

**IMPLICATIONS OF THE CONSTITUTION FOR POLITICAL
NEUTRALITY IN THE DYNAMICS OF LAW AND
DEMOCRACY**

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Abstract

This study seeks to analyse the constitutional provisions on political neutrality within the framework of Indonesia's democratic process, particularly as it pertains to the establishment and upkeep of a democratic society founded on social fairness and the preeminence of legal principles. This study examines applicable laws, legal theories, and police procedures via a normative-philosophical and descriptive analytical lens. Findings highlight the need of political neutrality in state administration and bureaucracy for maintaining a just and fair democracy. Government impartiality and honesty can only be restored by overhauls to political ethics and the inner workings of bureaucratic politics. In light of Pancasila and the Constitution of the Unitary State of the Republic of Indonesia (1945), this conclusion stresses the need of cooperation across different parts of the country in order to establish a national legal system that upholds democracy and social justice.

Keywords : Democracy; Legal Dynamics; Political Neutrality; Ethics Reform; National Legal System.

Introduction

A long time ago, there was a concern about the impartiality of state officials and bureaucracy. Many scholars in public administration and politics, including Nicholas Henry, Francis Rourke, and Guy Peters, have come to the conclusion that bureaucracies should take an active role in making political choices.¹ According to Wilson, Goodnow, and White, it is almost impossible to separate bureaucracy from politics as bureaucracies have the authority to make decisions, which is a political activity. Looking at it this way, the government bureaucracy is quite politicised. Decisions in the realms of politics and law are also involved.

From a theoretical standpoint, the legal system is the most important system for implementing a series of institutional powers that prevent abuse of power in politics, economics, and society. It acts as the main intermediary in social relations between the public and the state in its fight against criminalization and aims to establish a framework for the creation of laws, the protection of human rights, and the expansion of political power. It also provides a means for representing elected officials.² Regarding commerce, regulatory environments, or military operations, issues between sovereign nations are governed by international law, whilst administrative law is used to examine governmental decisions. "A dominion of law would be considerably better than the rule of rampant tyranny," Aristotle said.³

At the same time, there is never a dull moment in the political realm. Throughout human history, the very definition of the word has been contentious.⁴ Philosophers and political scientists have taken an interest in politics, politics, practices, and political thought as a means to advance human civilization. Concurrent with the zenith and twilight of a period came a great many works and individuals.

The Connection Between Legal Politics and the Politics of Legal Formation. The term "legal politics" refers to the study of the interplay between political factors and the legal system as a whole, specifically the policies that the federal government has or plans to enact on a national level. Here, the law is not merely to be understood as a set of requirements or an imperative body of articles; rather, it is to be viewed as a subsystem whose development, as well as its execution and enforcement, are highly susceptible to political influence. A political variable may be classified as

¹ Muhammad Ardhi Razaq Abqa dkk., *POLITIK HUKUM PEMILU* (JAMBI: PT. Sonpedia Publishing Indonesia, 2023), https://www.researchgate.net/profile/Mohamad-Hidayat-Muhtar/publication/371735353_Penerbit/links/6492eb86b9ed6874a5c549fc/Penerbit.pdf.

² Firman Yudhanegara dkk., *Pengantar Filsafat Hukum : Sebuah Ontologi, Epistemologi, dan Aksiologi Ilmu Hukum* (PT. Sonpedia Publishing Indonesia, 2024).

³ Mohamad Hidayat Muhtar, "Recognition of foreign judgments and decisions under Law 08-09 includes the Algerian Civil Administrative Procedure Code," diakses 18 Februari 2024, <https://www.asjp.cerist.dz/en/downArticle/512/7/1/239620>.

⁴ Nuvazria Achir dan Mohamad Hidayat Muhtar, "PEMBANGUNAN DESA MELALUI PENGUATAN ORGANISASI KARANG TARUNA DALAM MEMAKSIMALKAN PRAKTIK POLITIK DAN PEMILILHAN DUTA DEMOKRASI DI DESA MUARA BONE KECAMATAN BONE," *Community Development Journal : Jurnal Pengabdian Masyarakat* 4, no. 4 (20 September 2023): 7581–90, <https://doi.org/10.31004/cdj.v4i4.19099>.

either democratic or authoritarian, and a legal product can be characterized as either responsive or conservative/orthodox.⁵

Several issues surfaced, concerns emerged, and potential solutions were considered over that period. Everyone thinks politics is a shady field because of all the hidden agendas, jealousies, conflicts, falsehoods, and hypocrisy that goes on there. The two pillars of politics, in their view, are dishonesty and manipulation. Politicians' words and deeds may not always reflect their innermost thoughts and feelings. Whenever a politician meets someone he despises, he will often put on an act of kindness. He became a devoted follower in no time at all. In politics, you're never really alone, isn't that right?

Problems with a political component arise among the many that dot the history of political philosophy and the history of any country. Concurrently, several prominent personalities attempted to address the political challenges confronting their country by constructing discourse. Legal disputes, as seen in inquiries that have evolved into timeless masterpieces, are one such issue. For instance, is it really utopian to think that ethics should dictate political behavior? On the other hand, when a state, country, or culture is still immature politically, the collision of politics and morality becomes an absolute need.

Problem

The role of state administrators in constructing and sustaining democracy in Indonesia is the subject of this paper's descriptive issue, which centres on the link between political and legal neutrality.

Method

Based on the questions and ideas that were posed for this study, it may be classified as normative legal research. This study takes a philosophical and analytical tack, drawing from a variety of theoretical frameworks to arrive at its conclusions, which in turn seek to generate new results to address the identified primary issue.⁶ Additionally, descriptive-analytical tools will be used to examine the matter at hand. This will include outlining the relevant laws and regulations as they pertain to legal theory as well as positive law enforcement tactics.⁷

Result and Discussion

Understanding Legal Politics

There are two fundamental aspects to legal politics: first, as a framework for guiding the legal policy of state institutions when passing laws, and second, as a means of evaluating and criticizing the extent to which a law complies with this framework. consider the advancement of governmental objectives to be the purpose

⁵ Mohamad Hidayat Muhtar, "Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum," *Jambura Law Review* 1, no. 1 (30 Januari 2019): 68–93, <https://doi.org/10.33756/jalrev.v1i1.1988>.

⁶ H. Ishaq, *Metode penelitian hukum dan penulisan skripsi* (Bandung: ALFABETA, 2017).

⁷ Peter Marzuki Mahmud, *Pengantar Ilmu Hukum Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2016).

of legal policy. Creating legal materials to suit development needs, including land sector legal materials, is at the heart of legal development, which is a national legal policy according to Muhadar. How to implement existing legal provisions, such as upholding the supremacy of law, is another aspect of legal politics. Institutional functions and the development of law enforcers are also part of legal politics.⁸ So, the development and implementation of laws are part of legal politics, which may reveal the character, function, and trajectory of lawmaking.

When discussing the use of a national legal system to advance governmental objectives, it is necessary to cover the following ground: (1) The desired outcomes of Indonesian society or the state as a whole in terms of legal political orientation, including the appeal for the fundamental principles of state objectives to serve as guidelines for legal politics; (2) the national legal system necessary to accomplish these outcomes and the elements that impact it; (3) the framework and planning involved in the formulation of legal policies; (4) the substance of national laws and the elements that impact them; (5) the relationship between legal fencing and the National Legislation Programme, as well as judicial and legislative reviews, and so on.⁹

Country Goals

A nation's legal system serves as the foundation for legal politics, which seeks to advance the state's or society's objectives and aims via the advancement of the law. The principles of Indonesian society, including the creation of democratic and socially equitable legislation, must inform the country's legal framework. The Preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia states that legal development must aim to end an unjust social order and repression of human rights. As a result, legal politics must be oriented towards the ideals of a legal state based on the principles of democracy and social justice in one unified Indonesian nation.¹⁰

From the vantage point of legal politics, it is quite evident that the law serves as a means through which the state or Indonesian society's principles are advanced within a certain legal framework. A fair and successful society founded on Pancasila is the purpose of our country, the Indonesian nation. Section 4 of the Preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia lays out our nation's stated goals: (1) safeguarding the entire nation and all of Indonesia's bloodshed; (2) advancing the general welfare; (3) illuminating the nation's life; and (4) contributing to the establishment of a global order based on liberty, everlasting peace, and social justice. Belief in the Almighty God, a just and civilized humanity, Indonesian unity, a democratic process guided by wisdom in

⁸ Tuti Khairani Harahap dkk., "PENGANTAR ILMU HUKUM," *Penerbit Tahta Media*, 30 Mei 2023, <https://tahtamedia.co.id/index.php/issj/article/view/255>.

⁹ Sigit Sapto Nugroho, "Membumikan Hukum Pancasila sebagai Basis Hukum Nasional Masa Depan," dalam *Seminar Nasional Hukum Universitas Negeri Semarang*, vol. 2, 2017, https://www.academia.edu/download/55766982/ARTIKEL_SEMNAS_UNNES_SIGIT.pdf.

¹⁰ Mohamad Hidayat Muhtar dkk., *TEORI & HUKUM KONSTITUSI : Dasar Pengetahuan dan Pemahaman serta Wawasan Pemberlakuan Hukum Konstitusi di Indonesia* (PT. Sonpedia Publishing Indonesia, 2023).

discussion and representation, and social justice for all Indonesians are the five pillars upon which this nation's objectives rest (Pancasila). In several areas of national legal politics, Pancasila serves as a compass.

Principles of Legal Ideals (*rechtsidee*)

Law as a tool to achieve state goals, apart from being based on the five principles (Pancasila), must also function and always be based on four principles of legal ideals (*rechtsidee*), namely: (1) protecting all elements of the nation for the sake of integrity (integration); (2) realizing social justice in the economic and social fields; (3) realizing people's sovereignty (democracy) and the rule of law (nomocracy); (4) creating tolerance on the basis of humanity and civility in religious life.¹¹ These four principles of legal ideals must always be general principles that guide the realization of the ideals and goals of the state, because legal ideals are a belief framework that is normative and constitutive. The legal ideal is normative because it functions as the ideal base and prerequisite that underlies every positive law, and is constitutive because it directs the law and the goals to be achieved by the state.¹²

National Legal System

As a platform, basis, and framework for national legal politics, a national legal system is necessary based on the aspirations of society to be realised, which are crystallised in state objectives, foundations, and legal principles. Consequently, it is necessary to educate oneself on the Indonesian legal system or the national legal system of Indonesia.¹³ A system is an interdependent whole whose components work together to accomplish a common objective. Some have defined this system, but others have not. According to certain definitions, a system is an organised whole whose many parts and pieces are all interdependent on one another. The laws and regulations enacted and enforced by a nation to uphold its principles, objectives, and legal framework are collectively referred to as national law.¹⁴ Here, "Indonesian national law" refers to the codification of a set of principles articulated in the Preamble and Articles of the Unitary State of the Republic of Indonesia's 1945 Constitution in order to accomplish a set of stated aims. Embedded inside the 1945 Constitution of the Unitary State of the Republic of Indonesia are the goals, principles, and foundations of Indonesian law. What follows are some of the most defining characteristics of Indonesian culture, as they have evolved over the years in the collective mind.

Therefore, all of Indonesia's interrelated and originating legal elements—including content, structure, culture, facilities, statutory rules, and all of its sub-elements—form the Indonesian national legal system. This system is applicable

¹¹ Ibnu Sam Widodo dkk., *Hukum Tata Negara* (Sada Kurnia Pustaka, 2023).

¹² Muhammad Afif, "MEMBERANTAS KORUPSI MELALUI BUDAYA HUKUM YANG BAIK DAN CITA-CITA HUKUM DI DUNIA PERADILAN INDONESIA," *SUPREMASI: Jurnal Hukum* 1, no. 2 (2019): 97–107, <https://doi.org/10.36441/supremasi.v2i1.107>.

¹³ Titik Triwulan Tutik, "Pembaharuan Hukum Tata Negara Indonesia Dalam Rangka Mewujudkan Cita Negara Hukum Nasional," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 8, no. 2 (2 Oktober 2018): 373–98, <https://doi.org/10.15642/ad.2018.8.2.373-398>.

¹⁴ Ibnu Sina Chandranegara, "Fungsi Falsafah Negara Dalam Penerapan Konsep Negara Hukum," *Jurnal Cita Hukum* 2, no. 1 (2014), <https://journal.uinjkt.ac.id/index.php/citahukum/article/view/1448>.

throughout the whole country. derived from the beginning and ending of the Republic of Indonesia's 1945 Unitary State Constitution (Mahfud, 2006:20-21; Hartono, 1991:64). First, the components or parts of the legal system; second, the system's consistency; third, fundamental comprehensions of the system; and lastly, the system's completeness are the five items that are at stake inside the legal system.

Basic Framework for Legal Politics

Aiming to transform legislation into a means to an end is the essence of legal politics. National legal politics, in this sense, need to rest on the following foundational principles¹⁵:

- a. National legal politics must always aim at the nation's ideals, namely a just and prosperous society based on Pancasila.
- b. National legal politics must be aimed at achieving state goals, namely: (a) protecting the entire nation and all of Indonesia's blood, (b) advancing general welfare, (c) making the life of the nation intelligent, (d) implementing world order based on freedom, eternal peace, and social justice
- c. Legal politics must be guided by the values of Pancasila as the basis of the state, namely: (a) based on religious morals, (b) respecting and protecting human rights without discrimination, (c) uniting all elements of the nation with all their primordial ties, (d) placing power under the power of the people, (e) building social justice.
- d. Somewhat similar to point 3, if it is related to the legal ideals of the Indonesian state, national legal politics must be guided by the necessity to: (a) protecting all elements of the nation for the sake of integration or national integrity which includes ideology and territory, (b) realizing social justice in the economy and society, (c) realizing democracy (people's sovereignty) and nomocracy (rule of law), (d) creating tolerance religious life based on civility and humanity.
- e. To achieve goals and achieve goals with these foundations and guidelines, the national legal system that must be built is the Pancasila legal system, namely a legal system that takes or combines various interest values, social values and concepts of justice into one prismatic legal bond by taking elements -good elements.

Renewal of Political Ethics

There is always a catch-22 for a nation-state when trying to advance both democracy and integration.¹⁶ Such a scenario would be ideal if the two could coexist together. On the other hand, in practice, it is very uncommon for democratic attempts to collect and express the political will of different social groups to have to neutrally fight integration initiatives to build national links.

¹⁵ Bambang Sugianto, "POLITIK HUKUM DALAM PEMBANGUNAN HUKUM NASIONAL PASCA AMANDEMEN UNDANG-UNDANG DASAR 1945," *Justicia Sains: Jurnal Ilmu Hukum* 2, no. 2 (6 Desember 2017): 145–70, <https://doi.org/10.24967/jcs.v2i2.300>.

¹⁶ Mohamad Hidayat Muhtar dkk., *Menimbang Keadilan: Dinamika Hukum dan Demokrasi Di Persimpangan Zaman* (Sada Kurnia Pustaka, 2024).

We have seen this conundrum before. Actually, it is often seen as an inevitable part of establishing a democratic political structure that preserves social cohesiveness. We must proceed with care in continuing any political process that goes in this direction because it will inevitably lead to catastrophes. So, it's not only political theory that's needed here; honesty, political ethics, and national unity are all crucial.¹⁷

Keep in mind that cultural factors play a significant role in contributing to the many forms of disorder in this nation's life, alongside issues with political mechanisms like the inconsistent application of the idea of a modern and democratic state and the underempowerment of public power (civil society). As a branch of community ethics, the ethics of national life develop via cultural processes rather than formally political ones. A moral compass for national life in the shape of an idea of decent work and human values (human interest) that must be upheld exists in the form of an unspoken norm that is both abstract and widely recognised. All the many kinds of deceit that fall under the umbrella term KKN are inextricably bound up with the moral codes and ethics of the country. In addition, whether there are any allusions to religion in the matter. "Forbid" acts that go against these ideals are also essentially the core religious beliefs of Indonesian culture.¹⁸

There are three possible interpretations of the term "ethics" according to Bertens. To begin, there is the sense of moral principles and standards that help individuals and communities control their actions; these are known as ethics. Second, a code of ethics is a set of generally accepted moral principles. A code of ethics is what is being referred to here. Third, the study of right and wrong is another definition of ethics.¹⁹

Given the severity of the KKN epidemic, it is clear that the political, economic, and legal reforms that have been underway for the last five years have not been enough; further reforms are required in the mental sector, particularly to fortify and fortify the nation's ethics. Reason being, morality is essential for the development of any country. An upright country is one whose values are upright. Conversely, a country's morality must be high for it to survive. "The system will not work optimally no matter how good the system is if the mentality or ethics of the people are workers," Akbar Tanjung said in an essay he wrote. Frequently, he will behave arbitrarily while manipulating the system in pursuit of his own temporary gratification. Conversely, in a labour system, even decent people may be

¹⁷ Wenda Hartanto, "KESADARAN HUKUM SEBAGAI ASPEK DASAR POLITIK HUKUM LEGISLASI: SUATU TINJAUAN FILSAFAT," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 4, no. 3 (31 Desember 2015): 469–83, <https://doi.org/10.33331/rechtsvinding.v4i3.17>.

¹⁸ Deni Setiyawan dan Mohamad Hidayat Muhtar, "Contemplating the Morality of Law Enforcement in Indonesia," *Journal of Law and Sustainable Development* 11, no. 10 (2023): e1261–e1261.

¹⁹ Ahmad Ali Afifudin dan Qusthan Abqory Hisan Firdaus, "KONSEP ETIKA DAN KEBAHAGIAAN MENURUT HAMKA," *Paradigma: Jurnal Kalam dan Filsafat* 4, no. 01 (11 Januari 2023), <https://pips.fitk.uinjkt.ac.id/index.php/paradigma/article/view/30397>.

coerced into working as labourers. Consequently, progress in systems must occur in tandem with progress in people, particularly in terms of moral growth."²⁰

The development of moral consciousness, however, is not an afterthought; rather, it is an integral aspect of any nation's framework for social and political life. Democracy and power control are examples of actual political procedures that must locate their foundation in human cognition. Ethics plays a significant role in this context. A new democratic political structure that enables methods of mutual control and monitoring is required, as is an open and democratic code of ethics for politics. In addition to necessitating the growth of a non-capitalist and non-monopolistic economic ethic, we must build an economic system that permits and promotes the growth of a justice ethic.

Despite its abstract nature, political ethics is the final line of defence against the "will to power" that people possess. The trouble is, it's hardly a revelation that our politicians often cross the line while executing political manoeuvres. Politics, even when involving powerful special interests, may give the impression that it is devoid of moral principles and ethical truths. If this holds, skill in politics will become harmful, anti-democratic, biased, and maybe even unlawful.

When people have high moral standards in politics, they will act in a way that is healthy, democratic, fair, and constitutional, following the ground principles that everyone has agreed upon. Ethics must underpin effective politics, which must be conducted in a way that is peaceful, democratic, fair, civilised, and in accordance with the constitution. In addition to being immoral, these tactics are uncivilised, unfair, unconstitutional, and against the laws of the game, therefore it's best to stay away from them.

Still, a long time remains till we attain the level of civilised political competency. Many republican leaders still haven't figured out how to be really democratic. Members of this republic's political establishment continue to hold the outdated assumption that any organisation with divergent political goals are inherently hostile. To them, the terms "political opponent" and "political enemy" mean very different things. There is a significant distinction between the terms adversary and opponent. The word's origins suggest a distinct meaning. Politicians who seem to be opponents in a ring may not really be enemies in the real world. The regulations are based on the nation's best interests and the constitution, so even an adversary in a political campaign must play by the same set of rules. Because opponents must be vanquished and eradicated, this line of reasoning does not hold when individuals are seen as adversaries.

Competence in politics becomes very charged and dramatic under such situations, often including grassroots organisations as well. Taking a zero-sum game viewpoint, politics is seen as nothing more than a power struggle or political conflict. True, politics is an art form, but it's also "the art of playing with the possible" (the art of the feasible), which recognises the value of a mutually beneficial solution based on equitable distribution of power. Politics, much less set

²⁰ Muhammad Irham dan Nani Mulyati, "Perbuatan Tercela Sebagai Salah Satu Alasan Pemakzulan Presiden Dan/Atau Wakil Presiden Dalam Kajian Hukum Pidana Di Indonesia," *SASI* 27, no. 3 (7 Oktober 2021): 376–401, <https://doi.org/10.47268/sasi.v27i3.596>.

pricing, cannot be absolute. Again, political competence is about more than just having political power; it's also about having ambitions or being idealistic.²¹

The lack of intelligence and statesmanship, particularly among the haughty elite, influences circumstances that are prone to conflict or division for reasons other than politics. Taking a naturalist stance and assuming that plurality is an inherent reality. A gift from the Almighty God. Society should not be divided over something that has been given to it. That being said, the nation's collective consciousness has undoubtedly been influenced by the phenomena of division and horizontal confrontations like those that have happened lately.

To keep the peace and unity of the country intact in such a context of national heterogeneity, national solidarity is a crucial and strategic component. This highlights the critical need of fostering a national spirit that is both united and inclusive. Unfortunately, such agreements are very difficult to achieve in the present political climate. This state of perpetual tension colours the cohesion of national life even now.

Renewal of Bureaucratic Political Life

It is fitting that the government take the lead in implementing national development at the moment, specifically by motivating and guiding the process of renewal, development, and modernization of society, nation, and state in line with the national personality.²² The current constitution, the 1945 Constitution of the Unitary State of the Republic of Indonesia, provides the legal basis for this. The supreme law of the land demands that the state safeguard the integrity of the Indonesian people and their blood while simultaneously advancing the common good.²³

A democratic political life based on equality of sentiments, power, and opportunity should be managed gradually, situationally and conditionally, with the following goals in mind: first, a balanced and harmonious distribution of power between the infrastructure and the suprastructure; second, a distribution of power within the infrastructure among social and political groups; and third, a distribution of power among the existing state institutions (legislative, judicial and executive)

Putting aside the constraints imposed by the various political scientists and specialists. Developing and using power in a democratic manner is what politics is all about. That is to say, it's about political tactics and ethics. Strength, on the other hand, refers to stamina and combat prowess, which encompasses power, money, and strength according to the Pancasila democracy to which we are devoted.

Thus, it is evident that Pancasila democracy encompasses a wider range of concepts than liberal democracy or any other kind of democracy.²⁴ Pancasila

²¹ Muhammad Sidi Ritaudin, "Benturan Politik Antara Idealisme dan Pragmatisme" (Harakindo Publishing, 2012), http://repository.radenintan.ac.id/857/1/Buku_Benturan_Politik_Siap_upload.pdf.

²² Mohamad Hidayat Muhtar, "BAB 2 KONSTITUSIONALISME DAN PRINSIP-PRINSIP KONSTITUSI," dalam *Hukum Tata Negara* (Sada Kurnia Pustaka, 2023).

²³ Askar Askari, "Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria," *Journal of Indonesia Legal Studies* 8, no. 2 (2023): 1311–60.

²⁴ Mohamad Hidayat Muhtar, "Sistem Pemerintahan Indonesia," *Hukum Tata Negara: Konsep dan Teori. Global Eksekutif Teknologi*, 2023.

democracy encompasses not only political (the rights of citizens to vote, hold public office, and associate) but also economic (the state of the economy) and social and cultural (the way society functions) aspects of democracy. Thus, economic, social, and cultural rights are also guaranteed by the Pancasila democracy enshrined in the Constitution of the Unitary State of the Republic of Indonesia, which was ratified in 1945.

We cannot achieve the needed stability by just offering democratic rights without ensuring harmony in their application.²⁵ Our experiences as citizens during the New Order period make this quite clear. Some believe that other areas, particularly politics, are suffering as a result of the instability that has arisen from the past's exploitation of democratic rights.

The discordant execution of democratic policies in the realms of politics, economics, and culture is the root cause of this phenomena. Equally concerning is the fact that, despite its centrality to capital, discussions of democratic rights have mostly focused on political democracy, irrespective of its actual reach. Thus, the current focus should be on investigating the most effective methods of using politics as a tool to establish economic and cultural democracies.

For instance, in Indonesia's constitutional system, the Vice President revoked the previous Presidential Decree, which, according to legislative circles, was superfluous, and the President issued a Vice Presidential Decree, marking a period of instability or shock in social, cultural, and political life. Done²⁶ Similarly, when police officers engage in unethical practices and collaboration while on the job, the public suffers. This demonstrates that a firm agreement on the national issues is still lacking. This tendency makes it appear like society still has a long way to go before it can realise its potential or realise its members' dreams of wealth, peace, and justice.

Indeed, if we look closely, we can see that this instability stems from fundamental flaws in society's core fabric and way of life. Which is inextricably bound up with Indonesia's political leadership's past, present, and future socioeconomic and cultural standing. The following reasons, as stated by Suhardiman, contribute to this instability:²⁷

- a. The existence of differences in views in the field of political ideology, which actually occurred long before the proclamation, is still felt to continue.
- b. There is no detailed determination of the direction in which society will be taken, so that there are no measuring values for various phenomena and problems that arise in society.

²⁵ Mexsasai Indra, Geofani Milthree Saragih, dan Mohamad Hidayat Muhtar, "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia: Kekuatan Putusan Mahkamah Konstitusi dalam Pengujian Undang-Undang terhadap Undang-Undang Dasar 1945 di Indonesia," *Jurnal Konstitusi* 20, no. 2 (2023): 279–99.

²⁶ Istiqomah Fadlillah, "Threshold dan Masa Depan Demokrasi di Indonesia," *Staatsrecht: Jurnal Hukum Kenegaraan dan Politik Islam* 2, no. 1 (22 April 2022), <https://doi.org/10.14421/staatsrecht.v2i1.2532>.

²⁷ MH Sri Rahayu, "Kehidupan Demokrasi Indonesia Dan Masalah Gender (Perspektif Sosio-Historis)," *AGASTYA: JURNAL SEJARAH DAN PEMBELAJARANNYA* 4, no. 02 (2014): 25–32.

- c. The implementation of human rights by the State on the one hand and their use by members of society on the other hand is not as it should be, and last but not least there are attempts at political, economic and cultural intervention, subversion and penetration from outside.
- d. Looking at the form, these various instabilities can be seen in normative, structural and mental (moral) instability. In the normative field, for example, there are no consistent and permanent measures on how to instill good and clean political life or governance.
- e. One of the strong points throughout the New Order period was democracy. This occurs because biocrats are free to participate in politics as they see fit, since no laws specifically forbid it. In the case of biocrats who aspire to positions of power inside political parties, Golkar just informs or requests authorization from relevant authorities.²⁸

Biocrats are impacted and burdened by political interests, hence allowing them to participate in politics is detrimental to them. The government bureaucracy is being used as a springboard for the expansion, development, and consolidation of political parties and Golkar's power. The paternalistic bureaucracy of Indonesia maintains this status.

In a biocratic system, the leader—often a member of the political elite—is able to steer the ship and forge bonds with his followers based on shared goals. There is also a high incidence of nepotism and collusion when hiring employees from the same group or party. What colour the leader's biography is depends on his political leanings. The result is a bureaucracy that is biased, disorganised, and riven by internal conflicts of interest.

Dissatisfaction, discontent, complaints, gaps, and criticism from the public towards government biocracy are common outcomes of biocracy that is not neutral, as it influences workers towards the implementation given by biocrats, which is not objective, unfair, and tends to differentiate between political schools followed by members of society.

One of Akbar Tanjung's articles echoes this sentiment, stating that the New Order era's state administration structure was weakest at the level of supervision or control, leading to the concentration of power in the hands of President Soeharto. People experience poverty and inequality rather than wealth and justice and truth being protected because authority cannot be controlled and regulated by the people. This is the result of electricity operating autonomously, unchecked and unmonitored.²⁹

The State's involvement in regulating people's lives was diminished once the participation control system, which had been imposed repressively for a long time during the New Order government, collapsed. This community's eagerness to assume state responsibilities seems to be a challenge in and of itself, given the little

²⁸ Ilham Abdal Halim, "Degradasi Fungsi Parpol dalam Pendidikan Politik pada Kampanye Pemilu 2014," *Gema Keadilan* 1, no. 1 (2014): 36–42.

²⁹ Rikson H. Nababan, "QUO VADIS KEPASTIAN HUKUM, HAK MENCALONKAN DIRI BAGI MANTAN NARAPIDANA KORUPSI DAN PENGURUS PARPOL DALAM PEMILU 2019," *Jurnal Bawaslu Provinsi Kepulauan Riau* 1, no. 1 (2019): 76–102.

resources at its disposal. There is a lot of back-and-forth among different interests, so it's unclear which way the state will go in its attempts to democratise and solidify power.

President Soeharto's retirement and Vice President B.J. Habibie's selection as President of the Republic of Indonesia ushered in a new period, the Reformation era, marking the downfall of the New Order dictatorship. In addition to successfully pressuring the bureaucracy's senior leadership to resign, students and the general public are demanding that the bureaucracy remain impartial and unfettered by political factions and special interests.

A biocracy, as an executive entity, should be able to carry out its responsibilities and functions effectively without interference from any organisations or political interests. According to President Susilo Bambang Yudhoyono, all government officials are expected to remain impartial and refrain from politicising bureaucracy during regional head elections. This is in line with the principle of biocratic neutrality, which aims to establish a solid biography that remains unaffected by shifts in political leadership and societal and power elite upheavals.

Under the authority of TAP MPR NO. No. XI/MPR/1998, which seeks to establish an administration free of corruption, collusion, and nepotism, amendments were made to Law Number 8 of 1974, which deals with personnel principles, in response to student demands for reform. The goal is to establish a clean and neutral government, also known as a biocracy.

Dian Cahyaningsih cites a government decree from August 25, 1999, which states, "Before and during the New Order government, the Government Bureaucracy with almost all ranks of civil servants, both at the central and regional levels, had been influenced and burdened by political interests, so they could not be neutral in carrying out their duties and functions. This was the reason for the establishment of Law Number 43 of 1999." This decree was made in the context of a bill to amend Personnel Principles Law 8 of 1974, which was discussed in the DPR Plenary Session. By enlisting bureaucratic officials to join and/or run political parties, the powers that be employ civil workers to bolster their own political standing. This may happen since there is no hard and fast rule that says government employees can't join or run political parties.

What we can learn about the government bureaucracy's neutrality from its past is that it has become fragmented, biased, and unable to perform its functions professionally, efficiently, and effectively due to the influence and weight of political interests. Thus, the Transitional Government is eager to implement a programme of cleaning up the bureaucracy and making it independent of all political parties by Law no. 43 of 1999.

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So that the legal politics of Law No. 43 of 1999, which aims to establish an impartial bureaucracy, may be understood and understood correctly. As a reference, you may look to Satjipto Rahardjo's view, which covers a number of topics covered in legal politics, including^{30 31}:

- a. What goals are to be achieved with the existing legal system?
- b. What are the best methods to use to achieve this goal?
- c. When does the law need to be changed and what methods should the change be made?
- d. Can an established pattern be formulated that can determine the process of selecting goals and ways to achieve these goals?

In order to achieve an impartial bureaucracy free from the influence of any political party, Law No. 43 of 1999 sought to do the following:

- a. So that civil servants who serve as elements of the State apparatus can be tasked with providing services to the community in a professional, honest, fair and equitable manner in carrying out State, government and development duties, article 3 paragraph (1)
- b. Civil servants can be neutral and non-discriminatory in providing services to the community, article 3 paragraph (2)
- c. Civil servants can carry out their obligations properly to be loyal and obedient to Pancasila and the 1945 Constitution of the Unitary State of the Republic of Indonesia, the State and the government and maintain the unity and unity of the nation, article 4. This goal can also be intended to ensure that the overlap between loyalty to political parties and loyalty to the nation, state and government, as has happened before, does not happen again.
- d. To ensure the integrity, cohesiveness and unity of civil servants, explanation of the general part of number 6.
- e. Civil servants can focus all their attention, thoughts and energy on the tasks assigned to them, explains the general part of number 6.

As said before, the government bureaucracy can only accomplish its aims if it is certain that it can remain really impartial towards all political parties. Because of their position as bureaucrats, public officials are not allowed to participate in day-to-day politics. Public officials are not allowed to join or hold administrative positions in political parties according to Law No. 43 of 1999, Article 3, Paragraph 3. Members and administrators of political parties that hold public office positions must resign from their positions, either honourably or dishonourably. Overview of General Section 6

Bureaucratic neutrality necessitates planning ahead for the potential influence and involvement of political parties inside the bureaucracy via politicians, namely the assimilation of political elites into the bureaucracy. This foresight is indirectly manifest in Law 43 of 1999 in:

³⁰ Ade Mirza Kurniawan, "How Should the Law Work? A Book Review" *Biarkan Hukum Mengalir: Catatan Kritis Tentang Pergulatan Manusia dan Hukum*" (HeinOnline, 2021), https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jils6§ion=12.

³¹ Satjipto Rahardjo, *Biarkan hukum mengalir: catatan kritis tentang pergulatan manusia dan hukum* (Penerbit Buku Kompas, 2007).

- a. Positions in government organisations, whether structural or functional, are considered career positions and can only be filled or occupied by current or former civil servants, as stated in Article 1, number 6, and General Section 8, explanation of Law no. 43 of 1999. No one other than civil servants is authorised to apply for or hold such positions. in particular, powerful politicians
- b. Law no. 43 of 1999 grants authorised authorities the power to select non-permanent workers under Article 2, paragraph (3). By enacting this provision, the impartiality of the bureaucracy can be assured while political appointees (political appointments) are made for political elites whose ideas, energy, and knowledge are truly necessary to establish a government and carry out its functions. The reason behind this is that non-permanent employees are not considered civil servants but are instead appointed for a specific period of time to carry out government duties. Their development is of a technical, professional, and administrative nature, specifically tailored to the organization's needs and capabilities. This is done to ensure that the bureaucratic ranks remain intact, as explained in paragraph 3 of article 2.
- c. According to Article 25, paragraph (2) of Law no. 43 of 1999, civil service development authorities in each agency, whether central or regional, may be granted part of the power to select, transfer, and dismiss public servants by the President. At now, the highest-ranking career official in an agency, such as the Secretary General for Departments or the Regional Secretary for Regions, assumes the role of civil service supervising officer, rather than the Minister for Departments or the Governor for Provincial Regions. To prevent ministers and governors from politicising the bureaucracy, this safeguard is put in place.

Civil Service Development Officers do not have the authority to delegate or transfer the responsibilities of the President, including but not limited to the appointment, transfer, and dismissal of the Attorney General, heads of non-departmental government institutions, secretaries general of departments or highest/highest state institutions, directors general, and similar positions.

This is due to the fact that these posts constitute the pinnacle of government bureaucracy, requiring the President to have selective discretion over their appointment, transfer, and firing. Due to the novelty and lack of precedent for the bureaucratic neutrality problem, the legislative instrument governing it, Law 43 of 1999, may require further iterations of improvement before it can be fully utilised to accomplish its intended purposes. The view of Satjipto Rahardjo is congruent with this as well. Specifically, that: "The law must always make adjustments to the goals that society wants to achieve." Therefore, the law is dynamic. Because it strives for the desired legal *ius constituendum*, legal politics is a component that contributes to these processes.

Renewal of Legal Political Life

It is well-known that political policies and goods may be seen via the lens of legal politics. Also, there are two ways of looking at the legal system: broadly and narrowly. All things considered, it consists of four parts: legal content, legal

machinery, legal infrastructure, and legal culture. However, in a strict sense, it is restricted to the actual legal documents. The fundamental source of relevant legal concepts and norms, according to Bagir Manan, is the primary approach to the legal system. Due to the ideological character of national law, the national legal system is becoming more important in national legal politics.³²

Theoretically and pragmatically, the rule of law demonstrates the significance of societal interests in preserving a healthy social environment in accordance with Pancasila and the 1945 Constitution of the Unitary State of the Republic of Indonesia. There are individuals who hold the belief that the law isn't as important as it should be. This belief might be influenced by the fact that some people prioritise using their political power and strength to further their own interests, leading them to believe that the law is only meant for the weaker members of society. Regardless, this perspective is widely shared. Reflecting on the realities of history prior to the 20th century, when one country waged colonialism against another, we see this as an example of injustice. Such events prompted the framers of the Republic of Indonesia's 1945 Constitution of the Unitary State of the Republic of Indonesia to see the need of establishing a legal rather than a dictatorial form of government for the country.

Roescoe Pound's brilliant writings gave rise to a new understanding of law after WWI, which shifted the focus from a relatively static understanding—particularly in line with the historical school of thought—to a development of understanding as a means of change or social transformation. Pound saw law as a "tool of social engineering" to achieve a desired society.³³

Revolutionary and evolutionary change are the two main societal transformation mechanisms. Laws that undergo radical revisions seldom, if ever, improve society and often lead to "social hazard" or "social shock" instead. It is often believed that legislative reforms should be slow and evolutionary in nature so that they can weather any potential societal storms.

Thus, considering the function of law as a tool for progress and transformation necessitates a consensus-building level of understanding in order to identify the nature, essence, implications, and degree of consciousness associated with every aspect of law. It is evident that there are signs employed when the law is positioned as a tool for social change and advancement; this shows that people are aware of the two-way street of impact between the law and society.

Structure and culture are at the heart of these community agreements. A agreement on the principles to be aspired at is initially reached by those who create the legal system that is anticipated to control society. Anthropological and sociological considerations, together with societal dynamics, should inform legal formation. It is not simple to create a legislative policy that caters to every structural and cultural form of society, nevertheless, because of how diverse society is. There are a variety of social groupings, organisations, and norms in a diverse society. A

³² Susi Dwi Harijanti, "Khazanah: Bagir Manan," *PADJADJARAN JURNAL ILMU HUKUM (JOURNAL OF LAW)* 2, no. 3 (2015): 626–43.

³³ Almaidha Galung, "Undang-Undang Pemerintahan Daerah Nomor 32 Tahun 2004 Dilihat dari Fungsi Hukum 'A Tool of Social Engineering' dan 'A Tool of Social Control' (Suatu Kajian Sosiologi Hukum)," *Jurnal Universitas Widyagama Samarinda*, 2017, 29–44.

variety of ideals are embedded in society's framework. There are inconsistencies in the connection between society and law that stem from two competing premises, specifically:

- a. The law must follow changes in society and the law must always be in accordance with society and legal awareness
- b. Law is a tool for changing society and therefore it is society's legal awareness that must be changed by law

The first school of thought holds that society's legal awareness must develop organically rather than via legislation, and thus that it is impossible to impose new laws on society. The second school of thought, on the other hand, proposes new legal institutions like courts and police forces as well as reforms to existing ones via law.

There has been a shift in perspective on legislation recently, indicating a more balanced approach to reform and change through the law. However, we are cognizant of the need to carefully consider socio-cultural values and societal realities in these endeavours, so that we do not uproot people from their basic ways of life and risk social shock³⁴. People are beginning to see the law for what it really is: a force for social justice and equality, according to this revised understanding of the law's function.

The right to labour and a decent livelihood, as well as equality before the law, are established by the legal and political aspects outlined in the 1945 Constitution of the Unitary State of the Republic of Indonesia. To establish economic solidarity as the best business model in Indonesia and to maintain economic balance based on the concept of kinship. The same holds true for the idea that states all economic activities must contribute to the maximum well-being of the people; this is outlined in the Republic of Indonesia's 1945 Constitution Amendment.

Conclusion

An equitable and democratic national legal system in Indonesia must adhere to Pancasila and the 1945 Constitution of the Unitary State of the Republic of Indonesia, take into account societal diversity, and incorporate social justice ideals, according to the discussion of legal politics, state goals, principles of legal ideals, the national legal system, the fundamental framework of legal politics, renewal of political ethics, bureaucratic political life, and renewal of legal political life. To prevent corrupt activities and maintain an impartial bureaucracy, it is necessary to enhance political consciousness and ethics. Thus, the best advice is for the government, legal institutions, and society to work together to monitor and promote political and legal reform in line with national goals. It is also important to prioritise an inclusive and participatory approach when making and implementing laws, so that regulations and policies can address the needs and promote justice for all segments of society.

³⁴ Agus Prihartono dkk., "Beyond Rhetoric: A Critical Examination of Social Justice Theory In Development," *Journal of Namibian Studies* 33, no. 1 (2023): 2601–17.

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