Chapter 1

The trajectory of law reform in Indonesia: A short overview of legal systems and change in Indonesia

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This chapter offers a brief account of the development of the Indonesian legal system and, in particular, of law reform post-Soeharto, aimed at the reader with no previous knowledge. It also summarises the themes of this book and directs the reader to chapters that examine the specific issues raised in more detail.

Anderson (1983: 6-7) has described the modern nationalist state as an 'imagined community', an abstract political entity whose members may have little in common with one another other than acceptance that that they are unified by membership of that entity. By any measure, Indonesia is one of the world's largest and most complex 'imagined communities'. It comprises around 240 million people from well over two hundred different ethnic groups, scattered over some 17,400 islands. There is no ethnic, social or economic logic to the state's boundaries – the modern Indonesian state simply adopted the former limits of Dutch colonial power in the region.

Since independence was declared in 1945, Indonesian governments tried to control this extraordinary economic, social and political diversity, and their state's consequent tendency to fragmentation, by developing a highly-centralised and authoritarian bureaucratic system, which has only in the past decade begun to be unravelled by a devolution of power to the regions (see Schmit, this volume). Government today is still carried out by a tiny, scattered elite through a gigantic and complex, albeit now scattered bureaucracy which is still centred to some extent on the capital, Jakarta, a modern megopolis of unknown population, well in excess 11 million. Outside Jakarta and a few other major cities, tens of millions still live in ways not so dissimilar to those of ancestors a century ago or more, with many often relying on the values and norms of those ancestors to guide their daily lives (see Fitzpatrick; Thorburn, this volume). Religion is another source of division, as Islam contests both other faiths and government ambivalence to define a place for its own local legal traditions (see Part IV, chapters 12-15, this volume).

Obviously, a state that contains these diverse communities and cultures could not survive without a sophisticated legal framework. Indonesian law is often described as a member of the 'civil law' or 'Continental' group of legal systems found in European countries such as France and Holland, as opposed to 'common law' or 'Anglo-Saxon' legal systems, such as those in the United Kingdom and its former

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has said, it is easier to agitate than to organise – or, we would add, implement effective law reform.

Rhetorically at least, the broad principles of a more just and democratic system are now broadly agreed upon but much of the essential detail for implementing these principles instrumentally and institutionally is still missing. Put another way, new laws, courts and commissions lag well behind policy promises and national agendas. They will likely do so for the some years to come. This should not, however, mask the fact that what is remarkable about the troubled process of legal and political reform in post-Soeharto of Indonesia is not so much the morass of problems it still faces, but despite them, how far it has come along the long path to answering the same question asked so many times before in modern Indonesian history: what laws for the new State?

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