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Political Legal Development in Indonesia: A Post-Reformation Study and Its Role

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ABSTRACT

This article examines the development of political law in Indonesia during the post-reformation era and its role in shaping a democratic and equitable national legal system. Using a normative juridical method, the study employs statutory, conceptual, and case approaches to analyze positive legal norms and the dynamics of legal policy following the fall of the New Order regime. The findings reveal that Indonesia's post-reformation legal politics emphasize the three elements of the legal system as identified by Lawrence M. Friedman: structure, substance, and legal culture. Through the National Medium-Term Development Plan (RPJMN) 2004–2009, legal development policy focuses on strengthening institutional independence and accountability, ensuring consistency in legislation, and enhancing public legal awareness. Furthermore, political law functions as a strategic instrument to balance state powers through the principle of checks and balances and to promote public participation in the legislative process. The study concludes that post-reformation political law plays a crucial role in building a responsive legal order aligned with democratic values, the rule of law, and the protection of human rights in Indonesia.

KEYWORDS

Political Law; Reformation; Legal System; Democratization; RPJMN

INTRODUCTION

Every country has legal policies that serve as basic guidelines for state administrators to determine the direction, form, and content of the laws that will be enacted. According to Padmo Wahjono, legal policy is defined as the state administrator's policy on what criteria to use in determining punishment, which includes the formation, application, and enforcement of laws.[1] The issue is how the state manages it. Some countries develop their legal policies in a planned and systematic manner and intend to completely overhaul their legal systems, either for ideological reasons or due to political changes. For example, from a colony to an independent country, or from a monarchy to a republic. This is different from countries that already have an established legal system. Their legal policy is carried out more simply, i.e., it is more closely linked to specific needs than to fundamental principles or principles.[2]

In addition, political developments entering the third millennium, in various countries around the world, the tide of global change has left behind political autocracies that isolate themselves in favor of renewal. Take the Soviet Union, for example. Under Gorbachev's leadership, it was able to bring about reforms that spread to Europe. The Soviet Union eventually gave rise to new countries. In Europe, East and West Germany were reunited. In Africa and the Middle East, there are currently upheavals that demonstrate a determination for renewal. In Indonesia, the era of reform has been rolling since 1998, which overthrew the New Order regime.[3]

The rapid changes occurring in various parts of the world in the academic context have given rise to various theories about transition, whether in the political, economic, legal, or other contexts. In the political context, the meaning of "political transition" is interpreted, among other things, as a shift or change in government that occurs in various countries.[4] In some countries, opposition forces have become the ruling powers; meanwhile, in other countries, although not completely severed from the previous tyrannical regimes, they have distanced themselves from them and from the legacy of human rights violations committed by previous authoritarian regimes.

In several cases, the direction of political transition has been toward democracy, either by restoring some form of democracy from a government that had been destroyed by a dictatorial regime or through steps to form a new democratic government in which no one from the previous regime was involved.[5] In some other countries, the new regimes have not been democratically elected, or they have even come to power through force, but they have developed respect for human rights. In other situations, the new government blames the crimes committed by the previous tyrannical government and punishes those found guilty; however, they then also

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1 Padmo Wahjono, *Indonesia Negara Berdasarkan Atas Hukum* (Jakarta: Ghalia Indonesia, 1986).

2 Frenki, "Politik Hukum dan Perannya dalam Pembangunan Hukum di Indonesia Pasca Reformasi" (2011) 3:2 Asas, daring: <https://ejournal.radenintan.ac.id/index.php/asas/article/view/1662>.

3 John Pickles & Adrian Smith, ed, *Theorising Transition; The Political Economy of Post-Contmunist Trans' forntations* (London: Routledge, 1998).

4 Imam Syaukani & A Ahsin Thohari, *Dasar-Dasar Politik Hukum* (Jakarta: Raja Grafindo Persada, 2004).

5 Sunaryati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional* (Bandung: Alumni, 1991).

engage in repressive practices as carried out by the previous regime, albeit in a different form or directed at different targets.[6]

Thus, this transition has, in various ways, made human rights the center of a democratic revolution that has touched every part of the world in recent years. Although the tide of democracy has flowed rapidly, the emerging democracies still face daunting obstacles in enforcing the rule of law and establishing solid guarantees for human rights.

In Indonesia, although it cannot be said to have gone smoothly, in the period from 1990 to early 1998, or almost eight years at that time, the Indonesian people entered a period of reform. In Indonesian politics, the term "era of reform" refers to the period after General (Ret.) Soeharto stepped down as President of the Republic of Indonesia (RI) on May 21, 1998. Soeharto's resignation was caused, among other things, by repeated and continuous protests from the general public and students in particular, amid deteriorating social and economic conditions.[7] As is well known, Vice President B.J. Habibie was then inaugurated as President to replace Soeharto.

Various demands were then voiced by elements of society to improve the conditions and structure of the state after the New Order. These demands included the following: (1) amendment of the 1945 Constitution; (2) abolition of the dual function of the Indonesian Armed Forces (ABRI); (3) enforcement of the rule of law, respect for human rights, and eradication of corruption, collusion, and nepotism (KKN); (4) decentralization and fair relations between the central and regional governments (regional autonomy); (5) realization of press freedom; and (6) realization of democracy.[8]

METHOD

This study employs a normative juridical method, also known as doctrinal legal research, which focuses on analyzing positive legal norms applicable in Indonesia. This method is used to examine the development of national legal politics within the context of post-Reformation legal transformation. The primary focus lies in analyzing statutory regulations, legal doctrines, and relevant court decisions to understand the direction and dynamics of legal development in Indonesia following the collapse of the New Order regime. The research integrates three main approaches: the statute approach, the conceptual approach, and the case approach. The statute approach is applied to review various laws and regulations forming the foundation of Indonesia's political law, such as the 1945 Constitution of the Republic of Indonesia, Law No. 10 of 2004 on the Formation of Legislation, and the National Medium-Term Development Plan (RPJMN) 2004–2009, which outlines the post-reformation legal policy agenda. The conceptual approach is employed to explore the underlying concepts of political law, the national legal system, and the principle of checks and balances within a democratic state governed by the rule of law.

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6 Abdul Hakim Garuda Nusantara, *Politik Hukum Indonesia* (Jakarta: YLBHI, 1988).

7 Donald K Emmerson, ed, *Indonesia Beyond Soeharto: Negara, Ekonomi, Masyarakat, Transisi* (Jakarta: PT Gramedia Pustaka Utama bekerja sama dengan The Asia Foundation, 2001).

8 Majelis Permusyawaratan Rakyat Republik Indonesia (MPR RI), *Panduan dalam Memasyarakatkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses, dan Hasil Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (Jakarta: Sekretariat Jenderal MPR RI, 2003).

Meanwhile, the case approach is used to identify the practical implementation of political law policies through the analysis of judicial decisions and regulatory frameworks that reflect the evolving legal paradigm in Indonesia.

The data used in this study are secondary legal materials, comprising primary legal sources (statutory regulations and court decisions), secondary sources (books, journals, and scholarly articles on legal politics), and tertiary sources (legal dictionaries and encyclopedias). The data are analyzed qualitatively by describing, interpreting, and correlating legal norms with the realities of Indonesia's political and legal systems to produce comprehensive and objective conclusions.

RESULT & DISCUSSION

I. The Indonesian Legal System After Reform

With the holding of direct general elections and the formation of various new institutions that further encouraged steps towards democratization, including the fulfillment of several demands raised by the public in the early days of reform as mentioned above, although in reality it did not proceed smoothly, step by step, the Indonesian people entered the post-reform era.

In this era known as post-reform, several demands raised by the public will remain, especially those related to sectors that were not achieved during the reform period. These sectors include law enforcement, human rights, and the eradication of corruption, collusion, and nepotism. In addition, there will always be demands for economic justice. The reform agenda, as mentioned above, has been ongoing since the presidency of B.J. Habibie and will even continue during the presidency of Joko Widodo. One of the core demands of the people is the fulfillment of a sense of justice for the community. However, in reality, the measure of a sense of justice for the community is unclear. That is why legal development will be very important in the reform era.

One of the fundamental issues often discussed in this era of reform is the legal aspect. The legal aspects referred to here cover a wide range of dimensions, which can be summarized into three elements as follows: (1) structure (institutional order and performance); (2) substance (legal material); and (3) legal culture. These three aspects constitute Lawrence M. Friedman's theory, which is frequently referenced in various studies and reviews of the legal system in Indonesia.[9]

Friedman describes the elements of the legal system in the following sentences:

> *"In modern American society, the legal system is everywhere with us and around us. To be sure, most of us do not have much contact with courts and lawyers except in emergencies. But not a day goes by, and hardly a waking hour, without contact with law in its broader sense - or with people whose behavior is modified or influenced by law. Law is a vast, though sometimes invisible, presence".*[10]

The first element mentioned by Friedman is structure (institutional order and institutional performance). The second element described by Friedman is substance

[9] Ana Fauzia, Fathul Hamdani & Deva Gama Rizky Octavia, "The Revitalization of the Indonesian Legal System in the Order of Realizing the Ideal State Law" (2021) 3:1 Progress Law Rev 12–25.

[10] Lawrence M Friedman, *American Law: An Introduction* (New York: W.W, Norton and Company, 1984).

(legal provisions). The third element is legal culture. According to Friedman, legal structure is the framework, and as part of the law that remains constant, or the part that gives shape and boundaries to the whole. Legal institutions are part of the legal structure, such as the Supreme Court, the Attorney General's Office, and the Police. The substance or material of law refers to the rules, norms, and patterns of human behavior within the system. The substance of law also refers to the products produced by people within the legal system, including the decisions they make and the new rules they formulate.

Substance also includes living law, not just the rules found in law books. Meanwhile, legal culture is people's attitudes toward law and the legal system, their beliefs, values, thoughts, and expectations. Legal culture also includes the social mindset and social forces that determine how the law is used, avoided, or abused. Without legal culture, the legal system itself would be powerless.[11]

The influence of Friedman's views, particularly those related to the three elements of the legal system, remains to this day, namely in the legal politics implemented in the post-reform era. The term “legal policy” in the post-reform era specifically refers to several directives entitled “Reform and the Legal Policy System,” which is part of the 2004-2009 National Medium-Term Development Plan (RPJMN). Thus, the discussion in the following section will also be based on these three elements of the legal system.

This RPJMN can even be seen as a kind of State Policy Guidelines (GBHN) in the Old Order and New Order eras. As a result of the amendment process of the 1945 Constitution, one of the basic principles of which was that supreme power rests with the MPR, since 2004, the MPR elected in that year has no longer established legal products in the form of GBHN. However, GBHN has been one of the sources for reviewing legal policy, both those to be implemented and those already implemented by the government. Therefore, to analyze national legal development policy in the post-reform era, one of our main references is the RPJMN document.

In this RPJMN, Friedman's influence is very apparent in the early sections, where the political issues of national legal development are examined from three perspectives: legal substance, legal structure, and legal culture. In the context of legal substance, several issues have emerged, including the following: overlapping and inconsistent legislation, and the implementation of laws being hampered by implementing regulations.

Furthermore, in the context of legal structure, several obstacles were also mentioned, including the following: lack of independence and accountability of legal institutions, even though independence and accountability are two sides of the same coin. Next, the quality of human resources in the legal field was also mentioned, ranging from legal researchers, legislators, to law enforcement officials, all of whom still need improvement. The issue of a transparent and open judicial system is also emphasized. This context also suggests the need for the Supreme Court (MA) to implement a one-stop service as an effort to realize the independence of judicial power and create impartial court decisions.

Finally, in the context of legal culture, several issues were highlighted, including the following: the emergence of legal culture degradation in society. This

[11] Komisi Yudisial Republik Indonesia, *Dialektika Pembaruan Sistem Hukum Indonesia* (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2012).

phenomenon is characterized by increasing apathy along with a decline in public appreciation, both of the substance of the law and of the existing legal structure. Furthermore, the issue of declining awareness of legal rights and obligations in society was also mentioned.

In relation to these issues, according to the Presidential Regulation, the objectives to be achieved in the 2004-2009 period are the creation of a national legal system that is fair, consistent and non-discriminatory (including non-discriminatory towards women or gender bias); ensuring the consistency of all laws and regulations at the central and regional levels, as well as ensuring that they do not conflict with higher regulations; and establishing judicial and law enforcement institutions that are authoritative, clean, and professional in their efforts to restore the overall public's trust in the law.

II. The Role of Political Law in Indonesia After Reformasi

As explained in the previous discussion, legal policy is defined as the basic policy of state administrators in the field of law that will be, is currently, and has been in effect, which is derived from the values that apply in society for the ideal state. Thus, it is very clear that legal policy is formulated in order to realize the ideal goals of the Republic of Indonesia. The legal policy that will be, is being, and has been implemented within the jurisdiction of the Republic of Indonesia is very important, because it will serve as a basic guideline in the process of determining values, implementing, forming, and developing law in Indonesia. This means that, both normatively and practically-functionally, state administrators must make legal policy the first and foremost reference in the above processes. According to Daniel S. Lev, the most decisive factors in the process of law formation are political concepts and power, namely that law is always, to a greater or lesser extent, a political tool, and that the place of law in the state depends on the political balance, the definition of power, the evolution of political, economic, and social ideologies, and so on.[12]

Although the legal process referred to above is not identified with the intention of forming law, in practice, the process and dynamics of law formation often experience the same thing, namely that political concepts and power prevail in society and are decisive in the formation of a legal product. Therefore, to understand the relationship between politics and law in any country, it is necessary to study the cultural and economic background, political forces within society, the state of state institutions, and the social structure, in addition to the legal institutions themselves.

From this reality, it is clear that there is legitimate space for a political process to enter through political institutions to form a legal product. In this regard, there are two keywords that will be further examined regarding the influence of power in law, namely the words “process” and “institutions,” in realizing legislation as a political product. This influence will be even more apparent in the product of legislation by a political institution that is heavily influenced by the major political forces within the political institution. In relation to this issue, Miriam Budiarjo argues that political power is defined as the ability to influence public policy

[12] Daniel S Lev, *Hukum dan Politik di Indonesia Kesinambungan dan Perubahan* (Jakarta: LP3ES, 1990).

(government), both in its formation and its consequences, in accordance with those who hold power.[13]

The influence of political forces in shaping the law is limited by the constitutional system based on checks and balances, as enshrined in the 1945 Constitution (UUD 1945) after its amendment. A closer look at the amendments to the 1945 Constitution regarding the administration of state power reveals that they reinforce the powers and authorities of each state institution, clarify the limits of each state institution's power, and assign them based on the functions of state administration for each state institution. Such a system is called a "checks and balances" system, which is the limitation of the powers of each state institution by the constitution, where no institution is superior or inferior, and all are regulated equally based on their respective functions.[14]

With such a system, every citizen who feels that their constitutional rights have been violated by the political products of law-making political institutions is allowed to file a lawsuit against those state institutions. If the violation is committed through the formulation of a law, an objection may be filed with the Constitutional Court, and if any legal products from other political institutions under the law are submitted to the Supreme Court.

Beyond the political forces that sit within political institutions, other forces contribute to and influence the legal products produced by political institutions. These forces include various interest groups whose existence and roles are guaranteed and recognized by law in a country that adheres to a democratic system, such as business people, scientists, community organizations, professional organizations, religious leaders, non-governmental organizations, and others. In fact, Law No. 10 of 2004 on the Formation of Legislation, in Chapter X, emphasizes public participation as stipulated in Article 53: "The public has the right to provide input, either verbally or in writing, in the preparation or discussion of draft laws and draft regional regulations."

The above facts show that the influence of society in shaping the law has gained widespread recognition and appreciation. This is especially true since the public's demands for reform in all areas have been successful, marked by the fall of the New Order under Suharto's authoritarian leadership. The era of reform has brought about major changes in all areas, marked by the enactment of a number of laws that have gained widespread recognition and appreciation. In this case, it reminds us of what public philosopher Walter Lippmann said, that mass opinion has shown itself to be a dangerous master of decision-making when life and death are at stake.[15]

One important point that needs to be raised here for lawmakers to consider is Walter Lippmann's concern, namely: "If public opinion comes to dominate government, then there is a deadly distortion, a distortion that creates weakness, almost akin to paralysis, rather than the ability to govern."[16] Therefore, it is important for lawmakers to pay attention to the voices of the majority of the community who do not have access to influence public opinion or political policy.

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13 Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia Pustaka Utama, 1992).
14 Firoz Gaffar & Ifdhal Kasim, ed, *Reformasi Hukum di Indonesia* (Jakarta: Cyberconsult, 2000).
15 Walter Lippmann, *Filsafat Publik* (Jakarta: Yayasan Obor Indonesia, 1999).
16 *Ibid*.

This is where the role of elected representatives, through existing democratic mechanisms in the political structure and infrastructure, comes into play to protect the interests of the majority of the people and to fully understand the norms, rules, interests, and needs of the people so that these values become positive law.

It should be clarified here that the role of political law in national legal development in Indonesia cannot be separated from its historical context. As is well known, since Indonesia's independence and following the post-reform era, the Indonesian people have sought to reform the national legal system in line with the current development of the Indonesian state.[17] Throughout the history of the Republic of Indonesia, there have been alternating political changes (based on political system periods) between democratic and authoritarian politics. In line with these political changes, the character of legal products has also changed. These changes occur because law is a product of politics, so the character of legal products changes when the politics that gave birth to them change.

CONCLUSION

Based on the above description, it can be concluded that the development of national legal policy is an important area of development that requires intensive attention and handling, just like other areas of development. One of the fundamental issues that is often discussed in this era of reform is the legal aspect. The legal aspects referred to here cover a wide range of dimensions, which can be summarized into three elements as follows: (1) structure (institutional order and performance); (2) substance (legal material); and (3) legal culture. These three legal aspects after reform are reflected in the formulation of the RPJMN, which aims to create a national legal system that is fair, consistent, and non-discriminatory (including non-discriminatory against women or gender bias); to ensure the consistency of all laws and regulations at the central and regional levels, and that they do not conflict with higher regulations; and judicial and law enforcement institutions that are authoritative, clean, and professional in their efforts to restore the overall public's trust in the law.

DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

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[17] Soetandyo Wignjosoebroto, *Negara Hukum dan Permasalahan Akses Keadilan di Negeri-Negeri Berkembang Pasca-Kolonial* (Jakarta, 2012).

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