordance with the circumstances or the nature and purpose of the granting of its rights.

In connection with the provisions of Article 2 and article 3 of PP No.11 of 2010, we can clarify again in Article 1 and 6, it is stated that abandoned land is land that has been granted rights by the state in the form of property rights, business use rights, building use rights. Use rights and management rights or basic control over land that is not exploited, not used, or is not used according to the circumstances or the nature and purpose of granting rights or the basis for control over land.

In connection with developments in the land sector which have recently become a discussion in various groups leading to vertical and horizontal conflicts in the land sector, especially in the plantation business and land use which has been given many indications of neglect, especially in Sambas Regency. Based on this description, the formulation of the problem can be proposed as follows:

1. What is the Regulation of Abandoned Land Control Based on Government Regulation Number 11 of 2010 concerning Control and Utilization of Abandoned Land in Sambas Regency?
2. How to Effort Handling of Control or Ownership of Abandoned Land Based on Government Regulation Number 11 Year 2010 in Sambas Regency?
3. What are the Responsibilities of Notaries / Land Deed Making Officials and Related Agencies in Control and Utilization of Abandoned Land and Company Licensing Processes in Sambas Regency?

## **B. DISCUSSION OF PROBLEMS**

### **1. Abandoned Land Control Arrangements**

- a) Authority Rules for Control of Abandoned Land.

Abandoned land control is regulated in Government Regulation Number 11 of 2010 concerning Control of Abandoned Land, which is followed up by Regulation of the Head of the National Land Agency Number 4 of 2010 concerning Procedures for Controlling Abandoned

Land. In accordance with Article 3 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 4 of 2010, it is stated that the control of abandoned land as referred to in Article 5 states that the identification and research of indicated abandoned land is carried out by Committee C which consists of elements of the National Land Agency and elements of related agencies, in the event that These are the Regional Office of the National Land Agency of West Kalimantan Province, the Land Office of Sambas Regency, the Government of Sambas Regency and related agencies in West Kalimantan Province and Sambas Regency.

PeThese stipulations and arrangements include land use planning, tenure and legal actions regarding land. The authority in the land sector which is stipulated in the UUPA as the authority of the Central Government is based on several things, first, the entire territory of Indonesia is a unitary homeland of all Indonesian people who are united as the Indonesian nation. Second, the entire earth, water and space including the natural resources contained therein are the earth, water and space of the Indonesian nation and constitute national assets. Third, the relationship between the Indonesian nation and earth, water and space is eternal. Thus the authority to administer the land sector rests with the State, which in its implementation is carried out by the Central Government.

#### **b) Neglected Land Control Mechanism**

In carrying out actions to control abandoned land, the government must pay attention to the general principles of good governance, in identifying and examining abandoned land which includes: the name and address of the right holder; location, area, status of rights or basis of control over land and physical condition of the land controlled by the right holder, and the conditions that cause the land to be abandoned. In determining the sanctions there is a balance to the obligations that are violated, especially if you look at the provisions of Government Regulation No.11 of 2010 that do not regulate the compensation received by right holders who cannot carry out their obligations. In PP No. 11/2010 and Head of BPN Regulation No.

1. the entire expanse of land right / basis of control is abandoned or 100% neglected;
2. mostly displaced, with a range of > 25% - <100% neglected, and
3. a small proportion are displaced, with a range of ≤ 25% neglected.

Based on the data obtained, the percentage of land that has a Business Use Permit by PT Sungai Deras Sejahtera, whose business license is located in Sungai Rusa Village, Selakau District, Sambas Regency, covers an area of 55.84 hectares. From this area, it can be explained that:

1. Land that has been utilized according to SK 38.55 Ha or 69.04%.
2. Land that is not used according to SK 4.99 Ha or 8.94%
3. Unused / untapped land 12.30 Ha or 22.02%
4. The area of abandoned land (2 + 3) 17.29 Ha or 30.96.

## **2. Efforts to Control and Control Abandoned Land Utilization**

The efforts of the Sambas Regency Government and the Sambas Regency land agency and related agencies have increased revenue and invested land use rights that are indicated as neglected. As a next step these abandoned lands will be utilized for the benefit of the community. 11/2010, states that the allotment of control, ownership, use and utilization of state land which is formerly abandoned land is utilized for the benefit of the community through agrarian reform, state strategic programs, and for other State reserves. However, the reality is that Sambas District has not yet been designated as abandoned land, this is the role and responsibility of government agencies still need to be improved.

## **3. Roles and Responsibilities of Notary / PPAT, Government in Control and Utilization of Abandoned Land and in the Company Licensing Process.**

In connection with the implementation of control and utilization of abandoned land in Sambas Regency, that Government Agencies and Institutions related to the control of abandoned land that are members of Committee C have carried out a task and responsibility in accordance with Government Regulation Number 11 of 2010, namely conducting material preparation, formulating, implementing policies, drafting standard norms, procedures and criteria, and providing technical guidance and supervision as well as monitoring, evaluating and reporting activities on control and determination of abandoned land. However, in its implementation in the field, especially in Sambas Regency, at this time it has not reached the determination of abandoned land, only the identification of indicated abandoned land has been carried out by Committee C, for example at PT.

Notary or PPAT does not play much role in controlling abandoned land, but Notary / PPAT only plays a role and is responsible for making Deed of Establishment of Legal Entity, Change of Legal Entity, Transfer of Shares. Furthermore, in the Notary Position Law No.2 of 2014 concerning the Position of Notary, abbreviated as UUJN, it is the legal basis for the Notary as the only official authorized to make authentic deeds regarding all actions, agreements and stipulations as long as the deed acts by a general regulation are not also assigned or excluded from officials or other people. So the notary cannot refuse the deed if asked to him unless there is a basic reason.

### C. CLOSING

1. The regulation on abandoned land is based on Government Regulation No. 11/2010 concerning Control and Utilization of Abandoned Land, this is intended to overcome neglect of land that occurs in the Republic of Indonesia as in Sambas Regency. In this case in Sambas Regency, there are business use rights, building rights, usage rights, management rights and / or those that already have a basic use of land and are given by the state to individuals, private legal entities, and to public legal entities (government).
2. In connection with efforts to control abandoned land as stated in PP. 11/2010 where the National Land Agency obtained the authority of a delegation from the government, in this case the President. In addition, the Regional Office of the West Kalimantan National Land Agency, the Land Office of Sambas Regency, the Regional Government and Government Agencies of Sambas Regency relating to the allotment of land collected by a container, namely committee C, is to obtain sub-delegation authority from the Head of the National Land Agency of the Republic of Indonesia. Meanwhile, the mechanism for controlling abandoned land is carried out by forming committee C, which then carries out an inventory of lands with indications of neglect, identifies and studies indicated abandoned lands, gives warnings to rights holders,
3. With the responsibility of the Government in carrying out the control of abandoned land, the Regional Head of Regional Office forms a Committee C consisting of elements from the West Kalimantan Provincial Office, the Sambas Regency Land Office, the Sambas Regency Government and Agencies relating to the designation of the land concerned. In its implementation, it refers to Government Regulation No. 11 of 2010 and Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 4/2010, especially in Sambas Regency, until now it has only been limited to an inventory of abandoned lands, warnings, however the proposal for the determination of abandoned land from the Regional Office of West Kalimantan Province to the Head of the Republican National Land Agency has not been designated as abandoned land.

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