

Legal Reform, Where Are You Going?

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Translator's Introduction

James Llewellyn

The struggle for legal reform in Indonesia is redefining what it means to be governed by the rule of law in one of the world's largest democracies. Following the resignation of President Suharto (r. 1965-1998) and the collapse of the New Order regime, Indonesia embraced the democratic reforms of the Reformasi movement which included expanding the number of political parties, increasing freedom of speech, and introducing new political institutions to ensure government accountability.¹

Since the legislative reforms of the early 2000s, however, Indonesian democracy has taken what Dr. Rachael Diprose from the University of Melbourne describes as an "illiberal turn."² This turn away from democratic norms is evident in numerous Indonesian news reports. In 2020, Indonesia's premier telecommunications law UU ITE received widespread criticism for being used to arrest environmental activists, women's rights proponents, and government critics.³

¹ Tim Lindsey, "20 Years After Soeharto: Is Indonesia's 'Era Reformasi' Over?," *Pursuit*, University of Melbourne, May 20, 2018, <https://pursuit.unimelb.edu.au/articles/20-years-after-soeharto-is-indonesia-s-era-reformasi-over>.

² Rachael Diprose, Dave McRae, and Vedi R. Hadiz, "Two Decades of Reformasi in Indonesia: Its Illiberal Turn," *Journal of Contemporary Asia*, July 25, 2019, 1–22, <https://doi.org/10.1080/00472336.2019.163792>.

³ See CNN Indonesia, "UU Lindungi Aktivistis Lingkungan, Kasus Marco Diminta Disetop," September 2, 2021, <https://www.cnnindonesia.com/nasional/20210209200216-20-604417/uu-lindungi-aktivis-lingkungan-kasus-marco-diminta-disetop>; and Budiarti Utami Putri and Syailendra Persada, "Tak Ada Pihak Independen di Tim UU ITE, Koalisi: Hasilnya Pasti Berat Sebelah," *TEMPO.CO*, February 24, 2021, <https://nasional.tempo.co/read/1435782/tak-ada-pihak-independen>.

This worrying trend threatens Indonesia's progress toward a liberal society. President Suharto's leadership is now widely associated with the acronym KKN – Korupsi, Kolisu, Nepotisme. Corrupt, collusive, and nepotistic behavior was commonplace under the New Order regime and Reformasi Indonesia strived to root out these unjust practices. The main tool for stamping out this behavior was Komisi Pemberantasan Korupsi (KPK), or the Corruption Eradication Commission, founded in 2003.

Despite its status as a preeminent institution of the Reformasi era, the Corruption Eradication Commission and its mission to maintain public accountability are being undermined by the politically powerful in Indonesia. The proposed revisions to the Corruption Eradication Commission Act passed in 2019 created a Supervisory Board which limits the Commission's ability to achieve its goals.

Similar attempts have been made to weaken the reforms designed to protect against governmental abuses of power. In 2019, Indonesia's parliament attempted to reform the country's Constitutional Court even though such reforms were not included in the proposed legislative agenda.

There were also calls to reintroduce Garis-garis Besar Haluan Negara (GBHN), or the Outlines of the State Direction, a New Order-era system for formulating five-year national development plans. If this effort to reform Indonesia's democratic institutions succeeds, it will dismantle the system of checks and balances that has allowed Indonesia to reduce corruption, collusion, and nepotism.

The author of this essay, Eryanto Nugroho, recognizes a gejala arus balik, or a sign of regression/ backsliding, in the Indo-

nesian legal reform effort. As the Chairman of the Indonesian Center for Law and Policy Studies, Eryanto has underscored that the legal reform effort owes its success to the tireless work of legal reform activists throughout Indonesia.⁴ Eryanto is uniquely qualified to analyze the issue of legal reform in Indonesia given that his foundation recently established the Indonesia Jentera School of Law in Jakarta to produce the future law reformers of Indonesia.

In his essay titled “Legal Reform, Where Are You Going?”, originally published in Bahasa Indonesia via Hukumonline.com in 2020, the author explains how the ongoing erosion of Reformasi-era institutions has placed Indonesia at a crossroads. The public ought to see the accomplishments of Reformasi as milestones to determine whether the country is truly moving in the right direction. Indonesia needs a new imagination, a new sense of bravery, and a new willingness to take risks in order to preserve the progress it achieved after the collapse of the New Order regime.

⁴ The Indonesian Center for Law and Policy Studies, Pusat Studi Hukum & Kebijakan Indonesia (PSHK), was founded in 1998. PSHK’s work includes monitoring public legislative meetings, evaluating draft legislation, and proposing reforms for Indonesia’s court system.

Legal Reform, Where Are You Going?⁵

Eryanto Nugroho

The question “Where are you going?” is included in the title of this essay in a futile effort by the author to avoid the title “Quo vadis?”. Who knows how many essays and seminars have used the question “quo vadis?” as their title. The question “quo vadis?”, which can be translated as “where are you going?”, has already become a cliché used across the ages and across subject matter. Despite the fact that it is a cliché, the question quo vadis needs to be used when discussing the legal reform effort. After twenty-two years of Reformasi in Indonesia, there are many problems to reforming the law that are still left unresolved.

The fall of the New Order regime was marked by an announcement that President Suharto made on Thursday, May 21, 1998. Suharto’s resignation was welcomed with joy by the Indonesian people. However, everyone became immediately aware that Suharto’s stepping down from the seat of power which he had occupied for the past thirty-two years was not the end of the struggle against the New Order. The footprint of KKN practices (i.e., Corruption, Collusion, and Nepotism), as well as arbitrariness, remain sizable in the way that this country is managed.

Even after Reformasi in 1998, there remains a lot of remedial work that must be done, including in terms of legal reform. The New Order passed down a system that is a far cry from fulfilling any sense of justice. The New Order caused our ju-

⁵ Originally published in Indonesian as, “Reformasi Hukum, Mau Ke Mana?” Hukumonline.com, 8 June 2020, <https://www.hukumonline.com/berita/baca/lt5edd9bab2c496/reformasi-hukum-mau-ke-mana/>.

diciary to face serious challenges to its independence, law enforcement could be directed by those in authority without public accountability, and human rights violations were allowed to occur at any point in time.

While it could be considered a “failure” that former President Suharto was never tried, Indonesia’s initial achievements in implementing early rounds of reform were actually quite good. Amendments to the Constitution in 1999, 2000, 2001, and 2002 passed several reform milestones, among them: presidential term limits; direct election of the president by the people; inclusion of several passages relating to human rights; etc. Reformasi also gave rise to various new institutions: the Constitutional Court which aspires to become the “guardian of the constitution”; the Judicial Commission for ensuring the integrity of judges; the Regional Representative Council; and others.

Yet the primary symbol of resistance to KKN practices that were perpetuated by the New Order regime is none other than the creation of the Corruption Eradication Commission (KPK). The term “Corruption, Collusion, and Nepotism” continues to be identified with the New Order regime. Thus, the birth of KPK can be seen as the antithesis of KKN by providing answers to, and resistance against, the residual capriciousness from the New Order. KPK is an achievement of reform that has also become a spearhead in the effort to ensure that corrupt behavior may be eradicated in this country.

A Sign of Regression?

History often repeats, social change may go up and down, and the condition of society can very well go back to the point where it was before it experienced change. The same thing can occur in legal reform. It is important for the public to recognize the milestone for that change: are we still on track, are we at a crossroads, or have we already turned back?

Based on a reading that is the most moderate and the most clichéd, legal reform in Indonesia today is at a crossroads. Reading the situation as being at a “crossroads” is not only clichéd, but it is also unhelpful for a society in the process of determining a strategy to move forward.

For legal reform in Indonesia, there has never been a crossroads with a clear decision to go left or go right. From the very beginning, legal reform in Indonesia has been at a difficult crossroads. The image of a desert is perhaps a more apt visualization for describing the landscape of legal reform rather than a road, which has quaint lanes and obvious points at which to make turns.

It is for that reason that we need to have milestones for measuring the progress of legal reform in Indonesia. KPK is one such important milestone and an achievement of Reformasi. As an important milestone, it is entirely reasonable while reflecting upon the past twenty-two years of legal reform to use the condition of the KPK as a barometer to measure whether the current effort to renegotiate the reforms established after Reformasi ought to be treated as a sign of regression.

The artful, yet error-laden language in revisions to the Corruption Eradication Commission Act, the nomination and election of controversial KPK commissioners, the imposition of a KPK Supervisory Board, and President Jokowi’s apparent willingness to turn a blind eye to the effort to weaken KPK, all constitute signs of regression.

These signs of regression are certainly worrying to us all. It is not impossible that what has happened to KPK could also happen to the accomplishments of Reformasi. Last May, there was talk about the DPR’s plan to revise the Constitutional Court Act. This plan was not listed among the National Legislative Program’s priorities for 2020. The revisions were rejected as the proposal came under harsh criticism from ac-

ademics and civil society organizations.

We also recall the conversations that took place last year about reviving GBHN through amendments to UUD [Undang-Undang Dasar] 1945. These are all further signs that there is indeed an effort underway to undo the changes that have been made, to go back to the way it was before. The space for civil liberties also feels increasingly narrow. A string of arrests along with the criminalization of activists, hacking communication devices, limiting discourse, etc., continue to occur. This trend has been described in several reports, such as the report from the Indonesian Legal Aid Foundation (YL-BHI) which recorded no less than seventy-eight cases where freedom of opinion was violated in 2019, or data from the Alliance of Independent Journalists (AJI) which shows that there was a total of seven hundred and seventy-four cases of violence against journalists between 2006 and 2020. The Freedom House report in 2019 designated Indonesia as being only “Partly Free”.

In addition to facing curtailed freedoms, we are also forced to contend with problematic legislative questions which have emerged. The controversy last year surrounding the KUHP Omnibus Law is still fresh in our memories as much as the recent passage of the Minerba Omnibus Law which was ultimately rejected. In 2020, there are a series of thorny omnibus laws waiting just around the corner.

The description of the various problems above is not intended to reduce our appreciation for the ongoing legal reform effort. Despite these shortcomings, there are numerous legal reform achievements that remain intact, for example the improvement efforts in the field of judicial reform, the legal profession, business law, access to justice, and similar fields. However, those improvements seem to merely forestall the backslide that continues to undermine the accomplishments of reform. It feels like tree farming with illegal loggers: when

we manage to close one hole, the loggers dig a large hole somewhere else.

Leadership and Exemplariness

Legal reform needs law reformers. All this time, the legal reform effort in Indonesia has moved forward because of law reformers and leaders that exist throughout the country. But legal reform needs reformers who are also government leaders, so that they can bring about an immediate change in policy.

There is a practice in several countries where the law minister plays the role of reformer, or there is a law reform agency that is created to advance domestic legal reform. The dynamic that exists between legal reform and government is in clear need of improvement when it comes to Indonesia.

What is needed in Indonesia is more than just an implementing agency as stated in the development planning document, but rather a stalwart proponent of legal reform who wishes to cooperate with advocates for legal change outside of the government, understands the intricacies of legal reform, is committed to the type of change that was agreed upon, leads by example, and can effectively translate the legal reform agenda into actionable government policy.

But legal reform must carry on and it cannot wait for the ideal solution to present itself. The good news is that the backslide which continues to undermine our hard-won reforms is not irreversible. For instance, the news about the arrest of former MA Secretary Nurhadi by the KPK, or the success of the PTUN lawsuit against blocking internet access in Papua and West Papua both clearly show that there are still many drivers of legal change throughout Indonesia and the struggle

for legal reform continues to happen on many fronts.⁶

The public must question the direction of legal reform in Indonesia. By continuing to ask questions, we will not only come upon an answer at some point, but we may also discover a new imagination for change. Professor Daniel S. Lev stated that there was a need for imagination and new ideas as well as bravery to take risks in reforming the law.⁷ This imperative has become a challenge for us in the pursuit of that new imagination. Because of that, let us continue to ask: Indonesian legal reform, Quo Vadis?

⁶ On June 1, 2020, the KPK announced it had arrested former Secretary of the Supreme Court Nurhadi, who had avoided arrest for four months. Nurhadi is accused of accepting bribes totaling 46 billion rupiah (\$3.2 million) in exchange for fast tracking certain civil cases and land disputes to the Supreme Court. The Jakarta State Administrative Court, Pengadilan Tata Usaha Negara Jakarta (PTUN) ruled that a communications blackout imposed by the Indonesian government in Papua and West Papua during anti-racism protests between August and September, 2019 was illegal.--*trans.*

⁷ Administrator, "Daniel Sol Lev: Mahkamah Agung Sudah Jadi Pabrik Keputusan," *Tempo*, June 5, 2000, <https://majalah.tempo.co/read/wawancara/113929/daniel-sol-lev-mahkamah-agung-sudah-jadi-pabrik-keputusan.--trans>.

About the Author and Translator

Eryanto Nugroho is the Chairperson of the Indonesian Foundation for Law and Policy Studies (YSHK), which houses the reputable legal think tank: the Center for Law and Policy Studies (PSHK, www.pshk.or.id), and the law school of law reformers: Jentera Law School (STH Indonesia Jentera, www.jentera.ac.id). He is an Advisor of Hukumonline.com, a leading organization providing legal information in Indonesia (www.hukumonline.com). Eryanto graduated from Faculty of Law, University of Indonesia. He holds a master's degree in law from Erasmus School of Law, Rotterdam. In 2016, Eryanto was invited to be a Visiting Scholar at Columbia Law School, New York.

James Llewellyn is a graduate student pursuing a Master's degree in Southeast Asian Studies at the University of Wisconsin - Madison. He developed an academic interest in Southeast Asia by studying as a high school exchange student in Malaysia through the Kennedy-Lugar Youth Exchange and Study (YES) Abroad Program (2012-2013), serving as a Fulbright English Teaching Assistant to Malaysia (2020), and receiving a Boren Award to strengthen his proficiency in Bahasa Indonesia (2021). James received a Bachelor's degree in Politics and International Affairs with specializations in Middle East and South Asia Studies, and Arabic from Wake Forest University in 2018.