Indonesian Legal Dynamics in Global Capitalism Reality:
Analysis of the Formation of Indonesia’s Regulations

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Abstract: Consumer protection in muamalah transactions is a critical aspect that emphasizes the principles of justice and balance in Islamic law. This article examines the mechanisms of consumer protection in muamalah transactions, focusing on both the rights of consumers and the responsibilities of producers or sellers. The study employs a qualitative approach through literature review, referring to Islamic legal sources such as the Quran, Hadith, and scholarly fatwas. The findings reveal that fiqh muamalah includes several provisions explicitly designed to protect consumers, such as prohibitions against gharar (uncertainty), riba (interest), and tadlis (fraud). Additionally, the principles of honesty (sidq) and transparency in transactions are strongly emphasized to ensure that consumers receive clear and complete information about the products or services they purchase. The implications of this study highlight the need for increased awareness and enforcement of laws in muamalah transactions to safeguard consumers from harmful practices. This article also recommends strengthening regulations and educating business practitioners to adhere to sharia principles in their operations.

Keywords: Consumer Protection, Muamalah Transactions, Fiqh


Keywords: Perlindungan Konsumen, Transaksi Muamalah, Fiqh

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Introduction

Capitalism does not only apply in the world of economy and free trade as it has been understood so far. The theory of Karl Marx’s. Capitalist interests can shape economic policies through regulatory changes, as seen in Indonesia during the 1997/1998 crisis when IMF intervention led to capitalist-driven legislation. IMF aid frequently leads to a "debt trap," with countries like Argentina and Brazil experiencing ongoing economic problems such as inflation and currency devaluation.\(^1\)

Turkey’s IMF Stand-By Arrangement (SBA) in December 1999 initially stabilized the economy with falling inflation and interest rates. However, real exchange rate appreciation led to higher domestic demand and a larger current account deficit, while delayed fiscal and structural reforms raised market concerns.\(^4\) In Thailan, the value of bath dropped ergifrenthy 40%. While and Brazil, a serious social crisis was eindentitas 12,9 million became jobles.\(^5\)

In Indonesia, IMF recommendations led to privatization and deregulation, which allowed foreign entities to control previously government-owned companies. This increased Indonesia’s debt and exacerbated the economic crisis.\(^6\)

In Indonesia, law formation aims to serve the nation’s interests as outlined in the 1945 Constitution, focusing on improving public welfare and global peace. Pragmatic law development seeks to create laws reflecting national values, emphasizing justice, mutual cooperation, and alignment with both divine principles and democracy. As Achmad Irwan Hamzani\(^7\) argues that Indonesian national law should focus on public welfare, justice, and order, reflecting the values of its people. Development law should facilitate community growth, security, and education. Soepomo adds that Indonesian law must represent national identity and customary law while incorporating international principles in line with Pancasila and the 1945 Constitution.\(^8\)

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\(^{1}\) Agus Trisa, *Cara Kapitalisme Menguasai Dunia* (Ways Capitalism Conquers the World), https://www.kompasiana.com/, 2015; Karl Marx’s work has had an everlasting impact on the arena of sociology in that his views opened the door to the study of how one’s social class has a direct influence on one’s life experiences and life chances. His work also opened the door for many differing perspectives on the issue of wealth and the poor in society. (Robert S., Karl Marx: Becoming a Socialist, [https://study.com/](https://study.com/), 2018)


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Since 1945, Indonesia has advanced in legal reform and amended the 1945 Constitution multiple times. However, substantive legal changes are slow, with many laws still rooted in colonial legacies. Legal development often deviates from the ideals of the Preamble and Pancasila, favoring the pragmatic interests of specific groups. Legislation remains essential for national legal development, offering binding legal certainty that surpasses customary or jurisprudential law.9

Legal formation in Indonesia has diverged from reform goals due to foreign interference and global capitalism. Rizal pointed out that over 21 foreign-funded laws have harmed Indonesia’s economy, particularly in natural resource management, resulting in low state revenues.10 Eva Kusuma Sundari said that there was foreign interference involved in the drafting of dozens of laws in Indonesia, the draft being carried out by foreign parties.11 Research on Indonesian legal politics examines the shift from colonial laws to local reforms, including updates to the Criminal Code, Civil Code, and Commercial Law. It also focuses on aligning legal policies with national identity and goals, as noted by Mahfud, emphasizing the need to enforce new laws and replace outdated ones to meet national objectives.12

Legal politics in Indonesia seeks to address public needs and future goals by: 1) Integrating customary law and Pancasila into national law, 2) Creating new rules for emerging issues, and 3) Establishing laws that ensure fairness and prosperity.13

This paper explores Indonesian legal politics, focusing on how law formation deviates from established principles. It examines: 1) deviations in legal product creation, 2) application of laws, 3) causes of disharmony, and 4) the impact of foreign influences. The study argues that legal formation is swayed by political and legal interests, with executive and legislative power shifts often favoring specific groups over public welfare, perpetuating global capitalism.14

**Literature Review**

Indonesian law evolution is linked to political shifts. Initially, the founders aimed to base the legal system on Pancasila's noble values, which are rooted in Indonesian culture and reflect existing values rather than new concepts.15 European exploration and colonial expansion, starting with Columbus...
and da Gama, introduced early capitalism and aggressive colonization. This competition among European powers significantly reshaped Indonesian society and economy.¹⁶

A crucial question is why Indonesia's legal system should be uniquely Indonesian. B. Arief Sidharta notes that despite independence, Indonesian law remains heavily influenced by Western legal positivism.¹⁷ This is evident in the law-making process, where laws are crafted to advance legal development and the national system, starting with rational planning or structured programs.¹⁸

The rapid evolution of capitalism in Indonesia often outpaces legal regulation, causing the legal framework to struggle in keeping up with its fast-paced changes.¹⁹ Then the government system in Indonesia from time to time underwent several changes.²⁰ Historically, the application of capitalism and neoliberalism in Indonesia was driven by the New Order's goal to restore the nation's dignity and economy following the 1965 uprising.²¹ Max Weber argued that capitalism centers on maximizing profits for capital owners, often ignoring social welfare and shared interests.²²

The state protects the most influential capitalists and the destructive effects of reform.²³ Politics today often favors specific groups and individuals, sideling the broader public interest and prioritizing the goals of a few over the needs of the community.²⁴ Capitalists, guided by technocrats from industrialized countries, have mainly benefited industrialized nations while exploiting developing countries. To counter this dependency, developing countries should focus on local wisdom and robust governance.²⁵

Method

This study uses descriptive terminology and qualitative analysis, meaning it does not require large amounts of data, making it

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¹ pelatihan dasar calon pegawai negeri sipil golongan II, dan golongan I (Nationality Insight And National Defense Values Module I Basic Training For Prospective Civil Servants In Class II, And Class I), file:///C:/Users/ADMINI~1/AppData/Local/Temp/, 2019.


⁶ Bagas Wahjoe, Sistem Pemerintahan Indonesia Dari Masa Ke Masa (Then the government system in Indonesia from time to time underwent several changes), https://www.academia.edu, 2016.


¹¹ Khasman Zaini, Solusi mengatasi kapitalisme di Indonesia (The solution to overcome capitalism in Indonesia), https://www.academia.edu, 2014
easier to classify categories.\textsuperscript{26} The study uses secondary data from official sources to analyze laws potentially influenced by global capitalism, which may harm Indonesia's interests and contradict principles of good legislation. It involves classifying, comparing, and relating various legal aspects. Ramli notes that around 21 laws during the presidencies of Megawati and Soesilo Bambang Yudhoyono were foreign-funded. Key laws like the National Investment Law, Banking Law, Electricity Law, Foreign Investment Law, Education Law, and Forestry Law, which affect the economy and natural resources, are examined for capitalist influences.\textsuperscript{27}

The author avoids rigid distinctions between juridical and normative sociological research, adopting a socio-legal approach that examines legal texts and the broader context from law-making to implementation.\textsuperscript{28} Legal research, according to Fiter Mahmud Marzuki, identifies legal rules, principles, and doctrines to address legal issues. This study uses deductive logic to analyze legal materials, beginning with general concepts and narrowing to specific conclusions.\textsuperscript{29}

Results and Discussion

The foundation of the formation of a law in Indonesia

The formation of Indonesian legislation began with independence on August 17, 1945, transitioning from colonial to national law. Pancasila, established by BPUPKI and PPKI, remains the guiding principle. According to Kompas Research and Development, 96.6\% of respondents support Pancasila as the state foundation, with 92.1\% affirming it as the best foundation, leading all legal products to reflect its ideals.\textsuperscript{30} Pancasila is implemented through the 1945 Constitution of Indonesia, which, according to Hans Kelsen's theory, remains abstract and requires detailed regulations. Article 21 allows DPR members to propose draft laws, and Article 20A outlines DPR's functions. If an Act lacks details, subordinate regulations provide elaboration, as specified in Article 7 paragraph (1) of Law Number 12 of 2011 on Legal Norms, including: The 1945 Constitution of the Republic of Indonesia; Decree of the People's Consultative Assembly; Act / Regulation in Lieu of Law; Government regulations; Presidential decree; Provincial Regional Regulations; and Regency / City Regulations.\textsuperscript{31}

To create effective laws and regulations, including those at the regional and local levels, several conditions must be met. Firstly, philosophical requirements necessitate that laws align with the nation's core values and principles, such as Pancasila in Indonesia, which reflects the moral framework of the society. Secondly, juridical requirements must be fulfilled. This includes formal aspects, where the regulation must be based on a legal foundation that legitimizes the authority of the issuing body.

\textsuperscript{26} Aminuddin and Asikin, Pengantar Metode Penelitian Hukum (Introduction to Legal Research Methods), \url{http://www.rajagrafindo.co.id}, 2006.


Additionally, material aspects require a thorough review of the regulation's substance, ensuring it not only complies with legal standards but also effectively influences societal legal awareness and behavior.\textsuperscript{32}

**Policy Direction for Legal Formation**

In Indonesia, legal development is shaped by policy formulation reflecting legal politics principles. Detailed legal development began during the New Order era with the introduction of the Guidelines of State Policy (GBHN). The GBHN, set by the People's Consultative Assembly (MPR) every five years, outlined broad state objectives and guided policy implementation through six documents issued from 1973 to 1998.\textsuperscript{33}

The 1988 GBHN aimed to enhance legal certainty and enforcement, while the 1998 GBHN sought to align national law with Pancasila and the 1945 Constitution. However, applying Pancasila in practice has been difficult.\textsuperscript{34} In the reform era, the Parliament's 2005-2009 Prolegnas outlined laws to address gaps from the previous 2000-2004 period.\textsuperscript{35} Before Law No. 25 of 2004, legal policy was sector-specific per GBHN. Afterward, focus shifted to a broader regulatory framework, emphasizing the need to address primordial, sectarian, foreign interests, and sectoral egos.\textsuperscript{36}

The Legislative Relationship Products of Global Capitalism in Indonesia

During the Old Order era, legal formation often deviated from Pancasila, especially after Presidential Decree No. 2 of 1959, which bypassed general elections, and MPRS Decree No. 3 of 1963, which appointed the President for life. These New Order legal products were seen as orthodox, elitist, and conservative.\textsuperscript{37} During the New Order era, laws frequently deviated from reflecting Pancasila. Mahfud MD described Indonesia's political configuration during this period as "undemocratic."\textsuperscript{38}

Under Suharto's New Order era, the legal system was used to maintain power and serve the regime's interests. Laws facilitated government impunity, with the president's extended tenure leading to increased corruption and favoritism. The military's dominant role also hindered democratic progress, stalling the country's democratic development.\textsuperscript{39}

The reformation movement aimed to address legal issues from the New Order era, driven by: (1) laws being used to justify government policies and actions, (2) manipulation of justice for influential individuals and their associates, and (3) a judiciary that was influenced by executive power.\textsuperscript{40}

An example of a law diverging from legal


\textsuperscript{40} Imam Mahdi dan Sirajuddin, (2019) *Philosophy Of Law*
politics is Act Number 3 of 1975, which integrated the Indonesian National Military (TNI), Indonesian Police (Polri), and government bureaucracy into Golkar. This law effectively turned Golkar into a political tool for securing government support in elections, with civil servants required to back the party and village heads given vote quotas, leading to Golkar’s major victory in the 1971 general election.41

Under Act No. 3 of 1985, political parties were required to adopt Pancasila as their only principle, limiting their ideological diversity and voter base. This law also weakened the DPR's effectiveness, as it was dominated by Golkar. DPR members faced risks for opposing the government, leading to reduced legislative activity and challenges in forming effective coalitions.42

In the economic sector, deviations have worsened as capitalist groups, bureaucratic capitalists, and political elites dominate. They seek protection from foreign competition, along with concessions, licenses, monopoly rights, and government subsidies, leading to widespread abuse and corruption.43 The RPJPN 2005-2025 focused on legal development reforms to create a competitive nation and foster a regulation-based democratic society.44

Law formation in Indonesia faces significant issues, particularly in state administration. Politicians in Senayan are seen as rent-seeking entities influenced by foreign sponsors with business interests. Satya Arinanto, citing Daniel S. Lev, describes the current period as an "era of opportunity" for exploitation rather than true reform.45

The main problem faced is that it is easy to overlap or even contradictions among regulations.46

From various investigations, there are several Acts of reform era products that are suspected of potential irregularities, as expressed by state constitutional law expert Zainal Arifin Mochtar as well as Director of the Anti-Corruption Study Center at Gajah Mada University.47 One indication of the change in mindset of drafting laws due to foreign aid is the privatization of the public sector which should be the responsibility of the state.48 The Indonesian Constitution, guided by Pancasila, mandates that natural resources be state-controlled and used equitably for societal benefit. However, pragmatic politicians seeking immediate gains have led to a state of "Political Nihilism," similar to America. This shift undermines democratic principles and prioritizes profit over public welfare49

In Forming Religious-Based Regional Regulations, Jurnal MADANIA Vol. 23, No. 1, Juni 2019.


49 Irsyad Zamjani, Irsyad, Nihilisme Politik (Political Nihilism), Peneliti pada Center of Asian Studies
Indonesia worse off after the inclusion of capitalization in the world of education.\textsuperscript{50} The opening of higher education to the free market Higher education was finally released from government control. The issuance of laws related to investment, mining, and plantations has granted extensive concessions to the private sector, particularly regarding land tenure. These concessions have adversely affected local communities, leading to their impoverishment. Entrepreneurs, backed by the government under the guise of promoting investment and regional development, have acted unethically, undermining the principles of Pancasila. This situation highlights that morality in law is deeply intertwined with social and power relations.\textsuperscript{51} Therefore it should always be remembered by law makers Eugen Ehrlich and Roscoe Pound “the center of gravity of legal development lies not in legislation, nor in juristics, nor in judicial decisions, but in society.”\textsuperscript{52}

Despite the presence of large plantations, which are expected to benefit local communities, Bengkulu Province remains the second poorest area on the island of Sumatra and struggles with high levels of corruption. The region, with a population of less than 2 million, is often described by the term "a small gulf with crocodiles," reflecting its challenging socio-economic conditions and governance issues.\textsuperscript{53}

In the research on the tenure and management rights of customary land in the Pekal tribe region of North Bengkulu and Mukomuko Regency, Bengkulu Province, it leads to such matters.\textsuperscript{54} Khanif (2015) said the precepts in the Pancasila and the Preamble of the 1945 Constitution contained values that mandated the state to realize social welfare for all Indonesians.\textsuperscript{55} Therefore, the legal substance that deserves to be built in the future is the law that is in favor of human dignity and is democratic, therefore the legal substance must not have the potential to benefit a particular group, whoever it is. It must also be prevented from forming a corrupt legal substance. This is the joint task that accompanies us.\textsuperscript{56} Many people recently do not trust the institutions and law enforcement because legal issues are not yet effective in their handling. Distrust of the legal system in Indonesia increasingly becomes the cause for concern. This tendency does not only occur in justice institutions but also in all social level.\textsuperscript{57}

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\textsuperscript{50} Damang Averroes Al-Khawarizmi, Dinamisasi dan Pengaruh Sosiological Jurisprudence di Indonesia, (The Dynamics and Effects of Sociological Jurisprudence in Indonesia), http://birthdaysparty.co/, 2015.

\textsuperscript{51} C.F.G. Sunaryati Hartono, dkk, Pembangunan HukumIndonesia (Indonesian Legal Development), Laporan Tim Penelitian BPHN Tahun 2011

\textsuperscript{52} Helti Marini Sipayung, Ironi Korupsi Di Bengkulu (The Irony of Corruption in Bengkulu), https://bengkulu.antaranews.com


\textsuperscript{56} Efernando M. Manullang, Menggapai Hukum Berkeadilan Tinjauan Hukum Kodrat dan Antinomi Nilai (Achieve Equitable Law Review of Natural Law and Value Antinomy), Cetakan kedua (Jakarta: PT.
A lot of judicial review material on the Constitutional Court, proves that the Act was allegedly contrary to the 1945 Constitution of the Republic of Indonesia. The data shows, since the Constitutional Court was established in 2003 to 2017, there have been 574 norms amended both article and paragraph revoked from 234 Laws requested. Legislative institutions must uphold Indonesian legal principles and prioritize public interests over those of groups or individuals. Legislators should heed the voices of the majority who lack influence, ensuring that democratic mechanisms and political infrastructure safeguard the needs of the general populace. This approach will help create responsive and effective legal products that align with societal norms and values.

The DPR appears to have lacked seriousness in lawmaking, as evidenced by conflicting norms within laws that regulate similar matters. For example, Law No. 32 of 2004 on Regional Government and Law No. 25 of 2004 on Development Planning Systems contain contradictory provisions. Law No. 25/2004 (Article 19, paragraph 3) mandates that the Regional RPJM (Regional Medium-Term Development Plan) be established by Regional Head Regulation within three months of appointment. In contrast, Law No. 32/2004 (Article 150, paragraph 3, letter e) requires that the Regional RPJP (Regional Long-Term Development Plan) and Regional RPJM be set by Regional Regulation based on Government Regulation.

Discussion
The study aims to examine how law and regulation formation in Indonesia, from independence to the reform era, has been influenced by global capitalism, conflicting with Indonesian legal principles. Findings reveal that foreign capitalist interests have significantly impacted Indonesian legislation, particularly in natural resource laws. This influence is evident in the post-reform era, where legal processes are often managed or funded by foreign entities, resulting in laws that lack national identity. Foreign interests often conflict with the welfare-oriented goals of Indonesian legislation, especially in natural resource regulations. Despite efforts to benefit society, global capitalism heavily influences these laws. Erman Rajagukguk highlighted the contentious nature of foreign capital in Indonesia, evident in debates over the Investment Bill, which became Law No. 25 of 2007. This debate underscores the tension between attracting foreign

61 Zudan Arif Fakhirullah, Simplifikasi dan Reformasi Regulasi Di Era Otonomi (Simulations and Regulatory Reform in the Autonomous Era), http://ditienpp.kemenkumham.go.id, 2019
investment and protecting local interests.\textsuperscript{63}

Global capitalism influences Indonesian investment policies, especially in sectors like mining, forestry, and natural resources. While foreign investment can help overcome bureaucratic hurdles and high costs, these influences often conflict with the principles enshrined in the 1945 Constitution. Article 33 of the Constitution mandates that the economy be based on kinship principles and that vital sectors and natural resources be controlled by the state for the benefit of the people. This includes ensuring economic democracy, environmental sustainability, and national economic unity.\textsuperscript{64}

This article is most violated by the existence of foreign investment law, as stated by Petrus.\textsuperscript{65} Economic inequality in Indonesia is exacerbated by uncontrolled exploitation of natural resources and environmental degradation. The destruction of forests and wildlife habitats, coupled with weak supervision and governance, undermines environmental sustainability and exacerbates pollution and disasters. This environmental damage impacts local communities, often neglecting their rights. The influence of foreign capital on legislation further complicates the situation, highlighting a disconnect between legal frameworks and the needs of the Indonesian people.\textsuperscript{66} The involvement of the World Bank in Indonesia led to changes in several key laws, including the National Education Act (No. 20 of 2003), the Health Act (No. 23 of 1992), the Electricity Act (No. 20 of 2002), and the Water Resources Act (No. 7 of 2004). The National Education Act, in particular, reflects the influence of global capitalism. The Higher Education Law has been significantly shaped by the interests of international financial institutions, with prominent discourses such as the 'globalization of higher education' promoted by the WTO and 'Higher Education reform' pushed by the World Bank.\textsuperscript{67}

Several laws influenced by foreign interests have been reviewed and corrected by the Constitutional Court of Indonesia. For example, the Electricity Law was challenged because it allowed the government to delegate electricity management to private entities, which conflicted with Article 33(2) of the 1945 Constitution. The Constitutional Court ruled that electricity, being crucial for the public, must be controlled by the state, and the state cannot be indifferent or irresponsible in this matter.\textsuperscript{68} Other examples that have been decided by the Constitutional Court, such as the SDA Act, are contrary to the 1945 Constitution and do not have binding legal force.\textsuperscript{69} The Water Resources Law led to the issuance of

\textsuperscript{63} Erman Rajagukguk, Transformasi Hukum dan Ekonomi dalam Bidang Pembangunan (Transforming Law and Economics in the Field of Development), \url{https://journal.up45.ac.id}, 2017.

\textsuperscript{64} Ali, Masih Banyak UU Bidang Ekonomi yang Menabrak Konstitusi. Pengamat Ekonomi Aviliani menilai setidaknya ada 20 UU di bidang ekonomi yang tak sejalan dengan Pasal 33 UUD 1945 (There are still Many Laws on the Economy that Crash the Constitution. Economic observer Aviliani assesses that there are at least 20 laws in the economic field that are not in line with Article 33 of the 1945 Constitution), \url{https://www.hukumonline.com}, 2010.


\textsuperscript{67} Ahmad Rizky Mardhatillah, UU Pendidikan Tinggi dalam Jerat Kapitalisme (The Higher Education Act in the Trap of Capitalism), \url{https://indoprogress.com}, 2013.


\textsuperscript{69} Pan Mohamad Faiz, The Protection Of Civil And Political Rights By The Constitutional Court Of Indonesia (The Protection Of Civil And Political Rights By The Constitutional Court Of Indonesia), Indonesia
Government Regulation (PP) Number 16 of 2005, which allows various entities, including private businesses, to manage Drinking Water Supply Systems (SPAM). This regulation contradicts Article 40(2) of the previous Water Resources Act, which assigned SPAM development to central and regional governments. This shift represents covert privatization and disregards the Constitutional Court’s interpretation of the 1945 Constitution. The profit-oriented approach of water managers under this regulation conflicts with Article 33 of the Constitution and should be declared invalid.\(^{70}\)

In Indonesia, the formation of legislation is influenced not only by global capitalism but also by sectoral egos within ministries and government agencies. For example, discrepancies between Act No. 25 of 2004 on Regional Government and Law No. 25 of 2004 on the Development Planning System reveal differences in legal bases for Provincial Medium-Term Development Plans (RPJMD). Act No. 25/2004 mandates RPJMD to be established by Governor Regulation, while Act No. 23/2004 requires it to be set by Regional Regulation (Perda). These inconsistencies highlight conflicting principles in regional legal product establishment.\(^{71}\)

**Conclusion**

The impact of global capitalism on law formation, particularly following the 1997/1998 economic crisis, has led to regulations heavily influenced by international financial institutions like the World Bank and IMF. In Indonesia, this influence resulted in legislation characterized by liberalism and capitalism, such as the Investment Law, Oil and Gas Law, Electricity Law, and Water Resources Law, which diverged from the principles of the 1945 Constitution and Pancasila. These laws often prioritize foreign interests and profit over public welfare, leading to issues like resource exploitation and inadequate local benefits. To address these concerns, judicial reviews by the Constitutional Court can invalidate laws that conflict with the Constitution. Future research should focus on the interplay between political interests and lawmaking, as legislation is not only a legal but also a political product.

**Credit Authorship Contribution**

Imam Mahdi: study design, investigation, draft preparation, supervision.

**Declaration of Competing Interest**

The authors declare no competing interests related to this study. No financial or personal conflicts of interest are present.

**Data Availability**

Data are not available for sharing.

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