

Chapter VII Conclusions

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Chapter VII

Conclusions

Having completed the previous chapters, the author has come to the following conclusions:

1. That the Reformation Movement already started in the 1970s, if not earlier, before it exploded in 1998, witnessed by Human Rights fighters like Yap Thiam Hien, Mochtar Lubis, Princen, Adnan Buyung Nasution, Todung Mulya Lubis and people obsessed with the principles of the *Rechtsstaat* (Rule of Law) like Tasrif, Mochtar Kusumaatmadja, and many others, which is why the *Lembaga Bantuan Hukum* (Legal Aid Institution or LBH) was established, next to legal aid bureaus which were set up within the universities, and legal clinics established in the 70's in order that law students could be better prepared for their future work. One by one new NGOs came into being, first for environmental reasons, for gender issues, for the interest of the labour movement, against racial and religious discrimination, for the rights of the child, and many others.
2. That the sudden political changes, were lead by university students, and triggered by the monetary crisis of 1997 and that it was the monetary crisis of 1997, and the 12-13 May 1998 riots which formed the "last drop, which made the glass to overflow" and unleashed the already dissatisfied and angry students, people and activists for democracy, human rights and supremacy of law alike to go to the streets and demonstrate against the government and its President. Therefore in the May 1998, students demonstrations went hand in hand with their professors, such as happened in Jakarta and in Yogyakarta, where the Rector of Gajah Mada University Professor Kusnadi lead his students in the demonstration against Soeharto. Also in Makasar at the Hasanuddin University students took their professors lessons at heart so that whatever the students did, they were sure of their professors' support.

3. But after President Soeharto legally resigned from office the legal process of reform set in, starting with the 3 (three) political laws in February 1999 i.e. the law on Political Parties, the Laws on General Elections and the Law on Structure and Status of the People's Consultative Assembly (MPR) and of Parliament (DPR).
4. Soon, during the October 1999 MPR Sessions, nine MPR Resolutions started to outline the political consensus reached by the people's representatives in legal format, including the possibility of amending the 1945 Constitution which hence to forth was taboo (see Chapter IV).
5. So it were the MPR Resolutions which set the tone for the legal reform to come, to begin with the Change of the Rules of Order in the MPR, which changed the passive role of the MPR (and DPR) vis a vis the President and the Government, into a very active one, so much so that nowadays (2001) people think that sometimes the MPR or DPR is overacting, making it difficult for the Executive to perform efficiently, as every government policy, decision or act is scrutinized thoroughly by the DPR/MPR.
6. With MPR Resolution No. III/MPR/2000 on the Legal Sources and Hierarchy of Legislative Acts an end has been made to the debate on whether MPR Resolutions are part of the law or not. Since by this Resolution, MPR Resolutions are placed second (after the Constitution) in the hierarchy of written laws, bringing more certainty in the legal system.
7. All the other MPR Resolution's of 2000 indeed made fundamental changes, either in the procedure, structure and status of legal institutions, or relationship between the state institutions, such as between the Police Force and the Army or between the MPR and other highest state bodies, like the President/Vice President, Supreme Advisory Body (DPA), the State's Financial Controller and the Supreme Court, apart from allowing a Second Amendment to the Constitution to be drafted by the Working Committee of the MPR.
8. One exception however was MPR Resolution No. V/MPR/2000, which enforced the form of unity and unitary state of the Republic of Indonesia and its people.
9. Further developments in 2001 indicated that despite a number of very important changes in the policy, the Management of Natural Resources (MPR Resolution No. IX/MPR/2001) and further reorganization of and within the

MPR itself, another important stand was taken by the MPR by MPR Resolution No. VII/MPR/2001 on the Vision of Indonesia's Future, which still based their planning on the 1945 Constitution's Preamble. This is witnessed by the closing of this document (Vision on Indonesia's Future), which says: "On the basis of Indonesia's Vision to the Year 2020 it is hoped that gradually we will realize the long cherished ideals of the Indonesian nation, i.e. achieving a just and prosperous society, blessed by God the Almighty."

10. In conclusion, we have found that:

- (a) What at first sight seems to be radical political changes have often been prepared for a long time in advance, much as if they come "out of the blue". This happened with our independence in 1945, which was triggered by the surrender of Japan when they lost the Second World War. It happened again in 1998 seemingly as a result of the Economic Monetary Crisis, which began in 1997;
- (b) that political radical changes, in order to be sustainable, ought to be made permanent through legal instruments: laws, new legal institutions as well as legal capacity building, in order that the laws be enforced in the same spirit, as the considerations on which the new laws and institutions are based;
- (c) that the paramount prerequisite towards a more permanent democratic society, living under the Rule of (just) Law, is:

c.1. an independent judiciary (supported by auxiliary institutions like an independent Ombudsman, Mediator, an honest State Comptroller and other legal institutions;

But apart from that we need:

- a steady and steady-fast, wise, honest, but strong and hardworking leadership who maintains the principles of good governance;
- a professionally educated, hardworking and morally good bureaucracy, and
- a people, who trust their leader, their legal system and legal institutions, as well as their political procedures in reaching consensus on their national policies.

In short, political changes seem to have been prepared by processes of political education, which in turn will demand the necessary legal reforms. However, once the laws are in place, people will demand more legal changes, which trigger new political changes towards other legal reform, and so on.

What is more, political and legal theory will prescribe a process down the legal hierarchy, i.e. that laws be made on the basis of previously existing higher products, like Parliamentary Acts (in Indonesia), that shall be based on the respective MPR Resolutions, which in turn shall be based on the previously determined articles of the 1945 Constitution.

In reality, it may be that lower legislative products have been made first (like for instance, the Act of 39/1999 on Human Rights), before the higher legal products, like the respective MPR Resolution and the Constitutional Regulations have been spelled out. Nevertheless the contents of the lower legislative acts should still be in line and in accordance with higher legislative acts, in order that the Rule of Law will still prevail.