

Chapter II

POST SOEHARTO LEGAL DEVELOPMENTS

and REFORMS of POLITICAL LAW

in INDONESIA

The reasons why the people and especially the students in Indonesia were determined to end ex-President's Soeharto's tenure, despite the fact that he was "re-elected" only 2 (two) months ago, were manifold.

The biggest complaint against him, was economic, since Soeharto was found to favour the conglomerates, which consisted of Chinese entrepreneurs as well as his own family and cronies. All kinds of undue practices were tolerated, such as prolonging and even providing even bigger loans to the conglomerates, which were already in the red because of their debts they could never pay, but which time and again exceeded the legal lending limits.¹

Again, hundreds and even thousands of acres of land were illegally taken or "bought" from the owners with an unheard of low price, so that it was felt more like an illegal taking than a fair sale. The lands were used either for the President's own family's purposes (like for building houses, or factories or even for a cemetery) or for the sake of economic and social development, such as roads, schools, mosques, plantations or factories, etc.

A third grudge is the complaints of the regions, that more and more revenues which originated from natural resources in the regions were taken and used by the central government, for projects in Java, thereby neglecting the needs of the people living outside the island of Java.

Furthermore, although the law sufficiently prescribed the procedure or norms to be observed, but more often than not the law was not applied, and interpreted by the courts or the officials in favour of the executive. In 32 years of time such an

attitude certainly caused a situation, where nobody respected the law and courts anymore, because law enforcement was in such a bad shape, especially since corruption, collusion and nepotism flourished and became practiced not only by government officials who were poorly paid, but also by the highest paid officials, judges or businessmen.² No wonder our former Vice President Dr. Mohammad Hatta already in the 1970's complained that corruption has become part of our culture.

Through the years, the practice of unfair political elections which were arranged in such a way that the ruling party (*Golkar*) which officially was not recognized as a political party, like the *Partai Demokrasi Indonesia (PDI)* and the *Partai Persatuan Pembangunan (PPP)*, always won the election with an overwhelming majority, which kept Mr. Soeharto in power.

The Monetary Crisis of 1997 finally was the drop which caused the glass to overflow, which resulted in the downfall of Soeharto, who left his country in complete economic and political turmoil, aggravated by the non-existence of sufficiently effective legal means and institutions to uphold justice and security.

No wonder the first thing to do for president Habibie, who was in fact illegally appointed by Mr. Soeharto to become his successor, was to restore order and start with three important political laws, which were meant to open the door for a democratic parliamentary election, and restore the free establishment of political parties.

Soon after that, a law on the Structure, Organization, and Status of the *MPR* (People's Consultative Assembly) and the *DPR* (Parliament) were issued, followed by the First Amendment of the 1945 Constitution on October 1999. which changed the position of the *DPR* vis a vis the President, especially with respect to the legislative powers of the President, respectively the *DPR*.

The People's Consultative Assembly (*MPR*) itself did not kept silent, because it issued the following Decisions in 1999, 2000 and 2001.

In 1999 the *MPR* issued nine resolutions, i.e.³:

1. *MPR* Resolution No. I/*MPR*/1999: revising the Fifth Revision of *MPR* Resolution No. I/*MPR*/1988 on the Rules of Order of the *MPR* RI.

2. MPR Resolution No. II/MPR/1999 on the Rules of Order of the MPR-RI.
3. MPR Resolution No. III/MPR/1999 on the Accountability of President Prof. Dr. Ing. Bacharuddin Jusuf Habibie.
4. MPR Resolution No. IV/MPR/1999 on the Guidelines of the State's Policies during the Years 1999 - 2004.
5. MPR Resolution No. V/MPR/1999 on the Referendum in East Timor.
6. MPR Resolution No. VI/MPR/1999 on the Procedure for the Candidacy and Election of the President and Vice President of the Republic of Indonesia.
7. MPR Resolution No. VII/MPR/1999 on the Appointment of the President
8. MPR Resolution No. VIII/MPR/1999 on the Appointment of the Vice President.
9. MPR Resolution No. IX/MPR/1999 on the Assignment to the Working Committee of the MPR to Continue the Amendments of the 1945 Constitution. In the year 2000 MPR also issued nine decisions:⁴

1. MPR Resolution No. I/MPR/2000 on the First Revision of the MPR Resolution No. II/MPR/1999 of the Rules of Order of the MPR RI.
2. MPR Resolution No. II/MPR/2000 on the Second Revision of MPR Resolution No. II/MPR/1999 on the Rules of Order of the MPR RI.
3. MPR Resolution No. III/MPR/2000 on the Legal Sources and Hierarchy of Legislative Acts, which determines that the highest law of the land is:
 - The 1945 Constitution, followed by
 - MPR Resolutions;
 - Parliamentary Acts;
 - Governmental Regulations in lieu of Parliamentary Acts (Perpu);
 - Governmental Regulations;
 - Presidential Decrees;
 - Regional Regulations.
4. MPR Resolution No. IV/MPR/2000 on the Recommendation of Policies in the enforcement of Regional Autonomy;
5. MPR Resolution No. V/MPR/2000 on the Upholding of National Unity and Solidarity.
6. MPR Resolution No. VII/MPR/2000 on the Separation of the National Indonesian Army and the Police of the Republic of Indonesia.
7. MPR Resolution No. VII/MPR/2000 on the Role of the National Indonesian Army and the Role of the Police of the Republic of Indonesia.
8. MPR Resolution No. VIII on the Annual Reports of the Highest National Institutions (to the MPR) during the Annual Meetings of the MPR in the year 2000.
9. MPR Resolution No. IX/MPR/2000 on the Assignment to the Working Committee of the MPR to Prepare the Draft for the Amendments to the 1945 Constitution.

In the year 2001 eleven resolutions and four Decisions have been issued by the MPR as follows⁵:

1. MPR Resolution No. I/MPR/2001 on the MPR's Stand towards the President's Maklumat of the 23rd of July 2001.
2. MPR Resolution No. II/MPR/2001 on the accountability of President K.H. Abdurrachman Wahid.
3. MPR Resolution No. III/MPR/2001 on the Endorsement of Vice President Megawati Soekarnoputri as President of the Republic of Indonesia.
4. MPR Resolution No. IV/MPR/2001 on the Appointment of the Vice President of the Republic of Indonesia.
5. MPR Resolution No. V/MPR/2001 on the Third Revision of the MPR Resolution No. II/MPR/1999 on the Rules of Order of the MPR of the Republic of Indonesia.
6. MPR Resolution No. VI/MPR/2001 on the Ethics [to be observed] Life within the Nation (*Etika Kehidupan Berbangsa*).
7. MPR Resolution No. VII/MPR/2001 on the Vision for the Future of Indonesia.
8. MPR Resolution No. VIII/MPR/2001 on the Recommendation for the Guidelines on the Eradication and Prevention of Corruption, Collusion and Nepotism.
9. MPR Resolution No. IX/MPR/2001 on the Change [in Policies on the Agrarian System] and Management of Natural Resources.
10. MPR Resolution No. X/MPR/2001 on the Report of the Execution of MPR Resolutions by the Highest Institutions of the State during the Annual Meeting of the MPR in 2001.
11. MPR Resolution No. XI/MPR/2001 on the Revision of MPR Resolution No. IX/MPR/2000 on the Assignment to the Working Committee of the MPR to prepare the Draft for the Amendments of the 1945 Constitution.
12. MPR Decision No. 1/MPR/2001 on the Time of the Extraordinary Meeting of the People's Consultative Assembly of the Republic of Indonesia.
13. MPR Decision No. 2/MPR/2001 on the Schedule of the Extraordinary 2001 Meeting of the MPR.
14. MPR Decision No. 3/MPR/2001 on the Revision of the Schedule of the Extraordinary 2001 meeting of the MPR.
15. MPR Decision No. 4/MPR/2001 on the Establishment of the ad-hoc Committee of the MPR.

Whilst each of the MPR Resolutions indicates important changes in the political and legal views upon the substances regulated in the Resolutions, one of the most important constitutional reform concern the fact that politically and historically it became possible at last to amend some important articles in the 1945 Constitution. Hence MPR Resolutions No. IX/MPR/1999, Resolution No. IX MPR/2000 and Resoluion No. XI/MPR/2001 are by far the most important laws which have changed the constitutional - and political - law since the end of the New Order. These were followed by MPR Resolution No III/MPR/2000 on the Sources of Law and Hierarchy of Legislative Regulations, MPR Resolution No. VI and VII of 2001 and especially MPR Resolution No. VIII/MPR/2001 on the Eradication and Prevention of Corruption, Collusion and Nepotism.

Also, MPR Resolution No. V/MPR/1999 had politically and legally a very great impact upon the Indonesian Constitution, and politically life, as it changed our territory, apart from the changes of presidents in a number of other MPR Resolutions.

Whether this change of territory had been for the good or for the bad of the East Timorese people themselves, as well as for Indonesians is yet to be seen. Because it seems that the international world and the United Nations already have difficulties in providing the long expected security, economic welfare and social education for a longer period to Timor Lorosae, so that UNTAET itself has started negotiations with Indonesia in order that Indonesians provide the special facilities of posts, telecommunication, transportations, education, and many more other favours to the Timor Lorosae Government⁶, which of course Indonesia is enable to do, as the country itself still faces a multidimensional crisis, apart from the critical position the President and her Government find herself in, as the Indonesian people demand instant radical changes in all aspects of life, including the social - and- economic rehabilitations of people all over the country, who have become victims of political conflicts, natural disasters such as earthquakes, lands slides and floods.

The most important MPR Resolution for Indonesia's future, however, is MPR Resolution No. VII/MPR/2001 on The Vision for the Future of Indonesia.

In this Resoltuion the Future of Indonesia is divided into 3 (three) stages (see article 1), i.e.:

1. the 5 (five) year's vision, as contained in the General Guidelines of the State (*Garis-garis Besar Haluan Negara*);
2. the intermediate vision up till 2020;
3. the ideal vision which are the nation's highest ideals, as contained in the Preamble of the 1945 Constitution.

Hence towards the year 2020, Resolution No. VII/MPR/2001 pinpointed seven challenges, which the Indonesian nation has to face, i.e.:⁷

First, the affirmation of the unity of the Indonesian nation and the unitary state;

Second, the ensurance of the supremacy of just law, whereby all citizens are equal under the law, and enforcement of law is ensured for the sake of certainty of law, justice and protection of human rights;

Third, the formation of a democratic political system, which is based on a healthy political culture and political institutions, respecting differences, maintaining peace and good behaviour, non-violence under an honest, democratic, effective and strong leadership.

Fourth, the establishment of a fair and productive economic system, focusing on the common people's needs, interests and agricultural activities, forestry and activities in the seas, apart from manufacturing and other industrial activities, including the service industry;

Fifth, the creation of a modern civilized society, which respects and actualizes universal values taught by any religion and expressed by our own culture, which is based on mutual respect, and natural love for each and every human being;

Sixth, the improvement of the quality of our human resources, especially through an excellent educational system, which is able to produce professionally and morally qualified people, who are able to cooperate and work together in the spirit of love for their country, despite the ever growing demands for competition in a global market place.

Seventh, globalization, which demands the securing of existence and integrity of the Indonesian nation state, while at the same time making good use of the opportunities provided by the globalization trend, for the benefit of the Indonesian state and people.

Hence, for the analysis and evaluation as to whether the political and legal steps taken, or yet to be taken, are in accordance with Indonesia's vision for the future, one of the most important legal documents to consult are the two MPR Resolutions on the Indonesian Ethics and the Indonesian Vision (MPR Resolution No. VI and VII/MPR/2001), which clearly indicates the official vision towards a civilized, modern, democratic state and nation, living under the Rule of (just) Law.

New Laws for a More democratic and Law Abiding Society

The first laws issued towards a more democratic society were the package of Three Political Laws covering: ⁸

- Act No. 2 of 1999 on Political Parties;
- Act No. 3 of 1999 on the General Elections, and
- Act No. 4 of 1999 on the status and Structure of Parliament (DPR) RI in lieu of Law No. 16 of 1969.

To combat corruption, collusion and nepotism or KKN (*Korupsi, Kolusi dan Nepotisme*) for short, for the implementation of MPR Resolution No. IX/MPR/1998 on Good Governance, and Free from KKN, a special Act on the Eradication and Prevention of KKN was promulgated as Act No. 27 of 1999 on Clean Government, free from Corruption, Collusion and Nepotism.

A specific body named the Commission for the Investigation of the Wealth of State Officials (*Komisi Pemeriksa Kekayaan Penyelenggara Negara* or *KPKPN* for short) was created by Presidential Decrees No. 127/1999, which was revised by Presidential Decrees No. 242/M/2000. To improve the protection of human rights, Act No. 39 of 1999 came to regulate the human rights respected and protected in Indonesia along with the regulation by Parliamentary Act of the National Commission of Human Rights, which was already established by Presidential Decree No. 50 of 1993 under the Soeharto regime.

Also in 1999 ex President Abdurrachman Wahid established the National Law Commission by Presidential Decree No. 15/2000, and the National Ombudsman Commission by Presidential Decree No. 44 of 2000.

Apart from spelling out the functions, tasks and jurisdiction of the National Ombudsman Commission, Presidential Decree No. 44/2000 also mandated the task to the National Ombudsman Commission to within six month of its establishments draft a bill for the Ombudsman Commission, in order that it be based on a Parliamentary Act, rather than a Presidential Decree. The first draft of this bill was drafted by Prof. Dr. Sunaryati Hartono, S.H. together with the chairman and other members of the National Ombudsman Commission, a.o. Mr. Antonius Sujata, S.H.⁹, Prof, Dr. Bagir Manan (the present Chief Justice of the Supreme Court), Mr. R. Surachman SH, APU, Drs. Teten Masduki (also active as the Coordinator of Corruption Watch) and Drs. H. Masdar Mas'ud.¹⁰

After 8 (eight) seminars and workshops in Jakarta, Surabaya, Makassar, Medan, Pontianak, Surakarta and Denpasar discussing the draft of the bill, we have ended with the 9th revision of the draft, which in March 2002 will be presented to Parliament to be submitted as a Parliamentary initiative for debates with the Government.

The form for the Indonesian Ombudsman chosen by the drafters of the Bill happened to be a combination of the Swedish, Dutch, New Zealand's and Australian Parliamentary Ombudsman, although we decided that the main standards and principles recognized universally for the office of any Ombudsman should also be adhered to by the Indonesian Parliamentary Ombudsman (to be).¹¹

In conclusion, we may notice, that apart from new MPR Resolutions, Parliamentary Acts and Presidential Decrees, Indonesia has also embarked on the establishment of new political - and legal - democratic institutions as part of our democratic and legal capacity building.

To be true, much and much more still ought to be done, especially in the field of retraining and reeducation of personnel, as well as recruitment of leaders and members of the bureaucracy and judiciary. This may, however, take time, perhaps decades, after we may see the results of our efforts in restoring good governance and supremacy of law in Indonesia. However, although this is much too slow for the minds and needs of our younger generations and foreigners alike, apparently we find ourselves going in the right direction towards a democratic state and society under the Rule of (just) Law.¹²

NOTES

¹ Baharuddin Lopa: "*Kejahatan Korupsi dan Penegakan Hukum*", Penerbit Kompas, Jakarta, 2001, p. 115 etc.

² op. cit.

³ see Sukarno DM, etc. (ed.), "*Ketetapan-ketetapan MPR-RI dan Garis-garis Besar Haluan Negara Hasil Sidang Umum MPR RI 1999*", C.V. Mini Jaya Abadi Jakarta, first printing, 1999.

⁴ See Hadi Setia Tunggal, S.,H. (ed.): “*Ketetapan MPR 2001, 2000 dan Perubahan I & II UUD 1945*”, Harvarindo, Jakarta, 2001”.

⁵ See Sukarno, DM, etc. (ed.) “*Majelis Permusyawaratan Rakyat: “Putusan Sidang Tahunan MPR RI Tahun 2001, Perubahan Ketiga Undang-undang Dasar Negara Republik Indonesia Tahun 1945, Hasil Sidang MPR RI Tanggal 9 Nopember 2001*”, C.V. Mini Jaya Abadi, first printing, 2001.

⁶ See “Kompas” newspaper, 26 February 2002.

⁷ See Chapter III MPR Resolution No. VII/MPR/2001

⁸ See Annex

⁹ who is also author of a number of books on corruption and the role of the Ombudsman.

¹⁰ H. Masdar Mas’ud is a Moslem clergyman and member of the National Ombudsman Commission, who wrote and made a study of “Corruption viewed under the perspective of Islamic Law and Culture”.

¹¹ See further about the Indonesian Ombudsman (Chapter V),

¹² See Todung Mulya Lubis: “*In Search of Human Rights*”, PT Gramedia Pustaka Utama, 2nd. printing, 1994 p. 86 in Chapter 3, p. 86 and further that the Rule of Law does not guaranteed justice, as time and again since Hitler, autocratic leaders have relied on their (oppressive) law to control their people unfairly and even cruelly.