

## **The Constitutional Paradox of State Policy: Antinomy and the Reconstruction of State Policy's Framework Post-Reformation**

### ***Paradoks Konstitusional Haluan Negara: Antinomi dan Rekonstruksi Garis-Garis Besar Haluan Negara Pasca-Reformasi***

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#### **Abstract**

The idea of a State Policy Direction as a guiding framework for state administration has reemerged as a significant trend in contemporary governance, in line with efforts to realize national objectives enshrined in the Constitution. The Broad Outlines of State Policy (GBHN), as a product of the People's Consultative Assembly (MPR), ceased to be legally binding following the implementation of the National Development Planning System (SPPN), centralizing planning authority in the executive branch and risking unsustainable, short-term development policies. This study examines the philosophical and juridical problems of the GBHN model within Indonesia's post-SPPN constitutional system using a normative juridical method. The findings reveal a constitutional paradox: notwithstanding GBHN's abolition, the need for a comprehensive, integrated, and binding national development framework remains increasingly urgent. Therefore, reconstructing the Fundamentals of State Policy Direction (PPHN) consistent with constitutional democracy and the presidential system is imperative.

Keywords: Constitution; National Development Planning System; State Policy Direction.

#### **Abstrak**

Gagasan mengenai haluan negara sebagai pedoman dan arah penyelenggaraan negara telah menjadi tren di dunia kontemporer, sejalan dengan upaya mewujudkan tujuan bangsa yang termaktub dalam Konstitusi. Garis-Garis Besar Haluan Negara (GBHN), sebagai produk Majelis Permusyawaratan Rakyat (MPR), tidak lagi berlaku setelah penerapan Sistem Perencanaan Pembangunan Nasional (SPPN) yang berpusat pada kekuasaan eksekutif, sehingga berpotensi menyebabkan pembangunan tidak berkelanjutan dan bersifat jangka pendek. Penelitian ini mengkaji problematika filosofis dan yuridis dari model haluan negara dalam sistem ketatanegaraan Indonesia pasca-era SPPN menggunakan metode yuridis normatif. Hasil penelitian mengungkapkan bahwa eksistensi model haluan negara didasarkan pada Konstitusi secara historis-filosofis. Antinomi ini menunjukkan paradoks konstitusional: meskipun GBHN dihapus, kebutuhan akan pedoman pembangunan nasional yang komprehensif, terintegrasi, dan mengikat seluruh cabang kekuasaan negara justru semakin mendesak. Oleh karena itu, diperlukan rekonstruksi Pokok-Pokok Haluan Negara (PPHN) yang konsisten dengan prinsip demokrasi konstitusional dan sistem presidensial.

Kata Kunci: Konstitusi; Perencanaan Pembangunan Nasional; Pokok-Pokok Haluan Negara.

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## Introduction

In the architecture of modern state administration, the idea of Directive Principles of State Policy or Principles of Direction for State Administration has become a fundamental need that is increasingly recognized in various jurisdictions, regardless of the differences in ideology or the system of government they adopt.<sup>1</sup> This concept arose from the awareness that a constitution, as the highest basic law, is not only tasked with forming an institutional structure (frame of government) and guaranteeing citizens' basic rights (bill of rights), but is also obliged to provide substantive guidance regarding the direction and long-term goals of all state administration.<sup>2</sup> This direction serves as an ideological and philosophical compass, ensuring that every public policy made by the branches of power (Executive, Legislative, and Judicial) is in line with the founding ideals of the state (*Staatsidee*) and the fundamental values embraced by the nation, as stated in the Preamble to the Constitution.<sup>3</sup>

Essentially, State Policy serves as a normative bridge connecting the ideal goals (*das sollen*) of the Constitution with the reality of everyday state practice (*das sein*). In other words, it is an instrument that translates the fundamental values of Pancasila and the goals of the state (protecting the entire nation, advancing the general welfare, improving the nation's life, and contributing to maintaining world order) into measurable and binding policy guidelines.<sup>4</sup> Without clear, comprehensive, and legally binding guidance, the country risks policy deviation, development fragmentation, and program discontinuity between government periods.<sup>5</sup> This gap is what triggers the urgency of State Policy, making it an important topic in the discourse on constitutional law and national development planning.<sup>6</sup> In fact, the formulation of the state's direction clause, which embodies these constitutional values, is referred to as "constitutional direction." This direction encompasses the formulation of values and principles as the material content of the state's direction, which are fundamental and can be both instrumental and operational.<sup>7</sup>

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<sup>1</sup> Lutfil Ansori, "Haluan Negara Sebagai Pedoman Kebijakan Dasar Negara Dalam Sistem Ketatanegaraan Indonesia: Sebuah Tinjauan Filsafat Kenegaraan" (2019) 16 *Justicia Islamica* 79–102.

<sup>2</sup> Mohamad Roky Huzaeni, "Kedudukan Hukum Pancasila dan Konstitusi dalam Sistem Ketatanegaraan Indonesia" (2022) 2:1 *Pancasila: Jurnal Keindonesiaan* 114–125.

<sup>3</sup> Ansori, "Haluan Negara Sebagai Pedoman Kebijakan Dasar Negara Dalam Sistem Ketatanegaraan Indonesia", *supra* note 1.

<sup>4</sup> *Ibid.*

<sup>5</sup> Anisa Rahma et al, "ARGUMENTASI PENGEMBALIAN GARIS-GARIS BESAR HALUAN NEGARA: ANALISIS KESINAMBUNGAN RENCANA PEMBANGUNAN JANGKA MENENGAH NASIONAL DALAM PERIODE 2005-2024" (2022) 15 *Jurnal Politik Pemerintahan Dharma Praja* 26–38.

<sup>6</sup> Bambang Sadono & Lintang Ratri Rahmiaji, "REFORMULASI GARIS-GARIS BESAR HALUAN NEGARA (GBHN) DAN AMANDEMEN ULANG UNDANG-UNDANG DASAR" (2020) 49:2 *Masalah-Masalah Hukum* 213–221.

<sup>7</sup> I Wayan Sudirta, "MAKNA, KEDUDUKAN, DAN IMPLIKASI HUKUM HALUAN NEGARA DALAM SISTEM KETATANEGARAAN INDONESIA" (2020) 7:2 *Jurnal Yuridis* 258–278.

Indonesia has a long history of practicing State Policy, which is embodied in the Broad Outlines of State Policy (GBHN).<sup>8</sup> The GBHN, which is determined by the People's Consultative Assembly (MPR), serves as the highest guideline in national development planning.<sup>9</sup> In the pre-Amendment system of the 1945 Constitution, the MPR was the highest state institution and holder of people's sovereignty, while the President was the mandatary who was obliged to implement the GBHN.<sup>10</sup> This model effectively ensures alignment between development planning and the ideals of the Constitution and the direction set by the MPR.<sup>11</sup>

However, the wave of reform in 1998 triggered a series of radical amendments to the 1945 Constitution (1999-2002).<sup>12</sup> One of the fundamental changes that occurred was the repositioning of the MPR, namely from the highest state institution to a high state institution that is equal to other state institutions, and the strengthening of the presidential system, which is marked by the direct election of the President by the people.<sup>13</sup> The constitutional consequence of this change is the removal of the MPR's authority to determine State Policy.<sup>14</sup> This abolition was based on the argument that the existence of the GBHN, a product of the MPR, would contradict the principles of a strengthened presidential system, where the President would no longer be a mandate holder and would be accountable only to the people who elected him. While this change was deemed to have brought about a better constitutional life and affirmed the supremacy of the constitution and the principles of constitutional democracy, it also eliminated the existence of State Policy in the Constitution.<sup>15</sup>

After the GBHN was abolished, the national development planning function was replaced by the National Development Planning System (SPPN), which is regulated by Law Number 25 of 2004 concerning the National Development Planning System. This SPPN is embodied in the National Long-Term Development Plan (RPJPN) and the National Medium-Term Development Plan

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<sup>8</sup> Suanro, "KONSEKUENSI HUKUM DARI PERENCANAAN PEMBANGUNAN NASIONAL MODEL GARIS-GARIS BESAR HALUAN NEGARA (GBHN)" (2019) 4:1 Jurnal Ilmu Hukum Tambun Bungai 486-497.

<sup>9</sup> Janpatar Simamora, "URGENSI KEBERADAAN GBHN DALAM SISTEM KETATANEGARAAN REPUBLIK INDONESIA" (2016) 17:2 LITIGASI 3427-3466.

<sup>10</sup> Bilal Dewansyah & M Adnan Yazar Zulfikar, "Reafirmasi Sistem Pemerintahan Presidensial dan Model Pertanggungjawaban Presidensial dalam Perubahan UUD 1945: Penelusuran Sebab dan Konsekuensi" (2016) 3:2 PADJADJARAN JURNAL ILMU HUKUM (JOURNAL OF LAW) 285-309.

<sup>11</sup> Sadono & Rahmiaji, *supra* note 6.

<sup>12</sup> Firdaus Arifin, "Pembentukan Kabinet dalam Sistem Pemerintahan Presidensial di Indonesia: Studi Komparasi UUD 1945 Sebelum Dan Setelah Perubahan" (2024) 9 Jurnal Lex Renaissance 333-358.

<sup>13</sup> Dewansyah & Zulfikar, "Reafirmasi Sistem Pemerintahan Presidensial dan Model Pertanggungjawaban Presidensial dalam Perubahan UUD 1945", *supra* note 10.

<sup>14</sup> Silvia Rosiana, Ahmad Reihan Thoriq & Farsya Dalila Alamsyah, "Tinjauan Yuridis Terhadap Reformulasi Garis-Garis Besar Haluan Negara Dalam Agenda Amandemen Ke-V Undang-Undang Dasar 1945" (2024) 1:02 Forschungsforum Law Journal 19-31.

<sup>15</sup> *Ibid.*

(RPJMN).<sup>16</sup> Normatively, the National Development Planning Guidelines (SPPN) is an instrument expected to fill the void in development direction.

The philosophical and legal issues that emerged after the abolition of the GBHN (State Guidelines) created an antinomy or paradox in the contemporary Indonesian constitutional system. This antinomy can be formulated as follows: although the GBHN has been abolished through the implementation of the SPPN, which focuses on executive power, the need for comprehensive, integrated, and binding national development guidelines for all branches of government is even more pressing to realize the goals of the state as mandated by the Constitution. This situation gives rise to a constitutional paradox that requires in-depth study to find alternative models for state policy.

The main weakness of the SPPN lies in its executive-centric nature. Because the RPJPN/RPJMN are legal products rooted in the vision, mission, and programs of the elected President, these guidelines tend to bind only the executive branch and are partisan in nature. Consequently, national development policy is vulnerable to inconsistencies, discontinuities, and radical changes in direction every five years as leadership changes. This contrasts with the GBHN, which, despite its political weaknesses, is normatively binding on all state administrators. The consequence of this situation is that it is difficult to implement elements of national development in a gradual, sustainable, and consistent manner, as such planning depends solely on the will of the President, as the holder of executive power, and the ruling political group.

This paradox is further exacerbated by significant public demand for the revival of State Policy in a new form. Various groups, from academics to prominent figures (e.g., Jimly Asshiddiqie), have openly expressed support for the restoration of binding long-term development guidelines. The rationale is that the current RPJP (both national and regional) and central-regional relations are not functioning properly, resulting in divergent, incongruent, and unsustainable development directions.

From a constitutional law perspective, this situation reflects what is known as a normative vacuum in fundamental policy direction. The Indonesian Constitution provides a clear philosophical foundation (Constitutional Purpose), but does not provide sufficiently strong and binding legal instruments to ensure that these objectives are truly realized in an integrated manner by all state institutions. This gap between the Constitution's ideal goals and the implementation of short-term, sectoral policies is the core problem of this research.

Based on this background, this study formulates two main questions: first, how the antinomy of the State Policy Model (GBHN) exists within the

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<sup>16</sup> Chaira Saidah Yusrie et al, "Kebijakan Publik dan Kinerja Birokrasi Pendidikan Dalam Kompleksitas Perkembangan": (2021) 3:1 Jurnal Dirosah Islamiyah 126–143.

Indonesian constitutional system after the SPPN era; and second, how the constitutional existence of a comprehensive, integrated, and binding model of state policy is achieved across all branches of state power.

This article is a normative juridical study using a legisprudence approach to analyze the problematic nature of state policy from the perspective of constitutional law and policy formation. The research typology is prescriptive, aiming to provide legal arguments based on the research findings as solutions to the problems encountered, while simultaneously formulating an ideal reconstruction of the State Policy Model that aligns with the Indonesian constitutional system.

### **The Antinomy of the Existence of the State Policy Model (GBHN) in the Indonesian Constitutional System after the SPPN Era**

The idea of state policy has become a trend in the contemporary world as a guideline and direction for state administration, including for adherents of certain ideologies and systems of government.<sup>17</sup> This aligns with the nation's goals as outlined in the Constitution. In Indonesia, the dynamics of the post-reform state system demonstrate an antinomy regarding the existing model of state policy.<sup>18</sup> On the one hand, the GBHN, a product of the MPR, has been sidelined through the implementation of the SPPN, which focuses on executive power. However, on the other hand, the need for comprehensive, integrated, and binding national development guidelines for all branches of state power is increasingly pressing to realize the goals of the state as mandated by the constitution.<sup>19</sup> This paradoxical situation between the abolition of the GBHN and the demand for strong guidelines is the primary focus of this discussion, which aims to explain how this antinomy was created and influenced Indonesia's post-SPPN constitutional system.

Historically and philosophically, the existence of the model of state policy in Indonesia is rooted in the Constitution.<sup>20</sup> State policy is understood as national policy, or public policy in a broad sense. The reinstatement of the state policy model in the Indonesian constitutional system necessarily places the MPR as the highest authority holder in the GBHN (State Guidelines). In the history of Indonesian constitutional law, State Policy and its model are contained in the Constitution, where the Constitutional drafters positioned the MPR to establish the Constitution and the broad outlines of state policy.

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<sup>17</sup> Mei Susanto, "Konstitusi dan Pembangunan" (2017) 5 *Padjadjaran Law Review*, online: <<https://jurnal.fh.unpad.ac.id/index.php/plr/article/view/464>>.

<sup>18</sup> Dhafin Zhafran, Taufiqurrohman Syahuri & Syamsul Hadi, "Reformulasi Sistem Perencanaan Pembangunan Nasional Dengan Konsep Garis Besar Haluan Negara" (2025) 8:1 *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 59–77.

<sup>19</sup> *Ibid.*

<sup>20</sup> Sudirta, *supra* note 7.

The MPR's configuration as the highest authority holder in the form of GBHN, with MPR Decrees held by the President as the holder of the highest executive power, as well as the MPR's mandate. This model is inspired by the 1937 Irish Constitution, the first Constitution to contain Directive Principles of State Policy (DPSP). The existence of State Policy itself is a legal interpretation of Ideology and the Constitution:<sup>21</sup> assist in the formulation of general state policies for the branches of state power.

**Table 1. GBHN Comparative Framework**

| <b>Aspect</b>                  | <b>Before the Constitutional Amendment (GBHN Era)</b>   | <b>After the Constitutional Amendment (Post-GBHN Era)</b>  |
|--------------------------------|---|--|
| <b>Constitutional Basis</b>    | Based on the 1945 Constitution (before the amendment) which explicitly gave the MPR a mandate to determine the General Guidelines of State Policy (GBHN)      | There is no explicit constitutional mandate for "State Policy"; it is replaced by a legal framework under Law Number 25 of 2004 concerning the National Development Planning System.   |
| <b>Institutional Authority</b> | The MPR holds the highest authority (as a manifestation of the people's sovereignty) to formulate the GBHN and supervise its implementation by the President. | The People's Consultative Assembly (MPR) no longer holds the power to determine the direction of the nation. National policies are formulated by the President and coordinated through Bappenas within the framework of the National Long-Term Development Plan (RPJPN) and the National Medium-Term Development Plan (RPJMN). |
| <b>President's Position</b>    | The President is the executor (mandatary) of the MPR, responsible for implementing the GBHN and reporting to the MPR at the end of each term of office.       | The President acts as head of government who is directly elected by the people, formulating and implementing development plans without a mandate from the MPR.   |

<sup>21</sup> Dewan Redaksi, "Rancang Bangun GBHN" (30 August 2016), online: *Aktual.com* <<https://aktual.com/rancang-bangun-gbhn/>>.

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|---|--|--|
| <b>Development Planning Instruments</b>     | GBHN serves as the main national direction that guides the five-year development plan (REPELITA)                                 | The long-term plan (RPJPN) and medium-term plan (RPJMN) replaced the GBHN as instruments for development direction and policy coherence.                                 |
| <b>Accountability Mechanism</b>             | Political accountability is implemented through MPR evaluation and potential dismissal if the President deviates from the GBHN.  | Accountability is implemented through general elections and parliamentary oversight mechanisms, reflecting democratic legitimacy rather than hierarchical subordination. |
| <b>Political-Administrative Orientation</b> | Centralistic and directive, with a top-down policy structure that reflects a unitary and hierarchical conception of sovereignty. | Decentralization and pragmatics, emphasizing policy coherence, technocratic planning, and participatory governance.  |

Fundamental changes to the 1945 Constitution resulted in the elimination of State Policy from the Indonesian Constitution. Although these changes were seen as improving constitutional life and affirming constitutional supremacy and the principles of constitutional democracy,<sup>22</sup> it also raises a long-standing philosophical dilemma.<sup>23</sup> The elimination of the State Policy clause and its model in the 1945 Constitution occurred as a result of several weaknesses that emerged during the amendment process, such as the irregularity of the Constitution's systematics; the influence of political party identities and interests; the absurdity of the parliamentary chamber system; and the ambiguity of the government system.<sup>24</sup>

The primary rationale behind the amendments was an effort to refine and strengthen the presidential system of government. Direct presidential election by the people was the primary consequence, which automatically eliminated the President's role as the MPR's mandatary. This change also resulted in the

<sup>22</sup> Dudik Djaja Sidarta & Subekti, "KONSTRUKSI FILOSOFIS HALUAN NEGARA DIKAITKAN DENGAN HUBUNGAN ANTARA MPR DAN PRESIDEN SEBELUM DAN SESUDAH AMANDEMEN UUD 1945" (2021) 6:1 Jurnal Hukum dan Kenotariatan 311–322.

<sup>23</sup> Ilhamdi Putra, "KARAKTER HALUAN NEGARA DARI MASA KE MASA DAN IMPLIKASINYA DALAM SISTEM KETATANEGARAAN INDONESIA PASCAREFORMASI" (2023) 7:1 Unes Journal of Swara Justisia 112–132.

<sup>24</sup> Efriza Efriza, "POLEMIK: GARIS-GARIS BESAR HALUAN NEGARA (GBHN) DAN RENCANA PEMBANGUNAN JANGKA PANJANG (RPJP), DAN EKSISTENSI MPR" (2020) 1:1 PARAPOLITIKA: Journal of Politics and Democracy Studies 54–76.

MPR no longer being the supreme body of state, thus losing its authority to determine the direction of the nation. This shift was further emphasized through Law Number 25 of 2004 concerning the National Development Planning System (SPPN).<sup>25</sup>

The crux of the State Policy's antinomy lies in the inconsistencies that emerged from fundamental changes post-reform. The National Policy Guidelines (SPPN), established through Law No. 25 of 2004, marked a turning point. A comparison between the GBHN and post-GBHN eras reveals a fundamental shift:<sup>26</sup>

1. Institutional Authority: The People's Consultative Assembly (MPR) no longer has the authority to determine the direction of the nation; national policies are now formulated by the President and coordinated through Bappenas within the framework of the National Medium-Term Development Plan (RPJPN) and National Medium-Term Development Plan (RPJMN);
2. Position of the President: The President, who was previously the MPR's executive (mandatary), now acts as the head of government directly elected by the people, formulating and executing development plans without an MPR mandate; and
3. Accountability: Accountability is now carried out through general elections and parliamentary oversight, reflecting democratic legitimacy.

A fundamental inconsistency occurs between the model of state direction originally established by the MPR (Article 3 of the 1945 Constitution) and one of the reasons for the basic agreement on the amendment, namely to strengthen the presidential system.<sup>27</sup> Although the Explanation of the SPPN Law acknowledges the lack of continuity between direct elections and the existing State Policy model (GBHN), it still acknowledges the Constitutional mandate to implement development.<sup>28</sup>

The SPPN delegates this to the long-term and medium-term development plan model (RPJPN and/or RPJMN). This provision indicates that the affirmation of the presidential system does not align with the collective will in national development planning, but rather is based solely on the wishes and interests of candidate pairs and supporting political parties. Consequently, one element

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<sup>25</sup> Zennis Helen, Kiki Yulinda & Wira Okta Viana, "Perdebatan Payung Hukum Pokok-Pokok Haluan Negara Pasca Amendemen UUD 1945" (2022) 1:10 *Jurnal Cakrawala Ilmiah* 2625–2636.

<sup>26</sup> Sri Nur Hari Susanto, "PERGESERAN KEKUASAAN LEMBAGA NEGARA PASCA AMANDEMEN UUD 1945" (2014) 43:2 *Masalah-Masalah Hukum* 279–288.

<sup>27</sup> Dudik Djaja Sidarta & Subekti, "KONSTRUKSI FILOSOFIS HALUAN NEGARA DIKAITKAN DENGAN HUBUNGAN ANTARA MPR DAN PRESIDEN SEBELUM DAN SESUDAH AMANDEMEN UUD 1945" (2021) 6:1 *Jurnal Hukum dan Kenotariatan* 311–322.

<sup>28</sup> Septi Nur Wijayanti, "Studi Evaluasi Terhadap Amandemen UUD 1945 (Amandemen Sebagai Upaya Pemenuhan Kebutuhan Hukum Masyarakat Indonesia)" (2009) 3:5 *Jurnal Media Hukum* 35835.

of national development that is difficult to implement is gradual, sustainable, and continuous planning, which relies solely on the will of the President, as the holder of executive power, and the ruling political power group.<sup>29</sup>

The second antinomy is the normative vacuum at the highest level of fundamental policy planning, which ultimately triggered the re-emergence of the State Policy discourse. The abolition of the GBHN (State Policy Guidelines) eliminated the basic legal function of planning, which initially served as a moral guideline to ensure state policies were implemented within the Constitution. The discourse on reviving the state's direction is driven by several considerations:

1. The current state development system is unintegrated and unfocused, and tends to be fragile and short-term;
2. Changes in the head of government have also altered the vision, mission, and development programs;
3. The National Policy Guidelines (SPPN) are seen as binding only on executive power holders, not binding and regulating other branches of state power; and
4. The achievement of the goals of the nation and state as stipulated in the 1945 Constitution must be carried out by all branches of government and state institutions.

Reviewing the importance of the GBHN as a comprehensive and targeted development reference, as well as the need for a long-term, more sustainable national development vision framework integrated between the central and regional governments, Jimly Asshiddiqie assessed,<sup>30</sup> the current RPJP (both national and regional) is still not functioning optimally, resulting in misaligned and unsustainable development, particularly with the implementation of general and regional elections.

The resulting debate is inevitable: some argue that the State Policy in a presidential system based on constitutional democracy will not have absolute implications for executive, legislative, or judicial powers. However, others argue that reinstating the State Policy model will have significant impacts and changes on the state system, concerning the governance system, the relationships between state institutions, and the functions of each state institution. This antinomy, characterized by the State Policy being "sidelined and expected," demonstrates the widely recognized need for sustainable

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<sup>29</sup> Dymas Yulia Putri Kusumaningtyas, "PROBLEMATIKA MODEL PERENCANAAN PEMBANGUNAN NASIONAL PASCA-AMANDEMEN UNDANG-UNDANG DASAR NEGARA" (2018) 11:1 Ummul Qura Jurnal Institut Pesantren Sunan Drajat (INSUD) Lamongan 1–15.

<sup>30</sup> antaranewscom, "Jimly Asshiddiqie: Penting menghidupkan kembali GBHN" (24 October 2019), online: *Antara News* <<https://www.antaraneews.com/berita/1129848/jimly-asshiddiqie-penting-menghidupkan-kembali-gbhn>>.

development guidelines, which must be embodied in legally binding, regulatory frameworks as constitutional norms.

### **The Existence of a Constitutional State Policy Model that is Comprehensive, Integrated, and Binding to All Branches of State Power**

The previous discussion has identified an antinomy in the Indonesian constitutional system following the amendments to the 1945 Constitution: on the one hand, the GBHN (State Guidelines) were abolished along with the strengthening of the presidential system, but on the other hand, the need for comprehensive and sustainable national development guidelines is increasingly pressing. This normative vacuum, caused by the executive-centric nature of the National Development Planning System (SPPN), has created policy discontinuities and hampered the achievement of the nation's ideals. Therefore, the current pressing challenge is to formulate a new State Policy model that is not only present but also constitutionally comprehensive, integrated, sustainable, and binding on all branches of state power: the Executive, Legislative, and Judicial.

The existence of an ideal State Policy model must be able to resolve the post-reform paradox without damaging the core of the presidential system that has been strengthened.<sup>31</sup> This model must embody a strong constitutional direction, serve as a legal interpretation of Pancasila and the 1945 Constitution, and ensure long-term and sustainable public policy. The most rational solution is to reconstruct the Principles of State Policy (PPHN), strategically positioned within the legal hierarchy and supported by a strengthened system of checks and balances between institutions.

The idea of restoring state policy in Indonesia, which binds all branches of government, including the judiciary in its judicial review function, has important precedent in global constitutional practice. Three jurisdictions—India, Brazil, and South Africa—provide significant comparative models in which development guidelines or directive principles of the state serve as an interpretive benchmark for the judiciary in examining generally binding legislation, even though they cannot be directly tested.

#### **1. India**

The Indian Constitution contains Directive Principles of State Policy (DPSP) in Part IV which are explicitly declared as “non-justiciable” under Article 37. The DPSP encompass principles of development and social justice including

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<sup>31</sup> Muhtadi Muhtadi & Zulkarnain Ridlwan, “Reinstating the National Guidelines of State Policy within Indonesia’s Presidential System: Exploring the Possibilities” (2023) 17:2 *Fiat Justisia: Jurnal Ilmu Hukum* 131–142.

equitable distribution of resources (Article 39), security of adequate livelihoods, and protection of workers and children which are not directly enforceable through the courts but are considered “fundamental in the governance of the country”.<sup>32</sup>

India's constitutional design reflects a compromise between justiciable negative rights (civil and political rights) and programmatic positive rights (socio-economic rights). However, the Indian constitution-makers deliberately positioned the DPSP as a guideline for the legislature and executive in formulating policy.<sup>33</sup>

The DPSP has been used to enrich and broaden the interpretation of fundamental rights, particularly Article 21 (the right to life and personal liberty). In a series of decisions, the Supreme Court has interpreted the "right to life" broadly to encompass the right to livelihood, the right to health, the right to education, and the right to a clean environment, as informed by the relevant DPSP.

In *Olga Tellis v. Bombay Municipal Corporation* (1985), the court held that the DPSP "are fundamental in the governance of the country" and should be given equal weight with fundamental rights in assessing government policies. The court affirmed that the right to life includes the right to livelihood, referring to Article 39(a) of the DPSP.

The DPSP serves as a standard for assessing "reasonableness" and "public purpose" when legislation restricts fundamental rights. In *State of Bihar v. Kameshwar Singh* (1952), the Supreme Court held that an agrarian reform law implementing Articles 39(b) and (c) of the DPSP could be justified as a legitimate "public purpose" even though it restricted property rights.<sup>34</sup>

In *Bijay Cotton Mills v. State of Ajmer* (1955) and *Pathumma v. State of Kerala* (1978), the courts used the DPSP as a yardstick to determine the reasonableness of restrictions on fundamental rights. This approach allows the state to pursue a socio-economic justice agenda while still respecting fundamental rights.

The DPSP is used to validate laws designed to implement principles of social justice. Article 31C (introduced through the 25th Amendment, 1971) explicitly protects laws giving effect to Articles 39(b) and (c) of the DPSP from challenges under Articles 14 and 19 of the Constitution. Although the Supreme Court in *Kesavananda Bharati and Minerva Mills* (1980) limited the scope of Article 31C and affirmed the supremacy of the basic structure, the court nevertheless

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<sup>32</sup> Devdatta Mukherjee, "JUDICIAL IMPLEMENTATION OF DIRECTIVE PRINCIPLES OF STATE POLICY: CRITICAL PERSPECTIVES".

<sup>33</sup> B A Gebeye, *The Potential of Directive Principles of State Policy for the Judicial Enforcement of Socio-Economic Rights: A Comparative Study of Ethiopia and India* (2016).

<sup>34</sup> A. David Ambrose, "Directive Principles of State Policy and Distribution of Material Resources with Special Reference to Natural Resources – Recent Trends" (2013) 55:1 *Journal of the Indian Law Institute* 1–20.

recognized that the DPSP could justify legislative intervention for socio-economic justice.

The Kesavananda Bharati (1973) judgment affirmed that the DPSP is an integral part of India's constitutional identity. The Supreme Court stated that although the DPSPs are not directly enforceable, they constitute "the mandate to build a welfare state" and are part of the basic features of the Constitution. Therefore, any law aimed at implementing the DPSPs must be assessed not only on procedural compliance but also on substance, informed by the DPSP's transformative values.

## **2. Brazil**

The 1988 Brazilian Constitution established a three-tier budget planning system in Article 165: Plano Plurianual (PPA or Multi-Year Plan), Lei de Diretrizes Orçamentárias (LDO or Budgetary Guidelines Law), and Lei Orçamentária Anual (LOA or Annual Budget Law).<sup>35</sup> The PPA, established for a four-year period, "must establish, regionally, guidelines, objectives, and targets for federal government spending." Although the PPA is a legislative instrument (not a constitutional norm), its mandate stems directly from Article 165 of the 1988 Constitution, granting its function constitutional legitimacy.

Brazil's Federal Constitutional Court (Supremo Tribunal Federal - STF) has developed jurisprudence recognizing the PPA as an interpretative instrument in disputes related to fiscal policy and the fulfillment of social rights. The STF has progressively recognized the justification of socioeconomic rights guaranteed by the 1988 Constitution. In several cases, the STF has used the PPA as a reference to assess whether the government has fulfilled its constitutional obligation to realize social rights such as health, education, and housing.

In ADPF 45 (2004), Minister Celso de Mello, as rapporteur, recognized that the ADPF is an appropriate instrument to ensure the implementation of constitutional health policies. The court held that the judiciary should not be passive in the face of neglect regarding second-generation rights, signaling that even budgetary measures are subject to judicial review. Although the ruling was issued in a monocratic manner and the case ultimately lost its object, it remains paradigmatic because it reveals a new understanding of the role of the judiciary in the realization of social rights.

The STF uses the PPA as a standard for assessing the reasonableness of government budget allocations. When the government diverts development funds from programs stipulated in the PPA to the payment of large salaries and allowances of public officials or unsustainable programs without

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<sup>35</sup> Robson Zuccolotto et al, "The primacy of management over planning in Brazilian states" (2022) 16 *Revista de Contabilidade e Organizações*, online: <<https://www.redalyc.org/journal/2352/235272781004/html/>>.

sufficient justification, the court can order the government to prioritize sustainable development programs in accordance with the PPA.

In cases involving the implementation of individual budget amendments (Constitutional Amendment 86/2015), the STF acknowledged that while the Executive has discretion in budget implementation, this discretion is limited by the constitutional and planning commitments set out in the PPA. Research shows that after EC 86/2015, the amount paid and the number of individual amendments executed increased, while the profile of legislators with executed amendments also changed: being part of a government coalition became less important.

The STF has adopted two key interpretive principles in social rights cases: proportionality and the reserve of the possible. These principles serve as interpretive standards for balancing budgetary constraints with the need to uphold social rights.

The STF states that "the implementation of each of these rights must result in a reduction of social and economic inequality." In Brazil's constitutional system, there can be no doubt that the goal of the system protecting social and economic rights is to reduce inequality. This is evident in the preamble to the 1988 Federal Constitution, which clearly establishes that one of the primary functions of the Brazilian government is equality, in the sense of the word defined in the third clause of Article 3, which establishes as one of the four fundamental goals of the Federative Republic of Brazil "to eradicate poverty and substandard living conditions and to reduce social and regional inequalities."

The STF has demonstrated judicial activism in upholding social rights, particularly in health cases where courts have ordered the state to provide medicines and medical care despite budgetary constraints. Courts use the PPA as a reference to determine whether the state has sufficient resources to fulfill its constitutional obligations.

In practice, the STF has stated that judicial decisions can function as "triggers" or "inputs" in the public policy cycle. When the judiciary determines the realization of positive benefits by the state, it directly influences the institutional and budgetary dynamics of the public administration in the so-called public policy formulation cycle.

### **3. South Africa**

The South African Constitution includes directly justiciable socio-economic rights in the Bill of Rights. These rights include the right to housing (Article 26), health care, food, water, and social security (Article 27), and education (Article 29). Articles 26 and 27 stipulate that "the State shall take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right." This formulation reflects a balanced

approach between recognizing positive rights and realistically acknowledging resource limitations.

The National Development Plan (NDP), launched in 2012, is an action plan to secure South Africa's future as enshrined in the Constitution. The NDP aims to eradicate poverty and reduce inequality by 2030.<sup>36</sup> The National Planning Commission (NPC) is not a constitutional norm but a policy document developed by the National Planning Commission and adopted by the government. The NDP sets out six key pillars that represent the plan's broad objectives of eradicating poverty and reducing inequality.

Furthermore, the South African Constitutional Court has developed the reasonableness test as a standard of review for assessing the government's compliance with its constitutional obligations regarding socio-economic rights through several of its decisions.

In the Grootboom case, the Constitutional Court established a reasonableness framework for assessing the government's housing program. The court stated:

*"The Constitution requires the State to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. Their interconnectedness needs to be taken into account in interpreting the socio-economic rights."*

The court emphasized that government programs must be "reasonable" and must include measures for those in immediate need of assistance.

In *Khosa v. Minister of Social Development* (2004), the Constitutional Court ruled that the exclusion of permanent residents from social assistance was unconstitutional. The court rejected the government's argument that there were insufficient budgetary resources to extend social assistance to permanent residents, reviewing available information and noting the amount already spent on social assistance for citizens.

Although the NDP lacks constitutional status, the Constitutional Court has used it to:<sup>37</sup>

1. Assessing the socio-economic context: The NDP provides data and analysis on poverty, inequality, and development challenges in South Africa, which the court uses to understand the context in which socio-economic rights should be realized.
2. Determining the standard of reasonableness: The NDP sets national development targets and priorities, which serve as a benchmark for

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<sup>36</sup> Mandisi Matyana & Xolani Thusi, "Unemployment and poverty in South Africa: Assessing the National Development Plan 2030 predictions" (2023).

<sup>37</sup> David Francis & Edward Webster, "Poverty and inequality in South Africa: critical reflections" (2019) 36:6 *Development Southern Africa* 788–802.

assessing whether government policies are “reasonable” in the context of resource availability and the urgency of needs.

3. Linking rights to constitutional values: The NDP affirms the constitutional commitment to social transformation, equality, and human dignity, which the court uses to inform the interpretation of socio-economic rights.

Theoretically, adherence to State Policy is tested by the principles of the Rule of Law and legislative integrity. Legal philosophers such as Jeremy Waldron emphasize the importance of legal integrity, where all state policies must be coherent and consistent with higher fundamental values, namely the Constitution.<sup>38</sup> In this context, the State Policy is the embodiment of this principle of integrity. In the Indonesian context, the National Policy on Public Policy (PPHN) must serve as a bridge between fundamental norms (Pancasila and the 1945 Constitution) and implementing norms (laws and regulations thereunder).

The PPHN model must possess two key characteristics:

1. Non-Justiciable Nature: The PPHN should not be a norm directly enforceable by the courts, lest it interfere with the policy domains of the executive and legislative branches. This maintains the fundamental principle of India's DPSP, which ensures policy flexibility.
2. Regulative and Evaluative Nature: The PPHN serves as a regulatory basis for the formation of laws and as a criterion for evaluating the performance of the Executive by the Legislature.

The ideal reconstruction of the PPHN places the MPR as the authority that establishes the PPHN, but in its capacity as a high state institution, no longer the highest institution. This model is realized through an MPR Decree (TAP MPR).

The selection of the MPR as the deciding institution is based on historical and philosophical reasons: the MPR is the broadest collective representation of the people (the House of Representatives and the Regional Representatives Council) and ensures that the PPHN is the result of high-level political deliberation, not merely an executive agenda.<sup>39</sup> The PPHN must be stipulated in the form of a Decree of the People's Consultative Assembly (TAP MPR), which is subordinate to the 1945 Constitution but above the Law (UU). To

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<sup>38</sup> Jeremy Waldron, *The Rule of Law and the Measure of Property*, 1st edn (Cambridge University Press, 2012).

<sup>39</sup> D Nicky Fahrizal & Prajna Delfina Dwayne, “The People’s Consultative Assembly (MPR) and the State Policy Outlines (PPHN) in the Post-Fourth Amendment Era of the 1945 Constitution” (2022) 50:3 Indonesian Quarterly, online: <<https://journals.csis.or.id/index.php/iq/article/view/2006>>.

ensure its comprehensive legal binding force, the following must be implemented:

1. Strengthening the Status of the TAP MPR: The Law on the Formation of Legislation must explicitly recognize that the TAP MPR regulating the PPHN is above the Law and below the 1945 Constitution.
2. Legislative Linkage: This position ensures that any law enacted by The House of Representatives (DPR) and the President must not substantially contradict the PPHN, thereby guaranteeing legislative integrity.

The PPHN must be the highest reference point that integrates all planning documents:

1. PPHN (MPR Decree): A very long-term vision and principles (25-50 years), fundamental in nature.
2. RPJPN (Law/Presidential Decree): A long-term plan (20 years) that must translate the PPHN into measurable programs.
3. RPJMN (Presidential Decree): A medium-term plan (5 years) that must implement the RPJPN.

With this model, the PPHN forces vertical coherence from fundamental to operational policies, thereby eliminating the executive-centric nature of the SPPN.

Furthermore, a comprehensive mechanism of engagement and checks and balances is needed. PPHN engagement must be realized by strengthening the role of the three branches of state power: the Executive, the Legislative, and the Judiciary.

First, the PPHN binds the Executive through regulatory and evaluative means. The President must use the PPHN as a philosophical and programmatic basis for formulating the vision and mission, the RPJPN, and the APBN.<sup>40</sup> Failure to comply with the PPHN is not grounds for impeachment, but rather grounds for political accountability. The MPR's function is to evaluate the President's annual report regarding the compliance of policy implementation with the PPHN.

Second, the Legislative Engagement is substantial.<sup>41</sup> The DPR and the President are obliged to ensure that every draft law (RUU) under discussion does not deviate from or contradict the principles of the PPHN. The PPHN

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<sup>40</sup> Bambang Soesatyo, "THE URGENCY OF THE STAPLES OF STATE POLICY AS A LEGAL UMBRELLA FOR THE SUSTAINABLE DEVELOPMENT IMPLEMENTATION TO FACE THE INDUSTRIAL REVOLUTION 5.0." (2022) 23:1 *Central Asia & the Caucasus* (14046091), online: <<https://repository.ut.ac.id/10041/1/Jurnal%20Pak%20Bamsuet.pdf>>.

<sup>41</sup> Tarunabh Khaitan, "Directive principles and the expressive accommodation of ideological dissenters" (2018) 16:2 *Int J Const Law* 389-420.

serves as an ideological filter and guideline in the legislative process. It ensures that the resulting legal product is nation-centric, not party-centric.

Third, the involvement of the judiciary (Constitutional Court), which is the most crucial mechanism. Although the PPHN is non-justiciable, the Constitutional Court (MK) must be given the authority to review laws against the PPHN. The MK can review the material of a law against the 1945 Constitution. However, with the PPHN, the MK needs to have the authority to annul laws that clearly contradict the PPHN (Jimly Asshiddiqie argues that the MK can interpret constitutional direction). This aligns with the constitutional review approach in many countries, which considers the principles of state direction as an interpretive guide.

Conversely, the MK must have the authority to review the MPR Decree on the PPHN against the 1945 Constitution, ensuring that the PPHN itself does not deviate from the Constitution. This checks and balances mechanism ensures that no MPR product falls outside the scope of Constitutional oversight.

This PPHN model provides a comprehensive and sustainable solution for Indonesia: First, long-term sustainability. With the PPHN as a very long-term master plan, national development becomes resistant to changes in the President's vision and mission every five years. This addresses the problem of policy discontinuity complained of by many parties.

Second, the PPHN, which binds the MPR (regional representation) and serves as the basis for the RPJPN/RPJMN, automatically forces regional governments to align their RPJPD/RPJMD with the mutually agreed-upon national development direction.

Third, the PPHN is stipulated through an MPR Decree (TAP MPR) which is regulative, not directive or mandatory. The President is not impeached for violating the PPHN; instead, his accountability is assessed by the MPR. This maintains the principle of sovereignty in the hands of the people and strengthens the system of checks and balances between state institutions. The PPHN acts as a "mirror of the Constitution," not "a leash" on the President by the MPR.

Regarding the possibility of implementing this PPHN model, several realistic considerations need to be put forward. From an institutional perspective, the reconstruction of the PPHN through a TAP MPR does not require a politically risky amendment to the 1945 Constitution, but rather simply through optimizing the MPR's existing authority under Article 3 of the 1945 Constitution. This possibility is wide open if there is sufficient political consensus among the DPR and DPD factions as members of the MPR. From a constitutional perspective, the PPHN model, which is regulative—not mandatory—is compatible with the strengthened presidential system post-reform. The main challenge lies in political resistance from parties that tend to maintain partisan primacy in formulating the president's vision and

mission. However, the comparative experiences of India (DPSP), Brazil (PPA), and South Africa (NDP) demonstrate that state policy instruments can function effectively even in strong constitutional democracies, provided they are designed with proportional and non-absolute binding mechanisms.

## **Conclusion**

The dynamics of post-reform Indonesia have resulted in a constitutional antinomy in which the General Guidelines of State Policy (GBHN) were eliminated to strengthen the presidential system, yet at the same time, an urgent need arose for comprehensive national development guidelines. This antinomy manifested itself as a functional paradox of the National Development Planning System (SPPN), which is executive-centric and discontinuous, resulting in state planning tending to be fragile, short-term, and not binding on all branches of government. This condition created a normative vacuum in the fundamental policy direction that should function as a legal interpretation of the Constitution's ideals. Reconstruction of the General Guidelines of State Policy (PPHN) through a People's Consultative Assembly Decree (TAP MPR) is the most constitutionally realistic solution. The TAP MPR route does not require an amendment to the 1945 Constitution—which carries high political risks—and its implementation is quite likely if supported by cross-faction political consensus in the MPR. This reconstruction requires three strengthenings: (1) empowering the MPR's authority to formulate State Policy; (2) establishing the position of the TAP MPR in the hierarchy of laws and regulations above laws; and (3) strengthening the authority of the Constitutional Court to test the MPR Decree against the 1945 Constitution. In this way, the PPHN can become a comprehensive, regulatory and binding constitutional guideline for all branches of state power.

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