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- ❖ Penulis : Victor Imanuel W. Nalle
- ❖ Korensponden : Victor Imanuel W. Nalle

Tahapan Korespondensi

No.	Tahapan	Tanggal	Deskripsi
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3	Pengiriman revisi artikel	14 April 2025	Penulis mengirimkan kembali artikel hasil revisi melalui sistem manuscript central.
4	Revisi artikel diterima dan permintaan penyesuaian gaya selingkung	14 April 2025	Editor mengirimkan pemberitahuan bahwa artikel hasil revisi telah diterima dan penulis diminta untuk menyesuaikan manuskrip berdasarkan pedoman penulisan dari jurnal Law and Development Review.
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Kind regards,

Prof. Y.S. Lee
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Reviewer(s)' Comments to Author:

Reviewer: 1

Comments to the Author

This submission is exceptionally interesting. However, and it is a big however, it talks about developmentalism in Indonesia and the legal structures and histories of this process, however it literally misses all the important legal literature. The scholars missed include, the general leaders in the field Lawrence Friedman and DM Trubek. Nor does the submission cite the leading legal scholars of Indonesia, such as Dan Lev, Tim Lindsey, Simon Butt, Melissa Crouch, Nadir Hosen or Jeremy Kingsley.

A significantly enhanced literature review is necessary before this submission should be published. Just quoting political scientists is a deep disservice to this issue.



Victor Imanuel Nalle <victor@ukdc.ac.id>

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Prof. Y.S. Lee
Law and Development Review

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3 Editor-in-Chief
4 Law & Development Review

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7 14 April 2025

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9 Dear Editor-in-Chief and Reviewer,

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12 I sincerely appreciate the reviewer's constructive feedback on my manuscript. In response to the
13 comments, I have carefully revised the paper and addressed the key points raised. Below, I outline the
14 specific revisions made:

15
16 **1. Regarding Key Literature in Law and Development**

17 I have incorporated the framework proposed by David M. Trubek on state intervention in
18 economic growth, particularly in promoting foreign direct investment in emerging sectors and
19 enhancing the competitiveness of firms and industries. References to Trubek's work are
20 provided in footnotes 16, 17, 20, 100, and 121, which I have highlighted in yellow.

21
22 **2. Inclusion of Legal Scholars Specializing in Indonesian Studies**

23 To strengthen the manuscript's engagement with Indonesia-specific legal scholarship, I have
24 integrated arguments from experts such as Simon Butt (footnotes 82, 89, and 90), Petra Mahy
25 (footnote 113), and Melissa Crouch (footnote 116). These additions are highlighted in blue. I
26 have incorporated insights from these scholars to the extent that their perspectives align with
27 the substantive focus of this article. Consequently, not all Indonesian law experts
28 recommended by the reviewers could be included in this study.

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30
31 **3. Economic and Political Perspectives in Developmentalism**

32 Additionally, I would like to address the reviewer's critique regarding the absence of legal
33 scholars' perspectives in this article. As noted in point 2 of my response, I have indeed
34 addressed this by incorporating relevant Indonesian legal experts' views. However, since this
35 article examines the interaction between economics and law in Indonesia's development, its
36 scope necessarily extends beyond purely legal scholarship. The analysis must also consider
37 pertinent economic and political contexts. This is why the article has consistently referenced
38 scholars such as Eve Warburton, Richard Robison, Vedi R. Hadiz, and Luiz Carlos Bresser-Pereira,
39 among others, from its initial conception.

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44 I believe these revisions have significantly improved the manuscript's rigor and clarity. Thank you for
45 considering this revised version. Please do not hesitate to contact me if further modifications are
46 required.

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49 Sincerely,

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53 Author



DE GRUYTER

Law and
Development
Review

**Deciphering Developmentalism: A Legal-Economic
Examination of Indonesia's Administration**

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1 Introduction

This article, employing a historical legal approach, discusses the interplay between developmentalism, economic policies, and legal frameworks in shaping Indonesia's economic trajectory. The article illustrates the evolution of developmentalist ideas and their influence on Indonesian law, which is intricately linked to the socio-political and economic context from the New Order era (*Orde Baru*) to the period of *Reformasi*.

The interplay of the socio-political and economic context led to the sustained emergence of the concepts of deregulation and debureaucratization. Various dynamics within this context did not arise spontaneously but originated from a historical development in Indonesia's economy, particularly since the New Order era, where developmentalism was positioned as an economic strategy. Economic strategy, in this context, is understood as a chosen method or approach that considers both internal and external factors of the state to implement industrialization.

This article differs from previous studies that have discussed developmentalism in Indonesia. A review of previous research indicates a lack of discussion on developmentalism and law in Indonesia from a legal history perspective. Most of these studies also focus on developmentalism within specific periods only.

Some previous studies indicate a lack of analysis on law and developmentalism in Indonesia. Warburton's research specifically analyses developmentalism during the administration of President Yudhoyono in relation to the mining sector.¹ Warburton also analyses the trend of developmentalism policies in the era of President Joko Widodo which prioritized infrastructure development.² Gellert examines developmentalism in Indonesia within the context of neoliberal influence, state, and 'deep marketization' concerning resource extraction in Indonesia.³ Syukri specifically investigates new developmentalism in Indonesia by reviewing the implementation of participatory village governance experiments in Indonesia.⁴ Sato uses a historical approach

¹ E. Warburton, "Nationalism, Developmentalism and Politics in Indonesia's Mining Sector," in A.A. Patunru, M. Pangestu and M.C. Basri (eds), *Indonesia in the New World* (Singapore: ISEAS–Yusof Ishak Institute, 2018), pp. 90-108.

² E. Warburton, *Jokowi and the New Developmentalism*, 52 *Bulletin of Indonesian Economic Studies*, no. 3 (2016), 297-320.

³ P.K. Gellert, *Neoliberalism and Altered State Developmentalism in the Twenty-First Century Extractive Regime of Indonesia*, 16 *Globalizations*, no. 6 (2019), 894-918.

⁴ M. Syukri, *Indonesia's New Developmental State: Interrogating Participatory Village Governance*, 54 *Journal of Contemporary Asia*, no. 1 (2022), 2-23.

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3 to examine the development of developmentalism in Indonesia over five decades from an
4 'authoritarian developmental state' to a 'democratic developmental state.'⁵ However, these
5 studies do not provide an explanation of the implications of these developments on the legal
6 aspects in Indonesia.
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11 Therefore, this article elucidates how developmentalism has evolved into an influential
12 economic strategy, underpinning the processes of deregulation and debureaucratization. The
13 article aims to demonstrate that the interaction between economics and law in
14 developmentalism has taken a new direction during President Joko Widodo's administration.
15 The article presents a chronological analysis of the development of developmentalism from the
16 New Order era to the strengthening of ideas related to deregulation and debureaucratization
17 during President Joko Widodo's tenure.
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26 2 Developmentalism and Its Influence on Law

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30 Developmentalism generally refers to principles that advocate for active state involvement in
31 economic policies, particularly for industrial development. Therefore, developmentalism
32 differs fundamentally from economic liberalism, which grants full primacy to the market,
33 whereas developmentalism seeks a more balanced integration of the state and the market.⁶
34 Developmentalism positions the state, as a sovereign institution, with the ability to coordinate
35 the inevitable capitalist economic system in the course of modern economic development.⁷ In
36 this context, developmentalism emerges as a school of thought that emphasizes the role of the
37 state in controlling capitalism. Unlike economic liberalism, which advocates for minimal state
38 intervention, developmentalism implies the necessity of a strong and stable state, a legal
39 framework coordinating the economy with a balance between the state and the market, and a
40 developed and competent bureaucracy to operationalize such laws.
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50 Despite its essence in controlling capitalism, criticisms of developmentalism also emerge with
51 arguments that refer to the environmental impacts of development activities. According to
52 Dirlik, developmentalism will only strengthen the contradictions between development and
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56 ⁵ Y. Sato, "Reemerging Developmental State in Democratized Indonesia," in Y. Takagi, V. Kanchoochat and T.
57 Sonobe (eds), *Developmental State Building* (Singapore: Springer Nature, 2019), pp. 69-93.

58 ⁶ L.C. Bresser-Pereira, *The Two Forms of Capitalism: Developmentalism and Economic Liberalism*, 37 Brazilian
59 Journal of Political Economy, no. 4 (2017), 680-703.

60 ⁷ *Ibid.*

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3 environmental health, warranting widespread attention.⁸ He argues that an increasing number
4 of people engaging in productive and consumptive capitalist practices will lead to an
5 acceleration of environmental degradation and a depletion of natural resources. This
6 phenomenon, according to Song, is even more destructive in peripheral countries (Third World)
7 attempting to expedite their industrial development.⁹
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13 Despite facing numerous criticisms, some figures also view developmentalism from a different
14 perspective. Bresser-Pereira categorizes developmentalism into two types, namely Classical
15 Developmentalism and New Developmentalism. Classical Developmentalism is a response to
16 market failures in coordinating capitalism.¹⁰ Classical Developmentalism defines
17 industrialization as the primary means to achieve economic development, with foreign
18 constraints seen as the main hindrance to industrialization. This perspective positions economic
19 development as a structural change and calls for an active role of the state. In the political realm,
20 Classical Developmentalism emphasizes a coalition that unites business industrialists, workers,
21 and bureaucracy to build the nation and realize industrial and capitalist revolutions.¹¹
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31 The developmental practices in developing countries, particularly during the 1970s and 1980s,
32 illustrate how the leaders of these nations interpreted Classical Developmentalism in the laws
33 they enacted. The laws in these countries forged a unity among the business community, labour
34 force, and bureaucracy for industrialization aimed at creating stability (particularly political)
35 and social cohesion to prevent conflicts. Practices in South Korea, Singapore, and Malaysia in
36 the early stages of their development show that developmentalism became a chosen strategy by
37 leaders and policymakers with a strong commitment to achieving rapid economic growth,
38 allowing these nations to catch up with high-income countries.¹²
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46 The evolution of economic paradigms took a distinct turn, especially after the 1970s, when
47 neoliberal ideology gained prominence alongside the development of liberal economic policies
48 and globalization. However, the failure of liberal economics in Latin America and the global
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54 ⁸ A. Dirlik, *Developmentalism*, 16 *Interventions*, no. 1 (2012), 30-48.

55 ⁹ H.Y. Song, *The State, Class and Developmentalism in South Korea* (New York: Routledge, 2019), p. 143.

56 ¹⁰ L.C. Bresser-Pereira, *Reflecting on New Developmentalism and Classical Developmentalism*, 4 *Review of*
57 *Keynesian Economics*, no. 3 (2016), 331-352.

58 ¹¹ *Ibid.*

59 ¹² Y. Takagi, V. Kanchoochar and T. Sonobe, "Introduction: The Nexus of Developmental Policy and State
60 Building," in Y. Takagi, V. Kanchoochar and T. Sonobe (eds), *Developmental State Building* (Singapore: Springer
Nature, 2019).

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3 economic crisis that originated in the United States in 2008 prompted some economic thinkers
4 to advocate a reconsideration of the reconfigured concept of developmentalism, termed New
5 Developmentalism.¹³ The concept of New Developmentalism stands in contrast to the earlier
6 perspective of neoliberal economics, which sought to minimize the role of the state. Similar to
7 Classical Developmentalism, New Developmentalism underscores the need for state
8 intervention by interpreting economic development as a central element of progress or human
9 development, encompassing improvements in security, individual freedoms, reduction of
10 disparities, and environmental protection.¹⁴ The role of the state extends beyond merely
11 initiating economic activities; it also assumes the role of an ‘architect of markets’, actively
12 organizing domestic political economy.¹⁵ These advancements can only be achieved if the state,
13 as a regulator, employs the law as an instrument to provide protection and promote the various
14 aspects of human progress.
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19 This article views New Developmentalism in Indonesia as a state intervention solely for
20 economic growth but neglects human progress in various fields. In this regard, this article looks
21 at the extent of state intervention to grow the economy by referring to the indicators put forward
22 by Trubek, namely promoting direct foreign investment towards growth sectors and
23 encouraging companies and industries towards competitiveness.¹⁶
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28 The next section will outline the history of development in Indonesia and show that Indonesian
29 developmentalism in various presidential leaderships wants a strong and stable country. Later,
30 this development will be narrowed down to the desire to create efficient legal instruments to
31 coordinate the economy and improve the bureaucracy. In this regard, developmentalism then
32 requires a new meaning for decentralization to strengthen the role of the central government in
33 the context of stability, deregulation to produce an efficient legal system, and
34 debureaucratization to produce a bureaucracy that provides faster services.
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39 The issues of deregulation and debureaucratization are ultimately closely linked to the legal
40 framework. This discussion relies on expert opinions regarding the influence of law on the
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55 ¹³ M. Agosin, *Ten Theses on New Developmentalism*, 32 *Brazilian Journal of Political Economy*, no. 2 (2012),
56 336-339.

57 ¹⁴ Bresser-Pereira (2016), *supra* note 10.

58 ¹⁵ M. Kutlay, “Politics of New Developmentalism,” in E. Erşen and S. Köstem (eds), *Turkey’s Pivot to Eurasia*
59 (New York: Routledge 2019), pp. 183-196.

60 ¹⁶ D.M. Trubek, *Developmental States and the Legal Order: Towards a New Political Economy of Development and Law*, research paper no. 1075 at University of Wisconsin Legal Studies Research Paper (2008).

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3 economy. Trubek, for instance, emphasized the importance of law as a prerequisite for the
4 functioning of an industrial economy.¹⁷ In this regard, the existence of a legal framework
5 becomes crucial and will subsequently influence the impact of regulation. Lee provides the
6 example of freedom of contract as a support for the economy. The state must regulate freedom
7 of contract within a legal framework that ensures the rights and obligations of the parties
8 involved.¹⁸ Of course, the development of such a legal framework, as Kennedy pointed out,
9 cannot be separated from the context of socio-political dynamics.¹⁹
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17 This article also refers to the views of Trubek and Santos, stating that legal system reforms in
18 the name of development are shaped by the intersection of economic theory, legal ideas, and
19 institutional practices.²⁰ These domains are closely interconnected, influencing, and reshaping
20 one another in complex ways through reciprocal interactions. Economics shapes government
21 policies, and these policies, in turn, can influence economic theory. Similarly, reciprocal
22 interactions occur among economics, institutions, and law.
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29 On the other hand, an overly complex legal framework, with its supporting bureaucratic
30 structures, can burden the economy. Deregulation and debureaucratization thus become
31 relevant in correcting an excessively burdensome legal framework. Deregulation is related to
32 the fact that developing countries need a more growing market because the state cannot replace
33 the market as a driver of industry and growth. This includes encouraging market mechanisms
34 through foreign investment which also plays a strategic role. With this perspective, deregulation
35 can be seen to open the possibility for market mechanisms to work and increase foreign
36 investment. However, the government still has room to intervene if needed.²¹
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45 The need for debureaucratization refers to the developmentalist view that places an important
46 role on the state in regulating the economy. Therefore, the bureaucracy must overcome the
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50 ¹⁷ D.M. Trubek, *Toward a Social Theory of Law: An Essay on the Study of Law and Development*, 82 *The Yale*
51 *Law Journal*, no. 1 (1972), 1-50.

52 ¹⁸ Y.S. Lee, *General Theory of Law and Development*, 50 *Cornell International Law Journal*, no. 3 (2017), 415-
53 471.

54 ¹⁹ D. Kennedy, *Law and the Political Economy of the World*, 26 *Leiden Journal of International Law*, no. 1 (2013),
55 7-48.

56 ²⁰ D.M. Trubek and A. Santos, "The Third Moment in Law and Development Theory and the Emergence of a New
57 Critical Practice (Introduction)," in A. Santos and D.M. Trubek (eds), *The New Law and Economic Development: A*
58 *Critical Appraisal* (Cambridge: Cambridge University Press, 2006), pp. 1-18.

59 ²¹ L. Zarsky, "Climate-Resilient Industrial Development Paths: Design Principles and Alternative Models," in S.R.
60 Khan and J. Christiansen (eds), *Towards New Developmentalism: Market as Means Rather Than Master* (New
York: Routledge, 2011), p. 245.

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3 challenges of the neo-liberal agenda that wants to minimize the state based on the assumption
4 of 'government failure'. The failure of the government is related to the slow bureaucracy.
5 Therefore, if it wants to make its intervention appreciated, the state must have a competent,
6 efficient, and effective bureaucracy so that the existence of the bureaucracy remains relevant
7 and the way is through debureaucratization.²²
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10 11 12 13 3 Indonesian Developmentalism in the Soekarno Era 14 15 16

17 When the Indonesian government took effective control over the former Dutch East Indies on
18 27 December 1949, following the official transfer of sovereignty from the Netherlands to
19 Indonesia, the country faced significant challenges. The Japanese occupation and armed
20 struggles against the Dutch had severely impoverished the Indonesian population. The
21 government also dealt with armed rebellions in specific regions, including Aceh, West Java,
22 South Sulawesi, and the Maluku Islands, which were eventually suppressed but at the cost of
23 significant human and financial resources.²³
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30 President Soekarno, as the first president of Indonesia, led within the context of a strong
31 nationalist discourse. The predominant economic concept during President Soekarno's era was
32 developmental nationalism. Soekarno's version of developmental nationalism was heavily
33 influenced by the need to balance competing political and ideological forces within the country.
34 One of the primary ways President Soekarno sought to achieve this was by attempting to unite
35 them in a collective project to pursue national modernity together.²⁴
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43 On the other hand, the government during President Soekarno's era was not conducive to
44 foreign investment due to restrictions outlined in Law No. 78 of 1958 on Foreign Capital
45 Investment. During President Soekarno's era, economic activities commonly undertaken by
46 Indonesian citizens were closed to foreign investment.²⁵ The authority to determine these closed
47 economic activities was vested in the Foreign Capital Investment Board, composed of several
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²² S.R. Khan, "Towards New Developmentalism: Context, Program, and Constraints," in S.R. Khan and J. Christiansen (eds), *Towards New Developmentalism: Market as Means Rather Than Master* (New York: Routledge 2011), p. 256.

²³ T.K. Wie, "Introduction," in T.K. Wie (ed), *Recollections: the Indonesian Economy, 1950s–1990s* (Singapore: Institute of Southeast Asian Studies, 2003), p. 4.

²⁴ J. Barker, *Beyond Bandung: Developmental Nationalism and (Multi)Cultural Nationalism in Indonesia*, 29 *Third World Quarterly*, no. 3 (2008), 521-540.

²⁵ Article 4 Paragraph (1) Law No. 78 of 1958.

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3 ministers and the Governor of Bank Indonesia, which resulted in legal uncertainty.²⁶ The
4 Foreign Capital Investment Board also had the power to decide the transfer of foreign
5 companies to national entrepreneurs after the foreign company had operated for 20 years or 30
6 years for large plantation companies.²⁷
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11 The Soekarno government also pursued a nationalist agenda by nationalizing Dutch-owned
12 companies, which had the consequence of its inability to attract foreign investment.²⁸ This
13 nationalist agenda was marked by the enactment of Law No. 86 of 1958 on the Nationalization
14 of Dutch-Owned Companies. This law empowered the government to designate companies
15 subject to nationalization and determine the compensation for such actions.²⁹ Subsequently, this
16 law was followed by the issuance of Government Regulations specifying the details of Dutch-
17 owned companies that were subject to nationalization.
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25 The unfavourable investment climate contributed to the worsening economic situation in
26 Indonesia. This economic crisis was also influenced by political turmoil resulting from the
27 competition among political groups at that time.³⁰ In the midst of this political crisis, the
28 political turmoil of 1965 emerged, triggered by the events of September 30, 1965. The
29 dissolution of the Communist Party on 12 March 1966, was followed by the transfer of
30 leadership from President Soekarno to President Soeharto. This succession marked the
31 beginning of the New Order era and introduced economic policies that diverged from those of
32 President Soekarno's era. The subsequent section will elaborate on the economic developments
33 during the New Order era.
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43 4 The Beginning of the New Order: Openness to Foreign Investment and Centralism

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46 After the end of President Soekarno's era, the New Order took a different direction from the
47 previous policies, which tended to be unfriendly to foreign investment. The New Order began
48 its early governance by enacting Law No. 1 of 1967 on Foreign Capital Investment (Law No. 1
49 of 1967) to replace Law No. 78 of 1958. In contrast to Law No. 78 of 1958, which provided the
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56 ²⁶ Article 18 Paragraph (1) Law No. 78 of 1958.

57 ²⁷ Article 13 Law No. 78 of 1958.

58 ²⁸ P.V. Thuý, *Beyond Political Skin* (Singapore: Springer 2019), pp. 180-193.

59 ²⁹ Article 1 and 2 Law No. 86 of 1958.

60 ³⁰ N. Shalihin, Firdaus and A. Ashadi, *Economic Crisis and Regime Transition in Indonesian Democracy*, 41 *Revista Espacios* no. 40 (2020), 195-205.

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3 government with flexible opportunities to determine sectors closed to foreign investment, Law
4 No. 1 of 1967 offered more certainty for foreign investors by explicitly specifying which sectors
5 were closed and prohibited for foreign capital. As a guarantee for foreign capital, Law No. 1 of
6 1967 also explicitly regulated that the government would not conduct nationalization unless
7 there were state interests regulated by law.³¹
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13 A year later, the government enacted Law No. 6 of 1968 on Domestic Investment (Law No. 6
14 of 1968). If Law No. 1 of 1967 appeared to reverse the foreign investment policies of President
15 Soekarno's era, Law No. 6 of 1968, on the contrary, indicated that foreign investments, in the
16 long term, must transform into domestic capital. The operating period for foreign companies in
17 trade was until 31 December 1977, in the industrial sector until 31 December 1997, and in other
18 sectors, the government would determine a period ranging from 10 to 30 years. Upon the
19 expiration of this period, foreign investments could be redirected to other sectors or form joint
20 ventures with domestic companies.³² Although the substance of Law No. 6 of 1968 seems to
21 support the advancement of domestic entrepreneurs, the regulation provided legal certainty for
22 foreign capital and flexibility for them to shift to other business sectors.
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32 The legal certainty demonstrated by the New Order resulted in a significant increase in foreign
33 investments (in mining, oil and gas, and manufacturing) as well as domestic investments. There
34 was a wave of Japanese investments in the manufacturing sector, particularly in the electronic
35 and automotive segments.³³ This development triggered the *Malari* (Incident of January
36 Fifteenth) in 1974, a riot that began with demonstrations rejecting Japanese capital and marked
37 the first politically motivated riot in the New Order era.³⁴ Subsequently, the New Order
38 government revealed the beginnings of its repressive nature by exercising strict control over
39 politics, strengthening the bureaucracy and the military – ultimately giving rise to a bloated
40 bureaucracy – and creating mechanisms for control and patronage under President Soeharto.³⁵
41 This marked the beginning of the characteristic of the New Order referred to by Feith as
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54 ³¹ Article 21 and 22 Law No. 1 of 1967.

55 ³² Article 6 and 7 Law No. 6 of 1968.

56 ³³ K. Verico and M.E. Pangestu, "The Economic Impact of Globalisation in Indonesia," in S. Urata and H.T.H. Doan (eds), *Globalisation and its Economic Consequences* (London: Routledge, 2021), p. 81.

57 ³⁴ J.T. Lindblad, *Structural Characteristics of Japanese Investment in Indonesia*, 53 *Economics and Finance in Indonesia*, no. 2 (2005), 195-213.

58 ³⁵ M.T. Berger, *Old State and New Empire in Indonesia: Debating the Rise and Decline of Suharto's New Order*, 18 *Third World Quarterly*, no. 2 (1997), 321-362.
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3 ‘Repressive Developmentalism’, which would continue in the subsequent years through various
4 human rights violations.³⁶
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8 Furthermore, the New Order then demonstrated the extensive influence of the government
9 (bureaucrats) in the economy and the impact of the economic centralization model as a rejection
10 of the concept of free trade. According to technocrats at that time, the acceleration of
11 modernization in Indonesia could only occur if the government played a significant role in
12 economic leadership, closely cooperating with technocrats and businesspeople.³⁷ This concept
13 assumes that the government becomes the planner, regulator, and controller of capitalism. This
14 thinking is based on the state corporatism model in the early New Order, which positioned the
15 military, bureaucrats, and the *Golongan Karya*³⁸ – with the President at its centre – as the
16 decision-makers, using a technocratic and bureaucratic approach.³⁹ To implement this model,
17 laws needed to concentrate power in the central government.
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21 Therefore, regional governments did not have extensive autonomy. In 1974, the government
22 enacted Law No. 5 of 1974 on the Basic Principles of Regional Government (Law No. 5 of
23 1974), which seemingly provided regional autonomy but the provisions within it offered limited
24 autonomy for regions.⁴⁰ The law delegated the regulation of regional autonomy at the second
25 level regions to Government Regulations (one level below the Law). However, these
26 Government Regulations were only created 18 years later (Government Regulation No. 45 of
27 1992 on the Implementation of Regional Autonomy with a Focus on Regencies/Cities). Law
28 No. 5 of 1974 itself did not clearly stipulate the matters that fell under the jurisdiction of the
29 regencies/cities.
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33 Law No. 5 of 1974 also introduced a centralized control system over regions through the
34 authority of the Governor to annul regional regulations of regencies/cities and the authority of
35 the Minister of Home Affairs to annul regional regulations of provinces.⁴¹ According to Mahfud
36 MD, this preventive supervisory function has a centralistic nature.⁴² Therefore, if we refer to
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53 ³⁶ H. Feith, *Repressive-Developmentalist Regimes in Asia*, 7 Alternatives: Global, Local, Political, no. 4 (1982),
54 491-506.

55 ³⁷ R. Mallarangeng, *Mendobrak Sentralisme Ekonomi* (Jakarta: Kepustakaan Populer Gramedia 2005).

56 ³⁸ During the New Order era, *Golongan Karya* was not a political party but rather a socio-political organization
57 that accommodated socio-economic groups such as workers, farmers, fishermen, civil servants, and veterans.

58 ³⁹ S. Milne, *Corporatism in the ASEAN Countries*, 5 Contemporary Southeast Asia, no. 2 (1983), 172-184.

59 ⁴⁰ M. Mahfud MD, *Politik Hukum di Indonesia* (Jakarta: Rajawali Pers, 2010).

60 ⁴¹ Article 70 Law No. 5 of 1974.

⁴² Mahfud MD (2010), *supra* note 40.

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3 the substance of Law No. 5 of 1974, decentralization was not operational during the New Order,
4 even though the term was mentioned in the law. The New Order utilized a model of power
5 centralism and economic centralism to secure its development agendas, which were open to
6 foreign investment but also strengthened the state with the significant roles of the military,
7 bureaucracy, and *Golongan Karya*.
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13 5 The Turning Point of New Order Centralism and Deregulation Efforts

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17 Economic centralism appears to have reached a turning point in the 1980s. This was initiated
18 by the collapse of oil and commodity prices in the early 1980s, which then threatened the
19 income base of rent-seekers. Since the early 1980s, it became evident that world oil prices
20 tended to decline, and a massive economic restructuring would be necessary to boost non-oil
21 exports and address the high-cost economic issues caused by corruption.
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28 This development prompted President Soeharto to seek advice from technocrats who were
29 supportive of free trade. These economists suggested trade liberalization and deregulation to
30 enable a more diverse, manufacturing-based economy. Since the second half of the 1980s, the
31 concepts of ‘deregulation’ and ‘de-bureaucratization’ permeated all discussions about
32 Indonesia’s economic future. The private sector began to be considered for a new role in
33 development. Liberal technocrats from 1983 introduced deregulation measures designed to
34 eliminate what was perceived as the causes of Indonesia’s high economic costs, enhance
35 competitiveness, and stimulate the role of the private sector.⁴³
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43 The need to implement deregulation found its momentum when world oil prices began to
44 rebound in 1982.⁴⁴ Moreover, there was a sharp decline in economic growth, from 7% in 1981
45 to just 2% in 1982.⁴⁵ This condition compelled the government to boost non-oil exports and
46 encourage investment, one avenue of which was through deregulation policies. Deregulation
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55 ⁴³ R. Robison and V.R. Hadiz, *Privatization or the Reorganization of Dirigism? Indonesian Economic Policy in*
56 *the 1990s*, 14 *Canadian Journal of Development Studies/Revue canadienne d’études du développement*, no. 1
57 (1993), 13-32.

58 ⁴⁴ H.W. Arndt and H. Hill, *The Indonesian Economy: Structural Adjustment after the Oil Boom*, Southeast Asian
59 Affairs, (1988), 106-119.

60 ⁴⁵ W. Synder, *The Budget Impact on Economic Growth and Stability in Indonesia*, XXXIII *Ekonomi dan Keuangan*
Indonesia, no. 2 (1985), 139-150.

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3 policies began in 1983 through the June 1983 Package, which eliminated credit ceilings and
4 granted government banks the freedom to set loan interest rates.⁴⁶
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8 After stimulating the financial sector to provide more credit, the government then began to
9 streamline business permits. President Soeharto issued Presidential Instruction Number 5 of
10 1984 regarding Guidelines for Simplification and Control of Licensing in the Business Sector.
11 Through this Presidential Instruction, President Soeharto ordered the simplification of permits
12 by reducing the number of licensing requirements. The duration of the permits was extended to
13 provide assurance for certainty and business continuity. The most crucial part was the
14 instruction that the licensing procedures, evaluation of permit applications, and
15 approval/rejection should be carried out with clear and simple procedures within a short
16 period.⁴⁷
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25 After attempting to simplify industrial permits, the government continued its financial sector
26 deregulation that had started with the June 1983 Package. The government issued the October
27 1988 Package, easing the establishment of private banks.⁴⁸ Deregulation persisted into the early
28 1990s through various policy packages, including the July 1992, June and October 1993, and
29 June 1994 packages.⁴⁹ However, these deregulation policies did not align with their intended
30 outcomes in practice. According to Mallarangeng, entering the 1990s marked a decline in the
31 influence of technocrats advocating for deregulation.⁵⁰ Technocratic recommendations were no
32 longer prioritized because President Soeharto himself, at that time, was not inclined to
33 deregulate sectors that economically benefited the elite groups of that era. This was influenced
34 by President Soeharto's tendency to secure his family's businesses and those exploited by
35 officials around him.
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46 This is evident in the freedom utilized to build conglomerates among officials and their
47 children. Patron-client groups centred around President Soeharto and his cronies.⁵¹ The
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52 ⁴⁶ A. Nasution, "Perkembangan Perbankan Sebelum dan Setelah Deregulasi 1 Juni 1983," in H. Esmara (ed), *Teori*
53 *Ekonomi dan Kebijakan Pembangunan: Kumpulan Esei untuk Menghormati Sumitro Djojohadikusumo*
54 (Jakarta: Gramedia, 1987).

55 ⁴⁷ Article 1 Paragraph (2) Presidential Instruction No. 5 of 1984.

56 ⁴⁸ D.M. Sitalaksana, *Evaluasi Empat Tahun Pakto*, 1 *Economic Journal of Emerging Markets*, no. 1 (1993), 18-
57 33.

58 ⁴⁹ T. Nurrahma, *Dampak Liberalisasi Perdagangan Terhadap Efisiensi Teknis Perusahaan Pada Industri*
59 *Manufaktur Indonesia*, 14 *Jurnal Ekonomi dan Pembangunan Indonesia*, no. 1 (2013), 82-108.

60 ⁵⁰ Mallarangeng (2005), *supra* note 37.

⁵¹ R.A. Brown, *The Rise of the Corporate Economy in Southeast Asia* (Oxon: Routledge, 2007), p. 93.

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3 economy at that time was dominated by conglomerate groups close to Soeharto or even
4 Soeharto's own family, with a monopoly structure supported by political backing from
5 politicians, bureaucrats, and the military.⁵² The military's involvement in the economy then
6 focused on protecting concessions, licenses, or monopoly rights granted by the government to
7 Soeharto's cronies, making the military appear as capitalist-bureaucrats selling services to
8 private entrepreneurs.⁵³
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15 After 1993, economic liberalization, in practice, did not unfold as anticipated. President
16 Soeharto's family continued to monopolize imports of cars, toll roads, and several other
17 businesses to complement their earlier monopolies in cloves and transportation.⁵⁴ These various
18 monopolies were possible because Indonesia lacked legal instruments regulating business
19 competition. Law enforcement against corrupt practices was also weak. The government's
20 efforts to industrialize by promoting large-scale high-tech investment projects proved
21 unsuccessful. This failure was attributed to a bloated and incompetent bureaucracy incapable
22 of managing these projects effectively.⁵⁵
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31 History indicates that the fragile economic foundation of the New Order regime could not
32 withstand the impact of the economic crisis in 1997-1998. The corrupt practices of Soeharto
33 and his family exacerbated the economic situation. Technocracy-based suggestions for
34 substantial economic reforms were not implemented as Soeharto opposed economic
35 liberalization that could disrupt the patronage system surrounding him.⁵⁶ The worsening
36 economic conditions in the first quarter of 1998 and the withdrawal of political support led
37 President Soeharto to resign from his position on 21 May 1998. Ultimately, President Habibie,
38 previously elected as Vice President in 1997, had to take over Soeharto's position amidst the
39 chaotic economic conditions.
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52 ⁵² R. Robison and A. Rosser, *Contesting Reform: Indonesia's New Order and the IMF*, 26 *World Development*,
53 no. 8 (1998), 1593-1609.

54 ⁵³ J. Ibrahim, *Militer dan Kapitalisme Ersatz: Bisnis ABRI Pada Masa Orde Baru*, 14 *Humaniora*, no. 3 (2002),
55 286.

56 ⁵⁴ J.H. Cassing, *Economic Policy and Political Culture in Indonesia*, 16 *European Journal of Political Economy*,
57 no. 1 (2000), 159-171.

58 ⁵⁵ J.H. Park, *The East Asian Model of Economic Development and Developing Countries*, 18 *Journal of Developing*
59 *Societies*, no. 4 (2002), 330-353.

60 ⁵⁶ V. Juwono, *Melawan Korupsi: Sejarah Pemberantasan Korupsi di Indonesia 1945-2014* (Jakarta: Kepustakaan
Populer Gramedia, 2018).

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3 In the Habibie era, dozens of laws were enacted to organize Indonesia in terms of both
4 economics and politics. One politically related law inherited from Habibie, closely related to
5 the economy and investment, is Law Number 22 of 1999 concerning Regional Governance
6 (Law No. 22 of 1999), which grants extensive autonomy to regional governments at the
7 district/city level.
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12 Law No. 22 of 1999 then gave rise to criticism due to the overly broad authority granted to
13 regencies/cities, which had the potential for the misuse of power for short-term political
14 interests. Instead of providing a strong foundation for the economy at the regional level, the
15 extensive autonomy was feared from the beginning to encourage the emergence of prestigious
16 projects or ‘pork barrel’ projects that are prone to corruption.⁵⁷ Another impact is that
17 decentralization policies create a strong temptation for local governments to increase their
18 regional revenue through various forms of local taxes or levies. The decentralization model,
19 which tends to make regency/city governments uncontrolled, has led to conflicts between the
20 central and regional governments.⁵⁸
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31 Various problems resulting from decentralization, such as fragmented corruption, the
32 increasing number of local taxes or levies, and conflicts between government levels, have
33 created serious uncertainty for business in Indonesia. In the end, decentralization with Law No.
34 22 of 1999 is feared to have failed to regain investor confidence.⁵⁹ Later on, this
35 decentralization practice will also be accused of being one of the obstacles to foreign investment
36 in regions because regions formulate regional regulations that create a cumbersome
37 bureaucracy and the authority to issue environmental permits as hindrances to investment.⁶⁰
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45 During President Habibie’s administration, significant steps were taken, including the
46 establishment of laws that laid the groundwork for combating corruption, such as Law Number
47 31 of 1999 on the Eradication of Corruption (Law No. 31 of 1999). This initiative was followed
48 by the creation of various laws to provide legal certainty for the business world. Legal certainty
49 was particularly established by formulating laws that clearly state the rights and obligations of
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55 ⁵⁷ B. Brodjonegoro and S. Asanuma, *Regional Autonomy and Fiscal Decentralization in Democratic Indonesia*,
56 41 Hitotsubashi Journal of Economics, no. 2 (2000), 111-122.

57 B.P. Resosudarmo and A. Kuncoro, *The Political Economy of Indonesian Economic Reforms: 1983–2000*, 34
58 Oxford Development Studies, no. 3 (2006), 341-355.

59 *Ibid.*

60 K. Meliza and R.A. Simanjuntak, Pengaruh Desentralisasi Terhadap Masuknya Investasi Pada 32 Provinsi di
Indonesia, paper given at *Simposium Nasional Keuangan Negara Tahun 2018* (Jakarta, November 14-15, 2018).

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3 all business entities or investors. This was necessary because most of the business laws during
4 the New Order were colonial legacies that were no longer relevant.⁶¹ Therefore, several
5 fundamental laws for the economy were enacted, which had not been drafted during the 32
6 years of the New Order. Some of these laws include:
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- 10 a. Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair
11 Business Competition;
- 12 b. Law Number 8 of 1999 concerning Consumer Protection;
- 13 c. Law Number 18 of 1999 concerning Construction Services;
- 14 d. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution;
- 15 e. Law Number 36 of 1999 concerning Telecommunications; and
- 16 f. Law Number 42 of 1999 concerning Fiduciary Guarantees.

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24 On one hand, the government is formulating the ‘rules of the game’ for the economy, while on
25 the other hand, the Habibie administration remains cognizant of the importance of deregulation.
26 Consequently, the Habibie era can be characterized as a transitional period facilitating the
27 liberalization of Indonesia’s economy. Throughout this transition, it was not an immediate
28 success in eliminating economic impediments to attract investments. Even though President
29 Soeharto had stepped down, the entrenched forces from the past retained significant influence
30 in Indonesian politics, thereby giving rise to political instability. This political instability, in
31 turn, affected the investment climate and investor confidence.⁶²
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Keywords such as deregulation emerged during this era in the context of abolishing various
regulations previously established by the New Order to impede competition and provide
advantages to its cronies. On the other hand, the Habibie administration also drafted various
foundational laws for Indonesia’s economy. This signifies that legal policies in the economic
domain began to manifest during this period with the formulation of modern anti-monopoly
laws, the establishment of the groundwork for decentralization, and public acknowledgment
that corruption was a serious issue through the enactment of Law No. 31 of 1999.⁶³ These
policies paved the way for Indonesia’s entry into an era of economic reform, subsequently

⁶¹ A. Rajenthiran, *Indonesia: An Overview of the Legal Framework for Foreign Direct Investment*, ISEAS Working Papers Economics and Finance (Singapore, 2002).

⁶² H. Crouch, *Political Reform in Indonesia After Soeharto* (Singapore: ISEAS, 2010), p. 24.

⁶³ S.V. Marks, *Economic Policies of the Habibie Presidency: A Retrospective*, 45 *Bulletin of Indonesian Economic Studies*, no. 1 (2009), 39-60.

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3 continued by its successor, President Abdurrahman Wahid, chosen by the People's Consultative
4 Assembly (MPR) from the results of the 1999 General Election.
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8 As a president elected by the People's Consultative Assembly (MPR) through a democratic
9 general election, President Abdurrahman Wahid theoretically possessed strong legitimacy to
10 implement economic agendas. However, efforts to improve the economy under President
11 Wahid were overshadowed by ongoing political instability, which consumed much time and
12 attention. The changes in ministers that occurred throughout President Wahid's era did not
13 generate significant overarching ideas forming the basis of his economic policy.⁶⁴
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20 In his inaugural speech, President Wahid explicitly expressed his view that foreign investment
21 was the key to economic recovery.⁶⁵ Despite acknowledging that foreign investment was
22 crucial to the economy, deregulation and debureaucratization no longer emerged as significant
23 issues in the administration. From the early months of his presidency, President Wahid's efforts
24 to boost foreign investment seemed to be hindered by the instability created by political
25 dynamics or controversial statements made by himself. Amid political instability, President
26 Wahid attempted to lobby for the return of investments. However, his efforts were impeded by
27 ongoing uncertainties regarding transparency, clean governance, the slow pace of reforms, and
28 the persistent political instability.⁶⁶
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38 On 23 July 2001, President Wahid was impeached and was replaced by his vice president,
39 Megawati Soekarnoputri. President Megawati's term indicated her orientation toward restoring
40 macroeconomic stability, which had been disrupted by political instability.⁶⁷ In addressing the
41 instability affecting the economy, President Megawati had to reform the neglected bureaucracy
42 due to the uncertainty surrounding the direction of reform and the decentralization that led to
43 complications with the emergence of 'local kings' in the regions.
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55 ⁶⁴ R.W. Liddle, *Indonesia in 2000 A Shaky Start for Democracy*, 41 *Asian Survey*, no. 1 (2001), 208-220.

56 ⁶⁵ J. Wagstaff and R. Pura, *Indonesian President Wahid Vows To Expand Autonomy, Investments*, available at:
57 <<https://www.wsj.com/articles/SB940744069222316280>>, accessed October 15, 2021.

58 ⁶⁶ R. Dalrymple, *Indonesia in the Balance*, 55 *International Journal: Canada's Journal of Global Policy Analysis*,
59 no. 3 (2000), 443-462.

60 ⁶⁷ H. Hill and T. Shiraishi, *Indonesia After the Asian Crisis*, 2 *Asian Economic Policy Review*, no. 1 (2007), 123-141.

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3 At the beginning of her administration, President Megawati had emphasized the importance of
4 a new Investment Law.⁶⁸ Consequently, the government during this era initiated the drafting of
5 the Investment Law to replace the old law that had been in effect since 1967.⁶⁹ However, until
6 the end of Megawati's presidency, the draft law had not been ratified by the DPR (The House
7 of Representatives).
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12 The formation and preparation of this legislation were expected to restore investor confidence
13 in Indonesia. However, the existence of legal products alone is insufficient; it must be supported
14 by transparent and accountable governance practices. Therefore, observers believe that if the
15 existing social and economic uncertainties persist for too long, foreign investors are likely to
16 eventually distance themselves from Indonesia.⁷⁰
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22 Furthermore, the idea of decentralization implemented since 1999 with the hope of improving
23 development at the regional level appears to have been hijacked by corrupt elements that were
24 not swept away with the fall of Soeharto. Instead of being eradicated, these corrupt elements
25 managed to rediscover themselves through the new democratic framework. Decentralization
26 during 1999-2004 ultimately did not yield the technocratic governance that was idealized.⁷¹
27 This subsequently impacted high-cost investments and the economy, as regional leaders tended
28 to believe they had absolute authority in determining the fate of investors in their areas,
29 burdening them with various taxes and levies.⁷² Therefore, in addition to creating laws in the
30 economic sector, the Megawati administration also enacted new regional governance laws to
31 replace Law No. 22 of 1999, namely Law Number 32 of 2004 concerning Regional Governance
32 (Law No. 32 of 2004).
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45 During the Megawati administration, the concept of simplifying legislation by 'organizing'
46 Regional Regulations that created legal uncertainty can be found in Law No. 32 of 2004. This
47 law grants authority to the central government to annul regional regulations that contradict
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51 ⁶⁸ R. Sulistyowati, *Presiden Megawati Minta UU Investasi Diperbaharui*, available at:
52 <<https://bisnis.tempo.co/read/4138/presiden-megawati-minta-uu-investasi-diperbaharui>>, accessed December 28,
53 2021.

54 ⁶⁹ Hukum Online, *RUU Penanaman Modal Tinggal Tunggu Ijin Prakarsa Presiden*, available at:
55 <<https://www.hukumonline.com/berita/a/ruu-penanaman-modal-tinggal-tunggu-ijin-prakarsa-presiden-hol8289?page=all>>, accessed December 28, 2021.
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57 ⁷⁰ Rajenthran (2002), *supra* note 61.

58 ⁷¹ V.R. Hadiz, *Decentralization and Democracy in Indonesia: A Critique of Neo-Institutionalist Perspectives*, 35
59 Development and Change, no. 4 (2004), 697-718.

60 ⁷² P. Quinn, *Freedom of Association and Collective Bargaining: A Study of Indonesian Experience 1998-2003*,
Working Paper International Labour Organization (Geneva, 2003).

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3 public interests and/or higher-level legislation. The President can annul Regional Regulations
4 through Presidential Regulations, while regional governments can appeal to the Supreme Court
5 to review such annulments. In the same year, Law Number 10 of 2004 concerning the
6 Formation of Legislation (Law No. 10 of 2004) was also enacted. This was Indonesia's first
7 law regulating the sequence and nomenclature of legislation, aiming to bring order to the
8 legislative framework.
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15 A research report published in March 2005 subsequently revealed that overlapping legislation
16 had become a problem hindering investment in 2004, towards the end of President Megawati's
17 administration, which then distorted business activities. These distortions were also reflected in
18 the Doing Business data, a report released by the World Bank to assess investment
19 conduciveness in various countries. Based on the Doing Business data in 2005, investments in
20 Indonesia required numerous permits over an extended period from various ministries/agencies
21 and even local governments for establishing a company.⁷³ This situation was further
22 exacerbated by the practice of extortion within the bureaucracy and beyond.⁷⁴
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31 According to Hadiz and Robison, the failures during this period were attributed to the interests
32 of predatory political-business elites, nurtured under the New Order, successfully reorganizing,
33 and restructuring themselves.⁷⁵ The interests of these political-business predators were also
34 increasingly accommodated at the regional level, particularly due to regional autonomy. They
35 competed for power at the local political level as decentralization created new rent-seeking
36 opportunities for local governments. This made achieving a clean government and enhancing
37 investor confidence in clean governance challenging.
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45 The Megawati administration demonstrated that the issue of investment conduciveness
46 remained unresolved. Efforts to improve the legal regulatory system also began only in 2004.
47 When President Susilo Bambang Yudhoyono took over leadership, many expected an
48 improvement in the economic situation.
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57 ⁷³ I. Tselichtchev and P. Debroux, *Asia's Turning Point* (Singapore: John Wiley & Sons, 2009).

58 ⁷⁴ Research Team of KPPOD, *Daya Tarik Investasi Kabupaten/Kota di Indonesia, 2004: Peringkat 214*
59 *Kabupaten/Kota di Indonesia & Gambaran Permasalahan Dunia Usaha* (Jakarta: KPPOD, 2005).

60 ⁷⁵ V. Hadiz and R. Robison, *Neo-Liberal Reforms and Illiberal Consolidations: The Indonesian Paradox*, 41
Journal of Development Studies, no. 2 (2005), 220-241.

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3 Upon winning the first direct presidential election in Indonesia in 2004, Susilo Bambang
4 Yudhoyono was expected to build the most stable government in Indonesia since the fall of the
5 Soeharto regime. The policy targets of Yudhoyono's administration in 2004 were the
6 eradication of corruption, restoration of public security, and stimulation of economic growth.
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8 Despite President Yudhoyono having the priority task of improving Indonesia's poor
9 investment climate, his government did not achieve significant milestones in its first year. For
10 example, the government made slow progress in reforming the legal system, which has a deep
11 correlation with the investment climate.⁷⁶
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18 On 27 February 2006, President Yudhoyono issued Presidential Instruction Number 3 of 2006
19 on the Investment Climate Improvement Policy Package (*Inpres* No. 3 of 2006). This
20 instruction was formulated as a policy regulation to direct programs and outcomes aimed at
21 increasing investment. Some of the focuses outlined in this instruction include: expediting the
22 approval of the new Investment Law, simplifying regulations, streamlining the company
23 formation process, implementing a one-stop integrated service system for investment, and
24 reviewing regional regulations that impede investment.
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31 Presidential Instruction No. 3 of 2006 indicates that issues of deregulation and
32 debureaucratization emerged during the first two years of President Yudhoyono's
33 administration. However, these issues would later diminish and not be considered a matter to
34 be seriously addressed by the government. The necessity to implement deregulation over the
35 ten years of President Yudhoyono's administration decreased due to the government's
36 inclination toward inward orientation.⁷⁷
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44 As for decentralization, President Yudhoyono still considered regional autonomy as the best
45 available option. In his speech in May 2006, the President expressed his belief that
46 decentralization and regional autonomy could not be stopped.⁷⁸ However, the development of
47 regional autonomy, especially after the implementation of direct local elections, turned out to
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55 ⁷⁶ H. Hiratsuka, *The Indonesian Economy Under the Yudhoyono Administration: A Crucial Stage in Its Efforts to*
56 *Improve the Investment Climate*, Mizuho Research Paper Vol. 10 (Tokyo, June 2006).

57 ⁷⁷ A. Kuncoro, *Trends in the Manufacturing Sector under the Jokowi Presidency: Legacies of Past*
58 *Administrations*, 35 *Southeast Asian Economies*, no. 3 (2018), 402-424.

59 ⁷⁸ D. Tomsa, "Toning down the "Big Bang": The Politics of Decentralisation during the Yudhoyono Years" in E.
60 Aspinall, M. Mietzner and D. Tomsa (eds), *The Yudhoyono Presidency* (Singapore: ISEAS Publishing, 2015).

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3 be counterproductive for the local economy. This decentralization strengthened the rent-seeking
4 practices by political dynasties at the local level.⁷⁹
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8 The issue of infrastructure seemed to be a significant obstacle to investment during the
9 Yudhoyono era.⁸⁰ One of the reasons for the limited infrastructure investment at that time was
10 attributed to local governments creating a ‘forest of taxes, levies, and permits’. Decentralization
11 was considered to have further complicated the investment permit process, exacerbated by poor
12 coordination between ministries and the widespread corruption in both central and regional
13 governments.⁸¹
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20 The Yudhoyono administration subsequently sought to reform the laws governing investment.
21 In 2007, President Yudhoyono enacted a new Investment Law to attract more domestic and
22 foreign investors. This law replaced the old 1967 investment legislation established after
23 Soeharto came to power. Under the new law, foreign investors were required to obtain approval
24 from the Investment Coordinating Board (BKPM) and establish their businesses in accordance
25 with Indonesian legal provisions. The law guaranteed equal treatment for both foreign and
26 domestic investors, provided their activities aligned with national interests. Additionally,
27 investors were permitted to freely repatriate profits and other funds to their home countries.⁸²
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36 When President Yudhoyono continued his second term in office, the issue of ease of doing
37 business showed some progress. Several indicators experienced improvement. However, in
38 general, the Doing Business 2010 report indicated that the ease of doing business in Indonesia
39 still ranked 122nd out of 181 countries.⁸³
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45 In early 2011, the Yudhoyono administration also released a policy for the development
46 planning of economic corridors called the Masterplan for the Acceleration and Expansion of
47 Indonesian Economic Development (MP3EI) 2011-2025. President Yudhoyono launched this
48 policy to boost economic growth. Infrastructure played a crucial role in this policy, aiming to
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55 ⁷⁹ L. Agustino, *Dinasti Politik Pasca-Otonomi Orde Baru: Pengalaman Banten*, 29 Prisma, no. 3 (2010), 102-116.

56 ⁸⁰ M. Mietzner, “Indonesia: Yudhoyono’s Legacy between Stability and Stagnation,” in D. Singh and P.
57 Thambipillai (eds), *Southeast Asian Affairs 2012* (Singapore: ISEAS Publishing 2012).

58 ⁸¹ *Ibid.*

59 ⁸² S. Butt, “Foreign Investment in Indonesia: The Problem of Legal Uncertainty,” in V. Bath and L. Nottage (eds),
60 *Foreign Investment and Dispute Resolution Law and Practice in Asia* (New York: Routledge, 2011), p. 115.

⁸³ The World Bank, *Doing Business 2010* (Washington: The World Bank 2009).

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3 enhance both domestic and foreign investments.⁸⁴ Subsequently, the government enacted Law
4 Number 2 of 2012 on Land Procurement for Development for Public Interest to support the
5 infrastructure development agenda.
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10 The MP3EI policy signifies the strengthening role of the state in directing the economy through
11 a development agenda crafted by the government. According to Sato, this marks the resurgence
12 of developmentalism in a quasi-developmentalism format. The discourse on developmentalism
13 had diminished in the early stages of the reform era.⁸⁵ This development is attributed to the
14 roles played by businesspeople who also function as politicians, acting as a bridge between the
15 business community and policymakers. Their roles have guided Indonesia back toward
16 developmentalism within a different democratic climate compared to the New Order era.⁸⁶
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23 In its development, despite enacting several crucial investment-related policies, the second term
24 of the Yudhoyono administration did not yield many breakthroughs for the anticipated increase
25 in investment. President Yudhoyono, on various occasions, highlighted the obstacles to
26 increased investment that had yet to be overcome. Despite efforts to streamline business
27 procedures, the inadequate infrastructure affected investor interest.
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34 Towards the end of his leadership, the Yudhoyono administration enacted Law No. 23 of 2014
35 concerning Regional Government (Law No. 23 of 2014). This law seemed to mark a shift in
36 the pendulum of decentralization, moving in the opposite direction compared to Law No. 22 of
37 1999 and Law No. 32 of 2004. This indicates that the extensive decentralization at the beginning
38 of the reform era had been reevaluated, considering criticisms and disappointments. The broad
39 decentralization granted at the start of the reform era appeared to experience dysfunction due
40 to the lack of clarity in the national agenda.⁸⁷
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48 Towards the end of President Yudhoyono's leadership, the economy appeared more stable.
49 However, the issue of ease of doing business was still unresolved in the second term of
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55 ⁸⁴ M. Baiquni, *Tinjauan Geografi Regional Terhadap Masterplan Percepatan Dan Perluasan Pembangunan*
56 *Ekonomi Indonesia (MP3EI)*, 26 *Forum Geografi*, no. 2 (2012), 104-118.

57 ⁸⁵ Y. Sato, "State, Industry, and Business in Indonesia's Transformation," in K.B. Teik, K. Tsunekawa and M.
58 Kawano (eds), *Southeast Asia beyond Crises and Traps* (Cham: Springer International Publishing, 2017), pp. 71-
59 96.

60 ⁸⁶ *Ibid.*

⁸⁷ M.R Lane, *Decentralization and Its Discontents* (Singapore: ISEAS Publishing, 2014), p. 103.

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3 President Yudhoyono, as reflected in the ranking of 120 in the Doing Business 2014 report.⁸⁸
4 The issue of ease of doing business remained unresolved during the Yudhoyono era due to
5 persistent weaknesses in Indonesia's legal system. Investors observed that there were no
6 effective mechanisms – whether judicial or administrative – to clarify legal ambiguities.
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8 Contradictory regulations frequently created uncertainty about which rules applied, while
9 unpredictable court rulings further exacerbated the lack of clarity. Moreover, bribery was often
10 necessary to initiate investments, operate businesses, or resolve disputes – particularly in
11 decentralized regions.⁸⁹
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18 Why, then, did foreign investment continue to flow in, sustaining Indonesia's economic
19 stability despite its dysfunctional and unreliable legal framework? The answer lies in the
20 country's large consumer market, abundant natural resources, low-cost labour, and tax
21 incentives. Investors appeared to factor legal risks into their calculations, accepting them as an
22 inherent cost of operating in Indonesia.⁹⁰ This issue was later addressed in the subsequent
23 leadership with the implementation of several economic policy packages.
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30 31 6 Jokowi's Developmentalism

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34 When assuming office in 2014, President Joko Widodo (popularly known as President Jokowi)
35 faced economic challenges that were not easy. Although Indonesia's economic growth during
36 the second term of President Susilo Bambang Yudhoyono remained positive, there was a
37 slowdown. In the early years of his second term, the Yudhoyono administration experienced a
38 decline in growth from 6.22% in 2010 to 5.02% in 2014.⁹¹
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45 To address this situation, President Jokowi stimulated economic growth through domestic
46 economic reforms focused on infrastructure development and improving the investment
47 climate. Additionally, the President implemented unpopular policies aimed at reducing the
48 financial burden on the state, such as the removal of fuel subsidies. The elimination of these
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57 ⁸⁸ World Bank, *Doing Business 2014: Understanding Regulations for Small and Medium-Size Enterprises*
(Washington: The World Bank, 2013).

58 ⁸⁹ Butt (2011), *supra* note 82.

59 ⁹⁰ *Ibid.*

60 ⁹¹ Badan Pusat Statistik, *Laporan Perekonomian Indonesia 2015* (Jakarta: Badan Pusat Statistik, 2015).

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3 subsidies was expected to provide greater opportunities for the government to continue its
4 infrastructure development agenda, which was a focal point of his program.⁹²
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8 The development of infrastructure is closely tied to the planned program within the MP3EI
9 formulated during the Yudhoyono administration. However, President Jokowi signalled a more
10 aggressive approach to infrastructure development because of removing fuel subsidies.⁹³ Thus,
11 President Jokowi essentially continued the spirit of developmentalism directed by the MP3EI.
12 Although the Jokowi administration later departed from the MP3EI by introducing various
13 Economic Policy Packages, the underlying framework remained the same, emphasizing the role
14 of the state in guiding the economy.
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22 During optimism towards the Jokowi administration, it turned out that Indonesia's economic
23 growth in the first two quarters of 2015 was not significant. Therefore, the First Economic
24 Policy Package was released on 9 September 2015, containing three policy measures. The first
25 step was to boost the competitiveness of the national industry through deregulation,
26 debureaucratization, and law enforcement, as well as business certainty. Deregulation involved
27 rationalizing regulations by eliminating duplication/redundancy and synchronizing them. The
28 focus of deregulation was on various ministerial regulations related to the economy that had
29 been formulated by ministers based on their authority but had never gone through a
30 synchronization process under one roof. Consequently, overlapping legislation occurred at the
31 central level.⁹⁴
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41 On the other hand, the Jokowi administration also focused on debureaucratization, especially
42 regarding investment permits. The debureaucratization agenda initially involved discourse on
43 simplifying permits, delegating authority to the One-Stop Integrated Service, and providing
44 services through electronic systems. Law enforcement agendas also included combating
45 extortion and illegal levies and establishing channels for resolving legal and bureaucratic issues.
46 In addition to boosting the competitiveness of the national industry, this policy package aimed
47 to expedite national strategic projects and investments in the property sector.
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58 ⁹² Warburton (2016), *supra* note 2.

59 ⁹³ *Ibid.*

60 ⁹⁴ Press Release from the Coordinating Ministry for Economic Affairs, September 25, 2015.

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3 The various agendas were initiated with the release of the first Economic Policy Package,
4 followed by several other policy packages, totalling 16. Recognizing that excessive regulations
5 posed a problem in the Indonesian business landscape, the government planned to produce 203
6 regulations to replace those deemed problematic.⁹⁵ Additionally, deregulation at the regional
7 level was implemented in June 2016. With the authority granted by Law No. 23 of 2014, the
8 Ministry of Home Affairs revoked 3143 regional regulations identified as hindering ease of
9 doing business.

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12 While President Jokowi has not explicitly mentioned decentralization as an issue, some of his
13 statements suggest the need for a re-interpretation of decentralization for the ease of doing
14 business. He emphasizes coordination and harmonization between the central and regional
15 governments. Therefore, policies, especially those related to investment, should come from a
16 single source.⁹⁶ On other occasions, President Jokowi has expressed concerns about the
17 influence of regional autonomy in slowing down decision-making, especially during the
18 pandemic.⁹⁷

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21 President Jokowi continued the agenda of debureaucratization by issuing Government
22 Regulation Number 24 of 2018 on Integrated Electronic Business Licensing Services. This
23 regulation introduces a licensing platform that centralizes the technical issuance of business
24 permits into a single working unit authorized to issue business permits on behalf of ministers,
25 institution leaders, governors, or regents/mayors.⁹⁸ Furthermore, since 2019, President Jokowi
26 has also proposed efforts to streamline bureaucracy by simplifying the civil servant echelon
27 from four levels to two and adopting artificial intelligence to replace civil servant jobs wherever
28 possible.⁹⁹

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⁹⁵ H. AswicaHyono and D. Christian, *Perjalanan Reformasi Ekonomi Indonesia 1997-2016*, Economics Working Paper 02-2017 CSIS (Jakarta, August 2017).

⁹⁶ C. Stefanie, *Jokowi: Otonomi Daerah Bukan Federal, Kita Adalah NKRI*, available at: <<https://www.cnnindonesia.com/nasional/20180123181445-32-271053/jokowi-otonomi-daerah-bukan-federal-kita-adalah-nkri>>, accessed February 4, 2022.

⁹⁷ D.E. Nugraheny, *Jokowi dan Parpol Koalisi Juga Bahas Otonomi Daerah yang Dinilai Tak Efektif*, available at: <<https://nasional.kompas.com/read/2021/08/26/06401211/jokowi-dan-parpol-koalisi-juga-bahas-otonomi-daerah-yang-dinilai-tak-efektif>>, accessed February 4, 2022.

⁹⁸ K. Tanzil and S. Kandou, *OSS System – Indonesia’s Answer to Minimize Bureaucracy and the Lengthy Licensing Regime*, available at: <<https://www.asialaw.com/NewsAndAnalysis/oss-system-indonesias-answer-to-minimize-bureaucracy-and-the-lengthy-licensing/Index/333>>, accessed February 16, 2022.

⁹⁹ A.W. Akhlah, “Faster with AI: Indonesia to Replace Ministerial Aides with Machines”, available at: <<https://www.thejakartapost.com/news/2019/11/28/indonesia-to-replace-ministerial-aides-with-ai.html>>, accessed February 16, 2022.

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3 During President Jokowi's administration, there was a significant increase in the number of
4 regulations related to the simplification of licensing processes, facilitation of business
5 operations, incentives for investors, infrastructure development, special economic zones, and
6 other facilities aimed at boosting investment. Over the ten-year period, a total of 6 Laws, 89
7 Government Regulations, and 41 Presidential Regulations were enacted in relation to these
8 matters. This number surpasses the volume of regulations issued in similar sectors during
9 previous administrations (see Table 1). This demonstrates President Jokowi's efforts to promote
10 economic growth through legal reforms, in line with the indicators proposed by Trubek, namely
11 encouraging foreign direct investment into emerging sectors.¹⁰⁰
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20 **Table 1.** Comparison of the Number of Laws and Regulations related to Developmentalism

Types of Laws and Regulations	Habibie, Wahid, and Megawati (1999-2004)	The Yudhoyono Era (2004- 2014)	The Jokowi Era (2014- 2024)
Laws (<i>Undang-Undang</i>)	2	7	6
Government regulations (<i>Peraturan Pemerintah</i>)	5	26	89
Presidential Regulations (<i>Peraturan Presiden</i>)	0	14	41

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32 Efforts to implement debureaucratization have also occurred at the regional level, driven by
33 policies initiated at the national level. From 2015 to 2024, there have been 120 Regional
34 Regulations (*Peraturan Daerah*) at the provincial and district/city levels aimed at facilitating
35 investment in their respective regions. This number is significantly higher compared to the 23
36 Regional Regulations enacted during the ten-year administration of President Yudhoyono. The
37 impetus for creating these Regional Regulations originated from Government Regulation No.
38 45 of 2008 on investment facilitation in regions, which was introduced during President
39 Yudhoyono's era. However, the number of Regional Regulations addressing investment
40 facilitation surged significantly during President Jokowi's administration. Additionally,
41 provinces with Special Economic Zones have enacted Regional Regulations that provide
42 facilities and ease of local tax and retribution obligations within these zones. This demonstrates
43 that the push for debureaucratization intensified during President Jokowi's ten-year
44 administration.
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¹⁰⁰ Trubek (2008), *supra* note 16.

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3 Various policies implemented by President Jokowi are considered as the implementation of the
4 developmentalism. The Jokowi administration focuses on infrastructure, deregulation, and
5 debureaucratization, with other issues placed under these three main goals. According to
6 Warburton, this developmentalism style adopts aspects of developmentalism from the past. On
7 the other hand, the Jokowi administration also maintains the trend of nationalistic economic
8 policies that have been present since the post-Reformasi era.¹⁰¹ Referring to Warburton's
9 analysis, when various developmentalism agendas are maintained alongside nationalistic
10 economic agendas, it seems that developmentalism is primarily an economic strategy rather
11 than an ideological choice.
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20 In President Jokowi's developmentalism agenda, three economic planning areas stand out as
21 reflections of a new development paradigm: industrial activism, expansion of state-owned
22 enterprises (BUMN), and institutionalization of the welfare scheme implemented by the state.
23 This developmentalism implies an ambition to rapidly elevate Indonesia to higher strata in the
24 global economic rankings. Various policy packages implemented by President Jokowi have
25 shown positive results.¹⁰²
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32 An important part of President Jokowi's developmentalism era is the Job Creation Law or
33 commonly called the Omnibus Law. In his inauguration speech as president for the second term,
34 President Jokowi conveyed the Omnibus Law as a design of law to simplify laws and
35 regulations in Indonesia in supporting ease of doing business. The Omnibus Law with various
36 clusters has an impact on 79 (seventy-nine) previously existing laws. Most of the provisions
37 affected in the 79 laws are business licensing provisions.
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44 The government was very quick to draft the Omnibus Law which then gave rise to criticism
45 from civil society due to the lack of public participation. Regarding deregulation and
46 debureaucratization, the Omnibus Law is based on the argument that development needs to be
47 carried out by resolving investment barriers, including: carrying out debureaucratization to
48 eliminate the long bureaucratic chain, overlapping regulations, and the many laws and
49 regulations that are not harmonious, especially in central and regional regulations. Therefore,
50 deregulation is needed regarding: provisions regarding business licensing, investment
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58 ¹⁰¹ Warburton (2016), *supra* note 2.

59 ¹⁰² E. Warburton, "A New Developmentalism in Indonesia?" in H. Hill and S. Dharma Negara (eds), *The*
60 *Indonesian Economy in Transition* (Singapore: ISEAS Publishing, 2019).

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3 requirements, employment, micro, small and medium enterprises, cooperatives, land
4 acquisition, development of economic zones, implementation of government projects, as well
5 as provisions regarding government administration and imposition of criminal sanctions
6 regulated in various laws.¹⁰³
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11 Debureaucratization through the Job Creation Law is also implemented by reorganizing the
12 President's authority. The arrangement of the President's authority has an impact on the
13 arrangement of technical provisions that are more focused on central-level regulations,
14 especially Government Regulations or Presidential Regulations. The Omnibus Law aims to
15 produce a single reference in the implementation of authority at the central to regional levels.
16 Deregulation and debureaucratization with the centralization of regulation in the hands of the
17 President show that the Jokowi government's view of the two concepts in the context of
18 economic development is more directed towards centralization and not broad decentralization.
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27 The Constitutional Court in 2021 annulled the Omnibus Law and ordered the government to
28 repeat the process of forming the Omnibus Law within two years. The Constitutional Court
29 stated that the Omnibus Law ignored public participation so that the government must remake
30 the law by giving the public ample opportunity for their opinions to be heard and considered.
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36 However, at the end of 2022, the government ignored the order and instead re-created the
37 Omnibus Law in the form of a Government Regulation in Lieu of Law (commonly called
38 *Perppu*). A *Perppu* is a form of regulation that is equivalent to a Law (*Undang-Undang*) and
39 can be ratified by the President without parliamentary discussion if there is a compelling
40 emergency. Without any compelling emergency conditions, President Jokowi ratified the
41 *Perppu*.
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48 Despite having formal issues, the Omnibus Law has elaborated the concept of deregulation and
49 debureaucratization as a basis for situational policies to increase economic growth. The
50 government uses the Omnibus Law to deregulate and debureaucratize 11 topics/clusters which
51 then have an impact on 79 existing laws. Briefly, this design can be a solution for deregulation
52 and debureaucratization, especially by strengthening the role of the President or the central
53 government.
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¹⁰³ Academic Paper of Omnibus Bill (Coordinating Ministry for Economic Affairs-Republic of Indonesia. Jakarta. 2020), pp. 22-23.

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5 The question is: does this developmentalism really have an impact on foreign investment and
6 economic growth?
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10 With various policy packages and the Omnibus Law, economic growth in the Jokowi era has
11 never reached 6%.¹⁰⁴ If we start from the enactment of the Omnibus Law, economic growth in
12 2022 will reach 5.3% and in 2023 it will fall to 5.05%. The situation is surprising because the
13 realization of foreign investment in 2023 increased from 2022.¹⁰⁵
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18 Findings in the regions also show that debureaucratization did not occur as expected. The
19 greater role of the central government in licensing hampers domestic investment. Approval is
20 hampered when it reaches stages related to the central government. In this case,
21 debureaucratization in the Omnibus Law seems to be just a jargon.¹⁰⁶
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27 In addition, the practice of Jokowi's developmentalism is later perceived as overly emphasizing
28 physical development and neglecting human rights issues. Several previous studies have
29 indicated the lack of concern by the Jokowi administration regarding human rights issues.
30 Minority religious and sexual groups in Indonesia continue to be subject to sporadic
31 intimidation, hatred, and violence, even though radical groups have been suppressed by the
32 government.¹⁰⁷ Additionally, the Electronic Information and Transactions Law (UU ITE),
33 which restricts freedom of expression on the internet, is still in effect.¹⁰⁸ Two activists, Haris
34 Azhar and Fatia Maulidiyanti, faced charges under the UU ITE, accused of tarnishing the
35 reputation of Luhut Binsar Panjaitan, an influential minister in the cabinet.¹⁰⁹ Although the
36 court eventually acquitted both activists, the verdict is suspected of being influenced to
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46 ¹⁰⁴ M. Syaharani, *Pertumbuhan Ekonomi Indonesia Dalam 10 Tahun Terakhir*, available at:
47 <<https://data.goodstats.id/statistic/pertumbuhan-ekonomi-indonesia-dalam-10-tahun-terakhir-fivcI>>, accessed
48 November 20, 2024.

49 ¹⁰⁵ Badan Pusat Statistik, *Realisasi Investasi Penanaman Modal Luar Negeri Menurut Provinsi (Juta US\$), 2021-*
50 *2023*, available at: <[https://www.bps.go.id/id/statistics-table/2/MTg0MCMY/realisasi-investasi-penanaman-](https://www.bps.go.id/id/statistics-table/2/MTg0MCMY/realisasi-investasi-penanaman-modal-luar-negeri-menurut-provinsi.html)
51 *modal-luar-negeri-menurut-provinsi.html*>, accessed November 20, 2024.

52 ¹⁰⁶ M. Mahmudan, *Di Malang, Investor Rp 500 M Mundur Teratur*, available at:
53 <<https://radarmalang.jawapos.com/kota-malang/813455212/di-malang-investor-rp-500-m-mundur-teratur>>,
54 accessed November 20, 2024.

55 ¹⁰⁷ R. Robet, M.R. Fitri and M.C.S. Kabelen, *The State and Human Rights under Joko Widodo's Indonesia*, 9
56 *Cogent Social Sciences*, no. 2 (2023), 1-17.

57 ¹⁰⁸ S.E. Wieringa, *The Impact of Indonesia's 2019 Presidential Campaign on the Human Rights Movement:*
58 *Narrow Solidarity versus Affinity*, 10 *Open Journal of Political Science*, no. 4 (2020), 705-731.

59 ¹⁰⁹ A. Mansur, *Didakwa Cemarkan Nama Baik Luhut, Haris Azhar Dijerat UU ITE*, available at:
60 <[https://news.republika.co.id/berita/rsj9gp409/didakwa-cemarkan-nama-baik-luhut-haris-azhar-dijerat-uu-](https://news.republika.co.id/berita/rsj9gp409/didakwa-cemarkan-nama-baik-luhut-haris-azhar-dijerat-uu-ite#google_vignette)
ite#google_vignette>, accessed June 20, 2024.

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3 safeguard the President's reputation ahead of the 2024 General Election, where the President's
4 eldest son is a candidate for vice president.
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8 Amid the development and neglect of human rights issues, this period is also marked by the
9 emergence of illiberal democracy. The Jokowi administration reduced the number of opposition
10 parties (only 2 out of 9 parliamentary parties) by forming a large coalition. Even the Chief of
11 the Presidential Staff, Moeldoko, attempted to take over the leadership of one opposition party
12 (the Democratic Party), although Moeldoko later lost in court. The weakness of opposition
13 parties also undermines parliamentary control over government policies. Therefore, this period
14 is characterized by the introduction of controversial laws proposed by the President. Two laws
15 that have come under scrutiny are the revision of the Corruption Eradication Commission Law
16 – which subsequently weakened anti-corruption efforts – and the Omnibus Law aimed at
17 boosting investment but neglecting public participation in the legislative process.¹¹⁰
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27 The legislative process of the Omnibus Law has also raised significant democratic concerns.
28 The law has drawn considerable criticism for its lack of inclusive deliberation, particularly the
29 exclusion of labour groups from meaningful participation in the policymaking process,
30 resulting in regulatory changes that disproportionately favour employer interests.¹¹¹ A
31 fundamental structural change introduced by this legislation involves the transfer of detailed
32 labour provisions from Labour Law to subordinate regulations that can be issued by the
33 executive branch without parliamentary approval. This regulatory downgrading makes these
34 provisions more susceptible to future changes while removing them from the jurisdiction of
35 judicial review by the Constitutional Court.¹¹² These developments lend credence to growing
36 scholarly concerns that the Omnibus Law represents an institutional component of Indonesia's
37 broader democratic regression, despite government claims that such measures are necessary to
38 stimulate investment and economic growth. The law's enactment reflects a troubling trend of
39 executive overreach and the erosion of democratic checks and balances in Indonesia's
40 legislative process.¹¹³
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54 ¹¹⁰ S. Mujani and R.W. Liddle, *Indonesia: Jokowi Sidelines Democracy*, 32 *Journal of Democracy*, no. 4 (2021),
55 72-86.

56 ¹¹¹ T.A. Setia Negara, S.A. Anggoro and I. Koeswahyono, *Indonesian Job Creation Law: Neoliberal Legality,*
57 *Authoritarianism and Executive Aggrandizement Under Joko Widodo*, 17 *Law and Development Review*, no. 1
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59 ¹¹² P. Mahy, *Indonesia's Omnibus Law on Job Creation: Legal Hierarchy and Responses to Judicial Review in*
60 *the Labour Cluster of Amendments*, 17 *Asian Journal of Comparative Law*, no. 1 (2022), 51-75.

¹¹³ *Ibid.*

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5 The indications of declining democracy quality in Jokowi's developmentalism are also evident
6 in the involvement of the military and intelligence in civilian life, not because he attempts
7 repression like Soeharto, but because he sees it as an efficient and effective way to implement
8 his policies. He also seeks to establish an elite family by facilitating opportunities for his own
9 family members to enter politics (his eldest son and son-in-law becoming mayors), regardless
10 of the impression of dynasty and nepotism it may create.¹¹⁴
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17 Not only minimizing the number of oppositions, but the Jokowi administration also involves
18 many businessmen in his cabinet. Wasisto shows that 34% of ministers in Jokowi's second-
19 term government come from the ranks of political businessmen and non-political
20 businessmen.¹¹⁵ Some of them also play a significant role in realizing President Jokowi's
21 developmentalism vision. This indicates how the era of Jokowi's developmentalism has united
22 politicians and businessmen as a large coalition to stabilize political and economic conditions.
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29 The most significant indicator of democracy declining during the Jokowi era was the
30 Constitutional Court's controversial 2023 ruling on the minimum age requirement for vice-
31 presidential candidates. This decision enabled Gibran Rakabuming Raka, President Jokowi's
32 son, to run as vice-presidential candidate alongside presidential candidate Prabowo Subianto.
33 Notably, the Constitutional Court was then headed by Anwar Usman, Jokowi's brother-in-law.
34 The ruling, widely perceived as an attempt to consolidate the Jokowi family's political dynasty,
35 sparked intense public backlash from civil society groups. Subsequent investigations confirmed
36 that Anwar Usman had violated judicial ethics, leading to his removal as Chief Justice by the
37 Constitutional Court's Honor Council (MKMK). However, this ethical violation did not
38 invalidate Gibran Rakabuming Raka's candidacy. In the 2024 general election, Prabowo
39 Subianto and Gibran Rakabuming Raka were elected president and vice-president,
40 respectively.¹¹⁶
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51 7 Indonesian Developmentalism: Decentralization, Deregulation and Debureaucratization

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55 ¹¹⁴ G. Fealy, *Jokowi in the Covid-19 Era: Repressive Pluralism, Dynasticism and the Overbearing State*, 56
56 *Bulletin of Indonesian Economic Studies*, no. 3 (2020), 301-323.

57 ¹¹⁵ A. Wasisto, *Patterns of Cabinet Formation in Indonesia: The Case of Yudhoyono and Widodo's Cabinets*, 26
58 *Kajian*, no. 1 (2023), 21-34.

59 ¹¹⁶ M. Crouch, *The Rise and Decline of Constitutionalism in the Global South: The Case of Indonesia's*
60 *Constitutional Court*, 57 *Verfassung in Recht und Übersee*, no. 1 (2024), 147-158.

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5 An overview of Indonesia's economic system since the era of President Soekarno has revealed
6 that enhancing investment is, in fact, a classic issue. The Soekarno era demonstrated a strong
7 discourse of developmental nationalism, with a tendency to limit foreign investment
8 opportunities due to the belief in self-sufficiency. Inappropriate policies then led the economy
9 towards a deteriorating condition, particularly with hyperinflation, which subsequently
10 escalated into a political crisis. The policies of the Soekarno era underwent a drastic
11 transformation with the advent of the New Order era, which leaned more towards
12 developmentalism. However, New Order's developmentalism failed because President
13 Soeharto's government never fully implemented developmental policies, namely
14 industrialization and substantial investment in infrastructure. The classic issue persisted through
15 the reform era, with developmentalism consistently woven as a strategy to elevate the economic
16 status.
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19 The early New Order era did experience rapid development due to the high prices of oil and
20 commodities. Economic and political centralism at that time did not seem to pose financial
21 issues because the high oil prices provided the government with sufficient funds for
22 development. On the other hand, according to Syafrudin, during the heyday of oil prices, there
23 was abundant funding, leading the central government to frequently provide money to regions
24 with various instructions and a uniformity approach. Consequently, the intended objectives of
25 these financial allocations were often not achieved.¹¹⁷
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29 The fall in oil prices in the early 1980s prompted President Soeharto's administration to
30 recognize the importance of improving economic fundamentals to be better prepared for trade
31 liberalization. President Soeharto opted for technocrat advice that emphasized deregulation to
32 boost investment. However, the discourse on deregulation was followed by various policies that
33 were not consistently implemented, especially due to the increasing severity of corruption and
34 nepotism within President Soeharto's family circle.
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38 One crucial aspect to note is that the deregulation policy emerged within the context of
39 centralism and Repressive Developmentalism. Developmentalism became a concept
40 inseparable from the neglect of regional autonomy and violations of human rights. This
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¹¹⁷ A. Syafrudin, *Selayang Pandang Tentang Titik Berat Otonomi Daerah Pada Daerah Tingkat II*, Orasi Dies Natalis 30 Tahun Fakultas Hukum Universitas Katolik Parahyangan (Bandung, 1988).

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3 rendered developmentalism not seen as a strategy to compete with other countries, as observed
4 in the practices of other rapidly developing Asian nations.
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8 The early reform era was a transitional period aimed at improving the economic governance
9 that was previously in disarray. The period from President Habibie to President Megawati
10 witnessed various measures to organize decentralization, ensuring that power is no longer
11 concentrated in the central government. Additionally, several laws were enacted to serve as the
12 foundation for economic management.
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18 During President Yudhoyono's era, particularly in his second term, there was a resurgence of
19 the state's role in intervening in the economy through policy instruments that could guide
20 development. The formulation of MP3EI was one indication of this, and the direction of
21 infrastructure development within it was subsequently pursued aggressively by President
22 Jokowi in his first term. Although MP3EI as a planning document was no longer referenced
23 after 2014, the National Medium-Term Development Plan 2015-2019 continued the
24 development agenda from MP3EI with some modifications.¹¹⁸
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32 In addition to infrastructure development, the concepts of deregulation and debureaucratization
33 were continually emphasized during the first period of President Jokowi's administration. The
34 strengthening of deregulation and debureaucratization during his government indicated
35 President Jokowi's strong commitment to avoiding the failures of these agendas in previous
36 periods. The first year of Jokowi's administration initially showed a tendency to support
37 protectionist policies. However, the slowdown in economic growth in 2015 made him
38 increasingly confident in the discourse of deregulation and debureaucratization.¹¹⁹
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46 This development aligns with the historical pattern of policy-making in Indonesia, where rapid
47 economic growth tends to result in inward-looking policies, while slowing economies prompt
48 urgent liberal-oriented reforms.¹²⁰ We can observe this pattern in the 1980s when President
49 Soeharto embraced economic liberalization due to the decline in oil prices. Conversely,
50 President Yudhoyono did not take drastic steps towards economic liberalization when economic
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57 ¹¹⁸ W. Salim and S. Dharma Negara, *Infrastructure Development under the Jokowi Administration: Progress, Challenges and Policies*, 35 *Southeast Asian Economies*, no. 3 (2018), 386-401.

58 ¹¹⁹ R. Bush, "Indonesia in 2015," in M. Cook and D. Singh (eds), *Southeast Asian Affairs 2016* (Singapore: ISEAS
59 - Yusof Ishak Institute, 2016).

60 ¹²⁰ *Ibid.*

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3 growth was robust due to the rise in commodity prices. Therefore, given the economic
4 slowdown, President Jokowi's policies appear to be a natural course within the framework of
5 this historical pattern.
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10 Due to the repetitive pattern reminiscent of the New Order, the administration of President
11 Jokowi can be labelled as the era of Jokowi's Developmentalism, with the ambition to boost
12 investment and infrastructure through facilitating business, reinterpreting decentralization, and
13 pursuing deregulation and debureaucratization. Despite resembling the New Order, this should
14 be seen as a continuity of the development direction set in the MP3EI during President
15 Yudhoyono's era. Therefore, President Yudhoyono's era, especially the second period, should
16 be viewed as a transitional phase toward this Jokowi's Developmentalism.
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24 The discourse on development in the first period of President Jokowi's administration has been
25 materialized through deregulation at the Ministerial level and the annulment of problematic
26 regional regulations. Additionally, there has been a debureaucratization effort through
27 electronic licensing, reducing the administrative role of regional officials in the permit issuance
28 process.
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34 **Table 2.** Developmentalism in Indonesia since New Order

35	36	37	38	39
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Periods	1967-1998 New Order Developmentalism	1999-2004 <i>Reformasi</i> 's Transition Period	2005-2014 Yudhoyono's Developmentalism Transition	2015 - 2024 Jokowi's Developmentalism
Characteristic	The government controls the economy, human rights are ignored, the economy is for cronies.	Establishment of various laws that form the basis for economic governance.	The government makes the direction of economic development, the elimination of obstacles to business.	The government focuses on developing infrastructure and improving the investment climate. Human rights and democracy are not a priority.
Influential Rationality	Centralization, deregulation and debureaucratization (since the mid-1980s)	Decentralization, deregulation, economic and political stability	Ease of doing business, criticism of decentralization, deregulation, debureaucratization	Ease of doing business, re-interpretation of decentralization, deregulation, debureaucratization

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3 The developments in Table 2 reflect what Trubek and Santos describe regarding the interaction
4 between economics and law.¹²¹ However, in this context, it is evident that economics exerts a
5 significant influence on shaping the legal framework. To facilitate investment, the legal
6 framework has been oriented toward improving the investment climate. On the other hand,
7 human rights have not been considered a critical factor in investment and, as a result, have not
8 been prioritized in legal policies during the 10 years of Jokowi's administration.
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12 Table 2 also illustrates that the influencing rationales have been significantly impacted using
13 the Ease of Doing Business ranking from the Doing Business Project to assess Indonesia's
14 conduciveness for investment. The World Bank's Doing Business Project has ranked the ease
15 of doing business in hundreds of countries, subsequently influencing the government's response
16 to enhance investment, particularly since President Yudhoyono's era.
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19 The use of criteria in the Doing Business Project as a starting point for legal reforms in various
20 countries has indeed faced criticism. The ease of doing business ranking has been criticized for
21 oversimplifying contexts and equating criteria that are not necessarily applicable. These criteria
22 assume that one criterion in business-related legislation can be universally applied to all
23 situations. This assumption has dominated and become the mainstream of thought in legal
24 reform discussions in various countries.¹²² Despite these criticisms, there have also been data
25 irregularities in Doing Business 2018 and 2020, leading the World Bank management to
26 temporarily halt the Doing Business report since September 2021 and initiate a series of reviews
27 and audits of its reports and methods.¹²³
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31 In the end, policies aimed at increasing investment have narrowed down to various keywords
32 that had previously emerged during the Yudhoyono's and Jokowi's developmentalism era.
33 Several keywords that have resurfaced in the context of post-New Order developmentalism in
34 Indonesia include:
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49 a. Deregulation and debureaucratization
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56 ¹²¹ Trubek and Santos (2006), *supra* note 20.

57 ¹²² K.E. Davis, *Legal Universalism: Persistent Objections*, 60 University of Toronto Law Journal, no. 2 (2010),
58 546.

59 ¹²³ World Bank, *World Bank Group to Discontinue Doing Business Report*, available at:
60 <<https://www.worldbank.org/en/news/statement/2021/09/16/world-bank-group-to-discontinue-doing-business-report>>, accessed March 3, 2022.

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3 Deregulation in the post-New Order context differs from the meaning of deregulation
4 implemented by the New Order through various policy packages in the 1980s. During
5 the New Order era, the government focused deregulation efforts primarily on the
6 financial sector. The need for deregulation after the reform period underwent changes,
7 as it was not only aimed at eliminating or simplifying legislation in a specific sector but
8 also at addressing the overlapping of laws and regulations that arose from the multitude
9 of regulations at the regional to central levels since the reform.
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17 The overlapping of laws and regulations has driven the necessity for both deregulation
18 and debureaucratization. The overlapping occurs due to numerous regional regulations
19 conflicting with legislation at the central level or conflicts between legislation in
20 ministries/agencies. Efforts to simplify laws and regulations through deregulation at the
21 regional level were initiated in 2016. However, a Constitutional Court decision in 2017
22 became an impediment to the central government's intervention in evaluating regional
23 regulations.
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31 The need for deregulation is also related to the multitude of laws and regulations created
32 by ministries/agencies, thereby becoming an issue of sectoralism in legislation. This
33 issue arises from each ministry's authority to create its own regulations without a clear
34 system of coordination and harmonization. Based on this problem, the simplification of
35 laws and regulations should not only involve eliminating or merging several laws and
36 regulations but also entail organizing the legislative system.
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43 b. Permit simplification

44 The discourse on permit facilitation cannot be separated from the concept of
45 simplification, which serves as an antithesis to excessive sectoralism. Sectoralism
46 results in convoluted permits, while various countries have streamlined the permitting
47 process, leading to a shorter time required to start a business. However, Indonesia has
48 not significantly accelerated the ease and speed of permitting compared to its
49 neighbouring countries. The swiftness and simplicity of permits are expected to
50 stimulate investment at the micro, small, and medium business levels.
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58 The Jokowi administration has attempted to simplify permits through online platforms.
59 However, these technical efforts to streamline permits have not effectively reduced the
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3 number of required permits, as there are still numerous permit categories that investors
4 must obtain before commencing business operations. These permit categories are
5 dispersed across ministries and local governments, each with its own issuance
6 timeframe.
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12 c. Decentralization evaluation

13 The New Order implemented centralism through Law No. 5 of 1974, which later gave
14 rise to its antithesis, Law No. 22 of 1999. Criticism of regional autonomy emerged with
15 the implementation of Law No. 22 of 1999 due to decentralization leading towards
16 federalism. This criticism resulted in Law No. 32 of 2004. However, the implementation
17 of this law was also unsatisfactory due to poor governance at the regional level.
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23 The era of President Yudhoyono demonstrated that the use of power in the era of
24 regional autonomy was perceived to hinder investment development. Decentralization,
25 in its development in several regions, was not utilized to create more investment
26 opportunities; instead, power was used to slow down licensing processes and open
27 avenues for corrupt practices. This issue became more complex with the direct election
28 of regional leaders, leading to the emergence of political dynasties in some regions that
29 ultimately led to rent-seeking pursuits.
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37 Law No. 23 of 2014 has shifted the pendulum towards the centralization of some
38 authorities to the central government or provinces (by placing the Governor as a
39 representative of the central government in the region). The concept of decentralization
40 in the era of President Jokowi seems to be reinterpreted within the framework of
41 supporting developmentalism agendas.
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48 Although the three keywords indicate the continuity of rationality between Yudhoyono's and
49 Jokowi's developmentalism, the characteristics of neglecting human rights and democracy in
50 the Jokowi era are markers that demonstrate its unique era of developmentalism, termed as
51 Jokowi's developmentalism. The practices of the Jokowi administration indicate a tendency to
52 resemble Classical Developmentalism, which emphasizes a coalition of business industrialists,
53 workers, and bureaucracy under the pretext of nation-building. This is evident in his efforts to
54 minimize the number of oppositions in parliament during his tenure and to include business
55 actors in key positions in his cabinet.
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8 Conclusion

Throughout Indonesia's history, the evolution of investment policies has been closely tied to the nation's legal framework. The Soekarno era prioritized developmental nationalism, restricting foreign investment in favour of self-sufficiency. Under Soeharto's New Order, laws aimed at facilitating industrialization and investment were undermined by corruption and weak enforcement. The *Reformasi* era introduced decentralization, but conflicting regional and national laws created legal fragmentation that hindered investment. Jokowi's administration has prioritized deregulation, debureaucratization, and the simplification of business permits to attract investment, though challenges such as overlapping regulations and sectoral conflicts persist.

Legal reforms, including digitized permits and the abolition of outdated regulations, have improved the investment climate, yet the regulatory environment remains complex and disjointed. Shifts in decentralization laws, from Law No. 22 of 1999 to Law No. 23 of 2014, have sought to balance regional autonomy with national development goals but have led to fragmented governance and opportunities for corruption. Finally, Jokowi's developmentalism highlights ongoing tensions between the facilitation of economic growth and the protection of human rights, as business-friendly legal reforms risk undermining democratic principles and protections for land, labour, and the environment. Comprehensive and coordinated legal reforms remain essential for sustainable development in Indonesia.

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14-Apr-2025

Dear Dr. Nalle:

I would like to thank you for submitting your manuscript to Law and Development Review (LDR).

We see you have incorporated the reviewer's concern, and it is a pleasure to accept your manuscript entitled "Deciphering Developmentalism: A Legal-Economic Examination of Indonesia's Administration" for publication in LDR. Congratulations!

We ask all authors to format the article, including footnote citations and References (bibliography), in accordance with the journal guides (attached). Your footnote citations and Reference entries are not compliant with the journal guide. Please revise them and send us the final version. You need not upload your revised paper again. Just email us the final version at LDR@lawanddevelopment.net. We are also attaching a sample formatted article for your reference.

Please let me know if you have any questions. We look forward to receiving the final version of your article.

Kind regards,
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Victor Imanuel Nalle <victor@ukdc.ac.id>

16 April 2025 pukul 18.17

Kepada: LDR@lawanddevelopment.net

Dear Prof. Y.S. Lee
Editor in Chief, Law and Development Review

Thank you for your email and for the opportunity to publish my manuscript, "Deciphering Developmentalism: A Legal-Economic Examination of Indonesia's Administration" in Law and Development Review (LDR). I sincerely appreciate your guidance throughout the review process.

As requested, I have revised the manuscript to ensure full compliance with the journal's style guide, particularly regarding footnote citations and the References section. The finalized version is attached to this email for your review.

Please let me know if any further modifications are needed. I appreciate your time and consideration and look forward to hearing from you.

Best regards,

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Dear Dr. Nalle,

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Prof. Y.S. Lee, Ph.D (Cantab.)

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