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POLITICAL CONFIGURATION OF LAW IN THE FORMATION OF LEGISLATION IN INDONESIA

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Abstract

This article examines the political configuration of law in the formation of legislation in Indonesia. Law and politics are two entities that mutually influence each other; legal products are the result of a tug-of-war between political forces, particularly those found in parliament. This study aims to analyse the historical development of political configuration in relation to the character of legislation in Indonesia, and to identify the types of political configurations that have been applied. The method used is normative legal research with historical and conceptual approaches. The results show that Indonesia has gone through four distinct periods of political configuration: the liberal period (1945–1959), guided democracy (1959–1966), the authoritarian New Order (1966–1998), and the reform era (1998–present). Theoretically, there are three types of political configuration: democratic, authoritarian, and oligarchic-cartel. Indonesia currently adheres to a democratic configuration that provides wider space for public participation in the formation of legal policy.

Keywords: Political Configuration, Legal Politics, Legislation Formation, Democracy, New Order

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A. Introduction

Although fundamentally different in nature, law and politics are inseparably intertwined. Law functions as a coercive set of standards, consistently oriented toward right and wrong and imposing strict sanctions for any violations. Politics, by contrast, does not operate on such binary logic; it is the art of managing differences to achieve specific objectives. Despite their apparent divergence, both are connected dialectically: politics frequently shapes and even determines the content of legal products, while law constrains and controls political action.[1]

According to the science of legal politics, legislation is not created in a vacuum. It is a political product the result of conversations, negotiations, and disputes among political forces, particularly those that exist within parliamentary institutions. Additionally, social and economic forces outside parliament exert pressure and influence on the laws that are produced.[2] Ultimately, this configuration of forces determines whether a law serves the general interest or merely benefits particular groups.[3]

The mechanism of this influence may be explained as follows: if external forces such as social movements, civil society organisations, or economic pressures are stronger than forces within

[1] Tobias Wirawan, Politik Hukum di Indonesia (Jember: UPT Unej, 2004), p. 8
[2] Jazuni, Legislasi Hukum Islam di Indonesia (Bandung: Citra Aditya Bakti, 2005), pp. 9–10.
[3] Abdin A.B., 'Pengaruh Hukum Islam dalam Sistem Hukum di Indonesia', Jurnal Mimbar Hukum No. 9 Tahun IV (1993), p. 56.

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parliament, the resulting legal products will fulfil the demands of those external forces. Conversely, if external forces cannot counter the dominance of parliamentary forces, the resulting legal products will reflect accommodation of internal parliamentary interests.[4] In the science of legal politics, this dynamic is referred to as political configuration.

Legal products generated by a state are profoundly influenced by political configuration namely, how political forces are arranged within the system of governance. The proposition that 'a particular political configuration produces a particular legal product' may have some validity in certain situations. However, Mahfud MD[5] cautions that this proposition must be analysed with greater rigour so as not to conflate legal policy (legal policy) with the academic discipline of legal politics as a broader field. Both have different objects and approaches, even though they are closely interrelated.

Indonesia provides a rich empirical laboratory for understanding how changes in political configuration directly affect the character of legislation it produces. This is because the country has experienced various regime phases, including liberal democracy, guided democracy, New Order authoritarianism, and democratic reformation. According to Marpaung,[6] Indonesia's constitutional journey beginning with the 1945 Constitution, the RIS Constitution, the 1950 Provisional Constitution, the return to the 1945 Constitution, and its four amendments demonstrates how the dynamics of political configuration shape the legal architecture of a nation.

This study is not merely historical but is equally relevant to contemporary Indonesian legal politics. The reform era that began in 1998 brought major structural transformations: four rounds of constitutional amendment, direct presidential elections, the establishment of the Constitutional Court (Mahkamah Konstitusi) and the Regional Representative Council (DPD), and expanded press freedom. Nonetheless, the question of whether these democratic structures have been fully translated into responsive legal products or have instead shifted toward oligarchic-cartel patterns remains pertinent.[7]

Several previous studies have explored this issue from various perspectives. Marpaung[8] found a significant correlation between the type of political regime and the responsiveness or repressiveness of legal products. Isnawati[9] specifically examined democratic political configuration in producing effective legal products during the reform period. More recently, Ibad[10] investigated the relationship between constitutional legal politics and post-reform legal products. Nevertheless, there remains limited research that systematically synthesises the periodisation of Indonesia's political configuration from 1945 to the present while thoroughly analysing the typology of those configurations.

[4]Abdin A.B., 'Pengaruh Hukum Islam dalam Sistem Hukum di Indonesia', Jurnal Mimbar Hukum No. 9 Tahun IV (1993), p. 56.

[5] Moh. Mahfud MD, Membangun Politik Hukum, Menegakkan Konstitusi (Jakarta: Rajawali Press, 2017), p. 5.

[6]Lalu Parman Marpaung, 'Pengaruh Konfigurasi Politik Hukum Terhadap Karakter Produk Hukum', Jurnal Pranata Hukum (2012), pp. 6–12.

[7]Isnawati, 'Konfigurasi Politik Demokratis dalam Karakter Produk Hukum yang Responsif di Era Reformasi', Jurnal Socioscientia (2012), p. 85.

[8] Marpaung, L.A. (2012). Pengaruh Konfigurasi Politik Hukum Terhadap Karakter Produk Hukum. Jurnal Pranata Hukum.

[9] Isnawati. (2012). Konfigurasi Politik Demokratis dalam Karakter Produk Hukum yang Responsif di Era Reformasi. Jurnal Socioscientia.

[10]Syukri Ibad, 'Politik Hukum Tata Negara dalam Konfigurasi Politik dan Produk Hukum di Indonesia', HUKMY: Jurnal Hukum (2024), p. 611.

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Proceeding from these issues, this article seeks to uncover the political configuration of law in the formation of legislation in Indonesia with two primary questions: (1) How has the political configuration historically developed in relation to the character of legislation in Indonesia? and (2) What types of political configuration are operative in Indonesia?

The aims of this article are: (1) to systematically analyse and document the historical development of political configuration in relation to the character of legislation in Indonesia across four main periods 1945–1959, 1959–1966, 1966–1998, and 1998 to the present; and (2) to identify and analyse the three relevant typologies of political configuration democratic, authoritarian, and oligarchic-cartel. Theoretically, this article is expected to enrich Indonesian legal politics literature by offering an integrative analytical framework. Practically, its findings are intended to inspire legislators to produce legal products that are more aligned with the interests of the people.

B. Research Methodology

This study employs normative legal research methodology. The approaches utilised are the historical approach and the conceptual approach.[11] The historical approach is used to examine the history of political configuration development in the formation of Indonesian legislation across different eras, from the independence period (1945) to the reform and post-reform era. The conceptual approach is used to analyse the concepts and theories of political configuration and their relationship with the character of legal products.

Legal materials used include primary legal materials in the form of constitutional provisions and legislation, as well as secondary legal materials comprising textbooks, scientific journals, and other relevant scholarly works.[12] The technique of collecting legal materials is carried out through library research, which is then analysed qualitatively using the descriptive-analytical method.

C. Discussion and Analysis

1. Historical Development of Political Configuration in Indonesian Legislation

a. The Liberal Period (1945–1959)

The historical period known as the 'liberal era' was characterised by a parliamentary system of government and democracy. The dynamics of Indonesia's political governance at that time were driven by three constitutions: the 1945 Constitution, the Constitution of the Republic of the United States of Indonesia (RIS), and the 1950 Provisional Constitution. During this period, a democratic political system emerged.[13]

The multiparty process commenced with the Government Proclamation of 3 November 1945, which explicitly endorsed the emergence of political parties as instruments for expressing the aspirations of society. From that point, numerous political parties emerged and assumed control of national political life.

According to Muhaimin,[14] the structure of liberal democratic politics was characterised by political parties holding a dominant role in the state's policy formulation process through parliament, their constitutional vehicle. While the role of political parties temporarily receded during the period of

[11]Peter Mahmud Marzuki, Penelitian Hukum (Jakarta: Kencana, 2017).
[12]Johnny Ibrahim, Teori dan Metodologi Penelitian Hukum Normatif (Malang: Bayumedia, 2007).
[13]Bintan Regen Saragih, Politik Hukum (Bandung: CV Utomo, 2006), pp. 56–57.
[14]Yahya Muhaimin, Bisnis dan Politik: Kebijaksanaan Ekonomi Indonesia 1950–1980 (Jakarta: LP3ES, 1990), p. 43.

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power-sharing under the RIS, it re-emerged strongly under the 1950 Provisional Constitution. The executive branch was relatively weak in the face of party political strength, resulting in political instability and a succession of collapsed governments.[15]

Marpaung[16] noted that this instability also had an impact on press freedom and an environment permitting freedom of expression. This framework shows that legal products created during the liberal era, though imperfect, tended to support pluralism and civil liberties, consistent with the characteristics of a democratic configuration.

b. Guided Democracy Period (1959–1966)

This period was marked by President Soekarno's issuance of the Presidential Decree of 5 July 1959, which announced the return to the 1945 Constitution and the end of the parliamentary democratic system. From this point, the political structure took on an authoritarian character.[17]

During this period, the political configuration was characterised as authoritarian. Soekarno's administration was described as both authoritarian and totalitarian, as he became the central figure dominating the entire national political agenda. No space remained for political parties to participate meaningfully in the policy-making process. Presidential Decrees and Presidential Regulations of a repressive nature demonstrated Soekarno's dominance over constitutional institutions.[18]

The repressive character of this authoritarian structure was most apparent in the domain of press life. The Minister of Information issued decrees requiring publishers to affiliate with mass organisations, political parties, or functional groups, causing the media to lose their independence and become instruments of the political interests supporting them.[19] This phenomenon is direct evidence of Mahfud's thesis that an authoritarian system produces laws that impede civil liberties and undermine the functioning of democratic institutions.[20]

c. The New Order Period (1966–1998)

In contemporary Indonesian history, the New Order period represents the apex of the authoritarian-totalitarian configuration model. The political configuration was designed to create a strong state based on the paradigm of economic stability and national development. However, this 'strong state' was strong only in the sense of repression rather than welfare.[21]

Marpaung[22] identifies five principal instruments of political de-mobilisation employed by the New Order. First, the 'floating mass' policy (massa mengambang) prohibited the formation of party branches at the sub-district level, preventing grassroots political participation. Second, elections were not treated as genuine expressions of popular sovereignty but merely as formal legitimation exercises. Third, political parties were marginalised and amalgamated into three entities Golkar, PDI, and PPP under the single ideology of Pancasila. Fourth, bodies such as Kopkamtib and Bakin were deployed to control and centralise political life. Fifth, the ABRI Dual Function doctrine (Dwi Fungsi ABRI) positioned the military within the civilian bureaucracy.

[17]Mahfud MD, Politik Hukum di Indonesia (Jakarta: Rajawali Press, 2011), p. 92.

[18]Mahfud MD, Politik Hukum di Indonesia (Jakarta: Rajawali Press, 2011), pp. 100–105.

[19]Marpaung, 'Pengaruh Konfigurasi', pp. 8–9.

[20] Mahfud, M. (2017). Membangun Politik Hukum, Menegakkan Konstitusi. Jakarta: Rajawali Press.

[21] Marpaung, L.A. (2012). Pengaruh Konfigurasi Politik Hukum Terhadap Karakter Produk Hukum. Jurnal Pranata Hukum.

[22]Marpaung, 'Pengaruh Konfigurasi', p. 10.

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During the New Order era, the legislative body was structurally weak from a constitutional standpoint, as executives were effectively embedded within it through the Golkar Faction, the ABRI Faction, Regional Delegates, and Functional Group delegates. The president also controlled party elite recruitment to prevent the emergence of opposition figures and critical voices. Consequently, the New Order parliament produced what Nonet and Selznick termed 'repressive law' at executive order.

d. The Reform Era (1998–Present)

The 1998 reformation process, marked by Soeharto's resignation from the presidency, opened a new chapter in the history of Indonesia's political structure. A series of significant constitutional changes were implemented following the collapse of the authoritarian New Order regime. The 1945 Constitution was amended in four stages (1999, 2000, 2001, 2002), the Supreme Advisory Council (DPA) was dissolved, and new institutions such as the Constitutional Court (Mahkamah Konstitusi) and the Regional Representative Council (DPD) were established to enhance the democratic structure.[23]

The liberalisation of the multi-party system represented the most significant transformation in party politics. With broad political freedom, the public gained the ability to establish political parties. As a result, more than a hundred political parties have registered with the Ministry of Law and Human Rights since the reform period. All members of the House of Representatives (DPR) are now elected directly through electoral processes, rather than through executive appointment.[24]

In the domain of press freedom, the reform era brought fundamental change. Media independence was protected by Law Number 40 of 1999 on the Press, which replaced three previous press laws laden with restrictions.[25] The reform era was described as 'a celebration' for the press: the process of obtaining a publishing permit (SIUPP) that previously involved 16 stages was reduced to only three stages during the Habibie administration.[26]

The post-reform political configuration exhibits a pattern of openness that creates opportunities for all components of the people to actively participate in determining state policy. The government serves more as a facilitator implementing the democratically formulated will of society through representative bodies, while political parties function proportionally.[27] This fundamental shift confirms Mahfud MD's thesis: a democratic configuration indeed tends to produce legal products that are more responsive to public interests.[28]

2. Political Configuration in Indonesia

Conceptually, political configuration refers to the arrangement or constellation of political forces within a system of governance. Mahfud MD[29] classifies political configuration into three main typologies, each with distinct characteristics and different implications for the character of the legal products they generate.

a. Democratic Political Configuration

[23] Marpaung, L.A. (2012). Pengaruh Konfigurasi Politik Hukum Terhadap Karakter Produk Hukum. Jurnal Pranata Hukum.

[24] *Ibid.*

[25] Suroso, Menuju Pers Demokratis: Kritik Atas Profesionalisme Wartawan (Yogyakarta: LSIP, 2001), p. 3.

[26] *Ibid.*

[27] Isnawati, 'Konfigurasi Politik Demokratis', p. 88.

[28] *Op., Cit.* Marpaung, L.A. (2012). Pengaruh Konfigurasi Politik Hukum Terhadap Karakter Produk Hukum. Jurnal Pranata Hukum.

[29] Mahfud MD, Politik Hukum di Indonesia, pp. 25–30.

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Democratic political configuration is an arrangement of the political system that opens opportunities and possibilities for full public participation in actively determining general policy, while simultaneously maintaining a balance between conflict and consensus.[30] Institutionally, democracy is marked by restrictions on governmental power to protect individuals and societal groups, as well as regular, orderly, and peaceful leadership succession through effectively functioning representative institutions.[31]

In a democratic configuration, political parties and representative institutions serve as active pillars determining the direction of law and policy. Press life is relatively free and not under threat of suppression. The role of the executive is not dominant and is open to criticism.[32] According to Azhar,[33] genuine democracy is also characterised by respect for the rights of minorities and individuals, a prioritisation of resolving disputes through discussion, recognition of differences and creativity, and a willingness to compromise constructively.

Mayo[34] adds a procedural dimension to democracy: the nomination and election of representatives must take place honestly and fairly, and those institutions must receive the widest possible opportunities to discuss public affairs, criticise policy, and crystallise public opinion. Freedom of expression and assembly are the most fundamental political and civil rights, and democracy will only tolerate conflict as long as it does not destroy the system.

It is worth noting that nearly 97 per cent of modern nations claim to adhere to a democratic system, yet its implementation varies considerably from one country to another. Even countries that claim to be 'the teacher of democracy' frequently experience intimidation, coercion, and human rights violations under the pretext of protecting the people.[35] This reminds us that democratic configuration is not merely a formal claim but must be measured in terms of its substance and practice.

b. Authoritarian Political Configuration

Authoritarian political configuration is the diametrical opposite of democratic configuration. Mahfud MD[36] defines it as an arrangement of the political system that allows the state to play a more active role and assume virtually all initiative in state policy-making, characterised by the drive of the power elite to impose unity, the elimination of open opposition, domination by a perpetual political elite, and the existence of doctrine justifying the concentration of power.

Budiarjo[37] adds that behind authoritarian governmental actions there lies an ideology or doctrine justifying restrictions on the power of individuals and groups as a means of achieving certain objectives deemed ordained by history. The outstanding characteristic of modern totalitarianism accompanying authoritarianism, according to Dahrendorf,[38] is the overlapping of monistic social patterns and structures: all aspects of economic, political, cultural, educational, and press life are controlled and regulated by a single centre of power.

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[30] *Ibid.*

[31] *Op., Cit.* [31] Isnawati. (2012). Konfigurasi Politik Demokratis dalam Karakter Produk Hukum yang Responsif di Era Reformasi. Jurnal Socioscientia.

[32] *Ibid.*

[33] M. Azhar, Filsafat Politik Perbandingan antara Islam dan Negara (Jakarta: Raja Grafindo Persada, 1996), p. 60.

[34] H.B. Mayo, An Introduction to Democratic Theory (New York: Oxford University Press, 1960), p. 70.

[35] J. As-Shiddqy, Hukum Tata Negara dan Pilar Demokrasi (Jakarta: Konstitusi Press, 2005), p. 242.

[36] Op., cit. Mahfud MD, Politik Hukum di Indonesia, pp. 25–30.

[37] M. Budiarjo, Masalah Kenegaraan (Jakarta: Gramedia, 1980), pp. 339–400.

[38] R. Dahrendorf, Konflik dan Konflik dalam Masyarakat Industri (Jakarta: Rajawali, 1986), pp. 238–246.

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In an authoritarian configuration, the legal products generated are repressive in character, designed not to protect citizens but to protect and perpetuate the power of the regime. Laws become instruments of social control rather than instruments of justice. This phenomenon precisely describes conditions in Indonesia during the Guided Democracy and New Order periods, as elaborated above.

c. Oligarchic-Cartel Political Configuration

Etymologically, oligarchy derives from the Greek oligarkhia, meaning rule by a small group. The Indonesian National Dictionary[39] defines oligarchy as governance carried out by a few people in power from certain groups or factions.

Oligarchs control a massive concentration of wealth sources to maintain or accumulate that wealth, deploying it to acquire exclusive social positions. Oligarchic configuration is marked by a degradation of democracy that constructs itself through transactional politics among a handful of elites alone, pursuing 'commissions' or 'rent'. Its instrument is the cartel a malicious agreement that divides, categorises, and designs public space exclusively for the benefit of closed groups hostile to the public interest.

Actors in this configuration present themselves as if they were 'democratic' and 'free from corruption'. Behind media and cameras, however, they share territory, commissions, and stolen proceeds while covering each other's transgressions within the cartel network. Consequently, the people as holders of sovereignty function merely as spectators, not as active subjects determining the direction of policy.

d. Indonesia within the Democratic Configuration: Achievements and Challenges

Indonesia today is a state that formally adheres to a democratic political configuration. Ibad[40] asserts in his study on constitutional legal politics that a culture of democracy has been deeply rooted in Indonesian society since independence, and this system continues to be strengthened through a series of post-1998 institutional reforms.

The democratic system has tangible positive impacts: it provides hope for creating freedom, justice, and prosperity for all layers of society. However, democracy is also not free from negative implications, such as the potential for increased unemployment due to policy polarisation, bureaucratic gridlock, and, most threateningly, corruption that permeates through the gaps of a transactional electoral democracy.[41]

In this context, Dahl[42] cautions that pluralist democracy faces a dilemma between autonomy and control: granting full autonomy to various groups risks generating fragmentation and anarchy, yet excessive control threatens to extinguish the pluralism that is its very soul. The dynamic balance between these two poles constitutes democracy's perpetual task in Indonesia.

Furthermore, Supandri and Tabara[43] through a systematic literature review on the implications of simultaneous elections affirm that the efficiency of electoral democracy must be accompanied by

[39]Departemen Pendidikan Nasional, Kamus Besar Bahasa Indonesia (Jakarta: Balai Pustaka, 2002).

[40]Ibad, 'Politik Hukum Tata Negara', p. 615.

[41]Supandri I. & Tabara, 'Implikasi Sistem Pemilihan Umum Serentak di Indonesia: Sebuah Tinjauan Literature Review', Jurnal Ilmiah (2023), p. 99.

[42]Robert A. Dahl, Dilema Demokrasi Plural: Antara Otonomi dan Kontrol (Jakarta: Rajawali Press, 1985), pp. 8–9.

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strengthened quality of participation and civic political education. Without adequate political education, procedural democracy is vulnerable to exploitation by oligarchic forces for maintaining dominance through seemingly legitimate electoral mechanisms.

D. Conclusion

Based on the discussion and analysis presented, this study yields two primary conclusions. First, the historical development of political configuration in Indonesia consistently demonstrates a significant correlation between the type of political configuration and the character of legal products and legislation generated. This trajectory can be mapped across four fundamentally distinct periods. The liberal period (1945–1959), with its democratic configuration and parliamentary system, produced legal products that relatively accommodated pluralism and civil liberties. The guided democracy period (1959–1966), which was authoritarian in character under Soekarno's dominance, produced legal products that suppressed participation and centralised power. The New Order period (1966–1998), with its authoritarian-totalitarian configuration, produced legal products that functioned as instruments of social control and regime power preservation. Meanwhile, the reform era (1998–present) marks the return of a democratic configuration that has progressively generated legal products more responsive to the interests of the people.

Second, theoretically there are three typologies of political configuration relevant to analysing the Indonesian legal system democratic, authoritarian, and oligarchic-cartel. Indonesia currently adheres to a democratic configuration that provides broad space for popular participation in determining policy. Nevertheless, this system is not free from threats. The potential for corruption, the strengthening tendency toward oligarchic-cartel patterns in electoral practice, and the still-weak legal culture among state administrators represent real challenges that can degrade the quality of democracy from substantive to merely procedural. Therefore, the commitment of all elements of the nation to maintain and deepen democracy substantively is an imperative that cannot be bargained away.

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