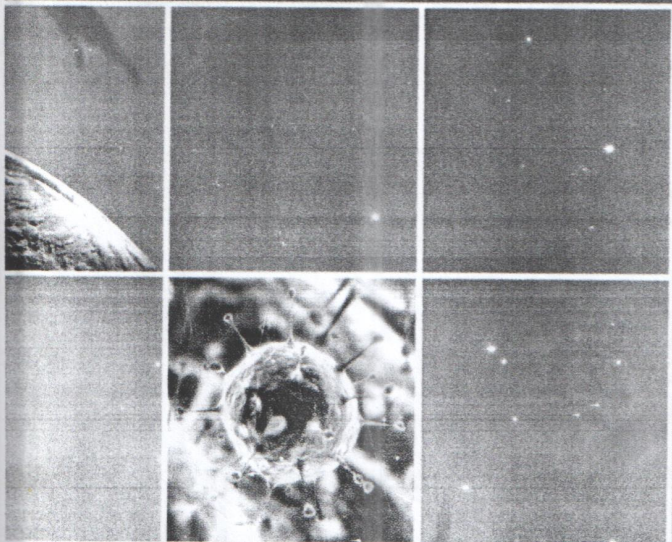


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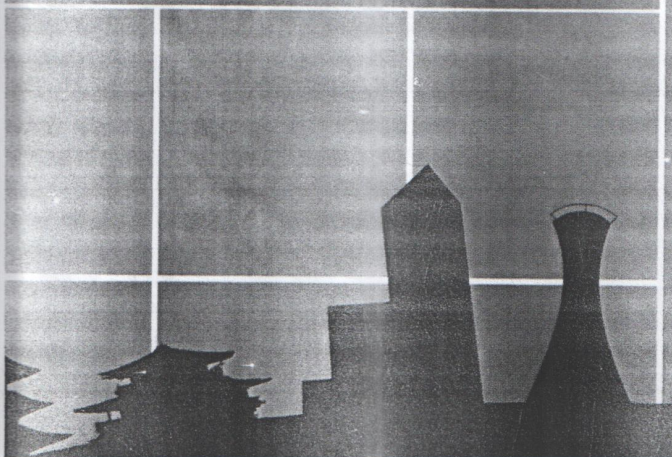
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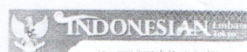
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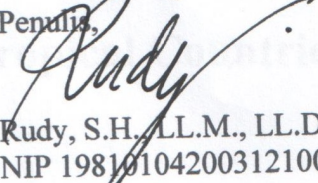
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TOPIC:

**Food, Water and Energy Security in Tropical Countries
(FEW)**

INTRODUCTION

Recently 'Asianization' becomes a new icon after hundreds years of 'Westernization'. The shift of pendulum generated some consequences; some of them lead to natural resources depletion, shortage of carbon based energy, shortage of food and water, as well as over-utilization of natural and/or over/under-utilization of human resources. The future economic and technology heavily rely on either the proper utilization of Asian natural resources, or well-prepared human resources.

Take for instance Indonesia. The country has huge preserve of the natural and human resources, of which will strongly affected by these pendulum movements. The effects can be both positive and negative, depending on how the stakeholders oblige the movements. The positive effect will lead the country to sustainable future; however the negative side will bring the country to the hundreds of years of environmental disaster, poverty and hunger.

On the other side, every country can own one or several competitive advantages but the difficulty is figuring out and determining what they are. Furthermore, the next challenge that will be faced is how to create some special and unique characteristics of the nation which cannot be replicated by competitors, or can only be replicated with great difficulties. In addition, some factors must be addressed to foster competitive advantage, such as how to acquire a sound macroeconomic condition to attract and sustain private sector participation in long-term investment.

From these situations, it can be concluded that socio-culture, economic, scientific and technological cooperation are important factors to empower relationship among countries. The scientific conference is one medium to discuss and elaborate the region competitive advantage by presenting ideas, innovations and breakthroughs from different fields. The desire and ability to continuously learn from any sources anywhere and to rapidly convert this learning into action is an ultimate competitive advantage.

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Sustainable Future for Human Security (Sustain'2010)
11-12 December 2010, Kyoto, Japan

Topic:
Socio-Culture and Social Science (S)

SATURDAY, December 11th, 2010

Komodo Room				
13-00 pm – 13.20 pm	20'	Invited Speaker	Mr. Edy Yusuf	Outlook of Indonesia Economy and role of Indonesia Bank
13-20 pm – 13.40 pm	20'	S-09	Shofwan Al-Banna Choiruzzad	Global War on Terror, Securitization and Human Security: Indonesia's Case
13-40 pm – 14.00 pm	20'	S-17	Agus Trihartono	Counting Down an ASEAN Community 2015: Identifying The Basic Impediments
14-00 pm – 14.20 pm	20'	S-22	M. Faishal Aminuddin	Is Liberal Democratization Failed? A comparative Review in Indonesia, India And Brazil
14-20 pm – 14.40 pm	20'	S-21	Rudy	Indonesian Constitutional Court Interpretation Upon State Control: Asian Versus Western Idea
14-40 pm – 15.00 pm	20'	S-02	Muhammad Tri Andika	Military Politics in Indonesia Post Democratic Reform; An Analysis of Retired Generals in 2009 Indonesian Elections
15-00 pm – 15.30 pm	30'	Coffee break		
15-30 pm – 15.50 pm	20'	S-16	Agus Trihartono	From Pheripheri to Center of Power: The Emerging Role of Public Opinion Pollster in Indonesian Electoral Politics
15-50 pm – 16.10 pm	20'	S-11	Iqra Anugrah	Political Parties and Religious Local Ordinances in Post-Suharto Indonesia: Measuring Elite and Public Opinion
16-10 pm – 16.30 pm	20'	S-06	M.R. Khairul Muluk	The Archetype of Public Participation System in Indonesian Local Government
16-30 pm – 16.50 pm	20'	S-08	Kurniawati Hastuti Dewi	Between Expectations and Actions: Javanese Muslim Women Leaders in Local Politics
16-50 pm – 17.10 pm	20'	S-10	Recky H. E. Sendouw	Disaggregate Analysis of Inter-Provincial Disparities in Indonesia
17-10 pm – 17.30 pm	20'	S-14	Nino Viartasiwi	Nurturing Peace: Civil Society's Role in The Post Conflict Area of Poso-Indonesia
17-30 pm – 17.50 pm	20'	S-23	Novri Susan	Land Conflict Management in Indonesian Democracy During 2004-2010

SUNDAY, December 12th, 2010

Komodo Room				
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INDONESIAN CONSTITUTIONAL COURT INTERPRETATION UPON STATE CONTROL: ASIAN VERSUS WESTERN IDEA

Rudy

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ABSTRACT

Formulation Article 33 of Indonesia 1945 Constitution was mainly influenced by the rejection of individualism as the symbol of capitalism and colonialism. It used to be associated with the authoritarian control of economic sphere. Nevertheless this provision has been survived through the process of amendment, which means that the people itself have defended the principle of communitarian in the economic sphere. The problem remain is the limitation of state control set by constitution upon economic spheres. This paper is trying to answer this old debated issue through the cases review of Indonesian Constitutional Court judgments relating with the economic rights vide article 33 of Indonesia 1945 Constitution.

Keywords: constitutional rights, environment, social science, interpretation, law and development.

INTRODUCTION

The legal system in Indonesia has been marked by the long struggle to construct a system based on the pattern of the family or community as set forth by the Constitution. Indonesia inherited a complex legal system whose main component parts were western law, adat law, and Islamic law. This complex legal system basically features the special characteristic of Indonesia community and made the birth of unification supporters and legal pluralism supporters.

Amidst the desire to construct a strong unitary state, Soepomo who was the great supporter of legal pluralism, however, was able to provide the basic provision in Indonesia 1945 Constitution to protect legal pluralism [1]. It may be said that Indonesia 1945 Constitution greatly accommodated the law from the top and law from below but did not give the way to negotiate between the two. However, attachment to the traditional communal life conflicts with modernization and industrialization. Since that time, the legal pluralism versus unification became great national issue. This never-ending contest between legal pluralism and unification is not only happen in Indonesia but also happen across the world in Asia [2], Africa [3], and Latin America [4]. Within the issue, old debated upon the interpretation of limitation of state control has not met the conclusion.

In the other side, under the rule of law missionaries, constitutionalism has been spread around the globe aided by many international donors. Since 1990s, most Eastern European societies have taken significant steps to reform their legal system including rewritten constitutions even though the results are still questioned. Most Latin American governments have acknowledged the need for rule-of-law reform and are taking steps toward it, or at least proclaiming that they will. In Asia, constitutionalism has been a part of formalistic rule of law reform package primarily to support legal reform related to commercial affairs [5].

At the same time, the rise of constitutionalism is followed by the gradual emergence and expansion of new constitutional court in the world political system as the part of institutionalization of constitutional structure [6]; these new judicial powers have been responsible for translating the constitutional provisions into practical guidelines to be used in daily public life and have been famously recognized as guardian of constitution. Cappeletti [7] in this regard concludes that judicial review or constitutional review is the method for effectuating the positivization of higher values expressed by constitutions. In addition, constitutional court is one pillar of separation of powers theory; Montesquieu's [8] and many other scholars believe that constitutional separation of powers is critically predicated on the existence of an independent constitutional adjudication.

In any case supremacy of constitutionalism and the rule of law would emerge if constitutional or judicial review through Constitutional Courts or Supreme Courts ensures that the constitution is followed. In addition, a strong Constitutional Court in newly democratic countries helps the state break with its authoritarian past and develops a constitutional culture in respective countries. Many of these courts have become significant, influential, well recognized, even powerful-actors. Gibson and Cadeira [9] emphasize South African Constitutional Court as defender of democracy in South Africa while Schwartz [10] concludes that the Constitutional Court in new democracies in East Europe such as Hungary and Poland as have been quite influential.

Despite one view that judicial review would be in subject to strong western influence and that it would be difficult to fit with Asia historical image of authoritarian regime, the emergence of constitutional and judicial review has been well recognized and documented by constitutional law scholar in this region [11]. While Japan has maintained the successful image of constitutionalism in Asia, new breed of constitutional court in Thailand and Indonesia after 1997 turbulent political situation give other possible prospect for future legal reform and constitutionalism in the region [12].

Upon both issue of constitutionalism and the old debate of state control limitation, newly established constitutional court may mediate and find way to resolve the conflict and put fundamental legal basis for future conflict. It can be argued that the Indonesian Constitutional Court hailed as the guardian of constitution may set the limitation upon the old debate of state control vide article 33 of 1945 Indonesian Constitution.

For this purpose of assessing the adjudicative function of the Indonesian constitutional court, this study will focus on the practice of constitutional interpretation, while identifying both the institutional characteristics and the socio-legal cultural conditions enabling such function. In order to consider the functional results of the different institutional design of constitutional courts, this paper should observe its dynamic institutional mechanisms by looking into the development of living norms of the constitution via the "interpretation" of the constitution as well as relevant laws considering the legal culture and political environment.

METHODOLOGY

Holmes notion describing the nature of law as an experience rather than logic is the best line to differentiate US school of Interpretation and Germany school of Interpretation. This difference is also reflected upon the legal scholarship in each of US and Germany; the formalism of Germany may be contrasted with the realism of US scholarship, the former emphasizing statutory interpretation and the latter reasoning from case law. The prevailing legal scholarship in both US and Germany greatly contributes the approach to constitutional law studies and constitutional interpretation.

Those two basic differences will be the basis of case review of Indonesian constitutional court interpretation. The first section of case review will be the presentation of the case itself, from the summary of the case to the decision by the constitutional judges, after that the author will analyze the weigh of logic versus the weigh of precedents before arriving with the conclusion. After this initial case review, how constitutional judges employed the interpretive method to resolve each judgment will be studied and analyses carefully using the available school of interpretation.

CASES REVIEW

After its establishment, Constitutional Court of Indonesia (ICC) has recorded so many cases encompasses politically related case to constitutional rights related cases. Until the end beginning of 2010, the Constitutional Court had handled 238 constitutional review cases from 114 different laws. Many of the petitions for constitutional review were granted, which means that part of the law was unconstitutional. These constitutional reviews involving many kinds of constitutional review of law, most of them are very related with the breach of rights provision provided in constitution. This paper however concerning less to the constitutional rights related cases focusing on the economic rights set in article 33 of 1945 Constitution of Indonesia. The case reviews specifically take electricity law case and oil and mining law case.

In a landmark decision on 15 December 2004, the Indonesian Constitutional Court (ICC) invalidates electricity law to unbundled and privatizes the country's electricity system. The ICC referred to international experience with privatization in rejecting the law, which they said would harm

the country. This decision is important decision involving the long conflict between freedoms versus social or communal rights within Indonesia legal system. Furthermore, it has made clear interpretation of "controlled by the state" involving economic activity, considering that the constitutional provision in article 33 of Indonesia 1945 constitution used to be debated for its meaning before the establishment of constitutional court. The main issue in this constitutional review was whether the privatization regulated in the electricity law is considered as against the provision of article 33 of 1945 constitution.

In the other decision involving the economic rights, ICC has passed a decision in a case of petition for constitutional review of the Law of the Republic of Indonesia Number 22 Year 2001 regarding Oil and Natural Gas against the 1945 Constitution of the State of the Republic of Indonesia on 15th December 2004 in its judgment No. 002/PUU-I/2003. ICC in this decision had declared part of Law No. 22 of 2001, which gave full authority to enterprises to undertake exploration and exploitation of the Oil and Gas Sector and relinquish oil and gas price determination to the market's mechanism, as contradictory to article 33 1945 Constitution.

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