

Chapter I

Introduction

This treatise on Political Change and Legal Reform towards Democracy and Supremacy of Law in Indonesia was written upon the request of the Institute of Developing Economics (IDE-JETRO) as part of their studies on Law and Political Development in Asian Countries.

The purpose of this study is to find out and analyze the legal and institutional reforms which were necessary for the political changes which occurred in Indonesia, some time preceding and after the downfall of ex-President Soeharto 1998, indicating the Era of multi faceted Reformation in Indonesia. To be true, on hind sight it appeared that this Era of Reformation was prepared many decades before, but it was the Economic Crisis of 1997 which really triggered the downfall of the then existing Government, ending the Era of the New Order.

All three writers, Prof. Dr. Sunaryati Hartono, S.H., Prof. Dr.Phil. Astrid S. Susanto and Mr. RM Surachman, S.H., APU Research Professor eqv., are especially grateful for having had this opportunity, because while writing and discussing the results of it, we came to realize how much in fact we Indonesians have achieved in the three years or so of the Reformation Movement, so that it seemed more appropriate to talk about a Revolutionary Movement instead of a reformation, although Indonesian activists and politicians, as well as the public at large feels as if “nothing” has been done, after President Soeharto’s downfall. Nevertheless, much and much more is yet to happen, before peace, stability, democracy and the rule of law will be established in Indonesia.

The political and legal changes discussed in this book do not focus on the entire developments since 1945, when the Indonesian people became independent, but only concentrate on the latest events, some time before and after ex-President Soeharto’s downfall on the 21st of May, 1998.

Those events therefore cover only less than five years of development; i.e. from 1997, when the monetary crisis started in Thailand and Indonesia, up till the end of February 2002.

The Reformation Movement as part of the Long Modernization Process of Development

Indeed no political or legal change comes out of the blue. Therefore each political event must have had a time and efforts which preceded the event. The same can be said about the Reformation Movement, preceded by the political upheavals starting with the parliamentary decision to oust President Soeharto from his presidency. Although this wish was for years voiced by activists, politicians, and the public at large, it was finally the parliamentary (DPR and MPR) Speaker's statement made by Mr. Harmoko (who was known as a very strong Soeharto supporter, and even for decades was Soeharto's and the ruling party's (Golkar) outspoken spokesman), that it was time for Soeharto to step down and make place for a more democratic president and government.

Therefore we could safely say that the monetary crisis helped our democratic aspirations and movements towards supremacy of law, which started in the 1960's, right after the 1959 presidential Decree, to succeed, although it was certainly not so intended at all.

Hence Soeharto's ousting could be seen as the culmination of several movements for democracy and supremacy of law, which went on for some thirty years (i.e. since the 1960s) and at the same time this event heralded the beginning of a new era for a multi-dimensional Reformation and Transformation, not only in the political and legal field, but also in the social, economic field and even religious field.

However, this treatise will not touch upon the social-economic, religious or moral aspects of the Reformation, except when this is appropriate for the discussions of political and legal developments.

For the purpose of discussion, we will use the definition mentioned in Black's Law Dictionary (sixth edition 1891-1991) of "democracy" and "supremacy of law", which says that:

“Democracy (is) that form of government in which the sovereign power resides in and is exercised by the whole body of free citizens, directly or indirectly through a system of representation as distinguished from a monarchy, aristocracy, or oligarchy” (p. 432)

On page 1440 Black's Law Dictionary states that:

“**Supremacy**” means “the state of being supreme or in the highest station of power, paramount authority, sovereignty, sovereign power”.

Hence, Supremacy of Law means that the Law is supreme as the paramount authority, or is the highest station of power, which means that even the government and parliament should abide by the law it has so promulgated.

Furthermore, when we use the word “law”, it may be that we use it in its generic sense as “the body of rules of action or conduct prescribed by controlling authority and having binding legal force” (p. 884), or as “the solemn expression of the will of the supreme power of the State. The law of a state is to be found in its statutory and constitutional enactments, as interpreted by its courts, and in absence of statute law in rulings of its Courts (Dauer’s Estate v. Zadel, 9 Mich. App. 176, 56, N.W. 2 d 34, 37).

In other words “law generally contemplates both statutory and case law” (Black’s Law Dictionary p. 884), and in this book may either mean law in its generic sense, or either statute(s) or case law, or traditional (customary/*Adat*) as well as modern law, as will be obvious from the context in which the word “law” is being used.

No doubt, from the beginning of Independence Indonesia planned for a democratic state under the law or which in the Dutch language is usually known as “*een democratische rechtsstaat*”.

This is evidenced by article 1 paragraph 1 of the 1945 Constitution saying that:
“Sovereignty is in the hands of the people, which is fully implemented by the People’s Consultative assembly (*Majelis Permusyawaratan Rakyat*).”

Moreover, the Elucidation of the Constitution specifically mentions that the Indonesian people aspires to become a *Rechtsstaat* or *Negara Hukum* (i.e. a state which recognizes that the Law is supreme) and not a *Machtsstaat* or *Negara Kekuasaan* (or a state based on mere power in the hands of the Executive).

Through the 50 years of independence, however, willingly or unwillingly, under pressure of the day to day political events, within the country or from international political power play, our state lapsed into an autocratic society, which is why already from the 1960s strong voices were raised, even by our first Vice

President, Dr. Mohammad Hatta, to return to our original aspirations of building a democratic state under the Supremacy of Law.

Hence, through the last forty years or so of independence, many people were caught, punished without due process of law, killed or simply disappeared, because they were fighting the government in the struggle for democracy, eradication of corruption (*KKN*), recognition of more autonomy of the regions outside Java, and better protection of human rights.¹ This is why the struggle for democracy went hand in hand with the struggle for recognition and better protection of human rights on the one hand and the struggle towards Supremacy of (just) Law or *Rechtsstaat* (German) on the other.

Therefore the writers of this book regard the Reformation Movement as part of a long and multi-dimensional process of Development in the process of the Indonesian nation - and state building.

The book is divided in seven chapters, as follows:

Preface

Contents

Acknowledgement

Chapter I: Introduction

Chapter II: Post Soeharto Legal Developments and Reforms of Political Law in Indonesia

Chapter III: The 1945 Constitution and its Amendments

Chapter IV: Democratization Process in Indonesia Through Law

Chapter V: Legal Measures for Better Protection of Human Rights and Improvement of Good Governance

Chapter VI: Decentralization of Powers and Local Autonomy

Chapter VII: Conclusions

Bibliography

Annexes

NOTES

¹ See Todung Mulya Lubis: “*In Search of Human Rights*”, PT Gramedia Pustaka Utama, Jakarta, 1993.