

Indonesian Legal Political Dynamics After Reformation Era

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Abstract: Indonesian's political changes after new order signed by constitution reforms ruled Indonesian constitutional system. Indonesian constitution, known as 1945 constitution assigned since August 18th 1999 had been amendments 4 times. First amendment ratified at October 19th 1999, the second amendment at August 2000, the third amendment at November 10th 2001, the fourth amendment at August 10th 2002. As the statement above, there are two instruments politic as policy; democratic regional election and regional autonomy (decentralization). One of the important policies related to decentralization process is the term of regional election. This is the fundamental one as the term of policy to release strong reforms, especially after 1999 movement. In the other hand, legal policy toward regional election runs dynamically. The shift of democracy toward regional election also influences it political law. The important one in dynamical legal policy is to be thought positively these political parties which function as the main actor in democracy would bring society as the first goal. Hence, the dynamical legal policy will run on its rule "for people interests", not to provide their parties or certain group only.

Keywords: Legal Politic, Regional Election, Dynamic, Amendment, Reformation Era

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I. PREFACE

Law No. 22/1999 on the local governments which gave the rule in order every district allowed managing itself is the main opening gate to integrate central and local government synergy. It is related to reformism striving movement in 1998. According to Indonesian people's consultative council (MPR-RI, 2007) these demands are;

1. Amendment of Constitution Republic of Indonesia 1945
2. Wiping out of doctrine two-functions military (ABRI)
3. Decentralization and the equitable relationship between central and local government.
4. Law enforcement, human right recognize, and eradication of corruption and nepotism
5. Making on freedom of journalist
6. Making on social life democracy.

After applied for about 3 years, and had been evaluated, concluded this law does not meet anymore to the growing of local government. Because of it, laws 22/1999 replaced by laws 32/2004 about the local government. Furthermore, the laws had replaced again as the second change of these laws became Laws 9/2015 about the local government. The process of the replacement above had through the indeed discussion based on the political situation. Regardless people agreement or rejection (pro-contra) and critics toward these constitutions. The applied of these local government constitutions, besides as the juridical time to change the system of local government, it is also inspired to change the system of local election, from assembly council election to direct electoral vote by citizen itself. This based on the constitution 32/2004 about the local government. The replacement of this regional election system aimed to create democratic principal on the selection regional election.

Based on rules of state structure, Dahlan Thaid (Dahlan, 2004) said "the change of regional election from the representation system to direct election is the significant progress in social state democracy, especially toward Indonesia state structure. It can be known because direct election brings broader citizens opportunity to participate in that demarcations process. In addition, it was said in political subject textbook "it can be said as the democratic political recruitment if qualified: (1) using the right general election process; (2) it is possible to change the authority; (3) the open of the recruitment process; and (4) public accountability. Furthermore, regional election through legislative assembly dealing with fourth principles of Pancasila; Democracy system guided by the inner wisdom in the unanimity arising out of deliberations among representative, the stressed word is Deliberation Among Representative which means is to make up deliberation. However, it is better to

make legislative assembly as the citizen voice in the regional head election. Although there were some laws about money politics, we can reject the reality occurred. However, it can be decreased if the law enforcement authorities (Police, Prosecutor, Corruption Eradication Commission) given authorities to find out the identity, investigate, wiretapping, to the legislative assembly which suspected used money politics.

The means of regional direct election in this research is the regional election which the citizen voted through the regional legislative assembly as well as their voice in regional scope. So there is no guaranty that directs election or not will bear regional chief loving their society. Juridical problem occurred after 1945 constitution replacement had to bear legal law about the terms of regional election, which is states in section 18 verse (4) 1945 constitution, as below;

1. The nation State Republic of Indonesia is divided into some provinces which have some districts/city. Every province, districts, or cities have regional government as their authorities based on the Constitution.
2. Regional governments of Provinces, districts, or cities have authorities to manage and run their government through autonomy and to help central government program.
3. Regional governments of Provinces, districts, or cities have the regional legislative assembly which elected through direct election.
4. Governor, regent, and mayor everyone is the chief of regional government elected democratically.
5. The regional government runs their autonomy maximally, except the one which determined as the central government program.
6. The regional government allowed making regional laws or another to run it program.
7. The terms and rules to run the regional government are determined in law.

Based on section 18 as explained above, can be said that 1945 Constitution does not clearly determine how the regional election said democratic or not. Hence, it is poor to say regional election through the legislative assembly is not a democratic but direct election. Erfan Helmi (Erfan, 2012) said that "there is a theory of the law enactment; juridical, philosophy, sociologically." philosophy Enactment are; first, the law is being considered valid if signed by the authorized. Second, the binding applicable law is law was ratified legally by the authorized. Third, a juridical applicable law is rule of law. Fourth is philosophical applicable law. Moreover, Erfan Hilmi said that "in the context of Nation State Republic of Indonesia law is considered valid philosophically when it creates through Pancasila values; fifth, law is considered valid sociologically when the law is obeyed by society as the legal awareness".

The legislative effort to put off direct regional election system into legislative assembly was thwarted by President Susilo Bambang Yudhoyono through Government regulation in lieu of law (Perppu) on October 2nd 2014: first, regulation laws No.1/2014 about electoral of Governor, Regent, and Mayor. Second, regulation laws 2/2014 about the change in laws 23/20014 about the regional government. Both these regulation laws had return citizen sovereignty to choose their regional chief directly.

II. DISCUSSION

Laws No.22/2014 about the electoral of the governor, regent, and mayor which authorized the terms of the regional election through legislative assembly got rejection almost by all citizens; it is also caused many problems in force, dealing with MK No. 18/PUU-VII/2009. Therefore, 1/2014 regulation laws, automatically replaced laws 22/2014 since October 2 2014. However, 1/2014 regulation law does not thwart 2/2014 laws at all, it just changes and replaced section 101 verse (1) word D and section 154 verse (1) word D which authorized province and district/major legislative assembly to choose the regional chief. These regulation laws aimed to provide certain law toward regional election which holds citizen sovereignty and democratic values. Therefore, the citizen involvement in rating democratic process should be active. Citizen as the holder of power in democratic should be realized well. It is the moment where the citizen to be the main power to oversee the democratic process. However, it should be understood that democracy is the Model, not the Goal.

A. Historical Term of Legal Policy

The reason upon the birth legal policy disciplines because of the jurist's disappointment toward the model of law approach there. Since the ancient Greece up to post-modern, studies of law run inconsistently, it is born because of the change of social class, politic, economic, and industrialization. Satjipto (2000) explains that at the 19 century the USA and UE are central of law order that the developing on civil law. As a matter fact, the approach of legal policy becomes a model of approach discussing almost in all studies. However, there is no legitimate result from the legal policy itself. Responding this, (Bellefroid, 1953) introduces *Rechtspolitiek* for legal policy as the independent scientific which is mean covering the explanation of any branches of science including about science of law. The legal policy has many kinds of interpretation, but every explanation should have substantive correlation each other. This research takes definition about the legal policy which central government (Indonesia) had done or will be done, these are; first, making or substituting law materials based

situation and condition and social interest. Second, the realization of the standing laws counted to function of the institution and laws enforcement officers (A Hakim, 1985). By this explanation, take an understanding that legal policy means is the process of the touchdown and enforcement of the law which identifying how the law using and bringing on.

There are two methods to reveal more understanding about legal policy and constitutions; through philosophical dimension, and political dimension. First, Philosophical Dimension; study of law which concerning the law as the parts of abstract ideas which are function as the more explanation toward philosophical thinking, this is knowing as philosophical law. In the other hand, William Zevenbergen in (Latif & Hasbi, 2001) states that legal policy function is to answer the questions on which regulation of law is regarded to be a constitution. The definition of legal policy is the process of legal establishment and enforcement.

Second, Political Dimension. In the field study of law philosophical dimension is the in-depth correlation between politics and laws. Even it was said the law is a political instrument which growing on and bears one field of political study known as a legal policy. Furthermore, the objects study field of legal policy also be political objects, that is the object of legal policy. First, Legal policy determined the human being norms what should be the have an action. Second, a legal policy also investigates the current situational condition to reveal suitable legal policy based on social life. However, there is some exertion to ranging constitution far from social reality. People using legal policy as the way to ruling class regardless social condition.

According to Moh. Mahfud there is two characteristic of legislation process: first, responsive legislation process is the terms of laws concerning the social justice and interests, during the legislation process involving group society or personal citizen. So the legislation results are socially responsive. Second; conservative legislation process is the terms of the law which it material containing on social class only (elite politician), government interests, positive instrumental, Society is just as the instrument of government ideological programs (Mahfud, 2009). Paradoxes toward responsive legislation, conservative legislation is more exclusive on any social demand.

B. Configuration of Relationship and Political Dominance of Law

Order got more understanding toward The relationship configuration and political dominance in law can be seen through theoretical observation as the approach of juridical normative in the field study of law. Law has other sides in real social condition because in the real social condition field law should be found its true function. As it is used as one of the local sub-systems, a law cannot separate from another social sub-system, like political system. Discussing theoretical aspects about the politic and law on each scientific field and the correlation between politics and law in social system has some aspect as following below;

Politic: Politic is one of the parts of the social study, in another hand, politic has many kinds of definition as the human amount (quot hominess, totsententiae). But in this study, the writer just researches the definition of politic which has suitable relation with the law or nation state organizer. Based on black's law dictionary (Bryan a, 1999) politic is the science of the organization and administration of the state. It is dealing with Miriam B (Miriam B, 1988) statement that politic is many kinds of the activities in one political system (nation state) which determined the process revealing the goals and realizations of the system itself. It needs some legal policies to realize these goals, the policies related to the management and distribution from the existing sources. It also needs power and authority to manage the cooperation process and to overcome any coming conflict caused by this process. The legal policies can be applied in persuasive term or through enforcement if needed. Without enforcement, these policies just bring dreaming law. Through the explanation above, we can describe the elements of one policy concerning to state administration by state institution which has power and authority to run the state. The principal element of the legal policy is; nation, power, and authority,

Law: according to Utrecht law is the guiding life (usually known as norms and rule) which containing instruction and prohibition which should be obeyed by the society to manage well their social life. Every violation of this law has responsibility and will be trial by the government (Utrecht, 1983). This definition is the normative term toward law, while philosophical and sociological definition also recognizes the social condition in one local social system. Through this definition, it can be said that law is not just about the principles and norms regulated social life, but also the process and the institutions which encourage to realized this law into it function truly.

C. Legal Political Post After 1945 Amendment

After passing many kinds of strong striving faced academics perception and political reality, finally, since 1999 we could make a change (known as the amendment) toward 1945 Constitution. of course, this change bear big development on our government administration system. Especially, strong formulation functions checks and balances by the judicial institution

and strong formulation on human rights protection. Otherwise, it is must if at the time there are some rejections about the result of 1945 constitutional amendment. We should see it as the advancement process in our political democracy. Moreover, everyone easily can evaluate or argue the prevailing constitution. There are 3 social types and attitudes responding amendment of constitution, there are;

1. Social group grading that it is needed more amendment toward constitution to be better.
2. Social group judge that the result of constitution amendment is totally wrong, the illegal one, because of that it should be brought back to the true 1945 constitution.
3. Social group thinking that the result of constitution amendment maximally had accommodated all social interest so there is no need amendment again if there is no political instability.

The term of guiding and policy in law simply settled as the way gaining government goals, so every establishment or replacement of law should be purposed to bring nation goals. Although in this definition stated that law is just the way, but it basically it bears supremacy of law. Moreover, Indonesian state had secured Pancasila as the final principle, so that every law should be concerning its values. Pancasila had applied some classification and limitation toward national legal policy (political law). They are; the National law should protect the freedom of religion to all citizens. There is no special attitude to one religion because of it has the major follower.

D. Legal Political Dynamics after Reformation

Throughout Indonesian history, there are many kinds of political transformation, based on the periodical political system between democratic political configuration and authoritarian political configuration. These transformations bring changes on legislation process also. When the political configuration using in democratically, the legislation process born responsive law. When the political configuration using in authoritarian it brings the legislation process would bear Orthodox law.

In addition, the growing of law, either private or public law which has no relevancy with the power will be influenced by political changes, such as; the alterations of president ordinance No. 11/1963 while at following time used as the constitution No. 11/PNPS/1963 about the subversion criminal act by regimes to take any repressive action toward everyone defying or disturbing their governance, but this law had been put off after 1998 reformation movement. Actual incident implied the 1998 reformation movement is the clear witness that law as the political product more influenced by the political condition. Some of the laws issued during new order had been replaced and reformulated. As the following explanation;

- 1). Laws No. 2/1985 about political party and Golongan Karya (Karya group) be modified by law 2 the year 2008 and had been revised become law 2/2001 about political party. Through this reformulation of laws, the citizen has a freedom to determine and choose base on their interest. The difference from law No. 2/1985 which determined the citizen to just accept and vote the 3 political parties were offered by the government. In another word, the citizen has a freedom to create any political party, but to be allowed in parliament member should pass the electoral threshold (parliamentary threshold).
- 2).Laws No. 2/1993 about the general election also repaired become law No.23/2003 and replaced for twice by laws No. 42/2008 with some regulation addition about the commission of general election (KPU). General election firstly organized by the domestic government had been hand over by the commission of general election independently, this rule is the result of 1945 constitution amendment; section 22E paragraph5 which said: general election officially organized by the commission of general election.
- 3). Laws No. 27/2009 about the structural position of people's consultative assembly, legislative assembly, the regional representative council (MPR, DPR, and DPD) changed into law No.17/2014. This replacement is regarding with general election laws principally explain about the decrease of legislative assembly member and the way to promote the people's consultative assembly in an open way.
- 4). Law No. 32/2004 about regional government changed into 23/2014. While the first law holds real autonomic forms responsibility, changed into foredoom autonomy in wide.

As matter of fact, the changes of the political condition not only caused the replacement of law but also touch the higher regulation law (higher constitution) concerning about the people's consultative assembly decision (Tap MPR) and 1945 constitution, such as the replacement of people's consultative assembly decision No.MPR/No II/MPR/1978 explaining about the Appreciation of The Practice Guidelines of Pancasila (P4) and people's consultative assembly decision No. IV/MPR/1983 about the referendum abolition which declared to be put off as determined by 1945 constitution. In addition, the most crucial replacement toward 1945 constitution after reformation era aimed to put in strong foundation striving to realize the future goals of Indonesian independence as stated in August 17th 1945. Since 1999 until 2002 Indonesian constitution has amendment four times. Although the used name is 1945 constitution, in the fact, there was much replacement on the materials substances and structural in numbers of chapters, sections, and verses. These changes influence the changes of the Indonesian administration form. The material of this changes classified into some part of explanation below;

Amendment Part one (1999), the replacement toward 1945 constitution which covered on government authority, ministry, legislative assembly, which stated in 15 dictum points, these are; replacement on section 5 paragraph 1, section 7 and 9, section 13 paragraph 2 and 3, section 14 paragraph 2, section 15, section 17 paragraph 2 and 3, section 20 paragraph 1,2,3,4 1945 constitution and also published by decision of people's consultative assembly of Indonesia (Tap MPR-RI) No II/MPR/1999 also Tap MPR-RI No.IX/MPR/1999 in October 21st 1999. Amendment Part two (2000), the replacement which covered 59 dictum points, these are; section 18 paragraph 2,3,4,5,6,7, section 18 A paragraph 1, section 18B paragraph 1,2, section 19 paragraph 1,2,3, section 20 paragraph 5, section 20A paragraph 4, section 22A, section 22B, section 22E, section 26 VERSE 2,3, section VERSE 3, section 28A, section 28B verse 2, section 28c paragraph 1,2, section 28d paragraph 1,2,3,4, section 28e paragraph 1,2,3, section 28e paragraph, section 28g, section 28H paragraph 2,3,4, section 28I paragraph 1,2,3,4,5, section 28 J paragraph 1,2, section 30 paragraph 2,3,4,5, section 36A,B and C, assigned in August 18th 2000, following by Tap MPR-RI No. IX/MPR/2000.

Amendment Part three (2001), the replacement which covered 60 dictum points, these are; section 1 paragraph 2 and 3, section 3 paragraph 1,2,3, section 6 paragraph 1,2, section 6A paragraph 1,2,3,5, section 7A, section 7B paragraph 1,2,3,4,5,6,7, section 7C, section 8 paragraph 1, 2, section 11 paragraph 2,3, section 17 paragraph 4, section 22C paragraph 1,2,3,4, section 22D paragraph 1,2,3,4, section 22E paragraph 1,2,3,4,5,6, section 23 paragraph 1,2, section 23A, section 23E paragraph 1,2,3, section 23F paragraph 1,2, section 23G paragraph 1,2, section 24 paragraph 1,2, section 24A paragraph 1,2,3,4,5 section 24B paragraph 1,2,3,4, and the last one is section 24C paragraph 1,2,3,4,5, 6. This replacement Assigned in November 10th 2001 Amendment part four (2002), assigned on annual meeting of people's consultative assembly of Indonesia in August 1st 2002, covered 29 dictum points, these are; section 2 paragraph 1,2,3,4, section 6 paragraph 4, section 8 paragraph 3, section 16 paragraph 1, section 23B, section 23d, section 24 paragraph 3, section 31 paragraph 1,2,3,4,5, section 32 paragraph 2, section 33 paragraph 2,4,5, section 34 paragraph 1,2,3, section 37 paragraph 1,2,3,4,5 section I about transitional rules, section II about transitional rules, section III about transitional rules, section I about additional rules, section II about additional rules (Hardjono, 2009).

The Indonesian political changes after new order also signed by reformation of the constitution which ruling the administration system. There are two important political instruments as the consideration of the reformations; there are the democratic general election and regional autonomy (decentralization). However, the general election is the fundamental form to release the decentralization agenda. Regional election recognized as the parts the part of general election after law No.22/2007 about the formulation of general election had been ratified. Since 2008 after ratifying of laws No. 12/2008 about the second replacement for laws no 32/2004 about the regional government which saying that the selection of regional election candidates is not just through political parties but also allowed by personal candidates (independent) with addition requirement should have citizen support proof by copy of citizen identity card or in written form. By this replacement law, the regulation about the regional election as stated in laws no 32/2004 officially had changed by laws No. 12/2008. According to Prof Yusril Ihza Mahendra said that the outward of Perppu No. 1/2014 and government regulation substitute No. 2/2014 is to put off the rules in law 22/2014 about the election of governor, regent, and mayor (regional election). And law No. 23/2014 about the regional government. So that, when the law is put off by legislative assembly it not automatically bring the legislative laws is in applying. But the government (president) and legislative assembly should have a session discussing it.

CONCLUSION

Indonesian political change after new order government signed by constitution reform which rules Indonesian constitutional system. Indonesian constitution, known as 1945 constitution assigned since August 18th 1999 had been amendments 4 times. First amendment ratified at October 19th 1999, the second amendment at 18th August 2000, the third amendment at November 10th 2001, the fourth amendment at August 10th 2002. As the statement above, there are two instruments politic as policy; democratic regional election and regional autonomy (decentralization). One of the important policies related to decentralization process is the term of regional election. This is the fundamental one as the term of policy to release strong reforms, especially after 1999 movement.

Legal political dynamic toward regional election runs in progress. The democratic change in the regional election also influences the legal policy on it. The most important one in this dynamical legal policy is in our trust, that the political parties will bring the social interest as the first goals. Hence, the dynamical legal policy would run in a correct way (social interest) not just for group or party interests only.

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