

## Legal Political Development in Perspective in the Era of Transition Law Reform (1998-2004) in Indonesia

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### Abstract

Law politics in the era of transition reform has shifted towards a democratic political configuration after the authoritarian New Order era, in which the character of legal products is a reflection of the political configuration that gave it birth. The development of the character of election laws in the New Order era so elitist or conservative, while in the era of transition reform in a democratic political configuration appear. As well as aspects of human rights and the field of combating corruption, collusion and nepotism, has experienced a shift from a legal product that is elitist in the New Order era shifted towards the political configuration that is more democratic, then the character of a legal product that was born in the era of transition reform tend to be unresponsive or populist. Implementation of legal development in the era of transition reform tends to shift toward the configuration of a more democratic political is characterized by the recognition of human rights, press freedom and the implementation of democratic elections and the enactment of Law No. 39 of 1999 on Human Rights, as well as commitment to eradicating corruption in Indonesia. To anticipate the era of openness and the values of globalization need to pay attention to and strengthen the legal pluralism and multicultural paradigm in the life of the nation, therefore appreciation to the Republic of Indonesia which recognizes the rights to life multiculturalism and pluralism is based on human rights. It is necessary to reorient the development paradigm of law in a society based on multi-cultural as well as Indonesia.

**Keywords:** Politics of law, transitional era, Indonesia

### A. Introduction

Reform in May 1998 in view Indria Samego (2002), has brought fundamental changes in people and the nation of Indonesia. *First*, since the fall of Soeharto we no longer have a very decisive leader. The emergence of new power centers outside the country, has shifted the position of the president of Indonesia from the ruling hegemonic and monopolistic become commonplace head of government, which at times can be sued and even passed down from power. *Second*, the emergence of a more liberal political life, has given rise to a political process that too liberal. Third, political reform has also been accelerating the political enlightenment of the people. The spirit of openness underlying the public has shown how high levels of distortion of the process of state administration. *Fourth*, at the level of state institutions, to strengthen the awareness of the process of checks and balances between the branches of power has evolved in such a way, to go beyond convention that had been held that the principle of family in the organization of the State. *Fifth*, political reforms have raised desire as influential public and political elite Indonesia to systematically and peacefully make fundamental changes in the constitution of Republic Indonesia.

The Constitution according to KC. Wheare (1975:1) an overview of the entire constitutional system of a State, a collection of rules that underlie and regulate or direct the administration. CF. Strong (1966:16) argues, are substantially true constitution lists three things: *first*, how the various settings genius institutions; *secondly*, the type of power entrusted to these institutions; and *third*, in what way these powers are conducted. Constitution according to Hans Kelsen (1971 : 365) as the fundamental law of the State is the basis of the national legal order. Therefore, the constitutional position is so important in a country, then the constitutional changes into the main agenda of reform in Indonesia.

Conceptually and strategically, Bagir Manan (2000: xviii) suggests there are four pillars of reform that should be a reference in the renewal of political, economic, social and others, including reforms in the legal field. *First*, realize the re-implementation of democracy in all life of society, nation and state. In a democracy, people are the source and at the same time are responsible for arranging and taking care of themselves. Every power must be sourced and subject to the whim and will of the people. *Second*, realize the re-implementation of principle state based on the sovereignty of the people is what determines the beginning and end of all activities of society, nation and state to realize the truth and justice for everyone. *Third*, empowerment of the people in the political, economic, social and others, to realize a society that is able to carry out responsibilities in society, nation and state. *Fourth*, realize the general welfare and the greatest prosperity on the basis of social justice for all people.

### B. Methods

This research is a law that has a distinctive character that it is normative. Morris L. Cohen (1992) says that legal research is the process of finding the law that governs activities in human society. In line with the above view of

Morris L. Cohen, according to Peter Mahmud Marzuki (2005: 29), that legal research is a process of finding the rule of law, principles of law, as well as legal doctrines in order to answer the legal issue at hand. In legal research by Morris L. Cohen, there are several approaches used, namely: (i) statute approach, (ii) case approach, (iii) the historical approach, (iv) comparative approach, (v) philosophical approach and (vi) the conceptual approach. Referring to these approaches, this study used a historical approach and the statute approach.

### **C. Results and Discussion**

The reform process both institutional reform and reform political culture can be trusted as an effective instrument of development, it must be developed and enforced to follow the norms and procedures which ensure the realization of certain genuine democratization process. Therefore both the reform agenda of institutional reform, cultural reform and law reform should be carried out in synergy and simultaneously. In other words, the idea of modern democracy, occupies a very central position, idealized democracy must be placed in the corridors of the rule of law. Do not let democracy could evolve towards a misnomer, because it can be interpreted unilaterally by the authorities in the name of democracy.

Reformation as a period of time, the absolute inherent in the constitutional history of Indonesia, therefore the development in this reform era has distinctive characteristics and identities, which is different from the previous period. To the authors to try to analyze and identify the product that was born in the reform era, so it is a distinctive identity in accordance with the period of reform.

In the view of M. Mahfud MD (1998: 209-210) New Order Indonesia have shifted the political system of the extreme authoritarian era guided democracy to a liberal democratic system. But the reality style libertarians did not last long, as well as a reaction to the authoritarian system that previous life, because since the beginning of the New Order obsession is to build national stability in order to protect the smooth economic development. Even Ismail Suny (1980: 44) argues that the Indonesian government actually adopts constitutionalism, a government limited by the provisions contained in the constitution, but the reality of the New Order implementing the political system by putting politics in charge, not the law as a commander. This is in contrast with the era of transition reforms that have led to the process of democratization. So, in this paper, legal politics in the era of transition reform is focused on three (3) areas, namely: (1) the field of Human Rights; (2) Field of Election; and (3) Sector Anti -Corruption and Nepotism.

#### **1. Sector of Human Rights**

Adnan Buyung Nasution (1995: 176) argues first consequence of the recognition of human rights is a deeper understanding of the meaning of democracy for human rights form the basis of democracy. At the time of forming the State, people do not relinquish their human rights, such as the right to determine their own lives. Thus, the people as a whole retains the right to determine this along with the organization of collective life in the State.

In the reform era, the development of human rights in Indonesia gained significant runway since the enactment of Presidential Decree Number 129 of 1998 on the Indonesian National Human Rights Action Plan 1998-2003, which is set on August 15, 1998. In the decree confirmed four (4) main pillars of development rights in Indonesia, namely: (i) preparation for ratification of the international instruments on human rights; (ii) the dissemination and human rights education; (iii) the implementation of a set of human rights as a priority; and (iv) implementation of the contents or the provisions of the various international instruments on human rights has been endorsed Indonesia.

Enforcement of Presidential Decree Number 129 of 1998 was followed by the issuance of Presidential Instruction Number 26 of 1998 concerning Indigenous and Non Stop terms Natives in all the Formulation and Implementation of Policy, Planning, or the Implementation of Governance.

Existence of Presidential Decree and is then followed by the enactment of Law Number 5 of 1998 on Ratification of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Furthermore, on October 9, President BJ Habibie also issued Presidential Decree Number 181 of 1998 on the National Commission on Violence Against Women. This decree was issued in order to prevent and tackle the problem of violence against women. In the decree stated that the commission is independent.

The enactment of Law Number 5 of 1998 was followed by setting the entry into force of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number: XVII/ MPR/1998 on Human Rights, set out in the Special Session on 13 November 1998. The date MPR Decree No. XVII/MPR/1998 on human Rights assigned to the higher institutions of the State and the entire apparatus of government to respect, uphold and promote understanding of human rights to the entire community as well as to ratify the various instruments of the United Nations on Human Rights to the extent not contrary to Pancasila and the Constitution of 1945. Provide protection against human rights can be done through the establishment of the National Commission on Human Rights and the Human Rights Court and the Truth and Reconciliation Commission.

To carry out the mandate of MPR Decree Number XVII/MPR /1998 on Human Rights, there have

been formed Law Number 39 of 1999 on Human Rights, as an embodiment of the responsibility of Indonesia as a member of the United Nations. In addition to this, the establishment of the Law on Human Rights also contains a mission to carry out a moral responsibility to uphold and implement the Universal Declaration of Human Rights established by the United Nations. Based on the developments, both in terms of national interests as well as of international importance, then to solve the problem of human rights violations were severe and restore security and peace in Indonesia is necessary to establish a Human Rights Court which is a special court for human rights violations are severe.

## 2. Sector of Election

Indonesia's democratic transition in its efforts towards a modern democratic state structure with pillars going public accessibility, recognition of human rights, a free press and commitment in organizing a clean government in view of the scope Reform Order M. Mahfud MD (1998: 377) requires one only need to be carried out democratic election, as a form of recognition of the sovereignty of the people. Democratic elections would still have to get serious attention, given the realities of the election in the New Order era are reflected in its legal product, namely Law Number 15 In 1969, the then almost always updated every elections, more likely conservative or elitist character. It means more benefit to the political power of the government.

Position election is important because the norms that regulate the organization of political life, community building, civilized, and democratic state. While elections are part of a political party that involves people, realizing the democratic ideals and practices of the state. In principle, elections in the realm of democracy more meaningful as the activities of political participation in perfection by the various parties. While circulation of the political elite which resulted in implementing performance improvement executives.

Legislation produced after the 1999 elections in accordance with the policy adopted by the 1945 changes, among others, determined that: (i) Sovereignty is no longer carried out by the Assembly; (ii) The President shall not be liable again to the Assembly; (iii) The President is elected directly by the people through an election and can only be re-elected for a further term of office; (iv) the House of Representatives holds the power to make laws; and (v) the presence of a new institution called the Regional Representative Council and Constitutional Court as well as the abolition of the Supreme Advisory Council.

However, the political reality after the 1999 election is raising issues, such as the conflict between the government of Abdurrahman Wahid and DPR/MPR which led to the president issued the Edict of the President dated July 23, 2003 the contents: (1) Freezing the MPR/DPR; (2) Return of sovereignty to the people and take action and draw up the necessary bodies to administer the Election within 1 (one) year; (3) Saving the total reform movement and the resistance elements of New Order to freeze the Golkar Party pending the Supreme Court decision.

Edict of the President is not known in the sort order RI legislation as set out in the TAP MPR No. III/MPR/ 2000. Besides the constitutional system adopted in 1945 was not given the authority to the president to freeze the institution MPR, DPR and freeze the political parties. The president's announcement did not receive widespread support from the people because they do not correspond to reality of the existing social and ultimately declared invalid by the Assembly, that's what implications for the dismissal of President Abdurrahman Wahid as president and was replaced by Megawati Soekarno Putri.

## 3. Sector Opposite Corruption and Nepotism

The phenomenon of the practice of authoritarianism in the New Order era occurs because of the power that was divided and lack of accountability. That's what causes the appearance of corruption, collusion and nepotism. Herbert Feirh called the new order as a 'bureaucratic polity' and Anderson and Crouch refer to it as 'representative developmentalist regimes'. They had a similar view that the emergence of the practice of authoritarianism that occurs because of the power that was divided and lack of accountability.

In the context of the reform, as efforts to eradicate corruption in Indonesia, the Indonesian government issued various policies, one of which was issued a wide variety of laws and regulations related to corruption, among others, that: (i) MPR Decree No. XI/MPR/1998 on the Running state Clean and Free from Corruption, Collusion and Nepotism; (ii) Act No. 7 of 2006 on Ratification of the United Nations Convention against Corruption 2003; (iii) of Law No. 30 of 2002 on Corruption Eradication Commission; (iv) Law No. 15 of 2002 on Money Laundering; (v) Law No. 31 of 1999 on Corruption Eradication; (vi) of the Act No. 28 of 1999 on State Implementation of Clean and Corruption, Collusion and Nepotism; (vii) PP 71 Year 2000 on the Implementation of community participation and award in the Prevention and Combating of Corruption; (viii) PP 19 of 2000 on the Joint Team Eradication of Corruption; (ix) Presidential Decree No. 11 of 2005 on the Coordinating Team for Corruption Eradication; (x) Presidential Instruction No. 5 Year 2004 on the Acceleration of Corruption Eradication.

Related to the above reality, then in a legal context, this transition problems, among others, led to the terminology of transitional justice. Transitional justice is justice in a period of political transition. In the

perspective of Ruti G. Teitel (2000:6), the conception of justice in a period of political change are usual broad and constructive. This is in turn shaped by and is the core of the political transition. The conception of justice that arises is contextual and partial. There is to be considered as a fair is uncertain and may be associated with the future, and this is based on information from a previous injustice. Responses against repressive governments give meaning to the rule of law.

In the development of the legal order according Nonet - Selznick (1979), there are three types of legal order to express a certain degree of development (evolution) legal order in a society that has been politically organized in the form of the State. Three types of legal order it is a repressive legal order, legal order otonomius and responsive legal order. In this type of repressive legal system, law is regarded as a man of repressive rule and command of a sovereign who has discretionary authority indefinitely. While otonomius legal order, the law is seen as an independent institution capable of controlling repression and protect its own integrity. The core of the legal order of government "Rule of Law ". While responsive legal order, the law is seen as a facilitator response or means in response to the needs and social aspirations. In this type, the expressive aspect of the law is more prominent than in the other two types, and substantive justice is emphasized in addition to procedural fairness.

Referring to the views Nonet- Selznick (1979) above, every effort put forth laws responsive or populist character must start from the democratization of political life. Law politics in the era of transition reform in Indonesia is expected to give birth to the legal character responsive or populist considering the democratization process in the reform era has taken place, than in the New Order era that appears with the political configuration authoritarian and centralized, so that the election in the Age of New Order is only a tool and legitimacy of power. In addition, in the New Order era guarantee of freedom of the press, respect for and protection of human rights and governance commitments are clean and free of corruption and collusion is also very difficult to be realized. Is expected in the transitional era of reform, both elections clean and fair, and as well as respect for human rights and efforts to build a clean government and free from corruption, collusion and nepotism gradually and accelerating can be realized.

#### **D. Conclusion**

History of the reality of politics in Indonesia until now shows that always a change, a shift in the political configuration of democratic and authoritarian configuration, in which the character of legal products is a reflection of the political configuration that gave it birth. The development of the character of election laws in the New Order era so elitist or conservative, while in the era of transition reform in a democratic political configuration appear. As well as aspects of human rights and the field of combating corruption, collusion and nepotism, has experienced a shift from a legal product that is elitist in the New Order era is shifting toward a more democratic political configuration, then the character of a legal product that was born tend responsive or populist.

Implementation of legal development in the era of transition reform tends to shift toward the configuration of a more democratic political is characterized by at least 3 (three) ways, namely: (1) the recognition of human rights, a free press and the commitment of the organization of clean government by requiring one of them held elections, as a form of recognition of the sovereignty of the people; (2) Changes in 1945 by adding 11 articles on human rights, which was followed by the enactment of Law No: 39 of 1999 on Human Rights; and (3) commitment to eradicating corruption in Indonesia through the discharge of various policies, one of which was issued a wide range of legislation related to corruption.

To anticipate the era of openness and the values of globalization need to pay attention to and strengthen the legal pluralism and multicultural paradigm in the life of the nation, therefore appreciation to the Republic of Indonesia which recognizes the rights to life multiculturalism and pluralism is based on human rights. It is necessary to reorient the development paradigm of law based state in a multicultural society like Indonesia.

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