

# "THE RULE OF LAW" IN INDONESIA IN POST-REFORMATION

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**By Prof. Dr. Jimly Asshiddiqie, SH., Chairman of the Advisory Board of the National Commission of Human Rights and Chairman of the Honorary Council of Election Management Bodies**

Welcome to the "World Justice Project" (WJP) in Indonesia. Welcome to all participants, from government officials and state institutions, businessmen, and civic or civil society organizations (CSOs) from domestic and overseas who have gathered in this important forum in the framework of global and multi-disciplinary efforts to strengthen the principles of rule of law that are free, prosperous, and in justice. WJP provides information for government and society to give their own assessment regarding improvement efforts that can and must be taken, to convince the policy makers from various sector to manage practical programs in order to strengthen social adherence to the 'rule of law'.

## **5 PILLARS OF THE RULE OF LAW**

Now, 15 years after reformation, Indonesia's nation also has recorded many changes and improvements which caused the "rule of law" performance in Indonesia continues to get better and develops rapidly, although here and there there are so many homework / notes that must be improved from time to time. Through this forum, Indonesia can also share experience with other countries in order to take lessons both from their success stories as well as their failures so that hopefully they will not happen in other area. From Indonesia's post-reformation experience, we can record a number of aspects closely related to the performance of the rule of law in Indonesia and in wherever such a rule of law will be put into practice, such as:

1. The presence of democracy system that successfully builds a climate guaranteeing the freedom and openness in every aspect of life of the society, the nation and the state;
2. The increase of social justice structurally which is indicated by the shrinking of gap in the structure of socio-politics, economy, and culture in society.
3. The development of 'good governance' practice in the state power management, in business environment and in practices of civic society organization reflects the development of social ethics in society.
4. The growth and the development of social ethics system supported by the institutionalization of ethics structure in the framework of 'rule of ethics' system in public space and in the environment of public official positions growing as the social basis for enforcement and proper function of the 'rule of law' system in life of the society, the nation and the state;
5. The increase of institutional quality of institutions and professionalism of law enforcer apparatus, and professionals in legal field in accordance with universal quality standards.

The idea of rule of law can only grow and develop in a democratic society (democratic rule of law). On the contrary, democracy will not grow well unless it is based on constitution and followed by the enforcement of rule of law (constitutional democracy). Principles of the rule of law itself must be followed by the enforcement and the proper function of 'the rule of ethics' in parallel, so that the state power governance, business organizations governance and civic society organization governance in general can grow and develop in accordance with the modern principle, namely 'good governance'. In social life, ideally everyone is able to differentiate and to tell between personal and institutional business, personal and others' rights and obligations. Everyone can only claim his or her rights no more

than required, and fulfill his or her obligations no less than required. Such a condition must always be practiced by professional law enforcers; starting from investigators, prosecutors, lawyers and judges as well as other paralegals.

## **FREEDOM**

Have all 5 aspects been achieved in the practical reality in Indonesia now? The answer certainly is not yet satisfactory. Freedom from democracy still tends to be abused by the elites, in terms of politics and economy, and culture. Freedom created by democracy tends to be misused and enjoyed by ruling party to build their own political dynasty, or to control economic resources and to strengthen their own business kingdom. Many society members also abuse freedom, to express their hatred and the spirit of hostility among themselves. In the meanwhile, there is a constitutional guarantee that 'freedom of speech' cannot be abused in order to practice 'hate speech'. Similarly, there is a constitutional guarantee for principles of 'freedom of association' that it should not be abused in order to organize the spirit of hatred and hostility among the society members.

Even the 'freedom of the press' must also not be abused for the purpose of hostility and hatred like in Charles Hebdo case. Terrorism is a barbaric crime and must be fought against, but while fighting against and eradicating terrorism we must not provide justification for any publication attempt that is intentionally spread hostility, hatred and revenge, let alone making profits from a bloody event by printing and selling publications that has created misunderstanding and has even led to a barbaric terrorism. Such practices of abuse of freedom still happen a lot in Indonesia until now, whether relating to the practice of 'freedom of speech', 'freedom of association' and 'freedom of the press'.

## **GOOD MANAGEMENT**

The principles of rule of law could be well conducted if the powerful organizations and working organization are managed properly by applying 'good governance' as modern principle. If management principles grow and develop, then principles of rule of law will be developed too in a good way. Nowadays, the practices of 'rule of law' can not be separated from the 'good governance'. Both are completing each other. With 'good governance', every worker can be able to separate their personal matters and institution's matters where they work and do their own duties. So everyone would know the limitation of their own rights and responsibilities, then people will only take his rights not more than it is supposed to be, and giving the responsibilities not less than it is supposed to be. Practically on these days, such principle has not been grown and been developed orderly In Indonesia after reformation. The professional position in working place is seen to be a source of dignity which must to be enjoyed, not considered to be a source of believing neither valuable mandate which contains commitments needing to be fulfilled.

## **SOCIAL ETHIC FUNCTION AND ETHIC PROFESSIONAL INFRA-STRUCTURE**

For that, we need regulation to develop the ethic infra-structure public professional and professional ethics which are based on the social ethic which function well in controlling the ideal behavior of local communities. Then, to grow and improve 'rule of law', it is needed wide social basic about the ongoing social ethic in communities. if law is described as a boat, ethic is the ocean. The boat of law (the rule of ethics) are dry and useless. Earl Warren (Head of MA AS, 1953-1969), says , "In a civilized world, law floats in a sea of ethics". Now, social ethic and our nation morality is in a state called anomy, is a situation of the absence of norm. The attitude of a nation declines because the uncontrolled liberty. Houses of worship are crowded by human, but the act of the believers don't reflect the dignity of the dogma of their religion. How someone could hope the law would be fairly applied if the system of the social norm in civilization life doesn't function well in controlling quality and integrity of our behavior as citizen.

## **The Modernization of the Institutions / Organization and the Professionalism of Law Practitioners / Professions**

Forth, where should we start? The keyword of future improvement nevertheless is the modernization efforts for / of the law enforcement institutions and the professionalization of the law practitioners / profession act of conduct which supposed to be professionals especially on the law enforcement sectors according to the principal standards with universally characterized, therefore they able to be “The Role Model” in terms of leading the enforcement process and the improvement for the “Rule of Law” system.

Therefore, (i) the law enforcement institutions council and organization of the law enforcement officers, including the advocates, are in need of reformations base on the principal of “Good Governance” which will guarantee the integrity, effectiveness, and the efficiency of the work implementations; (ii) reformation effort for the criminal procedural law, civil law, and the state administrative is necessarily to be done according to the modern standards which is more assuring the integrity, effectiveness and the efficiency, transparency, independency and impartialities; and (iii) the ethical infrastructure system that related of the ethical code system and the enforcement of institutional council that being assigned need to be coherently arranged. Supposedly, the only constitutional body / institution that is being designed in the UUD 1945 (Indonesia Principal Law 1945) as the honorary enforcement institution base on the “Rule of Ethics” principal which is the Judicial Commission need to expand the function or the role, not just keeping the respect honor of the judges, but also the law enforcement professionals or even as cohesively for preserve and guarding the honor of all public stake holder and state organizers.

At the moment we are entering a new phase in terms of law and ethics development, there’s the ‘*rule of law*’ system which need to be develop widely, concomitant and in line with the ‘*rule of ethics*’ system arrangement. The ‘*Code of Law*’ system should be equipped with the ‘*Code of Ethics*’, meanwhile the ‘*Court of Law*’ and the ‘*Court of Justice*’ should be equipped with “Court of Ethics”. The definition of “Court of Ethics” here is already being introduced and implemented by the DK – KPU (The Honorary Board of Election Committee) since 2009, and the DKPP (The Honorary Board of Election Organizer) since 2012.

Now, inside the MD3 UUD (MPR, DPR & DPD) are also being introduced with the conceptions of thus ethical courts (court of ethics), by transforming the name of BKD (The Honorary Board of DPR) into “The DPR Court of Honor” (MKD) which describing that enforcement of DPR – RI code of ethics now days is being constructed as a justice process, which is the ethical justice / court of ethics.