

Penegakan hukum dalam perspektif ketahanan nasional: studi tentang kasus pembuatan keppres mandiri pada pemerintahan orde baru

Anang Puji Utama, author

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Abstrak

In the Elucidation of the 1945 Constitution, it is stated that The State of the Republic of Indonesia is based on Law, which means that Indonesia is a State based on people's sovereignty, wherein the principles of law are applied in the construction of a Pancasila society to achieve a society of social justice, unity, fairness and prosperity. The government of the New Order could not prove such aim, for at that time, Indonesia, as a State of Law from the perspective of civics, was actually devoid of this system, shown by the large number of Independent Presidential Decrees made, each causing its own natural trouble. This thesis is made with the intention of revealing to what extent Independent Presidential Decrees are made in accordance with the prevailing legislations. The survey made for this thesis uses qualitative method as its procedure of research, as it may come up with observable written data of authorities and attitudes. The research was carried out in Jakarta and based on four sources that are pertinent to the process of the making of Independent Presidential-Decree, namely: Secretary to the Cabinet, Centre for the Study of Law and Policies (PSHK) in Indonesia, Indonesian Corruption Watch (ICW), and Indonesian Transparency Community (MTI).

Results of the research reveal that during the reign of the New Order, there were indeed a number of Independent Presidential Decrees issued, which obviously posed problems. This proved that the embodiment of the presidential tasks, with regard to all aspects of state organization, covered an unlimited extent. Thereby, any making of Independent Presidential Decree constitutes a quasi legislative product, which was so flexible that it was out of the hands of the Board of the People's Representative's control. As examples, several Independent Presidential Decrees are presented in this thesis, showing how they are not conforming to the prevailing legislation, from the aspect of procedure's well as content.

As measures of prevention against such recurrence, as have indeed been regulated in the 1945 Constitution, Article 4 paragraph one (1), it is urgent that a control system and inter-institutional balance within the state be established, and opportunities be provided for the people in general to present their assessment on every draft of law, including that of Independent Presidential Decree to be enforced upon the society.

Results of the research also reveal that law enforcement in the making of Independent Presidential Decree may contribute to the National Resilience System. This may constitute an extremely strategic measure in overcoming chaos in law, for, principally, any making of legislation is aimed at the benefit of the people, and therefore it should be able to create a well-being to the people. When this matter could be implemented in a consistent manner, abiding by the prevailing legislation, a confidence and trust in law could be established.