

## **Between Two Worlds: Modern State and Traditional Society in Indonesia**

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Indonesian political leaders in the mid-20th century attempted to create a new state founded both on the rule of law and on their understandings of traditional Indonesian communal life. They sought simultaneously to “advance” toward modernization and industrialization and to preserve older, village-level norms and values which they projected onto the national legal and political screen. This article examines the inconsistencies inherent in these twin aspirations and the continuing tensions, during a period of rapid growth and economic development, between rights-based conceptions and those based on an ideology of harmony and communal village life.

**T**o use the well-known Tofflerian expression, Indonesia is undergoing several “waves” of structural changes—not successively but simultaneously. We could say that Indonesia is in transition from an agrarian to not just an industrial society but a post-industrial society as well. For Indonesia and other new nations, theories are expected to explain what happens when a country is engaged in a process of great and complex change. A more intricate explanation is needed than the one-step theories provide, like Toennies’s *Gemeinschaft to Gesellschaft*, Maine’s *Status to Contract*, Durkheim’s *Mechanic to Organic Solidarity*, and Spencer’s *Military to Industrial Society*. The more complex theory should explain the stages of development experienced by the now developed countries, but it should also explain “stages” of development that happen at one and the same time.

### **A State Based on Law**

The Constitution of 1945 expressly stipulates that the Republic of Indonesia is a state based on law. A state that emerged in the second half of the 20th century, it has from the very start relied on legal concepts, theories, and doctrines that were al-

ready part of the dominant legal tradition of the world—for example, the *rechtsstaat gedachte* (the “rule of law” tradition). We can observe the bearing of the global tradition on legal thinking in Indonesia by examining, for example, the implementation of policies through legislation and the making of a modern legal structure, as well as the operation of the courts and law offices and the dissemination of modern legal thought in the law schools. In fact, we receive the impression that the transformation is finished—that a society based on a modern legal system has been achieved.

But the picture of the legal sector is incomplete. Transformation has occurred at the formal or state level, while life in the rest of society still proceeds in traditional ways. The legal sector is stratified, with the modern legal system in a thin layer at the top and the age-old structure, processes, and practices forming the substantial component. Nor is the dual system unique to Indonesia; it has also developed in other Asian countries (see, e.g., Mehren 1963; Parker 1984; Wolferen 1990; Hahm 1967).

Classical theories on law and society—in this case, on the development of the modern legal system—proffer stages of development, from archaic to traditional to rational (Weber 1954; Durkheim 1964). These theories suggest that certain stages should be accomplished before the next to achieve a further developed state. Weber, for one, propounded the classical matrix of authorities divided into three stages of development: the traditional authority, the charismatic authority, and the rational legal authority. Weber’s thesis was that legal systems develop through a process of rationalization.

The mechanical and linear development exemplified by Weber’s old thesis, among others, cannot match the complexity of development experienced by new nation-states in the second half of the 20th century—the “latecomers in modernization” (Eisenstadt 1966). The latecomers—Indonesia is a case in point—are experiencing simultaneous waves of development.

## The Making of a Republic

When Indonesia was in its conceptual state in early 1945, the problem of what its founding principles should be was the subject of lively debate. Supomo, a professor of *hukum adat*, the indigenous law, was an ardent advocate of basing the state on original Indonesian conceptions of the individual and society. Long before the discussion in the Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia, a committee established prior to independence to study and make recommendations on the constitution, Supomo had done much pioneering work in dissemination of those principles, which became important in the new republic.

In a speech in Yogyakarta in 1937, Supomo laid out the various concepts of the individual employed by Indonesians and Westerners. He said that the concept of *aku* (I, the self) in the Indonesian world embraces the whole community of which the individual forms a part, while in the West the personal pronoun represents just the individual. Within the Indonesian framework, conflict is alien, because conceptually there is no opposition between oneself and the group to which one belongs; rather, there is a deep feeling of identity. The relationship between the individual and society, between the individual and the state, is quite the contrary in the West, where it is felt that provisions must be made to protect the individual from the state. In the West, legal system are designed around this dichotomous view (Poggi 1978).

In a society with a hierarchy, however rudimentary, the Indonesian view of the individual and society can have profound implications, especially when observed from a Western perspective. One could, for instance, ask questions about how to start organizing a modern rational-bureaucratic society, of which the modern state is an important example, without a clear distinction between the individual and society.

The Indonesian archipelago includes thousands of islands and hundreds of ethnic groups, and although no absolute uniformity in social life exists, still there was thought to be commonality. The distinct character of social life in Indonesia was thought to reside in the sense of a shared communal life, a sense of oneness, togetherness, and harmony.

In making a state based on the indigenous mode of organization, the founders used *desa* (village) republic as a model. They conceived of the *desa* republic as an organic construction that embodies the traditional view of the individual and society. Some basic characteristics of their theory of the state are:

1. The state exists to protect and serve the interests not of an individual or group but of society as a whole.
2. The union between the government and the people should be strong—to use the Javanese expression, “*manunggaling kawula lan gusti*” (“the oneness of authority and people”). The government should embody the people’s sorrows and wishes and all other mental states and aspirations.
3. Individualism is frowned on. The Indonesian state is a joint venture of the people based on the principle of *gotong royong*—“all works should be accomplished in a spirit of togetherness.”
4. Opposition between the state and the people is inconceivable. Opposition and conflict are inconsistent with the ideal of a *negara kekeluargaan*, “a state based on the familial concept.”

To make the Republic of Indonesia a modern state along the lines of the *desa* republic, all the apparatus and institutions of the old republic were given new forms. The *kepala desa* (head of

the *desa*) was transformed into the president, and the *rapat desa* into the modern Majelis Permusyawaratan Rakyat, the highest representative council in the republic. However, the power and authority of the kepala *desa* are in fact without legal limitation; the power of the president, in contrast, is expressly stated in the Constitution of 1945 to be “not unlimited.”

### Different Development

By looking at the foundation of the Indonesian state we can better understand the ideals and outlook of the founders—their views on the organization of a state and on the state as a legal community—as well as better grasp the fundamental relation between Indonesian law and society.

From the very start, the making of the new state was directed toward building a modern industrial country. The preamble of the Constitution of 1945 states that the world is in the midst of a transformation and that the state will take part in the process. The use of the term *transformation* is just another way to refer to industrialization and urbanization. There was no hint of hesitation on the part of the founding fathers about whether the country should be modernized and industrialized or maintain its traditional form of life. Nor did the installation of industrial plants and modern educational institutions raise protest and disapproval. Before independence the people had been organized politically on the basis of their opposition to Dutch colonization, not on the basis of their opposition to industrialization and modernization.

Theorists of industrialization like W. W. Rostow would argue that a nation could successfully embark on the project of industrializing only if attitudes and infrastructure were supportive. Social, political, and economic institutions should be reorganized to sustain the process. In short, industrializing countries should employ structures like those in the West. In Indonesia, however, the decision was to base the national institutions on indigenous principles. The founding fathers did not transplant or imitate modern structures, patterns, and models of state and society but built a nation according to the traditional pattern of life. Here I am not judging the decision to inflate the *desa* republic into the modern Republic of Indonesia. I am only observing that two key processes in Indonesia headed in opposite directions: toward industrialization and modernization on the one hand and toward preservation of the old pattern of life on the other. Because of this “reverse development,” some problems have arisen in the field of law and society.

The social and economic processes of the country proceed via two-way traffic. One lane of the road is used to develop a fast-growing industrial country through modern institutions and bu-

reaucracy; the other lane is used to keep the modern processes within the bounds of the old principles. The Indonesian state, nearly half a century after it came into being, has achieved some major advances, including the establishment of high-tech industrial projects. Let me give just one illustration. Today, in cooperation with Spain, Indonesia is producing aircraft, a model known as the CN 235.<sup>1</sup> In 1995 Indonesia is expected to be able to produce aircraft without the assistance of another country. Rostow would argue that the presence of such a technologically advanced industry could be sustained only by modern institutions, be they forward linked, backward linked, or laterally linked, but Indonesia has evidently developed in a different way.

## Law and Society

Uniformity and centralization are the important principles that guide the politics of legal development in Indonesia, and they also characterize the legal structure and culture of the country. The politics of developing a monolithic legal system is related to the more general strategy of nation building and to the cultural base of the nation, which also has an important function in the development of strategy. As a part of this strategy, the values of unity and harmony are strongly upheld.

Together with Bahasa Indonesia—the national language, Malay in origin—the Hukum Nasional, or the national legal system, is considered a major contribution toward bringing this nation, plural in many aspects, into homogeneity. Hundreds of languages are spoken in Indonesia—Javanese by the most people (about 30% of the population). But Javanese was not adopted as the national language; Malay was chosen instead, even though it was spoken among only a tiny minority. Sociologically speaking, it is difficult to control the strong influence of Javanese on the Indonesian national language.

What happened in the development of the national language also happened more or less in the development of the law. A uniform (national) legal system has been instituted that bypasses the many local traditional social controls. As with the Indonesian language, which must bear the influence of the Javanese language, so, too, the Indonesian legal system must take into account the local traditional legal practices.

The description does not necessarily imply a subversion of the national legal system by the traditional social controls. In a society embedded in a plural structure, complex law enforcement is to be expected; it will be necessary to bend the national legal system to fit community life. Or we might say that the state

<sup>1</sup> CN is a combination of “C” (for Cassa, the name of the Spanish company) and “N” for Nurtanio, the abbreviated name of the Indonesian aircraft industry—Industri Pesawat Terbang Nurtanio.

legal system is reinterpreted in accordance with local customs and needs. Reinterpretation is an easy way to avoid the harsh enforcement of state law or to make the law more suitable to the regional and local communities, especially those located far from Jakarta. It is sometimes said that policymakers, including lawmakers, see all of Indonesia from the capital. Jakarta is becoming the point of reference from which the whole country is being controlled, engineered, and measured.

Let me give an example. The residents of Aceh, in the northern part of Indonesia, are well known for their fervent attitude toward religion—in this case, Islam. This characteristic is manifested, among other ways, in the strong opposition to gambling. The national law prohibits unauthorized gambling. On one occasion, the regional police chief said that the police would not protect anyone who gambles. This statement provoked a nationwide wave of protest, especially from Indonesian lawyers, who believe that, according to the law, even criminals have the right to police protection. The police chief reinterpreted the legal prohibition to conform with the norms of the Aceh community. His understanding was that from the sociological point of view, the police in a community must talk the idiom of the people there if they expect the community to take part in peacekeeping.

### **Rapid Development of the Desa**

If the Republic of Indonesia is the modern reconstruction of the age-old *desa*, then the *desa* itself is being transformed into a modern community. So the traditionalization of the modern Indonesian state goes hand in hand with the modernization of the traditional community.

During the hundreds of years of colonial domination, a divided society was developed, with modern and traditional sectors. The cities became modern, while the *desas* were left alone. The colonial administration did not engage in a comprehensive program to develop the nation as a whole; it created urban clusters. The *desa*, being peripheral to the city in the modern capitalistic economy, was exploited. When the new state was created in 1945, it was faced with this legacy at the same time that it was charged with developing the whole nation. The new policy is to make development more balanced—to lessen the gap between the modern and the traditional sectors, the city and the *desa*.

In the late 1960s a wave of modernization went through the *desas* in central Java. At the instigation of a governor eager for rapid modernization of the *desas*, many new practices have been introduced into the formerly quiet and relatively harmonious communities. The politics of modernizing the *desa* took definite shape with the introduction of Act No. 5/1979, dealing with *desa* government. What we have here is another kind of reverse devel-

opment: a modern state based on a traditional desa form of government that in the 1970s, 30 years after the establishment of the new state, attempted to transform that desa into a modern community. This transformation has created problems as the old, idealized community life has undergone critical changes. Although the desa act was intended to preserve the autonomy of the desa, giving it the authority to manage its own affairs, other provisions in the act have had the effect of considerably impairing the old desa power. It was the long tradition of the desa that contributed to its power and competence and that attracted respect, but the act has challenged the core of that tradition.

With the act, the state has penetrated more deeply into the desa. Desa government has been reorganized, extending the reach of the state bureaucracy and giving the state government a strong presence in the desa. The act deals with subjects like (1) the formation, division, fusion, and phasing out of the desa; (2) the structure of desa government; (3) the election, appointment, and resignation of the desa head; (4) the rights, authority, and duties of the desa head, (5) the desa ordinance; and (6) desa income, budget, and expenditures. All in all, the structure of a modern state and society are being transformed and transplanted into the desa. The process in some way contradicts the original basic idea of building a state based on the structure and life of a desa republic. Instead of incorporating Indonesian wisdom as embodied in the structure and processes of desa life, the old desa life is now being diluted and transformed into a different style of life, called "modern."

Specific problems that arise are the result of a type of development that I have already labeled "development from without." What Act No. 5/1979 proposed was development of the desa from without—that is, by the intentional implantation of a different kind of structure in the desa. In the course of applying the act, disintegration is in some way brought to the traditional form and organization of life; one writer referred to it as a cultural blow (Nasution 1991). Restructuring desa administration means shaping it to fit a rational-bureaucratic model of organization. Such restructuring has not developed desa life but, instead, has transformed the traditional idealized, autonomous, and powerful desa into a "modern skeleton" (*ibid.*). From the modernizers' point of view, the situation can be considered transitional to achieving a uniform nationwide model of government administration, but from a sociological point of view, what we see is a breakdown of desa life. Of course, the breakdown has long been under way, but the latest event, the enactment of Act No. 5/1979, dealt a decisive blow.



## Concepts of Rights

How are rights conceived in Indonesia and, for that matter, in most other Southeast Asian countries as well? In the first place, imposing one's rights is considered impolite. There is a story about an Indonesian law professor who lost his luggage. Once he knew that his luggage could not be found, he relaxed and was ready to go away. But his wife pushed hard, so he gave in and proceeded to make a claim. Although as a law professor, he taught his students to be aware of their rights, he did not apply his lectures to himself. In an actual situation, he tried to behave politely.

Certain fundamental rights were added to the Constitution of 1945 only after debate. The rights to express an opinion, to hold a decent job, to obtain an education, and to organize unions are all specified. But to impose one's individuality is considered by some to be an offense against harmonious communal life. This perception of rights creates problems when Indonesia is confronted with questions of human rights.

Given the rapid pace of modernization and industrialization, traditional communal values have met the developing individualistic and liberal patterns of life headlong. The conflict is exemplified by the people's protest against the current course of economic development, which they believe has moved Indonesian society away from an ideal cooperative and familial economy.

In the old days, people managed to express their rights to the kings, not by rioting or using other forms of violent expression, but by simply sitting down together peacefully in white clothes, usually between two banyan trees, in an open field called the *alun-alun*. When the king observed the coming together of people, he knew that there was something they wanted to tell him. This old institution is called the *pepe*—literally, "sitting in the sun." In the quite different society of today, creating and sustaining modern institutions that express the old tradition will be extremely difficult.

## Legal Education

Education has not played an important role in legal development in Indonesia. By legal development I also mean the transformation and making of a new state. The legal education system is still set up to train people for the job market. People generally want law schools to continue to educate people to be judges, attorneys, and advocates. Keeping the orientation to the job market means that legal education is dominated by the modern sector—by business, banking, and bureaucracy. The recent move to reform the curriculum reflects this view; the idea is to increase the practical knowledge imparted in a legal education.



This kind of legal education might be appropriate in a nation that was not in transition, for there would be no need to reexamine existing legal concepts and doctrines. But such is not the situation in a nation like Indonesia that is transforming itself and establishing its individuality. Most Southeast Asian countries are undergoing this process; in the United States it happened during the years in which a unique American legal system was formed—the time that an American writer, Grant Gilmore (1977), has called the Age of Discovery. He reports how the making of a distinct American legal practice bewildered those accustomed to the dominant legal tradition (p. 35).

Indonesia, being a society in transition, does not differ much from other nations struggling with modernization and industrialization. At the same time, unlike Singapore, for instance, Indonesia has developed a policy for maintaining the old tradition of statecraft—what we have called reverse development. If legal education is to contribute to the design of a modern Indonesian legal system while helping to preserve the old pattern of social life, then legal educators and others should articulate the kind of educational reforms that are needed to achieve this unique goal. For nearly half a century no such voice has been raised—or if it has, not loudly or persuasively enough.

If the age-old traditional values and indigenous pattern of life are to be maintained, the structure and concepts of the postcolonial legal system, which is based on different assumptions and social values, must be reviewed. The curricula of the law schools of today are not tailored to accommodate the basic reform of the legal system after independence. This does not mean that no effort has been made to make such a reform; rather, the reforms are not comprehensive and systematic enough to match the great change in the legal system. The redefinition of legal concepts has not proceeded well. Only here and there, in some seminars and writings, can we identify an awareness of the need to change the basic legal principles. As recently as 1990, two private law schools, one in Yogyakarta and the other in Bandung, organized seminars on reviewing the national legal principles of today, but did no follow-up. In 1987 the law school of the Diponegoro University in Semarang organized a seminar on the conceptualization of an Indonesia-based legal education.

In the field of constitutional law, there has been substantial legislation to give form to political developments. But the attempt in the Constitution of 1945 to create a modern constitutional system based on traditional patterns has not worked satisfactorily. After nearly half a century the system of a statecraft based on principles of family relationships and harmony—applied even to relationships among the organs of state—is still not firmly established.

A longing for a distinct Indonesian theory pervades the academic community—a theory with more structured, elaborated, and systematically developed legal concepts and constructs, which would give direction to national development. Basic to such a theory would be, for instance, the legal construction of the concepts of ownership and contract, of the criminal justice system, of constitutional law. The question is whether it is possible to develop legal concepts and doctrines nurtured by communal and harmonious values. Furthermore, if law schools are ever to play an important role in building institutions in Indonesia, then educators should express their position clearly as agents of development—that is, by actively and consistently giving form and direction to the processes and changes taking place in law and society in Indonesia.

### **Conclusion**

The legal system in Indonesia has been marked by the long struggle to construct a system based on the pattern of the family or community as set forth by the Constitution. Attachment to the traditional communal life conflicts with modernization and industrialization.

A modern Indonesian legal system could be constructed by instituting a distinct legal culture, not just making formal rules. In instituting such a culture, bureaucrats in the legal system are key. As the promulgators of the Constitution expressly stated, the development of a constitution based on community is of no use if the personnel in the legal bureaucracy are nurtured in the spirit of individualism. It is individualism, not community, that is rapidly expanding, because modernization and industrialization have outstripped the constitutional ideal of the founders of the Indonesian Republic.