

Preface

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PREFACE

This publication is one of the Series of ASEDP (Joint Studies on Economic Development Policies in ASEAN and Neighboring Countries) published by the Institute of Developing Economies in Japan. It intends to promote joint research studies between the Institute and local researchers in Asian countries to develop collaborative understandings within the region. The project started in 1988. The last study on Indonesian law was conducted in 1998 at a time when Indonesia was faced with radical changes to its legal system as a result of the burgeoning democratization movement. The legal reform or as it is known in Indonesia, “Reformasi Hukum”, was just about to start and it was hard to foresee what sorts of results legal reform may bring. That research was an earlier publication in this series and was entitled “Current Development of Laws in Indonesia.” It was edited by Prof. Koesnadi Hardjasoemantri and Naoyuki Sakumoto in 1999 (ASEDP No. 51, IDE/JETRO).

The aim of this joint research is to study and assess the development of legal reform which was occurred in the period from 1998 through to 2004. Legal reform in Indonesia followed the fall of the dictatorial rule of the former President Soeharto. This rule lasted some 32 years. It is fair to say that this period of legal reform in Indonesia is the biggest and broadest series of reforms that Indonesia has undertaken in its history, including its pre-independence history. This reform has seen hundreds of laws enacted and repealed as Indonesia strives to put in place a functioning, viable, and fair legal system.

These reforms started under the former President Habibie who succeeded Soeharto when the latter resigned from office in 1998. The reforms found their legal basis in the GBHN 1999-2004 (Act No. 25 of 2000) and the National Five-year Plan, PROPENAS 2000-2004. The general situation of law in Indonesia before the legal reform process got into full swing was neither unified nor democratic. Even today there are still many laws on the Indonesian Statute books that were enacted prior to independence in 1945, these legacies of the Dutch colonial rule often serve to complicate the enforcement of law in Indonesia. However, more interesting is that the majority of these laws of the colonial period are no longer in force in The Netherlands. This is the source of much criticism suggesting that there is insufficient political will on the part of the government to repeal this antiquated legislation and put into place laws drafted specifically for the conditions that Indonesia finds itself in today. This failure to modernize the legal and regulatory framework is an issue that cannot be

ignored within the framework of ongoing legal reform.

Each of the authors of the papers contained within this joint research project has studied and analyzed the developments and changes that occurred within the legal framework over the period researched. Each of the authors is considered to be an expert within their respective fields of study. Nevertheless, a research study of this kind was nonetheless a challenging and at times daunting prospect.

The reason for this is that the PROPENAS ranks legal development as a secondary priority among the five national priorities listed. “Supremacy of Law and Good Governance” is the stated objective for the implementation of legal reform. Realization of democratization through legal reform is not demanded by the PROPENAS nor is it a feature in another important official document setting out the National Development Plan, “the Long Term Vision and Direction 2005-2025 (PJPII)”, which was prepared by BAPPENAS. According to these official documents, democratization movements and legal reform are set apart and not necessarily discussed together in the formulation of national policies.

While taking advantage of organizing this project, the editors of this book would like to express their sincere appreciation to the authors and staff that have made this a reality. It required participants to spend a lot of time and labor not only in writing but sacrificing their valuable time to attend meetings and other administrative gatherings. Our deepest gratitude goes to many Indonesian friends and colleagues who kindly assisted our project in Indonesia. Ibu Yetty, Secretary as well as a Lecturer at the Faculty of Law at UI (University of Indonesia), Ms. Mera Meirani, Lecturer of the Faculty of Law at UI, and many others too numerous to mention. We are also grateful to Mr. Rob Baiton, a very hard-working English editor currently the Managing Editor at “hukumonline.com” in Indonesia, who has edited all of the articles to edit the English text. Also Mr. Purnawardi at UI Press who has kindly provided us with an opportunity to print this book. Let me also thank my Japanese colleagues at IDE/JETRO; Mr. Susumu Imura, Mr. Takayuki Sanada, Ms. Kyoko Kondo, Mr. Hajime Zakimi, who have kindly supported this project and made the project possible.

Lastly, let me express my sincerest condolences to the family of Professor Koesnadi Harjasoemantri, who passed away on 7 March 2007 sustained in the tragic crash of a Garuda airlines flight at the Adi Soetjipto Airport in Yogyakarta. The Professor was one of the founding fathers of environmental law in Indonesia. He was always enthusiastic when he talked about education and environment and his recently published book, “Ekologi, Manusia, dan Kebudayaan” (Ecology, People, and

Culture) (2006) commemorating his 80th birthday, reflects this enthusiasm and commitment. He is also the author of the book “Nihon no Kankyo Kihon Ho” in Indonesian (“Japanese Basic Environmental Law” (UGM Press) during his short stay in Japan.

In closing this short preface let me quote the late Prof. Koesnadi Harjasoemantri from his time as Chairperson of KEHATI:

“Knowledge is light. Without light, we cannot live and the world will get dark even though truth is just near you. In the past, we were handcuffed in the dark. Let us free our people with education, because truth from education can free our people.”

Naoyuki Sakumoto
Jakarta Indonesia
March 2007