Chapter VI: Conclusion

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CONCLUSION

1. Legal development in Indonesia may be classified into the following phases:

   a. Pre-Colonialist Era:

   During this era Indonesia consisted of kingdoms that applied *adat law* and some others adopted Islamic law.

   b. Colonist Era:

   Despite Indonesian occupations by various nations including the Dutch, Portuguese, Britain, and Japanese, one that has put the richest colours to Indonesian law was Dutch law that belongs to the " Civil Law Family" predominated by "Codification".

   c. Independence Era:

   This era should be still divided into:

   (1) The Era of Old Older Government under the leadership of President Sukarno,

   (2) The Era of New Older Government Section 1 under the leadership of President Suharto,

   (3) The Era of New Order Government Section 2 under the leadership of President B.J. Habibie,

   (4) The Era of Gus Dur- Megawati's government.

2. As a result of such historical development, despite the formal enforcement of the "Civil Law System" from Continental Europe by the Dutch Colonial government on the base of the concordance principle, in reality, three subsystems of law are formally effective in Indonesia, respectively:

   a. Western law

   b. Adat law

   c. Islamic Law

3. Similarly, as a result of historical factors, in the daily life of Indonesian society, Disharmonies frequently occur between legal awareness and legal

values living among Indonesian peoples on the one hand and rules of law formally enacted by government (both formerly colonial governments and the legal products of post-colonial government).

4. Therefore, as to the issue of "Law and Development" in Indonesia, we may not merely choose the alternatives between Robert B. Seidman's concept and that of David M. Trubek; instead, we should adopt a concept that is characteristic of Indonesia, namely the combination between Robert. B. Seidman's, David M. Trubek's and Donald J. Black's concepts, that were used case-by-case and contextually.
5. From the four periods of government suggested in the above point 1, there is no single government with thorough commitment to make law "commander", let alone to make law instrument in the development of the nation. Law has been always made political means for each regime in power, and has been always interpreted according to the political interests of the authority.
6. The difficulty during the transitional period that faces Gus Dur-Mega's government presently to improve the legal condition in Indonesia is mainly because Indonesian government after the "**dethronement"** of Suharto is under the condition of "transplacement", in which the new regime is a combination between figures of the former regime and new figures. Such condition put the new government in greater difficulty to settle, to the very bottom, various cases of violations of law and human rights in the past, because individuals from the former regime who still exist in the new government always make various efforts to cover up such illegalities. Consequently, there is continual tough "tug-of-war" of interests between both groups, bringing up highly unfavourable phenomena such as horizontal riots as well as bombardments in different places triggered by the interest "tug-of-war".
7. The solution for Indonesian people to escape from the present condition of law immersion is not enough by merely giving priority to the reform in the field of legislation, but Indonesian government should indeed have a "political will" to reform the three elements of the legal system, namely the reform of legal substance (of which legislation is included), the reform of legal structure, and the reform of legal culture.
8. The most important reform of legal substance is:

a. a. Replacing old laws that do not suit the needs of the present Indonesian society anymore with the new ones.
b. b. The will-be-made laws should be thought over deeply, maturely, and not hastily, so that the laws can be highly qualified as optimal laws able of meeting the three essential objectives of law, namely, justice, utility, and certainty.

9. The Reform of legal structure, including the reform of “law enforcers” should begin with the clearance of “dirty broom individuals” within the settings of law enforcement agencies, especially in attorney offices and courts. Next, this is followed up with the process of recruitment of law enforcers who are “clean”, mastering law (legal science), and having altitudinous commitment to “law enforcement”.
10. The reform of “legal culture” is mainly to change the paradigm of lay citizens as well as legal circles not to be cuffed by “legal thought” that is over “formalist-positivist” that depart law from the community’s sense of justice. This is the only way in which public trust to law and law enforcement can be restored, and therefore becoming the point of departure of the true “legal development” in Indonesia.
11. Legal technical assistance as well as aids from international financial organizations should be intended to reform the three elements of the legal system in balance.