

# Perspectives on Legal Reform in Indonesia (Notes on the Legal Reform System Updates)

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**Abstract.** Indonesian society consists of numerous tribes, with religious and cultural differences and the same fate as being colonized by Europeans (the Dutch), represented by the Founding Fathers, who agreed to establish a state based on Pancasila and UUD 45. These agreements were outlined in the emergence of MPR TAPs, Laws, Perpu, Presidential Decrees, government regulations, Ministerial Regulations, Regional Regulations, decrees, and other binding regulations. All country norms/regulations can develop based on the needs of the era and time so that legal reform will be up to date with the times. This research is legally normative. The result of establishing Indonesian law is to create a just and prosperous society, the state is present as a strict implementer of the law so that the development of social life can be balanced so that a national order is maintained that guarantees the rights of its people and protects every citizen. Law has a dynamic nature depending on the needs of society. The emergence of new laws and regulations can surprise everyone because sometimes it takes time to familiarize themselves with new laws. Effective law is a law that is extracted from culture and changes in order and technology. The purpose of the legal correction system through the Constitutional Court was to provide the public with the opportunity to test laws or laws based on the principles of justice, balance, and public participation in the law.

**Keywords:** Legal Reform; Legal Influence; Indonesian ideals

## 1 Introduction

### 1.1 Background

The noble purpose of making laws is to provide justice, legal certainty, and benefits to society.[1] However, according to the creator, it can also have another meaning, namely that it can involve controlling resources and taking over power and other hidden intentions. Pancasila is the source of all sources of law, especially the 5th principle of social justice, so all Indonesian people need to pay attention to this 5th principle.[2]

The ideals of law-making are defined as the direction in which law-making in Indonesia is intended to go. If interpreted in simple terms, it is how far the ideals of law-making can achieve the goal. Of course, the ups and downs of legal development will depend on the legal needs that develop in Indonesian society.[3]

Law is a collection of regulations consisting of legal norms and sanctions. The law aims to establish order in human interactions so that security and order are maintained.

Indonesia's independence on August 17 1945 was the initial order of the nation's goals socialized to all Indonesian people as stated in the preamble to the 1945 Constitution.[4]

Where there is society, there is law. Society consists of individuals who form a social community, either intentionally or naturally. This intentionally means that the community was formed for reasons of shared fate and suffering.[5] Individuals in Indonesian society have very diverse desires. Therefore, the community agrees to regulate to create balanced conditions. These agreements between communities are usually called norms which consist of social norms, morality, and state norms/legal norms.

Indonesian society, which consists of many tribes, with religious and cultural differences and the same fate as being colonized by Europeans (the Dutch), represented by the Founding Fathers, agreed to establish a state based on Pancasila and UUD 45. These agreements were outlined in the emergence of MPR TAPs, Laws, Perpu, Presidential Decrees, government regulations, Ministerial Regulations, Regional Regulations, decrees, and other binding regulations.

All country norms/regulations can develop based on the needs of the era and time. Legal reform will be up to date with the times.

## **1.2 Problem Formulation**

The problem that we want to try to raise in this paper is related to the correlation of legal development with the ideals of legal formation itself in Indonesia, which started from the colonial era, at the beginning of the independence period until now, in terms of actual situations that can be seen in real terms, including:

1. How does the development of Indonesian law influence the ideals and goals of the state?
2. How does legal correction of ineffective legal implications produce prosperity, equality, and a conducive situation?

## **2 Discussion**

### **2.1 Indonesian Legal Development and Reform**

#### **2.1.1 History of Legal Development**

Von Savigny, as the main thinker of the historical school, argued that law develops by the development of the people and becomes strong with the strength of the people's sovereignty, then disappears if the people lose their nationality.[6] So all laws were initially formed with the souls of the citizens of the nation and experienced development as did the citizens of that nation. But when the law is positive, the development of the law cannot keep up with the development of society, and then the law disappears and is left behind by the citizens of that nation.[7]

Each nation has special characteristics in language, and law too because there is no universal language, nor are there universal laws. Law arises not because of orders from the authorities or because of custom, but because of justice which lies in the soul of the nation (instinctive), the soul of the nation (volgeist) is the source of laws that are not made, but laws grow and develop with society.

In the context of the Unitary State of the Republic of Indonesia (NKRI), legal development is marked by the influence of the emergence of the oldest Hindu kingdoms in Indonesia, starting with the Tarumanegara kingdom in West Java and the Kutai Kingdom in Kalimantan, then followed by the arrival of Islam with the characteristics of the emergence of Islamic kingdoms in Sumatra and Java. who began to breathe Islam but did not abandon his Hinduism. The next period was the arrival of Europeans in the context of trading spices which ultimately progressively embedded civil law and turned into the character of colonialism. The influence of colonial law in Indonesia has left many influences, including to this day the use of the colonial Criminal Code, the contents of which must be updated to take into account culture, language, religion, and archipelago.[8]

In the era before independence, law was debated by the founding fathers regarding the basic provisions of the Pancasila state whose thinkers came from a Nationalist and Religious background. They decided that the source of Pancasila law was extracted from the noble values that exist in Indonesian society. The leaders also debated determining the direction of the nation which was also stipulated in the preamble and then established the 1945 Constitution as the highest source of law in Indonesia by including obligations and human rights for the Indonesian people.

In legal debates, of course, consideration is given to the benefits of the law and regulating the future order of state life to achieve a just and prosperous society.

During the colonial transition to the period of Indonesian independence, the Dutch Criminal Code was still considered suitable for use, where this law is still in effect today and it has been determined that changes to the old Criminal Code to become the new 2023 Criminal Code will apply. The Criminal Code only came into effect after two years of enactment. This change to the Criminal Code is a fundamental change that is adapted to current developments. Even though the Criminal Code is often called a colonial legacy, in practice it is still suitable for use. As democracy strengthens and the world order changes, it is felt necessary to reform and restore laws that are no longer worthy of being maintained. This means that the law is weathered by the times and chooses to adapt or be reformed towards an up-to-date law.

#### 2.1.2 Formation of New Laws and Legal Corrections

In an increasingly developing world, the goal of a state is no longer about welfare, even though sustainable development programs (Sustainable Development Goals (SDGs) 21 October 2015), the concept of a state is shifting to the goal of creating happiness for humans everywhere on this earth. That's why this condition must be accompanied by legal reform that supports this goal.[9]

Every formation of new laws or corrections to existing laws is always followed by societal dynamics and the moments that occur and occur can be very important (urgent). In its presence, the law can be categorized as a form of creating completely new laws and correcting existing laws.

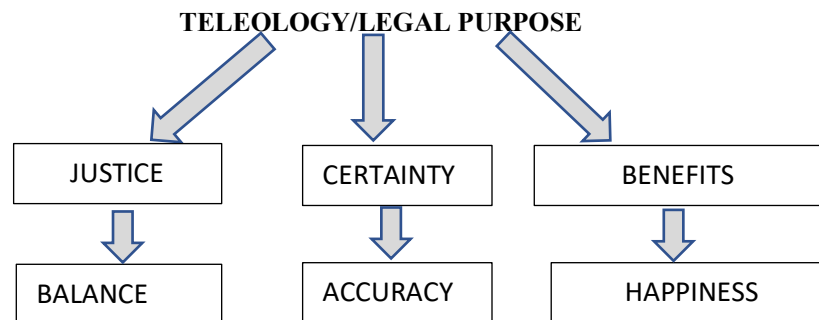
##### **a. Formation of new laws**

Because not all existing and existing laws can adapt to their era, the need for legal reform is dynamic. Some are like adjustments which are corrections to existing laws, and there are even creations of new laws that have not existed at all until now. Legal reform is needed to update the latest situation to organize current life. That any rule or law that is made must have ideals or goals. So laws are made

that have a purpose. This goal is a value that the Indonesian people want to realize. There are three main legal objectives, namely:

- Justice for balance
- Assurance of accuracy
- Benefits for happiness

Legal teleology can be described as follows:



**Fig 1.** Legal Teleology according to Franz Magnis-Suseno [1]

When making new laws, there is usually an interest from the public to change the law. These changes can arise from increasingly advanced technological reasons, for example with the advancement of communication via the internet, it is necessary to regulate communication in the public area because social media is a public area that needs to be regulated, that is why various kinds of laws and regulations such as the ITE Law are made, the aim of which is to regulate what prohibited when communicating on social media (cyberspace). Then, as a derivative of the ITE Law, regulations regarding transactions via banking were born, regulations regarding transactions via the internet, regulations regarding online courts during COVID-19, and other reasons for the emergence of new laws. In the field of debt and receivable collection, regulations have also been issued that regulate the interests of the community in terms of buying and selling traffic via e-transactions (e-bay) and so on.

In the field of corruption, since the 1998 reform, new laws and regulations regarding corruption, bribery, and money laundering have emerged, accompanied by the emergence of banking transaction regulations. To accommodate these regulations, a law known as the Corruption Eradication Commission (KPK) was created and established, and new institutions were formed since the reform era to support enforcement in the field of corruption, among other things, institutions such as the Corruption Eradication Commission (KPK), Police Supervision Commission, Judicial Commission, Prosecutor's Commission and others were established. Human Rights Commission. Later this followed the establishment of the Constitutional Court Institution. It was later realized that there was a need for an examining body for new and old laws or regulations that emerged that were not in line with their objectives. Or maybe some laws conflict with the sense of justice or conflict with the laws above. All the formation of new laws is aimed at strengthening the legal system with a spirit of law enforcement.

It is common for laws to be created to protect trade and e-pay transactions. This is done to prevent an increase in money laundering activities and to promote social justice and prosperity. All these laws and regulations did not exist from the start, only because of the pressure of the situation it was necessary to have new laws and regulations to accommodate the new situation.

**b. Corrections to Existing Laws (Legal Correction)**

To protect the public, laws are often corrected at the request of the public because some of these articles are no longer deemed relevant. It is even possible that the addition of commas, words, and sentences in the law can fundamentally change the meaning of its interpretation. For this reason, corrections to existing regulations or laws are often made to update imperfect laws. Corrections to the law are improvements to existing laws to improve the effectiveness of the law.

The Constitutional Court (MK) on October 16, 2023, decided to accept the lawsuit regarding the 40-year age limit for vice presidential and presidential candidates. As a result, the Constitutional Court decided to accept the plaintiff's petition. The Constitutional Court declared Article 169 letter q of Law Number 7 of 2007 concerning General Elections (Election Law)<sup>1</sup>. The issuance of this decision has become a matter of pros and cons for legal experts because this decision changes legal norms. Just add the sentence "The age limit for Presidential and Vice-Presidential Candidates is 40 years or occupy positions chosen by the Election/Pilkada". Those who are against state that the Constitutional Court's decision is problematic because the Constitutional Court should not exceed its authority to change the age requirements. Another opinion says this is an Open Legal Policy and must be handed back to the lawmakers, namely the DPR-RI. Pro-legal experts say this decision gives young people under 40 years the opportunity to become president and vice president with certain limitations.

Jimly Asshidiqie said that the decision should take effect in 2029, so its implementation awaits the revision of the presidential election. Law no. 48 of 2009 concerning judicial power (UUKK) adheres to the principle of judicial power which is exercised within the scope of the judicial environment of the Constitutional Court. The Constitutional Court's decision on Article 169 letter q is final and binding.<sup>[3]</sup>

A concrete example of corrections to the law is the updated cancellation of the law regarding water resources by the Constitutional Court. Initially, the regulations regarding water exploration were regulated by regulations in Public Works (PU) in 1970. Then the Law on Water Resources was born, because its implementation did not guarantee the realization of the constitutional mandate regarding state control rights over water. With Constitutional Court Decision No.85/PUU-XI/2013, Law No. 7 of 2004 was cancelled.

Likewise, in law no. 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning Eradication of Corruption Crimes. Law no. 30 of 2002 is still in active effect but has changed. So the law regarding criminal acts of corruption has undergone changes and/or corrections four times. Corrections to the law are not necessarily well-intentioned because we do not know exactly what motivated the creators to make corrections or changes. If it has a weakening impact rather than strengthening it, it could cause legal turbulence (Legal Turmoil).

## 2.2 Effective Legal Implications

Many legal cases undergo corrections which may strengthen or weaken the law during implementation. Even though its formation is based on the interests of society, sometimes the real goal is only the interests of a group of people. This is because the process of making laws and regulations is based on majority approval in the DPR-RI and DPRD. Even though the philosophy of law formation is not based on the wishes of the majority. That's why, for balance, a Constitutional Court was established that can cancel these laws or regulations.

The ineffectiveness of the law can be measured to what extent the law can realize the benefits of the headman and justice of society. The journey can be measured if no legal turmoil occurs. There were no protests regarding the presence of this law in the community. Justice can be measured if as many people as possible feel fair.[10]

The effectiveness of the law can also be linked to the prosperity of society because it could be that the law provides opportunities for society to gain prosperity and income. Concretely, for example, the presence of the UMKD and Cooperative Law makes doing business easier and makes it easier to access banks to get working capital. This can be felt and can be measured from the increasing trend of people being able to set up businesses quickly so that everyone's opportunities are well accommodated.

Effective law can provide peace and happiness when law enforcement is firm without discrimination. So that the interests of the community can be properly protected.

Legal effectiveness means that people act according to legal norms as they must and that these norms are implemented and obeyed.

According to Soekanto [4] says that effectiveness is the degree to which a group achieves its goals so that the law can be said to be effective if there is a positive legal impact, when the law achieves its target in guiding or changing human behavior so that it becomes legal behavior. Effective laws can change society from barbaric to good, from evil to good, from corrupt behavior to anti-corruption from anti-religious to more religious, from those who like to violate to obey, and from poor to prosperous, and there are fewer people in prison.

Laws are created like a double-edged sword. The initial noble goal with all its goodness can turn into a law that is detrimental to most people. Even laws are created to benefit certain groups or for momentary interests that are not relevant to the future. The law can have the following implications:

### a. Useful and Dignified Law

Laws that are made through a good process can be made and proposed by the government, then reviewed, asking for the participation of all parties, and then adopted by the DPR. The contents can be prohibitions whose function is to provide legal benefits for society in the form of protection, welfare, people's security, and state security, as well as the good of the future. Dignified laws can protect human interests and provide a sense of justice and the laws made do not conflict with the 1945 Constitution and Pancasila as the basis of the state. When the law is enforced, it will benefit as many people as possible.

### b. Laws That Only Benefit Groups

It could be that the process of making laws is carried out using the correct process and sometimes the contents can be in the interests of a few people who are valued and approved by the DPR. Because of their collective collegial nature, laws and regional regulations can pass for promulgation. That's why in this process

there is a Constitutional Court Institution as the final filter for justice seekers if the law is not aimed at benefit, justice, balance, equality, equity, and human dignity. In the Constitutional Court, laws can be tested and then canceled by law, and then returned to the legislator.

**c. Laws that harm many parties**

Sometimes laws are made to curb freedom and suppress speech and assembly. For example, in the New Order era, the Press Law was used to limit freedom of expression in public, so the Press Law was often used to ban mass media (newspapers, magazines, and books). And at that time demonstrations and demonstrations were not permitted.

Because the aim of the law is very noble, it requires the participation of all parties in creating new laws or correcting existing laws, so the parties involved in making laws and correcting laws, as well as law enforcers, are equipped with knowledge of normative law and empirical law.[5] The law must have the following characteristics:

1. Empirical law distinguishes between facts and norms that are strictly enforced
2. Legal phenomena must be purely empirical, namely social facts
3. The method used is empirical science
4. Empirical law is a value-free science

### **3 Conclusions and Recommendations**

#### **3.1 Conclusion**

Based on the issues and investigation previously explained above, the author draws the following conclusions:

1. The ideal of establishing Indonesian law is to create a just and prosperous society, the state is present as a strict implementer of the law so that the development of social life can be balanced so that a national order is maintained that guarantees the rights of its people and protects every citizen. Every citizen can participate and have the same opportunity to obey and comply with the law.
2. In the process of restoration, law can proceed according to needs, because law is not something static. Law has a dynamic nature depending on the needs of society. If society doesn't need it, it can be eliminated and if society still needs it, it can be maintained. However, the law can be revised or corrected to the law that is currently in force and can change at any time if improvements and perfection are needed.
3. New laws can also be created when situations change (technology, social media) and these norms are needed. Then new laws emerged that regulated a new order and a new life. In this case, the law is very dynamic, following the direction of updated interests. The emergence of new laws and regulations can surprise everyone because sometimes it takes time to familiarize themselves with new laws. This socialization is necessary to prevent unrest and the legal implications of being rejected by society.

4. Effective law is a law that is extracted from culture and changes in order and technology. The law will be effective if the community feels the benefits, and gets a sense of justice, and this can be measured from indications that people are becoming more legally literate and more and more people are obeying the law.
5. Legal reform and the creation of new laws may only be used by a certain group of people so that laws that are not fair and benefit as many people as possible can be annulled through a review mechanism by the Constitutional Court if there are parties or the public who challenge the law. The aim of the legal correction system through the Constitutional Court was to provide the public with the opportunity to test laws or laws based on the principles of justice, balance, and public participation in the law.

### 3.2 Suggestions

Due to the desire to create a balance by giving the community equal opportunities and participation in legal reform, the author provides input, including:

1. The government needs to educate every level of society to instill the spirit of Pancasila as the foundation of the nation's philosophy so that they remain faithful to God Almighty, but also act wisely and fairly towards others so that a culture of legal literacy and law-abiding can become the spirit of every citizen. It would be better if law enforcers or state officials became role models for legal compliance.
2. Teachers in every institution, whether teachers in schools and courses or lecturers and professors in colleges and universities hope that educating each student will not only provide material in the form of matters relating to logic but also morals and divinity. This provision will increase awareness and compliance with the law.
3. Every law enforcer (police, prosecutor, Corruption Eradication Commission) should be equipped with ethics and morals so that they can uphold justice by the goals and ideals of the law created for protection, welfare, and happiness. security, prosperity, equity, equality, etc.

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