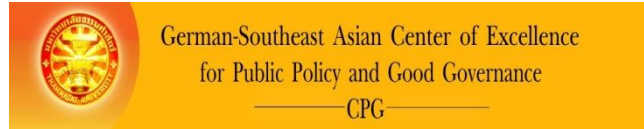


# CPG SUMMER SCHOOL 2013

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FACULTY OF LAW JEMBER UNIVERSITY-INDONESIA,  
CPG - FACULTY OF LAW THAMMASAT UNIVERSITY-THAILAND  
and HANNS SEIDEL FOUNDATION -GERMANY

## EUROPEAN AND SOUTHEAST ASIAN LAW IN THE ASEAN COMMUNITY DEVELOPMENT CONTEXT

**PROCEEDING**

**PAPER OF CPG SUMMER SCHOOL 2013**

**FACULTY OF LAW JEMBER UNIVERSITY-INDONESIA,  
CPG - FACULTY OF LAW THAMMASAT UNIVERSITY-THAILAND  
and HANNS SEIDEL FOUNDATION -GERMANY**

**EUROPEAN AND SOUTHEAST ASIAN LAW  
IN THE ASEAN COMMUNITY  
DEVELOPMENT CONTEXT**

**JEMBER UNIVERSITY  
FACULTY OF LAW  
2013**

## PREFACE

All of gratitude we say to Allah SWT, the One and Only God because He has given us blessing and mercy so that we can complete the preparation of proceeding for the summer school with theme: EUROPEAN AND SOUTHEAST ASIAN LAW IN THE ASEAN COMMUNITY DEVELOPMENT CONTEXT, and subtheme: "THE ROLE OF ADAT LAW IN THE FULFILLMENT OF THE CONSTITUTIONAL RIGHTS OF INDIGENOUS PEOPLES AS AN INDONESIAN CITIZEN."

This activity is held in a collaboration between: FACULTY OF LAW JEMBER UNIVERSITY-INDONESIA, CPG (German-Southeast Asian Center of Excellence for Public Policy and Good Governance) – FACULTY OF LAW THAMMASAT UNIVERSITY-THAILAND and HANNS SEIDEL FOUNDATION – GERMAN.

The objectives of activity collaborative college of law and human right between Jember University, CPG, Durakij Pundit University Thailand, Thammasat University Thailand and Haans Seidel Stiftung – German.

Faculty of Law of University of Jember to thank you for the support given to the parties concerned: University of Jember, CPG, Durakij Pundit University Thailand, Thammasat University Thailand and Haans Seidel Stiftung in the activity of CPG Summer School 2013 as onze of implementation MoU between Faculty of Law of University of Jember with CPG.

## TIME SCHEDULE

**Wednesday, 3 Juli 2013**

Section 1 07.00 - 08.30	:	Constitution and Politic in Germany by Dr. Duc Quang Ly
Section 2 08.30 – 10.00	:	International Economic Law by Prof. Dr. Prasit Aekaputra, the Dean of Faculty of Law, Dhurakij Pundit University, Thailand
Section 3 10.00 – 11.30	:	Economic Analysis of Thai Criminal Law by Assistant Professor Dr. Pokpong Srisanit from Thammasat University, Thailand.
Break 11.30 – 12.30	:	L u n c h
Section 4 12.30 – 14.00	:	Criminal Law and Human Rights in Thailand by Associate Professor Narong Jaiharn, the Dean of Thammasat University, Thailand
Section 5 14.00 – 15.30	:	Indonesian Criminal and Adat Law by I Gede Widhiana S.,S.H.,M.H., Lecture of Faculty of Law of University of Jember
15.30 – 17.00	:	The WTO Rules on Food Safety Measures - Balancing Trade and Public Health by Dr Jaruprapa Rakpong
17.00 – 18.00	:	Break
18.00 – 19.30	:	Adatlaw by Dr. Dominikus Rato, S.H., M.Si, Lecture of Faculty of Law of University of Jember
19.30 – 21	:	<i>Cooperative Law Reform, Important Role In Indonesian Economic Development, by Pratiwi Puspitho Andini, S.H.,M.H., Lecture of Faculty of Law of University of Jember</i>

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Thema: the interface between municipal law and adatlaw in order to fulfillment Indonesian  
Constitutional right.

## **THE ROLE OF ADAT LAW IN THE FULFILLMENT OF THE CONSTITUTIONAL RIGHTS OF INDIGENOUS PEOPLES AS AN INDONESIAN CITIZEN**

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*ratodominikus@yahoo.com*

### **A. WHAT IS AN ADAT LAW AND WHY THERE IS AN ADAT LAW**

Before we discuss about the role of adat law in the fulfillment of the constitutional rights of indigenous peoples as a citizen of Indonesia, first discussed notions of adat law, the existence of adat law, adat law and research methods. The customary or culture derived from the arabic language which means habits of a society that is spatially ajeg ( carried persistent ), maintained by its supporters. From the custom or culture was born a term of civilization. The customary or culture of a nation is a reflection of personality. The custom or culture is the reflection of personality of a nation. It is the personification of the soul of a nation that which is constantly growing in terms of evolution for centuries and form of culture. The development of the customary or culture, although brisk but not unpacked all the people, cultural roots because in them there are values that became the foundations. The development has always been a fundamental value enshrined into their guidelines to change, update, or remove any part of it if that habit is no longer functional. If this custom has been passed for many years and has veined root in conscience, a member of society it became civilization.<sup>2</sup>

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<sup>1</sup>. The Lecturer of Adatlaw at The Faculty of Law University of Jember

<sup>2</sup>. **Cornelis Van Vollenhoven**, 1925, *Het Adatrecht van Nederlandsch Indie. Jilid I (The Adatlaw of Netherlands Indie. Deel I)*. Leiden.

Culture is being intangible thing materiel and there are being intangible called immaterial. The law is one of the aspects culture that intangible thing. If it intangible thing, then provided it is shaped something like *awig-awig* in Bali, *ammanna gappa* in Bugis. If it did not written, then it shaped myth, or legend; or aphoristic customary.

This custom made to provide guidelines for members of the public to behave, with the expectation of what their life purpose is achieved. For example the purpose of life they were quietness regularity, order, welfare, common good, or justice. If it is so good, habits noble, been fulfilled, it is required a means that acted more force in order that any member of the peoples or society itself obey, maintain, discharge, keeping maintain, namely law. Laws that are made to force in order that any member of the peoples or society itself obey, maintain, discharge, keeping maintaince cultural values that, is expected to be taken and based on culture itself. Thus, a member of the community felt to have and thus they will obey by full consciousness.

Every nation or society has their own cultural matters. Hence, every nation or society have the law of each one that different from one another. Differences this is indicating that every society have symbols each as the identity of nations concerned. Local identity this is called the local-genius or local prudencia or local-wisdoms. This is what distinguishes culture may the Indonesian with any other nation, the law of the Indonesian to the laws of other nations. Law typical of Indonesian is adat law.

The Indonesian society is a composed of variate peoples, it is thousands. So that culture and the their adatlaw are variegated. Mpu Tantular gives a true concept to describe such conditions, called *Bhinneka Tunggal Ika Tan Hanna Dharma Mangruwa*. Such law in Indonesia referred to adat law. What is the adatlaw?