

# THE PROSPECT OF LEGAL INSTITUTIONS REFORM IN INDONESIA\*

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The efforts made in the present reform era to effect changes in the Indonesian legal institutions will be successful only if there is strong consistency of both the people and the government in changing such institutions as the Court, Public Prosecutor's Office, Police and Lawyer/Attorney.

At the beginning of the New Order era, the Indonesia people, especially the legal profession has a great expectation that the idea of rule of law i.e., the protection of human rights, the independent judiciary, legality in a sense all actions are based of legitimate grounds on laws, will soon be effective after paralyzed during the guided-democracy era.<sup>1</sup>

However, this expectation turned to fade away as the government emphasized on the need for a centralized and strong government to achieve economic growth. The attempts to criticize the government for the first time were silenced by banning seven newspapers in 1974,<sup>2</sup> several days after the January 1974 incident. Actually, the New Order only exist for only 8 years which ended in 1974.

The following years, political manipulations had occurred which derail from the rules.<sup>3</sup> This period was also identified by the collaborations of entrepreneurs in and government officials which brought abuse of power that resulted in losing on the ordinary people in the field of land, labor and environment.<sup>4</sup> On the other hand, the reform movement has not receded during 1970's. The government and opponent

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<sup>1</sup> Simposium "Kebangkitan Semangat'66 : Menjelajah Trace Baru", Jakarta 1966. Sumrah, SH, "Penegakkan Hak Azasi Manusia Ditinjau dari Pelaksanaan Rule of Law di Indonesia", In "The Rule of Law dan Praktek-Praktek Penahanan di Indonesia", Bandung : Alumni, 1968. p. 26.

<sup>2</sup> At least 7 newspapers were banned two days after the 15 January 1974 incidence, among other things Harian KAMI, Abadi, Indonesia Raya, Pedoman, Nusantara, Jakarta Time.

<sup>3</sup> Alflan, "Pemikiran dan Perubahan Politik". Jakarta : Gramedia, 1981. p. 250.

<sup>4</sup> T. Mulya Lubis, "Mengapa Bantuan Hukum Struktural", Ini Langkah Telah Diayunkan : Sepuluh Tahun Lembaga Bantuan Hukum. Jakarta : LBH, 1981. pp. 37-42. Paul S. Bat (Ed), Dilema Arus Pembangunan. Jakarta : Yayasan Lembaga Bantuan Hukum, 1990 pp. 30-40, 109-116.

groups mutually agreed to the rule of law but in different notions. One of the controversies appeared during the review of Law No. 14 of 1970 concerning Judicial Power. The legal profession, the attorneys in particular, expected that the Court be separated from the executive and has the ability to perform controls over the executive. However, this desire was defeated when finally Article 11 (1) of the Judicial Power Law defined:

“The Judiciary Tribunals performing judiciary functions shall organizationally, administratively, financially be under the subordination of their respective Departments.”

In Indonesia, this provision has brought in a non-independent status of the Courts. One of their legs is in the Supreme Court and the other in the Department of Justice (executive). Such circumstances create the possibility for the judiciary to be influenced by the executive. Although President Suharto is more sensitive than President Soekarno, who has appointed the Chief of Supreme Court and Chairman of the House of Representatives as Ministers, i.e, aides to the President, the New Order did not intend to dispose the power that was considered to remain useful for ensuring the political stability and economic development. It is this condition that made the Indonesian legal institutions unable to function properly, in term of being less critical, inefficient and corrupt. Their various decisions in the cases of people’s land, labor and environment tend to take side with the Government.<sup>5</sup> In political affairs, the general election system in which the candidates for the House members were nominated by the their political party, and the people elected the party, was one of the reasons why the House members did not represent the people’s aspiration.<sup>6</sup> This was aggravated by the House’s rules that did not enable an individual or a faction to play his role as the representative of the people. The right to question the Government, for example, should be supported by the other factions. The concentration of power has more influence toward the participation of private capital in the development of economy, such as creating the economic disparity between Java and outside Java and

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<sup>5</sup> Karni Ilyas. Catatan Hukum. (Jakarta : Yayasan Karyawan Forum, 1996). p. 7-8, 17.

<sup>6</sup> Meriam Budiardjo. Demokrasi di Indonesia-Demokrasi Perlemtenter dan Demokrasi Pancasila. (Jakarta: Gramedia Pustaka Utama, 1996). p. 309.

increase the concentration of economic power on a certain group of entrepreneurs.<sup>7</sup> This concentration of power in political and economic sectors has caused political unrest and increase the dissatisfaction of the middle class in Indonesia. On the other hand, the consequences Indonesian economic development was the increasing number of the middle-class people in Indonesia, i.e., they who were educated and did not make their lives depend on the Government, such as lecturers, students, attorneys/lawyers, legal counselors, doctors, engineers, journalists and other professional; Some of them launched either blatant or silent opposition. From this point it is understandable that in such authoritative political condition, there were occasionally awards rendered by judges who against Government's policy, the mass-media openly criticize the state's high-ranking officials, the scholars who have idea to amend the 1945 Constitution.

The victory of the reformer began to appear when the economic crisis struck Indonesia in August, 1997. President Suharto signaled that he would start the reform in 2003 when he will not be in power anymore due to old age. Economic crisis which occurred in Indonesia caused not only by external factors, but it also in my opinion caused by internal factors. The concentration of power and the absent of strong control from other institutions or the people, has led to economic distortions in term of numerous bad debt loans and increasing private and government foreign debts. In a very short time the rupiah value against dollar had declined to almost 700%, causing the crisis in the Indonesian banking system and companies going bankrupt creating tremendous unemployment and the rise of household consumption prices.

This economic crisis has pressured President Suharto to step down, four years earlier than expected. Such event proved that social and political in stability moved forward the development progress, depending on the ration between development growth and dissatisfaction of the people.<sup>8</sup>

In short, the issue of rule of law has become important in the New Order era, because of the weaknesses of legal institutions. A different of opinion concerning the relation between the state and the people is clearly remarkable. The New Order

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<sup>7</sup> Selo Sumardjan. "Ketimpangan-Ketimpangan Dalam Pembangunan : Pengalaman Indonesia", in Juwono Sudarsono (Ed), Pembangunan Politik dan Perubahan Politik, (Jakarta : Gramedia, 1976). p. 116.

<sup>8</sup> Arbi Sanit. Sistim Politik di Indonesia. (Jakarta : CV Rajawali, 1981). p. 130.

government emphasized on the supremacy of state and power of the President that may override the individual's rights, in the name of the people, since it held that the state and the people become integrated. On the other hand, the reformers led by the middle class contended that the law should serve as the basis of action, both for the rulers and the people. There was a separation between the state desire and that of the people. The rights of citizens as one of restrictions to the government's authority.

The Habibie administration did not have enough time for making substantial changes, except carrying out a democratic general election for the first time since the parliamentary democracy ended in 1959. A number of Laws were issued in this one year period, among others, the new Law on Political Parties which enabled many parties to participate in public election, as was the case with the 1955 parliamentary democracy, the Law concerning Public Election, the law concerning Structure and Position of the People's Consultative Assembly.

In the economic sector, new laws were promulgated, such as the Law on the Prohibition of Monopoly Practice and Unfair Business Competition, the Law on Consumer Protection, the Law on the Balance of Budget Between Central and Local Government, the Law on Anti Corruption. For the judiciary, there is an amendment on law No. 14 year 1970 concerning the judiciary, and finally the Law on Human Rights. Even though the judiciary is separated from the executive and the police is separated from the armed forces, however such has not brought significant changes to the legal institutions.

The administration of President Abdurrahman Wahid is facing with surmountable and complex problems. Expert on social sciences in Western countries take notes that nations proceed with three stages of development consecutively unification, industrialization, and social welfare. It has to be recognized that the parliament, judiciary and lawyers in the bureaucracy and legal profession play an important role in each of the development stage. The law, legal institution and lawyers, play an important role on normative system and new values on each of the development.<sup>9</sup>

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<sup>9</sup> Thomas M. Franck, "The New Development : Can American Law and Legal Institutions Help Developing Countries?", *Wisconsin Law Review* No.3 (1972) p. 778.

The political stability is a prerequisite to build industrial infrastructure and industrial growth is the prerequisite for social welfare.

The developing countries intend to achieve the three stages simultaneously: unification, industrialization and social welfare, has to be achieved concurrently.<sup>10</sup>

Currently, Indonesia is facing the same problem, how to prevent nation from disintegration, at the same time recover the severe economic crisis and to expand social welfare to reach the lowest class stratification.

The nation disintegration experienced by Indonesia is mainly due to the absent of distribution of power and balance budget between central and local government in the past. Beside that human rights and destruction of environment has pushed the desire of some quarters to separate themselves.

The struggle in various province which happened in around 1950s, amongst others, due to the lack of local development, the delayed autonomy implementation, the distribution of power and balance budget between central and local government.<sup>11</sup> The dissatisfaction continues after around 1970, accompanied with pressure ranging from soft, which is to obtain bigger portion for provinces which have natural resources to hard demand, provinces desiring to separate itself from the unitary state of the Republic of Indonesia.<sup>12</sup>

In the past the role of state is dominant as agent of development. The result is the political rights of the people are often pushed to satisfy social, economic and cultural rights.<sup>13</sup> This was born from the view that political right and people's rights are hampering economic growth. The social and economic progress can be achieved effectively if the effort by the government are not hampered by the opposition.<sup>14</sup>

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<sup>10</sup> Thomas M. Franck, *Ibid.*, p. 771.

<sup>11</sup> R.Z. Leirissa. *PRRI-PERMESTA*. (Jakarta: PT. Pustaka Utama Grafiti, 1991). p. 49-52, 86-88, 97. Lihat juga Richard Mann. (Alih Bahasa, Maria Irawati Yulianto, SS). *Memperjuangkan Demokrasi di Indonesia*. (Jakarta: Handal Niaga Pustaka, 1999). p. 215-225.

<sup>12</sup> Hartono Mardjono, "Solusi Pergerakan Daerah. Perspektif Keutuhan Negara Republik Indonesia." *Republika*, 12 Januari 2000, p. 6. Herman Haeruman, "Pemberdayaan Ekonomi Kawasan Dalam Mengantisipasi Perimbangan Keuangan Pusat-Daerah", in Ade Kamaluddin, Nasit Marasabessy, Jusuf Mile (Ed). *Menuju Masyarakat Cita : Refleksi Atas Persoalan-Persoalan Kebangsaan*. (Jakarta: Badan Koordinasi HMI Maluku-Irian Jaya, 1999), p. 84. M. Dawam Rahardjo. *Tantangan Indonesia Sebagai Bangsa* (Yogyakarta : UII Press. 1999).

<sup>13</sup> Yemi Osinbajo and Olukonyisola, "Human Rights and Economic Development in Developing Countries", *The International Lawyer* vol. 28 No.3 (Fall 1994), p. 728.

<sup>14</sup> Amartya Sen, "Human Rights and Economic Achievements", dalam Joanne R. Banerand Daniel A. Bell (Eds). *The East Asian Challenge For Human Rights*. (Cambridge : Cambridge University Press, 1999). p. 90-91.

This view has in fact brought severe crisis in the field of economics, politics and law. The truth is the essence of democracy is "sharing of power" between different groups within certain national society, including the right to express opinion and to compete to gain opportunity to create or influence decisions. The important element is the existence of feed back mechanism and adaptation which forced the government to answer and harmonize its actions in accordance with the view of others.<sup>15</sup>

The Indonesian economic crisis was a result of, among others, the occurrence of moral hazard in various economic and political sector. The problem on moral hazard has been widespread.<sup>16</sup>

From the perspective of legal history, a certain nation is entering the stage of state prosperity identified by the development of law which protects the weak parties. In this period a State begins to consider, among others, protection on labors, consumer protection, small business protection and the protection for the environment. The laws related to the protection of those various parties are intended to improve industrialization which does not always give goodness to all groups of people.

The minimum salary determined by the government which is still under the basic minimum requirement, have not been complied by many enterprises, however labors who do not have strong labor union are not able to fight for their rights. Apart from that the harsh competition in the labor market and severe economic crisis which made the labor to not have the courage to fight for improvement of their standard of living. Indonesia requires a strong labor union to fight for the standard of living of the labor so they do not have to use force and destruction.

The development of industrial products, in one hand, requires the development of consumer protection on the other hand. The legal protection on consumers are not limited to low quality goods but also goods which are dangerous to

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<sup>15</sup> Russel Lawrence Barch, "Democratization and Development". *Human Rights Quarterly* vol. 14 (1992) p. 121.

<sup>16</sup> Anwar Nasution, "Lessons From The Recent Financial Crisis in Indonesia", dalam Sustaining Economic Growth in Indonesia: A Framework For The Twenty - First Century. (Jakarta : USAID, LPEM-UI, ACAES, REDECON, 1999). p. 53. Sri Mulyani Indrawati, "Krisis Ekonomi Indonesia dan Langkah Reformasi", Speech on the Occasion of University of Indonesia 48th Anniversary. 7 February 1998, pp. 6-7.

human life, such as food, drinks and medicines. The implementation of consumer protection in Indonesia has not developed in accordance with the progress in the industrial products.<sup>17</sup>

The environmental pollution due to industrialization also requires continues and specific attention. The trend to prioritize industrialization growth can result in enterprises refusing to accept responsibilities for environmental pollution.

To overcome with the above problems, the reform on legal institutions is absolutely necessary. However, such cannot be realized in the short time because there are so many issues that has to be settled at the same time. In the process, of course, there will be competition between the majority of the people's interest and the group's or individual's interest. However, Indonesian history has shown that concentration of power without control from the people, both in the guided democracy and in the new order has brought severe crisis in the political, economic and legal field. The Indonesian middle class, I think, has learned such a lesson. In addition with the economic globalization and the development of international communication, the reform on legal institution, sooner or later, will certainly occur.

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<sup>17</sup> Law No. 8 Year 1999 concerning Consumer Protection which will be effective on April 2000.