

Building a Responsive Legal System Through Indonesian Constitutional Reform

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Abstract

Legal politics or what is known as policy direction is important in order to provide direction on the form and material of law. However, in a study that examines the problems of law enforcement, in Indonesia, which was studied from a legal sociology perspective, it was stated that developments in the world today often give rise to various problems, whether in the form of violations of norms that exist in social life or rules that have a tendency to create a phenomenon that is contrary to moral and ethical rules as well as legal rules. This paper aims to find out the facts and legal political realities that occur on post-reform legislation in forming responsive laws. Using a normative writing method. The direction of legal politics in post-reform Indonesia is the desire to form a responsive legal system, this can be implicitly seen in several changes to the constitution. Change towards responsive law is not something instant and easy, there must be a commitment from the state and the people together to realize the ideal of this system. Although the current implementation of law still experiences many errors here and there, at least the existing legal products have led to laws that responsive, what is needed now are leadership figures who are able to bring Indonesia to the implementation of responsive laws that are in accordance with what was previously expected in order to achieve prosperity for the people.

Keywords: Legal System, Constitution, State Law, Indonesian



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INTRODUCTION

One of the legal development efforts carried out by the government is carrying out legal reforms which aim to support the implementation of government administration and national development which is based on Pancasila and the 1945 Constitution as the legal basis of the Indonesian state.¹ The 1945 Constitution, which is the legal basis of the country, has been amended four times starting from 1999 to 2002 to be able to create a legal basis that can be relevant for use throughout time and in accordance with the needs and character of the Indonesian people.² Article II of the Transitional Regulations on the 1945 Constitution has the consequence of having an institution with the authority to assess which colonial product legal regulations are in harmony with and which are in conflict with the 1945 Constitution. In the literature it is known that there are two models of institutions to carry out this authority, namely judicial review and political review (Indra Officer, 2017). At that time, Muhammad Yamin at the BPUPKI meeting proposed a judicial review model, as did several legal experts after him, but until the end of the New Order period, legislators preferred the political review model.

The Constitution is not an ordinary law. If it only had the quality of an ordinary law, it would certainly not be possible to become the basis and cornerstone of thousands of existing laws in this country. To be able to become the basis for all these laws, the Constitution must

¹ Dian Rizki (2022). Penerapan Hukum Responsif dalam Pembentukan Undang-Undang di Indonesia. *Suloh Jurnal Program Studi Magister Hukum* 10(1).

² Indra Perwira, 2017. Realitas Politik Hukum Perundang-undangan Indonesia Pasca Reformasi, *Padjajaran Law Review*, 5

use language different from that of ordinary laws. He must use basic language which is none other than moral language (Henni Muchtar, 2012). The Constitution is not only the basis of the legal order, but also social, political, economic, cultural life and so on. The Constitution is a much more serious matter than just a legal matter. The Constitution is the foundation and concerns human life. The constitution regulates the life of the nation, not traffic violations, theft, contracts and other ordinary laws. So, the Constitutional Court Judges are great people because they are the only ones who truly understand our constitution. They can be called the second generation of Indonesia's founding fathers.³

For this reason, legal politics or what is known as policy direction is important so that it can provide direction on the form and material of law. However, in a study that examines the problems of law enforcement in Indonesia, studied from a legal sociology perspective, it is stated that developments in the world today often give rise to various problems, either in the form of violations of existing norms in social life or rules that tend to creating a phenomenon that is contrary to moral and moral rules as well as legal rules.⁴ Therefore, based on situations and conditions like this, efforts are needed to be able to build laws that side with society and are desired by society. Based on the description above, the author feels interested in being able to discuss more deeply with the title building a responsive legal system through reforming the Indonesian constitution with a tendency to discuss legislation after 1998 which aims to find out the facts and realities of legal politics that occurred in post-1998 legislation. reform in forming responsive laws.

RESEARCH METHODS

This paper uses a descriptive analytical method, namely a method that will describe the political situation in Indonesia using normative research methods. This method aims to present the results of analytical descriptive research by dissecting political concepts.

RESEARCH RESULTS AND DISCUSSION

Changes that occurred in the Reformation Era Constitution (reviewed in the Responsive Legal Theory Perspective of Philippe Nonet and Philip Selznick)

The Constitution in Indonesia underwent a transition and became a process for the Indonesian nation to become more advanced and this became history for the nation which was marked by the amendment of the 1945 Constitution four times. When facing an era of political transition, democratic countries will face several major problems related to the direction of legal development strategies.⁵ Philippe Nonet and Philip Selznick in Fikrotul Jadidah (2020) divide the pattern of legal evolution into three stages, namely:

1. Repressive Law;
2. Autonomous Law;
3. Responsive Law.

If this evolutionary pattern is related to conditions in Indonesia during the transition from the New Order to reform, there is a legal evolution that occurred in Indonesia which is very much in line with the theoretical perspective of Phillippe Nonet and Philip Selznick. The New Order era showed a repressive side, when the policies taken by the government ignored

³ Henni Muchtar (2012). Paradigma Hukum Responsif (suatu kajian tentang Mahkamah Konstitusi sebagai lembaga penegak hukum). *Humanis* 11(2).

⁴ Dian Rizki, dkk (2022). Penerapan HJukum Responsif dalam Pembentukan Undang-Undang di Indonesia. *Suloh Jurnal Program Studi Magister Hukum*, 10(1).

⁵ Abdul Latif Mahfuz (2019). Faktof yang Mempengaruhi Politik dalam Suatu Pembentukan Undang-Undang. *Jurnal Kepastian Hukum dan Keadilan* 1(1).

the interests of the people and prioritized protection of power.⁶ Then, the amendments made to the constitution provide a deterrent so that the government does not take repressive actions in the future. Apart from that, the constitution is also regulated in such a way that Indonesia will be able to implement responsive law, where the amendments made also allow for community participation through affirming the people's constitutional rights, which shows that they are serious about protecting themselves from repressiveness in legal development in the reform era. If you look at it now, the government system in Indonesia is still experiencing a transition period. The following are some of the changes that went hand in hand with the new government transition with the main points of the Indonesian government system during the reform period as follows:

1. Indonesia is a unitary state with extensive regional autonomy as evidenced by the existence of provinces that divide Indonesia's territory.
2. The head of state is called the president. The President is elected and appointed by the MPR for a five-year term. For the 2004-2009 term, the president and vice president will be elected directly by the people in one package.
3. Republic is a form of Indonesian government with a presidential government system
4. The cabinet or ministers are appointed by the president and are responsible to the president.
5. Parliament consists of two parts (bicameral), the People's Representative Council (DPR) and the Regional Representative Council (DPD). The council members are members of the MPR. The DPR has legislative power and the power to supervise the running of the government.
6. Judicial power is exercised by the Supreme Court and the judicial bodies below it.

Responsive Law in Legal Formation in Indonesia

In order for law in Indonesia to remain comprehensive-integral, in making regulations or laws they must be in harmony and in harmony with one another so that a large number of laws will not be a problem, however, it will make the applicable laws complex (Indra Perwira, 2017). Unfortunately, several laws were found to be inconsistent and some even contradict each other, so this will result in turmoil in society. Laws are made quickly to respond to problems developing in society, there are even quite a few laws for this purpose, even though they have not yet been included in the Prolegnas list. This does not include laws made through government regulations in lieu of law (Perpu). Just for comparison, during the 32 year New Order government, 8 (eight) Perpu were issued, but in the last 15 years 29 Perpu have been issued.

A positive meaning is expected when the word responsive has not been achieved in reality. Responsive means responding to the aspirations and interests of the people. In theory, Philippe Nonet and Philip Selznick in Indra Perwira (2017) argue that ideally responsive law makes laws a means of responding to the needs and aspirations of society (law as a facilitator of response to social needs and aspirations). Responsive law is characterized by laws that are flexible and political, thus efforts to create responsive law are overshadowed by the risk of actually making the law itself too soft (malleable), reducing the authority and delegitimizing the legal institution itself. Therefore, Nonet and Selznick in their book *Law and Society in Transition* state that responsive law is a "high risk" method of law".

This happens in Indonesia, which forms laws in a responsive manner, but in reality it tends to be more reactive. Law makers respond more quickly but the consideration and study

⁶ Philip Selznick dalam Fikrotul Jadidah (2020). Perubahan Konstitusi dalam Transisi Orde Baru menuju Reformasi di Indonesia, *Jurnal Ilmiah Mandala Education* 6(1).

carried out is less in depth so that many laws have problems starting from the time the law is enacted. Draft Laws that come from the Government are generally still based on studies or academic texts, but this appears to merely fulfill the formal requirements stipulated by Law No. 12 of 2011 concerning the Formation of Legislative Regulations. As a comparison, during the New Order era, academic texts were written by a team of experts from one or several leading universities in Indonesia. Experts who are not included in the team are usually involved in national seminars, to provide input, criticism and other responses, so that the study of academic texts is very comprehensive. Apart from that, campuses and academics can monitor and follow political developments in national legislation, which is very important, especially for teaching Law.⁷

Formation of responsive laws involving the community

The implementation of community participation in legal order is now starting to be developed. Community participation as stakeholders can be done by providing oral and written input in the context of planning, preparing and discussing draft legislative regulations, and to obtain an overview of the formation of laws in Indonesia we can see, namely (Dian Rizki et al, 2022):

1. Legislative planning stages
2. Planning Stages for Forming Draft Laws According to the Priority Scale
3. Stage of Determining the Draft Law
4. Public Consultation
5. Submission of Proposed Draft Law
6. Discussion of the Draft Law
7. Determination of Law

By involving the community, it is hoped that they can take into account the condition of the community because empirically the formation of laws in Indonesia has provided a guarantee as a responsive law. From the ideal model of community participation in the formation of laws in Indonesia, the author quotes from the journal Saifudin, which has researched the process of forming laws, with a study of community participation in the process of forming laws which states, from the results of laws that have been researched, good community participation activities are found in the National Education System Law, Election Law and Employment Law. Participation takes the form of support, rejection or input to influence the discussion process of a bill.⁸

The formation of a law that involves community participation so as to produce a responsive law means that the participatory character of responsive law in its drafting means that in the process of forming a law, from planning, discussion, enactment to evaluation of its implementation, it requires active community involvement. The content is aspirational, meaning that the material or substance of the norms in the law must be in accordance with the aspirations of the community.

CONCLUSION

Based on the explanation above, the following conclusions can be drawn: During the transition period from the New Order to reform, there were no changes to the preamble to the 1945 Constitution of the Republic of Indonesia, which contained Pancasila. In the reform era,

⁷ Indra Perwira, 2017. Op.cit

⁸ Saifudi, Proses Pembentukan UU: Studi Tentang Partisipasi Masyarakat dalam Proses Pembentukan UU, Jurnal Hukum No. Edisi Khusus Vol. 16 Oktober 2009, Fakultas Hukum Universitas Islam Indonesia Yogyakarta

the implementation of Pancasila as the highest norm gave a permanent position to the laws of the New Order era, the reform regime government only needed to make changes to regulations that were felt to be incompatible with Pancasila and were not included in Indonesia's development plans for the future. So, during the authoritarian transition to democracy in Indonesia, there is no need for a completely new constitution considering that the highest norms are still in force, so all that is needed is to revitalize the old constitution to get out of the trap of a repressive pattern towards a new pattern, namely responsiveness. The direction of legal politics in post-reform Indonesia is the desire to form a responsive legal system, this can be implicitly seen in several changes to the constitution. Change towards responsive law is not something instant and easy, there must be a commitment from the state and the people together to realize the ideal of this system. Even though the current implementation of the law still experiences many errors here and there, at least the existing legal products have led to responsive law. What is needed now are leadership figures who are able to bring Indonesia to the implementation of responsive law in accordance with what was previously expected. in order to achieve prosperity for the people.

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