

[All issues](#) ▶ Volume 54 (2018)

[◀ Previous issue](#)

[Table of Contents](#)

[Next issue ▶](#)

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## SHS Web of Conferences

Volume 54 (2018)

### The 1<sup>st</sup> International Conference on Law, Governance and Social Justice (ICoL GaS 2018)

Purwokerto, Indonesia, September 25-26, 2018

A. Raharjo and T. Sudrajat (Eds.)

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[PDF \(46.7 KB\)](#)

✓ Gender, Minority and Human Right

✓ Administrative Law

✓ Local Wisdom

✓ Business, Comercial and Corporate Law

✓ Criminal Justice System

✓ Criminal Law

## - *Constitutional Law*



Open Access

### [Analysis of Reduction of Authority of The Constitutional Court Through The Law on General Election](#) 01001

Budiman N.P.D Sinaga and Sahat H.M.T Sinaga

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185401001>

[PDF \(169.8 KB\)](#) | [References](#)



Open Access

### [The Development of Regional-Head Election Concept without Suspect](#) 01002

Muhammad Anwar Tanjung, Retno Saraswati and Lita Tyesta ALW

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185401002>

[PDF \(256.3 KB\)](#) | [References](#)



Open Access

### [The Settlement of Boundary Disputes Through Testing of Legislation in Indonesia](#) 01003

Suparto and Rahdiansyah

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185401003>

[PDF \(215.5 KB\)](#) | [References](#)



Open Access

### [Correlation Between Constitutional Changes and Development Paradigm on Regional Development Planning](#) 01004

Titut Amalia, Yos Johan Utama and Ani Purwanti

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185401004>

[PDF \(251.6 KB\)](#) | [References](#)



Open Access

### [Local Regulation Cancellation Mechanism and its Legal Consequence based on \*Lex Superiori Deregot Legi Inferiori\* Principle in Economy](#) 01005

Asri Agustiwi, Isharyanto and Hartiwiningsih

[PDF \(261.1 KB\)](#) | [References](#)

---

☐ Open Access

[The Position of President and Vice President of Republic of Indonesia, After 3<sup>rd</sup> Amendment Constitution 1945, Correlated with The 4<sup>th</sup> Principle of Pancasila](#) 01006

Yoyon Mulyana Darusman

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185401006>

[PDF \(233.7 KB\)](#) | [References](#)

### ***- Gender, Minority and Human Right***

☐ Open Access

[Migrant Workers' Village as an Effort to Strengthen The Rights of Indonesian Migrant Workers](#) 02001

Devi Rahayu

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185402001>

[PDF \(169.0 KB\)](#) | [References](#)

---

☐ Open Access

[Legal Protection of Children with HIV that Infected from Mother Transmission in Perspective on Human Rights \(Case Study in Cianjur District\)](#) 02002

Trini Handayani and Tanti Kirana Utami

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185402002>

[PDF \(236.1 KB\)](#) | [References](#)

---

☐ Open Access

[Government and Aesthetic Beauty Clinic's Responsibility in Fulfilling the Citizens' Constitutional Right to the Service of Aesthetic Beauty Clinic in Indonesia](#) 02003

Siska Diana Sari, I Gusti Ayu Ketut Rachmi Handayani and Pujiyono

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185402003>

[PDF \(204.7 KB\)](#) | [References](#)

---

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[Rethinking Cadar Banning in Indonesia's Higher Education: Questioning Freedom of Religion and Positioning Fear of Radicalism](#) 02004

Budi Kurniawan

[PDF \(223.7 KB\)](#) | [References](#)

---

 Open Access

### [A Gap Between Right to Live Protection and Death Penalty in Indonesia \(Judges Decision on Cases Threatened Death Penalty\)](#) 02005

Febrian, Nurhidayatuloh, Helena Primadianti, Ahmaturrahman and Fatimatuz Zuhro

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185402005>

[PDF \(197.6 KB\)](#) | [References](#)

---

 Open Access

### [The Attempt to Human Rights Protection Through Judicial Review in Indonesia](#) 02006

Riris Ardhanariswari, Muhammad Fauzan and Ahmad Komari

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185402006>

[PDF \(147.7 KB\)](#) | [References](#)

---

 Open Access

### [The Importance of Female Judge Representation in the Constitutional Court of Indonesia to Achieve Gender Equality during Judicial Review Procedure](#) 02007

Natasya Fila Rais

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185402007>

[PDF \(146.5 KB\)](#) | [References](#)

---

 Open Access

### [A Review of The “Head Of The Family” Concept From The Family Law, Gender Perspective](#) 02008

Wahyuni Retnowulandari

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185402008>

[PDF \(319.8 KB\)](#) | [References](#)

---

 Open Access

### [Gender-based Religious Democracy: A Study of Umi Azizah’s Winning and Women Political Movement of Tegal Regent Election in 2018](#) 02009

Zaki Mubarok

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185402009>



Open Access

### [Legal Politic of Gender Responsive Election System \(A Concept\)](#) 02010

Ristina Yudhanti, Adi Sulistiyono and Isharyanto

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185402010>

[PDF \(189.1 KB\)](#) | [References](#)

---



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### [The Importance of Revising Policy of Minimum Age of Marriage: A Philosophical, Sociological and Juridical Argumentation](#) 02011

Siti Rofiah

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185402011>

[PDF \(221.5 KB\)](#) | [References](#)

---



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### [Pancasila as a Scientific Paradigm for Studying Legal Pluralism in Indonesia: a Literary Perspective](#) 02012

Sudjito and Tatit Hariyanti

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185402012>

[PDF \(197.5 KB\)](#) | [References](#)

---

## **- Administrative Law**



Open Access

### [The Existence of Legal Protection of Citizens to Government Action in Making Decision of State Administrative](#) 03001

Enny Agustina

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403001>

[PDF \(135.7 KB\)](#) | [References](#)

---



Open Access

### [Quo Vadis Reclamation Policy Development Bay Of Jakarta](#) 03002

Trubus Rahardiansah

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403002>

[PDF \(122.3 KB\)](#) | [References](#)

### [Design of Social Justice In Administrative Courts](#) 03003

Indriati Amarini

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403003>

[PDF \(183.7 KB\)](#) | [References](#)

---

 Open Access

### [Preventing Maladministration on Issuing Mining License \(a Case Study in Southeast Sulawesi, Indonesia\)](#) 03004

Oheo K. Haris, Rizal Muchtasar and Sahbudin

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403004>

[PDF \(323.8 KB\)](#) | [References](#)

---

 Open Access

### [The Analysis of Administrative Law to the Government Policy about Tax Exemption of Waqf Land Certification](#) 03005

Islamiyati, R. Bondan Agung Kardono and Aditya Wirawan

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403005>

[PDF \(189.4 KB\)](#) | [References](#)

---

 Open Access

### [The Role of Administrative Court in Settlement Administrative Dispute of General Election.](#) 03006


Ayu Putriyanti

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403006>

[PDF \(145.2 KB\)](#) | [References](#)

---

 Open Access

### [State Administrative Court as a Means to Realize Justice](#) 03007

Weda Kupita

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403007>

[PDF \(148.0 KB\)](#) | [References](#)

---

 Open Access

### [Privatization of State Owned Enterprises in The Welfarestate Perspective](#) 03008

Tuti Widyaningrum and Rike Yunita Budi Hutami

[PDF \(107.1 KB\)](#) | [References](#)



Open Access

### [The Dynamics of Paddy Land Legal Policy in Indonesia](#) 03009

Sri Wahyu Handayani, Siti Kunarti and Supriyanto

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403009>

[PDF \(181.3 KB\)](#) | [References](#)



Open Access

### [Harmonization of Granting Land Rights for Investment in Land-Law Perspectives in Indonesia](#) 03010

Fifik Wiryani, Mokhammad Najih, Rizkahana Yuliansari and Asri Rezki Saputra

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403010>

[PDF \(180.9 KB\)](#) | [References](#)



Open Access

### [The Moral Panic of Environmental Crime in the Geothermal Exploration Project in Banyumas](#) 03011

Arif Awaludin

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403011>

[PDF \(284.8 KB\)](#) | [References](#)



Open Access

### [Community Knowledge Related to Mangrove Conservation Law Products](#) 03012

Eny Sulistyowati and Pudji Astuti

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403012>

[PDF \(94.25 KB\)](#) | [References](#)



Open Access

### [The Use of Forest Areas for Infrastructure Development under Leasehold Forest Area License: A Sustainable Development Perspective](#) 03013

Suhadi

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403013>

[PDF \(148.6 KB\)](#) | [References](#)

## [The Effectiveness of Hospital Accreditation Implementation as a Protection Effort on Patient Information Rights](#) 03014

Anggraeni Endah Kusumaningrum

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403014>

[PDF \(161.9 KB\)](#) | [References](#)

---

 Open Access

## [Fraud in Healthcare Service](#) 03015

Dara Pustika Sukma, Adi Sulistiyono and Widodo Tresno Novianto

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DOI: <https://doi.org/10.1051/shsconf/20185403015>

[PDF \(178.9 KB\)](#) | [References](#)

---

 Open Access

## [Legal Analysis of Hospital Dispute Settlement through Mediation by Provincial Hospital Supervisory Board \(BPRS\)](#) 03016

Nurani Ajeng Tri Utami

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403016>

[PDF \(101.8 KB\)](#) | [References](#)

---

 Open Access

## [Transformation of Social Security Administrative Body \(BPJS\) within Social Security Reform in Indonesia](#) 03017

Siti Kunarti, Tedi Sudrajat and Sri Wahyu Handayani

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403017>

[PDF \(162.5 KB\)](#) | [References](#)

---

 Open Access

## [Discretion as Freedom of Action in Administering Governance](#) 03018

Siti Kunarti and Kartono

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403018>

[PDF \(241.1 KB\)](#) | [References](#)

---

 Open Access

## [Legal Issues in The Implementation of National Social Security System on Labour in Indonesia](#) 03019

Tedi Sudrajat, Siti Kunarti and Abdul Aziz Nasihuddin



[PDF \(156.9 KB\)](#) | [References](#)

---



Open Access

### [Agrarian Justice and Indonesian Law](#) 03020

Laurens Bakker

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DOI: <https://doi.org/10.1051/shsconf/20185403020>

[PDF \(361.3 KB\)](#) | [References](#)

---



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### [Standard Issuance of Circular Letters in The Implementation Of Judicial Power](#) 03021

Rahadi Wasi Bintoro, Abdul Shomad and Trisadini Prasastinah Usanti

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185403021>

[PDF \(139.5 KB\)](#) | [References](#)

---

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Rani Hendriana

Published online: 14 November 2018

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[PDF \(172.6 KB\)](#) | [References](#)

---



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### [Local Economic Development Manifesto: Policy Analysis on the Implementation of Village-Owned State Enterprises](#) 04002

Ulil Afwa

Published online: 14 November 2018

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[PDF \(302.4 KB\)](#) | [References](#)

---



Open Access

### [Strengthening Indigenous Law to Make a Sustainable Development of the Coastal Area and Small Islands in Indonesia](#) 04003

Nurul Huda, A.H. Asy'ari T., Yusuf Saefudin and Muhammad Bahrus Syakirin

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185404003>

[PDF \(239.7 KB\)](#) | [References](#)

## [An Analysis of the Justice Values to Legal Protection for Traditional People from Coastal Reclamation Threat in Coastal Areas](#) 04004


Rina Yulianti, Safi and Murni

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185404004>

[PDF \(193.8 KB\)](#) | [References](#)

---

 Open Access

## [Social Work Penalty as the Alternative of Imprisonment](#) 04005


Kuat Puji Prayitno, Dwi Hapsari Retnaningrum and Rani Hendriana

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185404005>

[PDF \(173.3 KB\)](#) | [References](#)

---

 Open Access

## [Dialogue Model For Resolving Freedom of Religion Conflict](#) 04006

Rini Fidiyani and Erni Wulandari

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185404006>

[PDF \(189.4 KB\)](#) | [References](#)

---

### **- *International Law***

 Open Access

## [Violation on State Sovereignty by Military and Paramilitary Activities on Nicaragua vs United States Case](#) 05001

Nina Zainab, Dewa Nyoman Agung Noviardi and Fadilla Farhan Eka Buana ZK

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185405001>

[PDF \(158.8 KB\)](#) | [References](#)

---

 Open Access

## [The Cultural Genocide in Australia: A Case Study of the Forced Removal of Aborigine Children from 1912-1962](#) 05002

Nuriyeni Kartika Bintarsari

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185405002>

[PDF \(200.6 KB\)](#) | [References](#)

---

 Open Access

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DOI: <https://doi.org/10.1051/shsconf/20185405003>

[PDF \(188.0 KB\)](#) | [References](#)



Open Access

### [Analysis of International Law on Human Trafficking with Children as The Victims](#) 05004

Noer Indriati

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185405004>

[PDF \(247.0 KB\)](#) | [References](#)



Open Access

### [Construction of International Threat on UN Charter to Prevent an Unjust War](#) 05005

Arief Rachman Hakim, Elisabeth Septin Puspoayu and Dananggana Satriatama

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185405005>

[PDF \(198.3 KB\)](#) | [References](#)



Open Access

### [Accountability: State Capacity in Upholding the Rights of Indigenous Peoples in Malaysia](#) 05006

Rohaida Nordin

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185405006>

[PDF \(248.4 KB\)](#) | [References](#)



Open Access

### [Intolerance Acts in Philippines and Indonesia: a Comparative Study](#) 05007

Clara Ignatia Tobing and Nestor C. Nabe

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185405007>

[PDF \(280.9 KB\)](#) | [References](#)



Open Access

### [Paradoxical Analysis of the Existence of the Indonesian Archipelagic Sea Lane Against the Ideal of the World Maritime Axis](#) 05008

Siti Merida Hutagalung and Ruth Hanna Simatupang

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185405008>

[PDF \(171.3 KB\)](#) | [References](#)

## [Comparative Legal Research : Consumer Legal Term In The Article 1 Number 2, Law No. 8, 1999 – Indonesia VS. Chapter I Article 2, Law No. 8078 – Brazil](#) 05009

Junita Kaseme Tan, Dennis Darmawan Jo, Arni Winarsih, Kiki Kusumawati and Yongki Sidharta Gunawan

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185405009>

[PDF \(195.5 KB\)](#) | [References](#)

### **- Business, Comercial and Corporate Law**

 Open Access

## [Legal Responsibilities of the Boards of Directors of Persero State-Owned Enterprises Agency towards Losses Conducted by Directors' Loss](#) 06001

Susanto

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406001>

[PDF \(229.1 KB\)](#) | [References](#)

---

 Open Access

## [Implementation of Personality Principle in the Termination of Village Ground Treasure Utilization No. 143/1728 Between PB. Rancah Karya and Catur Tunggal Village Government](#) 06002

Umar Haris Sanjaya and Tedy Kuswara

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406002>

[PDF \(264.7 KB\)](#) | [References](#)

---

 Open Access

## [Fintech Indonesia User Legal Protection in Balance Borrowing Money Based on Information Technology](#) 06003

Sulistiyandari

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406003>

[PDF \(139.0 KB\)](#) | [References](#)

---

 Open Access

## [Insolvency within Bankruptcy: The Case in Indonesia](#) 06004

M Fauzi

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406004>

[PDF \(185.4 KB\)](#) | [References](#)

---

### [Private Port and Shipyard Operation in Padalarang Central Sulawesi](#) 06005

Agus Lanini

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406005>

[PDF \(156.3 KB\)](#) | [References](#)

☐ Open Access

### [The Development of Tax Law Application Formula in Indonesia from IRAC into IREAC](#) 06006

Agus Suharsono and Burhanudin Harahap

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406006>

[PDF \(324.8 KB\)](#) | [References](#)

☐ Open Access

### [Government Policies To Improve Tobacco Farmers Business Results](#) 06007

Hezron Sabar Rotua Tinambunan and Hananto Widodo

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406007>

[PDF \(149.2 KB\)](#) | [References](#)

☐ Open Access

### [Model of Entrepreneurship for People with Disabilities](#) 06008

S Eko Putro Widoyoko, Budi Setiawan, Khabib Sholeh and Muh. Ibnu Shina

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406008>

[PDF \(274.3 KB\)](#) | [References](#)

☐ Open Access

### [Empowerment of Small to Medium Enterprises using Franchise Takeover Model](#) 06009

Dewi Sulistianingsih, Pujiono and Rini Fidiyani

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406009>

[PDF \(184.6 KB\)](#) | [References](#)

☐ Open Access

### [Legal Protection for Consumers on Unlabelled Processed Food from Seaweed in Brebes Regency](#) 06010

Dwi Edi Wibowo and Benny Diah Madusari

Published online: 14 November 2018



Open Access

### [Legal Protection for Consumers in On Sale Purchase Agreement](#) 06011

Dharu Triasih, B. Rini Heryanti and Endah Pujiastuti

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406011>

[PDF \(102.6 KB\)](#) | [References](#)



Open Access

### [The Political Law of Government in Responding to The Development of Online Transportation in Indonesia](#) 06012

Ashintia Sekar Bidari

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406012>

[PDF \(112.8 KB\)](#) | [References](#)



Open Access

### [Legal Protection on Indigenous Herbs of Madura through Geographical Indications](#) 06013

Habib Adjie, Tanudjaja, Woro Winandi and Moh. Saleh

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406013>

[PDF \(236.4 KB\)](#) | [References](#)



Open Access

### [Legal Protection of the Registered Trademark Owner in the Constitutive System \(First to File\) in Indonesia](#) 06014

Raden Murjiyanto

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406014>

[PDF \(176.7 KB\)](#) | [References](#)



Open Access

### [The Importance of Sea Boat as a Supporting Transportation Facility for People and Goods](#) 06015

Elfrida R Gultom

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185406015>

[PDF \(167.2 KB\)](#) | [References](#)

 Open Access

## [Legal Philosophy of Pancasila as The Paradigm of The Criminal Justice System: A Philosophical Criticism for the Loss of a Sense of Humanity](#) 07001

Rocky Marbun, Abdul Hakim and M. Adystia Sunggara

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185407001>

[PDF \(218.8 KB\)](#) | [References](#)

 Open Access

## [Criticism of The Juridical Positivism Paradigm on The Meaning of Pornography In The Judge Mindset](#) 07002

Erni Wulandari and Rini Fidiyani

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185407002>

[PDF \(152.1 KB\)](#) | [References](#)

 Open Access

## [Optimization of The Role of State Storehouse for Seized Goods \(RUPBASAN\) Expansion of The Authority in The Perspective of Integrated Criminal Justice System](#) 07003

Irma Cahyaningtyas

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185407003>

[PDF \(195.2 KB\)](#) | [References](#)

 Open Access

## [The Dominance and Influence of Positivism Paradigm on Judicial Decision Making](#) 07004

Tri Laksmi Indreswari

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185407004>

[PDF \(199.2 KB\)](#) | [References](#)

 Open Access

## [Cyber Bullying Among Law Student: How They Deal With It, Understand and Apply The Law](#) 07005

Antonius PS Wibowo

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185407005>

[PDF \(269.5 KB\)](#) | [References](#)

 Open Access

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185407006>

[PDF \(192.0 KB\)](#) | [References](#)

---

 Open Access

### [Supporting and Inhibiting Factors the Application of Diversion Programs to Cases of Child Sexual Violence in the Juvenile Justice System in Indonesia](#) 07007

Setya Wahyudi and Angkasa

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185407007>

[PDF \(273.5 KB\)](#) | [References](#)

---

 Open Access

### [Sex Massage Therapy at Spa: A New Form of Prostitution](#) 07008

I Wayan Gde Wiryawan and Dewi Bunga

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185407008>

[PDF \(135.5 KB\)](#) | [References](#)

---

 Open Access

### [Corporate Criminal Liability Under the \*Reactive Corporate Fault\* to Achieve \*Good Corporate Governance\* in Indonesia](#) 07009

Budi Suhariyanto

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185407009>

[PDF \(118.1 KB\)](#) | [References](#)

---

 Open Access

### [Termination of Pretrial Process upon Commencement of the Subject Matter in the Indonesian Criminal Justice System Perspective](#) 07010

Tolib Effendi and Ria Karlina Lubis

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185407010>

[PDF \(193.7 KB\)](#) | [References](#)

---

 Open Access

### [Revitalization of Customary Court in the Juvenile Criminal Justice System in Indonesia](#) 07011

Nur Rochaeti and Rahmi Dwi Sutanti



[PDF \(192.5 KB\)](#) | [References](#)



Open Access

### [Access to Justice for the Disability Women as Victims in the Criminal Justice System](#) 07012

Cahya Wulandari

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185407012>

[PDF \(199.1 KB\)](#) | [References](#)



Open Access

### [The Prevention of Gratification in the District Court](#) 07013

Hibnu Nugroho

Published online: 14 November 2018

DOI: <https://doi.org/10.1051/shsconf/20185407013>

[PDF \(207.7 KB\)](#) | [References](#)

## **- Criminal Law**



Open Access

### [Problems of Diversion System Application in The Case of Children as Actorscrime of Narcotics are Based Restorative Justice](#) 08001

Frans Simangunsong

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### [Problems in Deciding the Case of Narcotics Abuse \(The application of Article 127 of Law No. 35 of 2009 on Narcotics\)](#) 08003

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## [Legal Protection for Cyber Crime Victims on Victimological Perspective](#) 08004


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Naqiyah and Nita Triana

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Ristati M. Yahya, Khairawati M. Hanafiah, Nurlela Ima Abdullah and Zulham Ibrahim

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Dwi Hapsari Retnaningrum

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### [The Tipikor Trial Model Based on IT In implementation of The Hearing on The Islands To Be Fast, Lightweight Cost and Simple](#) 08010

Sulistiyanta, Sebastianus Adi Santoso Mola, Fredyk M Haba Djingi and Fatma Ayu Jati Putri

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Vience Ratna Multi Wijaya

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### [Optimization of The Village Roles in Countermeasure to Criminal Acts of Human Trafficking](#) 08012

Erma Rusdiana, Eny Suastuti and Syamsul Fatoni

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Ermania Widjajanti and Rusmilawati Windari

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### [Legal Professions as the Reporting Parties in Anti-Money Laundering Regime: How Can Professions Actively Contribute?](#) 08014

Go Lisanawati, Njoto Benarkah and Yoan Nursari Simanjuntak

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Agus Raharjo, Luthfi Kalbu Adi and Yusuf Saefudin

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Ali Masyhar

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Rusmilawati Windari, Supanto and Widodo Tresno Novianto

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### [Investigation System Reform in Settling Smuggling Crime](#) 08018

Deaf Wahyuni Ramadhani, Supanto and Hartiwiningsih

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### [Hubbul Waton Minal Iman as Reinforcement Theorem of State Defense in the Context of Terrorism Prevention in Indonesia](#) 08019

Slamet Tri Wahyudi

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**PROCEEDING THE 1<sup>ST</sup> INTERNATIONAL CONFERENCE ON LAW, GOVERNANCE AND SOCIAL JUSTICE  
(ICOL GAS 2018)**

**SEPTEMBER 25 -26, 2018, PURWOKERTO, CENTRAL JAVA, INDONESIA**

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## **Foreword**

On behalf of Faculty of Law Jenderal Soedirman University, I would say thank you to all scientists, practitioner, and delegation from various institutions who attended the 1<sup>st</sup> International Conference on Law, Governance, and Social Justice (ICoL GaS) 2018. This is the first conference held independently since the birth of Law Faculty in 1981.

The idea of organizing 1<sup>st</sup> ICoL GaS 2018 is based on strong willingness to bring together all scientists and practitioner for solving national issues. In this first conference, the big theme that carried is Law Issues, Governance, and Social Justice. The problem in these three fields are often disturbing the nation in achieving their goals, that is fair and prosperous citizen.

I hope this proceeding can accommodate the ideas from the scientists and practitioner, conference participants and also spread it. We hope you can enjoy this 1<sup>st</sup> ICoL GaS.

Finally, we want to say thank you to all presenter with their willingness and joyfulness send and present their final result or current thinking. Also all non-presenter audience who following this event until finished and contributing the thoughts. Your attendance and presence make this conference held.

Prof. Dr. Ade Maman Suherman, S.H., M.Sc  
Dean of Faculty of Law, Jenderal Soedirman University

## **Preface**

Dear Author(s), 1<sup>st</sup> ICoL GaS participant, esteemed Readers,

First of all, from the deepest of my heart, I would say thank you to all participants in the 1<sup>st</sup> ICoL GaS 2018, held by Faculty of Law, Jenderal Soedirman University, Purwokerto, Central Java Indonesia at Java Heritage Hotel, Purwokerto, Central Java, Indonesia.

Every day, we watch both in TV or Internet, various problem in Indonesia obstructing the progress and goals of the country's achievement, to become Fair and Prosperous citizen. In the other side, the development of the global political environment influences the potentially to state policies as well as challenges in the implementation of fair governance. These important problems require solutions.

The paper on this proceeding are the chosen paper from around 250 papers who entered to the committee and were selected by our scientific ICoL GaS committee. These papers have presented on 1<sup>st</sup> ICoL GaS 2018, September 25 – 26, 2018, came from the key note speakers, academic experts, and practitioners who come from various country and regions. There are a lot of brilliant thinking from the participants written in their papers, and hopefully these papers can give the contribution for the nations in solving various issues as mentioned above, especially in the law, governance, and social justice fields.

We would say thank you to all contributors who have patiently waiting the review result and fix it. We also would say thank you to the Editor team, lay out, and English editors who have reviewing the incoming article patiently and detail, and the result of their works is proceeding 1<sup>st</sup> ICoL GaS served in front of us.

Kami berharap kalian bisa menikmati pertemuan ini dan dapat berjumpa kembali dalam suasana yang lebih semangat, bersahabat dan berbahagia pada penyelenggaraan 2<sup>nd</sup> ICoL GaS 2019 nantinya.

We hope you can enjoy this conference and meet again in more friendly, hilarious, and happiness of further 2<sup>nd</sup> ICoL GaS 2019.

Prof. Dr. Agus Raharjo, S.H., M.Hum  
Chairman



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**RUNDOWN**  
**1<sup>st</sup> International Conference on Law, Governance and Social Justice**  
**ICoL GaS 2018**

Java Heritage Hotel, Purwokerto, Central Java, Indonesia  
 September 25-26, 2018

**DAY I**

**Tuesday, September 25, 2018**

TIME (WIB)	ACTIVITY	LOCATION
07.30 – 08.30	Registration	Lobby 1 <sup>st</sup> Floor Java Heritage Hotel
08.30 – 08.40	Art Performance	3 <sup>rd</sup> Floor Khrisna Ballroom Java Heritage Hotel
08.40 – 08.45	National Anthem Indonesia Raya	
08.45 – 08.50	Recitation of Prayer	
08.50 – 09.30	Opening ceremony and welcoming remarks. 1. Chairperson of organizing committee 2. Dean Faculty of Law Jenderal Soedirman University (Unsoed) 3. Rector Unsoed	
09.30 – 09.45	<ul style="list-style-type: none"> <li>• Mou Signing between Unsoed and University of Limpopo South Africa</li> <li>• Foto Session</li> </ul>	Khrisna Ballroom
09.45 – 09.55	Coffee break	
09.55 – 12.00	Plenary Session 1 1. Prof. Dr. Jaco Barkhuizen University of Limpopo, South Africa 2. Prof. Dr. Sudjito Gadjah Mada University 3. Associate Prof. Dr. Rohaida Nordin Universiti Kebangsaan Malaysia	3 <sup>rd</sup> Floor Khrisna Ballroom Java Heritage Hotel
12.00 – 13.00	Lunch Break and Pray	Lobby 3 <sup>rd</sup> Floor Java Heritage Hotel
13.00 – 15.00	Plenary Session 2 1. Prof. Dr. Muhammad Fauzan Jenderal Soedirman University 2. Assistance Prof. Dr. L.G.H. (Laurens) Bakker University of Amsterdam 3. Prof. Dr. Agus Raharjo Jenderal Soedirman University	3 <sup>rd</sup> Floor Khrisna Ballroom Java Heritage Hotel

**INTERNATIONAL CONFERENCE ON LAW, GOVERNANCE AND SOCIAL JUSTICE 2018**

15.00 – 15.30	Break	-
15.30 – 19.00	City Tour	Sokaraja Purwokerto
19.00 – 19.30	Break	Java Heritage Hotel
19.30 – 21.00	Gala Dinner	Justisia 3 Hall Faculty of Law Unsoed
<b>DAY II</b> <b>Wednesday, September 26, 2018</b>		
<b>TIME (WIB)</b>	<b>ACTIVITY</b>	<b>LOCATION</b>
07.30 – 08.00	Registration	Lobby 2 <sup>nd</sup> Floor Java Heritage Hotel
08.00 – 10.00	Parallel session 1 Room 1 Room 2 Room 3 Room 4 Room 5 Room 6	2 <sup>nd</sup> Floor Arjuna Meeting Room
10.00 – 10.30	Coffee break	Lobby Arjuna Meeting Room
10.30 – 12.30	Parallel session 2 Room 1 Room 2 Room 3 Room 4 Room 5 Room 6	2 <sup>nd</sup> Floor Arjuna Meeting Room
12.30 – 13.00	Lunch Break and Pray	Java Heritage Hotel
13.00 – 15.00	Parallel session 3 Room 1 Room 2 Room 3 Room 4 Room 5 Room 6	2 <sup>nd</sup> Floor Arjuna Meeting Room
15.00 – 15.30	Closing Ceremony	1 <sup>st</sup> floor Yudistira Meeting Room

**PARALLEL SESSION**  
**1<sup>st</sup> INTERNATIONAL CONFERENCE ON LAW, GOVERNANCE**  
**AND SOCIAL JUSTICE (ICoL GaS) 2018**  
 2<sup>nd</sup> floor Java Heritage Hotel | Purwokerto | Indonesia

**Parallel Session 1**

PARALLEL SESSION AND TIME (WIB)	ROOM	TOPIC	PRESENTER
08.00 – 10.00 WIB	1	International law	1. Violation on State Sovereignty by Military and Paramilitary Activities on Nicaragua Vs. United States Case <b>Nina Zainab, Dewa Nyoman Agung Noviardi, and Fadilla Farhan Eka Buana ZK</b> 2. The Cultural Genocide in Australia: A Case Study of the Forced Removal of Aborigine Children From 1912-1962 <b>Nuriyeni Kartika Bintarsari</b> 3. Illegal, Unreported, and Unregulated Fishing as Transnational Organized Crimes <b>Elisabeth Septin Puspoayu and Peni Jati Setyowati</b> 4. Analysis of International Law on Human Trafficking with Child as Victims <b>Noer Indriati</b> 5. Construction of International Threat on UN Charter to Prevent an Unjust War <b>Arief Rachman Hakim, Elisabeth Septin Puspoayu, and Dananggana Satriatama</b>
	2	Criminal Justice System and Law Enforcement	1. Legal Philosophy of Pancasila As The Paradigm of The Criminal Justice System: A Philosophical Criticism for the Loss of A Sense of Humanity <b>Rocky Marbun, Abdul Hakim, and M. Adystia Sunggara</b> 2. Criticism of Juridical Positivism Paradigm on The Meaning of Pornography in the Judge Mindset <b>Erni Wulandari and Rini Fidiyani</b> 3. Optimization of The Role of State Storehouse for Seized Goods (RUPBASAN) Expansion of The Authority in The Perspective of Integrated Criminal Justice System <b>Irma Cahyaningtyas</b> 4. The Dominance and Influence of Positivism Paradigm on Judicial Decision Making <b>Tri Laksmi Indreswari</b> 5. The implementation of Criminal Sanctions toward LGBT through the Qanun in Aceh, Indonesia <b>Muhammad Hamdan, and Eva Syahfitri Nasution</b> 6. Cyber Bullying among Law Student: how they deal with it, understand and apply the law <b>Antonius PS Wibowo</b>
	3	Privat Law and Corporate Law	1. Legal Responsibilities of The Boards of Directors of Persero State-Owned Enterprises Agency Towards Losses Conducted By Directors' Loss <b>Susanto</b>

			<p>2. Implementation of Personality Principle In The Termination of Village Ground Treasure Utilization No. 143/1728 between PB. Rancah Karya dan Catur Tunggal Village Government <b>Umar Haris Sanjaya and Tedy Kuswara</b></p> <p>3. Fintech Indonesia User Legal Protection in Balance Borrowing Money Based on Information Tecnology <b>Sulistiyandari</b></p> <p>4. Insolvency within Bankruptcy: The Case of Indonesia <b>M Fauzi</b></p> <p>5. Private Port and Unlaw Full Operation in Palu Area Central Sulawesi <b>Agus Lanini, Sulbadana and Lembang Palipadang</b></p> <p>6. The Development of Tax Law Application Formula in Indonesia from IRAC into IREAC <b>Agus Suharsono and Burhanudin Harahap</b></p>
	4	Constitutional Law and Decentralization	<p>1. Constitutional Court Existence in Resolving the Internal Disputes of Political Parties in Indonesia (Case Study in Partai Persatuan Pembangunan) <b>Suparto dan Admiral</b></p> <p>2. Local Regulation Cancellation Mechanism and its Legal Consequence based on Lex Superiori Deregot Legi Inferiori Principle in Economy <b>Asri Agustiwi, Isharyanto, and Hartiwiningsih</b></p> <p>3. The Settlement of Boundary Disputes Through Testing of Legislation in Indonesia <b>Suparto and Rahdiansyah</b></p> <p>4. Analysis of Reduction of Authority of The Constitutional Court Through The Law on General Election <b>Budiman N.P.D Sinaga and Sahat H.M.T Sinaga</b></p> <p>5. Correlation Between Constitutional changes and Development Paradigm on Regional Development Planing <b>Titut Amalia, Yos Johan Utama, and Ani Purwanti</b></p> <p>6. The Development of Concept Of Regional-Head Election Without Suspect <b>Muhammad Anwar Tanjung, Retno Saraswati and Lita Tyesta ALW</b></p> <p>7. Legal Politics of Local Government in Democratic Context in Indonesia <b>Anna Triningsih and Oly Viana Agustine</b></p> <p>8. The Position of President and Vice President of Republic of Indonesia, After 3<sup>rd</sup> Amendment Constitution 1945, Correlated with The 4<sup>th</sup> Principle of Pancasila <b>Yoyon Mulyana Darusman</b></p>
	5	Human Right	<p>1. Migrant Workers' Village as an Effort to Strengthen The Rights of Indonesian Migrant Workers <b>Devi Rahayu</b></p> <p>2. Legal Protection Of HIV Children That Affected From Mother Transmission In Perspective Human Rights (Case Study In Cianjur District) <b>Trini Handayani and Tanti Kirana Utami</b></p> <p>3. Government and Esthetic Beauty Clinic's Responsibility in Fulfilling the Citizens' Constitutional Right to the Service of Esthetic Beauty Clinic in Indonesia</p>

			<p><b>Siska Diana Sari, I Gusti Ayu Ketut Rachmi Handayani, and Pujiyono</b></p> <p>4. Rethinking Cadar Banning in Indonesia's Higher Education: Questioning Freedom of Religion and Positioning Fear of Radicalism <b>Budi Kurniawan</b></p> <p>5. A Gap Between Right to Live Protection and Death Penalty in Indonesia (Judges Decision on Cases Threatened Death Penalty) <b>Febrian, Nurhidayatulloh, Helena Primadianti, Ahmaturrahman, and Fatimatuz Zuhro</b></p> <p>6. The Attempt to Human Rights Protection Through Judicial Review in Indonesia <b>Riris Ardhanariswari, Muhammad Fauzan, and Komari</b></p> <p>7. The Idea Of Authority Extension Of The Constitutional Court To Prosecute Dissolution of Mass Organization In Indonesia <b>Dody Nur Andriyan</b></p>
	6	Restorative Justice and Rehabilitation	<p>1. The Role of Correctional Center (Bapas) Creates Restorative Justice in Juvenile Justice System in North Sumatera <b>Marlina</b></p> <p>2. Victim Impact Statement Model in Criminal Justice System in Restorative Justice Perspective <b>Hervina Puspitosari, and Bintara Sura Priambada</b></p> <p>3. Problem of Diversion System Application in The Case of Children as Actors Crime of Narkotics are Based Restorative Justice <b>Frans Simangunsong</b></p> <p>4. Supporting and Inhibiting Factors the Application of Diversion Programs to Cases of Child Sexual Violence in the Juvenile Justice System in Indonesia <b>Setya Wahyudi and Angkasa</b></p> <p>5. Rehabilitation of Juvenile Throughout Diversion Institution as an Effort of Recidive Offenses on Juvenile Offenders <b>AM.Endah Sri Astuti, Untung Sri Harjanto and Yasrina Ziliwu</b></p> <p>6. Problems in Deciding the Case of Narcotics Abuse (The application of Article 127 of Law No. 35 Year 2009 on Narcotics) <b>Ruby Hadiarti Johny, Rani Hendriana and Dwi Hapsari Retnaningrum</b></p>

## Parallel Session 2

PARALLEL SESSION AND TIME (WIB)	ROOM	TOPIC	PRESENTER
10.30 – 12.30 WIB	1	International Law	<p>1. Intolerance Acts In the Philippines and Indonesia: A Comparative Study <b>Clara Ignatia Tobing, and Nestor C. Nabe</b></p> <p>2. Paradoxical Analysis of the Existence of the Indonesian Archipelagic Sea Lane Against the Ideal of the World Maritime Axis (A Critical Review of ALKI Regime of Jokowi's Maritime Doctrine) <b>Siti Merida Hutagalung and Ruth Hanna Simatupang</b></p>

			<p>3. Economic Cooperation Agreement: Indonesia and South Korea <b>Ade Maman Suherman and Anisa Rizky Anggalia</b></p> <p>4. Comparative Legal Research : Consumer Legal Term In The Chapter 1 Article 2, Law No. 8, 1999 – Indonesia With Chapter 1 Article 2, Law No. 8078 – Brazil – <b>Junita Kaseme Tan, Arni Winarsih, Dennis Darmawan Jo, Kiki Kusumawati, Yongki Sidharta Gunawan</b></p> <p>5. Female Genital Multilation Practices in Indonesia Between Syariah and International Law <b>Wismaningsih, Ade Maman Suherman and Burhanuddin Harahap</b></p>
	2	<b>Criminal Law and Criminal Justice System</b>	<p>1. Sex Massage Therapy at Spa: A New Form of Prostitution <b>I Wayan Gde Wiryawan and Dewi Bunga</b></p> <p>2. Corporate Criminal Liability Under the Reactive Corporate Fault to Achieve Good Corporate Governance in Indonesia <b>Budi Suhariyanto</b></p> <p>3. Termination of Pretrial Process Upon Commencement of the Subject Matter in the Indonesian Criminal Justice System Perspective <b>Tolib Effendi, and Ria Karlina Lubis</b></p> <p>4. Revitalization of Customary Court in The Juvenile Criminal Justice System in Indonesia <b>Nur Rochaeti, and Rahmi Dwi Sutanti</b></p> <p>5. Clemency As The Way Of Peacemaking Approach Application In Criminal Justice System <b>Umi Rozah and Jaco Barkhuizen</b></p> <p>7. Access to Justice For The Disability Women As A Victims in the Criminal Justice System <b>Cahya Wulandari</b></p>
	3	<b>Business and Comercial Law</b>	<p>1. Government Policies To Improve Tobacco Farmers Business Results <b>Hezron Sabar Rotua Tinambunan and Hananto Widodo</b></p> <p>2. Model of entrepreneurship for people with disabilities <b>Sugeng Eko Putro Widoyoko, Budi Setiawan, Khabib Sholeh, and Muh. Ibnu Shina</b></p> <p>3. Empowerment of Small to Medium Enterprises Using Franchise Take Over Model <b>Dewi Sulistianingsih, Pujiono Pujiono, and Rini Fidiyani</b></p> <p>4. Legal Protection for Cunsumers on Unlabelled Processed Food From Seaweed in Brebes Regency <b>Dwi Edi Wibowo, and Benny Diah Madusari</b></p> <p>5. Legal Protection for Consumers in On Sale Purchase Agreement <b>Dharu Triasih, B. Rini Heryanti, and Endah Pujiastuti</b></p> <p>6. Political Law of the Government in Responding to The Development of Online Transportation in Indonesia <b>Ashinta Sekar Bidari</b></p>



	4	Administrative Law	<ol style="list-style-type: none"> <li>1. The Existence of Legal Protection of Citizens to Government Action in Making Decision of State Administrative <b>Enny Agustina</b></li> <li>2. Quo Vadis Reclamation Policy Development Bay Of Jakarta <b>Trubus Rahardiansah</b></li> <li>3. Design Of Social Justice In Administrative Courts <b>Indriati Amarini</b></li> <li>4. Preventing Maladministration on Issuing Mining License (A Case Study in Southeast Sulawesi, Indonesia) <b>Oheo K.Haris, Rizal Muchtasar and Sahbudin</b></li> <li>5. The Analysis of Administrative Law to the Government Policy about Tax Exemption of Waqf Land Certification <b>Islamiyati, R. Bondan Agung Kardono, and Aditya Wirawan</b></li> <li>6. The Role of Administrative Court in Settlement Administrative Dispute of General Election <b>Ayu Putriyanti</b></li> <li>7. State Administrative Court As a Means to Realize Justice <b>Weda Kupita</b></li> <li>8. Privatization of State Owned Enterprises in the Welfarestate Perspective <b>Tuti Widyaningrum and Rike Yunita Budi Hutami</b></li> </ol>
	5	Gender Equality and Minority Rights	<ol style="list-style-type: none"> <li>1. The Importance of Female Judge Representation in the Constitutional Court of Indonesia in Order to Achieve Gender Equality during Judicial Review Procedure <b>Natasya Fila Rais</b></li> <li>2. "Head of The Family " Review of Family Law, in Gender Perspective <b>Wahyuni Retnowulandari</b></li> <li>3. Gender-based Religious Democracy: A Study of Umi Azizah's Winning and Women Political Movement of Tegal Regent Election in 2018 <b>Zaki Mubarak</b></li> <li>4. Legal Politic of Gender Responsive Election System (A Concept) <b>Ristina Yudhanti, Adi Sulistiyono, and Isharyanto</b></li> <li>5. The Impact of the Law No. 6/2014 on Village to Women Participation in Public Decision-Making Process of Kelurahan Representative Forum in Salatiga <b>Ani Purwanti, Dyah Widjaningsih</b></li> <li>6. The Importance of Revising Minimum Age for Mariage and Dispensation Policy in Act No. 1 of 1974 On Marriage: A Philosophical, Sociological and Juridical Argumentation <b>Siti Rofiah</b></li> </ol>
	6	Victimology, and Legal Assistance	<ol style="list-style-type: none"> <li>1. Legal Protection for Cyber Crime Victims on Victimological Perspective <b>Angkasa</b></li> <li>2. Reforming the Compensation Model to Victims of Crime in Indonesia <b>Hanafi Amran</b></li> </ol>

			<ol style="list-style-type: none"> <li>3. Reconstruction of Integrated Legal System for Protecting the Victims of Domestic Violence in Divorce Cases <b>Naqiyah, and Nita Triana</b></li> <li>4. Legal Assistance by Advocate to Defendant who Can't Afford <b>Dessi Perdani Yuris</b></li> <li>5. The Disappointed of Economic Assistance in Aceh: Study Disempowerment of the Former Free Aceh Movement's Widow – <b>Ristati M. Yahya, Khairawati M. Hanafiah, Nurlela Ima Abdullah, and Zulham Ibrahim</b></li> <li>6. Penal Mediation From The Perspective of Criminal Law (Study of the Settlement of Criminal Cases by Mediation) <b>Dwi Hapsari Retnaningrum</b></li> <li>8. The Tipikor Trial on IT in Implementation of the Hearing The Islands as Fast, Lightweight cost and simple <b>Sulistiyanta, Sebastianus Adi Santoso Mola, Fredyk M Haba Djingi, and Fatma Ayu Jati Putri</b></li> </ol>
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**LUNCH BREAK AND PRAY**  
**12.30 - 13.00 WIB**

**Paralell Session 3**

<b>PARALLEL SESSION AND TIME (WIB)</b>	<b>ROOM</b>	<b>TOPIC</b>	<b>PRESENTER</b>
<b>13.00 – 15.00 WIB</b>	<b>1</b>	<b>Criminal Law and Crime countermeasure</b>	<ol style="list-style-type: none"> <li>1. Children Under The Age as the Victim of Sexual Crimes <b>Vience Ratna Multi Wijaya</b></li> <li>2. Optimazation of The Village Roles in Counter Measure to Criminal Acts of Human Trafficking <b>Erma Rusdiana, Eny Suastuti, and Syamsul Fatoni</b></li> <li>3. Economic Approach To Combat Violence Against Children In Indonesia <b>Ermania Widjajanti and Rusmilawati Windari</b></li> <li>4. Legal Professions As The Reporting Parties In Anti Money Laundering Regime: How Can Professions Actively Contribute? - <b>Go Lisanawati, Njoto Benarkah and Yoan Nursari Simanjuntak</b></li> <li>5. Indonesia's Labor Protection in Singapore from Criminal Acts of Exploitation in the Work Environment <b>Mety Rahmawati</b></li> <li>6. Access to Justice for Victims of Structural Violence in Makassar, South Sulawesi <b>Agus Raharjo, Luthfi Kalbu Adi and Yusuf Saefudin</b></li> </ol>
	<b>2</b>	<b>Criminal Law and Penal Policy</b>	<ol style="list-style-type: none"> <li>1. Likelihood Rating of Fraud Risk in Government Procurement: Prospective Case Study <b>Mustofa Kamal, and Andilo Tohom</b></li> </ol>

			<ol style="list-style-type: none"> <li>2. Non Penal Policy of Terrorism Mitigation in Indonesia <b>Ali Masyhar</b></li> <li>3. Overcoming Corporal Punishment of Children: An Evaluation Toward Indonesian Penal Policy Nowadays <b>Rusmilawati Windari, Supanto, and Widodo Tresno Novianto</b></li> <li>4. Investigation System Reform in Settling Smuggling Crime <b>Deaf Wahyuni Ramadhani, Supanto, and Hartiwiningsih</b></li> <li>5. Relevance of Criminal Law Formulation in The Law of Household Violence Elimination in Indonesia <b>Emmilia Rusdiana and Dewi Setyowati</b></li> <li>6. Hubbul Waton Minal Iman As Reinforcement Theorem Of State Defense In The Context Of Terrorism Prevention In Indonesia <b>Slamet Tri Wahyudi</b></li> </ol>
	3	Bussiness law and Commercial law	<ol style="list-style-type: none"> <li>1. Legal Protection on Indigenous Herbs Of Madura Through Geographical Indications <b>Habib Adjie, Tanudjaja, Woro Winandi, and Moh. Saleh</b></li> <li>2. Legal Protection of the Registered Trademark Owner in the Constitutive System (First to File) in Indonesia <b>Raden Murjiyanto</b></li> <li>3. The Importance of Sea Boat as a Supporting Facility Transportation of People and Goods <b>Elfrida R Gultom</b></li> <li>4. Implication of Article 16 Section (3) Of 28 Year 2018 Copyright as a Fidusia Guarantee Object <b>Budi Hermono</b></li> <li>5. The Law Reform of Solving Waqaf Dispute Based on Pancasila in The Global Era <b>Islamiyati, Achmad Arief Budiman, Dewi Padusi Daengmuri</b></li> <li>6. Problems in the Status of Object Ownership of Ijarah Muntahiyah Bittamlik Financing Contract in Sharia Banking Law <b>Nurul Hikmah</b></li> </ol>
	4	Environmental Law and Administrative Law	<ol style="list-style-type: none"> <li>1. The Dynamics of Paddy Land Legal Policy in Indonesia <b>Sri Wahyu Handayani, Siti Kunarti, and Supriyanto</b></li> <li>2. Harmonization of Grating Land Rights for Investment in Land –Law Perspectives <b>Fifik Wiryani, Mokhammad Najih, Rizkahana Y Damhuri, and Asri Rezki Saputra</b></li> <li>3. The Moral Panic of Environmental Crime in the Geothermal Exploration Project in Banyumas <b>Arif Awaludin</b></li> <li>4. Community Knowledge Related to Mangrove Conservation Law Products <b>Eny Sulistyowati, and Pudji Astuti</b></li> <li>5. The Use of Forest Areas for Infrastructure Development under Leasehold Forest Area License: A Sustainable Development Perspective <b>Suhadi</b></li> <li>6. Court Administration in the Framework of Good Governance <b>Rahadi Wasi Bintoro</b></li> </ol>

			<p>7. A comparative study of spatial policy in Indonesia and the Netherlands <b>Haris Budiman, Anis Mashdurohatun and Eman Suparman</b></p>
	5	Health Law and Administrative law	<p>1. Effectiveness of Hospital Accreditation Implementation As a Protection Effort on Patient Information Rights <b>Anggraeni Endah Kusumaningrum</b></p> <p>2. Fraud in Healthcare Service <b>Dara Pustika Sukma, Adi Sulistiyono, and Widodo Tresno Novianto</b></p> <p>3. Legal Analysis of Hospital Dispute Settlement through Mediation By Provincial Hospital Supervisory Board (BPRS) <b>Nurani Ajeng Tri Utami</b></p> <p>4. Transformation of Social Security Administrative Body (BPJS) within Social Security Reform in Indonesia <b>Siti Kunarti, Tedi Sudrajat, Sri Wahyu Handayani</b></p> <p>5. Discretion as Freedom of Action in Administering Governance <b>Siti Kunarti and Kartono</b></p> <p>6. Legal Issues In The Implementation Of National Social Security System On Labor In Indonesia <b>Tedi Sudrajat, Siti Kunarti and Abdul Aziz Nasihuddin</b></p> <p>7. The Role of Village Consultative Body For the Tourism Development in Baturaden District <b>Kadar Pamuji, Riris Ardhanariswari, and Noor Asyik</b></p>
	6	Prevention Crime and Local Wisdom	<p>1. Prevention of Gratification in the District Court. <b>Hibnu Nugroho</b></p> <p>2. Victim Precipitation Prevention in the Criminal Acts of Fornication and Coition Against Children <b>Rani Hendriana</b></p> <p>3. Local Economic Development Manifesto: Policy Analysis on The Implementation of Village-Owned State Enterprises <b>Ulil Afwa</b></p> <p>4. Strengthening Indigenous Law to Make a Sustainable Development of the Coastal Area and Small Islands in Indonesia <b>Nurul Huda, A.H. Asy'ari, Yusuf Saefudin and Muhammad Bahrus Syakirin</b></p> <p>5. An Analysis of the Justice Values to Legal Protection for Traditional People from Coastal Reclamation Threat in Coastal Areas <b>Rina Yulianti, Safi, and Murni</b></p> <p>6. Social Work Penalty as The Alternative of Imprisonment <b>Kuat Puji Prayitno, Dwi Hapsari Retnaningrum and Rani Hendriana</b></p> <p>7. Dialogue Model for Resolving Freedom of Religion Conflict <b>Rini Fidiyani and Erni Wulandari</b></p>

# Social Work Penalty as the Alternative of Imprisonment

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**Abstract.** Social work penalty is a new type of penalty listed in the draft of KUHP. The purpose of the imposition of social work penalty for the perpetrators is to cause embarrassment for committing such crimes so that to establish a deterrent effect. The imposition of this sanction will reduce the stigmatization of imprisonment, so it is necessary to understand what the background and how the prospect as an alternative to imprisonment is. The method used to solve the problem is the normative juridical method, as well as the aim to be achieved are to contribute ideas to the development of criminal law. Social work penalty is not applied to all criminal acts which are punishable by imprisonment. In addition, the judges are also required to consider several matters, one of which is the defendant's acknowledgement of a crime committed so that the perpetrators realized their mistake(s). If the judge are not careful on applying this punishment, then it is feared that there will be disparities which will harm the perpetrators. It is hoped that with the enactment of the new KUHP, social work penalty can be carried out according to its objectives.

## 1 Introduction and Literature Review

Social work penalty is a new type of penalty listed in the draft of KUHP, which did not exist before in the KUHP. The background to the existence of social work penalty, one of which is based on consideration to reduce the adverse effects of imprisonment. By Bambang Poernomo stated:

“Prison crimes that deprive human freedom deserve attention. On the one hand there is a high percentage of court judge decisions that impose imprisonment on the defendant, on the other hand in its implementation it concerns the human dignity of the prisoner and his position as a citizen or resident of the Republic of Indonesia” [1].

Crucially, to the detrimental effect of imprisonment not only on the ineffectiveness of criminal sanctions, but also on the facilities and infrastructure within the Penal Institution which does not allow all prisoners to get the skills expected. Centre for Detention Studies (CDS) research results show that problems overcrowded cannot yet be resolved, even though they have negative effects that are not simple, including increasing rates of rape and sexual violence, limited resources available to each occupant, and limited resources related to education and job training that have the opportunity to increase the occurrence of crime after detention / imprisonment [2].

Gresham M. Sykes explained the meaning of suffering during his imprisonment as deprivation of liberty, the seizure of property, the seizure of rights to be able to have sexual relations, seizure of autonomy, seizure of security [1]. the suffering of prisoners has not yet been completed even though they have been released from prison because they still face stigma, labels, or labels from the community. Rob White and Fiona Haines, stated:

A labelling approach to the definition of crime argues that crime only really exists when there has been a social response to particular activity which labels that activity as criminal. If there is no label, there is in effect no crime [3].

In order to overcome the adverse effects of imprisonment, it is necessary to look for alternatives to short-term prison sentences. One of them is social work penalty.

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## 2 Objective of the Study

The focus of the research is to find out the reasons why social work penalty is included as one kind of penalties and how its prospect in the future

## 3 Methodology

The method that is being used is normative / doctrinal juridical, with descriptive specification. The data that is being used is secondary data by means of library research. Approach method with historical and conceptual approach. The collected data is analysed qualitatively. Analysis with a qualitative approach makes the quality of the data is vital. By deducting conclusions. According to Soetandyo Wigjosoebroto, in doctrinal legal research, formal logic with deductive syllogism is commonly used [4]. Deduction reasoning is a process of reasoning that departs from the angle of the general statement to arrive at a conclusion that will answer the question [5].

## 4 Discussion

### 4.1. Background of the Social Work Penalty as a Penalty

Why social work penalty appear as one of the fundamental penalty in the KUHP is inseparable from criticism of criminal law, especially in the imposition of criminal sanctions (imprisonment). The overcapacity of prison inmates is one of the benchmarks for the number of judges imposing imprisonment. Marcus Priyo Gunarto stated:

“In terms of law enforcement, overcapacity also occurs because the perception of law enforcers sees criminal sanctions for deprivation of independence as more effective than sanctions for acts or other types of crimes that are not deprivation of liberty [6].

The development of criminal law cannot be separated from the development of human civilization. Even said criminal law is an indicator or indicator of a nation's life.

According to Montesquieu, any punishment that is not born of absolute necessity is despotic [7]. In the criminal law literature according to the pure normative nature of the mind, the discussion of the criminal will always collide at a paradoxal point of conflict, namely that criminal acts on the one hand are held to protect one's interests, but on the other hand it turns out to rape the interests of someone else by giving punishment in the form of suffering to someone [1].

By Rupert Cross and Philip Asterley Jones, crime is defined as a legal wrong remedy for which is the punishment of offender at the instance of the State. Legal wrongs may be civil or criminal, and this distinction depends on that between civil and criminal law. The civil law is primarily concerned with the rights and duties of individuals inter se, whereas the criminal law defines the duties which a person owes to society [8]. Although it has a bad impact, but the view or the nature of the mind to abolish the criminal and criminal law, according to Roeslan Saleh is wrong.

Presented by Roeslan Saleh;

So, if on the one hand criminal law and criminal justice are said to be still useful, while on the other hand the criminal law cannot be abolished or abolished, or we get out of trouble, then nothing else can be done but still stick to the law which contains wavering doubts. Therefore we must be restrained and careful in their use. Criminal law is used only if it is inevitable [9].

The imposition of criminal sanctions cannot be separated from criminal purpose theory. The First Theory is absolute theory [10]. This theory aims to satisfy those who hold grudges both from the people themselves who are harmed or become victims. This theory is primitive. According to Helbert L. Packer there are two versions of absolute theory, namely revenge theory and expiation theory. Revenge means that the criminal is paid back; expiation means that he pays back. The revenge theory treats all crimes as if they were certain crimes of physical violence. The exposition theory treats all crimes as if they were financial transactions [11].

Second, relative theory. The basis for justifying the existence of a criminal according to this theory lies in its purpose. Criminal punishment is not because people make crime but so that people do not commit crime [10]. Regarding the criminal purpose for ordinary crime prevention, it is distinguished between the terms special and general prevention or often also used the terms "special deterrence" and "general deterrence". With special prevention is intended the criminal influence on the convicted person. So the prevention of crime is to be achieved by the criminal by influencing the behavior of the convicted person not to commit another crime. By general prevention is intended to be a criminal influence on society in general. This means that the prevention of crime is to be achieved by the criminal by influencing the behaviour of members of society in general to not commit



criminal acts [10]. From the background of criminal law thinking cannot be abolished because there is a goal of punishment, social work penalty is a way that can be done to achieve that goal.

#### **4.2. The Prospect of Social Work Penalty as the Short-Term Alternative of Imprisonment**

Social work penalty have been implemented in various countries. The results of a study comparing social work penalty in the Netherlands, Poland, and France, there are similarities in the three countries namely placing social work penalty as a fundamental crime. (13). In the RUU KUHP in 2018 the provisions concerning social work penalty are contained in Article 18. The contents of Article 18 principally stipulate that social work penalty is imposed if the defendant will be sentenced to imprisonment of less than 6 months or a fine of the 1st category. From the provisions of this research it can be seen that social work penalty is imposed for minor crimes.

Consideration to impose social work penalty is related to the defendant's recognition of the crime committed, the age of the defendant is appropriate to do work, social history, protection of the defendant's work safety, and the implementation should not be commercialized.

of the several provisions regarding the consideration of criminal imposition of social work, judging from the philosophy of punishment, it is in accordance with the theory of modern punishment which is not merely in the form of a prison, but contains rehabilitation of the perpetrator.

By minimizing the adverse effects of imprisonment, especially short-term imprisonment, the stigma / label / label of the prisoner in the expression once the person is not confident, can be abolished.

One of the main problems in fostering prisoners is that after leaving prison, the community did not accept it, making it difficult for prisoners to live together again to the community.

### **5 Conclusion**

Social work penalty as an alternative penalty to imprisonment in the background by the idea of eliminating the adverse effects of imprisonment on prisoners, reducing the capacity of prison inmates, and achieving criminal objectives. The prospects of social work penalty in the future will greatly support the implementation of a more humane criminal law improvement so that it needs to be implemented. In order that social work penalty is not misused, commitment and integrity from law enforcement officials is needed in its implementation.

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