

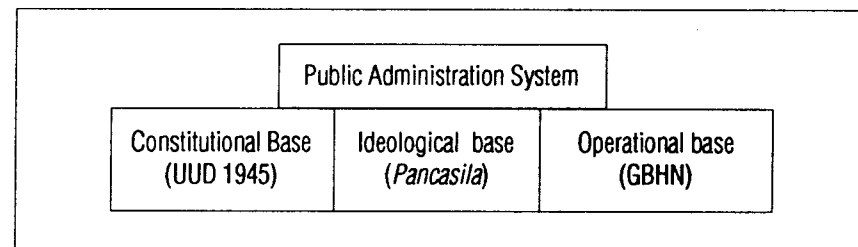
2. Djunaedi Hadisumarto, *The Indonesian Civil Service and its Reform Movements*. DPA Dissertation, University of Southern California 1974, p.180. Quoted in Quah 1989:249.
3. KORPRI (*Korps Pegawai Republik Indonesia*) is the organisation of all public sector personnel. Membership is compulsory for all civil servants (*pegawai negeri sipil*), for the staff of state-owned enterprises, and the members of the armed forces.

# 1

## The socio-political environment of public administration in Indonesia

We have already outlined above that the public administration system of a country does not exist in isolation: as a sub-system of the society it is interacting with a certain environment, exchanging information, ideas and resources. The social structure of the society, existing strategic groups and their shifting coalitions, the constitutional, political and legal framework of the state, the state philosophy or state ideology, political paradigms, culture, tradition and history, economic and ecological conditions influence structure, functions and activities of a public administration system. In the Indonesian debate, public administration has been based on three pillars: the state philosophy *Pancasila* as idealistic base, the 1945 constitution as constitutional base and the Broad Guidelines on State Policy (GBHN) as operational base (SANRI I:4).

**Figure 2: Basis of the public administration system in Indonesia**



In the following chapter, we will describe some of the influencing factors of the Indonesian public administration. We will concentrate on the constitutional and political framework, on the role of the official state ideology *Pancasila* and other political concepts dominating the socio-political debate, and on the legal framework in which public administration operates.

## 1.1 The constitutional and political setting of the Indonesian public administration

With the collapse of the Dutch-imposed concept of a Federal Republic of Indonesia and the decision of the Indonesian government to return to the concept of a unitary state in 1950 as envisioned at the time of the declaration of independence, the 1945 constitution (*Undang-Undang Dasar/UUD 1945*) has become the constitutional framework of the Indonesian state and was confirmed as such at the beginning of the "New Order"-government. The underlying principles of the constitution, which become also guiding imperatives for the Indonesian public administration are "the belief in the One and Only God, just and civilised humanity, the unity of Indonesia, democracy guided by the inner wisdom of deliberations amongst representatives and the realisation of social justice for all the people of Indonesia" (GOI 1989:1). The preamble of UUD 1945 furthermore formulates the objectives of the state: to protect the people and the land of Indonesia, to improve the public welfare, to advance the intellectual life of the people and to contribute to the establishment of a world order based on freedom, abiding peace and social justice (ibid:1).

The UUD 1945 envisages an Indonesian state based on the law (*Rechtsstaat*) and with a constitutional system (*hukum dasar*) which limits the power of the government. The supreme authority of the state rests in the hand of the *Majelis Permusyawaratan Rakyat (MPR)* (People's Consultative Assembly), which elects the President and which determines the policy of the government in the form of the GBHN. Regarding the hierarchy of the state institutions, the UUD 1945 distinguishes between the so-called "Highest state institution" (*lembaga tertinggi negara*), the MPR, and the "High state institutions" (*lembaga tinggi negara*) like the President, the DPR, the State Audit Board and others (SANRI I:17) (see Fig.3).

The functions and powers of these state institutions can be summarized as follows (see SANRI I:18ff., GOI 1991b):

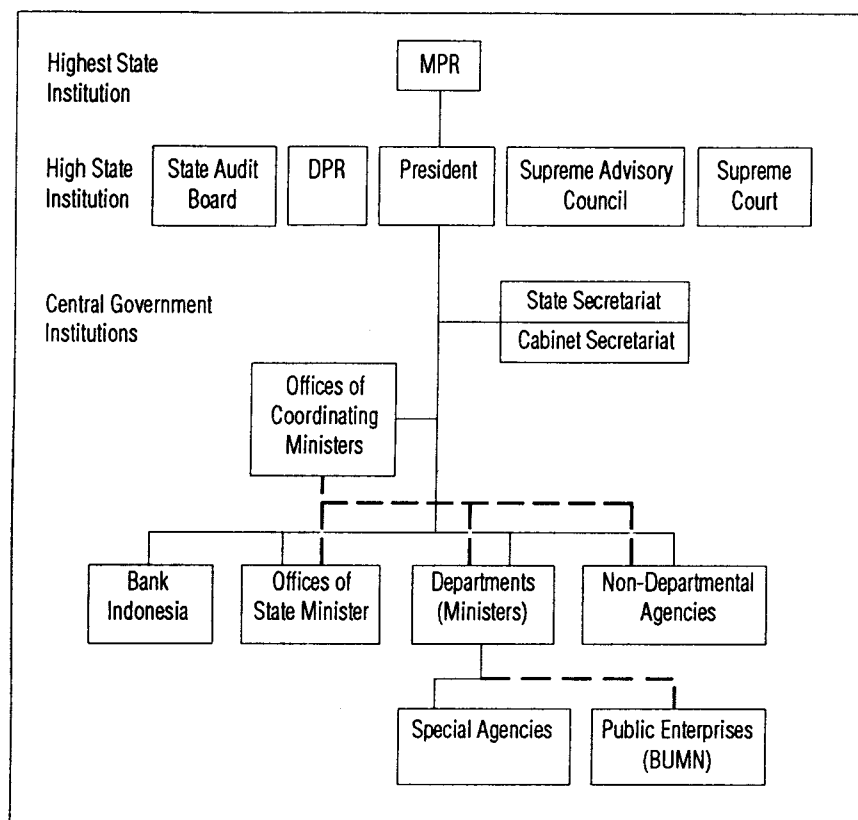
1. The **MPR** "acts as a channel of political and social aspirations prevalent in society and is therefore holding the supreme power in the state" (GOI 1991b:89). It holds the "sovereignty of the people" and is as such the highest state institution. It meets usually only once every five years at the beginning of what is called the "National Leadership Mechanism" to receive the report of the President on the implementation of the state policies for the previous legislative period, to elect a new President and Vice-President and to determine the state policies for the next five years (the GBHN). It consists of 1000 representatives, including the 500 deputies of the DPR. The other 500 representatives are nominated by the provinces (147 delegates) or are appointed by the President as representatives of the various groups in the society. The representatives are

grouped into five factions: the factions of the representatives of the Armed Forces (ABRI), the factions of the political parties (PDI, PPP and GOLKAR) and the faction of the representatives of the regions.

2. The **President** is the chief executive of the government and at the same time the head of state. He is regarded as the "mandatory" of the MPR, who executes the policies determined by the MPR and who is accountable to the MPR. Beside having executive functions, the President has also certain legislative functions in cooperation with the "principal legislative body" (Thoolen 1987:54), the *Dewan Perwakilan Rakyat (DPR)* (House of Representatives). The President is not accountable to the DPR, but should take into account the opinion of the DPR. Since all members of the DPR are at the same time members of the MPR, they can initiate to summon an extraordinary session of the MPR. The President's power is mainly limited by the rights and functions of the MPR.
3. The **DPR** (House of Representatives) can be regarded as the working parliament of the Indonesian state which shares legislative powers with the President, approves the budget, has the right to declare war and peace, and has control functions concerning the implementation of the state policies, the execution of laws and the activities of the public administration under the leadership of the President. It controls the implementation of the budget and the management of the state finances, and receives and discusses the reports of the State Audit Board. 425 of the 500 deputies of the DPR are elected every five years in general elections according to the proportional strength of the three political parties which are allowed to file candidates. The remaining 75 deputies are nominated by the ABRI.

Like the MPR, the 500 deputies of the DPR have formed factions according to their affiliation to the political parties or the Armed Forces. The work of the DPR is mainly done in its 11 committees which are each responsible for a certain sector of governments activities.

4. The **State Audit Board** (*Badan Pemeriksa Keuangan-BPK/Bepeka*) examines the state finances (the revenues and expenditures) according to the approved budget. Beside the national budget, the *Bepeka* can also examine budgets of the regional governments and of the state enterprises. Examination of budgets is not only in respect to adherence to the budget regulations, but increasingly also in respect to efficiency and effectiveness of public spending (GOI 1991b: 107f). The members of the *Bepeka* are appointed by the President from a list of candidates proposed by the DPR. The *Bepeka* reports its findings to the DPR, in cases of criminal behaviour it can also involve the state prosecutor directly. Activities of the *Bepeka* are based on a five-year plan (*Rencana Kerja Lima Tahun-RKLT*).

**Figure 3: Hierarchy of state and government institutions at the central level**

5. The **Supreme Advisory Council** (*Dewan Pertimbangan Agung-DPA*) is an advisory council to the government, which is involved at the request of the President, but which can also submit recommendations to the President on its own initiative. It has an autonomous status, "free from influences of the executive and social forces" (GOI 1991b: 101). The members of the DPA are appointed by the President, and can also be dismissed by the President. The topics of the council's work cover a wide range of issues, from economic planning to questions of the state ideology *Pancasila* and issues of national education.
6. The **Supreme Court** (*Mahkamah Agung-MA*) is the highest judiciary body handling appeals and revisions of all the various branches of the judiciary system. It also gives judicial advice to the President (in cases of clemency). Materially, it can examine only legal instruments below the level of a law and cannot for instance

rule on the constitutionality of laws. Judges to the Supreme Court are appointed by the President from a list of candidates nominated by the DPR.

The various functions of the state institutions are shown in Fig. 4. In short it can be said that the executive power rests very firmly in the hand of the President, that constitutional legislative power is with the MPR, ordinary legislative power is shared between President and DPR, while judiciary power is with the Supreme Court. The strong position of the President as determined in the 1945 constitution is emphasized by the fact that it is the President who appoints the heads and the members of the Supreme Court (MA), the Supreme Advisory Council (DPA) and the State Audit Board (*Bepeka*) based on proposals from or with the approval of the DPR. In other words: the President as the apex of the executive branch of the state has considerable influence on the composition of the other "High State Institutions", and is therefore clearly the *primus inter pares* among the "High State Institutions".<sup>(1)</sup>

**Figure 4: Main functions of the state institutions**<sup>(2)</sup>

Function (resp. article of UUD 1945)	MPR	President	DPR	MA	DPA	Bepeka
Constitutional (Art. 1.2, 3)	x					
Executive (Art. 4.1, 17)		x				
Legislative (Art. 5.1, 20, 21)		x	x			
Judiciary (Art. 24, 25)				x		
Auditing (Art. 23.5)						x
Supervising government (explanation of UUD 1945)			x			
Consultative (Art. 16)			x	x	x	

Below the level of the highest and high state institutions are the central government institutions as part of the President's executive branch. The ministers (as head of the departments) are appointed by the President and are regarded as his "assistants". As such they are accountable only to him but not to the DPR. (SANRI I:15)

The "National Leadership Mechanism" (*Mekanisme Kepemimpinan Nasional*) (see Fig. 5) describes the five-year cycle of the legislative period: following the general election, the President presents his report of the government's policy during the previous past five years (*Pidato Pertanggungjawaban Presiden*

*Mandataris MPR*) to the general session of the new MPR. The MPR elects a new President and Vice-President, and discusses and approves the new GBHN, the draft of which has been submitted by the President. Based on the stipulations of the GBHN, the President has the obligation to formulate and implement the Five-Year Development Plan (*Repelita*), to prepare the annual budgets and to formulate laws for the approval by the DPR.

Figure 5: The national leadership mechanism

Implementation of <i>Repelita</i>	State Address of outgoing President/ Election of new President / Vice-President GBHN Formulation of <i>Repelita</i>	Begin of new <i>Repelita</i>	Implementation of <i>Repelita</i>	Implementation of <i>Repelita</i>	General election to new MPR/DPR Implementation of <i>Repelita</i>	
Annual Budget		Annual Budget	Annual Budget	Annual Budget	Annual Budget	
General Election						
Year 0	Year 1	Year 2	Year 3	Year 4	Year 5 (0)	Y1

The existing constitutional and legal structure of the Indonesian state provides the public administration (as implementing instrument of the President's executive powers) with a strong and dominating role in the political life of Indonesia. Such a domination can be identified in the process of policy-making, which to a large extent takes place within the bureaucracy,<sup>(3)</sup> in the unbalanced distribution of power between the executive and the legislative branch of the state, and in the lack of external control mechanisms to check activities of the public administration: Direct and unrestricted control over the government administration is limited to the MPR (to which the President is accountable), which normally is in session every five years only, and where control is retroactive. The influence and control of the DPR on the actual policy of the administration is restricted, since the President and the ministers (as heads of the departments) are not accountable to the DPR, and there are few control mechanisms with which the DPR can directly determine the activities of the administration. Control of the public administration by the judiciary has been introduced only recently, and still needs to improve its efficiency. The appointment to the Supreme Court is done by the President (based on the proposals from the DPR), which again gives the executive branch of the state the opportunity to determine the composition of this highest court of the country. Public control of the administration by the society is underdeveloped because of the lack of effective means and instruments by which the society could influence the activities of the administration.

In short: in the Indonesian state the system of "check and balance" between the various state institutions clearly tilts in favour of the administration. Public administration furthermore dominates in the relationship with the society where it has to face only limited external control, and public administration is to a large extent independent in its decision-making (and policy-making) process.

## 1.2 The political debate in Indonesia: *Pancasila* and other concepts of political thinking

The official state ideology of Indonesia is *Pancasila*, consisting of the five principles which are formulated in the preamble of the UUD 1945 as follows: "

1. Belief in the One and Only God,
2. Just and civilized humanity,
3. The unity of Indonesia,
4. Democracy guided by the inner wisdom of deliberations of representatives,
5. Social justice for all the Indonesian people" (GOI 1991c:35).

*Pancasila* as state ideology rejects communist ideas as well as the establishment of a state based on religion.

Initially, *Pancasila* was seen as a state philosophy to provide a general framework of the goals and the objectives of the newly independent state in the sense of a policy orientation. Following the events of 1965/66 as the culmination of the power struggle between different strategic groups supporting different ideologies, *Pancasila* has been transformed by the "New Order"-government "from its origin as state philosophy, expressing national Indonesian thinking, into a compulsory state ideology with operative value for those who are in power" (Thoolen 1987:39).

This policy was justified with the argument that "history proves that *Pancasila* is the most appropriate philosophy and ideology of the Republic of Indonesia. The comprehension of *Pancasila* is compulsory if we wish to realize the objectives of the Republic of Indonesia" (GOI 1991b:211). In his State Address to the DPR in 1990, President Suharto reiterated this view by referring to the political and economic situation of the "Old Order"-period during which "*Pancasila* as the fundamental state principle which has been accepted as the foundation of independent Indonesia was in fact being debated and revoked. Political stability was never achieved. Governments were toppled one after the other in quick succession. In such a situation, planned development could never been implemented.... We realized that we had to return to genuinely and consistently apply *Pancasila* and the 1945 Constitution. We immediately rearranged the life of our society, nation and country. Past ways of managing the political and economic life were appar-

ently unable to secure national stability and economic growth. We had to abandon liberal democracy and guided democracy...We rearranged the entire life of our society, nation and country in accordance with the spirit of *Pancasila* and the 1945 Constitution.”<sup>(4)</sup>

The provisional MPR in 1966 confirmed *Pancasila* as state ideology and as a “basic source of all law in Indonesia” (GOI 1991c:36). Starting from 1978 with the establishment of BP7<sup>(5)</sup>, the “New Order”-government began with efforts to standardise the interpretation and application of *Pancasila*. BP7 developed the so-called P4-course on *Pancasila* as the government’s official interpretation of *Pancasila*: “P-4 is required to bring conformity in the sense of language, view and action in comprehending and application of *Pancasila*” (GOI 1991b:216). The P4-course in its various versions has since then been used to expose different target groups of the population (ranging from civil servants to new students, pupils and members of social mass organisations) to this official *Pancasila* interpretation.<sup>(6)</sup> In a further bid to strengthen the role of *Pancasila*, the DPR in 1985 approved Law No.8 (1985) which made *Pancasila* the binding ideology not only for the state and the state institutions, but also for the existing political parties and all mass organisations in Indonesia, including religious organisations.

In the official attitude of the “New Order”-government, “to deviate from *Pancasila* is to undermine development efforts, national stability and the character of the Indonesian people. Therefore, *Pancasila* should permeate all aspects of national life, including the political, economic, social and legal aspects” (Morfit 1986a:43). Whereas in Western analysis *Pancasila* in its codification by the government has been criticized for its static view and for the inherent attempt to encourage and push economic change without social change (ibid), in the understanding of the “New Order”-government *Pancasila* is a dynamic ideology, open to changes and modifications as the need arises in the process of economic and social development. To quote once more President Suharto: “We must continuously and freshly develop the various insights aimed at translating (*Pancasila* and UUD 1945) further into the political, economic, socio-cultural and defense-security field. Therefore, we have stated *Pancasila* as an open ideology, and we are developing it through national consensus...”<sup>(7)</sup>

The basic ideas of *Pancasila* have been accepted widely in the Indonesian society and are also prevalent in the political thinking of opposition groups demanding more “democratisation”<sup>(8)</sup>. However, the quasi monopoly for the interpretation and application of *Pancasila* claimed by the government is a constant issue of dispute between the government and other groups of the society which insist that their demands or protests are also legitimately aiming at the realisation of *Pancasila*, although their views are being treated by the government as “anti-

*Pancasila*”. One of the main points put forward by the Petisi 50-group of retired generals, former politicians, academics and students in 1980 was the accusation that the government “misinterpret *Pancasila* so that it can be used as a means to threaten the political enemies whereas *Pancasila* was intended by the founders of the Republic of Indonesia as a means of unifying the people”.<sup>(9)</sup>

*Pancasila* refers to and includes concepts of the indigenous Indonesian, especially Javanese culture, like *musyawarah* (broad discussion aimed at reaching consensus instead of having a decision by majority), *mufakat* (consensus based on mutual concessions), *gotong royong* (mutual assistance at all levels), which all put emphasis on compromise, consensus, cooperation, harmony, equilibrium and tolerance. The interpretation of *Pancasila* as codified by the “New Order”-government tries to expand the application of *Pancasila* to the areas of the economic system and the labour relations, the political system and the control over social organisations (Thoolen 1987:38f). As far as the economic system is concerned, *Pancasila* is supposed to favour an economic system based on the family as the fundamental social unit where not profit is the overriding concern but mutual assistance and togetherness. In the *Pancasila* economy cooperatives should play a strong role. Labour relations are supposed to be harmonious since workers and employers have the same interests and are not antagonistic.

The existing political system of Indonesia has been called “*Pancasila* Democracy” by the “New Order”-government to distinguish it from the previous political systems in Indonesia (“Liberal Democracy” in 1945-1959 and “Guided Democracy” in 1959-1965). *Pancasila* democracy is officially open to the airing of different opinions and views, however, only within the boundaries of the *Pancasila* ideology (which ultimately are defined by the government), and only as long as the ideology as such is not being questioned: “Different angles, different priorities, different policies and programmes of interests and aspirations will still be there, but it will not be an ideological strife” (Bintoro 1991:340). Open debate in the framework of *Pancasila* democracy must not endanger the national stability or seed conflicts or dissent in the society, instead the emphasis is on deliberations, consultations and consensus building: “*Pancasila* democracy implies the meaning that national problems concerning the life of the society, the nation and the state should as far as possible be solved through deliberations to reach a consensus to the interests of the people” (GOI 1993:16). Since 1985, all political parties have to be based on *Pancasila* as their ideological framework. Decisions in the two representative bodies (MPR and DPR) are in most cases unanimous, with majority decisions being the exception.

“*Pancasila* Democracy” does not contain the connotation of genuine separation of power as envisaged in the concept of liberal democracy of Western Europe “since

it adopts the division of power on the basis of the family principle. *Pancasila* democracy which adopts the family concept thus does not recognize forms of opposition, majority dictatorship and minority tyranny. Relationship between government institutions and other state institutions should always be founded on the spirit of togetherness, unity and responsible frankness" (GOI 1993:16). The symbol of the "family", which is also contained in the UUD 1945 description of the economic system of the country<sup>(10)</sup>, implies the image of a strong father (the President) who takes the responsibility for the well-being of his dependents. This concept, based on traditional values of the Indonesian culture, again favours a strong role of the public administration as implementing apparatus of the President as Chief Executive of the state.

Beside *Pancasila*, there are a number of other political concepts which influence role, activities and attitude of the public administration system in Indonesia, and thus are part of the system's "ideological environment".

Since Indonesia is an extremely diverse nation in terms of ethnicity, language, culture and religion, geographical distribution and ecological conditions, distribution of resources and levels of development, the centrifugal forces of this diversity have repeatedly threatened the unity of the nation since the declaration of independence in 1945. The attempts of the Dutch to maintain their influence by creating a loose federation of states on the territory of their former West Indies (the short-lived Federal Republic of Indonesia 1949-50), and the subsequent secessionist movements in Aceh, Sumatra and the Moluccas have made securing the national unity a prime policy priority. The official state motto "*Bhinneka Tunggal Ika*" (Unity in Diversity) tries to combine the recognition of the diverse elements of the Indonesian polity with the need to maintain unity as a nation state and with the feeling of belonging to a common political and economic polity. In relation to public administration, the inherent centrifugal forces of the Indonesian state have stimulated the development of a highly centralistic approach in policy and decision-making, in which little authority was given to the lower levels of government and administration, and all major decisions had to be made or to be confirmed by the centre (i.e. the central government in Jakarta). It is only in recent years, that because of sheer incapability of this centralistic approach to deal with the demands from the society the central government has taken steps to decentralise the administration, and to give authority for decision-making and implementation to the lower levels of government (see Chapter 3.7).

Preserving national unity, stimulating the feeling of a national identity and the protection of the natural resources of the country were also considerations in formulating the concept of the "Indonesian Archipelagic Outlook" (*Wawasan Nusantara*), which was based on the "Djuanda Declaration" of 13 December 1957,

which was later codified in Law No. 4 (1960). In short, the "Archipelagic Outlook" defined the territory of Indonesia as including all the waters connecting the Indonesian islands. "Thus, the concept of the 'Wawasan Nusantara' defines the Indonesian archipelago as one legal unity and one economic unity" (GOI 1991c:47) and contains Indonesia's claim for complete and unrestricted sovereignty over all the natural resources found on land and in the sea.<sup>(11)</sup> Although economic and strategic factors were influential in giving shape to the "*wawasan nusantara*"-concept, the underlying rationale was the concern for international recognition as an independent nation state, and the need for a concept "that could be made into a single symbol of unity and union of the Indonesian people and islands as a nation" (Fletcher 1994:106).

The concept of "national resilience" embraces ideological, political, economic, socio-cultural as well as defense and security aspects (Salamoen 1993:9) and refers to the ability of the Indonesian nation to overcome all possible hindrances and challenges for the national development by using Indonesia's own natural, human and cultural resources.

For the process of economic development, the concept of the "development trilogy" (*Trilogi pembangunan*) has become more important with the realisation that the benefits of the development process since the 1960's are distributed unevenly. In short, the "development trilogy" demands;

- "1. equitable distribution of development gains
2. sufficiently high economic growth
3. sound and dynamic national stability" (Salamoen 1993:8)

Especially with the beginning of the 6th Five-Year Development Plan (*Repelita VI*), the focus of state activities to promote economic development is planned to shift more to aspects of regional disparities in order to remedy the uneven distribution of the benefits of economic development.

### 1.3 Indonesia's legal framework and its impact on public administration

According to the UUD 1945, Indonesia is a state based on the law ("Rechtstaat") with a constitutional system, in which legislative power is shared between the President and the DPR under the overall responsibility of the MPR which holds the supreme power in the state (SANRI I:14f.) Beside the codified system of laws and regulations, Indonesia has still a body of traditional, un-codified law ("*adat*"), which influences the daily life of the people in the regions, especially in matters of marriages, family, and heritage, but also in matters concerning land use and the transfer of land (Thoolen 1987:34).

The Indonesian law system has a hierarchical order of legal instruments with the stipulations of the 1945 constitution at its top. Decrees of the MPR (TAP) follow second, while laws (or statutes) (*Undang-Undang/UU*) enacted by the DPR and ratified by the President come third. In most cases these laws authorise the government to regulate the detailed implementation of certain areas covered by the laws in the form of Government Regulations (*Peraturan Pemerintah/PP*), which are either passed by the whole cabinet or by the President alone in the name of the cabinet. Below the level of Government Regulations, Presidential Decrees (*Keputusan Presiden/KEPPRES*) and Presidential Instructions (*Instruksi Presiden/INPRES*) are detailed stipulations with legal impact only for the activities of the administration. Ministerial Decrees (*Surat Keputusan Menteri*), issued either by one minister or by several ministers together (*Surat Keputusan Bersama*) constitute more detailed guidelines for the administration in specific or technical fields. Certain matters (like the division of the country in administrative territories, taxes, court matters) can only be regulated by laws (UU) and not by legal instruments of a lower level. Table 1 gives the numbers of selected legal instruments ratified between 1973/74 and 1989/90.

**Table 1:** Ratification of legal instruments 1973/74 - 1989/90

Type of legal instrument	1973/74	1978/79	1983/84	1988/89
Laws (UU)	56	37	50	46
Government Regulations (PP)	259	156	210	182
Presidential Decrees (KEPPRES)	371	238	356	332
Presidential Instructions (INPRES)	45	67	80	37
(cumulative figures for five-year period)				

Source: GOI 1991c, p.360

There are four main bodies of codified law: the criminal laws (*Kitab Undang-Undang Hukum Pidana/ KUHP* or Bill of Criminal Code), the civil laws (*Kitab Undang-Undang Hukum Perdata* or Bill of Civil Code), the commercial and trade laws (*Kitab Undang-Undang Hukum Dagang/ KUHD* or Bill of Commercial/ Trade Code) and the administrative laws (*Peradilan Tata Usaha Negara/ PTUN*). Beside the legal instruments which were codified since Indonesia gained independence, a considerable number of regulations exist which date back to the colonial times, but which are still being applied.<sup>(12)</sup>

The court system in Indonesia consist of 4 different branches: the general courts on two levels,<sup>(13)</sup> military courts, religious courts and (since 1986) administrative courts. The Supreme Court is the highest court in the judicial system with

jurisdiction for appeals in all the different judiciary branches. The Supreme Court cannot, however, rule on the constitutionality of laws passed by the parliament. Assessment of the constitutionality of laws is the prerogative of the MPR as the highest state organ. The relatively weak position of the judiciary compared to other branches of the state can also be seen in the fact that "the legal system in Indonesia is not given any formal powers in the constitution or in later legislation. It functions primarily as a system for criminal and limited civil action and does not rule on constitutional issues." (MacAndrews 1986b:23)

Table 2 indicates the volume of cases accomplished by the court system. While the rate of accomplishment according to official government figures is quite high for the lower level courts, the rate of accomplishment decreases for the higher levels of the court system. Especially the Supreme Court is plagued by a substantial backlog of cases,<sup>(14)</sup> resulting in long delays of appeal decisions. Because this sheer amount of cases threatens the proper functioning of the Supreme Court, plans are being discussed to limit the possibility of appeals to the Supreme Court (e.g. according to the value of the cases concerned in civil matters, or the type of penalty in criminal cases).

It has been observed that the "legal system is extremely complicated because of its history and the enormous vagueness of the laws, which leave extraordinary discretion to government authorities" (Thoolen 1987:58). The ambivalent wording of laws and the absence of clear-cut definitions and terms require the issuance of supplementary stipulations (like the Government Regulation) before a law can actually be applied. Delays in the courts, contradictory and inconsistent judgments, difficulties in enforcing decisions of the courts, and shortage of information on laws, regulations and court decisions are well known shortcomings (Bhattarcharya/Pangestu 1993:41). The inconsistencies in the court system's procedures were exemplified in May 1995 when the Chief Justice of the Supreme Court, Soerjono, wrote a "personal letter" to the provincial government of Irian Jaya, declaring a previous and final verdict of the Supreme Court that ordered the provincial government to pay 8.5 m US\$ as compensation for land as not "executable" because the provincial government could not be regarded as a public legal body which has its own properties. Beside the substance of this argument, the procedure and the authority of the Chief Justice to write such a letter, and the relevance of this letter for the enforcement of the Supreme Court's decision has been questioned widely, among others by the Minister of Justice, Oetojo, himself.<sup>(15)</sup>

One of the biggest problem for the private sector is the lack of public access to legal information, "posing a major barrier to the effective development and implementation of the commercial legal framework..." (World Bank 1994a:138). Alleged corruption of judges have been linked to their low salaries,<sup>(16)</sup> lack of profes-

**Table 2: Activities of the Indonesian judiciary system 1982/83 - 1987/88.**

	1982/83	1983/84	1984/85	1985/86	1986/87	1987/88
1. Courts of Justice						
a) Total number of cases	660110	766880	1482624	1931300	1990399	1157158
b) Number of cases accomplished	640577	747705	1451932	1915000	1986915	1153077
c) in %	97.04	97.50	97.92	99.15	99.42	99.64
2. Courts of Appeal						
a) Total number of cases	6941	7297	10617	10300	13002	8790
b) Number of cases accomplished	4808	5184	7646	7700	9949	6569
c) in %	69.27	71.04	71.01	75.5	76.91	74.73
3. Supreme Court						
a) Total number of cases	12956	14746	14307	14500	17121	10163
b) Number of cases accomplished	4951	7729	6762	5600	5905	6422
c) in %	38.21	52.41	47.26	38.5	34.96	35.16

Source: GOI 1991c, p. 375

nalism and lack of work ethics. The independence of the judicial system, although guaranteed in the Basic Law on the Judiciary No. 14 (1970), has also been questioned since the "administration of the court system is under the jurisdiction of the Ministry of Justice, which controls the budget, posting, transfer and promotion of judges" (World Bank 1994a:136). In the general public perception government and administration are able to impose their will on the legal system.

The weakness of the legal system<sup>(17)</sup> is recognised by the government, and legal reform (both in terms of strengthening the institutions of the judicial system and in terms of improving the laws themselves) has become one of the priorities of the Repelita VI period.<sup>(18)</sup> Legal reforms include the replacement of colonial laws<sup>(19)</sup> and the harmonisation of existing bodies of laws, but also the implementation of a major commercial law project initiated in 1992 which is "expected to assist in the design and implementation of many of the improvements needed in the company, contract and credit laws" (World Bank 1994a:138). The need for such laws becomes even more important in view of the pursued shift of government functions from direct economic interventions to the setting of legal rules and procedures for economic activities of the private sector.

It was only in 1986 that with Law No. 5 (1986) the system of administrative law was codified and an administrative court system established. Law No. 5 (1986) on the State Administration Judiciary Procedures (*Peradilan Tata Usaha Negara*-

*PTUN*) is "to be the legal basis for efforts to create a more clean, effective, efficient and respectable government apparatus" (GOI 1991c:457), and provides the legal framework to settle legal disputes (*sengkata tata usaha negara*), if measures of the state (represented either by state institutions or state officials) violate the individual rights of a citizen. "PTUN is established in the framework to protect the rights of the individual, apart from protecting also the rights of the society."<sup>(20)</sup> However, PTUN does not cover administrative matters in the sphere of the military which fall under the jurisdiction of the military judicature.

The PTUN covers a broad range of around 25 subjects and issues, including e.g. permissions (dispensations, permits, licenses, concessions), the administration of civil service personnel (promotion, change or loss of position), the administration of state finances, the administration of housing and building (status of house or building, rent, responsibility for maintenance), taxes (determination of amount, methods of claiming taxes), customs, agrarian issues (like appropriation of land for development projects like the widening of roads, lease of land), social security and subsidies for the handicapped and for the poor, tariffs and costs of schools, education fees, organisation and regulation of traffic on land, on water and in the air, services which are provided by BUMN (like postal services, telephone, electricity, water), and problems which are related to the process of judicature (SANRI II:184f).

Administrative Courts (*pengadilan tata usaha negara*) at the local government level (*daerah tingkat II*) and Administrative High Courts (*pengadilan tinggi tata usaha negara*) at provincial level (*daerah tingkat I*) are the backbones of the administrative court system with the Supreme Courts at its top.

Whereas the first level Administrative Courts are established by Presidential Decree, the establishment of an Administrative High Court is done by a law (UU). Administrative High Courts have jurisdiction for appeals against decisions of the Administrative Courts and decide in disputes of competencies between Administrative Courts in their area of jurisdiction. Although the PTUN was enacted in 1986, the administrative court system became operational only in early 1991 and its development is lacking far behind the stipulations of the PTUN. As of now, there are 11 Administrative Courts. Administrative High Courts exist only in Jakarta, Medan and Ujung Pandang. Other problems encountered in the implementation of the PTUN include the lack of qualification of the judges in administrative law and overlapping stipulations in the law itself.<sup>(21)</sup>

The Indonesian administrative law distinguishes two categories of administrative actions according to their position in the law system: the "legal action" (*perbuatan hukum*) based on the public law (*hukum publik*) in which public administration becomes active on the basis of specific powers entrusted to it by the existing legal



norms, and actual deeds (*perbuatan nyata*) of the administration (Hadjon et.al. 1993:64f.). *Perbuatan hukum* are the subject of the administrative (or public) law, whereas actual deeds are covered by the other bodies of law, like the civil law or the commercial law depending on the character of the issue. The "legal action" of public administration is furthermore divided into unilateral action (*perbuatan hukum publik yang bersegi satu*) characterised by a hierarchical relationship between the administration and the natural or legal person concerned, and the bilateral action (*perbuatan hukum publik yang bersegi dua*) which is based on a contractual agreement between the administration and the natural or legal person concerned. At the core of the unilateral action is the so-called administrative decision (*keputusan tata usaha negara* or *administratieve beschikking*) which can be challenged in the administrative courts by the natural or legal person whose rights might be violated by the administrative decision.

The PTUN and the establishment of the administrative court system for the first time created an instrument of external control of the public administration. In principle it can be used by each citizen who is affected by decisions and acts of the public administration. Whether the PTUN will indeed enable the citizen to have an influence on the activities of the public administration and will help to protect individual rights against a powerful bureaucracy, remains to be seen.

In recent years, several prominent lawsuits dealt with the relationship between individual citizens and the state administration. These lawsuits made use of the stipulations of the PTUN or other laws in order to protect individual or public rights which were claimed to be violated by decisions of the administration:

1. In July 1993 the Supreme Court had ruled in favour of 34 villagers who had lost their land when the Kedungombo Dam was built in Central Java, and who had sued the government for higher compensation than those offered and already paid by the government. The publication of the Supreme Court's ruling in August 1994 attracted considerable public attention. The government appealed against the decision,<sup>(22)</sup> and in November 1994, 4 months after the previous decision had been made public, the Supreme Court annulled its own decision of July 1993. The annulment was widely seen as influenced by the pressure from the government. The influence of the executive was also seen in the unusual speed, with which the decision to reverse the previous ruling has been made.<sup>(23)</sup>
2. In October 1994, a group of environmental NGO's filed a lawsuit against the June 2, 1994 Presidential Decision (KEPPRES No. 42 of 1994) to make Rp. 400 billion of accumulated reforestation funds available as interest-free loan to the state-owned aviation company IPTN in order to finance the development of IPTN's new N250 aircraft model. In their lawsuit, the NGO's argued that the

presidential decision would violate a number of other legal stipulations concerning the reforestation fund.

Initially the Jakarta Administrative Court accepted jurisdiction to review the case, a decision hailed as indication of the supremacy of the law even over decisions of the head of state.<sup>(24)</sup> Beside the attention caused by the fact that the President himself was the defendant in the case, it was hoped that the proceedings would shed some light on the general problem to what extent actions and activities of the government can be examined in legal processes: the lawyers representing President Suharto questioned the right of the Administrative Court to hear the case because according to their argumentation the decision of the President was based on the 1993 Broad Guidelines of State Policy (GBHN) which legally is a decree of the MPR and of a higher level than a law, and that therefore the decision of the President could be questioned only by the MPR but not by an administrative court.

Although the court did not accept this line of argument, in December 1994 the State Administrative Court decided not to hear the case because in the opinion of the court the actual transfer of funds would be based on an agreement between the IPTN and the Department of Forestry. Therefore the matter should be regarded not as an administrative case but as a civil case for which the Administrative Court would have no jurisdiction.

3. In May 1995, the Indonesian Forum for Environment (WALHI), a NGO, filed a lawsuit against the Secretary-General of the Department of Mining and Energy. The lawsuit asked the administrative court to revoke the secretary-general's approval of the environmental management plan of a huge mining company (PT Freeport) in Irian Jaya, claiming that the approval process of the ministry had not been in line with the stipulations concerning the environmental impact assessment.
4. Information Minister Harkomo (who is also Chairman of the ruling GOLKAR party) faced two lawsuits in connection with the banning of three press organs in July 1993. In October 1994, both lawsuits (the one from a group of former employees of the defunct magazine "Tempo", the other from the former editor of "Tempo") were accepted by the Jakarta Administrative Court for examination, the first time that the revocation of a publishing license by the government administration was to be examined in the court: "The case is important because it will test whether the judiciary will back a more open press or the government's power to control information as Indonesia charts out its political future".<sup>(25)</sup> The proceedings of the court was hampered by procedural delays and administrative problems<sup>(26)</sup>, but in May 1995 the court decided in favour of the plaintiffs and ordered the government to re-issue the publishing license.

The decision was widely hailed as unprecedented and as a historic landmark in Indonesia's legal history, but it remains to be seen whether the higher administrative court will uphold the decisions once the government appeals.

How does the present status of the legal system in Indonesia influence the public administration? The function of the legal system to protect individual rights can not yet be fully implemented due to the lack of infrastructure, the quality of the laws themselves, the qualification of the judges and other institutional shortcomings mentioned above. In the relationship between individual citizen and the public administration which is governed by the administrative law or PTUN, the superiority of the public administration vis-a-vis the individual citizen, but also vis-a-vis the judicial system as one of the branches of the state appears still evident. The legal system has still to prove its effectiveness as an element of external control, as an element of a system of "checks and balances". However, encouraging trends exist, among others the fact that decisions of the court system, and the relationship of the courts and of the administration have come increasingly under scrutiny by the public and the press.

## Notes

1. For an in-depth analysis of the President's position in the 1945 constitution see Indra (1988) and (1989)
2. Based on SANRI I, pp. 16-17
3. See Chapter 2.4.1.
4. Pidato Pertanggungjawaban Presiden Suharto di depan DPR (16 August 1990): cited in: GOI 1991c:32ff.
5. Badan Pembinaan, Pendidikan, Pelaksanaan, Pedoman, Penghayatan, dan Pengamalan *Pancasila* Pusat (Board to Promote Education, Implementing Guidance to the Comprehension and Practical Application of *Pancasila*).
6. See Morfit 1986a for an analysis of the P4 course. At present, the effectiveness of the P4 course has been questioned, and the Chairman of the BP7, Sudharmono, has acknowledged the need to improve the course (*Jakarta Post* 13 August 1994: "Pancasila course to be made more interesting").
7. Pidato Pertanggungjawaban Presiden Suharto di depan DPR (16 August 1990); cited in: GOI 1991c:35.
8. See Uhlin 1993:533. Uhlin's observation contrast sharply with official announcements and statements made by the government and by President

Suharto himself in early 1994 that warned of a continuing threat for *Pancasila* by not specified "certain groups". The *Jakarta Post* of 25 January 1994 reported that when "meeting with middle rank Navy officers...Suharto asked the Armed Forces (ABRI) to defend *Pancasila* because forces were on the move to replace it. The president alleged that the forces, which he did not identify, are waging a campaign to discredit and undermine his administration." Similar comments were made by the Coordinating Minister for Political Affairs and Security, Soesilo Soedarman, who warned of the reemergence of "liberal" trends that would threaten *Pancasila* (see *Jakarta Post* 14 January 1994: "Public told to watch out for liberal minded intellectuals", *Indonesian Observer* 15 January 1994: "Minister warns of Revival of Extremism, Liberalism", and *Indonesian Observer* 15 January 1994: "Govt is concerned about Resurgence of Liberal Intellectuals"). Only a short time later President Suharto was again reported as saying that "there were plots of certain groups within the society to eradicate the state ideology *Pancasila*.." (*Indonesian Observer* 7 February 1994: "President Suharto Warns of Move to Replace *Pancasila*"). The *Jakarta Post* of 8 February 1994 carried a report ("Intelligence chief warns of threat to state ideology"), in which the head of the State Intelligence Coordinating Agency (BAKIN) was quoted as saying that "*Pancasila* is being besieged from both inside and outside Indonesia."

9. Statement of Concern (Petisi 50); cited in: Thoolen 1987:38.
10. Article 33 of the UUD'45 states: "The economy shall be organized as a common endeavour based upon the principles of the family system." (GOI 1989:11) In the explanation to the UUD'45 this is further clarified as follows: "Article 33 embodies the principle of economic democracy, which states that production is done by all for all, under the leadership of supervision of members of the community. Social prosperity is the primary goal, not individual prosperity. Hence, the economy is organised as a common endeavour based on the principles of the family system. The form of enterprise which meets those conditions is the cooperative." (ibid:30)
11. The archipelagic concept was finally also included in the new Law on the Sea as codified by the United Nations Conference on the Laws of the Sea (UNCLOS) (see Fletcher 1994).
12. According to the proceedings of a National Law Seminar 1994, 330 of the 400 existing legal foundations are still from the colonial time and are drafted in the Dutch language (*Jakarta Post*, 26 July 1994).
13. As of now, there are 261 District Courts and 14 Appeal (or High) Courts (GOI 1991c:367). The number of judges was given as 2170 (ibid:370).

14. In January 1995, the number of pending cases at the Supreme Court was reported to be around 16000, with 2000 new cases coming in every year (*Jakarta Post* 24 January 1995).
15. See *Jakarta Post* 12 April, 21 April and 26 April 1995.
16. Effective from 1 January 1995, salaries for the judges range between Rp. 300000 to Rp.1.1 million (for a judge in the highest category with 32 years professional experience).
17. The human rights lawyer Todung Muly Lubis was quoted as saying that the chronic problem facing Indonesia is "that its legal institutions are so weak and corrupt that they have aroused contempt and ridicule" (*Jakarta Post* 31 March 1994).
18. The 1993 GBHN states that "growing legal awareness and accelerated development activities ..require the establishment of a supporting legal system and legal products which are originated from *Pancasila* and the 1945 constitution. Further development in the legal fields needs to pay attention to the promotion of legal popularization, the consistent and consequent implementation of law enforcement, the promotion of a qualified and responsible legal apparatus and the procurement of proper supporting facilities and infrastructure." (GOI 1993:25).
19. See GOI 1993:109.
20. "Dengan demikian dapat dikatakan bahwa PTUN diadakan dalam rangka memberi perlindungan terhadap hak" perseorangan, melainkan juga untuk melindungi hak-hak masyarakat." (SANRI II:179)
21. According to former deputy chief justice, Indroharto, and Jakarta PTUN judge Paulus Effendie Lotulung (see *Jakarta Post* 13 January 1993).
22. *Indonesian Observer* 1 August 1994: "Suharto Instructs to Retrial Java Dam Victims Case".
23. That the government views cases like the Kedungombo dam not from a legalistic point of view, but from a more political aspect, is revealed in the comment made by Soni Harsono, State Minister for Agrarian Affairs and Chairman of the National Land Agency (BPN), who was quoted as asking whether it was "fair to privilege 34 people when the majority of the Kedungombo inhabitants had already accepted the lower compensation given by the government." (*Indonesian Observer* 26 July 1994) According to this pattern of thinking, equality in the treatment of people would have a higher value than

guaranteeing the individual rights of citizens who use the legitimate legal channels to seek redress.

24. "Lawsuit Against President reflects Law's Supremacy", *Indonesian Observer* 26 September 1994.
25. *Indonesian Observer*, 19 November 1994.
26. In April 1995, for example, a court session had to be postponed because the files were not available due to the absence of the secretary of the court who went on the *haj* to Mecca.