



Modul Pembelajaran Mata Kuliah
FILSAFAT HUKUM

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**PROGRAM STUDI ILMU HUKUM
FAKULTAS HUKUM
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Kata Pengantar

Modul ini disusun sebagai bahan ajar filsafat hukum. Filsafat hukum merupakan akar dari tumbuh-kembangnya disiplin keilmuan hukum. Dari filsafat hukumlah, muncul teori hukum, ilmu hukum, hingga pada akhirnya membuahakan doktrin-dogma-asas hukum praktikal. Mempelajari filsafat hukum sama halnya mempelajari kembali dasar-dasar pemikiran tentang hukum. Filsafat hukum terdiri dari berbagai aliran hukum: mazhab hukum kodrat, mazhab hukum positif, mazhab sejarah hukum, mazhab sosiologi hukum, hingga mazhab posmodern hukum. Dengan mempelajari berbagai mazhab itu, akan disaksikan sebuah perdebatan dan titik tolak berbagai perkembangan keilmuan hukum (Widodo, 2009).

Harapan dari perkuliahan ini adalah mahasiswa mampu menguasai, dan memahami perkembangan ilmu hukum. Memahami dan menguasai ilmu pengetahuan hukum terutama filsafat hukum yang berkembang didalam masyarakat.

Terima kasih sebanyak-banyaknya dan tak terhingga kepada Rektor Universitas Bhayangkara Jakarta Raya, Irjen. Pol. (Purn) Dr. Drs. H. Bambang Karsono, SH, MM, yang terus mendorong para dosen untuk berkarya dan menulis, termasuk bahan ajar ini. Begitu juga ucapan terima kasih saya haturkan kepada senior-senior dan kolega di kampus tercinta Universitas Bhayangkara Jakarta Raya.

Salam hormat

Jakarta, 01 September 2021

Dr. Awaludin Marwan, S.H., M.H

Filsafat Hukum

- Pengantar Filsafat
- Filsafat Hukum Alam
- Filsafat Hukum Kritis
- Filsafat Positivisme Hukum
- Posmodernisme Hukum
- Sosiologi Hukum
- Hukum dan Teknologi
- Hukum dan Kecerdasan Buatan
- Hukum dan Cybersecurity
- Hukum dan Pelindungan Data Pribadi
- Sejarah Pemikiran Hukum
- Soepomo
- Satjipto Rahardjo

- Soetandyo

Pengantar Filsafat: Manfaatnya

- Memahami fenomena hukum;
- Berpikir kritis;
- Mencari akar masalah;
- Menghimpun perspektif

Aliran-Aliran Dalam Filsafat Hukum

Hukum Alam

Hukum adalah moralitas: Aquinas & Kant

Legal positivism

Hukum adalah undang-undang: Hans Kelsen & HLA Hart

Posmodern

Hukum itu relatif
Derrida, Foucault,

Sociologi hukum

Hukum adalah cermin masyarakat: Eugen Erlich, Nonet & Selznick

Filsafat Hukum Kritis

Hukum adalah kekuasaan: Unger, Tushnet, Kennedy

Filsafat Hukum dan Teknologi

Hukum Kecerdasan Buatan

Manusia vs Robot

Hukum dan Cybersecurity

Filosofi para hacker dan kesadaran cyber security

Hukum dan Pelindungan Data Pribadi

Privasi dan subjek data

Hukum & Teknologi

Kemudahan, Realisasi Imajinasi

Filsafat Hukum Alam

Awaludin Marwan
Universitas Bhayangkara Jakarta Raya

Pokok-Pokok Filsafat Hukum Alam



Teologi



Metafisika

Topik topik pembicaraan filsafat hukum alam

- Keadilan
- Cita hukum
- Kebahagiaan
- Ketuhanan
- Moralitas
- Etika

- Kepatutan

TOKOH-TOKOH FILSAFAT HUKUM ALAM



Plato
Aristoteles
Cicero

Plato

Contents

Translator's preface
Editor's preface
Introduction
The Thirty
Faction
A Spartan utopia?
The philosopher and the king
A political work?
City and soul
Mathematics and metaphysics
A guide to further reading
Principal dates
Abbreviations and conventions
Editor's synopsis of The Republic
The Republic
Book 1
Book 2
Book 3

Plato The Republic

Edited by
G. R. F. Ferrari
Translated by
Tom Griffith

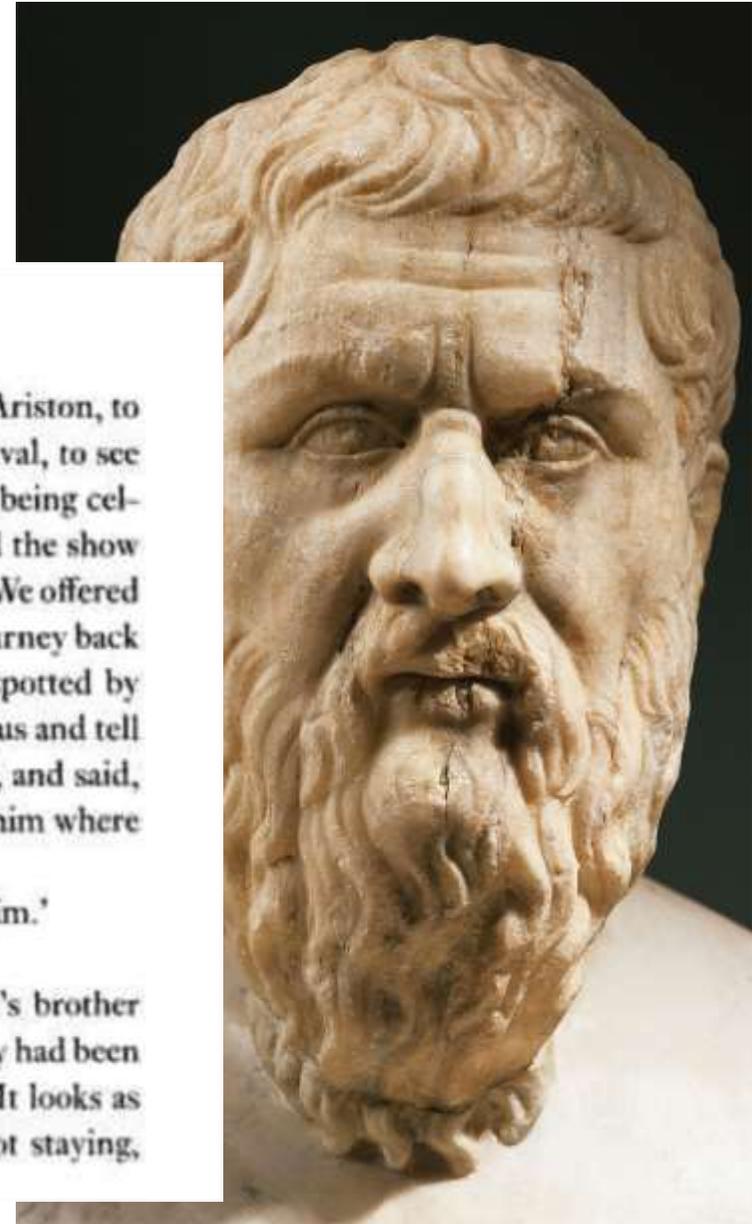
Book 1¹

327 I went down to the Piraeus yesterday with Glaucon the son of Ariston, to offer a prayer to the goddess.² Also I wanted to watch the festival, to see how they would conduct it, since this was the first time it was being celebrated.³ The parade of Athenians struck me as excellent, and the show put on by the Thracians was every bit as impressive, I thought. We offered our prayers, watched the festival, and then started off on our journey back to town. We were already on our way home when we were spotted by Polemarchus the son of Cephalus. He got his slave to run after us and tell us to wait for him. The slave tugged at my cloak from behind, and said, 'Polemarchus says you are to wait.' I turned round, and asked him where his master was.

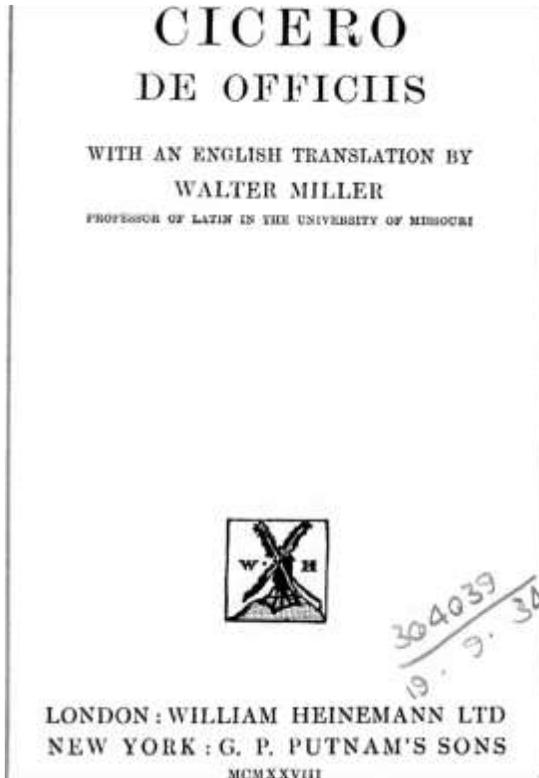
'There he is,' he said, 'coming along behind you. Wait for him.'

'We will,' said Glaucon.

c In a few moments Polemarchus reached us, with Glaucon's brother Adeimantus, Niceratus the son of Nicias, and a few others. They had been watching the procession, apparently. And Polemarchus said, 'It looks as if you're all on your way back to the city, Socrates. You're not staying, then?'



Marcus Tullius Cicero

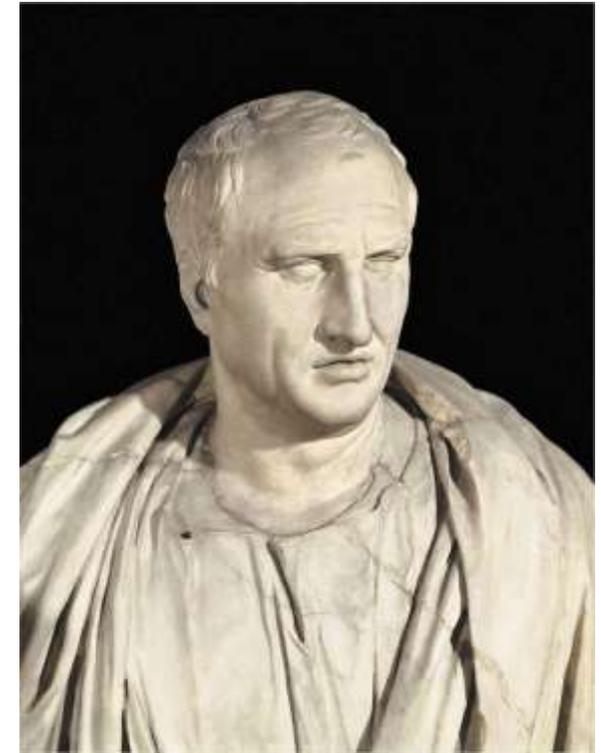


1. My dear son Marcus, you have now been studying a full year under Cratippus, and that too in Athens, and you should be fully equipped with the practical precepts and the principles of philosophy; so much at least one might expect from the pre-eminence not only of your teacher but also of the city; the former is able to enrich you with learning, the latter to supply you with models. Nevertheless, just as I for my own improvement have always combined Greek and Latin studies—and I have done this not only in the study of philosophy but also in the practice of oratory—so I recommend that you should do the same, so that you may have equal command of both languages. And it is in this very direction that I have, if I mistake not, rendered a great service to our countrymen, so that not only those who are unacquainted with Greek literature but even the cultured consider that they have gained much both in oratorical power and in mental training.

2. You will, therefore, learn from the foremost of present-day philosophers, and you will go on learning as long as you wish; and your wish ought to continue as long as you are not dissatisfied with the progress you are making. For all that, if you will read my philosophical books, you will be helped; my philosophy is not very different from that of the Peripatetics (for both they and I claim to be followers of Socrates and Plato). As to the conclusions you may reach, I leave that to your own judgment (for I would put no hindrance in your way), but by reading my philosophical

Introduction: the importance of combining Greek and Latin studies.

Greek Philosophy and Cicero's own.



Immanuel Kant

CHAPTER THIRD.

ACQUISITION CONDITIONED BY THE SENTENCE OF A PUBLIC JUDICATORY.

36.

How and what Acquisition is subjectively conditioned by the Principle of a Public Court.

NATURAL RIGHT, understood simply as that Right which is not statutory, and which is knowable purely *à priori*, by every man's Reason, will include Distributive Justice as well as Commutative Justice. It is manifest that the latter as constituting the Justice that is valid between Persons in their reciprocal relations of intercourse with one another, must belong to Natural Right. But this holds also of Distributive Justice, in so far as it can be known *à priori*; and Decisions or Sentences regarding it, must be regulated by the Law of Natural Right.

The Moral Person who presides in the sphere of Justice and administers it, is called the COURT of Justice, and as engaged in the process of official duty, the Judicatory; the Sentence delivered in a case, is the Judgment



THE PHILOSOPHY OF LAW

An Exposition
OF THE
FUNDAMENTAL PRINCIPLES OF JURISPRUDENCE

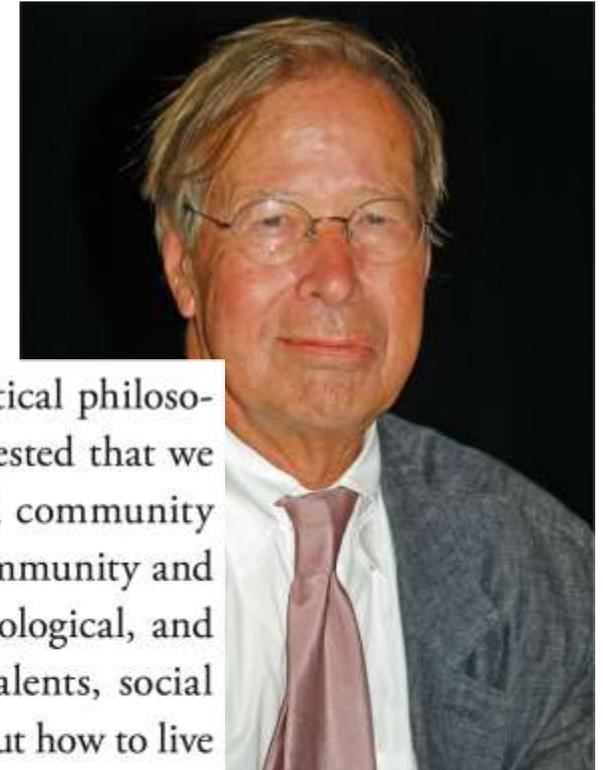
AS
THE SCIENCE OF RIGHT.

BY
IMMANUEL KANT.

Ronald Dworkin



However, the most famous example among moral and political philosophers now is Rawls's own original-position device. Rawls suggested that we fix principles of **justice** for the basic structure of our political community by imagining people who come together to establish such a community and who are well aware of general economic, technological, psychological, and sociological facts but ignorant of their own ages, genders, talents, social and economic positions, interests, desires, and ethical beliefs about how to live well. Rawls argued that people in that odd situation would agree on two principles of **justice**: one that assigns priority to certain liberties, and another that requires an economic structure in which the situation of the economically



Studi kasus terhadap hukuman mati

- Jika hanya Tuhan yang layak mencabut nyawa manusia, kenapa hukuman mati tetap dirumuskan?
- Bagaimana hukuman mati dalam perspektif HAM?
- Studi Putusan Nomor 1476/Pid.Sus/2017/PN JKT.SEL, kasus Narkoba: Liao Guan Yu, Chen Wei Cyuan, dan hsu Yung Li

Filsafat Hukum, Etika dan Teknologi Kecerdasan Artifisial

Awaludin Marwan

Saat AI bisa belajar dan otomatis bisa memutuskan, apakah dia sama seperti jiwa manusia?

- Rene Descartes 'cogita ergo sum'
- Immanuel Kant 'kehendak bebas'

Harry Surden Professor of Law at the University of Colorado Law School.

- Teknik 1: Rules, Logic and Knowledge Representation Approach – model & otomatisasi
- Teknik 2: Machine Learning Approach – self programming

Tentang AI

- (Google–Alphabet & Google Assistant, Facebook–Facebook AI, Microsoft–Cortana, Amazon–Alexa, Apple–Siri)
- Yuvah Noah Harari: Catur 1996 Deep Blue IBM vs Garry Kasparov, dan David Cope Professor University of California Experiments in Musical Intelligence memainkan John Sebastian Bach
- Prosa.ai, Kata.ai, Bahasa.ai, Nodeflux.ai, Widya.ai

Tiongkok

- A Next Generation Artificial Intelligence Development Plan. Riset lintas disipliner, pengembangan perangkat lunak dan perangkat keras teknologi kecerdasan artifisial pada aspek ekonomi dan sosial sebelum 2030.

Eropa

- Ethics Guidelines for Trustworthy AI: lawful AI & ethical AI
- White Paper on Artificial Intelligence. A European Approach to Excellence and Trust.’ mendorong perusahaan rintisan digital, kompetisi robot, teknologi di bidang kesehatan, energi, keuangan dan agribisnis.

proposal untuk harmonisasi peraturan untuk kecerdasan artifisial

- High risk AI, kesehatan, keamanan dan pemenuhan hak fundamental.

Singapore

- Model Artificial Intelligence Governance Framework
- Principles to promote fairness, ethics, accountability and transparency (FEAT)
- Advisory Council on Ethical Use of AI and Data

Aspek Legal AI di Indonesia

Perizinan

- KBLI 2020, yakni nomor 62021 dan nomor 62015
- Peraturan Pemerintah No. 5 Tahun 2021 tentang Penyelenggaraan Perizinan Berusaha Berbasis Risiko

Pendaftaran Penyelenggara Sistem Elektronik

- Peraturan Pemerintah Nomor 71 Tahun 2019 tentang Penyelenggaraan Sistem dan Transaksi Elektronik; dan Peraturan Menteri Komunikasi Dan Informatika No. 5 Tahun 2020, sebagaimana diubah dengan Peraturan Menteri Komunikasi dan Informatika No. 10 Tahun 2021 tentang Penyelenggara Sistem Elektronik Lingkup Privat

Kepatuhan dan Pengawasan

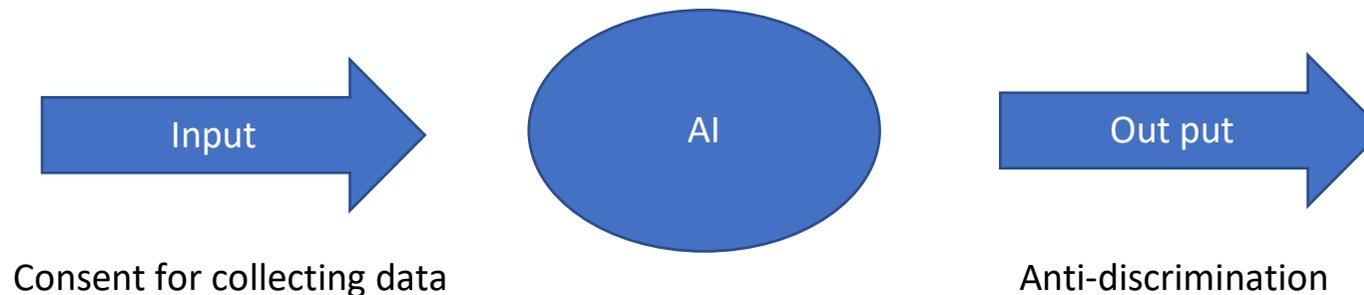
- mempunyai kebijakan internal mengenai data dan etika,
- mempublikasikan inovasi dan teknologinya,

- menyampaikan laporan secara berkala setiap 1 (satu) tahun kepada Direktur Jenderal Aplikasi Informatika.
- mempunyai SDM yang paling sedikit 1 (satu) orang tenaga ahli yang memiliki standard SKKNI, yang disyaratkan pada Keputusan Menteri Ketenagakerjaan Nomor 299 tahun 2020 tentang Penetapan Standar Kompetensi Kerja Nasional Indonesia Kategori Informasi dan Komunikasi Golongan Pokok Aktivitas Pemrograman, Konsultasi Komputer dan Kegiatan yang Berhubungan dengan Itu (YBDI) bidang Keahlian Artificial Intelligence Sub-Bidang Data Science. (Programmer, Manager, UI/ UX, Legal)
- Lihat, Peraturan Menteri Komunikasi dan Informatika No. 3 Tahun 2021 tentang Standar Kegiatan Usaha dan Standar Produk pada Penyelenggaraan Perizinan Berusaha Berbasis Risiko Sektor Pos, Telekomunikasi dan Sistem dan Transaksi Elektronik
- Pelindungan Data Pribadi (PP No. 71 Tahun 2019 dan Perkominfo No. 20 Tahun 2016)
- Kepatuhan Keamanan Siber (Peraturan BSSN No. 8 Tahun 2020 tentang Sistem Pengamanan Dalam Penyelenggaraan Sistem Elektronik)

- Partisipasi dalam Strategi Nasional
- Mendukung pengembangan kecerdasan artifisial di sektor prioritas, seperti: sektor kesehatan, reformasi birokrasi, pendidikan dan riset, ketahanan pangan, mobilitas dan kota cerdas.

Tantangan

- Pelindungan Data Pribadi, Keamanan Siber, Tanggung jawab perdata, pidana, dan administrasi
- Eksplisit Consent, Input dan Out put, tidak diskriminatif



Tantangan dan Peluang

- Hilangnya pekerjaan manusia
- Manusia melakukan kegiatan yang menyenangkan: bernyanyi, melukis, olah raga
- Apa batas etis sebuah AI?
- Bagaimana AI yang etis menurut Anda?

Pemikiran Hukum Indonesia

Awaludin Marwan

Sejarah Pemikiran Hukum Indonesia

- Zaman kolonial
- Revolusi
- Orde Baru
- Reformasi

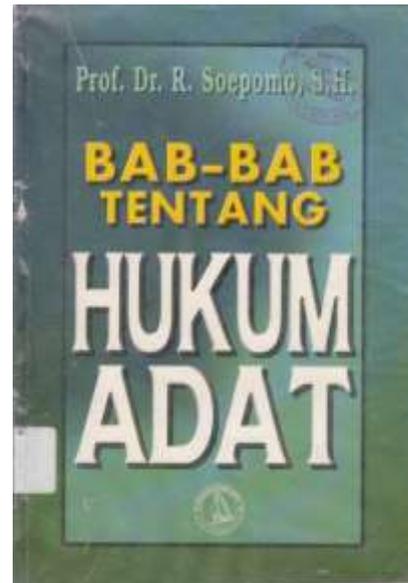
Beberapa tokoh

- Soepomo = hukum adat dan negara integralistik
- Satjipto Rahardjo = hukum progresif
- Soetandyo = sejarah hukum

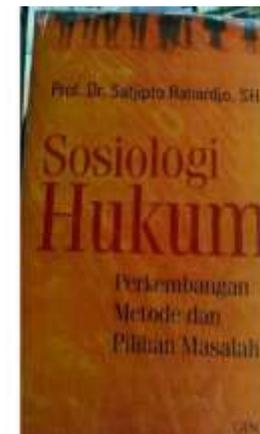
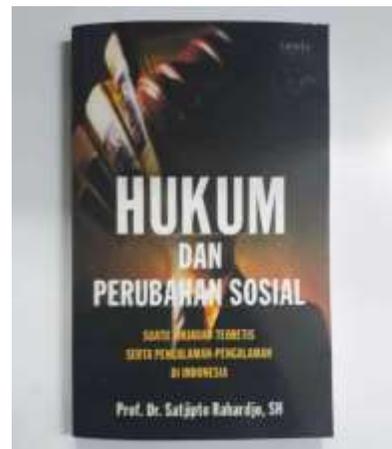
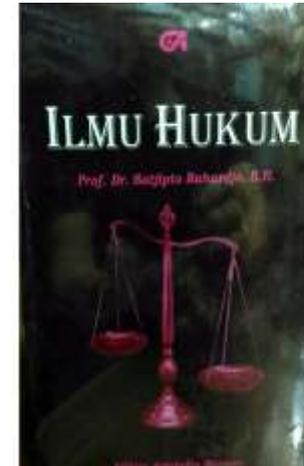
Periodisasi

Periode	Tokoh	Orientasi
Zaman Kolonial	Van Vollenhoven, Ter Haar, Paul Scholten	Pengembangan Kepentingan Kolonialisme
Masa Revolusi	Soepomo, Yamin, Soenario,	Dasar Negara
Masa Orde Baru	Satjipto Rahardjo, Soetandyo, Mochtar Kusumaatmadja, Arief Sidharta	Pembangunan
Reformasi	Jimly Asshidique, Suistiyowati Irianto, Susi Dwi Harijanti	Demokrasi, HAM dan Negara Hukum

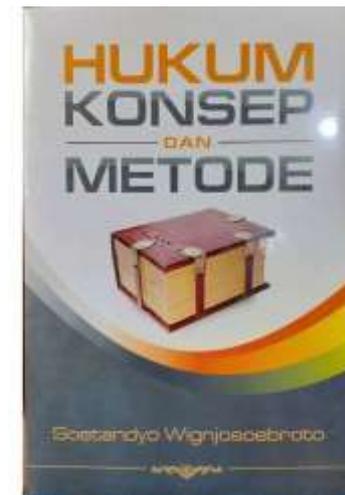
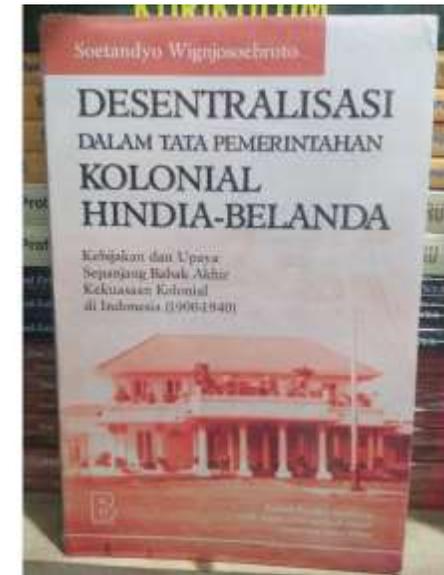
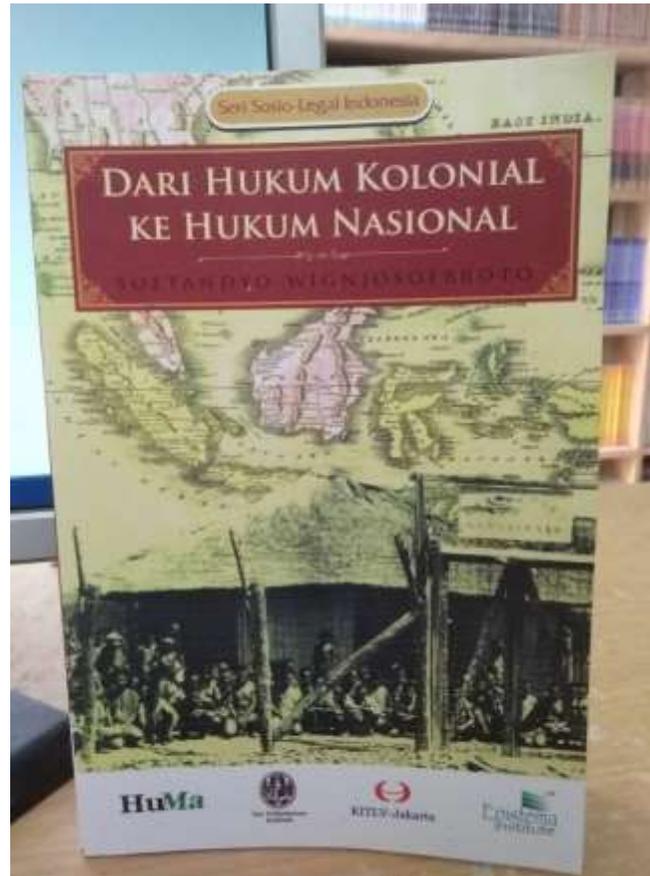
Soepomo



Satjipto Rahardjo



Soetandyo Wignjosoebroto



Daftar Isi

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Soetandyo Wignjosebroto. *Dari Hukum Kolonial ke Hukum Nasional: Suatu Kajian tentang Dinamika Hukum di Indonesia 1840-1990*. Raja Grafindo, Jakarta. Sebuah bab mengulas secara detail tentang pola pendidikan hukum di Indonesia pada masa kolonial yang memberikan dasar bagi lahirnya sarjana hukum dan Doktor di bidang hukum.

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