



# Constitutional Values, Legal Politics, and Political Stability: A Comparative Analysis in the Post-Authoritarian Context of Indonesia

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## Abstract

This paper explores the intricate relationship between constitutional values of equality and justice and their impact on political stability, with a specific focus on Indonesia's post-authoritarian context. Constitutional ideals, while crucial, face challenges in translating into tangible outcomes due to implementation gaps and entrenchment of inequalities. The study employs a comparative analysis of national constitutions, examining cases where provisions of justice and equality either succeeded or failed to foster stable political environments. Pathways linking constitutional equality to political stability are scrutinized, emphasizing both procedural and substantive dimensions. The research employs political stability indicators to unravel the nuanced relationship between constitutional principles and governance outcomes. In the context of Indonesia, the paper delves into the complexities of legal politics during the transition from the New Order to reformasi democracy. The post-authoritarian landscape witnessed struggles for freedom of expression and human rights enforcement, reflecting the challenges of aligning legal frameworks with democratic principles. The analysis considers the uneven progress in rule of law reforms, navigating the legacies of patrimonialism and oligarchic influence.

**Keywords:** constitutional values, equality, justice, political stability, legal politics, post-authoritarian, Indonesia, rule of law, human rights, freedom of expression.

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## 1. Introduction

A constitution stands as the cornerstone of a nation, encapsulating the paramount law and foundational principles upon which its identity is constructed. The inclusion of constitutional provisions related to equality, justice, and human rights is widely considered imperative for fostering a stable political system and nurturing a thriving democracy (Sutorius & Getachew, 2019). However, the mere existence of commendable constitutional ideals does not guarantee immunity from recurrent political upheavals and regime instability.

Beyond the codified aspirations of the constitution lies a complex interplay of factors that shape political stability. Government legitimacy, social justice, diverse avenues for participation, and the mitigation of communal violence are among the intricate elements influencing the political landscape (Poznansky & Rahimi, 2018). While the constitution establishes the norms, its efficacy is contingent upon the subsequent translation of these ideals into tangible policies and institutional frameworks capable of delivering the promised equality and justice. As articulated by Davis (2021), the root of the problem often lies in the implementation gaps between constitutional rights and duties versus the state's capacities and public expectations.

This paper seeks to meticulously analyze the profound impacts of upholding constitutional values of equality and justice on political stability and order. The exploration encompasses both procedural dimensions, such as participatory parity, inclusive suffrage, and a fair electoral system, and substantive dimensions that address the equitable distribution of resources, capabilities, and economic opportunities (Alexander, 2008; UNDP, 2017). Procedural equality strengthens stakeholder engagement, while substantive equality confronts structural disadvantages to promote justice.

The study will delve into various national constitutions, undertaking a comparative analysis of cases where provisions of justice and equality either succeeded or failed to translate into a stable political milieu characterized by government legitimacy, vibrant yet orderly democratic contestation, and minimal factional conflicts. To assess these dynamics, relevant political stability indicators from the World Bank's Worldwide Governance Indicators and the United Nations Development Programme framework will be employed. In doing so, the research aims to unravel the

nuanced relationship between constitutional principles and the intricacies of political stability, providing insights that extend beyond the surface of legal texts to the realms of governance and societal harmony.

### 1.1. Conceptualizing Equality, Justice, and Political Stability

Equality, characterized by the state of possessing equal status, rights, opportunities, and dignity (Fredman et al., 2021), is a dynamic and multifaceted concept intersecting with equity and social justice across legal, political, economic, and moral dimensions. Constitutional guarantees of equality aim not only to eradicate unjust discrimination but also to ensure equal access to rights, resources, and the capability to flourish. Going beyond numerical parity, equality endeavors to dismantle systemic barriers hindering certain groups, fostering a society where every individual can participate and contribute without facing systemic disadvantages.

Closely aligned with equality, justice is a concept viewed through various philosophical lenses, including liberalism, utilitarianism, commodification, and human capabilities (Sandel, 2010; Anderson, 1999). In the political realm, justice manifests through fair laws, impartial governance, and the equitable allocation of public goods. It extends beyond punitive measures to create a socio-political environment where individuals can exercise their rights freely and reach their full potential. Political justice encompasses the fair distribution of resources, balancing individual liberties with societal welfare, and the protection of vulnerable populations.

Defined by Rotberg (2004) as the absence of violence threatening socioeconomic order and governance legitimacy, political stability operationally hinges on the durability of governmental and regime structures. It involves managing democratic competition through institutional mechanisms that non-violently mediate power contests and public dissent. Political stability is a dynamic equilibrium, allowing for the peaceful functioning of institutions, economic activities, and societal interactions. It requires a balance between governance effectiveness and responsiveness to the populace, with mechanisms in place to address grievances and conflicts without resorting to violence.

The intricate interplay between equality, justice, and political stability emphasizes the interdependence of these concepts. Equality and justice form the moral and ethical foundations that underpin political stability. A society striving for equality and justice is more likely to achieve and sustain political stability, as it mitigates the conditions that often lead to socio-political unrest. Conversely, a lack of equality and justice can breed discontent, potentially undermining political stability. Understanding these interconnected dynamics is crucial for formulating effective governance strategies that promote harmonious, inclusive, and resilient societies.

### 1.2. Pathways Linking Constitutional Equality to Political Stability

A constitution grounded in the principles of equality, non-discrimination, and representation serves as a bedrock for fostering inclusive and cohesive politics, thereby contributing to the stability of democracy through various critical pathways:

- a). **Equal Voting Rights:** The assurance of equal voting rights, regardless of gender, race, belief, or status, establishes procedural justice. This facilitates broad participation and consent in processes like leadership succession and policy direction (Roberts, 2015). By minimizing the potential for alienation among disadvantaged groups, constitutional equality enhances the inclusivity of the political landscape.
- b). **Guarantees to Equality Before the Law:** Constitutional provisions ensuring equality before the law, personal rights, and freedoms play a pivotal role in narrowing intergroup disparities, promoting substantive justice. Strengthening social cohesion, these guarantees work to improve people's capabilities and provide substantive opportunities irrespective of their identities, fortifying the foundations of a stable democracy.

However, the effectiveness of these pathways can be compromised when:

- a). **Implementation Challenges:** De jure provisions may fail to translate into concrete roles, capacities, and tangible outcomes for rightful beneficiaries due to governance limitations or elite capture at the grassroots level (Poznansky & Rahimi, 2018; Davis, 2021). The mere existence of constitutional principles does not guarantee their practical realization, and shortcomings in implementation undermine the potential positive impact on stability.
- b). **Entrenchment of Inequalities:** Inequalities can become deeply rooted along loyalty lines, such as patronage, leading to certain factions systematically benefiting at the expense of more marginalized groups (Cheeseman, 2022). This entrenchment sparks serious grievances and motivates resistance, posing a significant threat to political stability. Understanding these challenges is crucial, as the entrenchment of inequalities based on loyalty undermines the intended outcomes of constitutional equality, potentially leading to socio-political instability. Addressing these challenges requires a nuanced approach that goes beyond the legal framework to encompass effective implementation and the mitigation of structural inequalities within the political system.

### 1.3. Freedom of Expression and Human Rights in Post-Authoritarian Contexts

During Indonesia's political transition from the New Order authoritarian regime to reformasi democracy, freedom of expression and human rights enforcement became pressing public demands (Aspinall, 2010). Having faced severe restrictions and violations without redress under the previous regime, citizens expected the new democratic system to deliver justice and effectively uphold civil liberties (Basri, 2012). However, the process of translating these aspirations into substantive outcomes involved surmounting extensive barriers.

According to Hadiz (2004), Indonesia's post-authoritarian landscape bore hallmarks of "illiberal democracy" - transition outcomes distorted by the enduring influence of entrenched oligarchic interests rooted in the previous regime. Renegotiating the social contract to align with democratic ideals required dismantling these structural-political obstacles to civic freedoms.

Moreover, as documented by Mietzner (2013), Indonesia's initial reform era witnessed a "judicial mafia" come to prominence. Rampant bribery, collusion and opacity within the court system exacerbated governance deficiencies and undermined public trust, not merely in state institutions, but across society (Tanjung, 2021). This fueled cynical sentiments regarding the legal system's capacity to deliver justice as demanded by citizens (Sulistyanto & Erb, 2009).

Understanding politics as collective patterns of human behavior within shared life – manifesting through governance (Leftwich, 2004) – clarifies how broader political forces influence social contracts and shape rights implementation trajectories. The extensively interwoven nature of legal and political realms renders progress contingent on supportive political settlements and accountable state institutions willing to counterbalance entrenched reactionary interests (Poznansky & Rahimi, 2018).

## 2. Research Methods

This paper employs a correlational and analytical approach to examine how Indonesia's legal politics has accommodated differing conceptions of legal development policies over time.

To unpack these complex dynamics, a historical approach is adopted entailing the contextual examination of background conditions, legal regulations and their evolution in relation to pertinent issues. Tracing this philosophical and conceptual genealogy underpinning contemporary legal politics provides insights into the ideas and motivations shaping current policy frameworks.

Specifically, the analysis aims to describe the objectives, mechanisms and impacts of legal development policies in the post-authoritarian reformasi era, as Indonesia transitioned towards democracy and greater human rights protections in the wake of the New Order regime's collapse. By correlating Indonesia's contemporary legal politics with previous political contestations and governance approaches, this research maps continuity and change across the dynamically shifting policy landscape. The descriptive account situates legal development debates within broader historical struggles to align legal frameworks with democratic principles and human rights standards as demanded by the public in the reformasi movement.

## 3. Research Findings

### 3.1. Legal Politics Development on Human Rights in Upholding Freedom of Expression within Democratic States

The concept of legal politics constitutes official policy lines containing laws aimed at either establishing new regulations or replacing previous ones, to ultimately achieve particular state objectives (Rahardjo, 2009). Laws formed by a ruling government as legal policies can be selectively enacted or revoked instrumentally to reach desired goals, positioning law as a means towards specific ends (Lev, 2000).

This viewpoint aligns with John Austin's perspective that "law is the command of the lawgiver" - underscoring how law codifies the interests and objectives of political sovereigns. Hence, legal politics allow those in power to utilize law as a tool to compel compliance and consolidate control (Raz, 1979). However, within democratic systems bounded by checks on executive power, legal politics should ideally represent the people's will through accountable state institutions. Legislation passed through an inclusive parliamentary process alongside executives can thus produce regulations upholding justice, rights and public interests (Dahl, 1998). Nevertheless, realities of democratic transition, especially in post-authoritarian contexts, show elite capture and institutional deficiencies can severely distort translation of democratic ideals into substantive outcomes citizens experience (Carothers, 2002).

Understanding these complex political dynamics shaping legal politics is thus crucial. Within Indonesia's turbulent transition, reformasi aspirations for greater freedom of expression and strengthened human rights enforcement confronted formidable barriers - rooted in entrenched oligarchic structures of the preceding New Order regime. This necessitated protracted, contingent renegotiations around the state-society relationship mediated through the evolving political settlement between competing factions (Slater, 2018). This section analyzes relevant developments in Indonesia's legal politics from the New Order authoritarianism to contemporary debates, situating discourse on rights and freedoms within broader historical struggles to align the legal system with democratic principles.

### 3.2. Post-Authoritarian Rule of Law Reform

Indonesia's reformasi movement catalyzed monumental changes, toppling Suharto's entrenched New Order regime in 1998 amidst widespread protests demanding democratic reforms and respect for human rights and civil liberties (Aspinall, 2010). This authoritarian collapse was followed by intensive legal and institutional reforms aimed at establishing a democratic rule of law aligned with reformasi ideals of justice, accountability and good governance (Butt, 2012).

However, progress has proved uneven, wrestled between contrasting visions and interests. Legacies of patrimonialism, collusion and nepotism coupled with tenacious oligarchic structures have perpetuated corruption and judicial manipulation - undermining substantive rule of law despite notable *de jure* improvements (Fukuoka, 2013). According to Hadiz (2010), Indonesia's legal apparatus exhibits features of "rule by law" rather than "rule of law" - laws exist not as neutral checks on power but rather as instruments selectively utilized by ruling elites against opponents while evading enforcement themselves.

For instance, examining the corruption eradication commission (KPK)'s efforts illustrates these complex dynamics. On one hand, the KPK's creation and assertive prosecutions represent major milestones, targeting even senior officials. However simultaneous attempts to politically undermine the KPK through budget cuts, legal threats and other means demonstrate resistance from established elites seeking to circumvent accountability mechanisms (Mietzner, 2012). This exemplifies the variegated struggles around legal reform.

Understanding Indonesia's post-authoritarian legal politics requires analyzing ongoing contestations between reformist and reactionary factions within state and society, tracing continuities and changes in the balance of power shaping institutional trajectories - particularly regarding rights and governance. The next section focuses specifically on regulations pertaining to freedom of expression, democracy and human rights.

### 3.3. Legal Politics of Rights and Freedoms

The collapse of Suharto's New Order regime in 1998 raised public hopes for substantive reforms aligning Indonesia's legal-political system with human rights, civil liberties and democratic principles, after over 30 years of authoritarian controls. This section examines key regulations and contentions around rights and freedoms since Reformasi.

Significant steps have been taken to codify international human rights standards domestically. These include Law 39/1999 on Human Rights, establishing the National Commission on Human Rights, along with Indonesia's ratification of core UN conventions like ICCPR and ICESCR which guarantee civil-political rights alongside socioeconomic rights (Simandjuntak, 2013). Constitutional amendments have also reinforced rights protections and mandated state obligations (Indrayana, 2008).

However, many provisions remain poorly implemented, with legislation often vague or conflicting. For instance, restrictions on press freedoms and free speech rooted in the national security approach of the New Order era still feature in the revised 1999 Press Law and controversial 2008 Pornography Law (Romli, 2012). Defamation clauses within the criminal code have sustained intimidation of journalists through legal charges for critical reporting, despite advocacy efforts pushing for decriminalization aligned with democratic principles (Dhyatmika, 2019).

Ongoing contention around Indonesia's draft Criminal Code also spotlights unresolved tensions. While aiming to update colonial-era provisions, current bills appear set to expand state controls and curb civil liberties based on conservative religious influence - containing articles violating privacy, restricting speech and controlling sexuality/morality which human rights groups strongly oppose as undermining reformasi ideals of rights, pluralism and democracy (Diela, 2019). Ultimately consolidating substantive rule of law and rights faces ongoing obstacles from entrenched reactionary interests. As analyzed by Mietzner (2020), "illiberal forces" retaining patronage links with old regime elites actively resist reforms threatening their privileged status. Advancing freedom of expression and human rights thus remains contingent on supportive power configurations and strategic mobilization of pro-reform coalitions.

## 4. Conclusion

Based on the discussion previously presented, the following is a proposed conclusion for the journal:

- a). A constitution that upholds the values of equality, justice and human rights is an important foundation for political stability and democratic governance. However, effective implementation plays a key role in ensuring the translation of these principles into real outcomes that citizens experience.
- b). The dynamics of legal politics in Indonesia after the New Order authoritarian regime show complex struggles. The legacy of patrimonialism, collusion and resistance from reactionary old elites creates multi-layered challenges in efforts towards reform of the democratic rule of law. Developments regarding stated freedoms and human rights also experienced ups and downs.

- c). Overall, although significant progress has been made in strengthening the legal umbrella of human rights and de jure civil liberties, the enforcement of these substantial principles is still hampered by interests embedded in the political structure and the old elite's fear of the loss of privileges.
- d). Encouraging the realization of a political-legal system that is truly democratic and upholds human rights requires continuous mobilization of a pro-reform framework to balance and overcome it. Between the continuity of the old regime and new political dynamics, Indonesia is at an important crossroads towards consolidating reform values or downplaying anti-democratic influences.

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