



BOOK REVIEW

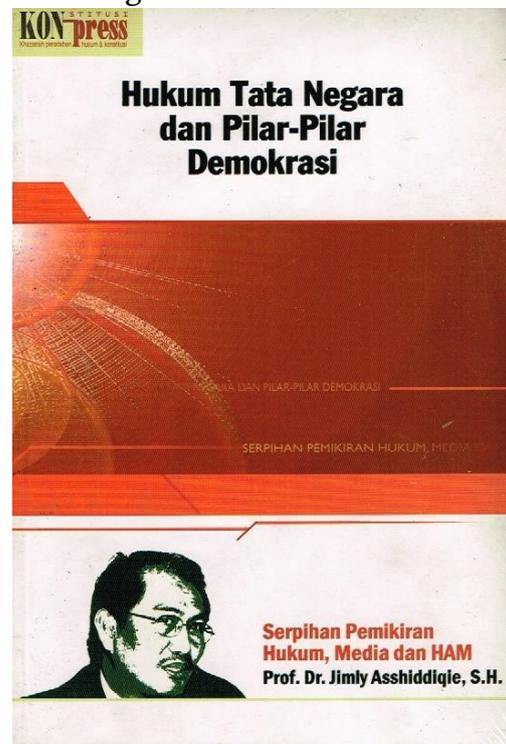
Indonesian's Pillars Democracy: How This Country Survives

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INTRODUCTION

BOOK written by Jimly Ashiddiqie—one of the legal scholar which concern in constitutional law— “*Hukum Tata Negara dan Pilar-Pilar Demokrasi*”, Constitutional Law and Pillars Democracy, become one of the important books concerning to constitutional law as well as the whole perspective how Indonesia reformulate this type of country. The book actually quite same but it is little bit different with another books. Jimly, through his book tried to examine how Indonesia establish their rules and regulation post Local Autonomy era. Starting with the establishment of law and law making-process and ending with conflict in the context of freedom of expression in people democracy, this book expressed the comprehensive perspective about democracy and it process in the framework of legal perspective.



LAW MAKING PROCESS AND GENDER OF INDONESIAN PARLIAMENTARY SYSTEM

THE Book Constitutional Law and Pillars of Democracy written by Jimly Asshiddiqie in Chapter I provided some ideas of Jimly concerning to the Constitutional Law and Local Autonomy. First important thing that discussed by Jimly namely the establishment of law and its making process. Jimly limits the chapter with the limitation of legal definition into four groups: (1) *The State's Law*; (2) *The People's Law*; (3) *The Professor's Law*; and (4) *The Professional's Law*.

The State's Law group composed of three institutions such as government, parliament and the courts. Group of the People's Law there are various institutions including indigenous institutions, legal institutions and in practice, as well as legal research institutions and universities. Then related to the process of law in accordance with the Constitution of 1945, there are five processes including (1) establishment of the laws; (2) establishment of legal jurisprudence; (3) the formation of customary law; (4) establishment of 'volunteer' law; and (5) establishment of legal studies doctrine.

Secondly, Jimly discussed in his book, about parliamentary structure as well as bicameral system. Jimly declared that at the previous time, Indonesia adopted *monokameral* on parliamentary system. *Majelis Permusyawaratan Rakyat* or MPR at the time become the highest organ or institution that has unlimited powers, so that the Assembly can form the Constitution and the State Policy as well as oversees the Parliament and the President. Indonesia officially adopted parliamentary structures bicameral or two-chamber system after Indonesia became a union under the Constitution of RIS on 1949. Amendment of Constitution 1945 has brought a fundamental change that is by the alternation of power distribution by separation of power. Amendment of Constitution 1945 has also given the widest local autonomy to the Regional. Amendment of Constitution 1945 initiated the election of president and vice president directly as well as the establishment of the *Dewan Perwakilan Daerah* or DPD.

After their amendment of Constitution 1945 parliamentary system in Indonesia according to Jimly Asshiddiqie consists of two rooms or *bicameral* that is DPR and DPD. The MPR into the parliament house that is the same position with the DPR and DPD. So later if there is a third amendment to the Constitution 1945 Jimly Asshiddiqie suggested that the legislative powers of the Assembly carried be composed of DPR and DPD. Asshiddiqie also suggested that DPD members are elected directly by the pure district system is winner takes all. The legislature is elected using proportional system are also useful for strengthening the institutional political parties. For areas not using bicameral except certain areas that are set to be the special autonomous regions.

Related to the controlling functions of DPR and DPD, generally consist of legislating, controlling, and budgeting functions. Therefore, DPR and DPD should have a same and equal whether in functions, rights, or duties, but for the appointment of public officials, only DPR could execute it. Also with asking for accountability and responsibility from the government (*impeachment*) should be made by the Parliament, while the Council will determine the verdict on MPR. Then specialized to ensure the protection of rights and social wealth of the imposition by the state, whose main task handed over to DPD. As for the legislative function, DPR and DPD can make laws as well as the President to submit a bill. To create the checks and balances between the DPR, DPD and the President must mutually agree that laws can be made and not disputed who has the task of legislation.

The third section of Chapter I discusses the shifts in legislative and executive powers. The shift of power from one government to the parliament because of the aspirations of the people who want to liberate themselves from the yoke of feudal kings and aristocrats. The shift from the parliament to the government many countries in the world such as Turkey, England, Italy, and Indonesia in its constitution authorizes the government or the executive to join together to make laws or legislative parliament. Actually, the parliament has the authority to change the bill that is mostly made by the government, to develop wisdom openly debate and control of government and state spending. So that the roots of government dominance over parliament caused by various phenomena. The phenomenon causes a shift of power from parliament to the government during the 20th century include (1) the phenomenon of the welfare state; (2) the phenomenon of conflicts and wars between countries; (3) the development of the party system and the number of political parties; (4) the complexity of the development of the tasks of government. Forward tendency towards and in the 21st century, liberalism and individualism leads to new, along with the demands of increased autonomy, besides it also develops people's empower and civil society. Political parties will also affect the role of parliament as a result of the political process at the community level.

Furthermore, the executive-legislative power shift in Indonesia can be seen from the dynamics that have occurred. Shifting dynamics of the parliament to the government and then shifted again from the government to parliament has been going on for 50 years since independence. The shift from the parliament to the government can be seen during the administration of President Soekarno which during that time the role and the powers of government to grow larger and stronger over time. The process of power shift that goes from the new government to parliament actually occurs in the transition to the era of reform.

The fourth section of Chapter I discussed the critical analysis regarding first and second amendment of the Constitution of 1945. Jimly Asshiddiqie discuss about Civility and the Constitution, to need amendment the Constitution 1945. Amendment of the Constitution of 1945 today, and

proposed solution. Civility and the Constitution discussed the principles of citizenship and nationality as well as the constitution and civil religion. Amendment of the Constitution discussed the amendment system: (1) amendment made in accordance with the procedure set out by the Constitution it or do not based on the provisions of the Constitution; (2) amendment can be made through the update script, replacing the old texts with new manuscript, and through additional scripts. Besides the amendment, this part also described about the procedure and mechanism of amendment, legal form amendment and substance of the amendment.

This section also discusses the necessity of the Constitution of 1945 to be amended. The Constitution of 1945 which was passed on August 18, 1945 according to the Constitution, Soekarno lightning or as the Constitution temporary. Therefore, in the journey of the Constitution of 1945 have not been applied consistently pure and rulers. So a lot of abuse and interpretation interpreted freely by the ruler is in power at the time. For the Constitution of 1945 needs to be changed in order to overcome the transience of the Constitution of 1945. The material needs to be changed as institutional structure, the concept of rule of law, and accountability of the president.

Changes related to 1945 TODAY bore some formal criticism (criticism procedural) of the 1945 changes are related to engineering changes through script changes and problems explanations of the 1945 Constitution Mechanical changes through script changes the Constitution means that good always determine their own procedures change for him. Related explanation after Amendment the Constitution of 1945 ratified explanation need not be included anymore. But if it did not include details status 1945 then changes into a new constitution not change the Constitution of 1945. The criticism related material (criticism substance) which consists of the main ideas of the Constitution, discussion and ratification of the Bill, the involvement of Parliament in the acceptance of foreign Ambassadors, the determination of state borders, formulation of human rights, local governance and the elimination of de-concentration, testing materials law and completion disputed state administration, the form and the hierarchy of legislation (outlined in TAP MPR), executive agency which is independent (outlined in TAP MPR), systematics Constitution, and so forth. Therefore the proposed solutions in the form of (1) the middle way already cope with the preparation of the script of the Constitution; (2) systematic content of the Constitution; (3) designing procedures and discussion; (4) public participation and the legitimacy of the Constitution; and (5) new systematics.

Chapter I of the fifth section discusses related presidentialism versus parliamenterism. There are four models of government systems in the world today is the British model with a parliamentary system, the American model of union with a presidential system, the French model with a mixed or hybrid system, and the Swiss model is commonly called the collegial system. Indonesia in journey have conducted experiments in the history of the application of the system of government. Less than three months after the

1945 enacted on August 18, 1945 Indonesia officially established a parliamentary cabinet. Parliamentary system of government practiced from 1945 to 1959. From 1959 to 1965, Indonesia adopted a mixed system based on the Constitution of 1945 go to New Order then can the Constitution be applied purely and consistently makes the power that last up to 32 years which led to the reform. This means that the parliamentary system has failed and the mixture is applied in Indonesia. Indonesia needs to implement a pure presidential system.

But Indonesia is less suited to use with a multi-party presidential system. It is therefore necessary arrangements so that the party can be narrowed down by itself without any restrictions and limitations. Likewise with presidentialism with a two-party system there is a weakness in their tendency to dual legitimacy or a government divided between the president and Parliament. To cover up the shortcomings of the presidential system, it is recommended (1) the presidential elections conducted in two stages; (2) Political parties possible cooperation in nominating the president and vice president before the election campaigns; (3) The President and Vice President who determines the cabinet personnel; (4) The President may at impeachment for any violation of the law (criminal) relating to individual responsibility; and (5) government responsibility is individual.

The sixth section discusses the authority of ministers to regulate. Asshiddiqie suggested that should immediately prepare a specific law concerning to the types of laws and regulation legislations. In it must be provided provisions on the form of regulation as central regulation on the lowest level. Recently the seventh section discusses the political and constitutional economics in the study of Constitutional Law. Constitutional law has an important role in structuring social life and on the basis of the system referred to under the constitution. Liberal democratic system states that every human being is responsible for and to himself. This is in line with the modern constitution that affect the constitution in western countries.

Various constitutional text in western countries the social and economic arrangement are not included in the constitution because it is not a state activity. But in the countries of Eastern Europe to include social and economic order explicitly stated in the constitution. The worldview of the countries of Eastern Europe and socialist countries which include economic aspects as a reaction to Western Europe who think that sovereignty is only political. Actually, the concept of sovereignty includes political and economic dimensions. Relations with the sovereignty of the people which must be mastered by the people not only political aspects of the life of the state, but also of economic resources. Understanding that has led to the conception of economic and political democracy today. Therefore, within the scope of the study Constitutional Law, then not only discuss the basics of the political arrangements of the institutions of the country, but also social and economic structuring idealized in a community covered by the study material that Modern Constitutional Law.

MEDIA AND THE STATE: HOW MEDIA AFFECTED THE INDONESIAN'S PILLARS DEMOCRACY

CHAPTER II discussed about the future of legal thought in media and information technology era. The first part of Chapter II discusses the development of information technology and its implications for law and government. The development of information technology and often responded slowly by poor countries and developing country. Unless the country's leaders have committed to respond quickly. Even rich countries because of the commitment the leader is not there then the response to the developments in technology and information is also sluggish. The development of technology and information also have interaction with the world of law. Including those relating to the administration of justice. Relation to the administration of the law there are three types of legal decisions that got the attention that arrangement, the determination of the administration, and the judge's decision. In the future there will be symptoms of hyper-regulation and the need for e-law. Therefore, it needs infrastructure and substructure arrangement of legal information.

The second section discusses the future of the law in the era of information technology: the need for a computerized information system of state administration and government. The longer a legal product into hyper regulation so that people become hyper regulation. Then it is expected to handle information technology hyper regulation symptoms. Countries should be able to take advantage of information technology to manage the symptoms hyper regulation namely through national and governmental institutions such as the Board of Representatives, the President and the Governing Council, Justice Agencies, and other institutions. In the future there will be a paradigm shift in the law. The world is complex and complicated law would face a fundamental change as one of the information needed by the community.

The third section discusses the need for the regulation and control of dynamic development of telematics. So far, legislation regulating the telematics still limited when compared to the telematics very broad limits. For that adjustments should be related to telematics and also in the form of an official body that handles telematics. When compared with some countries like Jordan that has the Telecommunications Regulatory Commission (TRC), South Africa which has SATRA institutions, and Canada linking such institutions with parliament. Furthermore, regarding authority organize and responsibility for implementation, with the actual separation of the executive and legislative powers can actually be used as a basic consideration that the existence of independent institutions in the field of telecommunications which is also intended to regulate not associated with the government, but the House of Representatives. We recommend a lot of commissions and independent institution fostering moved from the realm of government into the realm of parliament.

HUMAN RIGHTS IN UEFORIA OF DEMOCRACY

CHAPTER III *Constitutional Law and Pillars of Democracy* book written by Asshiddiqie entitled *flake thinking about the individual, human rights and citizenship*. The first part of Chapter III discusses the conceptual and procedural dimensions of today's promotion of human rights (human rights progress towards understanding the fourth generation). This section discusses the human rights in the information age, historical determinism and cultural elements, and four generations of development of human rights. Related to human rights in today's information age, the need to be set so that information is considered as the heritage of humanity that is free and is the right of every nation and everyone's right to know is not controlled by a handful of people. Human rights dimension of the future will be developed rapidly along with the development of information technology. Information lately been a source of strength. So whoever controls the information then he will have the power. The President has the supreme authority in the kind of information the government's policy. President many master the information needed to support the system of power in the life of the state with a presidential system. If the government take action that people harm connection with infringement of the same information then it is in violation of human rights in the conventional sense.

Elements of historical and cultural determinism discuss problems related to the implementation of human rights in the field. In Indonesia the concept of human rights is acceptable but implementation on the ground is different from practice practices that have been implemented in countries that have advanced human rights protection. The problem relates to the dimensions of the historical and cultural deterministic or determine the pattern comprehension and implementation of human rights principles everywhere. Then associated fourth generation of human rights developments. The first generation is thinking about the conception of human rights that has long progress in the discourse of scientists since the era enlightenment rose to international legal documents official. The second generation, embrace the concept of human rights that guarantee to pursue the fulfilment of economic, social, and cultural, including the right to education, the right to determine their political status, the right to enjoy variety of scientific discoveries, and so forth. The third generation, led to a new conception of human rights that include an understanding of the right to development. The fourth generation declared that human rights issues not quite simply understood in the context of power relationships vertically, but also horizontally, between communities, between people or community groups, and even between one groups of people in a country with a group of people in other countries.

The second part of Chapter III discusses the citizens and citizenship of the Republic of Indonesia. This section consists of two topics, namely the nationality of the “Chinese” descent and reform citizenship laws. Regarding the nationality of Chinese descent, Chinese descent settle down for generations in Indonesia since the reform era has managed to fight for is no longer referred to as the Chinese people, but called the Chinese people. Peak Presidential Instruction No. 26 on the Cessation of Use Terms Natives and Non-Natives who makes the legal status and the status of Chinese descent sociological groups in Indonesian society is not undisputed. Asshiddiqie suggest reforms its treatment of the descendants of “China” and other descendants of citizens do not have to be realized in the form of replacement of such terms. More important for the development is the adoption of a legal system that is non-discriminatory based on the principles of human rights, accompanied by law enforcement strict and indiscriminate and supported by the sincerity of all parties to seriously bring together the distance or the gap of social, economic and political wide open during this time. Even if possible, descent citizens no longer need to call itself by its own ethnicity.

The following discussion on the reform of citizenship laws where appropriate discriminatory provisions are appropriately completed. The original concept of national citizenship laws and concepts about how to obtain citizenship status which includes also the registration mechanism can be considered essential. Then the basic assumptions that are discriminatory based on taste and entities completely omitted in the formulation of the law in the future in accordance with spirit promote human rights in today's era of reform.

Chapter IV, entitled flake democratic thought and reconciliation towards a new Indonesia. The first section of this chapter discusses democracy and nomocracy: a prerequisite to the new Indonesia in which to realize the ideals of Indonesia in the future build can there are three things that need to be discussed, namely democracy, nomocracy, and the new Indonesia. The second part discusses about national reconciliation. The idea of national reconciliation is the way the Indonesian nation to solve national problems. The establishment of a national truth and reconciliation commission as an extra-judicial body with the task of upholding the truth by revealing abuses of power and human rights violations in the past in accordance with the provisions of the laws and regulations in force, and implement reconciliation in the perspective of the mutual interest of the nation. The second part also discussed reconciliation, national integration and social integration. Implementation of the national reconciliation agenda, needs to be implemented various measures, whether national, provincial, and district level to the village level. Social integration and national reconciliation agenda can be developed starting both central and regional level with the approach of the legal and socio-legal.

The following discussion on the second part of Section IV discusses the conflicts and freedom in a pluralistic society. To manage the conflicts that

exist in Indonesian society is required at least four elements in conflict-prone environments namely (1) normative reference; (2) the agent of mediation and resolution; (3) social support; and support from government facilities.

DATA of BOOK

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**ACCIPERE QUID UT
JUSTITIAM FOCIAS NON
EST TEAM ACCIPERE
QUAM EXIORQUERE**

To accept anything as a reward for
doing justice is rather estorting
than accepting