

## Conference Paper

# Development Of National Legal Political Strategy In Indonesia

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**Abstract.**

In the development of the political situation entering the era of the third millennium, in various countries, it turned out that they were leaving political autocracies that were more dynamic toward legal reform, including Indonesia, which had implications for amendments to the 1945 Constitution. The study aimed to analyze the problem, how to correlate legal reform with the development of national legal politics in Indonesia. The study method used was descriptive analysis approach. The discussion of these problems that correlate legal reform in the development of national legal politics in Indonesia, in essence, has a philosophical content to achieve legal goals within the framework of realizing the goals of the Indonesian state, namely achieving a just and prosperous society. It can be concluded that the development of national legal politics is one of the important areas of development, which also requires intensive attention and handling like other development fields. In the transitional era of the New Order era to the Reformation era, national law reforms provided accommodation to resolve various problems. The political development of the national law seems rather difficult to implement so that in some ways the politics of national law development seems to be somewhat sloganistic.

**Keywords:** development of national, legal political, Indonesia

## 1. INTRODUCTION

In the development of the political situation entering the era of the third millennium, in various countries in the world the currents of global change turned out to be leaving political autocracies that were more dynamic towards reforming the laws of each country. In Indonesia, since the rolling reform era in 1998 overthrew the New Order regime [1]. Until now there has been a fundamental change in legal political behavior. Even in Indonesia, it has implications for the state constitution, namely the 1945 Constitution which has been amended four times [1].

The rapid changes in the academic context have given rise to various theories of legal transition, which have influenced a very broad concept of the legal system. Understanding law as a means of development increases the quantity and quality

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Published 5 January 2024

Publishing services provided by  
Knowledge E

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Selection and Peer-review under the responsibility of the 4th INCLAR Conference Committee.

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of a more responsive progressive concept so as to produce legal products that are appropriate within the framework of cross-sectoral regulations.

Among several examples in the behavior of state life, the direction of legal transition and legal politics has been towards a more open democracy, either by restoring a form of democracy from government that has been damaged by a dictatorial regime, or through steps to form a democratic government. The new regime, in which neither party from the previous regime was involved, sometimes creates management chaos, which causes disruption to legal certainty.

In several developing countries, the new regime is not used to adhering to democratic ideology; or even they enter into power through force, such regimes are sometimes trapped in a government system that moves the bureaucracy in an authoritarian manner in the name of power.

The new government often blames or blames the crimes committed by the previous government, and punishes those who are found guilty; but they later also engaged in repressive practices as practiced by the previous regime, although in the form of a different character or directed at different targets [1].

Rather, transition is a complex reworking of social relations in a different process. Furthermore, in the legal context, this transitional issue raises the term transitional justice. Transitional justice is justice in a period of political transition.

The conception of justice in the period of change in legal politics is constructive. These are alternately shaped by the core of legal political transitions. As a result, the conception of justice that arises is contextual and partial. This means that what is considered "fair" is uncertain and can be related to the future; and this is based on information from previous injustices. Responses to a repressive government give meaning to the rule of law [2]. When a country experiences a political-legal transition, the legacy of injustice relates to what is considered transformative.

In certain contexts, the emergence of such legal responses has provided examples of legal political transitions. The role of law influences all the dynamics of the structure of social behavior in the administration of state administration and government (including the Indonesian state), including in the development of the national economy along with its diversity of concepts and implementation, both macro and micro policy concepts.

The problems faced by countries entering the new democratic era are bringing about the attainment of a just solution that can be accepted by the people (the people) who have suffered for a long time and which leads to a prosperous life through law development and a balanced national economic development based on the will of the constitution, which is the constitutional basis for achieving a just and prosperous society.

So, the problem that can be raised, from this brief paper is how to correlate legal reform in the development of national legal politics in Indonesia.

## 2. METHODOLOGY/ MATERIALS

The study method of this problem is carried out through a descriptive analysis approach. The discussion of these problems, that correlating legal reform in the development of national legal politics in Indonesia, in essence has a philosophical content to achieve legal goals within the framework of realizing the goals of the Indonesian state, namely achieving a just and prosperous society.

## 3. RESULTS AND DISCUSSIONS

### 3.1. Indonesia in the Reformation Period

Although it cannot be said that it went smoothly, in the early 1998 era of reformation, the Indonesian nation has entered a period of reformation. The reformation era refers to the period after Suharto's resignation as President of the Republic of Indonesia (RI) on May 21, 1998. Suharto's cessation was partly due to the continuous and barrage of protests from the people in general and students in particular, amidst the decline social and economic conditions [3]. As is known, Vice President B.J. Habibie was then sworn in as President to replace Suharto.

Various demands were then voiced by elements of society to improve the condition and structure of the post-New Order state administration. These demands include: (1) amendments to the 1945 Constitution; (2) the abolition of ABRI's dual function; (3) upholding the rule of law, respecting human rights (HAM), and eradicating corruption, collusion and nepotism (KKN); (4) decentralization and fair relations between the center and the regions (regional autonomy); (5) realizing press freedom; and (6) realizing democratic life [3].

The reform agenda that took place in Indonesia after Suharto's cessation covered the following areas: (1) constitutionalism and the rule of law; (2) regional autonomy; (3) civil-military relations; (4) civil society; (5) governance reform and socio-economic development; (6) gender; and (7) religious pluralism.

From the aspect of the legal system that has developed so far until the reform era, structurally, substantively, and legal culture, it appears that this theory will be very easy to evaluate how the existence of the concept and application of law should be. This era

was marked by the formation of the Development Reform Cabinet. A year and a half after coming to power, President B.J. Habibie was forced to resign after his accountability speech was rejected by the MPR in its General Session on October 19, 1999.

MPR Decree Number III/MPR/1999 concerning Accountability of the President of the Republic of Indonesia Bacharuddin Jusuf Habibie, in the People's Consultative Assembly of the Republic of Indonesia, Decrees of the People's Consultative Assembly of the Republic of Indonesia Results of the 1999 General Session of the MPR RI, is a manifestation of one of the dynamics of legal politics, as well as welcoming reform-based global change in a country's strategic environment [4].

After making improvements to MPR Decree Number II/MPR/1973 concerning Procedures for the Election of the President and Vice President of the Republic of Indonesia, it became MPR Decree Number VI/MPR/1999 concerning "Procedures for the Nomination and Election of the President and Vice President of the Republic of Indonesia", the MPR then appointed K.H. Abdurrahman Wahid became President of the Republic of Indonesia and Megawati Soekarnoputri as Vice President of the Republic of Indonesia.

However, President Wahid's government did not last long, or only about 20 months. After being rocked by the first Bulog Scandal or better known as Buloggate I, and after going through 2 (two) DPR Memorandums, then through MPR Decree Number II/MPR/2001 concerning Accountability of the President of the Republic of Indonesia K.H.Abdurrahman Wahid, the MPR finally decided to dismiss Wahid as the President of the Republic of Indonesia and stated that the MPR Decree No. VII/MPR/1999 regarding the Appointment of the President of the Republic of Indonesia was null and void. July 2001 which is considered to have seriously violated the direction of the state.

In line with this, through MPR Decree Number III/MPR/2001 concerning the Appointment of the Vice President of the Republic of Indonesia Megawati Soekarnoputri as President of the Republic of Indonesia, the MPR then appointed Indonesian Vice President Megawati Soekarnoputri as President of the Republic of Indonesia replacing K.H. Abdurrahman Wahid until the end of the remaining term of office of President of the Republic of Indonesia 1999 - 2004.

Furthermore, as a result of the presidential and vice presidential elections which were held directly for the first time in Indonesia in 2004, the pair of President and Vice President Susilo Bambang Yudhoyono and M. Yusuf Kalla were elected. In the implementation of the 2004 general election, not only the President and Vice President were directly elected, but also members of the People's Representative Council (DPR), Regional Representative Council (DPD), and Regional People's Representative Council (DPRD). The democratization process then continued with the holding of direct elections

for Regional Heads and Deputy Regional Heads which began to be held in various regions in 2005.

### 3.2. Indonesia in the Reformation Period

Since the holding of direct general elections and the formation of various new institutions that have increasingly encouraged steps towards democratization, including the fulfillment of some of the demands of society that emerged in the early days of reform, as mentioned above, even though in reality things did not go smoothly. Some of the demands put forward by the public will still exist, especially those related to sectors that have not been met during the reform period. In addition, there are always demands for the fulfillment of justice in the economic field.

The reform agenda as mentioned above has continued since the presidency of B.J. Habibie, and continued during the presidency of Susilo Bambang Yudhoyono. One of the core of the various demands put forward by the people is the fulfillment of society's sense of justice. However, in reality, the measure of society's sense of justice is not clear. That's why legal development will be very important in the reform era.

One of the fundamental issues that is often discussed in this reform era is regarding the legal aspect. The legal aspects referred to here cover a broad range of dimensions, which can basically be summarized into 3 (three) elements as follows: (1) structure (institutional structure and institutional performance); (2) substance (legal material); and (3) legal culture (legal culture). These three aspects – are the theories of Lawrence M. Friedman – which are very often referred to in various research and studies on the legal system in Indonesia [5].

Friedman describes the elements of the legal system as follows: The first element Friedman mentions is structure (institutional arrangements and institutional performance). While the second element described by Friedman is substance (statutory provisions). Meanwhile, the third element is legal culture.

The influence of Friedman's views, especially those related to the 3 (three) elements of the legal system, even persists to this day, namely in legal politics enacted in the post-reform era. What is meant by legal politics in the post-reform era, was originally specifically one part of the 2004-2009 National Medium-Term Development Plan (RPJMN).

The three elements of the legal system put forward by Friedman greatly influenced the opinions of Indonesian legal scholars in formulating various views on law and the legal system. For example, as was done by the National Legal Development Agency (BPHN) of the Ministry of Law and Human Rights when formulating elements of the

Indonesian legal system. According to BPHN, the Indonesian legal system consists of the following elements: (1) legal material (legal order), including: (a) legal planning, (b) legal formation, (c) legal research, and (d) legal development. To form legal material, attention must be paid to the legal politics that have been determined, which may differ from time to time due to interests and needs; (2) legal apparatus, namely those who have the duties and functions of: (a) legal counseling, (b) application of the law, (c) law enforcement, and (d) legal services. The existence of certain legal apparatus cannot be separated from the legal politics adopted; (3) legal facilities and infrastructure, which include physical matters; (4) the legal culture adhered to by members of the community, including officials; and (5) legal education.[6]

Therefore, to analyze the politics of national legal development in the post-reform era, one of our main references is the RPJMN text. The development of national law in the post-reform era, the historical aspect, is that the implementation of legal reform has actually obtained a more significant political basis for the development of national law in the 1993 and 1998 GBHN. [MPR RI Decree No. II/MPR/1998 concerning Outlines of State Policy in People's Consultative Assembly of the Republic of Indonesia, Decrees of the People's Consultative Assembly of the Republic of Indonesia Year 1998] Since the enactment of the two GBHNs, the legal policy in the field of law has undergone two developments as follows: (1) the legal policy which since the year GBHN 1973 has been included in the ranking of "Sector" in the 1973 GBHN, for example, together with the Political Sector, Government Apparatus, and Foreign Relations, in the 1998 GBHN the arrangement has been included in the "Field" rating; and (2) if the 1993 GBHN only regulates 3 (three) sub-sectors of legal policy, namely: (a) Legal Materials; (b) Legal Apparatus; and (c) Legal Facilities and Infrastructure. Whereas in the 1998 GBHN there are two additional sub-sectors, namely: (d) Legal Culture and (e) Human Rights [7].

The relatedness of Friedman's thoughts began to appear in the 1993 GBHN, namely when the directives of the Legal Sector were divided into 3 (three) sub-sectors, namely: (a) Legal Materials; (b) Legal Apparatus; and (c) Legal Facilities and Infrastructure. Thus it can be said that since 1993, the basic foundation of the legal policy that directs our national legal development politics has been heavily influenced by Friedman's views.

As a general observation, it can be said that in the pre-reformation era, the spirit of legal reform in Indonesia had actually been widely expressed. The ideals of the need for a legal system whose quality is on par with the legal systems of developed countries; a unit of civil law for all classes of citizens; and a legal system which includes all currents of modern thought in the world, the realization of a new economic structure, the ideals

of industrialization, trade relations with foreign countries will require the establishment of a new civil law which is in accordance with the civil law of developed countries.

### 3.3. Development of National Legal Politics in the Reform Era

In the Reform Era, the MPR held a Special Session in November 1998. One of the results of the Special Session was the MPR Decree Number X/MPR/1998 concerning “Principles of Development Reform in the Context of Saving and Normalizing National Life as the Country’s Direction” which was stipulated in Jakarta on November 13, 1998.

The MPR Decree which is also known as “GBHN Mini” contains several political directions for the development of national law as follows:

1. Crisis management in the field of law is aimed at upholding and implementing the law with the aim of creating order, tranquility and peace in society.
2. Implementation of reforms in the field of law is carried out to support crisis management in the field of law.

In the context of the “GBHN”, it is very clear that the development of national legal politics is directed at overcoming crises in the field of law. Crisis management in the field of law aims to uphold and implement law with the aim of creating order, tranquility and peace in society.

Subsequently, the MPR as a result of the 1999 general election held a session, one of the results of the MPR session was the MPR Decree Number IV/MPR/1999 concerning “Outlines of State Policy for 1999-2004” which was stipulated in Jakarta on October 19, 1999.

The politics of developing national law in the context of legal policy at that time had a benchmark of 10 (ten) points of the GBHN directives as stipulated in MPR Decree Number IV/MPR/1999. The ten directives are as follows:

1. Developing a legal culture at all levels of society to create awareness and legal compliance within the framework of the rule of law and upholding a rule of law.
2. Organize a comprehensive and integrated national legal system that recognizes and respects religious law and customary law and renews colonial legacy laws and discriminatory national laws, including gender inequality and its incompatibility with demands for reform through legislation programs.
3. Uphold the law consistently to better guarantee legal certainty, justice and truth, rule of law, and respect for human rights.

4. Continuing the ratification of international conventions, especially those relating to human rights according to the needs and interests of the nation in the form of laws.
5. Increasing the moral integrity and professionalism of law enforcement officials, including the Indonesian National Police, to foster public trust by increasing welfare, supporting legal facilities and infrastructure, education and effective supervision.
6. Creating a judiciary that is independent and free from the influence of the authorities and any party.
7. Develop laws and regulations that support economic activities in facing the era of free trade without harming national interests.
8. Carrying out judicial processes in a fast, easy, cheap and open manner, and free from corruption, collusion and nepotism while upholding the principles of justice and truth.
9. Increasing understanding and awareness, as well as increasing the protection, respect and enforcement of human rights in all aspects of life.
10. Complete various judicial processes for violations of law and human rights that have not been handled thoroughly.

If a comprehensive review is carried out, the politics of national law development which is directed at the post-reform era is still influenced by Friedman's views, even though the influence - especially in the context of giving the titles of Fields or Sub-sectors, because they are not divided over these matters - is not as big as the influence in the 1993 GBHN. However, this influence will be seen even more clearly in the politics of national law development in era pasca reformasi.

### **3.4. DEVELOPMENT OF NATIONAL LEGAL POLITICS IN THE POST-REFORMATION ERA**

In the post-reform era, the development of national legal politics referred to several directives entitled "Reform and Legal Political System" which was one part of the 2004-2009 National Medium-Term Development Plan (RPJMN). Thus the discussion in the next section will also be based on these three elements of the legal system.

Political problems in the development of national law are viewed from 3 (three) aspects: legal substance, legal structure, and legal culture. In the context of legal



substance, there are several problems that have surfaced, including the following: there is overlap and inconsistency of laws and regulations and the implementation of laws is hampered by implementing regulations.

Furthermore, in the context of the legal structure, several obstacles are also mentioned, including the following: the lack of independence and accountability of legal institutions, even though the factors of independence and accountability are two sides of a coin. Furthermore, it was also mentioned about the quality of human resources in the field of law - starting from legal researchers, drafters of statutory regulations to the level of implementers and law enforcers - still needs improvement. He also emphasized the problem of a transparent and open justice system.

Finally, in the context of legal culture, several problems are highlighted, including the following: the emergence of the degradation of legal culture in society. This phenomenon is marked by increasing apathy along with the decreasing level of public appreciation, both for the substance of the law and for the existing legal structure. Furthermore, it also mentions the problem of declining awareness of legal rights and obligations in society.

The creation of a national legal system that is fair, consistent and non-discriminatory (including non-discriminatory against women or gender bias); ensuring the consistency of all laws and regulations at the central and regional levels, and not contradicting higher regulations; and judiciary and law enforcement institutions that are authoritative, clean, professional in an effort to restore public trust in the law as a whole.

In connection with the matters described above, the “development of national legal politics” between 2004 - 2009 and until now, the point is directed at policies to improve legal substance (material), legal (institutional) structure, and legal culture (culture) by means of:

1. Rearranging the substance of the law through reviewing and rearranging laws and regulations to pay attention to orderly laws and regulations by taking into account the general principles and hierarchy of laws and regulations; and respecting and strengthening local wisdom and customary law to enrich the legal and regulatory system through empowering jurisprudence as part of efforts to update national legal materials.
2. Reforming the legal structure through institutional strengthening by increasing the professionalism of judges and judicial staff as well as the quality of an open and transparent justice system; simplifying the justice system, increasing transparency so that justice can be accessed by the public and ensuring that the law is applied

fairly and in favor of the truth; strengthening local wisdom and customary law to enrich the legal and regulatory system through empowering jurisprudence as part of efforts to reform national law.

3. Enhancing the legal culture, among others, through education and dissemination of various laws and regulations as well as exemplary behavior of the head of state and his staff in obeying and complying with the law and upholding the rule of law.

The enactment of several new regulations to replace these old regulations is still the main problem in the development of legal politics.national as well as material for the development and renewal of national legal politics, including the following: (1) updating or replacing legal regulations from the colonial period that were still valid through the Transitional Rules of the 1945 Constitution; and (2) create a new law that is entirely based on Pancasila and the 1945 Constitution (including its Amendments), in accordance with the demands and developments of society at the local, national, regional and international levels in the era of globalization.

In order to achieve these various objectives, it can be oriented towards the concept of legal renewal in development covering at least 5 (five) matters as follows:

1. legal planning program;
2. law formation program;
3. programs to improve the performance of the judiciary and other law enforcement agencies;
4. program to improve the quality of the legal profession;
5. awareness raising program on law and human rights.

## 4. CONCLUSION AND RECOMMENDATION

Based on these various descriptions, it can be concluded that the development of national legal politics is one of the important areas of development, which also requires attention and intensive handling like other development fields. From a historical review, it appears that there have been problems related to the inconsistency and overlap of various regulations in various fields. g. The inconsistency and overlapping of various regulations has made efforts to develop national law quite difficult.

The development of national legal politics that was enforced since the Old Order era to the current Post-Reform era actually provided sufficient accommodation to solve

various problems, however, in reality the development of national legal politics seems rather difficult to implement, so that in some ways, the politics of national legal development is meant to be rather sloganistic. In this regard, a comprehensive national legal development policy is needed to improve and perfect the legal order in the post-reform era. In this regard, the main issues in the development of national legal politics include the following: (1) updating or replacing legal regulations from the colonial period which were still valid through the Transitional Rules of the 1945 Constitution; and (2) create a new law that is entirely based on Pancasila and the 1945 Constitution (including its Amendments), in accordance with the demands and developments of society at the local, national, regional and international levels in the era of globalization.

## References

- [1] Ibrahim S. Reformasi Politik Global Abad Milineum. Jakarta: Pamator Press; 2017.
- [2] Suratman R. Keadilan & Dinamika Sosial Pasca Reformasi. Jakarta: Pena Media Press; 2017.
- [3] Kurniawan D. Negara, Ekonomi, Masyarakat, Transisi. Jakarta: Gramedia Pustaka Utama; 2014.
- [4] Suparto H. Kajian Strategis: Politik Hukum Ketatanegaraan Pasca Era Reformasi. Jakarta: Intermedia; 2013.
- [5] Bidharjo S. Reformasi Sistem Hukum Nasional. Jakarta: Agung Press; 2016.
- [6] Peraturan Presiden Republik Indonesia Nomor 7 Tahun 2005 tentang Rencana Pembangunan Jangka Menengah Nasional Tahun 2004-2009. .
- [7] Ketetapan MP. Nomor II/MPR/1998 tentang Garis-Garis Besar Haluan Negara dalam Majelis Permusyawaratan Rakyat Republik Indonesia. Ketetapan-ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia Tahun; 1998.