

ASEDP Series No.74

Reforming Laws and Institutions in Indonesia: An Assessment

Edited by
Naoyuki Sakumoto
and
Hikmahanto Juwana

Institute of Developing Economies
Japan External Trade Organization

CONTENTS

Preface.....	iii
Contents.....	vii
Chapter I	Introduction.....1
	I. Background1
	II. Purpose of the Study.....2
	III. Overview of Indonesian Legal reform 1998-2004.....3
	IV. Summarized Discussions and Assessments.....7
Chapter II	Reform of the Indonesian Judicial System, 1998-2006.....11
	I. Introduction11
	II. Constitutional Changes and the One-Roof System12
	A. Amendment of the Constitution
	B. Amendment of the Legislation Governing the Judicial System and Establishment of the Judicial Commission
	III. Institutional Change.....18
	A. Preparing Blueprints for Judicial Reform
	B. Implementing the one-roof system
	C. Culture Issues: Openness and Non-Career Justices
	D. Corruption and Public Image
	IV. Dynamic Changes in Political and Social Relationships: The Courts and Other Organs of State.....27
	A. Relationships between the Executive, Parliament, and the Court
	B. The Courts vs. the Judicial Commission and the Anti-Corruption Commission
	V. Conclusion: Reform and its Challenge.....32
	A. Political Will and the Ability to Manage Change
	B. External Support and Pressure
Chapter III	The Role of the Constitutional Court in Indonesian Legal Reform.....47
	I. What caused the emergence of the Constitutional Court in Indonesia?.....47

	II.	Four Waves of Ideas Regarding Judicial Review.....	47
		A. The Controversy between the Two Concepts of the State	
		B. The concept of People’s Sovereignty with Parliamentary Supremacy	
		C. Concept of People’s Sovereignty with Constitutional Supremacy	
	III.	The Idea of the Establishment behind the Constitutional Court	53
		A. The Idea of Constitutionalism	
		B. The Authority of the Constitutional Court	
	IV.	The Constitutional Court in Legal Reform	61
	V.	Conclusion.....	70
Chapter IV		Administrative Court and Legal Reform Since 1998 in Indonesia.....	83.
	I.	Introduction.....	83
	II.	Administrative Court and Practical Development	84
	III.	The Amendment of Law No. 5 of 1986 as Law No. 9 of 2004 on the Administrative Court.....	91
		A. Bailiff	
		B. The Basis of the Claim	
		C. The Execution of Article 116	
		D. The Abolition of Article 118	
	IV.	Presidential Regulations in the Law on Legislation Drafting.....	102
	V.	Conclusion.....	103
Chapter V		Human Rights Practice in the Post—Soeharto Era 1998-2006...113	
	I.	Introduction.....	113
	II.	Assessment of the Government’s Commitment.....	114
		A. Human Rights under Four Presidents	
		B. Sectoral Human Rights in the Post-Soeharto Administrations	
	III.	Assessment of the Legal Regulatory Framework.....	124
		A. Domestic Legislation	
		B. The Ratification of International Instruments	

	IV.	Assessment of the Domestic Trials for International Crimes.....	129
		A. The East Timor Trials	
		B. The Tanjung Priok Trials	
		C. Unsatisfactory Results – The Causes	
	V.	Assessment of the War on Terror and the Promotion of Human Rights.....	134
	VI.	The Work of Human Rights Institutions.....	137
	VII.	Closing Remarks.....	139
Chapter VI		The Development of Indonesian Intellectual Property Laws in The Legal Reform Era: Between Need and Reality.....	145
	I.	Introduction.....	145
	II.	Historical and Philosophical Background.....	145
	III.	Development of Indonesian IPR Laws.....	153
		A. The Need	
		B. The Reality	
		C. The Laws and the Legal System	
	IV.	Conclusion.....	176
Chapter VII		Indonesian Labor Law Reform Since 1998.....	187
	I.	Introduction.....	187
	II.	Indonesian Labor Law before 1998.....	188
	III.	Indonesia Labor Law Reform after 1998.....	193
	IV.	Conclusion and Assessment.....	200
Chapter VIII		Development of Environmental Law and Legal Reform in Indonesia.....	205
	I.	Introduction	205
	II.	Two Developmental Factors of Environmental Law in Indonesia.....	207
		A. International Impacts and the Domestication of International Environmental Law Principles	
		B. Developmental Stages of Environmental Law in Indonesia	

III.	Problems of Environmental Law before and after Legal Reform	216
	A. Comparison of the EMA 1982 and the EMA 1997	
	B. Problems of Environmental Law before the Legal Reform	
IV.	Assessment and Conclusion	228
Brief Biographies of the Authors.....		239

© Copyright in 2007 by Institute of Developing Economies, Japan External Trade Organization

3-2-2, Mihama-Ku, Wakaba-Cho, Chiba-Shi, Japan, 261-8545

All rights reserved. No part of this publication may be reprinted by means without written permission from the Institute.

ISBN: 978-258-55074-6

Printed by Faculty of Law Press, University of Indonesia