

CENTRE FOR INTERNATIONAL LAW – NUS

**THE LEGAL FOUNDATION OF
INDONESIA'S FOREIGN POLICY, WITH
SPECIAL REFERENCE TO LAW NO. 37
YEAR 1999**

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SINGAPORE, 30 NOVEMBER 2011

OUTLINE OF THE PRESENTATION

- **LEGAL SOURCES OF FOREIGN POLICY (GENERAL & ASEAN COUNTRIES);**
- **LAW NO. 37 YEAR 1999 AND ITS CONTEXT OF ORIGIN;**
- **WHAT NEEDS STRENGTHENING AND HOW;**
- **SOME POINTS FOR REFLECTION.**

LEGAL DIMENSION OF FOREIGN POLICY

TEXTUAL SOURCES:
LAW & LEGISLATION,
DOCTRINES, STRATEGIES



DM-UNIT



FOREIGN POLICY

CONTEXTUAL SOURCES:
DOMESTIC MILIEU &
INTERNATIONAL
ENVIRONMENT



FOUR MAJOR LEGAL SOURCES OF A COUNTRY'S FOREIGN POLICY

- **CONSTITUTION;**
- **LEGISLATION AND OTHER REGULATIONS;**
- **TREATIES AND EXECUTIVE AGREEMENTS;
AND**
- **INTERNATIONAL LEGAL INSTRUMENTS TO WHICH A COUNTRY BINDS ITSELF.**

CONSTITUTION

- **Contains the core directions for foreign relations and foreign policies of a country.**
- **Stipulates the declaration of war, the ratification of treaties or agreements and the appointment of ambassadors and acceptance of foreign ambassadors; institutions that are responsible for its foreign relations and foreign policies.**

CONSTITUTION BASED DIRECTIVES OF THE FP OF ASEAN MEMBER STATES

STATES	CONSTITUTION	LEGISLATION	TREATIES & EXECUTIVE AGREEMENTS	RATIFIED INT. INSTRUMENTS
Brunei Darussalam	Amended 1959 Constitution		X	X
Cambodia	1993 Constitution		X	X
Indonesia	Amended 1945 Constitution (Preambular Sources)	X	X	X
Laos	1991 Constitution		X	X
Malaysia	1963 Constitution		X	X

CONSTITUTION BASED DIRECTIVES OF THE FP OF ASEAN MEMBER STATES

STATES	CONSTITUTION	LEGISLATION	TREATIES & EXECUTIVE AGREEMENTS	RATIFIED INT. INSTRUMENTS
Myanmar	Suspended 1974 Constitution		X	X
Philippines	1987 Constitution		X	X
Singapore	1965 Constitution		X	X
Thailand	1997 Constitution		X	X
Vietnam	1992 Constitution		X	X

LAW NO. 37 YEAR 1999 AND ITS CONTEXT OF ORIGIN

- **21 May 1998: President Suharto resigned and B.J. Habibie was sworn in as President.**
- **Legal Reform as a Priority in the Reform Era:**
 - **Law on Regional Autonomy;**
 - **Law on Anti-monopoly;**
 - **New Law on Political Party.**

LAW NO. 37 YEAR 1999 ON FOREIGN RELATIONS (14 September 1999)

- **10 Chapters and 40 Articles.**
- **Main Themes:**
 - **The conduct of FA and the implementation of FP;**
 - **The making and ratification of international treaties;**
 - **Protection of Indonesian citizens;**
 - **Asylum and Refugees;**
 - **FA Apparatus;**
 - **Credentials.**

THE AMENDMENT OF THE 1945 CONSTITUTION

- **19 OCTOBER 1999:**

In the appointment of ambassadors and in the acceptance of foreign ambassadors, the President is required to take into account the consideration provided by the House of Representatives (DPR).

BETWEEN 1999 AND NOW: CHANGES HAVE HAPPENED IN THE LANDSCAPE OF INDONESIA'S FP

- **Growing interests of civil society groups in foreign affairs;**
- **The role of media and the broad use of social media networks;**
- **Expanding foreign policy establishment;**
- **Local governments play greater roles in a particular type of foreign relations; and**
- **The foreign policy role of the Legislature is enlarging.**

A STARTING POINT:

- **A legal source in the form of a specific law that frames Indonesian foreign affairs and foreign policy should ideally contain provisions that include at least eleven aspects.**

11 KEY DENOMINATORS:

- 1. The doctrine of foreign policy and the principles and fundamental commitments in the relationships among nations;**
- 2. Governmental actors of foreign relations (executive, legislative, judiciary) and non-governmental;**
- 3. The relationship among actors;**
- 4. Regional autonomy and foreign relations;**

11 KEY DENOMINATORS

- 5. Consistency and coherence of policy vis-à-vis the diversity of actors in foreign relations;**
- 6. Foreign policy planning;**
- 7. Institutional aspect;**
- 8. Management and organizational aspects;**
- 9. Dispute settlement;**
- 10. Choice of foreign policy instruments; and**
- 11. Foreign policy and democracy.**

(1) DOCTRINAL ASPECT

- **DOCTRINES, FUNDAMENTAL PRINCIPLES; AND BASIC COMMITMENTS:**

Can be formulated on the basis of not only ideas but also experiences and historical factors as well as the objective condition.

(2) GOVERNMENTAL ACTORS OF FOREIGN RELATIONS (EXECUTIVE, LEGISLATIVE, JUDICIARY) AND NON- GOVERNMENTAL ACTORS

Phases of Foreign Policy	Actors
THE FORMULATION	Policy Planning Network/Foreign Policy Establishment: Governmental and non-governmental actors such as religious and cultural leaders, party leaders, news media, academics, businessmen, observers of foreign issues, parliamentarians, youth organizations, NGOs, and other civil society groups.
THE MAKING	The Proximate Policy Makers: the executive, legislative, judicative, bureaucracy and interest groups.
THE IMPLEMENTATION	Implementing Agencies: government c.q. Ministry of Foreign Affairs and its missions abroad.

(3) THE RELATIONSHIP AMONG ACTORS

How should executive agencies interact with the legislature in handling foreign affairs?

**Taut check-and-balance;
accommodative; collaborative;
competitive?**

How should the interaction between government and non-governmental actors be?

(4) REGIONAL AUTONOMY AND FOREIGN RELATIONS

REGIONS	SOURCES OF AUTHORITY
CHINA: Xinjiang	The People's Republic of China Regional Ethnic Autonomy Law (1987, 2001)
FINLAND: Åland Islands	Amended 1920 Act on the Autonomy of Åland Islands
USA (Federal): States	State Constitution; State Statute; City Ordinance
TAIWAN (Entity): The City of Taipei	National Policy of Taiwan
INDONESIA	UU No. 22/1999; UU No. 32/2004; UU No.18/2001 (NAD); UU No. 11/2006 (PA); UU No. 21/2001 (Papua)

FOUR PATTERNS OF CENTRAL – REGIONAL RELATIONS

- **Conflicting/Antagonizing Pattern;**
- **Complementing Pattern;**
- **Complicating Pattern; and**
- **Dissociating Pattern.**

(5) CONSISTENCY AND COHERENCE OF POLICY VIS-À-VIS THE DIVERSITY OF ACTORS IN FOREIGN RELATIONS

While the diversity of actors has increased in the Indonesian foreign policy establishment, unless well managed, it has potentials to harm the consistency and coherence of the country's foreign policy.

(6) FOREIGN POLICY PLANNING

- **Provisions regarding foreign policy planning should specify:**
 - **The forms of plans: strategic plan or white paper or policy statement;**
 - **The main actors in the planning; and**
 - **Public participation in the planning process.**

(7) THE INSTITUTIONAL ASPECT

Provisions concerning the institutional aspects include:

- **Primacy of the MFA;**
- **Complementary role of other agencies;**
- **Proliferation of units having potentials to strengthen a country's foreign policy profile;**
- **Relations among units to enshure FP coherence.**

(8) MANAGEMENT AND ORGANIZATIONAL ASPECTS

Provisions that govern the managerial and organizational transformation by institutions associated with foreign foreign policy, particularly the MFA.

(9) DISPUTE SETTLEMENT

Provisions that regulate choices of actions when dispute with other country occurs:

Consultations, negotiations, inquiry, good offices, judicial settlement, resort to regional agencies and arrangements, sanctions, dissolution of diplomatic relations, or war waging.

(10) CHOICE ON FOREIGN POLICY INSTRUMENTS

- **Provisions on the instruments of foreign policy (diplomacy; economic and development assistance; humanitarian assistance; cultural mission; the use of the military).**
- **Provisions on circumstances under which one instrument is considered the best option to take.**

(11) FOREIGN POLICY AND DEMOCRACY

Provisions that encourage foreign policy dialogues and debate as part of democratic process, including in the debates of presidential candidates.

TWO WAYS TO STRENGTHEN THE LAW

- **A substantive change can be accommodated in the same legal source, such as amendments in the Constitution or the Law on Foreign Relations (*vertical strengthening*)**
- **The proliferation of legal sources issued by the branches of the executive, legislative or even the judiciary (*horizontal strengthening*).**

TWO POINTS FOR REFLECTION

- **Why are countries that have no specific law on foreign policy doing well in their foreign relations?**
- **What is so important of such a specific law?**
- **US plan to deploy troops in Darwin:**

What legal imperatives can guide Indonesia to respond to the plan?



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