

# The Politics of Law of the Development of Law and Regulations in Indonesia

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## I. INDONESIA LEGAL HISTORY

The Indonesian legal system is complex because it is a confluence of three distinct systems. Prior to the first appearance of Dutch traders and colonists in the late 16th century and early 17th century, indigenous kingdoms prevailed and applied a system of adat (customary) law. Dutch presence and subsequent colonization during the next 350 years until the end of World War II left a legacy of Dutch colonial law. A number of such colonial legislation continues to apply today. Subsequently, after Indonesian declared independence on 17 August 1945, the Indonesian authorities began creating a national legal system based on Indonesian precepts of law and justice.

These three strands of adat law, Dutch colonial law and national law co-exist in modern Indonesia. For example, commercial law is grounded upon the Commercial Code 1847 (Kitab Undang-Undang Hukum Dagang or Wetboek van Koophandel), a relic of the colonial period. However, commercial law is also supplemented by a large number of new laws

determinant factors among one and another, because even though the law is one of political decision product, all political activities shall comply with the rules of law.

The essence of substance from which a large amount develops of all politics of law is The 1945 Constitution. All contents that contained in its chapters and articles beckon politics of law; even the opening of The 1945 Constitution itself has the basis of politics of law as well. The value of politics of law is not only contained in the terms of law, but also contained in other fields of terms such as, economy, social, culture, etc. For example, some of stipulation of the 1945 Constitution that related to the principle of the economy of the State, as the basis of the politics of law of economy and investment, are mentioned in the following articles:

1. The 1945 Constitution, article 23 subsection (1), forth amendment, said:  
*The State's budget income and expense as a form of the State financial management is determined yearly by the act and implemented transparency and responsibly for all society's prosperity.*
2. The 1945 Constitution, Article 23B, forth amendment, said:  
*The type and price of currency is determined by the act*
3. The 1945 Constitution, Article 23C, third amendment, said:  
*Other matters about the State's Finance is regulated by the act*
4. ... etc

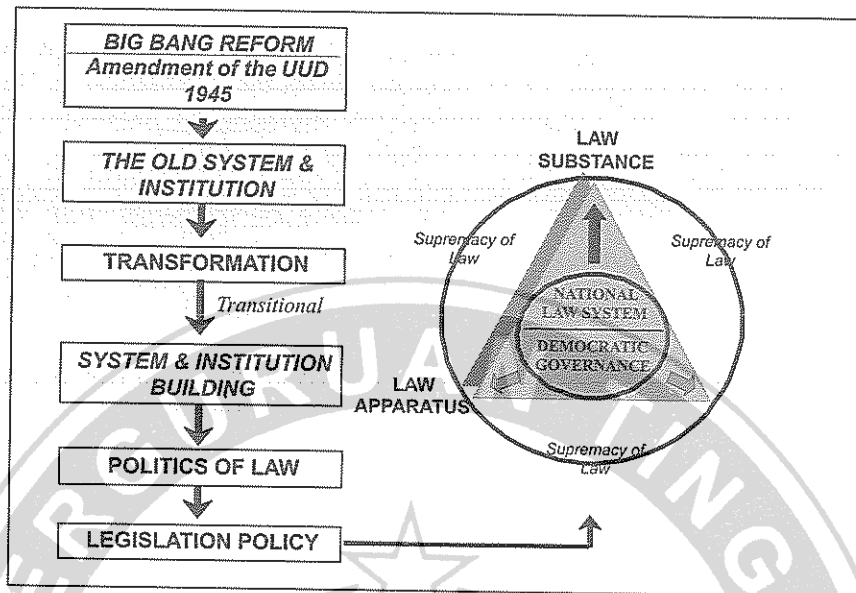
enacted since independence. They include the Banking Law 1992 (amended in 1998), Company Law 1995, Capital Market Law 1995, Antimonopoly Law 1999 and the Oil & Natural Gas Law 2001. Adat law is less conspicuous. However, some adat principles such as "consensus through decision making" (musyawarah untuk mufakat) appear in modern Indonesian legislation.

## II. CONFIGURATION OF LAW AND POLITIC

Law is political product that views the law as formalization or crystallization of the political wills that interact and competing. From this perspective, there are three main reasons of the statement above, which are: First, law is the main determinant factor of the politics which means that all political activities are arranged and complied with the rules of law. Second, politics is the main determinant factor of the law, because law is formed by formalization or crystallization of the political wills that interact and competing. Third, politic and law as society subsystem are in the same position as

The role of law is significant to ensure that the law, state and market become very vital to be synergized. At this point, the role of law or act that related to economy and the process of economy will be prioritized. And subsequently, political economy and politics of law can be synergized. Therefore, the development of economy will not be achieved without the development of law.

Based on the juridical-normative determination above, the value of politics of law is clearly concluded in the Constitution and it will be the basis of making of various regulation and law descendant products.



### III. THE DEVELOPMENT OF LAW AND REGULATIONS IN INDONESIA

#### A. Constitution Reform

To understand modern Indonesia's legal system, some background must be given regarding the Indonesian constitutional structure. Indonesia is a unitary republic established pursuant to the constitution declared at independence, commonly called the 1945 Constitution (Undang Undang Dasar 1945). During the 32-year period when Soeharto was in power, the 1945 Constitution was never amended.

After his resignation in May 1998, the 1945 Constitution was amended four times - in October 1999, August 2000, November 2001 and August 2002. Along with these amendments, Big Bang Reform has been occurred. The 1945 Constitution which consisted of 16 chapters, 37 articles, and 77 subsections, has been amended to become 20 chapters, 77 articles, and 199 subsections. Among other things, these amendments deal with far-reaching issues such as limitations on the powers and term of office of the President; decentralization of authority from the central government to provincial and regional governments; and the creation of additional constitutional bodies such as the House of Regional Representatives (Dewan Perwakilan Daerah) and the Constitutional Court (Mahkamah Konstitusi).

Proposals for future amendments, some of which deal with equally weighty matters, are currently being discussed. Talking about the law position in Indonesia, The 1945 Constitution clearly asserted that "The State of Indonesia is the state of law" (article 1 subsection 3). This assertion has been made in the third amendment of the 1945 Constitution to shows serious intention of Indonesia to become "the state of law".

#### B. The Development of Law and Regulation

Big Bang Reform which occurred along with the amendment of the UUD 1945 Constitution resulted the changing of the old system and institution. In the effort of changing, the transformation has also being made. Together with the transformation, the politics of law will also be affected. Then finally, the changing will influence the program and activity of national legislation generally, and will impinge on politics of law in other fields specifically (such as economy, social, etc).

The framework of the pillar of law above describes how the politics of law affects the legislation policy and the formulation of law. Because the old system and institution are no longer appropriate to the core of the amendment of the 1945 Constitution, then the system and institution shall be changed. In the effort of that, the process of transition must be done based on the Amendment.

Even though the transition has begun, the new system and institution have not become institutionalized and still have several problems to be solved. Therefore, the transition shall be prepared well and swiftly. Besides being supported by the new system and institution, the transition would also need to be supported by the consciousness of law. Thus hopefully, the new politics of law which is mandated by the 1945 of Constitution can be proceeded with the short period of transition.

As a result of The Amendment, concentration of power and responsibility are no longer solely in the hands of the president. Now, the power and responsibility are shared to The House of Representative (DPR), Supreme Court (Mahkamah Agung), and Constitution Court (Mahkamah Konstitusi). The House of Representatives has the power to make law. Since the transformation of its task and duty along with the amendment of the 1945 Constitution in 2002, the House of Representative has more powerful authority than before. Now, any bill is jointly debated by the House and the President to get common agreement. At the side of having the functions of legislation, The House of Representative has also the function of budgetary and oversight.

#### I. LEGAL COMPLIANCE

The effectively of law depend on the society's level of compliance to the law and regulations. In this perspective, the knowledge of law is not the same as the law consciousness in the meaning of legal compliance. There is an ironic statement that says: most of the law breakers have actually understood and been conscious about the law. However, the consciousness of the law is the first step to the legal compliance. Therefore, it is important to publicize and socialize all of the legal products.

In addition to the law consciousness, people need a figure of political elite, which is now we do not have enough of them. How could people comply with the law if the political elites show that the law is a commodity that could be traded, and where

the law seems taking sides to the people who has more power, either politically or financially. Therefore, the most important thing to do now is tightening the gap between "law in the book" and "law in action". This is the only way to reform Indonesian law which seems ineffective in the most people's point of view.

#### V. CONCLUSION

Politics of law is about the law that will be made and where the law system of the society and the State will be brought to.

Big Bang Reform which occurred along with the amendment of the UUD 1945 Constitution resulted with the new system and institution. Politics of law, which is influenced by Big Bang Reform, is the foundation of the transformation of national legislation.

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