

# Regional Perspectives on Law and Rights: Where Are We Now and Where Are We Heading?

Proceeding of The 2013 Padjadjaran International Legal Conference Series,  
Bandung, 22 - 24 October 2013

Editors:

R. Achmad Gusman Catur Siswandi, S.H., LL.M., Ph.D

Chloryne Trie Isana Dewi, S.H., LL.M.

Inna Junaenah, S.H., M.H.

Imam Mulyana, S.H., M.H.

Bilal Dewansyah, S.H., M.H.

Faculty of Law – Universitas Padjadjaran  
Indonesian Community for Human Rights (PAHAM)  
Bandung, 2014



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## PREFACE

During the last decade, the international community has witnessed a myriad of global problems taking place in many different parts of the world, including refugees, nuclear proliferation, civil wars, trade disputes, and environmental issues. While international law has provided relevant mechanisms to solve these problems, many of them have peculiar characteristics and need to be resolved within a regional sphere. This has been particularly evident at least in three fields of international law, namely human rights, trade law, and environmental law. Each of these fields has demonstrated a proliferation of regional mechanisms to deal with transboundary issues, ranging from informal cooperation between governments to the establishment of new institutions.

The increasing popularity of regional arrangements has also attracted the attention of scholars and academicians, especially in the field of comparative law. Different legal systems and institutions across the globe have posed a significant challenge to regionalism, particularly with respect to the harmonization of laws among concerned States.

Despite the popularity of regional arrangements, controversies remain. For instance, in the field of international trade law, it has been argued that regionalism may lead to regulatory incoherence and policy fragmentation. Additionally, in the field of international human rights law, it has been observed that a number of States are still reluctant to initiate and establish a regional human rights mechanism. These situations have raised a fundamental question: would regionalism make a significant contribution to the development of international law or, on the contrary, would it weaken the global consensus adopted in various international fora?

In the light of the above question, this conference aimed to provide a forum for international scholars and lawyers to exchange ideas about contemporary regional perspectives on law and rights and to discuss how these perspectives would evolve in the future. In this regard, the discussions were particularly focused on the South East Asian context. However, the contributions from the participants included in these proceedings also reflected the developments in other regions.

More specifically, this conference aimed to examine the issues of regionalism vis-à-vis multilateralism in the South East Asian context and to review the current implementation of international legal instruments in the South East Asian countries. In addition, it was also expected that through this conference, the participants would be able to assess the effectiveness of the current regional arrangements in the South East Asian region as well as to



Identify the elements of regional arrangements that need to be established in the South East Asian region.

Within this context, the 2013 Padjadjaran International Legal Conference Series was divided into three separate but related conferences. The first conference, which was also titled as the second Padjadjaran International Conference on Human Rights, was focused on regional perspectives on human rights issues. The second conference was focused on regional perspectives with regard to international law issues, and the third conference was focused on regional perspectives in the field of comparative law.

Editors.



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Bandung, 2014



Faculty of Law, Universitas Padjadjaran

# Part One : Opening Remarks

PILC Series 2013, Bandung, 22 - 24 October 2013



**OPENING REMARKS FROM  
THE RECTOR OF UNIVERSITAS PADJADJARAN  
AT THE 2013 PADJADJARAN INTERNATIONAL LEGAL CONFERENCE SERIES**

Bismillahirrahmanirrahiim,  
Assalamualaikum Warahmatullaahi Wabarakatuh,  
Good morning

His Excellency Mr. Andri Hadi, the Indonesian Ambassador for Singapore,  
Ms. Siti Noor Laila, Chairperson of the National Human Rights Commission of  
Indonesia, and Members and Staff of the National Human Rights Commission of  
Indonesia,  
Colleagues from Universitas Padjadjaran and universities in Bandung,  
Distinguished speakers and participants,  
Ladies and gentlemen.

First of all, I would like to convey an apology from Prof. Ganjar Kurnia, Rector of Universitas Padjadjaran, for not being able to meet you all in person as he has to attend another meeting with the Governor of West Java and the Minister of Justice and Human Rights this morning. So I would like to deliver these opening remarks on his behalf.

It is such a great honour to welcome you all to this event, the 2013 Padjadjaran International Legal Conference, which is organized by the Faculty of Law, Universitas Padjadjaran. This is the second international conference organized by the Faculty of Law, and the theme for this year's conference is "Regional Perspectives on Law and Rights: Where Are We Now and Where Are We Heading?" Last year, the theme was "Human Rights, Economic and Social Rights Today", and the conference was a wonderful success.

The theme of this year's conference, regionalism, is one of the important global issues that we are currently facing today. Just about two weeks ago, Indonesia hosted the Asia-Pacific Economic Cooperation meeting in Bali, which truly indicates the pivotal role of regional cooperation, particularly in supporting the resilience and sustainable growth of the global economy. In fact, the Asia Pacific region itself has been expected to become 'the engine of global economic growth'.

Another example in which we could observe the importance of regional arrangements is the issue of refugees and asylum seekers. Last month, a boat carrying migrants to Australia tragically sank off the Indonesian coast, killing at least 36 people. Earlier this month, the Australian Prime Minister Tony Abbott



**Part One: Opening Remarks**

and our President Susilo Bambang Yudhoyono met and held talks concerning this issue in Jakarta. As problems related to refugees and asylum seekers do not only concern Australia and Indonesia, but also countries where the migrants come from as well as other countries in the Asia Pacific region, it is evident that those problems need to be resolved at a regional level.

Ladies and gentlemen,

As one of the top universities in Indonesia, Universitas Padjadjaran has a particularly strong interest in making academic contributions to resolve global and regional issues. We have a vision that Universitas Padjadjaran should become a highly regarded university that offers a world-class education. Within this context, we have acknowledged in our 2012–2016 Strategic Plan the essential role of the higher education institution, such as Universitas Padjadjaran, as a medium for international networking and cooperation. In line with our Strategic Plan, we have initiated a number of cooperation programmes with several international institutions, including the German Academic Exchange Service (DAAD), the Syngenta Foundation for Sustainable Agriculture and also the World Health Organization.

This international conference would provide another opportunity for Universitas Padjadjaran to build its capacity with respect to international networking and cooperation, which eventually would enable us to enhance our academic performance in making contributions to resolve regional and global issues. Therefore, I would like to cordially invite all the audience to discuss any future cooperation programme with us.

Ladies and gentlemen,

On this remarkable occasion, Universitas Padjadjaran will also sign a Memorandum of Understanding with the National Human Rights Commission of Indonesia. The MOU covers all forms of cooperation in the fields of teaching, research, dissemination and training in human rights. The signing of the MOU thus demonstrates the commitment of Universitas Padjadjaran to support the promotion and protection of human rights, not only at national level, but also at regional and international levels.

Finally, I would like to wish all participants a great and insightful conference, and I am delighted to officially open this 2013 Padjadjaran International Legal Conference.

Wassalamualaikum warahmatullaahi wabarakatuh.



REMARKS FROM DR. SIGID SUSENO, S.H., M.HUM  
DEAN, FACULTY OF LAW UNIVERSITAS PADJADJARAN  
AT THE 2013 PADJADJARAN INTERNATIONAL LEGAL CONFERENCE SERIES

Bismillahirrahmanirrahiim,

Assalamualaikum Warahmatullaahi Wabarakatuh,

Good morning

His Excellency Mr. Andri Hadi, the Indonesian Ambassador for Singapore,

Ms. Siti Noor Laila, Chairperson of the National Human Rights Commission of Indonesia, and Members and Staff of the National Human Rights Commission of Indonesia,

Colleagues from Universitas Padjadjaran and universities in Bandung,

Distinguished speakers and participants,

Ladies and gentlemen.

It is such a privilege for me to welcome you to the 2013 Padjadjaran International Legal Conference. This year we have extended the scope of the Conference, which does not only touch upon the issue of human rights law, but also international law and comparative law. We have accepted around forty abstracts, submitted by participants not only from different regions of Indonesia but also from other countries, including the United States, Taiwan, India and Sri Lanka.

This Conference would provide not only a forum for academic discussions but also for international networking and cooperation. As you all may know, a higher education institution has a significant role in promoting international networking and cooperation, and the Faculty of Law has long been actively involved with various international cooperation programmes. Some of these programmes have been conducted through our research centres, including our human rights centre, also known as "Paguyuban Hak Asasi Manusia" or PAHAM, which has initiated this Conference for the second time.

Ladies and gentlemen,

Apart from providing a precious opportunity to expand our international networking and cooperation, this Conference is also essential for enhancing our academic performance, especially in the fields of human rights law, international law and comparative law. The Law Faculty of Universitas Padjadjaran has been regarded as one of the leading law schools in Indonesia, and we really depend on events like we are having today to maintain our reputation.



Part One: Opening Remarks

Nevertheless, we still have a lot of work to do in order to realize our vision of becoming a world class university that offers a world class legal education. This would be such a daunting task, and we realize that we could never do this on our own. Cooperation at every possible level is essential in this regard. Therefore, through this conference, I also hope that we could gain something that could become a basis for future cooperation, especially in resolving legal issues in the fields of human rights law, international law and comparative law. We warmly welcome the Memorandum of Understanding that is going to be signed later between the National Human Rights Commission of Indonesia and Universitas Padjadjaran, and we would fully support any forms of cooperation resulting from this MOU.

Ladies and gentlemen,

I would also like to take this opportunity to thank the organizing committee for their hard work in preparing this Conference. I would also like to express our gratitude to the Universitas Padjadjaran, the National Human Rights Commission of Indonesia and the Human Rights Resource Centre for every assistance that they have provided.

Have a great Conference, thank you for your kind attention.

Wassalamualaikum warahmatullaahi wabarakatuh.



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Have a great Conference, thank you for your kind attention.

Wassalamualaikum warahmatullaahi wabarakatuh.



OPENING REMARKS - DIRECTOR OF THE INDONESIAN  
COMMUNITY FOR HUMAN RIGHTS  
FACULTY OF LAW, PADJADJARAN UNIVERSITY  
AT THE 2013 PADJADJARAN INTERNATIONAL LEGAL CONFERENCE SERIES  
Bandung, 22 October 2013  
Ruang Serba Guna, Gedung 2 lantai 4  
Universitas Padjadjaran Kampus Iwa Koesoemasoemantri  
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Bismillahirrahmanirrahiim,  
Assalamualaikum Warahmatullahi Wabarakatuh,

His Excellency Mr. Andri Hadi, the Indonesian Ambassador to Singapore

Ms. Siti Noor Laila, Chairperson of the National Human Rights Commission of Indonesia, and Commissioners and Staff of the National Human Rights Commission of Indonesia,

Vice Rector of Cooperation, Dr. Setiawan

Distinguished speakers (Prof. Bagir Manan of Padjadjaran University-former Chief Justice of the Indonesian Supreme Court and Honorary Chairman of PAHAM, Prof. Satya Arinanto of University of Indonesia-Legal adviser to the Vice President of Indonesia, Prof. Christina Cerna of Georgetown University, Dr. Graham Hassal of Victoria University of Wellington, Mr. Hitoshi Nasu of Australian National University, Ms Ethel Avisado of the University of Philippines, Ms Michelle Kelsag of Human Rights Resource Center for ASEAN, Dr. Atip Latifulhayat of Padjadjaran University, and Dr Dianto Bachriadi of National Human Rights Commission of Indonesia),

Colleagues from Universitas Padjadjaran and other universities,

Distinguished participants,

Ladies and gentlemen,

It is my great honor to welcome you in Universitas Padjadjaran attending the 2013 Padjadjaran International Legal Conference Series. Last year, the Indonesian Community for Human Rights known as "Paguyuban Hak Asasi



## Part One: Opening Remarks

Manusia" or PAHAM – a human rights center of Faculty of Law – organized the 1<sup>st</sup> Padjadjaran International Conference on Human Rights with the theme of economic and social rights. This year, after quite intensive discussion with the Steering Committee, the Organizing Committee headed by Mr. Gusman Siswandi who just recently accomplished his doctoral program from Australian National University, decided to focus on regionalism, in particular ASEAN region. The major reason for this is because regionalism becomes one of the main important issues that we are facing today, and ASEAN is predicted to be one of the most dynamic regions in the world. A couple weeks ago, at the 23rd ASEAN Summit held in Brunei Darussalam, leaders of 10 ASEAN member countries discussed measures to reach the goal to build an ASEAN Community by 2015 and development directions for ASEAN after that. In this regard, governments and society are among the fundamental pillars to implement those directions.

Ladies and gentlemen,

In general, this conference aims to provide a forum for international scholars and lawyers to exchange ideas about contemporary regional perspectives on law and rights and to discuss how these perspectives would evolve in the future. In particular, a number of discussions which will be held both in panel sessions as well as chamber sessions will examine the issues of regionalism vis-a-vis multilateralism in the South East Asian context, review the current implementation of international legal instruments in the South East Asian countries, assess the effectiveness of the current regional arrangements in the South East Asian region, and identify the elements of regional arrangements that need to be established in the South East Asian region. However, discussions of other regions will also welcome.

Distinguished guests, speakers, and participants,

PAHAM which was established in 1998 have actively involved in a number of activities, at the international, national as well as local levels. It has developed cooperation with the Raoul Wallenberg Institute of Lund University in Sweden which resulted in, among other, the library development project during 2001-2005 through which the Library of Faculty of Law now becomes one of the leading library in Indonesia in terms of human rights collection. PAHAM also conducted research on rights to education and rights to health under the cooperation with the Government of West Java Province. This morning, we will witness the signing of the Memorandum of Understanding between the National Human Rights Commission of Indonesia and Universitas Padjadjaran



nich will serve as basic document for various activities organized by the two institutions. In this regard, PAHAM will play a pivotal role to further implement his important cooperation. In addition, PAHAM is now preparing for another potential cooperation with Human Rights Resource Center for ASEAN which is headed by Mr. Marzuki Darusman – a special reporter for North Korea. PAHAM will apply to become an affiliated institution to this prestigious human rights center in ASEAN region. The MoU is expected to be signed next year.

Ladies and gentlemen,

Without generous assistances from a number of institutions as well as individuals, this 2013 International Legal Conference could not be realized. Therefore, I would like to take this opportunity to express my appreciation to Rector of Padjadjaran University who always provides continuous support. Next, I thank to Dr. Sigid Suseno – the new Dean of Faculty of Law – with the hope that Faculty of Law would be able to assist next year conference which will concentrate on the issues of constitutionalism. The National Human Rights Commission of Indonesia and Human Rights Resource Center for ASEAN are the next important partners who are able to assist us in organizing this Conference. I would like also to thank all distinguished speakers who come from different parts of the world and are keen to share knowledge and experiences. To participants both paper presenters and non-presenters, thank you for your attendance. In particular, I would like to mention the role of Dr. Indra Perwira, the Director of Centre on State Policy who always helps us in preparing this Conference, ranging from concept or ideas to financial matters. Last but not least, I would like to thank the Organizing Committee for your hard work and



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# IS BLSM JUSTIFIED? (LAW AND HUMAN RIGHTS PERSPECTIVE)

HS Tisnanta\*

## Abstract

*"Bantuan Langsung Sementara Masyarakat" (BLSM), a compensation of raising fuel price, has caused values distortion and community disintegration. The increasing policy gives rise to debate over morality and its impact. Redistribution policies through direct transfers such kind of BLSM provides option for people to lead themselves become poor people.*

*This paper asks two fundamental questions, namely how the BLSM policy is considered in terms of a rights-based approach and how it relates to welfare State vision and its morality. This paper will utilize the concept of legal empowerment of the poor and the concept of rights-based approach.*

*BLSM redistribution mechanism does not consider the poverty condition. BLSM legal framework is not formulated based on the characteristics of the poor. In the context of human rights, BLSM policy shall be conducted using a rights-based approach and not emphasizes on charity and basic needs approaches as well as the exclusion of human dignity. Legally, BLSM policy does not answer poverty reduction as outlined in the law of poverty elimination and national strategies for poverty reduction focusing on the development of capacity, basic skills, and entrepreneurial skills.*

*In welfare State based on Pancasila, human dignity, as morality of the nation, is the very fundamental value. Strategies and mechanisms of redistribution shall be executed within the framework of legal empowerment for the poor which include rights enhancement, rights awareness, rights enablement, and rights enforcement. However, BLSM policy exactly preserves poverty itself. Thus it can be concluded that BLSM as a social policy is not justified.*

**Keywords:** *BLSM, justice, law, human rights.*

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\* Lecturer at the Faculty of Law of Lampung University and Director of PKKP-HAM Unila



### A. Preface

"*Bantuan Langsung Sementara Masyarakat*" (next to be called-BLSM), a replication of the direct cash assistance (named BLT), has essentially the same function and character as the compensation given by the government due to the increase in fuel policy. BLSM given to 18, 5 million households for 9 (nine) months reached IDR 150,000 per month. Total fund allocated (including operating expenses), hits IDR 25.6 trillion.

BLSM, as laid out within the framework of the government policy of poverty reduction is stipulated in Presidential Regulation Number 15 / 2010 concerning the acceleration of Poverty Reduction. But a lot of criticisms and rejections come from both elite and the grassroots level. Some form of rejections emerges as follows:

- a) Dozens of heads of households in the village Tegaltirto Berbah, Sleman, Yogyakarta, returned the "card - poor ". They did not feel as poor families who are eligible to receive aid as compensation for the increased price of fuel.<sup>1</sup>
- b) Residents in the eight - villages, sub-district " Tiang Pumpung Kepungut ", Musirawas regency, South Sumatra, refused BLSM in 2013 because they considered that BLSM was misplaced (the News);
- c) Jatisura Village Chief, District Jatiwangi, Ginggi Shar Hashim said, BLSM had more negative impact rather than positive, especially for the head of the village. Based on his experience, village officials had never been involved in formulating on those are eligible to receive BLSM.<sup>2</sup>
- d) The rejection of BLSM by the village chief in Bandung regency is sticking back.<sup>3</sup>

These facts indicate the need to observe and that the policy BLSM is not fully accepted by society. Regardless of the pro and contra of the policy, at a glance BLSM implies that the government faces "kindness" to the community, especially the poor. The issue emerges whether to maintain this kind of policy has a correlation to the improvement of the national economy? It often spoofed into "*BALSEM*" (Indonesian word for "Balm" or liniment), the nature and

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1 indosiar.com - Wednesday : 26/06/2013  
2 sindonews.com  
3 inilah.com



character of BLSM also similar to the workings of the balm that only creates a temporary effect. When it applied to parts of the body affected by pain or irritation, the balm make temporary hot effect and reduced pain. Then if the effects of heat balm began to disappear, then the pain will be back.

According to the experts, BLSM policy actually has eroded the purchasing power of people at once to amputate the public's ability to survive in the changing of economic situation. No wonder if the perception that this policy is nothing but an attempt to quell public anger over the raising of fuel price. Maintain some sort of compensation policy is like a BLT or BLSM sees poverty as pathology rather than as an implication of the existing system. This perspective certainly has implications for the choice of policy models that attempt to solve the problem instantaneously through social policies that are caricature and temporary. In other words, the author wants to say that the only true BLSM preserve the so-called culture of poverty.

BLSM does not make people self-sufficient and productive. In fact, a way out of poverty is none other than to make people productive in order to meet their basic needs. Instead of helping the poor, this program is actually an attempt to shift the responsibility of the government to improve the lives of the people and create social justice.

Based on the criticism of reality BLSM policies mentioned above, it appears that a fundamental question is whether BLSM can be laid down as a policy to reduce poverty while placing the dignity of the poor.

Indonesia as country that states as a welfare state, the concept of community development should be improving the functional capabilities and substantive freedoms.

#### B. Problems

On the basis of the above description, the issues to be discussed in this paper are:

- a. What is the BLSM policy in relation to the concept of "Pancasila welfare state"?
- b. How the poverty reduction policies through BLSM terms of a rights-based approach?

#### C. Discussions

1. **BLSM Policy in relation to the concept of welfare state ideology**  
The conception of the rule of law should be put in the Indonesian *Pancasila* as the



national ideology. Pancasila state law is not only in the formal sense but also in its material. According to M Yamin, Pancasila State Law is the welfare state "expressis verbis" stated in the Preamble of the 1945 of Indonesian Constitution (UUDNRI 1945) by the formulation of national purpose is "to promote the general welfare and the intellectual life of the nation".<sup>4</sup>

The fundamental question that arises then is what is the common good and how to achieve social justice? Magnis Suseno,<sup>5</sup> formulate the general welfare as "overall social preconditions that enable or facilitate human to develop all its worth", or the "sum of all social conditions necessary for individuals, families, and community groups can achieve wholeness or complete their development with more and faster". Thus the general welfare is defined as the number of terms and conditions that need to be available so that community members can prosper. The hallmark of the welfare state is the implementation of various facilities and actions-specific measures to improve the welfare of social groups who are less able.<sup>6</sup> State is responsible for the fulfilment of the rights of the classical and social rights for people to be able to live free from poverty and economic dependence.

Constitutionally UUDNRI 1945 has laid the foundation of economic development in Article 33 and Article 34 which contains the basic provisions in the field of economy and people's welfare. The substance of Article 33 cannot be removed with the content of the provisions of Article 34 as a favour to the poor and not able to through the social security system. Besides of these provisions, it also affirmed the state's responsibility to develop a welfare policy in various areas of health and welfare services, especially public facilities appropriately.<sup>7</sup>

UUDNRI 1945 were the highest agreement is the reference and referral in developing any national economic development policy. The national economy must be put in the context of public welfare in accordance with the spirit and moral economy of Article 33 and Article 34. Soul and the moral economy of Article 33 and Article 34 is a cornerstone in formulating the substance of legal products. Alignments against the weak and not able to be accommodated

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4 Muhammad Yamin, *Pembahasan Undang-Undang Dasar Republik Indonesia*. p. 429.

5 Franz Magnis Suseno, *Etika Politik*, Jakarta: P.T. Gramedia, 1991, p. 314.

6 *Ibid.*, p. 316.

7 Jimly Asshiddiqie, *Konsolidasi Naskah UUD 1945 Setelah Perubahan Ke Empat*, Jakarta: Yarsif Watampone, 2003, p.58.



through proper legal policies (particularly law and other local regulations) those are affirmative. Affirmative settings will penetrate the limitations faced by the poor people.

BLSM can be categorized as policies that are welfare policy and affirmative. Thus it can be argued that the policy BLSM have a strong constitutional foundation. But not BLSM policy oriented towards increasing the capacity of the poor who are the poor side demands. Improved legal rights could be done through empowerment of the poor which includes four essential elements, such are:<sup>8</sup>

- a) Reforming the Poor Law and Giving Voice: Ensuring that the poor are Able to influence the development of policy and law and enhance their rights through democratic and transparent political processes - rights enhancement.
- b) Providing Knowledge as a Means for Empowerment: Making sure that the poor understand their rights and the processes by roommates they can be exercised and enforced - rights awareness.
- c) Levelling the Playing Field: Ensuring that the poor are Able to overcome bureaucratic and cost barriers that broadly affect their access to economic opportunity and wealth generation - rights enablement.
- d) Providing Access to Enforcement: Making sure that the poor can protect their rights in and access to opportunities and assets through affordable, fair Mechanisms for enforcement of rights and contracts and dispute resolution - rights enforcement.

Four elements of empowerment, in the Indonesian legal system positively regulated Act Number 13 of 2012 on Poverty Management. The law put in freeing the state obligations of the condition and carried through the respect, protection and fulfilment of the right to basic needs. Efforts should be made by the state as a priority in national development, including for the welfare of the poor. Under the Act, among others, set about rights (Article 3), responsibility (Article 4) and the form of workarounds (Article 7). The legislation provides a strong foundation for the government to undertake poverty alleviation through development programs.

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<sup>8</sup> USAID, *Legal Empowerment of The Poor-from concept to assessment*, March 2007, [www.ssrn.com](http://www.ssrn.com), downloaded at April 18, 2010, 12.45.



**2. Policies to reduce poverty through BLSM terms of a rights-based approach**  
Indonesia still faced by multidimensional problems of the high rate of poverty. Various attempts have been made by the government through the development programs. In the medium-term of National Development Plan 2010-2014 (RPJMN), the poverty rate is targeted to reduce by 8-10 percent in 2014. Efforts to accelerate poverty reduction stipulated in Presidential Regulation Number 15 / 2010, which roughly define strategies grouped into four (4) clusters, namely cluster I; Social assistance programs and guarantees, Cluster II; community empowerment program, Cluster III ; empowerment of micro, small and medium enterprises, Cluster IV ; pro-people program, to complement the three other clusters. Nevertheless, the challenges and the problems of poverty in Indonesia are so complex that these programs have not been able to liberate the poor from poverty. According to these clusters, BLSM can be categorized in Cluster I.

It is undeniable that the policy to rise up the BBM price had made poor economic shocks. BLSM is a policy for the poor to ease the burden of rising fuel prices. BLSM policy is a partial settlement policy and peripherals that are only solve the problem of poverty in the downstream side of the course. It should be recognized that the value of this policy that the social security system which serves to protect the poor from economic shocks impact of rising fuel prices. However, the policy does not respond substantively about the issues of poverty.

Substantively, poverty in Indonesia continues to ensnare poor segments of society to continue to be in poverty (*poverty trap*). To be able to get out of the poverty trap, it takes a deep understanding of the characteristics of poverty itself and its resistance. One of the characteristics of poverty is vulnerability to changing conditions and government policies that make them be helpless.

BLSM is government assistance to the poor to alleviate the burden of rising fuel prices for 18.5 million poor households for 9 months. Funds allocated by 25, 6 trillion rupiah, including the operating budget. Each poor household receive assistance amounting to IDR 150,000.00 per month. The policy makes a lot of people declare themselves poor, just to obtain such assistance, so that it can be said that the aid moral distortion impact. On the other hand, because of access and uneven distribution causes the disintegration of the grass-roots level.

BLSM policy only emphasizes on the aspects and utilities alone cannot restore the functional capability of the poor. Poverty is a condition of loss of capability (*capabilities deprivation*) functional and substantive freedom.<sup>9</sup> The

<sup>9</sup> Amartya Sen, *Development as freedom*, First Anchor Books Edition, August, 2000.



poor people lost something intrinsically very important as it reduces its ability to deliver value to their lives with the "doings" and "beings" them. BLSM cannot encourage poor people to appreciate and give value to life because it is only based on the utility aspect.

Fight against poverty with the capability approach is a part of human development that aims to expand human choices. Therefore, the solution for poverty must be substantial and integral to overcoming the barriers that are related to one another are able to solve the problems of poverty in the upper level and the long-term impact.<sup>10</sup> The Macro strategy of poverty reduction will be linked to the four barriers aspects, i.e.: structural, human resources, social and cultural institutions that constitute poverty traps should be transformed to poverty reduction. The effort requires a process of transformation through the fulfilment of basic needs.

In the context of human rights, poverty reduction policies can be carried out with a rights-based approach (basic needs approach). Fulfilments of basic rights make to build on the empowerment of the poor. Policies can not only caricature or just based on needs. Policies must be based on the needs of the caricature and can be done in emergency conditions. Oriented approach to poverty reduction can be presented in the following table:<sup>11</sup>

Table  
Orientation Caricature Approach, Approach Needs and Rights -Based Approach

Caricature Approach	Needs Approach	Rights-Based Approach
Focus on input not outcome	Focus on input and outcome	Focus on process and outcome
Emphasizes increasing charity	Emphasizes meeting needs	Emphasizes realizing rights
Recognizes moral responsibility of rich towards poor	Recognizes needs as valid claims	Recognizes individual and group rights as claims toward legal and moral duty-bearers
Individuals are seen as victims	Individuals are objects of development interventions	Individuals and groups are empowered to claim their rights
Individuals deserve assistance	Individuals deserve assistance	Individuals are entitled to assistance
Focuses on manifestation of problems	Focuses on immediate causes of problems	Focuses on structural causes and their manifestations

Source: Jakob Kirkemann Boesen & Thomas Martin, 2009

10 Kemal A. Stamboel, *Panggilan keberpihakan: strategi mengakhiri kemiskinan di Indonesia*, Jakarta: Kompas Gramedia, p.28.

11 Jakob Kirkemann Boesen & Thomas Martin, *Applying a Rights-based Approach*, [www.humanrights.dk](http://www.humanrights.dk) downloaded at Desember, 23 2009, 10.25.



## Part Four: Presenters' Presentation

Policy that focused to a rights-based approach is process-oriented and outcomes (effects) of policies with an emphasis on the realization of the rights of the poor. This is different from the caricature approach and the approach needs to focus on the input or the amount of aid that the emphasis on the amount of aid and unmet needs. Rights -based approach to recognize individual rights and group rights as legal and moral obligation of the government, so that they can claim their constitutional rights. In the approach seen as a caricature of the poor victims in need of recognition of the moral responsibility of the rich, so the poor people are entitled to be able to help. While the needs approach to the poor become the object of development policy interventions. They have the right to receive assistance that can be prosecuted. Rights -based approach to dealing with the sovereignty of the welfare of the poor release of structural dependency. Form of empowerment of the poor is not solely directed to the creation of justice and equity, but more than that, namely improving the competence that makes people become independent in accordance with the status and dignity.

**A. Conclusion**

Based on the description above it can be concluded that the runway has a constitution BLSM policies and strong legislation. The policy is a welfare policy that is affirmative. However, based on the approach taken and the impact it had, BLSM not be justified. BLSM is a policy that is partial and peripheral distortion it causes moral and social disintegration.

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