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**Proceeding of  
Pekalongan International  
Conference on Islamic Studies (PICIS)**

**Realizing**  
**MENTAL**  
**REVOLUTION**

**through Recontruction of Science  
in Islamic Higher Education Institutions**

**Pekalongan, December 17<sup>th</sup> 2016**



IAIN PEKALONGAN

**Postgraduate Program  
IAIN Pekalongan**



**Proceeding of  
Pekalongan International  
Conference on Islamic Studies (PICIS) :**

**Realizing  
Mental  
Revolution**

**through Recontruction of  
Science in Islamic Higher  
Education Institutions**

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## Preface

Director of Postgraduate Program IAIN Pekalongan

All of the praises and gratitude be to Allah Azza Wajalla Who Endlessly Blesses us with His Mercy and His Grant in all kinds of forms; health, prosperity, intelligence, willingness, and even in the form of awareness and an ability to express our gratitude to Him. With His Blessings, the proceeding of Pekalongan International Conference on Islamic Studies (PICIS) 2016 by the theme of “Realizing Mental Revolution through Reconstruction of Science in Islamic Higher Education” could be published.

The theme was chosen because we believe that nation building cannot move forward if we only rely on the change on institutional capacities, without the change on human resources, the ones who actually run the institutions. The greatness of an institution will contribute nothing unless its human resources are incessantly developed.

The history of Indonesia since the independence up to now has always been fulfilled with mismanagements in many aspects of life, including in formal and non-formal institutions. This condition could give negative impacts on the national development so significantly that mental degradation has always haunted this country's civilization.

For this purpose, the President of the Republic of Indonesia has introduced what he calls themental revolutionagenda that should responsibly recognized and applied by the whole elements of this country.

The activity of Pekalongan International Conference on Islamic Studies (PICIS) became a strategic move, as a constructive response to the nation's problems that have been rooted in problems of mental state. This activity was a realization of a support to the program. In another word, Indonesia needs to implement mental revolution as soon as possible, as well as to find solution as to which areas receive initial treatment. Hierarchically, changes should be made from ourselves to families, neighbors, and workspaces, then widened into larger communities, such a country.

Institut Agama Islam Negeri (IAIN) Pekalongan as an educational institution has an essential role in building good mentality of Indonesian people, through thoughtful effort in reconstruction of Islamic sciences. This reconstruction is aimed at changing the mental state of people in perceiving knowledge. The change of the perception is usually marked by the change of the philosophical view.

In medieval era, laws derived from religion became the absolute truth, including scientific activities. In the Renaissance era, humans were no longer the God's image, but they also had rationality or awareness as well as creativity to move forward and to improve their roles that had been accumulated when forming cultures and civilizations. Sciences relied on rationality and empirical phenomenon that had developed fast by using quantitative approach in the study.



Studies conducted within Islamic higher education institutions have long been considered of little contribution to the development of citizens' mindset and attitude. It is, therefore, this program is hoped to make the contribution more evident and appreciated.

This noble responsibility rests with higher education institution. The transformation of STAIN into IAIN has put more weight on its mission to play more vital role in establishing a better society, nation and country. Pekalongan International Conference on Islamic Studies has taken its part and simultaneously serves as means to build international partnership. This in turn demonstrates the institution's international recognition. Additionally, the program offers opportunities for all academics to improve their capabilities, and uncovers all obscured potentials; especially where abundant researches conducted within Islamic higher education institutions remain weak and inadequately published. Hence the objectives of this program are as follow:

1. To help researchers publish their work internationally, exchange valuable findings, expand more broadly their expertise, and make the most of their mutual academic links and cooperation today and in the future.
2. To help academics and decision makers sit together and make serious attempts to contribute to the country's development through scientific advancement and the promotion of *nawacita* program for the country's continuous growth.

All of the works here were the results of the conference participated by lecturers, researchers, practitioners, and scientists from various disciplines and universities across the country, as well as representatives from neighboring countries such as Malaysia, Brunei Darussalam, and Singapore. All of them have discussed several disciplines in Islamic studies from rich perspectives. This proceeding contains 46 articles, clustered based on these disciplines:

- ❖ Mental Revolution through the reconstruction of Tafsir and Hadith Studies.
- ❖ <sup>11</sup> Mental Revolution through the reconstruction of Sharia and Islamic Law Studies.
- ❖ <sup>11</sup> Mental Revolution through the reconstruction of Islamic Education Study
- ❖ Mental Revolution through the reconstruction of Tasawuf and Psychology Studies
- ❖ Mental Revolution through the reconstruction of Economy and Syariah Banking Studies
- ❖ Mental Revolution through the reconstruction of Dakwah and Islamic Communication Studies
- ❖ Mental Revolution through the reconstruction of Language and Literature Studies
- ❖ Mental Revolution through the reconstruction of Sciences and Technology Studies

As the organizer, we would like to express our gratitude to Anto Ikayadi (The Deputy of Prevention of Corruption Eradication Commission-KPK), Dr. H. Amirsyah Tambunan, M.A (Deputy Secretary General of Indonesian Ulema Council),





Dr. Raudlatul Firdaus Fatah Yasin (International Islamic University Malaysia), Dr. H. Ade Dedi Rohayana (Rector of IAIN Pekalongan, Central Java, Indonesia), The public and military officials, The Directors of Graduate Programs of representative colleges in Indonesia, and all the participants who successfully conducted **Pekalongan International Conference on Islamic Studies (PICIS) 2016**.

Finally, we would also like to thank all the directional team, executive team, as well as the management team of the Graduate Program of IAIN Pekalongan who facilitated all the series of the event, from the preparation until the evaluation. Thanks are also delivered to anyone and any parties who are not specifically mentioned for helping us in conducting the event as well as publishing the proceeding. May Allah Bless us in every step we take and every struggle we make and write them as our good deeds. Ameen.

Pekalongan, December 17<sup>th</sup> 2016  
Director,

Dr. H. Muhlisin, M.Ag



## Acknowledgement

All the praise be to Allah Who Blesses us with His Mercy and His Grace to all the academics of State Institute for Islamic Studies (IAIN) Pekalongan. It is due to His mercy and blessing that IAIN Pekalongan continuously attempts to improve its quality and contribution to education, especially in Pekalongan and its surroundings. Thanks to Allah, IAIN has successfully organized another international seminar titled **Pekalongan International Conference on Islamic Studies (PICIS)**.

PICIS event in 2016 was also a part of the fifth Dies Natalis of Postgraduate Program. PICIS is one of the commitments held by IAIN Pekalongan to develop sciences based on Islamic values as well as oriented to society's empowerment and social problem-solving. PICIS 2016 took **Realizing Mental Revolution through Science Reconstruction in Islamic Higher Education** as the theme that we believed relevant to the spirit of the Indonesian government to improve the nation through mental revolution.

Mental revolution is a movement of the people as well as the government to ameliorate the nation's character for the sake of the better Indonesia. A lot of social problems area result of weakening character and moral of the nation. The rampant of corruption, humans' right violation, and criminalities are the results of the fading value of *Bhinneka Tunggal Ika* (unity in diversity). This event was conducted as a scientific endeavor to participate in character building through a variety of studies. The results of the studies and researches were explicated in this event so that it could give real contributions to people. Therefore, it is hoped that this program could be a part of the cause of mental revolution promoted by the government.

We would like to express our thanks to the whole committee of the conference of **Pekalongan International Conference on Islamic Studies (PICIS) 2016** who had done their best for the success of this event. We would also like to deliver thanks to all contributors of the proceeding. We hope that the proceeding could serve as resourceful references for all concerned to Islamic Studies. Ameen.

Rector of **IAIN Pekalongan**

**Dr. H. Ade Dedi Rohayana, M.Ag**



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# QUO VADIS THE <sup>5</sup> LAW ENFORCEMENT AND ETHICS OF THE STATE ORGANIZER IN INDONESIA

Sabian Utsman<sup>1</sup>

## Abstract

<sup>5</sup> The law enforcement to and ethics of the state organizers need to trace the law theories of the positivism and the development of the continuing critics. The law theories of positivism is the scientific paradigm on the mind set of the discipline society. Relating to enforcing of the law and strengthening the ethics of the state organizers is very complicated. The Indonesians reformed to fight against the tyranny as the deviation from the proper law and ethics, and the urgent cases, especially the rampant corruption. The fact that, after years, the reformation movement is unable to do much, as the corruption keep happening in rampant and the ethics of the state slowly disappear. The law enforcement for the firm ethics of the state organizer must be expanded on the concept of the management of the social order and the development of ethics as well as the state organizers. These are the efforts to construct the regularity as the substance of the main benevolent values. In terms of law enforcement, the most crucial one is the synergy of the three pillars the <sup>14</sup> law enforcement, and the legal culture of the society. Thereby, the state organizers are expected to have both the ethichs and the high moralities. In order to manifest it, the State Organizers Honorary Council of the Republic of Indonesia (SOHC RI) is needed.

**Keywords:** *The Law Enforcement, the Ethics of the State Officials*

## A. Introduction

The law enforcement of the ethics of the state organizer and strengthening need the tracing to the theories of the legal positivism and the development of the criticism in law enforcement cases in order to establish the ethics of the state organizers. It occurs since both the practicioners and the legal theories particularly in Indonesia seem stuck in the paradigm of unconditional positivism which is no more functional as the analysis tool and the control of the regularity setter. Law as an instrument is not analogous to the characteristics life table of the ethics of the state organizers, the reality of dynamic context and the multiple interests of the process and the law.

The law could not be separated from the history of human and the development of the ethics, so it is obviously that the development and the changes of law are correlated

---

<sup>1</sup> The writer was graduated from doctrolal program of law at Indonsian Islamic University UII Yogyakarta (2012), the lecturer of lawsubject in *Syari'ah* faculty and the head of Family Law Posgraduate Study Progman at. IAIN Palangka Raya.

by the ethics of social dynamics, either right or good as well as wrong behaviour with all the interests that have been legally structured. The law can't be denied it's always developed, but the aim of the law development could not be ascertained in particular direction. In the end, it brings the change after the bound and conflict of any interests behind the law itself. The law is correlated to the society when the society changes, so does the law. The structure of the law and ethics has the substance to the main purpose, the good life, and it is not only about good and bad.

In line with the development of social ethics, Jimly Asshiddiqie stated that the understanding of ethics is as the symptoms of ethic positiveness which the formula of ethic value and standard behaviour is written and systematized in concrete terms as the legal norm<sup>2</sup>. As the fact of forming the Election Organizers Honorary Council of the Republic of Indonesia (EOHCRI), an institution prosecutes those who broke the rules of the election organizer. As the institution of the legal law enforcement, it also reaches the whole Indonesian archipelago through the Regional Investigation Team in each province of Indonesia that works professionally and proportionally.

Spotlighting how the law and the ethics in Indonesia, it certainly no one might order how the Indonesian should be, but how the character of the Indonesian it must be decided by him self. As Nonet and Selznick stated:

Our understanding about the social transition is never complete unless we find adapting ways to think out the new lasting historical alternatives, such as the changing from status to contract, from *Gemeinschaft* (the community) to *Gesellschaft* (the society), and from the strict law to the justice.<sup>3</sup>

The basic change causes the obligation of the strict attitude towards the law. It is not the time to defend the only one standard, the positivism (18-19 Century), or the old monoparadigm, but it should consider the acceptable way of the law and the ethics for the up-to-date modern community in either local or global. The law theorist, Sang Bagawan Prof. Wignjosoebroto stated:

... The influence of the logic model, also known as the Galilean model of positivistic thinking ... pervasive and to bloom well in the natural-law thinking arbitrate to organize human life in the centuries 18-19 entering the scale and the new format. ... Goes together with the need to build new law as a means of control orderly life on a national scale, the thinking that takes place according to the flow of positivism Galilean was immediately utilized for the underlying paradigm of the formation of modern national laws.

Legal developments necessary to control the lives of the modern nation state is envisioned the establishment of a guarantee of certainty in terms of the implementation of the law as a tool that orderly stylist. Law according to this new model is needed

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<sup>2</sup> Jimly Asshiddiqie, *Peradilan Etik dan Etika Konstitusi* (Jakarta: PT. Sinar Grafika, 2014), 43.

<sup>3</sup> Philippe Nonet And Philip Selznick, *Law and Society in Transition Toward Responsive Law* (New York: Harper and Row, 1978), 29.

reformers to overcome the arbitrary line-menaan law. From the beginning, the ruling autocrats claims her unilaterally as law enforcement that comes from divine power of the Most Perfect. The absence of normative references which can be utilized to check for making the king's laws (king's order) is impressed very arbitrary and repressive.<sup>4</sup>

As the notice, discussing the law and the ethics means discussing the dynamism. It discusses the challenging context and on the other side is the answer of the problem (challenge and response). The design of the law is should be related to the social ethics based on the definite assumptions, conditions, territories, principles and normalizations as well as the definite law institution structure. About the law, Satjipto Rahardjo stated:

The ethics, particularly for the state organizers, are very important and urgent since the ethics decide whether it is good or bad state apparatus service to the people as the holders of the highest sovereignty. The proper behaviour or the action is guided by not only the law but also the ethics now that it is needed so the state organizers behave properly in living together.<sup>5</sup>

Asshiddiqie stated:

... Philosophy of ethics is not only concerned with the matter of right and wrong as in filsfat law, but beyond that it's a matter of good and bad. The ultimate goal is for the good life (the good life) not a life that is always right and never wrong. But in practice, both the substance of the essence of the subject matter of ethics, which is right and wrong (right and wrong), as well as good and bad (good and bad) human behavior in life together.<sup>6</sup>

Besides the ethics, the law in Indonesia considers that the law is the legislation (without noticing the community fluctuation, so there are no the commitment and the morality to enforce the fair ideal law as the professional certainty not transactional. The action could be the disapproved ethics so as the facility to enrich self or representative. The writer see it becomes worse in this state, as the direct concrete example in the root-grass society life, that some . the decision of DKPP RI when trying the breach of the election organizers these recent years? And a few years ago, the decision of the district court of Pangkalan Bun, Central Borneo about the disposal of trawl net to the accused Sanan Bin Tawe from Thailand (the Decision No:15/PID/B/2000/P.N./P.Bun, date 2 March 2000).

What a substandard is our law supremacy with the sky high concepts level of law in the books concerning the positivistic paradigm, so that the function of jurisdiction

<sup>4</sup> Prof Wignjosoebroto, *Paradigma Falsafati yang Mendasari Teori-teori dan Norma-norma Hukum* (Sari Kajian Teori Hukum Program Doktor Ilmu Hukum) (Yogyakarta: PPs FH. UII), 7-8.

<sup>5</sup> Prof. Rahardjo, "Konsep dan Karakteristik Hukum Progresif" Paper presented at National Seminar Law faculty of Diponegoro University Cooperate with Law Faculty of Trisakti University, Jakarta, Dec 14 2007.

<sup>6</sup> Prof. Jimly Asshiddiqie, *Peradilan Etik dan Etika Konstitusi (Perspektif Baru tentang 'Rule of Law and Rule of Ethics' & Constitutional Law and Constitutional Ethics')* (Jakarta: Sinar Grafindo, 2014), 42.

institution (mechanistic) is as the institution of the corruptors and the sinners, including the breacher of ethics for the state organizers to get safe haven as the following statement of Rahardjo, "The old system, which is actually a liberal, has led to "diseases" itself, as has also been widely criticized in the United States".<sup>7</sup>

In Indonesia, in the context of combating corruption, it is often said, that the court has become a safe haven (safe haven) for the corrupt. To conceive how Indonesia arbitrate and ethical, then he shall depart from the collective perspective of the structure of the judicial system so as to form a single unit construction as the direction of the specific target. The specific targets are certainly not off the mark that explicitly mentioned in the preamble 45 that in forming the government of Indonesia Raya is aimed at "protecting the entire Indonesian nation and the entire homeland of Indonesia and to promote the general welfare, the intellectual life of the nation" which values the value has been crystallized for the whole Indonesian nation and should not be the slightest deviate from these values in carrying out the law in Indonesia.

To conceptualize how to make Indonesia enforce the law and the ethics, it must start from the collective perspective in the judicature structure to construct as the unity towards the specific objective. It must not swerve which is explicitly mentioned in the Preamble of the 1945 Constitution of the Republic of Indonesia that in order to form a Government of the State of Indonesia that shall protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation's intellectual life, in which the values are crystallized for the entire Indonesians and it may not diverge a whit from the values in enforcing the law in Indonesia.<sup>8</sup>

In the law and ethics as well as the mind of Pancasila and the 1945 Constitution of the Republic of Indonesia, our big question is how deep the law and the ethics give the advantage in the society life, so as the highlight how to enforce is related to how to build the pillars, at least, how is the law and ethics culture on the people. with the result that at least the core of the problem in the law and the ethics can be traced by previously leaving the positivism monoparadigm and creating dualparadigm.

The basic fallacy in society begins on the law, especially when the law practitioner and theorist, particularly in Indonesia, understand the law only literally. To be realized, the study of the law, the Dutch law system (mainly as the reference of the law in Indonesia), is categorized as the Roman Law System (borrowing the term from Rahardjo and Wignjosoebroeto is the Roman-Germany Law System) which is constituted in Europe (12<sup>th</sup> and 13<sup>th</sup> Century) as the reference to the judge not deciding differently from the constitution, as the main source, and it is strengthened more when Napoleon legislated the Civil Code, so the developing opinion is the constitution is the

<sup>7</sup> Parer Rahardjo. *Ibid.* 1.

<sup>8</sup> the Constitution of the Republic of Indonesia 1945



law itself (Civil Code is considered perfect and results the legal security and the unity of the law).

In enforcing the structured law with the ethic characteristics particularly, if the Roman Law System is perceived stiffly and literally, no judge or investigator including in the ethics court makes a mistake in deciding a case and no burden of responsibility on either the judge or the investigator ethically and morally (because of the Legal Maxim, the literal law meaning said so) and no consequence although the decision is wrong, erroneous, imprecise, contrary to the justice or his/her own heartstrings. Thus, the court process only more emphasize the legal security than the advantage and the justice.

## B. The Problem of the Law Enforcement

Understanding the law as the set of rules to regulates the society in order to create not only the harmony but also the ideal behaviour is meaningful when it is supported by the firm and distinct reward and punishment system of the competence state organizers. Through the ethical attitude of the ideal state organizers, it not only brings the advantage but also the enforcement of the justice which deeply grows in communal internal attitude. The justice is the vindictive justice not the absolute one which pronounces based on the law procedure and basic distinct ground, which means it is not based on sentimental feeling, solidarity, compromise, and any reason that swerves from the justice. It is in accord with the spirit of the article 27 of the 1945 Constitution of the Republic of Indonesia.

The process to get the structurized justice with the ethics value is the inseperable link, at least since the legislation is pronounced. The case or *rechtsfeit*, until the verbal process in the police and the prosecution, or the civil suit, and ended by the verdict has the permanent legal power (*inkracht vangeweisde*), so the quality process as the quality guarantee on the culmination point result or the benefit of the set of legislated rules. Thus it has a great chance to enforce the law supremacy which band together the society to behave properly with the state organizers with the high ethics and morality as the models. Harold J. Laksi in Sabian Utsman<sup>9</sup> stated “that the citizen has the obligation to obey the certain law only if the law gratifies to the justice”.

Relating to enforcing of the law and strengthening the ethics of the state organizers is very complicated. The Indonesians reformed to fight against the tyranny as the deviation from the proper law and ethics. The urgent cases, especially the rampant corruption, breach the principles of the democratic ethics in the state and the welfare of the people through the enforcement of law supremacy, but we see the fact that, after years, the reformation movement is unable to do much, as the corruption keep happening in rampant and the ethics of the state slowly disappear. It is not rarely

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<sup>9</sup> Sabian Utsman, *Anatomi Konflik dan Solidaritas Masyarakat Nelayan* (Yogyakarta: Pustaka Pelajar, 2007), 262.

to find the head district as the state organizer takes the civil's money or the civil basic right for personal interest and unashamedly do that on behalf of state, whereas the enforcement of law supremacy is as carrying the coals to the newcastle.

So ironically, during the reformation, the reformation fighters had the great chance to be active in order to enforce the law supremacy. What happened then? The law enforcement becomes worse to the indefinite aim and the ethics of some state organizers disappear day after day. The people easily see the amount of the functioners get involved together in breaching the law that drops the social principle ethics of Pancasila and the advocates defend more than the right should be. Prof. Mahfud MD distinctly shouted that:

... Lawyers are broken due to the luscious them not to appear as a lawyer for idealism, but rather to seek victory in many ways for the sake of popularity money. ...

Judges were in agreement, the performance is getting worse, bribery and extortion in handling cases more vivid. In fact, there are cases, judges accept bribes and blackmail exactly as we were shouting many judges of trafficking cases.<sup>10</sup>

Unfortunately, court decisions no matter how wrong and misguided remains binding and must be implemented if you already have binding legal force. Regarding the state issues and the ethics of the state organizers are also our problems, the relation to the enforcement of the law supremacy is the biggest and most urgent issue of Indonesia, so it is so precise if our criticism about the problem has also the alternative solution. It should focus on enforcing the law and the ethics of the state organizers based on the values of Pancasila.

Discussing which law supremacy has the law enforcement supported the three law principles into the frame of the humane social justice, the fact that some of it up-to-the minute is no more than the utopian which aims to the ideal rhetoric for some apparatus of the state organizers and some socialites or the masters of the law especially in Indonesia. It happens since the beginning process of recruitment of the state organizers that there is the deviation of the proper behaviour, such as the corruption and the transactional.

What the more ironically is the law concept of the law supremacy enforcement which processed by the state is not definitely perfect in the implication, although it is acknowledged that the outline has the qualify of the ideal framework according to the maker ( it is common in Indonesia, particularly in legislating, ignoring the characteristic of society interest which is very crucial and functional). The legislation indeed have to notice the society interest in the language and substance as well as the procedure which is understandable to the logical common society.

<sup>10</sup> 24 Moh. Mahfud MD. *Hukum Tak Kunjung Tegak* (Bandung: PT Citra Aditya Bakti, 2007), 76-77.

An issue itself in the enhancement of the public service (the state organizers) becomes the substance in Indonesia, including the quality of the human resources which is not enough to just the high education but also the personal level, the proper behaviour, and also the respect of the quality ethics. This is important because the law enforcer is as the spearhead and the figure of the ethics in the implementation of law itself, but ironically the existence of the law enforcers in Indonesia is still questionable, how many judges or another law enforcers are suspected and/or breach the ethics and are accused bribes and/or another blamable cases.

Reflecting the fact, it concludes that the most Indonesian society culture is not aware of the law. So it proves more, when we easily seenot only the apparatus of law enforcement and/or the apparatus of the state organizers misuse the authority and despise the ethic values, but how many and often the violence happens immediately in mass mobility and/or communally does the trial and judges the criminals out of the legal court. It happens especially when it has direct connection to the society, so the burn, the mob violence, the pillage, and the murder are the other way of the society to implement the meaning of justice or the exact way on their opinion in the enforcement of the law and the ethics, because the state institution is no more considered as the place to process and get the justice (as if the state is the factory machine of the legislation, it is not on the behalf of the society interest that most of them wait for the state functioners for the welfare not the sufferance).

### **1. Why the Problem Happens**

The problem of the law enforcement in Indonesia is actually hard to get the chronology, as if trying to get the head of the knot or the end of a circle of phantom that causes the more authority of crime. Because of the rampant crime, the ethics of the state organizers is no more ideal nor supports each other in the synergy of eradicating the crimes.

Perspectively, the sociological crime is the identified thing as the booster of the judicial mafia, besides the positivistic value, the change of the background of the relation between the law enforcer and the lawsuit partner or the other state organizers which must be profesionally but it becomes transactionally. With the result that the Indonesian society in the powerlessness questioningly ask in the deep of the heart, “whether the justice belongs to the right and honest people or whoever could pay the law provision and also the pride or the ethics of the judges, the attorneys, or the other state organizers.”

If the justice is under the mafia control that obviously swerves the ethic and the morality of Pancasila, it definitely causes the damages to the national principles, i.e.; the law discrimination, the public-distrust, the contempt of court, the lost of the national identity status, and also the disgrace of the essence of the noble aspiration. The benefaction is on every state organizers. The essence of the judicature is to strenghten the basic of the ethics and the morality, not only based on the rule of law and the rule

of ethics, but also the effort of the synergy of these state organizers in the tradition in order to the function of the norm comes in line with the essence of society and nationality. In this case, Jimly Asshiddiqie stated:

... How are we able to make the function of norms of ethics as the philosophical basis of the nation. Pancasila confirmed the source of ethical norms because of Pancasila is the philosophy and outlook of the nation. Philosophy of life that contains the value of social ethics. ...

Recent legal uncertainty make people more upset the face of what we are doing to improve the system of norms in the life of nation and state. This can be understood as the implications of current changes are so fast and strong in democratic life.<sup>11</sup>

As the alternative effort to solve the judicature problem, it is related to the need of the ethics and morality tradition of Pancasila, besides the start from the inner motivation of the legislator and the law enforcer by focusing not only on the legal positivism ideology but also the collection of the possibly various ideologies for Indonesia, such as about the role of judges, they are; (1) legal positivism, the role of the judge is as the implementation of the law (*Wetstoepassing*), (2) *Freie Rechtsbewegung*, the role of the judge is creating the law (*Rechtsschepping*) which is not related to the law, (3) *Rrechtsvinding*, the judge has the bound freedom (*Gebonden-Vrijheid*) or it can be described as the free boundary (*Vrije-Gebondenheid*), (4) finding the other alternative that suits the characteristics of the Indonesian, that is why the social control is needed from the non-government institution as the State Organizers Honorary Council of the Republic of Indonesia (OHCRI). The observation by Asshiddiqie some countries in establishing code of ethics enforcement agencies quite successfully. Nur Hidayat Sardini in his writing <sup>13</sup> "60 Tahun Jimly Asshiddiqie: SOSOK, KIPRAH, DAN PEMIKIRAN" states:

US, following the results of the recommendation of the General Assembly (United Nations) which ordered that the countries in the world to form the infrastructure of ethics ... in 1978 to form the Office of Government Ethics ... in 1989 had the support of Congress then was upgraded from Office of Personal Management to Office of Government ethics, with 5 members. It turns out that the institution is very authoritative, so that senators and state officials in General, think a thousand times when they wish to do break the code of ethics.

Beside that, the experiences of another country can be a lesson, even Jimly on several occasions have always said, Indonesia could be start of something good, that it could be drawn into example for other countries. The bla bla could be a symbol of the personification of the transformation the idea of judicial ethics which is free and open.<sup>12</sup>

<sup>11</sup> Jimly Asshiddiqie, *Menegakkan Etika Penyelenggara Pemilu* (Jakarta: PT. RajaGrafindo Persada, 2013), 40.

<sup>12</sup> Nur Hidayat Sardini, *60 Tahun Jimly Asshiddiqie: SOSOK, KIPRAH, DAN PEMIKIRAN* (Jakarta: Yayasan Obor Indonesia, 2016), 235.

To reform the advocates in accompanying the issues of the breach of the state organizers, the developing issue among the society which shows the public accountability, and the government strengthens the political will as what have done in China, as explained by Dr. Afan Gaffar (2001). at the National Seminar about “The Relevance of the Ethics in the Context of the Good Governance Formation in Indonesia”, as the following: as happened in China. The officials had determined to combat the corruption, the collusion and the nepotism. Every official always stated to provide a hundred and one cemeteries. A hundred for the corrupting officials and the one is for him/herself. (Kompas PPS UMM, 2001)

In fact that there is no vacuum in the judicial implementation, viz, it goes on the implications of the instrument of the law, ethic, and mental of the apparatus, the social politics, the economy condition, the legal aid system, the intelligence, and the educational level of the society. What happens when not only the society realizes the inconsistent legal practitioner and theorist but also it is an open secret that the judicature in Indonesia can be bought, so money has more authority. The fact of the ethic and morality deviation causes the society judicature feeling dissapoint, moreover, of the state organizers as the public servants that should be the model figures. Karl Marx in Erich Fromm said “Hence, money appears as a disturbing power of individual and social ties, which claims to be an independent entity. Money changing loyalty into treason, love into hate, hate into love, truth become error, the error becomes the truth”.

The worse ethics of the state organizers, the less trust in the law and the state organizers as the main of the nation civilization advancements. To realize the elements that must be the model figures of the law and the proper ethics, viz, the justice, the certainty, and the function to build the level of the welfare becomes an otopics and gets the poor dysfunction. The mass fury, vigilante, and the habits of the unlawful society manners have the inseparable correlation between the characteristics of the inconsistent practitioner and the theorists of the state organizers and the truly essence of the judicature and the government as well as the ethics, which the society expects a process of the justice enforcement and the fulfillment of the welfare sovereignty of the mandatory society, i.e. to the judicial institution as the part of the state institution. The existence of the state organizers should be on the enforcement of the ethics and Pancasila morality which is on the people’s side, accountable, open, transparant, and credible. But the fact is the reverse. The presence of DKPN is an exact alternative to solve the problem, as it is expected to be the expansion step of DKPP RI that runs well and greatly contributes to the development of the democracy in this country, especially in the general election since June, 12, 2012, which was previously formed with name the Honorary Council of the General Election Commisions (HCGEC) in 2008.

## 2. The Offered Solution

Based on the some backgrounds of the law enforcement problems in building the ethics of the state organizers as discussed above, there are some offered alternative

solutions in the following. At least there are three dominant pillars in the law enforcement in order to proceed well and affect the solid ethics development of the state organizers, they are the related legislation, the organizers, and the society culture. If those are seriously fixed, the problems are solved.

**a) The Legislation;**

It is well-known that some of the constitutions in Indonesia up to now are the inheritance of the Dutch government which the existence is acknowledged on the transitional provisions Chapter II UUD 1945. Actually it means to avoid the vacuum in the law with the expectation we ourselves sooner legislate in the appropriate characteristics of the people of Indonesia which have many kinds of the common law. But today, we are still on the lullaby to not legislate, as the example to substitute <sup>1</sup> *Burgerlijk Wetboek (BW)*, *Wetboek van Koophandel (WVK)*, *Faillissements-Verordening (FV)*, *Wetboek Van Strafrecht (WVS)* to the context and the aspiration as well as the characteristics of Indonesia.

No less appreciation of the great work of the Indonesian such as the Basic Agrarian Law, the Basic Provisions on the Judicial Power Law, the Marriage Law, the District Autonomy Law, the Traffic Law, the Criminal Procedure Law, etc. More than a half of the century, BW, WVK, FV, and WVS are used as the references of the law enforcer in Indonesia in order to be fair for the culprit, the plaintiff and the defendant. It means done consciously, intentionally and well-planned but there is the legal force, fighting for the justice on the unjustified condition since some of the laws do not suit with the Indonesian, but they are still legal and continuous. With the potency of the human resource and the sufficient chance, our great nation is no need to use the laws. The sources of the legislation <sup>22</sup> must be the interest and the ethics and moral characteristics of the Indonesian which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia, so as the structural systemic has the function more to “enforce the law and firm the ethics of the state organizers” with the full control of the certain institution as the right alternative step, besides the efforts to complete the substitution of the provisions of the Dutch inheritance law, therefore the form of the State Organizers Honorary Council of the Republic of Indonesia (OHCRI) is needed.

**b) The State Organizer;**

To enforce the law supremacy and to firm the ethics of the state organizer, the basic and urgent thing is the reformation of the apparatus structure, whereas the legislation could be done along the way. As the strategic step is the reformation of the apparatus in the ethics in order to improve the morality and the commitment as the state organizers, so they could be morally responsible besides others. As the apparatus of the noble responsibility, it may not be misused and the position is not for enriching self in material or another breach ethics.

Actually, the apparatus who has the commitment could control the crime, although it is on the contrary or breaks the law of positivism by reducing, eliminating,

smallen and possibly vanishing or combating the root. One of what must be done is re-examine whether the repressive action from the apparatus contrasts with the ethics of Pancasila that is full load of morality. In the certain case, the controversial verdict with the justice (the priority is the legal security) causes the criminal behaviour. It possibly happens when the verdict is irrational and out of the principles of the justice. It is obviously seen when it begins from the poor ethics of the apparatus then the process in the court results the illogical verdict of common, or another cases cause the mass fury anywhere which happens often all over our land.

For strengthening the commitment of the apparatus as the legislator and the law enforcer, it is time to change the paradigm because it is possible for someone getting the wrong verdict because of the error apparatus. As the court in Japan, the police do not hand all cases over the prosecutor, and the prosecutor does not also sue all cases. G. Aryadi (2002:63)<sup>13</sup> said that the authority for the suspension of the prosecution in Japan based on the article 248 (KUHAP) Japan.

In the certain case, the apparatus as the part of the law enforcement in Indonesia (not limited as the four elements) seems only make the instrument of the law as the spiderweb which only gives the sentence to the marginal people, the poor, the thief, the stupid, and the crime that commonly done by the marginal people. but when it involves the functioner or the high level criminal, the law does not work as it should be and it obviously has no ethics nor the morality commitment for it. So, it is relatively solved if the law enforcer or the apparatus in the general holds well the ethics and the morality commitment.

### c) **The Legal Culture of the Society;**

Either enforcing the law or firming the ethics of the apparatus comes from the society and the purpose to create the peace and the tranquility in the society. Thus, not only the society could influences but also decides the law supremacy enforcement and the ethics of the state organizers. Therefore, it is not suitable for the apparatus; as the maker, the enforcer and the user, just considers the orientation to the legalism or the legal positivism.

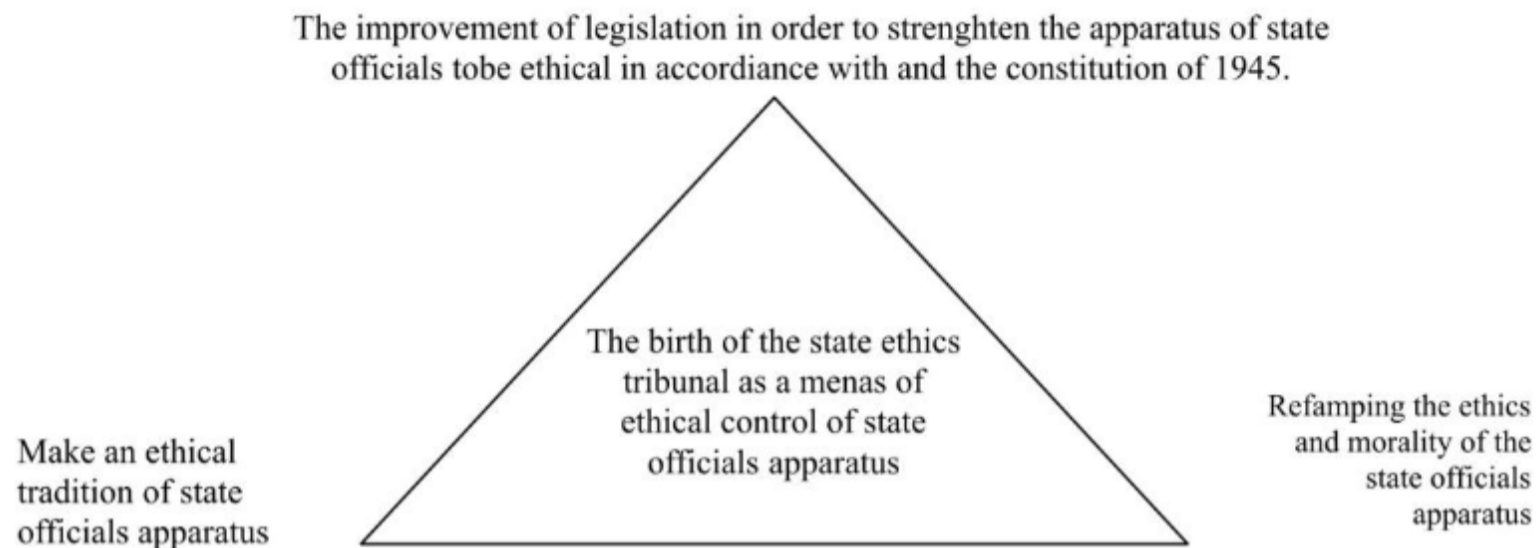
Based on the social culture system, Indonesia consists of the plural society and many kinds of social stratification. For note, there is the contrast characteristic distinction between the most society who lives in the village or the marginal district and the urban people. Discussing the law enforcement and the ethics of the state organizers, it would be a nonsense discussion unless involving the pluralistic society, moreover our society is in the phenomenal transitional phase. The transitional justice society could raise the chaos, so the law enforcement solution and the ethics of the state organizers improvement might not take the actions that could cause the riot of the

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<sup>13</sup> According to Shikita, Minoru, *Integrated Approach to Criminal and Justice* (UNAFEI, 1982), p. 37. In the Journal of Law Ius Quia Iustum FH UII.

society. The role of the study sociologically is so crucial and strict, so the society not only joins the process but also has the sense of the belongings to the agreement and/or the rule to build the apparatus with the noble ethics as in the values of Pancasila and the responsibility of the commitment, personality, and morality of all competent parties.

For further, the three pillars of the law enforcement strengthen the ethics of the state organizers could be structured as follows:



Figures: The structuration of law enforcement in an effort to strengthen the ethics of state officials .

On the such problem, the concept or the model "the aim of the law enforcement in order to firming the ethics of the state organizers" is abstracted ideally and must be supported with the exact effort. To realize it, besides the reformation of the legislation that is appropriate with the fundamental norm of Pancasila, the state organizers, and the culturing ethics of the apparatus, so the firm and functional institution is needed, the State Organizers Honorary Council of the Republic of Indonesia (SOHCRI).

#### D. CONCLUSION

The law enforcement to firm the ethics of the state organizers need to trace the law theories of the positivism and the development of the continuing critics. The law theories of positivism is the scientific paradigm on the mind set of the discipline society. It is in line with the discipline of the law since 19<sup>th</sup> Century. The correlation between the law enforcement and the ethics in Indonesia, it does not mean the monoparadigm of the legal positivism not good, but functionally, in understanding, analyzing, and deep controlling the characteristic of the plural life in the regional, national, or global, it is not equal anymore and the alternative idea is needed. Many ideologies of the law are conceptualized, such as the mixture of the legal positivism, the Freie Rechtsbewegung, the



Rechtsvinding, and any ideology that suits the legal characteristics and the ethics of Indonesian completely.

The enforcement of the law supremacy and the firm of the ethics of the state organizers is an human effort to reach the regularity or the discipline with the appropriate and needed ethics as the main benefaction. In case of the enforcement, it is the synergy among the three pillars; the law, the state of organizer, and the legal culture and the ethics of the apparatus before laying the strict to the society. The good government in fact is the least in the order, but every action/statement contains the synergy between the law and the ethics as the model figure.

In the enforcement of law to firm the ethics of the Indonesian state organizers, the thesis is structured into three parts; *first*, the reformation of the law as the effort to firm the state organizer in the ethics as stated in Pancasila and the 1945 Constitution of the Republic of Indonesia; *second*, the reformation of the ethics and the morality of the state organizers; and *third*, civilizing the ethics of the state organizers. As for the concept, it no longer needs to form the new functional institution, the State Organizers Council of the Republic of Indonesia (SOCRI).

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