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— PROCEEDING —

INTERNATIONAL CONFERENCE ON
**LAW AND
SOCIETY**



YOGYAKARTA, 04 – 07 APRIL 2017

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

— P R O C E E D I N G —

INTERNATIONAL CONFERENCE ON
**LAW AND
SOCIETY**

Yogyakarta, 04 – 07 April 2017

LP3M & Faculty of Law Universitas Muhammadiyah Yogyakarta
2017

PROCEEDING

International Conference on Law and Society

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Message from Chairman

Yordan Gunawan

Chairman, International Conference on Law and Society 6,
Universitas Muhammadiyah Yogyakarta

Assalaamu'alaikumWarahmatullahiWabarakatuh,

In the Name of Allah, the most Gracious and the most Merciful. Peace and blessings be upon our Prophet Muhammad (S.A.W).

First and foremost, I felt honoured, on behalf of the university to be warmly welcomed and to be given the opportunity to work hand in hand, organizing a respectable conference. Indeed, this is a great achievement towards a warmers multilateral tie among UniversitasMuhammadiyah Yogyakarta (UMY), International Islamic University Malaysia (IIUM), UniversitiIslam Sultan Sharif Ali (UNISSA), Universiti Sultan ZainalAbidin Malaysia (UNiSZA), Fatoni University, Istanbul University, Fatih Sultan Mehmet Vakif University and Istanbul Medeniyet University.

I believe that this is a great step to give more contribution the knowledge development and sharing not only for eight universities but also to the Muslim world. Improving academic quality and strengthening our position as the procedures of knowledge and wisdom will offer a meaningful contribution to the development of Islamic Civilization. This responsibility is particularly significant especially with the emergence of the information and knowledge society where value adding is mainly generated by the production and the dissemination of knowledge.

Today's joint seminar signifies our attempts to shoulder this responsibility. I am confident to say that this program will be a giant leap for all of us to open other pathways of cooperation. I am also convinced that through strengthening our collaboration we can learn from each other and continue learning, as far as I am concerned, is a valuable ingredient to develop our universities. I sincerely wish you good luck and success in joining this program

I would also like to express my heartfeltthanks to the keynote speakers, committee, contributors, papers presenters and participants in this prestigious event.

This educational and cultural visit is not only and avenue to foster good relationship between organizations and individuals but also to learn as much from one another. The Islamic platform inculcated throughout the educational system namely the Islamization of knowledge, both theoretical and practical, will add value to us. Those comprehensive excellent we strived for must always be encouraged through conferences, seminars and intellectual-based activities in line with our lullaby: The journey of a thousand miles begin by a single step, the vision of centuries ahead must start from now.

Looking forward to a fruitful meeting.

Wassalamu'alaikumWarahmatullahiWabarakatuh

Foreword

Trisno Raharjo

Dean, Faculty of Law, Universitas Muhammadiyah Yogyakarta

Alhamdulillah all praise be to Allah SWT for his mercy and blessings that has enabled the Fakultas Hukum, Universitas Muhammadiyah Yogyakarta in organizing this Inaugural International Conference on Law and Society 6 (ICLAS 6).

This Conference will be providing us with the much needed academic platform to discuss the role of law in the society, and in the context of our two universities, the need to identify the role of law in furthering the progress and development of the Muslims. Muslim in Indonesia and all over the world have to deal with the ubiquity of internet in our daily lives life which bring with it the advantages of easy access of global communication that brings us closer. However, internet also brings with it the depraved and corrupted contents posing serious challenges to the moral fabric of our society. Nevertheless, we should be encouraged to exploit the technology for the benefit of the academics in the Asia region to crat a platform to collaborate for propelling the renaissance of scholarship amongst the Muslims.

This Conference marks the beginning of a strategically planned collaboration that must not be a one off event but the beginning of a series of events to provide the much needed platform for networking for the young Muslim scholars to nurture the development of the Muslim society.

UMY aims to be a World Class Islamic University and intend to assume an important role in reaching out to the Muslim ummah by organising conferences hosting prominent scholars to enrich the developmment of knowledge. This plan will only materialise with the continous support and active participation of all of us. I would like to express sincere appreciation to the committee in organising and hosting this Conference.

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The Importance of Comparative Law in Legal Education

M. REFIK KORKUSUZ

Faculty of Law, İstanbul Medeniyet University

A. Historical background

In the western countries, the basis of studies of “comparative law” that started in 17th century aims for mutual legal solutions in a way that analyzes and compares the norms of several legal systems. Despite the gradual convergence of the systems, legal academicians have been avoiding the chance for a long time. Through the remarkable meetings of Roscoe Pound Comparative Law Studies in Paris, 1901 and the U.S., 1919, the idea of creating mutual norms that can be applied to several legal systems is accepted. Following that, “Comparative Law” became a department and a research area in law faculties.

Comparative law is a frequently emphasized and growing area, especially in recent years. The system simply looks for a research, comparison of different cultures and the best possible compatibility in a world where the concepts of “far” and “close” or “local” and “foreigner” constantly and widely change. This field of science has an important role on expanding the general knowledge of law and the progress of law as a field of study. Overall, it provides a better understanding on national institutions as well as it contributes to those institutions in practice. A glimpse on comparative law reveals that it contributes to any area of law, from civil law to commercial law and from criminal law to social security law.

B. Key points in comparative law

The study of comparative law requires a broader research than comparing a state to another. It is not sufficient for a study of comparative law to express that the approaches of the compared states to a legal problem are exactly the same or detect and list the differences. The reason of similarities and differences is also needed to be both researched and expressed. Likewise, it is essential to address the necessity of both a detailed analysis of the compared states and historical backgrounds, socio-political structures and general attributes of the legal sphere. For example, if a direct adaptation from one legal system to another is drawn as a conclusion, the historical base or cultural interaction causing the result should be explained.

A better review on the weak and strong sides of our national system may be achieved through comparative law studies. Other examples may provide hints and benefits to our legal codifications. It can be possible to develop a theory on the field of industrial relations and test the hypothesis on certain models. The models may provide hints for possible events in the future along with the theory. A resource can be created for research findings, national and multinational enterprises, international trade unions and law protectors. At this point it should be taken into consideration that the rules and institutions’ comparative technique may cause problems in terms of efficiency and usefulness. A far more correct approach than the comparison of rules and institutions is to compare the functions of these institutions. It is perhaps necessary to conduct country studies (horizontal method) based on a common plan, but that is not enough. It is more

beneficial to compare in vertical method; using the horizontal method, through the data and information (on employment assurance, participation in administration litigation and mediation etc.), it can be turned into an in depth comparison¹.

C. contribution of comparative law to the education at law faculties

Even though the comparative law is perceived as examining the foreign legal systems, it is also a tool to have a look at our own legal system as a third eye and at least to crosscheck it to synchronize. By this way, we can have a chance to see the deficiencies of our own legal system and we can check the consistency between our legal system and the needs of the time, social structure and the realities of the time. In the same direction, having comprehensive knowledge of foreign legal systems became very important to be a contemporary lawyer² and studies of comparative law is a precious tool to have that comprehensive knowledge.

In this sense, I believe it is important for Turkey, who is founded as a secular western state of law, to be at peace with its own civilization and enrich it with the values of western legal systems will make an important contribution to our legal system³. Defending only the legal education system of a hundred years ago, will make it become a dogma and will not allow us to make progress in this field.

A nice progress not to be ignored is that; selective courses in Turkish law faculties are becoming more important⁴. However, as far as I could observe at law faculties during my dean duty, and at other faculties, we could not reach the target of having a system that offers 65% of the courses as selective courses in line with the "Bologna Process". There are many reasons for this situation. In my opinion, some of the main reasons are that we can not break the old habits and there is a strong will of the old generation for the next generation to have the same law education with the past. For example, we do not have some classes such as bargain law or some special classes on declamation and negotiation; which are now in an institutive form at European law faculties today⁵.

Without a doubt, comparative law branch has application in both private law and public law. However, legal academicians stayed away from taking advantage of comparative law, maybe because of their intense programs. But both in public law and private law, academicians should have benefited from comparative law. Legal academicians should be able to teach the equivalent institutions and practice of the related institution in both western legal systems and eastern legal systems (Islamic Law, Chinese Law, Indian Law etc.) and should encourage the students to improve themselves in that direction by giving them homework. Otherwise we, the legal academicians, can face the danger of being locked in a confined space instead of benefiting from the opportunities of the legal systems that are getting closer every day. For example Roman Law got over the obstructions it had by adopting Islamic Law institutions in 10th century. Especially on the problem that the slaves don't have power of attorney since they are not a person in Civil Law. Roman Law solved this problem by adopting "attorneyship and representation" institutions which are created by Islamic Lawyers.

Apart from the important roles of comparative law, increasing numbers of the comparative law institutes both in and abroad Turkey; and frequently taking place in the universities as courses shows us the importance of the comparative law in present day. On the other hand, the point that comparative law has reached shows us that it will be an indispensable part of the notion of law.

Consequently; benefiting from comparative law,

1. adds value learning the current legal system and its practice
2. creates new perspectives on solving the problems in current legal system
3. gives the opportunity to learn the equivalent institutions of the institutions in our legal system
4. improve the students' ability to think genuine and comparative

Endnotes

- ¹ <http://journals.istanbul.edu.tr/tr/index.php/sosyalsiyaset/article/view/81> E.T. , 01.12.2013.
- ² ÖZSUNAY, s. 283.
- ³ ROTTLEUTHNER, Hubert, Hukuk Eđitimine Genel Bakýþ, s. 28.
- ⁴ GÜRÝZ, Adnan, Hukuk Eđitimine Genel Bakýþ, TBB Yayýnlarý, S. 59, Ankara-2004, s.25.
- ⁵ ROTTLEUTHNER, s. 28.

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