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REALIZING THE RULE OF LAW AND DEMOCRACY IDEAL AND JUSTICE IN INDONESIA

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Abstract

The State of Indonesia is a state of law, so all government actions must be based on laws and regulations that are valid and written.Because law is for humans, all laws and regulations must be humane or democratic, when there are undemocratic regulations, there will be conflicts, so it is necessary to realize an ideal and just state of law and democracy, especially in Indonesia. To realize the ideal state of law by: (1) Law enforcement processes such as law culture, correction, and legal education, must be carried out optimally to the people indiscriminately, using print and electronic media; (2) Establishment of moral legal regulations: (3) Establishment and amendment of constitutions and laws and regulations in accordance with the wishes of the people as a whole. And to realize an ideal democratic state by: (1) Representative institutions need to be umbrellaed with an electoral system that is more in accordance with the character of the people's lives, namely continuing to use an open proportional system, in order to ensure an ideal and just democracy; (2) Election of political officials by direct election system; (3) The system of direct election of the President; (4) Eliminate reprehensible practices in elections, such as political money, using tools of power solely for those in office, and using other undignified reprehensible practices; (5) A system of recruitment of expert, clean, and professional cabinet officials by freeing them from the shackles of political transactions of compensation and support; (6) Structuring the party system, so that the party truly represents the will of its people; (7) Maintain political stability by providing free active movement to opposition parties with the government.

INTRODUCTION

The teaching of the state based on law (*de rechts staat* and the *rule of* law) contains the understanding that the law is *supreme* and the obligation for every state or government administrator to submit to the law (*subject to the law*). There is no power above *to the law*. On the basis of the above statement, there must be no *arbitrary power* or *misuse of power* in both royal and republican states. Meaningfully, being subject to the law contains the notion of limitation of power as well as the teaching of separation and division of powers. Therefore, the state based on law contains elements of separation or division of powers.[1]

Aristotle formulated the rule of law is a state that stands on laws that guarantee justice to its citizens. Justice is a condition for the achievement of happiness in life for citizens and as a justice it is necessary to teach morality to every human being so that he becomes a good citizen. The real rules, according to Aristotle, are rules that reflect justice for association between citizens, so according to him, those who govern the country are not humans but "just minds". The ruler is only the holder of law and balance.[2]

The State of Indonesia is one of the countries based on law, as stipulated in Article 1 Paragraph (3) of the 1945 Constitution, namely the Republic of Indonesia is a state of law. In a state of law, every aspect of governmental action both in the field of regulation and in the field of service must be based on laws and regulations or based on legality. This means that the government cannot carry out government actions without a basis of authority.[3]

In Indonesian literature it has been very popular with the use of the term "state of law", which is a direct translation of the term "*rechtsstaat*". Besides the term *rechtsstaat*, another term that is also very popular in Indonesia is the rule of law, which is also used to mean *the rule of law*. Muhammad Yamin uses the word state of law the same as rechtsstaat or government of law, clearly saying that: "The Republic of Indonesia is a state of law (rechtsstaat, government *of law*) where written justice applies, not a police state or a military state, where police and soldiers hold government and justice, nor a state of power (*machtsstaat*) where gun power and body power perform arbitrarily.[4] "The basic understanding of the rule of law, where power grows in law and everyone is equal before the law or state which places law as the basis of state power and the exercise of that power in all its forms is carried out under the rule of law.[5] The main principles of the rule of law are the principles of legality, free judiciary, and protection of human rights. That is, the actions of state administrators must be based on law, so the law must be above power.[6]

It is in this context that the 1945 Indonesian Constitution states that Indonesia is a state based on law and not based on power. The law actually makes power legitimate by showing the

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[1]Bagir Manan, *Presidential Institute*, Faculty of Law UII Press, Jakarta, 2003, p 11

[2]Aristotle, *Politik (La Politica)*, translated into English by Benjamin Jowett and translated into Indonesian by Syamsur Irawan Khairie, Second Printing, Visimedia, Jakarta, 2008, p 43

[3]Faisal A. Rani, The *Concept of the State* of Law, HTN Development Lecture Material, Postgraduate Program of the Faculty of Law, Syiah Kuala University, Banda Aceh, 2009, p 29

[4]Muhammad Yamin, *Proclamation and Constitution of the Republic of* Indonesia, Jakarta, Ghalia Indonesia, 1982, p. 72

[5]Mochtar Kusumaatmadja, *Strengthening the Ideal of Law and National Legal Principles in the Present and the Future*, Paper, Jakarta, 1995, pp. 1-2

[6]Yusril Ihza Mahendra, Dynamics of *Indonesian Statecraft***:** *A Compilation of Constitutional Issues, House of Representatives and Political Parties*, Gema Insani Press, Jakarta, 1996, p 90

mechanism of administration and the limits of an action. The judiciary must be free from government influence and human rights protection exercised.[7] The ideal of Indonesian law is Pancasila as contained in the preamble of the 1945 Indonesian Constitution. One of the most fundamental norms in the legal mind is the ideal of justice, meaning that the law created must be a law that is fair to all. Therefore,[8]the problem to be discussed in this article is how to create an ideal and just state of law and democracy in Indonesia.

DISCUSSION

Realizing an Ideal and Just State of Law

a. The Ideals of the State of Law and Democracy in the 1945 Indonesian Constitution

Indonesia was idealized and aspired by *the founding fathers* as a State of Law (*Rechtsstaat / The Rule of Law*). Article 1 paragraph (3) of the 1945 Indonesian Constitution affirms that "The State of Indonesia is a State of Law".[9] However, how the elaboration of the idea of the rule of law has never been formulated comprehensively. There is only the development of the legal field that is sectoral. Therefore, the law should be understood and developed as a unified system. Moreover, the state wants to be understood as a legal concept, namely as the State of Law. In law as a unified system there are:[10] (1) Institutional elements (*institutional elements*); (2) Elements of the method of rule (instrumental elements), and (3) Elements of behavior of legal subjects who bear the rights and obligations determined by the norm of the rule (*subjective and cultural elements*).

The three elements of the legal system include (a) law *making* activities, (b) law administration activities, and (c) judicial activities for violations of law (*law adjudicating*). Usually, the last activity is commonly also referred to as law enforcement activities in the narrow sense (*law enforcement*) which in the criminal field involves the role of the police, prosecutors, advocates, and judiciary or in the civil field involves the role of advocates (lawyers) and the judiciary. In addition, there are also other activities that are often forgotten by people, namely: (d) correctional and legal education (law *socialization and law education*) in the broadest sense which is also related to (e) legal *information management* as a supporting activity. The five activities are usually divided into three areas of state power functions, namely (i) legislative and regulatory functions, (ii) executive and administrative functions, and (iii) judicial or judicial functions.[11] The legislative organ is the parliamentary institution, the executive organ is the government bureaucracy, while the judicial organ is the bureaucracy of the law enforcement apparatus which includes the police, prosecutors, and courts. All of them must also be connected with their respective hierarchies starting from the highest to the lowest organs, namely those related to the central level apparatus, provincial level apparatus, and district / city level apparatus.[12]

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[7]Bagir Manan and Kuntara Magnar, *Some Problems of Indonesian Constitutional Law*, Revised edition, Bandung Alumni, Bandung, 1997, p 79

[8] *Ibid*, p 91

[9] Article 1 paragraph (3) is the result of the Fourth Amendment to the 1945 Constitution.

[10] Jimly Asshiddiqie, at the Seminar "Questioning the Morals of Law Enforcement" in the framework of Lustrum XI Faculty of Law, Universitas Gadjah Mada. February 17, 2006.

[11]Montesquieu, *The Spirit of the laws*, Translated by Thomas Nugent, (London: G. Bell & Sons, Ltd, 1914), Part XI, Chapter 67.

[12] Jimly Asshiddiqie, *Op.Cit* p. 15

In all elements, components, hierarchies and aspects that are systemic and interrelated with each other, the understanding of the legal system that must be developed within the framework of the Indonesian State of Law based on the 1945 Indonesian Constitution. If the dynamics pertaining to all aspects, elements, hierarchies and components do not work in a balanced and synergistic manner, then the law as a whole system also cannot be expected to be enforced as it should.[13] For example, because our nation inherited the Continental European legal tradition (*civil* law), we tend to devote so much attention to law-making activities, but less attention to *law enforcement*. In fact, we simply adhere to the paradigm and doctrine of thinking that is prevalent in the *civil* law system, namely the enactment of *fictitious theory* which assumes that once a legal norm is established, then at that time everyone is considered to know the law. A person's ignorance of the law cannot exempt that person from prosecution. This theory is also justified by a principle that is also universally recognized, namely equality *before the law*. The rich in Jakarta should be treated the same by law as the poor in remote areas or remote tribes on small islands throughout the archipelago.[14]

The *fiktie* theory above is indeed *fictitious* or imaginary in nature, because it does not reflect the actual reality. For the environment of developed and especially small countries like the Netherlands with an even level of welfare and knowledge of the people, of course there is no problem with the fictitious theory. In such a homogeneous society, the legal information available in society is symmetrical. But in a country that is so large in area, so large in population, and poor and backward welfare and education conditions such as Indonesia, of course the legal information system available in society is not symmetrical. It is unfair to impose a legal norm on those who do not understand, are not involved, and have no knowledge of the norm of the rule imposed on them. If in the norms of the rule there is a criminalization process, of course the person concerned is threatened to become a criminal without him himself knowing it. Therefore, in addition to and between law *making* and *law enforcing* activities, activities are needed, namely law *socialization* which tends to be ignored and considered unimportant so far. In fact, this is the key to law enforcement. Without a social base that is aware of its legal rights and obligations, any law that is made will not be effective, will not be enforced, and will not be obeyed seriously.[15]

Therefore, understanding the law comprehensively as an integrated system is very important to do. The strategy of legal development or national development to realize the idea of the State of Law (*Rechtsstaat* or *The Rule of Law*) should also not be trapped only oriented to making laws, or only by looking at one element or aspect of the entire legal system mentioned above. That is why, I often say it is important that we as a nation compile and formulate what we mean by the conception of the Indonesian State of Law mandated in the 1945 Indonesian Constitution, especially now that it has been affirmed in the formulation of the provisions of Article 1 paragraph (3) of the 1945 Indonesian Constitution. All existing legal institutions or institutions should be seen as part of the overall legal system that needs to be developed within the framework of the State of Law. For this reason, the Indonesian nation needs to compile a *blue-print*, a macro design

[13]Hans Kelsen, *General Theory of Law and State*, translated by: Anders Wedberg, (New York; Russell & Russell, 1961), p. 115 and 123-124.

[14] Asshiddiqie, Op.Cit, p. 2

[15] Asshiddiqie, Loc.cit

of the State of Law and the Indonesian Legal System that we want to build and enforce in the future.[16]

Indonesia has succeeded in carrying out *large-scale constitutional reforms*. If the 1945 Constitution only includes 71 provisions in it, then after four changes, the 1945 Indonesian Constitution now contains 199 provisions. Changes to the 1945 Constitution were carried out gradually and became one of the agendas of the MPR Annual Session from 1999 until the fourth amendment at the MPR Annual Session in 2002 along with the agreement to establish a Constitutional Commission tasked with conducting a comprehensive review of changes to the 1945 Constitution based on MPR Decree No. I / MPR / 2002 concerning the Establishment of the Constitutional Commission.[17]

The First Amendment was made in the 1999 MPR Annual Session which included Article 5 paragraph (1), Article 7, Article 9, Article 13 paragraph (2), Article 14, Article 15, Article 17 paragraph (2) and (3), Article 20, and Article 22 of the 1945 Constitution. Based on the provisions of the amended articles, the direction of the First Amendment to the 1945 Constitution was to limit the power of the President and strengthen the position of the House of Representatives (DPR) as a legislative institution.[18]

The Second Amendment was made in the 2000 MPR Annual session which included Article 18, Article 18A, Article 18B, Article 19, Article 20 paragraph (5), Article 20A, Article 22A, Article 22B, Chapter IXA, Article 28A, Article 28B, Article 28C, Article 28C, Article 28D, Article 28E, Article 28F, Article 28G, Article 28H, Article 28I, Article 28J, Chapter XII, Article 30, Chapter XV, Article 36A, Article 36B, and Article 36C of the 1945 Constitution. This Second Amendment covers the issue of state territory and the division of local government, perfects the first amendment in terms of strengthening the position of the DPR, and detailed provisions on human rights.[19]

The Third Amendment stipulated at the 2001 MPR Annual Session amends and or adds to the provisions of Article 1 paragraphs (2) and (3), Article 3 paragraphs (1), (3), and (4), Article 6 paragraphs (1) and (2), Article 6A paragraphs (1), (2), (3), and (5), Article 7A, Article 7B paragraphs (1), (2), (3), (4), (5), (6), and (7), Article 7C, Article 8 paragraphs (1) and (2), Article 11 paragraphs (2) and (3), Article 17 paragraph (4), Chapter VIIA, Article 22C paragraphs (1), (2), (3), and (4), Article 22D paragraphs (1), (2), (3), and (4), Chapter VIIB, Article 22E paragraphs (1), (2), (3), (4), (5), and (6), Article 23 paragraphs (1), (2), and (3), Article 23A, Article 23C, Chapter VIIIA, Article 23E paragraphs (1), (2), and (3), Article 23F paragraphs (1), and (2), Article 23G paragraphs (1) and (2), Article 24 paragraphs (1) and (2), Article 24A paragraphs (1), (2), (3), (4), and (5), Article 24 B paragraphs (1), (2), (3), and (4), Article 24C paragraphs (1), (2), (3), (4), (5), and (6) of the 1945 Constitution. The material of the Third Amendment to the 1945

[16] Jimly Asshiddiqie, Loc. Cit

[17] The MPR Annual Session was only known during the reform period based on Article 49 and Article 50 of MPR Decree No. II / MPR / 1999 concerning Rules of Order of the People's Consultative Assembly of the Republic of Indonesia.

[18] It was established on October 19, 1999.

[19] It was established on August 18, 2000.

Constitution includes provisions on the principles of state foundation, state institutions and relations between state institutions, and provisions on General Elections.[20]

The Fourth Amendment was made in the 2002 MPR Annual Session. The amendments and/or additions in the Fourth Amendment include Article 2 paragraph (1); Article 6A paragraph (4); Article 8 paragraph (3); Article 11 paragraph (1); Article 16, Article 23B; Article 23D; Article 24 paragraph (3); Chapter XIII, Article 31 paragraphs (1), (2), (3), (4), and (5); Article 32 paragraphs (1) , (3), and (4); Chapter IV, Article 33 paragraphs (4) and (5); Article 34 paragraphs (1), (2), (3), and (4); Article 37 paragraphs (1), (2), (3), (4), and (5); Transitional Rules Articles I, II, and III; Additional Rules Articles I and II of the 1945 Constitution. The material changes in the Fourth Amendment are provisions on state institutions and relations between state institutions, the abolition of the Supreme Advisory Council (DPA), provisions on education and culture, provisions on economy and social welfare, and transitional rules and supplementary rules.[21]

These changes are not only editorial changes, but also involve a very fundamental paradigm shift in thinking. Therefore, immediately after the *constitutional* reform agenda, we need to proceed with a massive *legal reform* agenda. If we look at the provisions in the 1945 Indonesian Constitution after four amendments, there are 22 points of provisions that state "regulated by law" or "further regulated by law", 11 points of provisions that state "regulated in law" or "further regulated by law", and 6 points of provisions that state "stipulated by law. The areas of law that require such formation and renewal can be grouped according to the fields needed, namely:[22] (1) The political field of government; (2) Economic and business sectors; (3) Social and cultural welfare; (4) The field of system structuring and legal apparatus.[23]

As a consequence of the supremacy of the constitution and the hierarchy of legislation in a legal system, constitutional changes require changes to legislation in the legal system, as well as their implementation by the competent authorities. Similarly, changes to the 1945 Indonesian Constitution which are quite basic and include almost all the provisions contained therein, must be followed by changes in the legislation under it and its implementation by authorized organs. Existing statutory provisions originating from certain provisions in the 1945 Constitution before the amendment must be reviewed for conformity with the provisions of the 1945 Constitution.[24]

As a unified legal system, efforts to change legislation to conform to changes in the 1945 Constitution should be an integral part of the development of national law as a whole. Therefore, changes to various laws should be carried out in a planned and participatory manner in the national legislation program as well as the form of *legislative review*. The national legislation program must be prepared first and foremost to implement the provisions of the 1945 Indonesian Constitution.

[20] It was established on November 9, 2001.
[21] It was established on August 10, 2002.
[22] Jimly Asshiddiqie, Op.cit. Thing. 5
[23] Jimly Asshiddiqie. Loc.it
[24]Law can be categorized into four groups of legal definitions seen from the area of making and forming law, namely State Law (The *State's Law*), Customary Law (The People's Law), Doctrine (The Professor's Law), and practice law (*The Professional's Law*). See Jimly Asshiddiqie, *Constitutional Law and the Pillars of Democracy*, (Jakarta; Constitution Press, 2005), p. 4.

Based on the provisions of the 1945 Indonesian Constitution, legislation can be elaborated that must be made in the national legislation program both in the political, economic, and social fields.[25]

In addition, the public can also apply for constitutional *review* to the Constitutional Court against laws that are considered detrimental to their constitutional rights in the amended 1945 Constitution.[26] The public can also apply for *judicial review* to the Supreme Court against laws and regulations under the law that are considered contrary to higher laws and regulations.

The decision on the review of the Law against the 1945 Indonesian Constitution that has been made by the Constitutional Court on various test applications submitted must also be considered in efforts to develop national law, especially changes in legislation.[27] These decisions contain definitions and concepts related to the understanding of a provision in the constitution. Until now, there have been various decisions of the Constitutional Court both in the political,[28] economic,[29] and social[30] fields related to the provisions in the 1945 Indonesian Constitution.

Laws that need to be drafted and updated are not only laws but also Government Regulations, Presidential Regulations, Ministerial Regulations, Regulations within high state institutions and other special and independent agencies such as the Supreme Court, Constitutional Court, Bank Indonesia, General Election Commission, and so on. Similarly, in the regions, the renewal and formation of laws is also carried out in the form of Regional Regulations and later can also be in the form of Governor Regulations, Regent Regulations and Mayor Regulations. To accommodate needs at the local level, including accommodating the development of customary law norms living in rural communities, Village Regulations can also be established. In addition, the nomenclature and form of the legal system also need to be addressed, for example, it is necessary to distinguish clearly between regulations (*regels*) that can be the object of *judicial review* and administrative

[25] Jimly Asshiddiqie, Op.Cit. Thing. 5

[26] Based on Article 50 of Law Number 24 of 2003 concerning the Constitutional Court, the constitutional review authority of the Constitutional Court is limited to laws enacted after the first amendment to the 1945 Constitution. However, in the decision of case No. 04/PUU-I/2003, Article 50 of the 2003 Law was set aside by the Constitutional Court because it reduced the authority of the Constitutional Court based on the 1945 Constitution.

[27]The *extensive judicial* review process, which includes *constitutional review*, has become a means of upholding the rule of constitution in modern democracies. O. Hood Phillips and Paul Jackson, *Constitutional And Administrative Law*, Eighth Edition, (London: Sweet & Maxwell, 2001), pp. 7-8

[28] For example, the Constitutional Court Decision Case Number 011-017 / PUU-I / 2003 which restored the passive and active political rights of former members of the PKI and other banned organizations by stating that Article 60 letter g of Law Number 12 of 2003 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council (State Gazette of 2003 Number 37, Supplement to the Government Gazette No. 4277) is contrary to the 1945 Constitution and has no binding legal force.

[29] For example, the Constitutional Court Decision No. Case 002/PUU-I/2003 in the case of petitioning for the constitutionality of Law No. 22 of 2001 concerning Oil and Gas, and the Constitutional Court Decision No. Case 001-021-022/PUU-I/2003 which stated that Law No. 20 of 2002 as a whole has no binding legal force because the Articles tested and declared contrary to the 1945 Constitution, namely Article 16, Article 17 paragraph (3), and Article 68 are the heart of Law No. 20 of 2002.

[30] For example, Decision No. Case 011/PUU-III/2005 in the case of an application for examination of Law No. 20 of 2003 concerning the National Education System.

determinations in the form of decisions (*beschikking*) that can be used as objects of state administrative courts, and judges' decisions (*verdicts)* and fatwas (*legal opinions*).[31]

Thus the State of Indonesia is a state of law. Constitutionally, this is affirmed in Article 1 paragraph (3) of the 1945 Indonesian Constitution.[32] In fact, historically the state of law (*Rechtsstaat*) was the state idealized by the founding fathers as later stated in the general explanation of the 1945 Constitution before the change.[33] Article 1 Paragraph (3) of the 1945 Constitution states unequivocally that the State of Indonesia is a state of law. This is in accordance with paragraph 4 of the Preamble to the 1945 Constitution which states "... hence the drafting of the Indonesian National Independence in **a Constitution** of the State of Indonesia...". As a state of law, all actions of state administrators and citizens must be in accordance with applicable legal rules. This is the principle of nomocracy adopted in the 1945 Constitution.[34]

On the other hand, Article 1 Paragraph (2) also states that sovereignty is in the hands of the people which is exercised according to the Constitution. In paragraph 4 of the Preamble of the 1945 Indonesian Constitution it is also stated "... then the Indonesian National Independence was drafted in a Constitution of the State of Indonesia, which was formed in **a structure of the Indonesian State which was sovereign of the people**..." Based on this principle of popular sovereignty, the laws applied and enforced must reflect the will of the people so that participation in the state decision-making process must be guaranteed. Laws are made based on democratic principles. Between democracy and nomocracy, if embraced together in a country will give birth to the concept of a democratic state of law. The rule of law limits and governs how popular sovereignty is channeled, exercised, and administered. Instead, the law should reflect the interests and feelings of justice of the people. Therefore the law must be made with democratic mechanisms. Laws should not be made in the interests of any particular group or the interests of the rulers who will give birth to a totalitarian rule of law.

Thus, the concept of a democratic state of law contains the meaning that democracy is governed and limited by the rule of law, while the substance of law itself is determined in democratic ways based on the constitution. Democracy and nomocracy unite quantitative approaches in democratic mechanisms and logical approaches to truth and legal justice based on the will of all people as stated in the constitution. Philosophically, the Preamble of the 1945 Indonesian Constitution is a *modus vivendi* (noble agreement) of the Indonesian people to live together in the bonds of one plural nation. It can also be referred to as a birth sign in which it contains a declaration of independence (proclamation) as well as self-identity and a foothold to achieve national ideals and national goals. From a legal point of view, the Preamble of the 1945 Indonesian Constitution which contains Pancasila is the basis of state philosophy that gives birth to the ideal of law (*rechtsidee*) and the basis of its own legal system in accordance with the soul of the Indonesian nation itself. Pancasila as the basis of the state is the source of all sources of law

[31] Jimly Asshiddiqie, Op.Cit. thing. 6

[32] The result of the third amendment to the 1945 Constitution.

[33] The explanation of the 1945 Constitution in the process of amending the 1945 Constitution was omitted by incorporating it into the torso material.

[34]M. Guntur Hamzah, State Law and Democracy Education Module, Center for Pancasila and Constitutional Court Education, 2016, p. 16-25. See Dr. Ali Safaat's State of Law and Democracy Module-2. ok (mkri.id)

that provide legal guidance and overcome all laws and regulations. In such a position, the Preamble of the 1945 Indonesian Constitution and the Pancasila it contains become *staatsfundamentalnorms* or fundamental state principles and cannot be changed by law, unless changes are made to the identity of Indonesia which was born in 1945.

The State of Pancasila recognizes humans as individuals who have rights and freedoms, but at the same time recognizes that human nature is also a social creature that cannot become human if they do not live with other humans. In such a concept of balance, Pancasila is not an adherent of the concept of individualism that absolutizes individual rights and freedoms, but also not an adherent of the concept of collectivism that wants to equate all humans without respecting individual rights and freedoms. In the context of the legal system, the Pancasila Legal System differs from the Continental European legal system which only emphasizes legism, civil law, administration, legal certainty, and written laws that characterize the *rechtsstaat*. The Pancasila legal system is also different from the Anglo Saxon legal system which only emphasizes the role of the judiciary, common law, and legal substance, which are the characteristics of *the rule of law*.

In the articles of the 1945 Indonesian Constitution, it is affirmed that Indonesia is a state of law as stated in Article 1 Paragraph (3) of the 1945 Indonesian Constitution which is lifted from the normative provisions of the Explanation, without mentioning the term as a predicate, both *the rechtsstaat* and *the rule of law*. The 1945 Indonesian Constitution also affirms individual human rights, both as humans and as citizens, as well as the collective rights of citizens. The rights guaranteed in the 1945 Indonesian Constitution include not only civil and political rights, but also economic, social and cultural rights.

The concept of the Indonesian rule of law is reinforced by the regulation of judicial power in the 1945 Indonesian Constitution. It is stated that the judicial power is an independent power to administer justice, to uphold law and justice. The judicial power is exercised by the Supreme Court (MA) and the Constitutional Court (MK). In addition, to propose the appointment of Supreme Court justices and to maintain and uphold the honor, dignity, and conduct of judges, a Judicial Commission (KY) was established. The description shows that the conception of the rule of law in Indonesia remains a synthetic conception of several concepts that differ in its legal tradition. In other words, it can be argued that the Indonesian legal state is colored both by the concept of *rechtsstaat* and *the rule of* law, both formal legal states and material law states, which are then given Indonesian value as specific values so that they become Pancasila legal states.

This synthetic conception, although born from the specific environmental needs of Indonesian society, is not without risks. In practice there is often debate about the view of the concept of the rule of law, but with different references, between the *rechtsstaat* and the *rule* of law, or one refers to the formal state of law with its legism while the other refers to the material state of law with *just law*-his. Not infrequently, interpreters and law enforcement are inconsistent by choosing different concepts for the benefit of different cases.

In fact, insofar as the basic attitude concerned is consistent and pure for the establishment of justice, such changes in orientation can be justified in the sense that people may take mixed methods and use them to fight for justice. Laws that are still officially in force can be maintained insofar as they contain or correspond to the sense of justice of the community. However, the law

can also be set aside if it contains things that are perceived to be unfair. The principle that takes precedence is to uphold justice and truth with the support of law enforcement. So everyone who is called a law enforcer should function as an enforcer of justice, not *an sich* law enforcer. This statement is important because in practice law enforcement activities do not in themselves mean upholding justice. Many people use law simply by establishing *formal truth* but its substance is very contrary to the sense of justice because what is built is law for law and not *law for justice.*

b. Democratic Law Enforcement in the State of Law.

Democracy has become a highly exalted term in the history of human thought about an ideal socio-political order.[35] Democracy (English: Democracy) is linguistically derived from the Greek, namely Demokratia. Demos means people and cratos means government or rule. Democracy means that it means a political system in which the people hold the highest power, not power by the king or the nobility. The concept of democracy has long been debated. In ancient Greece, democracy as an idea and political order had come to the attention of state thinkers. There are pros and some cons. Plato (429-437 B.C.)[36] and Aristotle (384-322 B.C.)[37] did not strongly believe in democracy and placed democracy as a bad form of government. This famous philosopher believed more in monarchy, whose ruler was wise and concerned about the fate of his people. Plato could accept democracy, if a country did not yet have a constitution, while Aristotle in the format of a polytheistic state, namely democracy with a constitution or democracy that is modern.[38]

One of the successes achieved by the Indonesian nation during the reform period was *constitutional reform*. Constitutional reform is seen as a necessity and agenda that must be carried out, because the 1945 Constitution before the amendment was considered insufficient to regulate and direct the administration of the state according to the expectations of the people, the formation of *good governance*, and support the enforcement of democracy and human rights.[39] At the 1999 MPR General Session, all factions in the MPR made an agreement on the direction of changes to the 1945 Constitution, namely:[40]

a) Agreed not to amend the Preamble to the 1945 Constitution;
b) Agreed to maintain the form of the Unitary State of the Republic of Indonesia;
c) Agree to maintain the presidential system (in the sense of simultaneously narrowing it to fully meet the general characteristics of the presidential system);

[35] Hendra Nurtjahjo, Philosophy of Democracy, PSHTN FH UI, Jakarta, 2005. thing.1.

[36] Plato (429-347 BC) was a disciple of Socrates (469-3999 BC), he was born on May 29, 429 BC in Athens. Plato produced many works in the fields of philosophy, politics and law. Among his famous works are Poletea (on the State), Politicos (on State Experts) and Nomoi (on Law), quoted in JJ. Von Schid, Great Thinker

[37] Aristotle (384-322 BC) came from Stageria. He was a student of Plato (429-347 BC). Aristotle produced many works in the fields of Philosophy, Logic, Politics, and Law. His best-known works in the midfield of Philosophy of Law are Ethica and Politica. Quoted in Budiono Kusumohamidjojo, Philosophy of Law; Problems of Fair Order, Grasindo, Jakarta, 2004, p. 38. On State and Law, PT. Development, Jakarta, 1988, p. 10.

[38] Haedar Nashir, Ideas and New Wave of Democracy, in Mahfud MD, et.all, Discourse on Indonesian Politics and Democracy, Student Library, 1999.

[39] Jimly Asshiddiqie, Scientific Oration Material Commemorating the XXI Anniversary and 2007 Graduation of Darul Ulum University (Unisda) Lamongan. December 29, 2007.

[40] The five agreements are attached to MPR Decree No. IX / MPR / 1999 concerning the Assignment of the Workers' Body of the People's Consultative Assembly of the Republic of Indonesia to Continue Amendments to the Constitution of the Republic of Indonesia in 1945.

d) Agreed to move the normative matters contained in the Explanation to the 1945 Constitution into the articles of the 1945 Constitution; and
e) Agreed to take the addendum method in amending the 1945 Constitution.

Changes to the 1945 Constitution were carried out gradually and became one of the agendas of the MPR Session from 1999 to 2002.[41]The first amendment was made in the MPR General Session in 1999. The direction of the first amendment to the 1945 Constitution was to limit the power of the President and strengthen the position of the House of Representatives (DPR) as a legislative institution.[42] The second amendment was made in the 2000 MPR Annual Session. The second amendment resulted in the formulation of amendments to articles covering the issue of state territory and the division of local government, narrowing the first amendment in terms of strengthening the position of the DPR, and detailed provisions on human rights.[43]

The third amendment was enacted at the 2001 MPR Annual Session. This stage change changes and or adds to the provisions of the article on the principles of the foundation, state institutions and relations between state institutions, as well as provisions on General Elections.[44] While the fourth amendment was made in the MPR Annual Session in 2002. The Fourth Amendment includes provisions on state institutions and relations between state institutions, the abolition of the Supreme Advisory Council (DPA), education and culture, economy and social welfare, and transitional rules and supplementary rules.[45]

The four stages of amendment to the 1945 Constitution cover almost the entire material of the 1945 Constitution. The original text of the 1945 Constitution contained 71 provisions, while the changes made resulted in 199 provisions. Currently, of the 199 provisions in the 1945 Constitution, only 25 (12%) items of provisions have not changed. The remaining 174 (88%) items of provisions are new or amended material. From a qualitative point of view, changes to the 1945 Constitution are fundamental because they change the principle of people's sovereignty which was originally fully implemented by the People's Consultative Assembly to be implemented according to the Basic Law. This causes all state institutions in the 1945 Constitution to be equal and exercise people's sovereignty within the scope of their respective authorities. Another change was from the concentration of power and *responsibility upon the President to the* principle of *checks and balances*. These principles affirm the ideal of the state to be built, namely a democratic state of law.[46]

The implementation of the 1945 Indonesian Constitution must be carried out starting from the consolidation of legal norms to the practice of national and state life. As a basic law, the 1945 Indonesian Constitution becomes a basic reference so that it really lives and develops in the

[41] The MPR Annual Session was only known during the reform period based on Article 49 and Article 50 of MPR Decree No. II / MPR / 1999 concerning Rules of Order of the People's Consultative Assembly of the Republic of Indonesia.

[42] It was established on October 19, 1999.

[43] It was established on August 18, 2000.

[44] It was established on November 9, 2001.

[45] It was established on August 10, 2002.

[46]Jimly Asshiddiqie, *Indonesia's Constitutional Structure After the Fourth Amendment to the 1945 Constitution*, Paper Delivered in a Symposium conducted by the National Legal Development Agency, Ministry of Justice and Human Rights, 2003, p. 1.

administration of the state and the life of citizens *(the living constitution).* One of the basic principles that has been affirmed in the 1945 Indonesian Constitution is the principle of the rule of law, as stated in Article 1 Paragraph (3) of the 1945 Indonesian Constitution[47] which states that 'the State of Indonesia is a state of law'. Even historically, the state of law (Rechtsstaat) is a state idealized by the founding fathers as stated in the general explanation of the state government system which states that the State of Indonesia is based on law (rechtsstaat), not based on mere power *(Machtsstaat).*[48]

The idea of the real rule of law has long been developed by philosophers from the time of Ancient Greece. Plato, in his books "the *Statesman*" and "the *Law"* stated that the rule of law is the second best form to prevent the decline of power. The concept of the modern legal state in Continental Europe was developed using the German term "*rechtsstaat"* among others by Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others. While in the Anglo American tradition the concept of the rule of law was developed under the name "*The Rule of Law"* pioneered by A.V. Dicey. In addition, the concept of the legal state is also related to the term nomocracy *(nomocratie)* which means that the determinant in the exercise of state power is law.[49]

Prinsip-prinsip negara hukum senantiasa berkembang sesuai dengan perkembangan masyarakat. Kemajuan ilmu pengetahuan dan teknologi, serta semakin kompleksnya kehidupan masyarakat di era global, menuntut pengembangan prinsip-prinsip negara hukum. Dua isu pokok yang senantiasa menjadi inspirasi perkembangan prinsip-prinsip negara hukum adalah masalah pembatasan kekuasaan dan perlindungan HAM. Saat ini, paling tidak dapat dikatakan terdapat dua belas prinsip negara hukum, yaitu Supremasi Konstitusi *(supremacy of law)*, Persamaan dalam Hukum *(equality before the law)*, Asas Legalitas *(due process of law)*, Pembatasan Kekuasaan *(limitation of power)*, Organ Pemerintahan yang Independen, Peradilan yang Bebas dan Tidak Memihak (*independent and impartial judiciary*), Peradilan Tata Usaha Negara *(administrative court)*, Peradilan Tata Negara *(constitutional court)*, Perlindungan Hak Asasi Manusia, Bersifat Demokratis *(democratische-rehtsstaats)*, Berfungsi sebagai Sarana Mewujudkan Tujuan Bernegara *(Welfare Rechtsstaat)*, serta Transparansi dan Kontrol Sosial.[50]

In a state of law, there requires normative and empirical recognition of the principle of the rule of law, namely that all problems are solved with the law as the highest guideline. Normative recognition of the rule of law is manifested in the formation of hierarchical legal norms culminating in the supremacy of the constitution. While empirically manifested in the behavior of government and society that bases itself on the rule of law. Thus, all government actions must be based on valid and written laws and regulations. These laws and regulations must exist and apply first or precede the actions committed. Thus, every administrative action must be based on rules and *procedures*.

[47] The result of the third amendment to the 1945 Constitution.

[48] The explanation of the 1945 Constitution in the process of amending the 1945 Constitution was omitted by incorporating it into the torso material.

[49]Jimly Asshiddiqie, *Indonesian Constitution & Constitutionalism*, Revised Edition, (Jakarta: Constitution Press, 2005), p. 152.

[50] Asshiddiqie, *Op Cit*., hal. 154-162.

However, the principle of the rule of law is always accompanied by the adoption and practice of the principle of democracy or people's sovereignty which guarantees the participation of the community in the state decision-making process, so that every law applied and enforced reflects the feeling of justice of the community. Applicable laws and regulations shall not be determined and applied unilaterally by and/or only for the benefit of the ruler. The law is not intended to guarantee only the interests of a few in power, but rather to guarantee the interests of justice for all. Thus the state of law developed was not absolute rechtsstaat, but *democratische rechtsstaat*.

Based on the principle of the rule of law, it is the law that governs, not the human being. Law is interpreted as a hierarchical unity of legal norms culminating in the constitution. This means that in a country the law requires the supremacy of the constitution. The supremacy of the constitution besides being a consequence of the concept of the rule of law, is also an implementation of democracy because the constitution is the highest form of social agreement.

Law *enforcement* in a broad sense includes activities to implement and apply the law and take legal action against any violations or deviations of law committed by legal subjects, either through judicial procedures or through arbitration procedures and other dispute resolution mechanisms (*alternative desputes or conflicts resolution*). In fact, in a broader sense, law enforcement activities also include all activities intended so that the law as a normative method that regulates and binds legal subjects in all aspects of public and state life is truly obeyed and truly carried out as it must be-his. In a narrow sense, law enforcement involves enforcement activities against any violations or deviations from laws and regulations, especially those that are narrower through the criminal justice process involving the roles of police officers, prosecutors, advocates or lawyers, and judicial bodies.[51]

Therefore, in a narrow sense, the main actors whose roles are very prominent in the law enforcement process are police, prosecutors, lawyers and judges. These law enforcers can be seen **first of all** as people or human elements with their respective qualities, qualifications, and work culture. In this sense, the problem of law enforcement depends on the actors, actors, officials or law enforcement officials themselves. **Second**, law enforcement can also be seen as an institution, body or organization with its own bureaucratic qualities. In that connection we see law enforcement from an institutional perspective which, in fact, has not been institutionalized rationally and impersonally (*institutionalized*). However, both perspectives need to be understood comprehensively by looking at their relationship with each other and their relationship with various factors and elements related to the law itself as a rational system.[52]

The legal profession needs to be reorganized and improved in quality and welfare. These legal professionals include (i) legislators (politicians), (ii) legal [53]*drafters*, (iii) legal consultants, (iv) advocates, (v) notaries, (vi) land deed officials, (vii) police, (viii) prosecutors, (ix) clerks, (x) judges, and (xi) arbitrators or referees. To improve the quality of professionalism of each of these

[51]Jimly Asshiddiqie, *Op,Cit,p.14*

[52] Jimly Asshiddiqie, *ibid*. Thing. 15

[53] For now, politicians as legislators in representative institutions cannot be categorized as a separate profession. However, in an established political system where professional roles have been very tightly divided, the position of parliamentarian can also develop more and more professionally. Politicians gradually become a profession because they become professional life choices in society.

professions, a national certification system and standardization are needed, including with regard to the welfare system. In addition, an integrated education and training program is also needed that can continuously foster mental attitudes, improve the knowledge and professional abilities of law officers.[54]

The agenda of developing professional quality among the legal profession needs to be separated from the program of coaching administrative employees within these legal institutions, such as in courts or in people's representative institutions. Thus, the orientation of improving the quality of law enforcement can really be developed in a directed and sustainable manner. In addition, the development of the professional quality of law enforcement can also be done through increasing the empowerment of their respective professional organizations, such as the Indonesian Judges Association, the Indonesian Notary Association, and so on. Thus, the quality of judges can be improved through the role of the Supreme Court on the one hand and through the role of the Indonesian Judges Association on the other.[55]

In addition, the law enforcement agenda also requires leadership at all levels that meet two conditions. **First,** leadership is expected to be an effective driver for definitive enforcement actions; **Second**, the leadership is expected to be an example for the environment they lead each regarding the integrity of the personality of people who obey the rules.[56]

One important aspect in the framework of law enforcement is the process of cultivating, correction, and legal education (law *socialization and law education*). Without being supported by awareness, knowledge and understanding by legal subjects in society, legal norms cannot be expected to be upheld and obeyed. Therefore, this agenda of culture, correction and legal education needs to be developed separately in order to realize the idea of the rule of law in the future. Some factors related to this problem are (a) development and management of legal information systems and infrastructure based on information technology (information *technology*); (b) increased efforts for publication, communication and dissemination of law; (c) development of legal education and training; and (d) popularization of images and examples in the field of law.[57]

Then in the framework of legal communication, it is necessary to rethink the need for digital and electronic media, both radio, television and internet networks and other media that are owned and managed specifically by the government. Regarding television and radio, it can be said that private television and radio are already very numerous and therefore, the possibility of unilateral domination of information flows from the government as occurred during the New Order period is no longer possible. Therefore, sources of information from the public and from financiers are available very many and varied. However, the flow of information from the government to the public, especially with regard to education and legal correction is noticeably lacking. For this reason, the development of special media is felt to be very necessary, such as building and strengthening the position of television and radio as a good and democratic legal education medium for the people and to convey legal messages made by the state.

[54] Jimly Asshiddiqie, *Op.Cit.*
[55] Jimly Asshiddiqie, *ibid*
[56] Jimly Asshiddiqie. *Ibid*
[57] Jimly Asshiddiqie, *ibid*. p.16

Thus, in order to enforce democratic law in a state of law such as in Indonesia, it must be done by:

a. Law enforcement processes such as law culture, correction, and legal education (law *socialization and law education*), must be carried out optimally to the community indiscriminately, using print and electronic media. Because law is not supported by awareness, knowledge and understanding of legal subjects in society, its implementation will be difficult both now and in the future, even the legal norms cannot be upheld and obeyed by the people.

b. Establish moral legal regulations, because morals are *the common sense* of people's lives. Immoral laws and regulations can hurt the conscience of the people and it is feared that these regulations cannot be fully enforced.

c. Establish and amend the constitution and laws and regulations in accordance with the wishes of the people as a whole. This can be done by organizing legal discussions, seminars, socialization, publishing law and legislation books, which can be done manually or electronically.

Realizing an Ideal and Just Democratic State

a. The Development of the State of Law and Democracy

The idea of the rule of law has long been developed by philosophers from the times of Ancient Greece. Plato, early in the *Republic*, argued that it was possible to create an ideal state to achieve goodness at the core of goodness. For this reason, power must be held by one who knows the good, namely a philosopher (*the philosopher king*). But in his books "the *Statesman*" and "the *Law"*, Plato states that what can be realized is the second best form that places *the* rule of law. A government capable of preventing the deterioration of one's power is rule by law. In line with Plato, the goal of the state according to Aristotle is to achieve the *best life possible* that can be achieved by the rule of law. Law is a manifestation of collective *wisdom*, so the role of citizens is needed in its formation.[58]

The concept of the modern legal state in Continental Europe was developed using the German term "*rechtsstaat"* among others by Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others. While in the Anglo American tradition the concept of the rule of law was developed under the name "*The Rule of Law"* pioneered by A.V. Dicey. In addition, the concept of the legal state is also related to the term nomocracy *(nomocratie)* which means that the determinant in the exercise of state power is law. The concept of the legal state called A.V. Dicey and Stahl can be said to be the first generation of the concept of the legal state that became the thought of jurists in the 19th century. The conception of the rule of law based on the [59]*design* designed by the two experts above has given birth to the formal state of law, where the role of the government is very few and narrow in running the government. The narrow role of government is not only in the political field, but also in the economic field which is carried out based on the proposition of *laissez*

[58]George H. Sabine, *A History of Political Theory*, Third Edition, (New York – Chicago – San Francisco – Toronto – London; Holt, Rinehart and Winston, 1961), p. 35-86 and 88-105.

[59]Jimly Asshiddiqie, *Indonesian Constitution & Constitutionalism*, Revised Edition, (Jakarta: Constitution Press, 2005), p. 152.

faire (the economic condition of the country will be healthy if every human being is left to take care of their own economic interests. In terms of political economy, the task of the state is to protect the economic position of the group that controls the means of production and the government).[60]

Departing from the various negative impacts arising from the application of the concept of the formal legal state that only protects the interests of a group of people in a state, twentieth-century legal thinkers, finally rethinking the concept of this state. The idea of the 19th century rule of law began to be challenged. One of them was delivered by Wolfgang Friedman. He stated that in the concept of the rule of law, justice will not necessarily be realized substantively.[61] One reason is that the principle of the rule of law tends to minimize the role of the state in managing socio-economic problems. The principle that government is prohibited from interfering in the socio-economic affairs of citizens espoused by the concept of the formal legal state shifted towards a new idea. The idea is that the government should be responsible for the welfare of the people.[62]

In this context, Professor Utrecht distinguishes between the Formil State of Law or the Classical State of Law, and the State of Material Law or the Modern State of Law. The Formil Law State concerns the formal and narrow definition of law, namely in the sense of written laws and regulations. While the State of Material Law also includes the understanding of justice in it. [6] This challenge to the concept of the formal legal state later gave birth to the concept of the material legal state which is the second generation of the concept of the legal state, as the conception of the legal state in the 20th century. Where in this concept, a democratic rule of law must also include an economic dimension in order to prosper the people. This dimension of the material law state is aimed at minimizing economic disparities through government intervention in distributing state wealth.

With the development of the concept of the state of law from the concept of the formal legal state in the 19th century to the concept of the material law state in the 20th and 21st centuries, the concept of the state is also not only to limit state power, but also to guard the state government to carry out its obligations to prosper the people. In order for the state's obligation to prosper the people to be fulfilled, the state must also be strong. In a sense, it is not under the intervention of any power that does not want the state's partiality to the achievement of the welfare of its people.

b. Realizing an Ideal and Just State of Law and Democracy in Indonesia.

By examining the debate of the founding fathers which was further embodied in the text of the 1945 Indonesian Constitution as the constitution of an independent Indonesian state, we can see that forming and realizing the Indonesian legal state has become the commitment of the founding fathers of the nation. This commitment is still maintained and affirmed in the 1945 Indonesian Constitution as outlined in Article 1 Paragraph (3), provisions for the protection of

[60]Moh. Mahfud MD, *Constitutional Court and the Future of Indonesian Democracy*, Scientific Oration Material delivered before the Open Senate Meeting of Andalas University, Padang, 2008, p. 16

[61]Jimly Assiddiqie, *Constitutional Court and Cita Negara Hukum Indonesia; Reflections on the Exercise of Judicial Power After the Amendment of the Constitution of the Republic of Indonesia in 1945*, in www.pemantauperadilan.com., p. 8

[62] Moh. Mahfud MD, *Op.cit.*, p. 16

human rights and constitutional rights of citizens, restrictions on power, and guarantees of independence of judicial power carried out by the Supreme Court and the Constitutional Court.

This constitutional commitment must of course be realized in the practice of national and state life. However, until now we still see that the ideal of the rule of law that has become a common commitment has not been fully realized. The commitment of the rule of law has not been followed by proper law enforcement. The law has not been placed as *supreme* as desired. Even the law has also been hit by a severe crisis in the form of rampant corruption, conflicts in the regions, and acts of violence in the form of vigilantism. Law has not fully become a pillar and means of building a just and certain society in an orderly and democratic society. There are two major issues that must be resolved in an effort to realize the rule of law. The first is the paradigmatic problem of ambiguity in orientation to the conception of the legal state. The second is the political problem of the legacy of a corrupt bureaucracy and erroneous political recruitment.[63]

Paradigmatic problems are long-term and fundamental problems. To realize a state of law oriented towards justice and substantial truth, a paradigm shift must be made to the conception of the rule of law from the *rechtsstaat* to *the rule of law* as widely developed in Anglo Saxon countries. With this paradigm, every law enforcement effort will be able to break away from the traps of procedural formalities and encourage law enforcers to be creative and dare to explore the values of justice and uphold ethics and morals in society in every legal case settlement. This paradigm shift must also be interpreted as an effort to restore the sense of justice and morals as a legal spirit that will be built for the future of the Indonesian legal state.

To make a paradigm shift, it is now very open to do because the 1945 Indonesian Constitution no longer explicitly mentions "*rechtsstaat"* as a reference for the Indonesian state of law. The term rechtsstaat, which was officially contained in the Explanation to the 1945 Constitution before the amendment, is no longer included. Even the orientation of the rule of law towards justice can be seen in the formulation of Article 24 Paragraph (1) which states *"The judicial power is an independent power to administer justice in order to uphold law and justice."* In addition, Article 28D guarantees the right of everyone to fair legal protection and certainty as follows: *"Everyone has the right to recognition, guarantee, protection and just legal certainty and equal treatment before the law."*

Meanwhile, the political problem we face today is the strong corrupt bureaucracy as a legacy of the past and the many old political actors and bureaucrats who then hamper law enforcement efforts. Many of the old political actors who helped build the corrupt system are still active in politics and government by wearing new political clothes. At the same time, new political actors emerged who turned out to be corrupt because they interpreted their presence on the political stage as an opportunity to carry out political revenge or to enjoy what in the past could not be enjoyed because of the dominance of certain political forces. The meeting between old players and new players who are both indicated to be corrupt synergizes the emergence of many new corruption and collusion under bureaucracy and procedures that are still corrupt.

[63]See Moh. Mahfud MD, *Constitutional Law Debate After Constitutional Amendment*, (Jakarta: LP3ES, 2007), p. 153-182.

This problem must be resolved by efforts to reform the bureaucracy so that it is immediately clean of corrupt systems, procedures, and officials. The belief that one of the important keys to the success of reform is bureaucratic reform has not yet been realized in concrete and decisive steps. Meanwhile, to overcome legal cases and violations of past inheritance laws, it is necessary to immediately resolve with a firm political decision to break with cases left over from the past. There are two ways to choose to break the relationship. First, amputating bureaucratic officials, especially law enforcement bureaucracies who are at a certain age and level, through the Illustration Law so that legal action can be carried out firmly and straightforwardly. Without large-scale amputations, it will continue to be difficult to adjust old cases involving those tasked with legal action.[64]

Second, whitening by granting *national pardons* to past offenders, arguing that it was very difficult to make firm legal remedies for so many and complex cases committed by them as a result of the coercive system at that time. The reason that can be added to do this whitening is that the Illustration Law may be difficult to enact because the making of the law must involve those who will be affected by amputation. A policy option that seems more realistic, then, is bleaching or pardon first, provided that any offence, once bleaching has been committed, must be punished quickly and openly.

To realize an ideal democracy in Indonesia, it must be done by:

a. Representative institutions must be umbrellaed with an electoral system that is more in line with the character of the nation's life while still using an open proportional system, although in fact the district and closed systems can also be used in Indonesia. This is done to better ensure an ideal and just democracy, which does not stick to the sequence number of legislative candidates, but rather adheres to the majority votes elected by the people directly, so that the legislature is the person who really wants the people, namely the one who gets the most sura from the results of the general election, not based on the sequence number at the top.

b. Election of political officials at all levels with a direct election system. Such a system is not perfect and does not guarantee one hundred percent goodness, but it can minimize fraud in the form of money politics, collusion, and nepotism in political recruitment.

c. The presidential election system is carried out directly by the people, according to the wishes of the people as a whole, the voice of the people is the voice of God.

d. Eliminate reprehensible practices in elections, such as political money, using tools of power solely for those in office, and using other undignified reprehensible practices.

e. Rekruitmen officials or cabinet Ministers who are expert, clean, and professional, by freeing them from the shackles of political transactions of compensation and support.

f. Structuring the party system, so that the party truly represents the will of its people.

g. Maintain political stability by giving free active space to opposition parties, because really the real truth comes when there are two opposing sides, for example there must be a supporting party and there must

[64] Moh. Mahfud MD, "The Politics of Human Rights Law", Inaugural speech of professor at Faculty of Law UII, Yogyakarta, September 2001.

also be an opposition party, all of which must be given a place and legal protection in the constitution and positive laws and regulations.

CLOSING

Based on the preliminary description and discussion above, it can be concluded that to realize the ideal state of law and democracy in Indonesia, among others:

1. To realize the ideal state of law, among others, by:
   a. Law enforcement processes such as law culture, correction, and legal education (law *socialization and law education*), must be carried out optimally to the community indiscriminately, using print and electronic media. Because law is not supported by awareness, knowledge and understanding of legal subjects in society, its implementation will be difficult both now and in the future, even the legal norms cannot be upheld and obeyed by the people.
   b. Establish moral legal regulations, because morals are *the common sense* of people's lives. Immoral laws and regulations can hurt the conscience of the people and it is feared that these regulations cannot be fully enforced.
   c. Establish and amend the constitution and laws and regulations in accordance with the wishes of the people as a whole. This can be done by organizing legal discussions, seminars, socialization, publishing law and legislation books, which can be done manually or electronically.
2. To realize an ideal democratic country, among others, by:
   a. Representative institutions must be umbrellaed with an electoral system that is more in line with the character of the nation's life while still using an open proportional system, although in fact the district and closed systems can also be used in Indonesia. This is done to better ensure an ideal and just democracy, which does not stick to the sequence number of legislative candidates, but rather adheres to the majority votes elected by the people directly, so that the legislature is the person who really wants the people, namely the one who gets the most sura from the results of the general election, not based on the sequence number at the top.
   b. Election of political officials at all levels with a direct election system. Such a system is not perfect and does not guarantee one hundred percent goodness, but it can minimize fraud in the form of money politics, collusion, and nepotism in political recruitment.
   c. The presidential election system is carried out directly by the people, according to the wishes of the people as a whole, the voice of the people is the voice of God.
   d. Eliminate reprehensible practices in elections, such as political money, using tools of power solely for those in office, and using other undignified reprehensible practices.
   e. Recruitment of expert, clean, and professional officials or cabinet of Ministers, by freeing them from the shackles of political transactions of compensation and support.
   f. Structuring the party system, so that the party truly represents the will of its people.
   g. Maintain political stability by giving free active space to opposition parties, because really the real truth comes when there are two opposing sides, for example there must be a supporting party and there must also be an opposition party, all of which must be given a place and given legal protection in the constitution and positive laws and regulations.

COMPETING INTERESTS

The authors have no compting interest to declare.

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