



EDITORS

**Suyatno Ladiqi, Suparto Wijoyo
Aminuddin Mustaffa, Prawitra Thalib**

Law Politics *and* Society

**The Unravelling of
Malaysia and Indonesia Potentiality**

Law
Politics
and
Society

**The Unravelling of
Malaysia and Indonesia Potentiality**

Pasal 113 Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta:

- (1) Setiap Orang yang dengan tanpa hak melakukan pelanggaran hak ekonomi sebagaimana dimaksud dalam Pasal 9 ayat (1) huruf i untuk Penggunaan Secara Komersial dipidana dengan pidana penjara paling lama 1 (satu) tahun dan/atau pidana denda paling banyak Rp100.000.000 (seratus juta rupiah).
- (2) Setiap Orang yang dengan tanpa hak dan/atau tanpa izin Pencipta atau pemegang Hak Cipta melakukan pelanggaran hak ekonomi Pencipta sebagaimana dimaksud dalam Pasal 9 ayat (1) huruf c, huruf d, huruf f, dan/atau huruf h untuk Penggunaan Secara Komersial dipidana dengan pidana penjara paling lama 3 (tiga) tahun dan/atau pidana denda paling banyak Rp500.000.000,00 (lima ratus juta rupiah).
- (3) Setiap Orang yang dengan tanpa hak dan/atau tanpa izin Pencipta atau pemegang Hak Cipta melakukan pelanggaran hak ekonomi Pencipta sebagaimana dimaksud dalam Pasal 9 ayat (1) huruf a, huruf b, huruf e, dan/atau huruf g untuk Penggunaan Secara Komersial dipidana dengan pidana penjara paling lama 4 (empat) tahun dan/atau pidana denda paling banyak Rp1.000.000.000,00 (satu miliar rupiah).
- (4) Setiap Orang yang memenuhi unsur sebagaimana dimaksud pada ayat (3) yang dilakukan dalam bentuk pembajakan, dipidana dengan pidana penjara paling lama 10 (sepuluh) tahun dan/atau pidana denda paling banyak Rp4.000.000.000,00 (empat miliar rupiah).

Law Politics *and* Society

**The Unravelling of
Malaysia and Indonesia Potentiality**

EDITORS

**Suyatno Ladiqi, Suparto Wijoyo
Aminuddin Mustaffa, Prawitra Thalib**



LAW, POLITICS & SOCIETY:

The Unravelling of Malaysia and Indonesia Potentiality

Editors : Suyatno Ladiqi, [et al.]

ISBN 978-602-473-774-0 (PDF)

© 2021 Penerbit **Airlangga University Press**

Anggota IKAPI dan APPTI Jawa Timur

Kampus C Unair, Mulyorejo Surabaya 60115

Telp. (031) 5992246, 5992247 Fax. (031) 5992248

E-mail: adm@aup.unair.ac.id

Redaktur (Zadina Abadi)

Layout (Ovarine Imtihana; Djaiful; Achmad Riyanto; Sarah Khairunnisa)

Desain Sampul (Erie Febrianto)

AUP (1131/10.21)

Hak Cipta dilindungi oleh undang-undang.

Dilarang mengutip dan/atau memperbanyak tanpa izin tertulis dari Penerbit sebagian atau seluruhnya dalam bentuk apa pun.

Foreword

LAW, POLITICS & SOCIETY: The Unravelling of Malaysia and Indonesia Potentiality

Malaysia and Indonesia both own unique and potential treasures in community life as culturally similar and forged an exchange of life values that have proven successful in building a civilization of commonality in many life directions. That explains the absence of significant conflicts other than non-substantial differences of opinion during hundreds of years of living next door. Even if a dispute arises, it is only temporary and lasts only on the surface. Like sibling's quarrel on specific issues indeed.

Instead of tracing the conflicts that have occurred, this book further explores the potential in both countries in legal, social, and political fields. Digging into the problems of life in the area is very beneficial to enrich the treasures of knowledge to obtain many sources of questions and solutions. That is very important to ensure that the old civilization between Malaysia and Indonesia that has been intertwined is strong enough. In the future, it will be more potent and mutually beneficial to each other. When legal, social, and political issues arise, both countries' real solutions are important lessons and experiences. It is possible that problems that have occurred in Malaysia in these areas in the future also appear in Indonesia, and vice versa. Therefore, highlighting the issue as an effort to decipher the potential exists is very important and urgent to be done by scientists of both countries, hoping that learning and sharing experiences will enrich the treasures of life together.

This book is the fourth compilation as a regular joint publishing effort since 2017 between Sultan Zainal Abidin University (UniSZA), Terengganu, Malaysia, and Airlangga University (UNAIR), Surabaya, Indonesia. Filled by lecturers and students, this book is expected to strengthen the relationship between the two universities and further strengthen the Malaysia-Indonesia relationship. There is pivotal potential in the field of law, social and political in the society of both countries, by the scientists of both universities, tried to describe the problems

that arise and at the same time highlight the understanding obtained to solve the problems that occur. The fresh ideas in each of the issues outlined will give a lot of deep meaning. Particularly the importance of discovering the potential in the communities in both countries.

This book consists of two sections, namely Section one on Law and Section two, covering issues in Social and Political. These three issues are described in detail in each article. Section one explores the potential of law in society through the problems studied. There are 11 articles featured in the field of law. The first five articles discuss the sharing economy in the digital world, which certainly has legal implications in any issue that arises. As a current phenomenon, the sharing economy world has become essential to find a legal solution amidst the threatening problems in the current trade process. The sharing economy is a fundamental implication of the industry 4.0 revolution that uses online as the primary medium in the business world. The authors clearly describe a new legal approach to solving the problem. The first article is "Learning in the Digital Age: Legal Profiles of Private Open and Distance Learning (ODL) Institutions in Malaysia", by Tuan Fatma Tuan Sulaiman and Zuhairah Ariff Abd Ghadas. This article discusses the legal profiles of these institutions with particular reference to the companies' constitutions. In response to changing learning environment, e-learning is being implemented more and more frequently in higher education, creating new and exciting opportunities for both educational institutions and students.

The second article entitled "Formation of Contracts in Sharing Economy Transactions: Special References to COD Businesses", by Zuhairah Ariff Abd Ghadas, Nasarudin Abd Rahman, and Ahmad Idzfar Che Azhar. This article discusses the formation of contracts in COD businesses concerning fundamental elements of a contract. The finding of this article highlighted the phase where and when a contract was formed in COD businesses. Meanwhile, an article was written by Norhasliza binti Ghapa, entitled "Regulating Sharing Economy for Protecting Consumer Interests in Malaysia". This article explores the reasons for regulating the sharing economy sector based on a systematic literature review and offers arguments both for and against public regulation of the sharing economy using content analysis. This article concludes with some proposals for further research in this area and a call for an appropriate regulatory approach for protecting consumer interests in sharing economy businesses.

The use of the internet as a medium of communication has changed the way people conduct their business transactions and commerce in this competitive world. Sale and purchase activities are held online either to perform a digital contract itself or to be performed outside the cyber world. This question is elaborated sharply by Hartinie Abd Aziz and Zuhairah Ariff Abd Ghadas, who study in her article entitled 'Analyzing the Element of Gharar in terms of Online Shopping Contracts in Malaysia'. This study analyzes the terms of the standard online shopping contracts used by online retailers in Malaysia to identify 'gharar' in the contracts. This research also involves fieldwork through structured or semi-structured interviews with regulators, retailers, and customers engaged in online shopping. Findings of this would be relevant to produce fair and shariah-compliant contracts for online shopping.

The last article discussed the world of sharing economy, the latest important phenomenon in the tourism industry. Sharing economy marketplaces have thrived in all fields, including the area of travel and tourism. The ascent of this sharing economy in the accommodation market is driven by financial and societal contemplation. This new business standard is rapidly changing as new online platforms race to capture markets and customers worldwide. The article is titled "The Rise of Short-Term Accommodation as a New Booking Trend in Tourism Industry: A Need for Legal Interference in Malaysia", by Azizah Musa and Zuhairah Abd Ghadas. This article, along these lines, intends to examine the need to have specific standard guidelines in managing this sharing economy for short-term accommodation (STA) to line up with the fundamental standards of the Malaysia Tourism Industry Act 1992.

In section one, other articles describe the legal issues that arise and the need for a more appropriate approach to resolve them, especially in shariah-compliant judgment. Abdul Majid Tahir bin Mohamed wrote the article, Nor 'Ashikin binti Hamid, Nur Amani binti Pauzai, Maheran binti Makhtar, Khairun Nisaa binti Asari, and Mohd Lotpi bin Mohd Yusob, entitled "Shariah-Compliant Judgments in Private Contracts: A Review from the Present Governing Law on Judgments". This article reviewed the position of existing Malaysian law regarding court judgments in cases relating to private contracts. The finding showed that unlike judgments in Islamic banking cases, judgments in private contract cases generally do not conform with the Shariah due to the existence of claims for interest (riba). This manuscript also found that judgments in private contract cases may be Shariah-compliant if disputing parties mutually agree not to claim the draw.

Implementing the social contract requires an appreciation of its spirit as much as the letter. The social contract has been ignored in Malaysia as an inconsequential and historical theory. Therefore, the article is aimed to enlighten a need to honour the social contract via critical interpretation of the theories and examination of selected policies or laws in Malaysia. The article can be found in an article compiled by Noor 'Ashikin Hamid, Noraida Harun, Kamaliah Salleh, Asiah Bidin, and Mahamad Naser Disa, entitled "Social Contract a Forgotten Pledge".

Meanwhile, Asiah Bidin, Shahril Nizam Md Radzi, Kamaliah Salleh, Noraida Harun, and Noor 'Ashikin Hamid wrote an article entitled "Legal Protections of GIG Workers under Malaysian Employment Law: An Analysis". Gig economy worker refers to the people that earn their income in a business environment where temporary employment is commonly applied rather than permanent employment, with companies hiring workers for short term tasks. There has been a debate on the status of the gig workers. Regarding those phenomena, this article examines the status of gig workers and their rights under the Malaysian employment legislation.

Noraida Harun, Asiah Bidin, Noor' Ashikin Hamid, Kamaliah Salleh, and Nazli Ismail @Nawang, wrote an article entitled "The Application of Insurance Principle in Land Administration: A Need?" The purpose of this article is to identify the needs of the insurance principles in our land administration to remedy innocent purchasers and bona fide purchasers in land matters. This study also discusses some suggestions for improvement and outcome to ensure the interests and rights of the parties involved.

An article that discusses the Covid Pandemic is contained in the writings of Abdul Majid Tahir bin Mohamed, with the title "Covid-19 Pandemic and Its Impacts on Alternative Dispute Resolution Process". This article tried to examine the impacts of the virus on legal procedures governing Alternative Dispute Resolution (ADR) processes in Malaysia. The article also suggested suggestions that could be considered to ensure justice is not compromised during this turbulent time. From the study, the article found that legal processes and proceedings in ADR are more suitable to be done online to ensure justice is timely served for the benefit of all parties.

Meanwhile, Section 2 discusses social and political issues in Malaysia and Indonesian societies. Beginning with an article entitled "Public-Private Partnership (PPP) Financing In Sustainable Infrastructure Projects Through Sharia Financing In Indonesia Towards Acceleration On National Development"

by Faizal Kurniawan, Prawitra Thalib, Suparto Wijoyo, Radian Salman, and Wisudanto.

Syafiq Sulaiman and Salawati Mat Basir wrote an article entitled “Malaysia’s Legal Responsibility to Protect the Right to Life of Asylum-Seekers at Sea”. This article aims to analyze Malaysia legal responsibility in protecting the right to life of asylum-seekers at sea. The materials used include international and national legislation, case laws and published written materials. This article found that Malaysia is bound by its national laws and international agreements to protect the right to life of asylum-seekers at sea. Therefore, it suggested that Malaysia must step up its enforcement effort of this right and never in any way violate it.

Mahathir’s leadership in Malaysia has become an extraordinary political phenomenon. In his twilight years, he was still able to lead Malaysia with tenacity. Still, the role of Malaysia’s foreign politics during his reign was phenomenal, particularly placing Islam in Malaysian Foreign Policy. Further details can be found in Abdul Majid Hafiz Mohamed, Abdullah Ayoade Ahmad, and Mohd. Afandi Salleh entitled “Mahathir’s Twice Premiership: The Position of Islam in his Foreign Policy”. During the premiership of Tun Dr Mahathir Mohammed, Malaysia has always put the issues of Islam and the Muslim states in the distinct priority. Hence, during the Mahathir era, the government showed a high commitment to the Palestinian -Israeli crisis and other issues in Islamic countries. There are a few reasons or determinants for this action, and one of them is the co-religionist factor. This article will attempt to analyze the influence of religion, Islam in this context, towards Malaysia’s involvement in these issues.

The Halal Study in Indonesia was written by Suparto Wijoyo, Prawitra Thalib, Wisudanto, Mohamad Nur Kholiq, and Wahyu Aliansa, entitled “Integration of halal certification with ecolabel in the industrial world (a review of the East Java MUI work program 2020-2025)”. In conclusion, this article mentions that standardizing halal certificates must also be based on the importance of maintaining the environment so that whatever products from industry and business actors other than halal, *thayyib* (good) is also a blessing to give glory to people around.

Meanwhile, the article “The Influence and Dissemination of Islamic Law in The Nusantara Before and After the Independence of The Republic of Indonesia” was written by Prawitra Thalib, Wisudanto, Suparto Wijoyo, Tri Vena Putri, and Mohamad Nur Kholiq, discusses Islamic Law in Indonesia. The

influence of Islam on the law in Indonesia began to be felt with the emergence of Islamic Law as a system that had a beginning and began when Muslim scholars and traders came to Indonesia. Through the role of both, Islam can grow and develop. The Islamic law was introduced and applied in social life at that time, along with customary law that existed long before the entry of Islam. The influence of Islamic law began to decrease when the Dutch entered and applied the receptive theory. This theory emphasizes the validity and application of Islamic law for Indonesian Muslims. However, the changes after independence provided ample space for Indonesian Muslims to re-enact and apply Indonesian-style Islamic law. The independence of the Religious Courts realizes this circumstance to decide cases related to the Islamic civil sector; moreover, there is also KHI as a reference for examining and determining in the Religious Courts.

Writing about globalization as a product of the modern age is in an article entitled “Globalization and Batik Diversity: A Case Study of Competition between Indonesia and Malaysia Products of Batik” by Aizatul Anis Zuhari and Suyatno Ladiqi. Globalization connects people and reappraises the world market with interconnectedness and fast movement of goods, service, labour, and capital in an integrated way that, economically speaking, no foreigners. In the case of Batik, Indonesia, on the other hand, has been doing a fantastic job in marketing and producing its Batik, specifically called ‘Batik Jawa’ at a lower price. Which subsequently posts a competition to Malaysian Batik is usually called ‘Batik Indonesia’ were pricy primarily to keep its authentic and originality of the Batik products. Indonesia has managed to produce its Batik in mild quality but still eye-catching enough to buyers.

In contrast, Malaysian Batik keeps its original making and less production that resulted in high prices. It severely affected Malaysian Batik producers as Java set the trend, and many Malaysians favour it while taking the attention away from the Malay Batik. Thus, the purpose of the study is the effects of globalization on the diversity of Batik that has post-competition with Malaysian Batik.

The last article that closes Section 2 discussing gender studies in Indonesia is in the article written by Wisudanto, Prawitra Thalib, Tri Veny Putri, and Mohamad Nur Kholiq. Gender equality in the board of commissioners can supervise directors in different ways, and institutional ownership control firms effectively. The article examines board gender diversity and institutional ownership on dividend policy as measured by the dividend pay-out ratio. This

study indicates that board gender diversity has a significant positive effect and institutional has a significant positive impact on dividend policy.

University of Sultan Zainal Abidin (UniSZA) and Universitas Airlangga (UNAIR) had worked closely for the past six years to achieve our common goal: cooperation between two emerging universities. The plan has been set consciously since in determination to offer the best towards the nation. We want to thank all authors and the Airlangga University Press for making this volume materialized. We are confident this volume will significantly contribute to disseminating knowledge and the friendship of the two states while prospering a new field of expertise.

Kuala Terengganu & Surabaya
Editors

Suyatno Ladiqi, Suparto Wijoyo, Aminuddin Mustaffa, Prawitra Thalib

Prakata pak De KARWO

Assalamualaikum Warrahmatullahi Wabarakatuh

Puji syukur kita panjatkan kehadiran Tuhan Yang Maha Esa atas terbitnya buku yang dihasilkan oleh para penulis hebat dari Indonesia dan Malaysia. Tidak lupa saya mengapresiasi kepada penulis-penulis kami yang mewakili Indonesia khususnya dari Universitas Airlangga yang telah berkontribusi dalam karya tulis buku dengan tema **“LAW, POLITICS & SOCIETY: The Unravelling of Malaysia and Indonesia Potentiality”** diantaranya: Suyatno Ladiqi, Suparto Wijoyo, Aminuddin Mustaffa, dan Prawitra Thalib.

Hasil karya ini tentu sangat memberikan manfaat khususnya bagi hubungan antara kedua negara, Indonesia dan Malaysia. Melalui karya tulis buku ini diharapkan semakin mempererat hubungan kerjasama bilateral antara Indonesia dan Malaysia. Selain itu juga meningkatkan tali silaturahmi antar kedua negara. Buku ini berkontribusi dalam memberikan wawasan dan ilmu pengetahuan baik bagi para akademisi, mahasiswa, maupun masyarakat luas. Dengan demikian, buku ini diharapkan mampu memperkenalkan potensi penelitian di Indonesia dan Malaysia, meningkatkan kerjasama penelitian internasional, dan meningkatkan akses bagi masyarakat luas untuk mengadopsi dan menerapkan hasil penelitian di lapangan.

Demikian kiranya sambutan apresiasi dari saya terhadap lahirnya buku ini yang diselenggarakan oleh Universiti Sultan Zainal Abidin Malaysia.

Wassalamualaikum Warrahmatullahi Wabarakatuh.

Surabaya, 14 September 2021

Dr. H. Soekarwo
Anggota Dewan Pertimbangan Presiden

Daftar isi

Foreword.....	v
LAW, POLITICS & SOCIETY: The Unravelling of Malaysia and Indonesia Potentiality	v
Prakata pak De KARWO	xiii

Part 1

LAW

1. Learning in the Digital Age: Legal Profiles of Private Open and Distance Learning (ODL) Institutions in Malaysia.....	3
<i>Tuan Fatma Tuan Sulaiman, Zuhairah Ariff Abd Ghadas</i>	
2. Formation of Contracts in Sharing Economy Transactions: Special References to COD Businesses	28
<i>Zuhairah Ariff Abd Ghadas, Nasarudin Abd Rahman and Ahmad Idzfar Che Azhar</i>	
3. Regulating Sharing Economy for Protecting Consumer Interests in Malaysia	37
<i>Norhasliza binti Ghapa</i>	
4. Analysing the Element of Gharar in the Terms of Online Shopping Contracts in Malaysia	50
<i>Hartinie Abd Aziz, Zuhairah Ariff Abd Ghadas</i>	
5. The Rise of Short-Term Accommodation asa New Booking Trend in Tourism Industry:A Need for Legal Interference in Malaysia	59
<i>Azizah Musa, Zuhairah Abd Ghadas</i>	
6. Shariah Compliant Judgments in Private Contracts: A Review from the Present Governing Law on Judgments	74
<i>Abdul Majid Tahir bin Mohamed, Nor 'Ashikin binti Hamid, Nur Amani binti Pauzai, Maheran binti Makhtar, Khairun Nisaa binti Asari, Mohd Lotpi bin Mohd Yusob</i>	

7.	Social Contract A Forgotten Pledge	90
	<i>Noor 'Ashikin Hamid, Noraida Harun, Kamaliah Salleh, Asiah Bidin, Mahamad Naser Disa</i>	
8.	Legal Protections of Gig Workers in Employment.....	103
	<i>Asiah Bidin, Mohd Shahril Nizam Md Radzi, Noraida Harun, Kamaliah Salleh, Noor 'Ashikin Hamid</i>	
9.	The Application of Insurance Principle in Land Administration: A Need?	110
	<i>Noraida Harun, Asiah Bidin, Noor 'Ashikin Hamid, Kamaliah Salleh, Nazli Ismail @Nawang</i>	
10.	Covid-19 Pandemic and Its Impacts on Alternative Dispute Resolution Process	123
	<i>Abdul Majid Tahir bin Mohamed</i>	

Part 2

SOCIAL & POLITICS

11.	Public Private Partnership (PPP) Financing in Sustainable Infrastructure Projects Through Sharia Financing in Indonesia Towards Acceleration on National Development	135
	<i>Faizal Kurniawan, Prawitra Thalib, Suparto Wijoyo, Radian Salman, Wisudanto</i>	
12.	Malaysia's Legal Responsibility to Protect the Right to Life of Asylum-Seekers at Sea	145
	<i>Syafiq Sulaiman, Salawati Mat Basir</i>	
13.	Mahathir's Twice Premiership: The Position of Islam in his Foreign Policy.....	153
	<i>Abdul Majid Hafiz Mohamed, Abdullah Ayoade Ahmad, Mohd. Afandi Salleh</i>	

14.	Integration of Halal Certification with Ecolabel in The Industrial World (An Overview of The Working Program of Indonesian Council of Religious Scholars (MUI) East Java, 2020-2025).....	165
	<i>Suparto Wijoyo, Prawitra Thalib, Wisudanto, Mohamad Nur Kholiq, Wahyu Aliansa</i>	
15.	The Influence and Dissemination of Islamic Law in The Nusantara Before and After The Independence of The Republic of Indonesia.....	173
	<i>Prawitra Thalib, Suparto Wijoyo, Wisudanto, Tri Vena Putri, Mohamad Nur Kholiq</i>	
16.	Globalization and Batik Diversity: Study Case of Competition between Indonesia and Malaysia Products of Batik	180
	<i>Aizatul Anis Zuhari, Suyatno Ladiqi</i>	
17.	Board Gender Diversity, Institutional Ownership, and Dividend Policy in Indonesia	190
	<i>Wisudanto, Prawitra Thalib, Tri Veny Putri, Mohamad Nur Kholiq</i>	