BUKU AJAR

BAHASA INGGRIS HUKUM

PENULIS

Dr. Esti Royani, S.H., S.Pd., M.Pd., M.H., C.PS., C.M

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Isi di luar tanggung jawab penerbit dan percetakan

Kata Pengantar

Assalamualaikum Warahmatullahi Wabarakatuh,

Puji syukur saya panjatkan kehadapan Tuhan Yang Maha Esa karena berkat rahmatNya lah akhirnya Buku Ajar " Bahasa Inggris Hukum " ini dapat diselesaikan.

Buku ajar Bahasa Inggris Hukum adalah salah satu sarana yang sangat diperlukan oleh dosen dan mahasiswa sebagai sebuah pedoman dalam melaksanakan perkuliahan. Buku Ajar Bahasa Inggris Hukum ini disusun dengan harapan agar setelah menempuh mata kuliah ini mahasiswa mampu menganalisis secara konferensif berbagai masalah yang berkaitan dengan : Introduction to Law and the Era of Reformation, The beginning of Law and the " Adat Recht", menentukan penggunaan The Present Perfect Tense (S + Have/Has + V3/ Past Participle) di dalam kalimat, An Introduction to Indonesian Law and the President of the Materially Richest Nation of the World, Legal Education Reform in Indonesia, Adat Recht Snouck Hurgronje and Islam, The People's Consultative Assembly (MPR), High Institution of the State/ The Parliament (DPR), Military Court, The Five Year National Development Plan, The Conception Sources and System of International Law, Implementing the UN Convention Against Corruption (UNCAC) 2003 in Indonesia, dan The Subject of International Law.

Buku ajar Bahasa Inggris Hukum ini disusun dengan model kuliah secara daring dan Luring, yang diharapkan akan dapat memperdalam penguasaan mahasiswa akan setiap materi yang dipelajari.

Akhir kata kami ucapkan terima kasih yang tulus kepada :

1. Dekan Fakultas Hukum Universitas 17 Agustus 1945 Samarinda dan para Wakil Dekan yang telah mendorong diterbitkannya buku ajar ini.
2. Para pihak yang telah membantu penyelesaian buku ajar ini .

Akhirnya , besar harapan kami semoga kehadiran Buku Ajar “ Bahasa Inggris Hukum “ ini dapat diterima dan dimanfaatkan dengan sebaik – baiknya.

PENULIS

Dr. Esti Royani, S.H., S.Pd., M.Pd., M.H., C.PS., C,Me

KATA SAMBUTAN
DEKAN FAKULTAS HUKUM UNIVERSITAS 17 AGUSTUS 1945 SAMARINDA

Assalamualaikum Warahmatullahi Wabarakatuh,

Puji syukur kehadapan Tuhan Yang Maha Esa, atas anugrah dan karuniaNYA telah diterbitkan Buku Ajar BahasaInggris Hukum sebagai buku pengantar untuk materi Kuliah BahasaInggris Hukum pada Fakultas Hukum Universitas 17 Agustus 1945 Samarinda .Kami menyambut baik terbitnya Buku Ajar ini, semoga buku ini bermanfaat tidak hanya bagi para mahasiswa di Fakultas Hukum UNTAG 1945 Samarinda, namum juga dipergunakan sebagai bahan referensi bagi para pengajar dan mahasiswa lainnya.

Dengan terbitnya Buku Ajar Bahasa Inggris Hukum ini, maka menjadi sebuah kebanggaan karena bertambah lagi koleksi buku yang diterbitkan oleh dosen – dosen Fakultas Hukum UNTAG 1945 Samarinda. Hal ini tentu sangat baik untuk atmosfir pendidikan hukum di Indonesia, oleh karenanya kami menyambutnya dengan suka cita. Buku ini memuat materi – materi dasar Bahasa Inggris Hukum.

Kami mengucapkan selamat atas terbitnya Buku Ajar Bahasa Inggris Hukum ini semoga bermanfaat. Semoga para penulis tidak henti – hentinya berkarya, sehingga tercipta buku – buku yang sesuai dengan perkembangan ilmu hukum untuk melengkapi kepustakaan ilmu pengetahuan hukum yang telah ada.

Samarinda, 15 Maret 2021

Dekan Fakultas Hukum UNTAG 1945 Samarinda

Kunti Widayati, S.H., M.Hum

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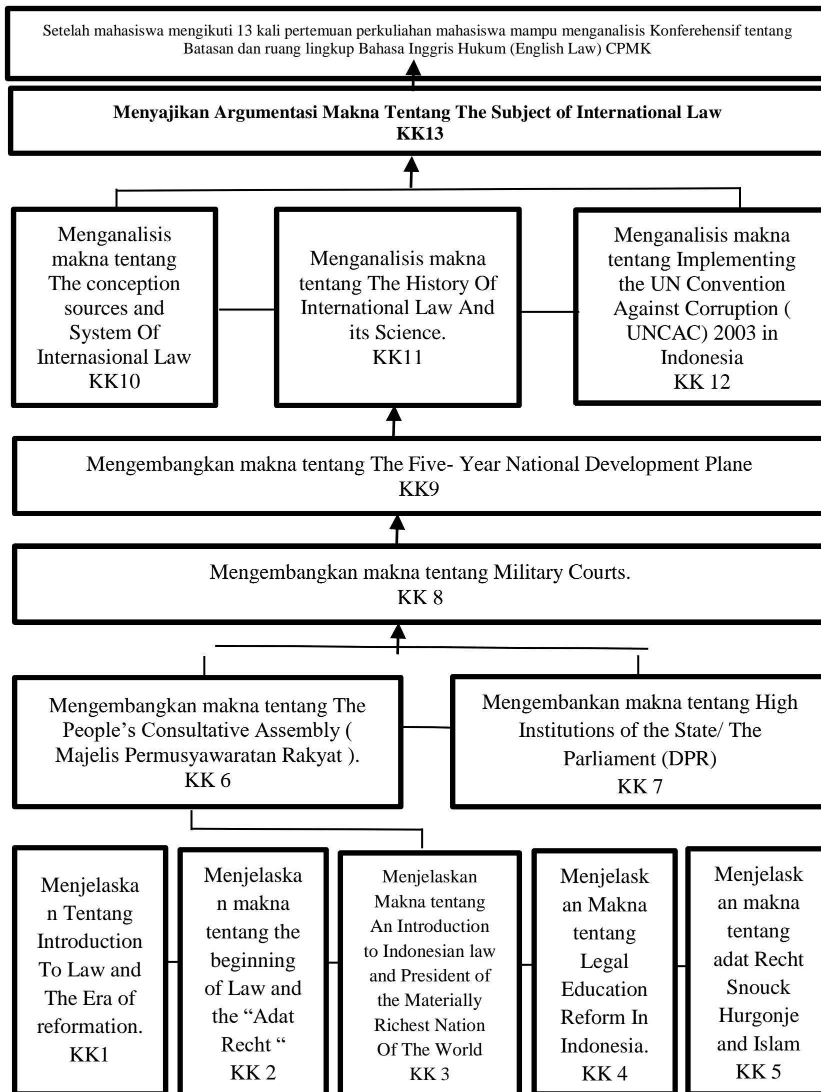
I. ANALISIS CAPAIAN PEMBELAJARAN

Peta (Capaian Pembelajaran)



II. IDENTITAS MATAKULIAH

PROGRAM STUDI	:	Ilmu Hukum
MATAKULIAH	:	Bahasa Inggris Hukum
KODE MATAKULIAH	:	114042
SKS	:	2
SEMESTER	:	IV
MATAKULIAH PRASYARAT	:	---
DOSEN PENGAMPU	:	Dr. Esti Royani, S.H., S.Pd., M.Pd., M.H., C.PS., C.Me.

III. MANFAAT MATAKULIAH

Untuk meningkatkan kemampuan Mahasiswa dalam memahami , mengerti dan mengembangkan serta memberikan argumentasi tentang kekhasan Bahasa atau Style Bahasa (Legal Term) yang dipergunakan dalam penulisan artikel – artikel hukum maupun dokumen – dokumen hukum serta mampu membedakan Legal English

dengan yang pada umumnya dipergunakan dalam penulisan artikel – artikel yang bukan hukum.

IV. CAPAIAN PEMBELAJARAN

Mahasiswa mampu menganalisis secara konferehensif tentang Batasan dan ruang lingkup Bahasa Inggris Hukum (English Law)

V. DESKRIPSI MATA KULIAH

Mata kuliah ini membahas secara mendalam mengenai Introduction to Law and the Era of Reformation, The beginning of Law and the " Adat Recht", menentukan penggunaan The Present Perfect Tense (S + Have/Has + V3/ Past Participle) di dalam kalimat, An Introduction Law Richest Nation of the World, Legal Education Reform in Indonesia, Adat Recht Snouck Hurgronje and Islam, The People's Consultative Assembly (MPR), High Institution of the State/ The Parliament (DPR), Military Court, The Five Year National Development Plan, The Conception Sources and System of International Law, Implementing the UN Convention Against Corruption (UNCAC) 2003 in Indonesia, dan The Subject of International Law.

VI. PERSYARATAN MENGIKUTI MATA KULIAH

Mata kuliah Bahasa Inggris Hukum merupakan mata kuliah Wajib Institusional (Universitas / Fakultas) yang ditawarkan pada semester 2 (dua).

VII. ORGANISASI MATERI

Materi kuliah terdiri dari beberapa pokok bahasan , yang dapat digambarkan sebagai berikut :

Introduction to Law and the Era of Reformation

- Development After Independence

The beginning of Law and the " Adat Recht",

- What Is Legal English?
- The concep to flaw: Adat and adat law as an invention of adat law scholars
- Adat lawand custom
- Adat lawor customary law

An Introduction to Indonesian Law and the President of the Materially Richest Nation of the World

Legal Education Reform Indonesia

- Evaluation of Legal Education Reform

Adat Recht Snouck Hurgronje And Islam

- The system of Islam
- The practice of Islam

The People's Consultative Assembly

- Origins
- Federal Era and Parliamentary Democracy Era
- Guided Democracy Era/Old Order
- Composition
- Transition to New Order

High Institutions Of The State / The Parliament (DPR)

- History
- Japanese Occupation
- KNIP
- The Federal Legislature
- Liberal Democracy
- Guided Democracy

Military Courts

The Five – Year National Development Plan

The Concept Of International Law

- Sources of International law

The History Of International Law and Its Science

Implementing The United Nation Convention Against Corruption (UNCAC) 2003 In Indonesia

The Subject Of International Law

- Subjects of International Law

- Who Is a Subject Of International Law?

- How Do We Determine If An Entity Is a Subject Of International Law?

VIII. METODE, STRATEGI DAN PELAKSANAAN PROSES PEMBELAJARAN

1. Metode Pembelajaran

Metode pembelajaran adalah Problem Based Learning (PBL), pusat pembelajaran ada pada mahasiswa Metode yang diterapkan adalah " Belajar "(Learning) bukan " Mengajar " (

Teaching) Dosen memfasilitasi mahasiswa untuk belajar.

2. Strategi Pembelajaran

Kombinasi daring (3 kali pertemuan sinkronus, tatap maya, ceramah, tanya jawab, diskusi dalam sebulan) dan luring (1 kali pertemuan sinkronus tatap muka, ceramah, tanya jawab, diskusi dalam sebulan). Satu kali pertemuan untuk Learning Contract , Satu kali pertemuan untuk Ujian Tengah Semester dan satu kali pertemuan untuk Ujian Akhir Semester. Total pertemuan 16 kali.

3. Pelaksanaan Proses Pembelajaran

3.1. Strategi dan Teknik Pembelajaran

Perkuliahan tentang sub – sub pokok bahasan dipaparkan dengan alat bantu media zoom, power point serta bahan bacaan tertentu yang dipandang sulit diakses oleh mahasiswa. Sebelum mengikuti perkuliahan mahasiswa sudah mempersiapkan diri (self study) mencari bacaan (materi), membaca dan memahami pokok bahasan yang akan dikuliahkan ,

sesuai dengan arahan (guidance) dalam buku ajar teknik perkuliahan : pemaparan materi, tanya jawab dan diskusi (proses pembelajaran dua arah).

3.2. Strategi Tutorial

A. Mahasiswa mengerjakan tugas – tugas (Discussion Task, Study Task dn Problem Task) sebagaibagian dari self study , berdiskusi dan tutorial presentasi power point.

B. Dalam perkuliahan , mahasiswa diwajibkan :

   Mengumpulkan tugas – tugas yang diberikan tutorial berupa terjemahan kosa kata dan menjawab reading .

IX. TUGAS – TUGAS

Mahasiswa diwajibkan untuk mengerjakan, mempersiapkan, dan membahas tugas – tugas yang ditentukan di dalam Buku Ajar. Tugas – tugas yang harus dikumpulkan berupa menjawab reading, menterjemahkan reading dan mengartikan kosa kata .

X. UJIAN – UJIAN DAN PENILAIAN

A. Ujian :

Ujian dilaksanakan dua kali dalam bentuk tertulis yaitu, Ujian Tengah Semester (UTS) dan Ujian Akhir Semester (UAS).

B.Penilaian :

Penilaian Akhir dan proses pembelajaran ini berdasarkan nilai akhir sesuai Pedoman Fakultas Hukum Universitas 17 Agustus 1945 Samarinda, sebagai berikut :

Nilai Akhir : $\dfrac{(UTS + TT)}{2} + (2 \times UAS)$

Skala Nilai		Penguasaan Kompetensi	Keterangan dengan skala nilai	
Huruf	Angka		0 – 10	0-100
A	4	Sangat Baik	8,0 – 10,0	80-100
B	3	Baik	6,6- 7,2	66 - 72
C	2	Cukup	5.2 – 5.8	5.2-5.8
D	1	Sangat Kurang	4.0 – 4.4	40-44
E	0	Gagal	0.0 – 3.9	10 - 39

XI. BAHAN PUSTAKA

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XII. JADWAL PERKULIAHAN

Jadwal perkuliahan sebagai berikut :

No	Hari/Tanggal	Pokok Bahasan
1.	Senin, 1 Maret 2021	Learning Contract
2.	Senin, 8 Maret 2021	Introduction To Law and The Era Of Reformation
3.	Senin, 15 Maret 2021	The Beginning of Law and The " Adat Recht "
4.	Senin, 22 Maret 2021	An Introduction to Indonesian Law and The President of The Materially Richest Nation of The World.
5.	Senin, 29 Maret 2021	Legal Education Reform in Indonesia
6.	Senin, 5 April 2021	Adat Recht Snouck Hurgronje and Islam
7.	Senin, 12 April 2021	The People's Consultative Assembly and Islam
8.	Senin, 19 April 2021	High Institution of The State / The Parliament (DPR)
9	Senin, 26 April 2021	Military Court

10.	Senin, 3 Mei 2021	The Five Year National Development Plan
11.	Senin, 10 Mei 2021	The Conception Sources and System of International Law
12	Senin, 17 Mei 2021	UTS (Ujian Tengah Semester)
13.	Senin, 24 Mei 2021	The History of International Law and Its Science
14.	Senin, 7 Juni 2021	Implementing The United Nation Convention Against Corruption (UNCAC)
15.	Senin, 14 Juni 2021	The Subject of International Law
16.	Senin, 26 April 2021	UAS (Ujian Akhir Semester)

PERTEMUAN I DAN II

LEARNING CONTRACT

CHAPTER I. INTRODUCTION TO LAW AND THE ERA OF REFORMATION

- Development After Independence

PERTEMUAN III

CHAPTER II. THE BEGINNING OF LAW AND THE "ADAT RECHT"

- What Is Legal English?
- The concep to flaw: Adat and adat law as an invention of adat law scholars
- Adat lawand custom
- Adat lawor customary law

PERTEMUAN IV

CHAPTER III. AN INTRODUCTION TO INDONESIAN LAW AND THE PRESIDENT OF THE MATERIALLY RICHEST NATION OF THE WORLD

PERTEMUAN V

CHAPTER IV. LEGAL EDUCATION REFORM INDONESIA

- Evaluation of Legal Education Reform

PERTEMUAN VI

CHAPTER V. ADAT RECHT SNOUCK HURGRONJE AND ISLAM

- The system of Islam
- The practice of Islam
- The system of Islam
- The practice of Islam

PERTEMUAN VII

CHAPTER VI. THE PEOPLE'S CONSULTATIVE ASSEMBLY

- Origins
- Federal Era and Parliamentary Democracy Era
- Guided Democracy Era/Old Order
- Composition
- Transition to New Order

PERTEMUAN VIII

CHAPTER VII. HIGH INSTITUTIONS OF THE STATE / THE PARLIAMENT (DPR)

- History
- Japanese Occupation
- KNIP
- The Federal Legislature

- Liberal Democracy
- Guided Democracy

PERTEMUAN IX

CHAPTER VIII. MILITARY COURTS

PERTEMUAN X

CHAPTER IX. THE FIVE – YEAR NATIONAL DEVELOPMENT PLAN

PERTEMUAN XI

CHAPTER X THE CONCEPT OF INTERNATIONAL LAW

- Sources of international law

PERTEMUAN XII. UJIAN TENGAH SEMESTER

PERTEMUAN XIII

CHAPTER XI. THE HISTORY OF INTERNATIONAL LAW AND ITS SCIENCE

PERTEMUAN XIV

CHAPTER XII. IMPLEMENTING THE UNITED NATION CONVENTION AGAINST CORRUPTION (UNCAC) 2003 IN INDONESIA

PERTEMUAN XV

CHAPTER XIII. THE SUBJECT OF INTERNATIONAL LAW

- Subjects of International Law
- Who Is a Subject Of International Law?
- How Do We Determine If An Entity Is a Subject Of International Law?

PERTEMUAN XVI. UJIAN AKHIR SEMESTER

Chapter I

INTRODUCTION TO LAW AND THE ERA OF REFORMATION

Most developing countries have identified industrialisation as the most important step in their economic development. For this reason, in many cases, the state has played an important role in fashioning massive industrialisation programs to improve the economy (Jilberto and Mommen 1996). The state's intervention in industrialisation inevitably leads to its involvement in the industrial relations system. The purpose and the degree of the involvement may vary, however, the government's control over the industrial relations system is closely related to the interests of economic development of the country (Siddique 1989:386).

As in other developing countries contexts, the economic history of post- independence Indonesia has been characterised by strong state intervention. In the early phase of the Republic, the Indonesian state was deeply involved in economic activities due to the absence of a significant domestic bourgeoisie capable of replacing the structures of the

colonial Dutch economy or of guiding industrialisation after 1949 (Robison 1986). The subsequent nationalisation of the former Dutch firms in 1957 and the rise of the authoritarian 'New Order ' state in 1965 under President Suharto further strengthened state domination of economic life. The result was corporatist industrial relations with a strong state behind it, which contained the workers within the economic development framework (see Tjandra 2002; Caraway 2004; Ford 1999; Fox 1997).

The state's role changed dramatically when the Asian financial crisis hit Indonesia in 1997. The crisis fractured the foundations of the New Order state, and gave birth to Reformasi (reform) in 1998. Changes in labour law since then are part of a broader push to liberalise Indonesian economic and political life. Having been relatively untouched for more than three decades under the New Order, Indonesian labour law has been transformed from a corporatist model, backed by a strong and powerful state, to the one that is mainly based on market principles.

Although the development of market-based economy began in early 1980s (Feri Dhanu Setyawan and Pangestu 2003; Lee 2003), it is only in a few years since Reformasi that the law had been significantly changed. By this time the

develop mentalist state had significantly weakened, and the economy had shifted from guided or state-led development to market-oriented reform and external liberalisation (see Rosser 2002).

Teri Caraway (2004) has argued that the Indonesian unions took advantage of the labour reform, successfully defending their rights through the labour reform process. Caraway's argument is based upon a claim that the 'protective aspects' of the labour legislation inherited from the New Order period were preserved under the reform process. Combined with international pressure and institutional design, Caraway argued, this protective legacy provided an 'unexpected source of strength for weak labour unions'. This article challenges Caraway's conlcusion arguing that even though some protective aspects of the old legal system were preserved under the labour law reform program, a high degree of flexibility has been built into the new laws, which limits both the scope of protection available and the capacity to implement what protection is mandated in the new framework. The article begins with an examination of the historical development of labour law in Indonesia since its independence in 1945 before showing the package of three new labour laws enacted between 2000 and 2004 that

diminished the protective aspects of Indonesia's framework of labour law and enacted the more liberal labour law model.

Developments
After
Independence

An examination of labour law since reformasi requires some understanding of the evolution of Indonesian labour law, particularly since Independence in 1945. This section briefly explores this historical background and its legacy for contemporary labour law.

After proclaiming independence from the Dutch on 17 August 1945, Indonesia engaged in armed struggle for another four years. Various social groups, including labour groups, participated actively in the campaign. The so-called l*asykar buruh* (labour brigade) were involved in defending workplaces against the Dutch forces, and seized foreign-owned production facilities in the nationalist cause (Trimurti 1980). After the Indonesian government officially assumed sovereignty from the Dutch in December 1949, labour 's contribution to the struggle for independence, especially in the revolutionary period between 1945 and 1949, ensured organised labour movement a place in the post-colonial Indonesian life (Hadiz

1997). The emergence of strong labour unions was also influential in the enactment of a series of labour laws, at the time including the regulation of industrial accident compensation procedures, labour inspection and annual leave.[1]

Labour's influence was evident particularly in policy-making related to the improvement of wages and salaries. There were several new labour laws that could be considered 'progressive', in the sense that they were based on the strong notion of protection for the workers. In 1947, a Safety at Workplace Law (No.33) was promulgated by the provisional government of Amir Sjarifuddin's Cabinet. This law signalled a significant shift in the basic labour policy of the new country which was previously regulated under Articles 1601-1603 of the Colonial Civil Code (Burgerlijk Wetboek), which was more concerned with 'private' contracts between parties based on the liberal notion of 'no work no pay'. In 1948, two other laws, namely the Workers' Protection Law (No.12) and the Labour Inspectorate Law (No.23), were passed.

Law No.12 of 1948 became the primary labour law of the time, setting the tone on labour regulation and protection in the new nation. It covered many aspects of labour protection, such as the prohibition of discrimination in the

[1] Soetandyo Wignjosoebroto, "Development of the National Law and Legal Education in Indonesia in the Post-Colonial Era" may be accessed at

workplace, the 40-hour and six-days working week,[2] the obligation of employers to provide workers' housing, and the prohibition of the employment of children under the age of fourteen. It also guaranteed women the right to take menstruation leave (two days per month) and three months maternity leave, as well as restricting night work. There are no records regarding the enforcement of these laws during the revolutionary period (1945-1949), but they became the foundation of modern Indonesian labour law, eliminating the old colonial labour law and labour policy, and providing the legal basis for labour protection in Indonesia.

With regard to the regulation of industrial conflict, Collective Bargaining Law No.21 of 1954 further strengthened labour unions' legal position by providing for direct negotiation between the unions and the employers, and restricting the rights of employers to dismiss workers without prior approval from the government. Two years later, in 1956, the Indonesian government ratified the International Labour Organisation (ILO) Convention No.98 on the Application of the Principles of the Right to Organise and to Bargain Collectively, which guaranteed trade unions' legal status. In 1957, the Labour Dispute Settlement Law (No.22) was

[2] Ibid., 4.

enacted, replacing the Emergency Law No.16 of 1951,which introduced compulsory arbitration system through tripartite mechanisms.[3] The Termination of Employment in Private Undertakings Law No.12 of 1964 followed this. These two laws required employers to apply for permission to dismiss workers, without which a dismissal was null and void. The second Basic Law promulgated in 1969 (No.14), reaffirmed Law No.12 of 1948, and further guaranteed the rights of workers to join unions, engage in collective bargaining and achieve basic labour standards on occupational health and safety and workers' compensation. These laws remained the pillars of the legislative protection for the Indonesian workers, even in the authoritarian New Order period. On coming to power in 1965, the Suharto New Order regime faced the difficult task of rebuilding a rapidly decaying economy inherited from the previous government. The crisis presented a serious problem for the new regime, but also offered an opportunity to establish legitimacy, which it sought through a promise of future economic development. As noted by Dwight King (1962), the major labour policies of the New Order were thus strongly influenced by its economic goals:

[3] Ibid., 4.[3]

The economic stabilisation program launched in 1966 required wage restraint and the contraction of credit which inhibited the expansion of domestic business and curtailed the creation of new employment. In addition, the government policy of rationalisation of the bureaucracy, which called for steady across the board salary increase for civil servants, assumed smaller increments in the private sector, which caused wage 'pressures' there. Finally the door had been reopened to foreign investors further adding the potential for labour unrest. No doubt each of these factors contributed to the government sense that a controlled labour force was more important than ever (cited in Hadiz 1996:4).

This emphasis on economic stability required tighter labour control. The unions were effectively tamed after Sentral Organisasi Buruh Seluruh Indonesia (SOBSI), the largest union of the pre-New Order period, was caught up in the destruction of the Partai Komunis Indonesia, Indonesian Communist Party (PKI) in 1965-66. Later, in 1973 the remaining unions were encouraged to establish the Federasi Buruh Seluruh Indonesia (FBSI) (All-Indonesia Labour Federation) as the sole, state-sanctioned labour union

federation, while government employees were contained in Korps Pegawai Republik Indonesia (KORPRI) (Indonesian Government's Employees Corps), a 'functional group' rather than a union (see Ford 1999). At the same time the new organisations were directed towards the socio-economic realm and not politics (Hadiz 1996:7-8). In 1985 the government-controlled FBSI was restructured into an even more centralised, hierarchical, and therefore, easily controlled single union called SPSI (All-Indonesia Workers' Union) (Hadiz 1997). The Pancasila Industrial Relations concept was refashioned by the hard-line Minister of Manpower, Admiral Sudomo, who released several ministerial regulations legitimising military involvement in labour disputes, which reached its peak in the murder of Marsinah in 1993 (Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI) 1994).

Although workers' and trade unions' rights were legally recognised in Indonesia under the New Order, in reality it was ministerial-level regulations that determined labour outcomes. During the 1980s several Minister of Manpower regulations were released, under which trade union rights were severely restricted. There were some new unions established due to the relaxation in government policy in the 1990s and growing criticism from international Non Governmental Organisations

(NGOs) and other states, in particular the United States through the Generalised System of Preference (see Human Rights Watch/Asia 1994, Glasius 1999). However, these unions could not operate properly due to the continuous strict policies and repressions from the government. After 1994, no new unions were established, and the number of collective labour agreements remained low. This situation continued for the rest of the decade, relatively without significant challenges from labour, until the economic crisis hit Indonesia in July 1998.

Chapter II

THE BEGINNING OF LAW AND THE "ADAT RECHT"

I. What Is Legal English?

Legal English, often referred to as legalese, is the version of the English language that lawyers and others who are involved in the legal profession, such as judges and legislators, use when discussing the law and law-related issues. It is mostly used in written form, such as in the creation of legal documents and laws, and during court proceedings. The use of Legal English dates back, at least in some form, several thousand years.

There are several unique factors that distinguish Legal English from the more common Standard English with which most people are familiar. Although it is based on Standard English, it requires knowledge of very specific terminology particular to the law, a more precise way of speaking, and even some familiarity with Latin and French. It also has several

quirks with regard to sentence structure and use of words that to the laymen might seem confusing. For instance, instead of a document saying *Mike Jones previously lived there*, it might say something like *Mike Jones heretofore resided in the aforementioned residence*.

Often times, Legal English is needed to make things clearer when Standard English might be ambiguous, hence the use of more specific — albeit complex — words, but it can often be abused. This creates language and communications that are unnecessarily long and confusing. Most of these issues stem from the words used in Legal English, and the way they are put together. Many times two or three words that are redundant are combined together to express something that could be expressed in one word. For instance, a document might use the term *null and void* instead of just saying *invalid.*

Use of these types of phrases, while redundant, are still relatively clear, but they can make documents unnecessarily long and harder to read if there are many of them. Sometimes, words are strung together that, while similar, aren't exactly the same. This creates the ambiguity that was trying to be avoided in the first place. Use of these words in long and unusually

worded sentences, another common feature of Legal English, often adds to the confusion.

Many of the quirks in the use of the modern form stem from its origins. Legal English had its beginnings in pre-historic Britain. Over the centuries, due to wars with French, Latin and Germanic peoples, it transformed into a combination of all of these languages, with many of the terms developed still in use today. The phrase *ad hoc*, commonly used in legal documents, is Latin. The word *tenant* is French in origin. Many times in the past, words from different languages would be used together to avoid any uncertainty, a practice that still is used today.

The use of Legal English used to be isolated to countries that had English as their primary language, such as the United Kingdom and the US, but it is now widespread across the globe due to its use in international business. Many schools that previously taught only Standard English now teach the formal Legal form of the language. There are many sites available on the Internet that solely focus on this type of training.

Two Major Legal System In The World

When break time Gendra and Fuad discuss about topic Legal English

Gendra : Hi…. Fu!!! How are you?

Fuad :Hi Gen, I'm fine! How About you?

Gendra : I'm fine too! So why you look so tired?

Fuad :ooo….nothing. I just finished my task from Mr. Arik. Have you?

Gendra :Oh…. Wait. About what? I'm sorry. I'm forget.

Fuad :oo… About two major legal system in the world

Gendra :Oh My… I'm Not yet

Fuad ;You fool

Gendra : Hey…. No!!! I just forget about it!!

Suddenly Nadina and Bagus Came.

Nadina : Hi Guys

Gendra : Hi Nad, Where you came from?

Nadina : I came from coffee shop, Why?

Gendra : Have you done a task from Mr. Arik?

Nadina : Of Course but truelly I didn't understand about two major legal system in the world

Bagus : Let me try I know about it

Fuad : Awesome… …..you look so good tell me

Bagus : Two major legal system in the world are the Anglo American common law system and Romano Germanic civil law system

Gendra : What the means with American Anglo common law system?

Bagus : Common law system is the system of law originated and developed in England and based on court in decision

Nadina : Hmmm… so how about the civil law system? nt about

Gendra : Civil legal system are different, Their source of law is written law or statute

Bagus : So what different about common law and civil law?

Fuad : The common law the source of the law is unwritten law and then civil law the source it is written law

Gendra : So what the country follow civil law system?

Devi : Followed by some country such as Austria, Belgium, Greece, Indochina, Indonesia, Latin

America, Netherlands, Portugal, Spain, South Korea, Turkey and Switzerland

Bagus : And then How about the common law system?

Fuad : It followed by USA,UK, Australia and Singapore

Devi : The common law system has and uses more doctrine and customs rather and based on court decision

Fuad : Under common law system when a court decides and reports its decision concerning a particular case becomes part off the body of law can be used in later case involving similar matters known are precedent

Nadina : What is Judicial decision?

Gendra : Judicial decision is a decision about an individual lawsuit issued by the courts

Bagus : What is use full of judicial decision?

Devi : Judicial decision the judge explain the legal reasoning used to decide the case

Fuad : What's role of legislative?

Nadina : Make a statuette

All : Okay…. Now I Understand about Two Major Legal System in The world

II. The concept of law: Adat and adat law as an invention of adat law scholars

The alleged role of the Dutch in the creation of adat law has been forcefully argued by Peter Burns (2007) in his contribution to the interesting volume *The revival of tradition in Indonesian politics* (see also Burns 1989, 2004). Following Burns, editors Jamie S. Davidson and David Henley (2007:36) call the concept of adat law developed by Van Vollenhoven 'a confusing myth'. This implies two propositions. One questions whether there could be anything in adat at all that could usefully be labelled 'law'. The other suggests that the term 'adat law' does not reflect the reality of the lives of Indonesians. Both points are am- plified by a third reproach that, by speaking of adat law, Van Vollenhoven and his followers drew a sharp line between legal and non-legal aspects of adat.

III. Adat law and custom

There is no doubt that the Dutch word *adatrecht*, adat law, is a relatively new concept, first used systematically by C.

Snouck Hurgronje.[4] He and Van Vollenhoven were well aware of the fact that the term *adat* was used in many but not all regions of Indonesia to indicate an often undifferentiated whole constituted by morality, customs, and legal institutions.[5] But they observed that within adat there were more or less institutionalized sets of rules and procedures for marriage, property and inheritance, political authority, and decision-making processes, which they discerned as elements of a legal nature. Van Vollenhoven spoke of adat law as 'the totality of the rules of conduct for natives and foreign orientals that have, on the one hand, sanctions (therefore: law) and, on the other, are not codified (therefore: adat)'. He emphatically used this term to emphasize that there was no sharp dividing line between legal and other aspects of adat (Van Vollenhoven 1933:3; J.F. Hol- leman 1981:23). 'The use of the term adat law has an even stronger claim to preference because it serves to weaken the notion that a sharp and rigid line separates legal usages from other popular usage, or adat law from the rest of adat. The borderline is, indeed, so vague that it is difficult,

[4] Snouck Hurgronje 1893, I:16. See also Van Volle nhoven 1928:23; Sonius 1981:li.
[5] The generic term adat itself was also an invention, as Van Vollenhoven reported. Muntinghe, a former counsellor of Raffles, was the first to use it as such in 1817 (as cited in Sonius 1981:li). See also Koesnoe 1977; F. von Benda-Beckmann 1979; Geertz 1983.

and sometimes impossible, to distinguish one from the other.'[6] It is difficult to comprehend how Burns (2007:69) could so grossly misrepresent Van Vollenhoven's thinking when he alleges that Van Vollenhoven drew a sharp line between the law in adat and other adat or that he identified adat with '*recht*' (law).[7]

In talking about rules, institutions, procedures, and sanctions as law, Van Vollenhoven thus used a broad analytical concept of law, which is not by definition tied to the organization of the state. There is nothing mythical about such a conceptualization. It is simply a broader understanding of law, akin to later social scientific concepts that do not tie the concept by definition to the state and that allow for the possibility of co-existing interdependent legal orders that have different legitimations and are based on different orga- nizational structures, currently summarized as 'legal pluralism'.

[6] J.F. Holleman's translation (1981:5); Van Vollenhoven 1918:9.

[7] We prefer to speak of law in adat (F. von Benda-Beckmann 1979:117). To interpret this as meaning that this is 'not law as such' or 'not law proper', as Burns (2004:254-5) does, is missing the point. This is due to his view that only written rules 'consistently enforced by a sovereign state' are law. Adat therefore by definition cannot be law; it is merely custom (Burns 1989, 2004, 2007).

IV. Adat law or customary law

Van Vollenhoven characterized adat law as dynamic and flexible 'folk law' (*volksrecht*) or 'living law' (*levend recht*). He also provided a very thoughtful analysis of the social processes of its reproduction (see J.F. Holleman 1973). Although he is often associated with the German Historical School, he explicitly distanced himself in critical dialogue from this school and the constructions of folk law and customary law that were dominant in European legal systems (F. von Benda-Beckmann and K. von **Benda-Beckmann 2009a). He did not characterize adat law as customary law. Neither custom nor** official accep- tance by the state was a defining characteristic of adat law in his opinion. Thus Van Vollenhoven avoided the semantic trap of 'customary law', which indeed often turns out to be a 'confusing fiction' (J.P.B. de Josselin de Jong 1948). In most state legal systems, customary law is a category defined and validated by legislators, judges, or legal scientists. One speaks of 'customary' rules as law because these rules have been accepted and used since time immemori- al.[8] In such a

[8] See Van den Bergh 1986:68. The ideological screen of continuity implied in the notion of customary law hid a fundamental discontinuity (Chanock 1985:4).

doctrinal legal perspective, only rules and principles conforming to these criteria may be incorporated as law.[9] However, the term customary law is often also used in a much more off-hand sense, a generic term for non-state law independent of its recognition by the state and jurisprudence, often synonymous with folk law, people's law, or traditional law. Such rules and procedures, although called customary, are not necessarily customary in the sense of being based upon an (assumed) continuity of local legal tradition. This use of the term customary law resonates with the socialization of many lawyers and anthropologists not familiar with social-scientific perspectives on law and legal pluralism. In other cases the term expresses an explicitly legalistic and statist conceptualization of law. It is not always clear which meaning of the term is being applied.

The characterization of adat law by adat law scholars thus differed considerably from legal constructions of customary law. Rephrasing adat or adat law as customary law or as custom therefore reveals an implicit or explicit legalistic and state-centred perspective on law. Interpretations of Van

[9] Thus, within the Anglo-African context, non-state rules that do not conform to this criterion of customariness, for instance 'modern innovations', do not fall under the concept of customary law. See Chanock 1985:62, 65. This is a totally different conceptualization than that of adat and adat law in the Indonesian context.

Vollenhoven and colonial legal history frequently suffer from the identification of adat law with customary law or custom (P.E. de Josselin de Jong 1980). In Davidson and Henley's collection (2007), for instance, adat law is 'customary law' for Henley and Davidson, Cees Fasseur, and Greg Acciaioli; adat is 'custom' for Burns, Tania M. Li, and Henley; it is 'culture' for Maribeth Erb and Davidson. By contrast, Carol Warren, on Bali, and Renske Biezefeld, on Minangkabau, just speak of 'adat' and 'adat law'.

Chapter III

AN INTRODUCTION TO INDONESIAN LAW AND THE PRESIDENT OF THE MATERIALLY RICHEST NATION OF THE WORLD

(Sauri and Sauki have just graduated from high school. They have not yet decided on their respective *(masing-masing)* field of study. The dialog below takes place *(terjadi)* in a library in the city. Study the dialog carefully. Observe how the basic tenses, the modal auxiliaries and the passive voice are used.)

Sauki : Hi Sauri, how are things with you?

Sauri : Fine, fine, thanks. (sees Sauri's book) Ha, you're reading this book? 'An Introduction to Indonesian Law.' Are you going to study law?

Sauki : Yes, I have decided to study law. Anyway *(bagaimanapun juga),* reading is one of my hobbies. I'm going to return this book to the library later.

Sauri : Can you brief me a little on the subject? I'm interested in law too, you know.

Sauki : Well, it says that from the days of Dutch colonization, **inhabitants** of the Indonesian **archipelago** have been

divided for legal **purposes** into three **population** groups.

Sauri : What are these three population groups?

Sauki : They're the Europeans, Natives (Bumiputera, Inlanders), and Foreign Orientals *(Orang Timur Asing, Vreemde Oosterlingen).* I know, next thing you'll ask: 'What is the **motive** for this division?'

Sauri : **Exactly,** that's what I'm really going to ask.

Sauki : OK, the motive'for this division has been questioned. However *(namun),* some experts stated that the purpose of the division was to make sure that the European group was at the top and the Indonesians at the bottom. Thus, the domination of the ruling class could continue.

Sauri : How was the legal system connected with these three different groups of society?

Sauki : First, the Dutch *Indische Staatsregelling* defines who belongs to what group, and there was an article in it which regulates the law in force for each group. Now, let me see here, which law was in force for which group?

Sauri : 1 think I know the answer to that question. The Europeans were subject to European law; for the

Foreign Orientals, mostly Chinese, the European regulations were applied and civil and commercial regulations for the Native group were based on adat law, that is, on indigenous customs and religion.

Sauki : Yeah, that's interesting, all right. But why are we always talking about the past?

Sauri : It's OK to go back to the past as long as *(asal saja)* we don't just stay there. Now it's time to come back to the present... Now what do you know about the present as far as he legal aspects of life is concerned... Have you read anything interesting?

Sauki : Oh yes, a great deal... The year 1998 witnessed two momentous if not shocking events. tOne is the downfall of former president Suharto after 32 years of abusing his power for his family and cronies. And the other one is the sex scandal of the president of the greatest nation of the world.

Sauri : Hm... sex scandal, huh... What are you talking about?

Sauki : Sex scandal...that's what I'm talking about.

Sauri : All right, what about it...

Sauki : Now listen and listen good... Since Januari 1997 this president of the greatest country in the world — well, let's call him president X - has had sexual relationship with an intern *(pekerja/ karyawan)* of his office. This

girl brought the case to court and testified before the grand jury that she had had sexual relationship with the president.

Sauri : The president denied the allegations *(tuduhan)* and said to the people of his country on a televised statement that he "did not have sex with this woman". And he said it to the grand jury in court.

Sauki : Well you read the newspapers too, didn't you?... So, you know the rest.

Sauri : Yes, I did, only that much... Now what's the rest of the story?

Sauki : When the president denied the truth, the girl brought to her lawyer a sample of sperm *(sperma)* that stained *(mengotori)* her skirt during one of the sexual acts with the president. Then her lawyer requested a sample of president X's DNA to prove that the semen was his.

Sauri : Ha, ha, ha, that's hilarious *(menghebohkan).*

Sauki : That's not funny to the people of president X' s country... The president knew the DNA could not lie *(berbohong).* The president was cornered *(terpojok)...* On August 13, 1998, the president confessed to his family and the people of his country that he had an "improper relationship with Miss Sexy (not the real

name)".

Sauri : So, the president comitted perjury; he had been lying under oath before his confession. His grievous offense was that he had lied to the people of his country.

Sauki : Where did you get all this information, huh?

Sauri : It's all in the paper, man or even in the Internet... The Ken start report is there complete and detailed... The sexual escapades *(petualangan)* of the president, which according to Ken Starr, an independent council, will make people throw up *(muntah)*... There was a complete report in the "Newsweek Magazine" of August 30,1998... Why throw up?... Because people of these advanced countries have bizarre and weird sexual behavior which are unknown to most Indonesians, or Asians for that matter... I'm not going to tell you the details because you gonna throw up, too...

Sauki : Why do you think they have these vulgar or unnatural sexual practices?

Sauri : My opinion is that these people of the most advanced country in its economy and technology are lacking spiritual and religious concepts of life. They focused on the materialistic and hedonistic aspects of life and marriage and sex for pleasure (definitions for

materialism and hedonism is found in Chapter Five)... They ignore *(mengabaikan)* the fact that marriage is a spiritual bondage *(ikatan)* between a male and a female and above all, it is also a bondage between a couple and God... There are complete rules in the Holy Book the Quran as to how a couple should manage a family, relations between husbands and wives, and so on and so forth... You know, the syariah in Islamology.

: Wow, you sound like a religious leader to me... By the way, what happened to this president?...

: There has been a long argument by the people of his country whether he will be impeached or not... And finally, in February 1999, to the surprise of many people, the president was freed from all the charges made against him. In short, the Senate of the country did not have the power to impeach him.

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An Introduction to Indonesian Law, by Sudargo Gautama and Robert N. Hornich.

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The Holy Qur'an by

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September 13, 1998 Internet and Cable News Network (CNN), 1988.

QUESTIONS LEADING TO DISCUSSION

1. During the colonial rule, why were the people of Indonesia divided into population groups?
2. How many population groups were there at that time?
3. What was the motive for the division of the inhabitants into population groups in Indonesia by
   the Dutch colonial government?
4. Can you describe each of the three population groups?
5. What regulations were the Europeans subject to?
6. Which law did the Native groups have to obey?
7. Which law was applied to Foreign Orientals?
8. What did the Chinese traders serve as?
9. Why is it absurd that during the colonial rule Chinese had to obey European Regulations?
10. What was the law for the European group based on?
11. Why were changes sometimes made in the legal system of the European group?

12. During the Dutch colonial rule, Christian Indonesians were made subject to the adat law. Why was this condition irrational?
13. According to the dialog, why were the Chinese made subject to European laws?
14. The name of the most advanced country in the world is not stated in the dialog. Who do you think this president is? Why is his name not mentioned in the conversation?
15. What is the president's serious legal offense?
16. Why didn't the president tell the truth at the beginning of the court procedure?
17. Why did he finally confess to his family and people?
18. What is materialism? Hedonisme?
19. According to the speaker in the dialog, what is the definition of a marriage?
20. What is your religious and spiritual concept of life?
21. What is meant by "impeach"?

VOCABULARY FOCUS

The following vocabulary items are taken from the dialog. Notice that they are used in sentences in the context of law. Study these sentences carefully.

1. interested (adj) — attracted; *tertarik*

- Many students are **interested** in studying law because law is a noble profession.

2. inhabitants (n) — settlers; *penghuni*

- The inhabitants of the islands were native tribes of Kapuas and Singkep.

3. archipelago (n) — many islands in a sea; *kepulauan*

- The Indonesian **archipelago** stretches from Sabang to Merauke.

4. divide (v) — separate (into); split; break up; *membagi*

- Opinions are **divided** on the question (issue); there are people who are for it and there are those who are against it.

5. purpose (n) -— aim; goal; objective; *tujuan*

- The members of the committee held a meeting for the **purpose** of studying the case carefully.

6. population (n) — the number of people living in a place or country; *penduduk*

- The population of Indonesia at present is about 200 million; there is an increase *(peningkatan)* of about 2% every year.

7. motive (n) — stimulus; reason; *dorongan*

- The members of the society did not have any **motive** for following the rules.

8. exactly (adv) — precisely; accurately; *tepatnya*

- He did not know **exactly** what he had to do to join the debating club.

9. domination (n) — control; predominance; *dominasi;penguasaan*

- The State Ideology Pancasila tries to stop Western **domination** of Indonesian values.

10. continue (v) — go on; go farther; *berlangsung*

- Members of the society will **continue** to follow rules in order to keep law and order.

11. define (v)_—describe; say something about; explain; *menjelaskan*

- How do experts **define** law? Some experts define law as the natural instinct for doing what is right.

11. belong to (v) — be a member of; *termasuk*

- He **belongs to** a low-income group family as his income is only Rp 100,000 a month.

12. in force (phrase) — be valid; hold true; *berlaku*

-The exit permit requirement for foreigners is no longer **in force** in some countries.

13. apply (v) — use; employ; *menggunakan*

- Several methods were **applied** to promote sales of domestic goods in the Indonesian market.

14. middleman (n) — any trader through whose hands goods pass between the producer and the consumer; *perantara*

- As a **middleman,** he makes a lot of money by selling farm products to consumers in the big cities.

15. circumstances (n) — condition; fact; *keadaan*

- Under such chaotic **circumstances,** law and order cannot be easily maintained.

16. result (v) — come about, happen as a natural consequence; *berkesudahan*

- The land dispute has **resulted** in a family feud *(pertikaian).*

17. possible (adj) — probable; feasible; *mungkin*

- It is **possible** for the police to keep law and order because the people themselves are conscious about what is right and what is wrong.

18. strengthen (v) — to make strong; fortify; establish; *memperkuat*

- He **strengthened** his team of lawyers by getting some experts on international law and labor law.

19. administer (v) — control; manage; put into operation; *mengelola*

- He cannot **administer** such a big business enterprise because he does not have the skill.

20. enforce (v) — make effective; impose; *menjalankan*

- The prison guard **enforced** very strict discipline with the prisoners; they had to clean the yard every morning, rain or shine.

21. unified (adj) — combined, united, formed into one; *bersatu*

- The proclamators of our independence made the country into a **unified** nation, the Republic of Indonesia.

22. promulgate (v) — make public; announce officially; *meng-umumkan*

- It was **promulgated** that the 1945 Constitution should be the source of all laws and regulations in Indonesia.

23. overcome (v) — be too strong for; be made weak; *menaklukkan; mengatasi*

- Racial prejudices can be **overcome** in our country by inter marriages *(perkawinan antarsuku/antarbangsd).*

24. diverse (adj) — varying; different; *beragam*

- Indonesians consist of **diverse** ethnic groups speaking over 30 different dialects *(bahasa daerah).*

25. requirement (n) — demand; need; *syarat*

- According to local custom, one of the **requirements** in a marriage is for the man to give a large water buffalo to the woman.

26. deviation (n) — turning aside or away; *penyimpangan*

- There were certain **deviations** from the original plan as the members of the committee had different opinions.

27. warrant (v) — guarantee; assure; *menjamin*

- His university diploma does not **warrant** him a good job because he still needs some special skills.

28. subsequent (adj) — the next one; *berikutnya*

- The first question was about the defendant's education, and the **subsequent** one was about his family background.

29. portion (n) — part; *sebagian*

- The inheritance was divided into small **portions;** each son got only one-tenth of a hectare of land.

30. explicitly (adv) — clearly; fully expressed; tegas

- He stated **explicitly** which regulations have to be followed by drivers.

VOCABULARY ACTIVITY 1

In the exercises below, supply each blank with a sentence of your own using the structural form of the vocabulary item as indicated in brackets. Then add a sentence of your own.

Example:

- describe (v) description (n)

  (n) The police are recording **the description** of the thief.

1. diverse (adj) diversity (n) diversified (adj)

   (n) Unity in **Diversity** means Bhinneka Tunggal Ika.

   (adj) ....

2. dominate (v) domination (n) dominant (adj)

   (v) Western ideas **dominate** his policy

   (adj) ....

3. require (v) requirement (n)

(v) Writing **requires** special skills and talent

(n) ....

4. define (v) definition (n) definitive (adj)

(v) He **defined** the marriage system as matrilineal, not bilateral,

(n) ....

5. deviation (n) deviate (v)

(v) The lawyer **deviated** from his original belief; now he is working only for money, not for
protecting the poor,

(n) ....

6. distinction (n) distinct (adj)

(adj) There are **distinct** behavior patterns between the Javanese and the Batak.

(n) ....

7. inherit (v) inheritance (n)

(n) His **inheritance** is a large sum of money; he can live com fortably on it alone,

(v) ....

8. serve (v) servant (n)

(n) He is a public **servant** working for the Department of Education.

(v) ....

VOCABULARY ACTIVITY 2

Match each word in column A with its synonym in column B.

A	B
1. Exact	a. announce
2. Exist	b. part
3. Delay	c. definite
4. Overcome	d. overpower
5. Define	e. united
6. Indicate	f. occur; happen
7. Result	g. show
8. Result	h. live
9. Portion	i. postponement
10. Promulgate	j. describe

COMMUNICATION FOCUS

The Murder Trial of Mr. Dodo

The following is a part of a scene in a court house in a city in Indonesia. The defendant, Mr. Dede, has been charged with murder. He was accused of murdering Mr. Dodo by pushing the victim from the balcony down to the swimming pool in his yard. Many people were present in the court house including the prosecutor, the defendant and his defense lawyer, the judge and

some law students. Observe the use of the basic tenses and some passive voice constructions.

Prosecutor : Mr. Dede, did you push *(tolak)* Mr. Dodo, off the balcony of your house?

Dede : No, I didn't.

Prosecutor : The body was found in the swimming pool of your house. According to the medical report, he died because of drowning *(tenggelam).*

Dede : He died in my swimming pool, all right. But I did not push him into it. He might been attacked by something, who knows?

Prosecutor : Did he come to your house that night?

Dede : Yes, he did.

Prosecutor : Was he alone or was he accompanied by some friends?

Dede : He was alone.

Prosecutor : What was the purpose *(tujuan)* of the visit?

Dede : He asked me for money. He said he borrowed money from a number of people and that night he was chased *(dikejar)* by creditors.

Prosecutor : Did he ever borrow money from you?

Dede : He never borrowed money from me; he only asked for it from me. (Dede stressed the word 'asked')

: Will you please explain the nature of his visit that night?

: Well, Mr. Dodo looked drunk. There was something strange in his eyes. So I just left him and went into my room. I always left him alone whenever *(apabila)* he came to me drunk. Then ... that night, after a few minutes, all I knew ... he was dead in the swimming pool.

During the trial, a physician from the General Hospital was summoned to give a complete medical report on the victim. The doctor was also asked to form an opinion based on his profession as a medical doctor. According to *(menurut)* the doctor, the victim was under a heavy dose *(dosis yang tinggi)* of narcotics when he came to see Mr. Dede on the balcony that night. That was why he was a little shaky and strange. At that time the victim was in a 'fly-drunken' state. Because of the sense of fly, he jumped all by himself into the swimming pool and hit his head against the side of the pool. This was proven by the fact that there is no indication of anybody pushing him from the balcony down into the pool. At the end of the session, the death of Mr. Dodo was ruled *(ditetapkan)* accident by the presiding judge.

COMMUNICATION ACTIVITY

Read the dialog thoroughly and answer these questions.

1. Who are present in the court house?
2. Who are Mr. Dede and Mr. Dodo?
3. What is the relationship between Mr. Dede and Mr. Dodo?
4. Why did the victim come to see Mr. Dede?
5. What did the medical report show?
6. How did Mr. Dodo die?
7. Why was the victim in a fly-drunken state?
8. Did Mr. Dodo always borrow money from Mr. Dede?
9. How was the death of Mr. Dodo ruled by the judge?

LEGAL EDUCATION REFORM IN INDONESIA

Legal education in Indonesia has been in a state of reform since the time of Dutch colonization. Originally, legal education was a middle school education at the Senior High School level with the establishment of the *Rechtsschool* in 1908. In 1924, legal education was transferred to the higher education sector or a level equivalent to university. This transfer was formalized with the establishment of the *Rechtshogeschool*.

It will endeavor to explain and analyze legal education reform in Indonesia. Initially, this explanation will focus on an evaluation of legal education reform which will include an evaluation of educational objectives and the organization of legal education. Next, based on the results of this evaluation,it will suggest a number of ways to improve or perfect the legal education process in the future.

It contains two basic arguments. Firstly, based on the evaluation of legal education objectives in Indonesia it can be clearly seen that in reality these objectives are not

autonomous. The objectives of legal education are very dependent on the intentions of the government of the time or the specific prevailing conditions in Indonesia. Yet, if one was to look at the graduates from any faculty of law, then it also becomes quite evident that a number of these legal education objectives do not have any significant influence.

The second argument is that the evaluation of the organization of legal education indicates several weaknesses that do have a significant influence on graduates of law faculties in Indonesia.

Legal education in this article has been reduced to mean legal education at the undergraduate level or a first degree of law. Nevertheless, in several sections the article will discuss two types of legal education; namely, academic or university legal education and professional legal education.

It is based on the research and the empirical experience of the author. The author has had the benefit of completing the undergraduate legal education in Indonesia, and become a lecturer and currently the Dean of the Faculty of Law at the University of Indonesia (FHUI). Additionally, the article draws on the experiences of the author as a practicing lawyer and as a bureaucrat in Government agency.

Evaluation of Legal Education Reform

The following is an evaluation of legal education reform in Indonesia. This evaluation of legal education will focus on two aspects, legal education objectives and the organization of legal education.

Legal education objectives need to be evaluated remembering that legal education reform in Indonesia is neither separate from the intentions of the government of any one period nor the specific prevailing conditions in Indonesia. Since legal education became a part of the higher education system in Indonesia, there has been more or less four periods of government that have had some influence on the law and legal education: the Colonial government, the government of Soekarno, the government of Soeharto, and the post- Soeharto governments. Each of these governments will be analyzed as to what the objectives of a legal education were during the respective periods of government.

Meanwhile, an evaluation of the organization of legal education must be undertaken primarily because organization represents the medium that ties together the objectives noted previously with the graduates produced by law faculties. The desired legal education objectives must be interpreted

accurately into the organization of a legal education in order that law faculties produce the graduates expected of them.

a. Evaluation of Legal Education Objectives and their Impact

Legal education objectives in Indonesia have experienced a number of changes over time. These changes to the legal education objectives have tended to occur as there has been fundamental change of government, for example, an Indonesia that moved from being a colony to an independent state; an Indonesia in revolution to an Indonesia in the throes of development, and an Indonesia governed authoritatively to an Indonesia becoming increasingly democratic.

It is apparent that legal education objectives can neither be separated from what is occurring in Indonesia nor the intentions of the government. Soetandyo suggested that legal education objectives 'are not a process that is autonomous,' but rather was more forceful in stating that:

> *"a process that claims in a functional manner to follow political developments, particularly the politics that are closely connected with policy and the efforts of government to*

efficiently use the law to achieve objectives that are not forever in the legal domain and/or the justice domain.”[10]

Simply, this means that legal education objectives are not a neutral product but ones that are colored by the intentions of the government. Consequently, these objectives are unlikely to prevail for indefinite periods of time.

The Colonial Dutch government introduced legal education in Indonesia to fill an administrative need; namely, to fill legal bureaucratic positions from the ranks of indigenous citizens. It was hoped that graduates of this newly introduced legal education would become judges of the *landraad* or legal officers in the offices of the Dutch Colonial government.

Legal education objectives in this period were to create legal bureaucrats or *rechtsambtenaren*. The curriculum for legal education at that time was designed with a primary objective of ensuring that once students graduated they had a thorough knowledge of certain legal principles—especially those molded as legislations. In fact there was an inclination that successful graduates of this curriculum were very legalistic in that their knowledge of the law and did not

[10] Soetandyo Wignjosoebroto, “Development of the National Law and Legal Education in Indonesia in the Post-Colonial Era” may be accessed at

touch upon the empirical realities experienced by those in the field.

At the time Indonesia gained independence, legal education objectives changed. The legal education objectives were influenced greatly by the perceptions of the national leadership towards the law and a desire to create a uniquely Indonesian state. Soetandyo describes these perceptions as follows:

President Soekarno proclaimed a need to create a legal revolution to overthrow all aspects of colonial law that up to that point according to formal principles must still be viewed as the prevailing law. President Soekarno openly criticized legal experts and the hold of formal law as conservative powers that will serve to obstruct the wheels of revolution. The experts who have always been bound together legalistically to the this formal law- with the pretext of legal certainty- are always inclined to hold onto old systems and orders, which in reality were exceedingly colonial.

It is not surprising then that the legal education objectives changed and it is even less surprising that they moved towards producing graduates that have not only the courage to throw off the shackles of Dutch Colonial law but also possessed the necessary skills to continue the revolution from colony to independence.

Legal education objectives changed again when the Soekarno government was replaced by that of the Soeharto government. In this period legal education was designed primarily to ensure that graduates were able to support the process of development in Indonesia.

Law students were expected to know just enough of the theory and the prevailing laws and regulations. Students were also expected to be sensitive to the operation of the law in the community. Mochtar Kusuma-Atmadja who at that time was the Chairperson of the Legal Sciences Consortium (KIH) was stringent in his promotion of the importance of sociology in legal education and law studies. Therefore, a direct consequence of this is that law in Indonesia – both in theory and practice – is always related to the very latest problems of socio-economic development.

A note to this period, in 1993 in response to the needs of graduate employers, who considered that the graduates that were coming out of law faculties were not fit for practice, the law curriculum was amended (hereinafter referred to as 1993 curriculum).[11]

[11] The curriculum is provided under the Minister of Education and Culture Decree (Decree No. 17/D/O/1993).

These amendments were designed to ensure that graduates knew not only just enough of the theory but also possessed legal skills. In this instance it is clear that both academic and professional legal education came together as one in one curriculum.

In the period of the post-Soeharto governments, which is also identified with the early stages of the democratization process in Indonesia, an intention that legal education produce progressive graduates has come to the fore. This idea was put forward by, among others, Satjipto Rahardjo from Diponegoro University.

According to Rahardjo progressive legal education represents an opponent to the educational status quo. This idea of progressive legal education came about as a reaction to the unresponsiveness of the law to the fundamental changes that were occurring in Indonesia in this period. The law was continuing to amble along its rather dogmatic path and was essentially considered to be insensitive to the process of transition being experienced in Indonesia. In any event the National Law Commission (KHN) rated legal education as being inclined to be monolithic.[12]

[12] National Law Commission, "Towards a New National Legal Development Paradigm," February 2005 may be accessed at www.komisihukum.go.id/article_opini.php?mode=detil&id=113

The elements of progressive education are that education is (1) creative, (2) responsive, (3) protagonist, (4) freedom in character, and (5) is orientated towards Indonesia and the needs of Indonesia.[13] It is envisaged that if progressive legal education were to be fully implemented with the above noted elements, then law faculties would be able to create graduates that always place their conscience and justice above laws.

Currently, progressive legal education remains at the discourse level and as yet has not been implemented.

In consideration of the legal education objectives noted above, the question becomes, how far and significant are the stated objectives impacting upon the graduates produced by law faculties?

Despite the differences, some of which are noted above, in the objectives of legal education from time-to-time, there seems to be no striking differences in the graduates produced by law faculties across this same time frame. Graduates of the 1930s, 1950s,
1970s, 1980s and even the 1990s can be reasonably stated to be the same. Recent graduates are still inclined to be legalistic and in that regard are no different from the

[13] Satjipto Rahardjo, "Where is Legal Education?", Kompas 8 April 2004.

graduates of the Dutch Colonial period, and tend to neglect the post-independence stated legal education objectives.

There are several reasons why a number of these noted legal education objectives are not seen to be significant to the graduates produced by law faculties.

First, the core legal education curriculum that was in effect during the colonial government period is still in effect today. If there is any difference, then the difference is located in the application of the credit semester system and the emphasis on the applied nuances of subjects

Furthermore, on closer attention the majority of the substance of subjects in the core curriculum and the teaching methods has not fundamentally changed since the period of Colonial government. The substance of subjects and the teaching methods have already become self-perpetuating because of the lecturers involved. Lecturers are resistant to change despite changes, often fundamental, to the stated legal education objectives.

This problem of perpetuation is further exacerbated through the system of recruitment of lecturers. New lecturers are recruited to become assistants first. The recruitment process commences as soon as the prospective lecturer finishes their study,

while the prospective lecturer was still a student. The principal lecturer undertakes recruitment based on the obedience of the candidate lecturer to the principal lecturer, as well as faithfulness to the substance of the subject and the teaching method employed. New lecturers must accompany the principal lecturer for a period several years before gaining sufficient trust to teach classes on their own and by this time they have been sufficiently indoctrinated into the ways of the principal, hence a perpetuating change-resistant legal education system.

This situation also perseveres because the text books used from year-to-year remain unchanged. Furthermore, whatever is presented in the subject by the principal lecturer then become the teaching materials, inclusive of any dictated notes and books, for any lecturer that follows. Students are neither given the freedom nor the opportunity to seek different perspectives. Students have come to believe, and the actions of lecturers appear to support this belief, that the lecturer wants the student to answer the exam questions with the answers expected of them and not to compare, contrast, or analyze based on different perspectives proffered by other experts on the relevant question.

Fourth, the majority of graduate employers tend to prefer the type of graduate that knows laws and regulations as opposed to one that has a broad understanding of the law. It can reasonably be said that the law in Indonesia has been reduced to regulations.

Therefore, whatever the specified objective is in legal education, law faculties will continue to produce graduates that accord to the tastes of graduate employers. Throughout the history of Indonesian law faculties it is worth noting that there has not yet been one law faculty courageous enough to produce a graduate that is different from those of other law faculties, even for the purpose of fulfilling legal education objective as determined by the political leaders.

Fifth, society's perceptions have resulted in the uniformity, in nature and type, of graduates produced by law faculties. The society stereotypes law faculties graduates into being very legalistic, good in memorizing, and above all faithful to legal doctrine. The consequence is that the organizers of legal education, lecturers, and even students consider that there are no other choices but to conform to the perceived society's stereotype.

In brief, it can be concluded that several of the legal education objectives noted in reality have no impact on the graduates produced by law faculties. Law faculties already do and will continue to produce graduates that resemble those graduates produced by law faculty first introduced by the Colonial government.

This conclusion can also be reasonably stated to indicate that legal education objectives really represent something that is neutral. It is also reasonable to state that legal education objectives in the Indonesian context do not accord with the preferences of political leaders or country-specific conditions because ultimately the graduates of Indonesian law faculties are generally the same.

b. Evaluation of the Organization of Legal Education

Leaving behind the several legal education objectives that have already been noted previously, implicitly it is recognized that legal education in Indonesia is directed towards producing graduates that possess legal knowledge and knowledge of the laws of Indonesia.

The question that arises now is whether the organization of legal education in Indonesia has translated this into the implicit legal education objectives? The short

answer to this question is, not yet. One of the primary indicators is the many complaints from graduate employers. Moreover, law faculty graduates in Indonesia are deemed to be unable to compete with those graduates of other countries, this is especially the case at the regional level.

If this is the case, what are the weaknesses in the organization of legal education to date? The following is an explanation of the weaknesses in the organization of legal education in Indonesia. There are five main weaknesses that will be analyzed; namely, there is no clear distinction between academic and professional legal education; the credit semester system; insufficient attention to support infrastructure; and, the strong interventions by those that drafted the curriculum.

1. There are No Distinct Differences between Academic (University) and Professional Legal Education

Legal education in Indonesia has for a long time not distinguished between academic and professional legal education. Distinction between the two types of education is important and it is important that this distinction is made. This importance derives from the fact that students studying

law in its academic form are neither certain to nor will they immediately apply this in practice.

Since legal education was first introduced in Indonesia these two types of different education have been fused,[14] the only exception to this was for those individuals that intend to become notaries.[15]

The curriculum has been drafted in such a way that graduates are expected to have a thorough theoretical legal knowledge while at the same time have the skills that are demanded by the professional world. In the 1993 curriculum despite acknowledging these two types of education, the curriculum fused them into one in the one curriculum. Moreover, the fusing of university and professional legal education in the 1993 curriculum occurred as a result of almost all levels of higher education in Indonesia sort to implement the applied approach.

Although this was the case, the subjects applied in the 1993 curriculum were insufficient to ensure that graduates were employment ready with respect to specific professions they were likely to enter.

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[14] Hikmahanto Juwana, "Rethinking the Legal Education System in Indonesia," Jentera, Special Edition, 2003: 95.

[15] In Indonesia, as in many Continental European Systems, notaries are one part of the legal profession that is required to participate in further education to obtain specialized legal skills

The fusing of university and professional legal education is not a realistic objective. The allocation of time for students to garner the theoretical and practical knowledge is too short. Generally, law faculties will graduate students after they have followed a 4-year program however in some law faculties it is possible to graduate in 3.5 years. Clearly, this time frame is too ambitious to encompass two types of education and complete both successfully.

If one was to make a basic comparison with other commensurate professions,[16] to become a doctor requires 4 years of university education and 2 years of professional education.[17] To become an accountant requires 4 years of university education and 1 year of professional education. To become a psychologist requires 4 years of university education and 2 years of professional education.[18] To become a pharmacist requires 4 years of university education and 1 year of professional education.

It is not surprising that there has been a great deal of criticism leveled at law faculty graduates who, unlike their counterparts noted above, are able to immediately commence

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[16] Data obtained from faculties within the University of Indonesia.

[17] This is according to the new curriculum of the Faculty of Medicine, University of Indonesia. According to the former curriculum, academic education consists of 5 years of study and professional education of 1 year.

[18] In the Faculty of Psychology, the professional stage is equivalent to a Masters and therefore requires 2 years of study.

practice as advocates upon graduation without first having to complete any professional legal education. In this regard the KHN recommended, "… need to develop law faculties in the future that resemble the education patterns of medicine, in order [that graduates are] immediately employable."[19]

Currently, even though professional legal education exists, such as that for public prosecutors or judges, this education tends to just repeat of the university legal education already obtained.

This repetition occurs for two basic reasons. First, in professional legal education the materials are taught by academics that most do not have a background in practice or only minimal practice experience. Second, practitioners that teach the professional program are inclined to teach materials that are theoretical in nature. Thus, the permeating theoretical nature of the materials leads the presenters, both the academics and the practitioners, to believe the materials must be presented in this manner.

2. Weaknesses of the Credit Semester System

In 1982, the credit semester system was introduced in the organization of legal education. One of the consequences

[19] Ibid., National Law Commission, "Towards a New National Legal Development Paradigm."

of this was that there were a number of year-long subjects that had to be broken down and studied across several semesters. This also meant that the names of the subjects were changed to accommodate the fact that they were now held across more than one semester.

In several law faculties, the total number of subjects offered has expanded, in some cases exponentially. In the FHUI, for example, there are more than 130 subjects offered in any one year. This increase in subjects offered has also occurred to satisfy the interests of certain parties that consider certain subjects are important to teach and thus are taught.

There are several weaknesses with the application of the credit semester system. First, students do not understand the continuity between one subject and another or understand that one subject may in fact be a pre-requisite for another subject they intend to take in the future. As a result students do not get the strong foundation needed to understand the law.

Furthermore, students do not adequately consider the subjects they choose. Most often subjects are chosen based on the ease of passing rather than in consideration of

their needs post-graduation, particularly with regards to employment.

Other weakness is some subjects are overlapping in content due to lack of coordination between lecturers. Students are learning the same thing under a different subject name.

3. Lack of Attention in Supporting Infrastructure

This weakness in the organization of legal education occurs because policy and law faculty's do not pay sufficient attention in the supporting infrastructure, particularly with a view to facilitating the implementation of the curriculum. The main areas of supporting infrastructure that do not garner enough attention include, among others, the professionalism of lecturers, teaching methods, library resources, journal resources, lecture rooms, and the very large class sizes forced upon lecturers.

The professionalism of lecturers becomes a weakness since the majority of lecturers often reduce their academic duties to that of 'just' lecturing. The majority neither research nor do they write for any legal journals, including their university's own legal journal (if one exists). In the event research or writing is undertaken it is done in such a manner

that it is the bare minimum required to meet the standards for promotion.

The professionalism of lecturers also relates to their attendance at lectures, the research completed, and any written work that may result. Senior lecturers, professors, and those with Doctorates are often pulled away from campus to bourgeoning work opportunities off campus. In Indonesia it is considered natural, and even high prestige, for senior lecturers to work off campus. They tend to work in government agencies, the private sector, or they become campus bureaucrats.

There are a number of reasons for this, primary among these are demand from outside and financial. Financially, lecturer's salary does not meet their needs, especially higher education institutes run by the state. Ultimately, employment as a lecturer becomes a part-time venture and provides only just enough status.

Subsequent to the lack of professionalism of lecturers is that graduates often complain about the discord between what they have learned at university and reality that they come to learn post-graduation. Additionally, graduates also complain about the minimal amount of knowledge that they acquire through their university careers.

Another weakness is the teaching methods employed. Up to this point in time most lessons are still presented as one way communication. It is not uncommon for lecturers to dictate lecture notes to their students. Indeed the fault does not lie with the lecturer only. Indonesian students do not culturally possess the ability to question or challenge what is presented by the lecturer. They will listen just enough and make the minimum amount of notes on what is provided by the lecturer to pass.

The teaching methods employed are also related to subject materials. Teaching materials are sometimes limited to one or two textbooks and what the lecturer knows. Modules are sometimes not prepared and any reference books provided are the bare minimum.

Furthermore, subject materials are also not up-to-date with current trends or movements in the law. Much of the substance of the subjects remains unchanged from year-to-year irrespective of the many changes that have occurred in the laws and regulations as well as any other relevant legal products. Moreover, lecturers fail to put in the necessary effort to make the subject material relevant to current examples in the subject field.

In the teaching of students, lecturers do not demand or challenge their students to answer questions. Rather students give priority to answering questions in a manner that they consider to be the way the lecturer expects them to answer the question which in turn is expected to gain them a good grade. From year-to-year model questions and the types of questions will stay the same and therefore become easily learned by the students who tend to pass them down to their junior colleagues.

Students are neither given any incentives nor additional credit if they ably reveal the perspective of another expert. Incentives are also not provided if students' exhibit improvisation in answering questions covered in the case materials covered in lectures. There are no surprises that among students there is an impression that they will graduate if they learn the dictated notes or the exam problems for that lecturer.

Supporting infrastructure that does not garner enough attention includes law library resources and law journals.

Libraries have yet to become a critical component in the organization of legal education in Indonesia. Where there are law faculties within Universities it has always been deemed sufficient to have buildings and lecturers. They have

disregarded library as an important part of the law faculties. Actually, without a functioning and equipped law library a law faculty in fact means very little. Without a law library, the role of the law faculty can be reduced to merely handing out law degrees. It must be acknowledged that it is law libraries, not lecturers that provide the broad insights for students.

Law library collections of Indonesian law in Indonesian are very limited and this problem of limited resources is even more acute in terms of English legal language. Furthermore, only a few of the law faculties in Indonesia have either the desire or the funds to subscribe to electronic legal resources such as *westlaw* and *lexis nexis*.

Even where law libraries exist, the tragedy is that the majority of lecturers and students do not actively use library resources. This is because subjects do not place any demands on students that they visit the library for research or other purposes. Students can graduate from law faculties having spent a minimum amount of time in the library, perhaps no time at all.

The problem of inadequate law libraries and usage is further exacerbated because many students and lecturers do not possess a library culture. Borrowed books sometimes are

not returned. Books have pages torn out as the borrower does not want to photocopy it. There is a culture of self-interest in that one borrower need not consider other borrowers.

Moreover, the spaces provided in law libraries usually reserved for study and research are often used for discussions and talks that are not related to the law.

Another aspect of critical support infrastructure is the existence of a faculty's law journal. Many law faculties throughout Indonesia do not yet have a law journal. In those where a law journal is in existence it is general in nature. The articles that appear in these journals sometimes are merely to satisfy the conditions for obtaining a promotion for the author. Furthermore, both the author and the editor do not differentiate the types of articles accepted for the journal. Popular articles or seminar papers are accepted as is without any modification into an acceptable law journal format.

Many law journals are not managed professionally although there is an accreditation system in place. The receipt of articles is more based on personal relationships and friendships rather than the quality of the writing. There are also articles that are accepted not because of the quality of the article but rather the status or the name of the author. Articles from Professors are more readily received and

published despite the fact that on serious peer review the standard of the legal research may not be at an accepted professional level.

Furthermore, articles in journals are seldom used as references by either students or lecturers. Students and lecturers alike seldom follow current issues or debates in journals. The majority, lecturers and students alike, read journals only if they must or there is a need to do so.

A consequence of the lack of attention paid to the existence of libraries and legal journals is the minimum legal knowledge that graduates acquire. Graduates also do not get the opportunities to gain legal knowledge. Moreover they are not as sharp as their colleagues that have graduated from overseas institutions.

Other supporting infrastructure which is lacking attention is subjects conducted with huge number of students. The number may come as high as 300 students. In such instance, the lecture may not be able to give special attention to the students. The lecture of a very large class has to do with the availability of rooms. This has become a problem since most of the time class room allocation is in the hand of the University, not faculty. The lack of building

and class room infrastructure has to certain extent affected the quality of graduates expected under the curriculum.

4. The Strong Interventions by the Curriculum Drafters

The law education curriculum in Indonesia is dominated by the identity of the drafters. In the past there was an institution within the confines of the Department of National Education that had specific responsibility over the development of a number of sciences, including law. This institution was initially known as the Legal Sciences Consortium (KIH) which was later changed to become the Commission for the Discipline of Legal Sciences (KDIH).

In the beginning KIH had members from eight law faculties represented by their Deans, among them, the University of Indonesia, Gadjah Mada University, Padjadjaran University, Airlangga University, University of North Sumatera. It is unclear as to what the criteria for membership of the KIH or the KDIH was, except seniority and consensus. Additionally, the Head of the KIH or the KDIH was not a current Dean but rather a law lecturer appointed by the Department of National Education. The KIH and the KDIH were assisted by a number of experts

from several higher education institutions from throughout Indonesia.

In January 2003, the KDIH was dissolved by the Department of National Education. Since that time the drafting and perfections of the curriculum or any other matters related to the organization of legal education has no longer located in one central location.

In theory, every law faculty now has the freedom to amend or perfect the curriculum as they see fit. Nevertheless, and in spite of this apparent freedom, the Deans of the state run law faculties have taken the initiative to meet periodically in a forum known as the Deans of the Indonesian Public Law Faculties Cooperation Board. At this time the current membership is 34, including a Military law school.

During the KIH or the KDIH period, the drafting of the curriculum was carried out by the Head, Deans, and experts. Thus, a frequent occurrence was that individuals involved in the drafting or perfection of the curriculum whether consciously or otherwise were able to exert their influence with specific interventions that allowed for their own respective perceptions to determine the subjects that were considered important in the curriculum. This led to the impression that the important determining factor was not the

subject but rather the subjectivity of the proposer in the KIH/KDIH.

Considering, that the leadership and some experts who held positions in the KIH/KDIH had obtained further post-graduate education in the social sciences, then the fact that the legal education curriculum exhibited these social science influences is hardly surprising.[18] In addition, those individuals that drafted and determined the legal education curriculum had already placed social science subjects into the compulsory subjects list of the legal education curriculum, which ensured that the study of law moved away from the strict study of law and maintained an element of how these laws were to apply in the society.

The influence of the social sciences also came to the fore because senior law faculties at that time were initially combined with the social sciences faculty.

It is difficult to deny that the social sciences have colored the organization of legal education and the legal curriculum. This has had the effect that law faculty graduates appear to have lost direction when it comes to the practice of law. Graduates have considerable difficulty and some are unable to distinguish between positive law and the values that exist in the community.

The above is not intended to suggest that the influence of social sciences on legal education is not important. On the contrary, social sciences are very beneficial and helpful to law faculty graduates. Law faculty graduates with basic social sciences knowledge possess an increased sensitivity to the operation of the law in a country like Indonesia.

The negatives, which are sometimes excessive, of the social sciences on legal education are the distortions that arise with the traditional study of law. Law is studied in its social sciences context. In legal education in Indonesia, research and the writing of a thesis are based on a method known as social research. This is in spite of the fact that many of the legal issues would be better covered and handled using a doctrinal research approach. This results in students experiencing a great deal of confusion when they have to research and write their thesis.

Other problems include that there is not enough attention paid to the depth of the gaps between one law faculty and another in the organization and implementation of the curriculum. The mandated curriculum is followed in the senior law faculties but not followed in the junior law faculties. This lack of attention to the glaring gaps between

law faculties is a direct result of the drafters of the curriculum coming from the senior law faculties and their inability to incorporate the demands and needs of the junior law faculties into the national curriculum.

Chapter V

ADAT RECHT SNOUCK HURGRONJE AND ISLAM

The system of Islam

Snouck believed correct information to be very important for passing any kind of Judgement. He repeatedly conversed about Islam and its misapprehension, with people from different continents. His research was consequently always based upon an abundant amount of literature, both European and Arabic. Determined to gather all data necessary for a comprehensive view, he mastered the basics of Islam within a few years. Snouck Hurgronje was able to present completely new information concerning Islamic Law, taxes and the belief system of Islam. He pointed out the *idjima,* the consensus that believed the teachings of the Muslim community infallible. Believing history essential in the attempt to shape an image, he often doubted whether historians can make solid predictions, however. This does not restrain him from having an opinion on what might happen between Islam and the West, given their dissimilarities.

Like Christianity, the religion of Mohammed had to pass through different stages of development before it adjusted

to the strongly differing needs of its many adherents of different race and nationality. The growth of Mohammed's teachings into a full-grown system of Islam, including daily routines and Muslim Law, took approximately three centuries.[20]

When Mohammed began sharing his prophesies with the world he believed God's revelations could differ in form (for example in language), but in essence they could not deviate from one other since there was only one God. But in the medina he came across a number of Jews who made him realize he had made an ideological mistake. Not only did Jews and Christians have different opinions on many aspects of his teachings, in addition they would not even consider acknowledging this new Islam as the only true religion. They could not accept Mohammed's holy mission mainly because of how they interpreted the content of their Holy Books. Mohammed found the simplest explanation for his unexpected discovery of this disappointing fact – namely that Jews and Christians must have strayed from the true path, twisted their revelations, and altered their Holy Scriptures. [21]

Of course one can see how this determination meant

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[20] W.J., *Dr. C. Snouck Hurgronje,* 72

[21] Chr. Snouck Hurgronje, 'De Islam', in : *De Gids*, Leiden 1886, II , 259

that Christendom and Jewry could no longer be the criterion for Islam, although they were all based on the same Scriptures, and Mohammed kept saying that he was not proclaiming a new religion.[22]

After his numerous encounters with different believers around the holy city of Mecca, it struck Mohammed that he had to follow his own path, relying on his own faith. Snouck found it significant that many elements in the religion are from foreign origin gathered under the label of Islam, but that there was no denial of their descent. He submits that one cannot really speak of the teachings of Mohammed, only of his religion.[23]

The Prophet did build himself a religious *Weltanschauung*, but he accomplished this with an enormous lack of system. Here we return to the question of whether one interprets
'teaching' in the sense of a coherent and well-thought-out set of convictions. Snouck conversed endlessly with his friends on this specific topic. Was Mohammed's intention 'ethical' reform, creating a better life in the future? Or did he mean to ignite a reformation of the religious customs and traditions known in those days, a dogmatic reformation? Snouck liked to

[22] de Bruijn and Harinck, *Een Leidse vriendschap*, 128
[23] Snouck Hurgronje, *De islam en het Rassenprobleem*, 10

believe Mohammed's goals were aimed purely at a better future by staying true to himself and the metaphysical messages he claimed to receive.

Ultimately the Koran was meant to be the most perfect expression of Allah's word and to replace all previous revelations. This meant making the Arab edition of the Holy Scripture as universal and absolute. When one is interested in Mohammed's personal beliefs, one should consult the Koran, which appears to contain his authentic speeches. Human artefact or not, it is almost the only source of information. Snouck's attitude towards Scriptures was sceptical, without wanting to make scepticism or agnosticism into a system of itself. The use of religious Scriptures as a reliable source, according to Snouck, was accompanied by tremendous difficulties that resulted in cautious historical critique. Ignoring those obstacles was impossible because "the objective tone of revelations, spoken by human mouths, written down by human hands, canonised by human speech, in the end became subjective again, not to mention the diversity of opinion for which there is still room. Thus, the value of an infallible standard, quantitatively and qualitatively determined by subjects, remains as relative as any other irrefutable

conviction."[24] Snouck kept this in mind when deducing 'facts' about Mohammed's views.

In accordance with older revelations, Mohammed taught that humankind descended from one couple, which principally meant equality among all human beings within the diversity of qualities that characterized individuals or groups. In an attempt to end the tribal wars that were dividing the Arabs once and for all, Mohammed said:

> "*People! We have created you from one man and one woman and made you in groups and tribes so that you would acknowledge each other; the most noble of you in Allah's estimation is the most pious; Allah is omniscient, all knowing."*[25]

But equality did not have the meaning it has now. Mohammed divided humanity in three categories, starting with the civilized – who of course are the Muslims. In the second place came the half-civilized people, who believed in a Holy Scripture, but who because they rejected the absolute truth embodied in Mohammed's message walked in darkness. The civilized men could try to guide them towards the highest level of faith through moral means and were obligated to do so. And last but not least, there were the uncivilized or savages who, if necessary, had to be persuaded by violence to be incorporated

[24] de Bruijn and Harinck, *Een Leidse vriendschap*, 163
[25] Snouck Hurgronje, *De islam en het Rassenprobleem*, 11

into Islamic culture, or else
were to be eliminated. This division was discussed by Snouck in one of his books on Islam, and the resemblance with the segmentation by superiority taught by the Christian 'Modern theologians' like A. Kuenen, C.P. Tielen and L.W.E. Rauwenhoff is striking.

They all stress the different stages of moral awareness. There is reason enough to assume that the first caliphs saw themselves not only as extremely civilized, but also as substitutes for God on earth and therefore authorized to command in his place. This so-called 'fact' was even written on coins they had minted;[26] yet their subjects agreed only partly. It didn't take long for the biblical scholars to find an alternative to this title: substitute for God's representative. This definition has been the common point of view among Muslims ever since. The ulema are not substitutes for God on this earth, but heirs to Mohammed, who was sent by God. The period in which the caliphs were losing religious authority in favour of the ulema is set to be around 800-850 AD. During this period an intense struggle also erupted between the Charidjites and the official caliphs. Migrants who moved together with Mohammed to Medina ravaged villages and caravans on the

[26] Hans Jansen, *Lezing gehouden voor de Arabische Vereniging,* 26.02.2002

way to Mecca, the main trade centre of the Northwest Arabs.

The caliphs agreed that an established religion in a world of order could not approve of such inhumane, irresponsible behaviour, particularly not when it involved the abuse of Allah's name. This was an era that attracted Snouck's attention during his years at Leiden University and he had even played with the idea of writing his dissertation on the Charidjites.[27]

One of the most exceptional results of Snouck's scientific investigation was his assertion that orthodox Islam *never drew a line between religious and secular power*.[28] It is important to keep in mind that the term 'state' did not have the same meaning then as it has now, and could even be called a rather recent European discovery. Even though the Islamic world has known a long and impressive secular tradition, there has never been a 'state' to separate it from the mosque, the two being intertwined.[29] The government was the entity that collected taxes, and thus controlled all land the Islamized Arabs had conquered in the name of Islam after Mohammed's death. The decisions made by the first two successors of Mohammed implied therefore that Islam was to be not only a

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[27] de Bruijn and Harinck, *Een Leidse vriendschap*, 58
[28] Snouck Hurgronje, *Islam*, 16
[29] Michiel Leezenberg, 'Enlightenment Darkens', in NRC Handelsblad, 29.03.2002

religion, but also a government or state. But Mohammed's successors were not entitled to explain or admit dogmas since they were not the ones with divine power, and therefore never drew up a clear and undisputable justification for the separation of heaven and earth.

The Islamic biblical scholars had a hard time coming to some kind of practical verbal agreement, and kept moulding words and interpretations until they came up with reasonable arguments we would now call 'opinion.' The consensus they arrived at remained, since the community as a whole was believed infallible. But in the theory of the Islamic orthodox philosophers, there simply exists no written justification for this so-called separation of heaven and earth, of mosque and state. The farther in the past the formative period is, the longer certain presumptions will have been consensus and the harder it would be to enforce a change of direction in thought.

The philosopher Immanuel Kant described the Enlightenment as the liberation from self-imposed tutelage and critical thinking as an awakening from dogmatic religious and metaphysical systems. Islam knew such Enlightenment much earlier than Europe did. Already in the ninth century, Islamic rulers stimulated public debates on such religious issues as criticism of the Koran, showing an openness and political

maturity the West could not even grasp yet. The Muslim equivalent of Kant is known as Farabi, who declared reason to be unambiguously superior to religious revelation as a source of knowledge and as a basis for political order.[30] However, with the proliferation of the profession of ulema, this kind of free thinking did not continue to be appreciated. When dealing with the interpretation of the Koran, ulema have the common problem that renunciation of Islam is liable to punishment and that this punishment should be the death penalty. The question they had to answer for themselves is how far one's thoughts should differ from the consensus before one actually renounces Islam. This so-called commandment (still known today) does not base itself on the Koran, but might help to explain why rebelliousness was so severely punished.[31]

During the ninth century, religious authority in Islam went from the caliphs to the guild of the biblical scholars, the ulema. These men of God were not organized in a structured hierarchy, but formed a free republic of quarrelling independent scholars. This was the complete opposite of what the West in those days believed the hierarchy in the East to be. Snouck Hurgronje's discovery of this constant tug-of-war for power was no less than revolutionary. Islam didn't establish a

[30] Leezenberg, 'Enlightenment Darkens', in NRC Handelsblad, 29.03.2002
[31] Snouck Hurgronje, Islam, 6

church organization since there was already one that emerged organically. This occurrence of ego-powered men looking for their own territory within the greater whole was not something Snouck could appreciate.

He did not regard the ulema as objective or even reliable in leading discussion on important biblical issues. He has called the ulema the “Muslim rabies,” because one didn’t become an ulema by assignment or consecration, but by taking an examination. This approach results in an endless ‘incestuous’ circle, with the ulema declaring one another qualified through examinations, leaving hardly any room for reformation. The ulema guarded without compromise what they saw to be the true Islam, which is exactly why Snouck was very cautious with trusting them in his work in the Dutch Indies.

Mohammed began preaching to the Arabs primarily because they were most open to his words, but when circumstances shaped the message into a universal one, the whole of the existing Islam was already so Arabic that non-Arabs had to submit more or less to a change of language or even life to feel comfortable within it. Everyone was welcome to pray in his or her own language, but people seemed to prefer praying in Arabic.

Language is only one of the manifestations of the miraculous unity that the international community of Islam showed. What was remarkable to Snouck were the multitude of similarities that marked individual and communal behavior, and also the religious attitude of Muslims of different race and background.[32] The Arab language as well as the Arab army resulted in Islamizing a people being equal to Arabizing them in those first centuries. The speed and suppleness with which this nomad language evolved was amazing. When we speak of the rich Arab literature and of a scientific hegemony of Arabs in the Middle Ages, we mean *international Muslim* science and culture, which used the Arab language as vehicle.[33]

This Arabic supremacy laid heavy upon the oppressed people; especially on those who had had a developed culture before Islam. The artificial attachment of the genealogy of individuals, families and even whole peoples to the Arabic family tree took a certain amount of the pressure off, but not everyone wished to be naturalized in this manner.

Those who didn't want to become Arabs began demanding that their equality be recognized on grounds of personal accomplishment. They recalled Mohammed's main

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[32] Snouck Hurgronje, De islam en het Rassenprobleem, 16

[33] Ibidem, 14

argument being the principle of virtue and not descent, thus giving equal opportunity to all races. This uprising started a rich literature of racial struggle. "Islam has not been free from racial conflict - the racial literature is not the only testimony of this -, but it never reached dangerous proportions. Theory and practice have stayed aloof from the American type of exclusion."[34] Mohammed failed in his attempt to unify all humankind under one banner with Islam, even though the only criterion that had to be met was that of a pious attitude towards life and thus towards Allah.

The practice of Islam

"It is not just the language that initially seems strange and alienates us from Muslim society, but also the habits, the way of thinking, the ideas and of course the morals."[35] Without knowing where these ideas have their roots and how certain habits have formed, one might distrust Muslims without good reason and remain guided by prejudices. Snouck found that in real Islamic life there was a visible separation between politics and religion. One could easily tell by the look of a person's clothes, for instance, whether he was a dignitary of God or a secular individual. Even though doctrine and daily routines

[34] Ibid., 21
[35] Dr. C. Snouck Hurgronje, 49

vary enormously among Muslims, there is a great sense of unity that characterizes the lives of different Mohammedan people. Their acknowledgement of the same detailed system as a goal of life had become of eminent importance to their international society.

Snouck believed because early Islam had had less time than other religions to be applied to the life and the mind of its followers, it strove for expansion more diligently than for more intensive application of what had been achieved. Leaving a great deal of room for all kinds of interpretation given that certain commandments remained unexplained.[36] Just as for Christianity, the goal of Islam is conversion of all, and thus it was correctly seen as a fearsome competitor. Especially since the process of converting is so much easier with this Arabic variant of monotheistic religion. In real life becoming a Muslim did not only mean acknowledgement of the Koran and Allah, but also complete arrangement of one's life in accordance with the God-given laws.[37] Muslim Law, in theory, wants to bind the whole of life in all its expressions with the ties of its all-controlling regulation, although never and nowhere has this succeeded according to Snouck. He repeated over and over how regular Muslim life has always and

[36] Chr. Snouck Hurgronje, Islam in Nederlands- Indië, Leiden 1913, 53
[37] Snouck Hurgronje, Islam, 1

everywhere fought the oppression of the straitjacket of Muslim Law, but at the same time he saw the beauty of this daily routine. When flicking through the pages of a Muslim law book, he stated how he understood how one could feel that this religion, imposed on those who are not born and raised into it , was an unbearable yoke; but one who is witness to the conversion of individuals or tribes will come to the opposite conclusion.[38] This specific remark again fuels the mystery of whether he actually converted to Islam.

A theme Snouck keeps coming back to in his books is how the importance of education for religious life has been dramatically underestimated. Snouck felt it necessary to study Islam because in his days the religion already included millions of people and was an important world religion.[39] He found many deviations existed within Islam and tried to reconcile them by either putting them into his familiar historical context, or rooting the practise on the official and accepted Scriptures, thereby avoiding stepping on the toes of any fanatical Muslims. A religious environment which tolerates academic study tends to be moderate rather than fundamentalist. Snouck wanted his work to be practical,

[38] Chr. Snouck Hurgronje, De Atjehers, Batavia/Leiden 1893-1894, I, 317

[39] Moereels, Christiaan Snouck Hurgronje, 2

instead of speculating on topics that are not of much use to humankind. One of the reappearing misconceptions is on the veil Snouck saw Muslim women wearing internationally. These rules were not enforced by Mohammed or his law, but by the curious civilization of Islamic Eastern countries where men were jealous.[40]

Another example was the importance of circumcision in the Dutch Indies, where it was of far greater importance than the published law acknowledged. For the population there, it was seen as a kind of local maturity ritual, while in the law it is only one of many prescriptions.

On a more theoretical level it was necessary to understand some provocative principles of Islam like the *hidjrah* of Mohammed. His revelations were not intended to convert pagans, but to give the believer a pattern for organizing his or her life in a particular way. Mohammed revoked peace without declaring war towards disbelievers, because his movement was growing too fast and he needed to get rid of a substantial part of the population. With this particular action he was breaking off all connections with non-believers and renouncing all responsibility for them. Furthermore the Muslims did not feel the need to be a part of

[40] Ibidem, 26

the decline of neighbouring powers. This kind of pious deceit belonged to the convention of that era.[41] In the Law, on the other hand, there was a section specifically aimed at the urge Muslims feel to expand their religion.

[41]Snouck Hurgronje, Islam, 12

Chapter VI

THE PEOPLE'S CONSULTATIVE ASSEMBLY

The **People's Consultative Assembly of the Republic of Indonesia** (Indonesian: *Majelis Permusyawaratan Rakyat Republik Indonesia*, **MPR-RI**) is the legislative branch in Indonesia's political system. It is composed of the members of the People's Representative Council and the Regional Representative Council. Before 2004, and the amendments to the 1945 Constitution, the MPR was the highest governing body in Indonesia.

In accordance with Law No. 16/1960, the assembly was formed after the first general election of 1971. It was decided at that time that the membership of the Assembly would be twice that of the Representative House.

The 920 membership of MPR continued for the periods of 1977–1982 and 1982–1987. For the periods 1987–1992, 1992–1997, and 1997–1999 the MPR's membership became 1000. One hundred members were appointed representing delegations from groups as addition to the faction delegates of

Karya Pembangunan (FKP), Partai Demokrasi Indonesia (FPDI), and Persatuan Pembangunan (FPP). For the period of 1999–2004 the membership of MPR was only 700, likewise for the 2004–2009 period.

Origins

On 18 August 1945, the Preparatory Committee for Indonesian Independence (the Panitia Persiapan Kemerdekaan Indonesia, known as the PPKI) approved a new constitution for the country. It was, however, difficult to implement because of the unsettled postwar conditions. The Preparatory Committee therefore decided to instead implement a document titled *The Four Clauses of Transition Regulations.* Clause IV of those regulations stated that until permanent governing bodies could be established all governmental powers would be held by the President with the assistance of a National Committee.

On 29 August 1945, the Central Indonesian National Committee (KNIP) was set up, with membership drawn from leaders of communities from various regions as well from the Preparatory Committee. the MPR..

On 16 October 1945, Vice President Mohammad Hatta issued a decree that outlined the function and authority of the KNIP. In addition to the assisting the President, the committee would perform legislative duties until an MPR and DPR could be formed. In taking on the functions of the MPR, the KNIP was responsible for creating the Broad Outlines of Government Policy (GBHN).

The role which KNIP played would provide a rough outline of the duties which Preparatory Committee (the MPR) would later perform.

Federal Era and Parliamentary Democracy Era

On 27 December 1949, Indonesia's independence was recognized by the Dutch Government, and the search was on for a form of government that would suit Indonesia.

From that year until 17 August 1950, Indonesia was known as the United States of Indonesia (RIS) and had a federal system of government. Under the constitution of the RIS, the MPR was not recognized as the highest state institution, and it ceased to function. On the 17 August 1950,

however, the RIS ceased to exist, and Indonesia changed its name to the Unitary State of the Republic of Indonesia (NKRI).

Parliamentary democracy was the form of government quickly adopted by the newly re-formed nation. It operated under a provisional constitution that did not recognize the MPR. As a result of the 1955 legislative elections, however, a new DPR was formed. In December 1955, a government body called the Constitutional Assembly of Indonesia (*Konstituante*) was formed, and its duty was to draft a new constitution for Indonesia. Nevertheless, the Constitutional Assembly could not agree on a constitution, and by 1959, the government was demanding a return to the 1945 constitution; this step was rejected by the Constitutional Assembly.

Guided Democracy Era/Old Order

Formation

On 5 July 1959, President Sukarno, who until then had played the role of ceremonial Head of State intervened. In a decree, he dissolved the Constitutional Assembly and declared that the 1945 Constitution would thenceforth be in force and that the Provisional Constitution was void. With the return to

the 1945 Constitution, the MPR was once again recognized as the highest governing body in the land.

Immediately after issuing the decree, Sukarno set to work in establishing an MPR, although it would be dubbed the Provisional People's Consultative Assembly (MPRS). Sukarno had originally envisaged a legislative election to be held to replace the MPRS with a proper MPR, but that vote was delayed until 1971 under President Suharto's rule.

Composition

The MPRS during the Guided Democracy era numbered 616 members. It consisted of the 257 DPR members, 241 Representatives of the Functional Groups, and 118 Regional Representatives. The MPRS was subservient to Sukarno, with the President deciding everything from the number of seats to the appointment of additional members and the choice of the body's Chairman and Vice Chairmen.

1960 General Session

The MPRS held its first General Session in Bandung, West Java from 10 November to 7 December. Its main resolution was the adoption of Sukarno's political manifesto as the GBHN and the broad outlines of an eight-year Development Plan, which was set to start in 1961.

1963 General Session

The second General Session was held in Bandung from 15 May to 22 May 1963. It was at this General Session that Sukarno was elected President for Life.

1965 General Session

The MPRS held its third General Session in Bandung from 11 April to 15 April 1965. This General Session further entrenched Sukarno's ideological approaches in the running of Indonesia. Many of Sukarno's Independence Day speeches were adopted as the guideline for policies in politics and economics. The MPRS also decided on the principals of Guided Democracy, which would involve consultations (*Musyawarah* and *Mufakat*).

Transition to New Order

1966 General Session

Perhaps the most significant of the MPR's General Sessions was that in 1966. Meeting in Jakarta from 20 June to 5 July 1966, the General Session marked the beginning of the official transfer of power from Sukarno to Suharto. Although the de facto transfer of power had been made on 11 March by virtue of Supersemar document, Suharto wanted to maintain the appearance of legality.

During the 1966 session, the MPRS passed 24 resolutions; they included revoking Sukarno's appointment to the life presidency, banning Marxism-Leninism, ratifying *Supersemar,* the holding of legislative elections, commissioning Suharto to create a new Cabinet, and a constitutional amendment in which a President who might be unable to perform his duty would be replaced by the holder of *supersemar* instead of the Vice President.

Also during the General Session, Sukarno delivered a speech called *Nawaksara* ("The Nine Points"), in which he was expected to give account for the 1965 30 September

Movement, in which six generals and a first lieutenant were kidnapped and killed by alleged communists. The speech was rejected, and the MPRS asked Sukarno to give a supplementary speech at the next MPRS General Session.

1967 Special Session

The 1967 MPRS Special Session marked the end of Sukarno's presidency and the beginning of Suharto's. Much like the 1966 General Session, the official transfer of power was done before the General Session in March, with Sukarno stepping down from his position in February. Suharto's appointment as Acting President and the withdrawal of power from Sukarno during this General Session was just a formality.

The MPRS also passed a resolution to re-examine the adoption of the Political Manifesto as GBHN.

The Special Session assembled after Sukarno's *Nawaksara* Supplementary Letter was deemed to be unworthy because it had not accounted for the G30S. He did not deliver a speech. On 9 February 1967, the DPR declared that the President was endangering the nation through his leadership

and ideological stance. It then asked for an MPRS Special Session to be held in March.

1968 Special Session

The 1968 MPRS Special Session officially consolidated Suharto's position by appointing him to the Presidency. The MPRS commissioned Suharto to continue stabilizing Indonesia's politics and to formulate a Five Year Plan for the economy.

The Special Session was assembled when it became obvious that Suharto was not going to be able to hold legislative elections on July 1968 as had been ordered by the 1966 MPRS General Session. During this Special Session, the MPRS also commissioned Suharto to hold elections by 5 July 1971.

New Order

The building complex in Jakarta that includes the offices and meeting chamber of Indonesia's People's Consultative Assembly

1973 General Session

The 1973 General Session was the first MPR to be elected by the people. Its membership was increased to 920. and until 1999 it included members from Golkar, the United Development Party (PPP), the Indonesian Democratic Party (PDI), ABRI (the military), as well as Regional Representatives.

For the first time, the President was required to deliver an Accountability Speech in which he would outline the achievements which he had accomplished during his five-year

term and the way in which they fulfilled the GBHN which the MPR had set out.

In this General Session, the MPR passed resolutions that outlined the method of the election of the President and Vice President and decided on the relationship between the Governing Bodies in Indonesia — such as the MPRS, DPR, DPA, etc.). Suharto was elected to a second term as President, with Sultan Hamengkubuwono IX as Vice President.

1978 General Session

The 1978 General Session passed resolutions that included the integration of East Timor as a province of Indonesia and commissioning Suharto to establish Pancasila as the national ideology via an indoctrination process.

The session was noted for the mass walkout of PPP members when Suharto referred to religions as "streams of beliefs".

During this General Session, Suharto was elected to a third term as President, with Adam Malik as his Vice President.

1983 General Session

The 1983 General Session passed resolutions on the holding of a referendum, as well giving Suharto the title of "Father of Development". He was elected to a fourth term, with Umar Wirahadikusumah as Vice President.

1988 General Session

The 1988 General Session was marked by a reorganization of the MPR. Another faction, dubbed the Groups Faction. was added. Members of this faction are drawn from all walks of life and integrated into the factions of Golkar, PPP, and PDI.

This General Session was also noted for the furor over the nomination of Sudharmono as Vice President, which resulted in Brigadier General Ibrahim Saleh interrupting the General Session and PPP's Jaelani Naro nominating himself as Vice President before he was convinced to withdraw by Suharto. The latter was elected to a fifth term as President with Sudharmono as Vice President.

1993 General Session

Suharto takes the oath of office at the 1993 session of the People's Consultative Assembly.

The 1993 General Session was marked by another reorganization of the MPR, with membership being increased to 1,000 This General Session was noted for ABRI's preemptive nomination of Try Sutrisno as Vice President. Although displeased, Suharto did not want an open conflict with ABRI and accepted Try as his Vice President. Suharto was elected to a sixth term.

1998 General Session

The 1998 General Session was held during the height of the Asian Financial Crisis and the peak of pro-democratic movements in Suharto's regime. In an effort to restore security and stability, the MPR passed a resolution to give special powers to the President to ensure the success and security of development.

Suharto was elected to a seventh term, with BJ Habibie as Vice President.

To date, this is the New Order's last ever General Session, marked with Suharto's downfall on the Special Session in May, marking the starting the new Reformation era.

Reform Era

1998 Special Session

The MPR during the 1998 Special Session

The 1998 Special Session (*Sidang Istimewa*) was the first MPR assembly held after Suharto's resignation from the Presidency and fall from power in May 1998. Although it still consisted of politicians who had flourished during Suharto's regime, these MPR members were keen to distance themselves from Suharto and appeal to the reformist sentiments that were prevalent in Indonesia at the time.

During this Special Session, MPR revoked the special powers given to the President in the 1998 General Session and

limited the number of terms of the President. The MPR also resolved to hold legislative elections in 1999, ordered a crackdown on corruption, collusion, and nepotism and revoked the resolution which had ordered the indoctrination of *Pancasila* in order to establish it as a national ideology.

This Special Session, and Suharto's resignation, marked the downfall of the New Order, which transited to the Reformation era.

1999 General Session

The 1999 General Session was the first MPR with "real" reform credentials. In another reorganization process, the membership was reduced to 700. with 500 DPR members, 135 Regional Representatives, and 65 Group Representatives.

During the General Session, the MPR recognized the referendum in East Timor and set a task force to amend the 1945 constitution. It also stipulated that it would thenceforth hold annual sessions to receive reports from the President, DPR, the State Audit Board (BPK), DPA, and the Supreme Court. After receiving these annual reports, the MPR would

then work to give recommendations on the course of action that the President could take.

For the first time, the MPR rejected a President's accountability speech, and Presidential and Vice Presidential elections were held with more than one person competing.

During the General Session, Abdurrahman Wahid was elected President, with Megawati Sukarnoputri as Vice President.

2000 Annual Session

The 2000 Annual Session continued the reform process. The MPR separated the TNI_from the National Police and defined their roles. It also passed resolutions on the consolidation of National Unity and recommendations regarding the execution of Regional Autonomy.

2001 Special Session

The 2001 Special Session assembled after President Wahid was allegedly involved in a corruption case and after the DPR began claiming that Wahid's leadership had become incompetent. Originally scheduled for August 2001, the

Special Session was brought forward to July 2001. It then removed Wahid from the Presidency and elected Megawati as President and Hamzah Haz as Vice President.

2002 Annual Session

The 2002 Annual Session continued the constitutional amendment process, most notably changing the system of presidential elections, abolishing the DPA and requiring that 20 percent of the national budget be allocated for education, It also order the formulation of the Constitutional Court by 17 August 2003.

2003 Annual Session

The 2003 Annual Session focused on the legal status of the previous resolutions that the MPR and the MPRS had passed, as well as deciding on the composition of a Constitutional Commission.

The 2003 Annual Session also outlined the MPR's new status, which would come into effect with the inauguration of the new President in 2004. With the President and Vice President thenceforth elected directly by the people and with

the constitutional amendments which the MPR had worked on from 1999 to 2002, the MPR's power was reduced. It would no longer be the highest governing body but would stand on equal terms with the DPR, BPK, the Supreme Court, and the Constitutional Court. In dealing with the President and Vice President, the MPR would be responsible for the inauguration ceremony and, should the occasion call for it, the impeachment of the President or Vice President, or both. The MPR would elect a President and Vice President only if both positions were vacant.

2004 Annual Session

During this session, the MPR heard its last accountability speech by a President.

List of Chairman

KNIP

- Kasman Singodimedjo (1945-1949)

MPRS

- Chaerul Saleh (1960-1966)
- Gen. Abdul Haris Nasution (1966-1972)

MPR

- Idham Chalid (1972-1977)
- Adam Malik (1977-1978)
- Gen. Daryatmo (1978-1982)
- Gen. Amirmachmud (1982-1987)
- Lt. Gen. Kharis Suhud (1987-1992)
- Lt. Gen. Wahono (1992-1997)
- Harmoko (1997-1999)
- Amien Rais (1999-2004)
- Hidayat Nur Wahid (2004-2009)
- Taufiq Kiemas (2009–present)

Chapter VII

HIGH INSTITUTIONS OF THE STATE / THE PARLIAMENT (DPR)

The **People's Representative Council** (Indonesian: *Dewan Perwakilan Rakyat*, **DPR**), sometimes referred to as the **House of Representatives**, is one of two elected national legislative assemblies in Indonesia. Together with the Regional Representatives Council (*Dewan Perwakilan Daerah*/DPD), a second chamber with limited powers, it makes up a third chamber, the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*). Currently there are 560 members, following the 2019 elections.[42]

The house has been constantly under public outcry due to high level of fraud and corruption.[43]

[42]Ricklefs (1982) p. 164
[43] Taufiqurrahman, M. (10 December 2004). "House, parties 'most corrupt'". The Jakarta Post. Archived from the original on 3 March 2016.

History

Volksraad

Dutch East Indies Governor-General Johan Paul van Limburg Stirum opens the first meeting of the *Volksraad* in 1918.

In 1915, members of the Indonesian nationalist organization Budi Utomo and others toured the Netherlands to argue for the establishment of a legislature for the Dutch East Indies, and in December 1916 a bill was passed to establish a *Volksraad* (People's Council).[44] It met for the first time in 1918. Ten of its nineteen members elected by local councils were Indonesians, as were five of the nineteen appointed members. However, it had only advisory powers, although the governor-general had to consult it on financial matters. The body grew in size to 60 members, half of who were elected by a total of 2,228 people.[45]

In 1925, the *Volksraad* gained some legislative powers. It had to agree to the budget and internal legislation, and could sponsor laws of its own. However, it had no power to remove

[44] Ricklefs (1982) p. 164
[45] Ricklefs (1982) p. 153

the governor general and remained nothing more than a gesture.

In 1940, after the German invasion of the Netherlands, and the fleeing of the Dutch government to exile in London, there was a motion calling for an inquiry into turning it into a quasi-legislature, but this was withdrawn after a negative response from the government. In July 1941, the *Volksraad* passed a motion calling for the creation of a militia made up of up to 6,000 Indonesians In February 1942, the Japanese invasion began, and in May 1942 the Dutch formally dissolved the *Volksraad*. It was replaced by a council made up of heads of departments.

Japanese Occupation

The Japanese invaded Indonesia in 1942. By 1943 the tide had turned against them, and in order to encourage support for the war effort, the Japanese appointed Indonesian advisors (*sanyo*) to the administration and appointed Sukarno leader of a new Central Advisory Board (*Chuo Sani-kai*) in Jakarta.[46] In March 1945, the Japanese established the Committee for Preparatory Work for Indonesian Independence (Indonesian:

[46] Ricklefs (1982) p193

Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia) or BPUPKI, chaired by Radjiman Wediodiningrat, with Sukarno, Hatta and Thamrin among its members. This body drew up a constitution for an independent Indonesia over several weeks of meetings. At a session of the Committee on 1 June 1945, Sukarno laid down the principles of Pancasila by which an Indonesia would be governed.[47]

On 7 August, the day after the atomic bombing of Hiroshima, the Preparatory Committee for Indonesian Independence (Indonesian: *Panitia Persiapan Kemerdekaan Indonesia*) or PPKI was established. Sukarno was chairman, and Hatta vice-chairman. The two proclaimed the Independence of Indonesia on 17 August.[48] On 18 August, the PPKI accepted the constitution drawn up by the BPUPKI as the provisional Constitution of Indonesia and decided that during a six-month transition period, the new republic would be governed according to the constitution by a president, assisted by a National Committee, who would establish the two chamber legislature mandated by the constitution. The upper chamber, the People's Consultative Assembly would then have six months to draw up a new constitution, leaving open the

[47] Ricklefs (1982) p. 197
[48] Ricklefs (1982) p. 197

possibility that this would be an entirely new document free of the influence of the situation prevailing during the Second World War. The PPKI also named Sukarno as president and Hatta vice-president.[49]

KNIP

Main article: Central Indonesian National Committee

The historic meeting of the KNIP in Malang, East Java to decide Indonesia's response to the Linggadjati Agreement

The **Central Indonesian National Committee** (Indonesian: *Komite Nasional Indonesia Pusat*) or KNIP was a body appointed to assist the president of the newly independent Indonesia, Sukarno, on 29 August 1945. It was originally planned to have a purely advisory function, but on 18 October,

[49] Kahin (1952) p. 138

Vice-president Hatta issued Decree X transferring the powers the Constitution conferred on the People's Consultative Assembly and People's Representative Council from the president to the KNIP. The day-to-day tasks of the KNIP would be carried out by a Working Committee.[50]

During the War of Independence, the entire KNIP was unable to meet regularly. Therefore, the KNIP acted as the upper house, the People's Consultative Assembly in the constitution, meeting only infrequently to discuss fundamental and pressing national issues, while the Working Committee acted as the day-to-day parliament.

The Federal Legislature

In January 1948, the Dutch authorities established the Provisional Federal Council for Indonesia (*Voorlopige Federale Raad voor Indonesia*) comprising Lieutenant Governor Hubertus Johannes van Mook and eight Indonesians chosen by him to represent the views of Indonesia. Two months later, the council made up of heads of departments that the Dutch had set up to replace the pre-war *Volksraad* officially became the Provisional Federal Government (*Voorlopige*

[50] Cribb (2001) pp. 280–281

Federale Regering). This body invited heads of the states making up the United States of Indonesia to send delegates to the Federal Conference in Bandung in May 1948. That month, leaders of states and other areas joined together to establish the Federal Consultative Assembly (*Bijeenkomst voor Federaal Overleg* or BFO) to represent the federal regions.[51]

Following the transfer of sovereignty to the United States of Indonesia (RIS), in December 1949, the state adopted a bicameral system, with a 150-member People's Representative Council and a senate with two representatives from each of the 16 component areas of the RIS. Initially People's Representative Council had 50 representatives from the Republic of Indonesia and 100 from the 15 component parts of the RIS. The plan was for elections within a year. The KNIP met for the last time on 15 December 1949 to agree to the Republic of Indonesia joining the RIS.

This People's Representative Council met for the first time on 15 February 1950, but was soon overtaken by events as

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[51] Cribb (2001) pp. 282–284

the federal system collapsed as the individual states dissolved themselves into the unitary Republic of Indonesia.[52]

Liberal Democracy

The original building in central Jakarta where Indonesia's legislature, the People's Representative Council (DPR) met from 1950

Given that the Republic of Indonesia did not want the RIS parliament to become the legislature of the unitary republic, in May 1950, Hatta and representatives from the federal states agreed to establish a new parliament comprising the 150 members of the RIS parliament, 46 members of the KNIP Working Committee, 13 from the Republic of Indonesia Supreme Advisory council and 32 RIS senators, making 241 members. On 17 August 1950 the RIS was formally dissolved and the unitary Republic of Indonesia came into being.

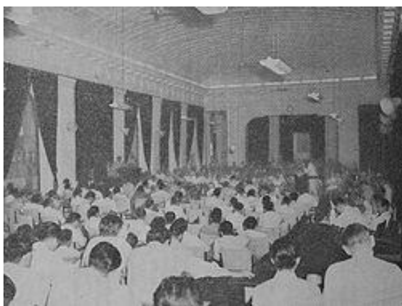
[52] Hilmi Syatria (ed) (1995) p.8

The provisional People's Representative Council met for the first time on 16 August 1950. By then there had been minor changes to the agreed composition as three RIS senators had refused to take their seats and 21 representatives from the State of Pasundan were replaced by 19 members appointed by the Republic. Of the 236 members, only 204 took their oaths of office on 20 August, and only 170 voted in the election of the speaker, which was narrowly won by Sartono of the Indonesian National Party (PNI). Masyumi was the largest parliamentary party with 49 seats. The PNI had 36 seats and no other party had more than 17.[53]

In 1952, the DPR demanded a reorganization of the Ministry of Defense and the dismissal of the Army leadership in response to military opposition to troop reductions. This led to the '17 October 1952' incident with large-scale demonstrations at the presidential palace by soldiers and civilians demanding the DPR be dissolved. The crowd dispersed after Sukarno addressed it. [54]

[53] Cribb (2001) pp. 285–286
[54] Ricklefs (1982) p. 233

Despite the election bill being introduced in 1951, it was not passed until 1953 and elections were held in 1955.[55] The results surprised everybody. The Indonesian Socialist Party did worse than expected, as did Masyumi, while the Indonesian Communist party did better than predicted. Following the election, the PNI and Masyumi had 57 seats each, the Nahdatul Ulama had 45 and the PKI 39. There were know 28 parties in parliament, compared with 20 before the election. Only 63 of the 257 pre-election members of parliament still had seats, but there were 15 women members compared with eight before. The new parliament met on 26 March 1956.



The Indonesian parliament in session in the 1950s

Over the next few years, public dissatisfaction with the political parties grew. In 1957, Sukarno announced his concept

[55] Ricklefs (1982) p. 234

of a national unity cabinet and a National Council made up of functional groups to advise the cabinet. This Council was established in May 1957. On 5 July 1959, Sukarno issued a decree, which as well as reviving the provisional 1945 Constitution, dissolved parliament.[56]

The new DPR took office on 22 July 1959. It accepted the president's decree by acclamation and aid it was ready to work as stipulated by the 1945 Constitution. However in March 1960 it unexpectedly rejected the government's budget. Sukarno then dissolved it as it was seen as no longer fulfilling the president's hopes that it would work with him in the spirit of the 1945 Constitution, Guided Democracy and the Political manifesto (*Manipol*, the political ideology of the time). The DPR session ended on 24 June.[57]

Guided Democracy

See also: Guided Democracy (1957–1965)

Sukarno then used this difference of opinion with the legislature as justification for the establishment of a People's Representative Council of Mutual Assistance (Indonesian:

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[56] Cribb (2001) pp. 288–297

[57] Poltak Partogi Nainggolan (2001) p 301

Dewan Perwakilan Rakyat Gotong Royong, DPR–GR). The membership was no longer based on the results of the 1955 election, but was determined by the president, who could appoint and dismiss members at will. Political opponents were sidelined, and some who opposed the establishment of the DPR-GR refused to take their seats. As Masyumi and the Indonesian Socialist Party did not agree with Sukarno, they were given no seats, meaning there was no longer a parliamentary opposition. A number of representatives from various functional groups including the military were also appointed. As of mid-1962, there were 281 members; 130 from 10 political parties, 150 from 20 functional groups and 1 representative from West Irian.

The responsibilities and duties of the parliament were dramatically curtailed as it was reduced th helping the government implement its policies. In 1960 it produced only 9 laws, compared with 87 in 1958 and 29 in 1959. It became little more than a rubber stamp for Sukarno's policies. For example it passed a law allowing volunteers to be sent to participate in the 'Confrontation' with Malaysia.[58]

[58] Dept of Foreign Affairs (1962), Indonesia 1962, Jakarta, p. 9, No ISBN

New Order

See also: New Order (Indonesia)

The Building in Jakarta where Indonesia's People's Representative Council holds its plenary sessions.

Following the coup attempt of the 30 September Movement in 1965, which was officially blamed on the Indonesian Communist Party (PKI), the DPR-GR was purged of PKI members – 57 communist members were suspended.[28] On 14 November parliament resumed without the PKI representatives, including deputy speaker M. H. Lukman. In 1969, the government passed an election law that set the membership of the DPR at 360 elected and 100 appointed members. The number of representatives from the military increased to 75. Elections were finally held in 1971, having

been delayed to allow preparations to ensure a victory for the government's Golkar organization.[59]

Following the election, the words '*Gotong Royong* were removed and the body became the *Dewan Perwakilan Rakyat* again. In 1973 the remaining political parties were reduced to two, the United Development Party and the Indonesian Democratic Party . For the remainder of the New Order, Golkar won absolute majorities at every elections, while the parliament did not produce a single law on its own initiative, its role being reduced to passing laws proposed by the government.[60]

Reform Era

In May 1998, President Suharto stepped down and the following year saw Indonesia's first free elections since 1955. Of the 500 seats, 462 were elected, while 38 seats were reserved for the military/police faction. In the 2004 elections, all 550 seats were elected. In the 2009 elections the number of

[59] Poltak Partogi Nainggolan (2001) pp. 304–303
[60] Daniel Dhaidae & H. Witdarmono (2000) p. xix

seats was increased to 560. There are now no appointed military officers in the legislature.[61]

Powers

The DPR has three main functions, legislative, budgeting and oversight. It draws up and passes laws of its own as well discussing and approving government regulations in lieu of law and proposals from the Regional Representatives Council (DPD) related to regional issues. Together with the president, it produces the annual budget, taking into consideration the views of the DPD. It also has the right to question the president and other government officials.[62]

The President of Indonesia does not hold the power to relinquish the People's Representative Council.

Current Composition

The People's Representative Council has 560 members resulting from the 2009 legislative election. There are

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[61] Friend (2003) p. 405

[62] http://www.dpr.go.id/tentang/hak-kewajiban DPR website – Rights and Obligations (Indonesian)

representatives from 9 political parties grouped into 9 factions.[63]

Leadership

The DPR is chaired by a speaker and four deputy speakers elected from the membership. The current speaker is Marzuki Alie.

Commissions

There are a total of eleven commissions whose job it is to discuss matters related to their areas of responsibility and formulate bills for submission to the plenary session of the Council. The commissions and areas of responsibility are:

- Commission I :Defense, foreign affairs and information
- Commission II: Domestic governance, regional autonomy, state apparatus and agrarian affairs
- Commission III: Legal affairs and laws, human rights and security
- Commission IV: Agriculture, plantations, maritime affairs, fisheries and food

[63] http://www.dpr.go.id/akd/komisi DPR website - Components (Indonesian)

- Commission V: Transport, telecommunications, public works, public housing, village development and disadvantaged areas
- Commission VI: Trade, industry, investment, cooperatives, small and medium businesses and state-owned companies
- Commission VII: Energy, natural mineral resources, research and technology, the environment
- Commission VIII: Religion, social affairs, the empowerment of women
- Commission IX: Demographic affairs, health, manpower and transmigration
- Commission X: Education, youth affairs, sports, tourism, art and culture
- Commission XI: Finances, national development planning, banking and non-bank financial institutions

The commissions can meet with the president or ministers and can hold meetings to listen to public opinion.[39]

Chapter VIII

MILITARY COURTS

Military courts can be classified by the persons over whom they exercise their jurisdiction. Courts-martial and military courts of inquiry are concerned with members of the armed forces. Military commissions and provost courts (operated by officers of the provost marshal general) exercise their power over civilians who, although not affiliated with the military, may face a military court in time of war or rebellion. In the early days of the republic, the distinction was not as clearly drawn. Winthrop's *Military Law and Precedents* remarks on the courts-martial of civilians for collaboration with the traitor Benedict Arnold in 1780, for spying on New Orleans in 1815, and for inciting and supplying the Creek Indians in Florida in 1818.

The same confusion attended courts of inquiry, authorized by the Articles of War, and considered to be quasi-judicial boards of investigation; yet it was such a court, convened by Gen. George Washington, which recommended that Maj. John André of the British army be treated as a spy

and executed. Courts of inquiry were common in the 19th century, when one was used to inquire into the conduct of Major Reno at the 1876 Battle of the Little Bighorn. However, they came to be replaced by less formal administrative boards. Still authorized by the Uniform Code of Military Justice, they have in recent years only been utilized by the U.S. Navy, for example, to deal with the losses of vessels such as the USS Scorpion, and in the *Pueblo* incident (1968).

Similarly, military commissions (established to try civilians for criminal offenses) and provost courts (intended to resolve civil disputes) are still authorized by the Uniform Code. When established in occupied territory and utilized to try cases involving local residents, these courts derive their authority from international law. Their authority over U.S. citizens was challenged in Exparte Milligan (1866) and *Duncan* v. *Kahanamoku* (1946), in which majorities of the Supreme Court held that jurisdiction could not be exercised in areas where U.S. civil courts were open and functioning. However, in *Ex parte Quirin* (1942), a case involving Nazi saboteurs, a majority of the Court approved of a commission that tried alien enemies found in the United States. The Court similarly approved their use to try war crimes overseas, for example, in

In re Yamashita (1946), which led to the execution of the Japanese general in charge of Manila in 1945.

Courts-martial are the best known military courts. The 1775 Articles of War, following British practice, established three categories of such courts for the army: general, for the most serious offenses and for cases involving officers; regimental; and detachment or garrison courts. The so-called inferior courts were limited in their jurisdiction to noncapital offenses, to offenders who were enlisted men (and, in the case of regimental courts, to enlisted personnel who were members of that unit), and by the kinds of punishment they could impose. The Naval Rules made no such distinction and relied on naval custom. Military law treatises uniformly state that courts-martial were always composed of officers; had to consist of at least three members; and that there was no American equivalent of the English "Drum Head" court-martial, where punishment was summarily imposed. However, Stephen Ambrose's account, in *Undaunted Courage* (1996), of the Lewis and Clark Expedition (1804–06) reports instances where enlisted men were appointed as the court-martial to decide what punishment should be imposed on a fellow soldier, and one case in which the joint commanders appointed

themselves as the court. The punishments imposed (typically flogging) were within statutory limits. The history of such informal courts remains to be written, as does the use of these courts to try prisoners of war (POWs). During World War II, seven German POWS in the United States were convicted of murder of fellow prisoners and were executed at the U.S. Disciplinary Barracks at Fort Leavenworth.

Nonjudicial punishment, permitted by naval custom (called in the navy, “Captain's Mast,” and in the Marine Corps, “Office Hours”), was prohibited in the army, whose statutes and regulations required a court-martial composed of at least three officers. During the Civil War, single officer field officer's courts were permitted but ceased at the war's end. In 1890, the first single army summary courts were established by regulation; it was not until World War I and congressional passage of Article 104 that army commanders were permitted to impose minor punishments without trial. Even as army commanders' authority was thus enhanced, it was also curtailed by legislation which required that courts-martial convictions be scrutinized by Boards of Review. With the passage of the Uniform Code of Military Justice (1950) that practice was extended to the air force, Coast Guard, the navy, and the

Marine Corps. Board decisions could be reviewed by the Court of Military Appeals, subsequently renamed the U.S. Court of Appeals for the Armed Forces, as the boards became known as Military Courts of Appeal. Thus, for the past half century, the organization of courts-martial has remained unchanged.

Chapter IX

THE FIVE – YEAR NATIONAL DEVELOPMENT PLAN

President Susilo Bambang Yudhoyono briefing the state ministers during their first cabinet meeting at the State Secretariat's office in Jakarta on Friday. (Photo: Widodo S. Jusuf, Antara)

As if for the first day of the school year, there was a nervousness in the air and overdressed attendees for the first meeting of the government's new ministerial team on Friday morning.

But Indonesia's 6th President Susilo Bambang Yudhoyono opened the meeting with a sense of purpose by spelling out three areas he wanted his new cabinet to focus on: change, continuity and unity.

"Change and continuity" meant new ministers should not hesitate to continue relevant programs begun under the last

administration, he explained, while an appraisal of his last government's five years had given him insights into obstacles to change. "I have identified weaknesses, constraints and unfinished goals because of bottlenecks and clashing regulations," he said.

Yudhoyono said the main agenda for the new government included boosting growth to 7 percent or more by 2014, improving governance and ensuring that democracy remained solid.

Also important was realizing fair and inclusive development. "We should really pay attention to regional development, intersector development and the development of marginal or underdeveloped communities," he said.

The first priority would be to improve governance, including the sluggish bureaucracy. The education sector was number two, followed by poverty reduction, food security, infrastructure, investment and business climate, and energy.

Yudhoyono specifically announced the formation of a poverty control coordinating team to be led by Vice President Boediono and intended to "synergize and synchronize poverty control."

The team would comprise the coordinating ministries for the economy and people's welfare and other ministries, Yudhoyono pledged.

Data from the Central Bureau of Statistics (BPS) shows that 32.5 million, or 14.1 percent, of the country's 230 million people were living in poverty as of last March.

Yudhoyono again stressed that his ministers were all carefully selected. "Many outside of us, in certain capacities are way above us. But as this is a five-year program, based on my vision, action plan, priorities and agenda, I therefore looked for the appropriate individuals," he said.

The first cabinet meeting was marked by awareness and faux pas, with the well-dressed new ministers reporting bright and early, most arriving an hour ahead of schedule. Instead of the "daily suit" required by protocol, the men wore full suits and ties or batik shirts. The women wore batik.

The new ministers apparently were not the only nervous ones. When new State Secretary Sudi Silalahi entered the assembly room, protocol officials mistakenly thought he was Yudhoyono and asked the ministers to rise. They burst out laughing when they realized their mistake.

"We are too enthusiastic for the first meeting," said one minister, as quoted by okezone.com. The laughter ceased when Yudhoyono and Vice President Boediono arrived less than a minute later.

One attendee did not, however, get to stay for the action. Gita Wirjawan, the new head of the Investment Coordinating Board (BKPM), was asked to leave.It was revealed that his position was not a full cabinet-level position yet. "My inauguration will come later," said Gita, who will have to wait until a new cabinet secretary is appointed.

Chapter X

THE CONCEPTION SOURCES AND SYSTEM OF INTERNATIONAL LAW

Developing the concept of “international law”, ie of the essential content of this phenomenon – one of the tasks of science in general and the rights of its section, which is called the theory of law, in particular, and science (doctrine) of international law and its interface the theory of international law.

Unfortunately, however, the domestic legal theory, usually based on the analysis of the phenomena that characterize domestic (national) law, and the theory of international law deals mainly with phenomena peculiar to interstate or, more broadly, international relations.

This occurs, in particular, because in reality there are two systems of law , the right to domestic (the totality of the national rights of individual states) and international law with its specific objects and subjects of legal regulation. The object of domestic regulation are the social relations developing

within the state, ie within organized in that state of society, and the object of international legal regulation , the social relations arising in the international community of states, ie primarily the relationship between states.

Dualistic understanding of law as formed by the two though interrelated, but separate legal systems (domestic and international law), it is accepted in doctrine, both national and international law. However, without going into details, we note that the doctrine of the right to raise scholastic monistic theory of law (the theory of common law). Some authors consider common rules of international law, which can supposedly handling and intrastate relations. At the same time they admit the existence and domestic regulation, which operates by virtue of insufficient development of international law, but disappear in the future as the development of international law. Other authors monistic concepts believe that international law is only permissible within the limits prescribed by national law of that State, ie that it is domestic law.

Meanwhile, the relationship of domestic and international law lies in the fact that international law has to take into account the socio-political structure of States, particularly with the presence of bodies of state authority

competent to express the will of the State in its relations with other states and other actors in international relations, as well as with the presence of social relations within the domestic jurisdiction of any state, and usually not subject to international legal regulation. International law refers to such cases to the rules of national law.

In turn, the national law to reckon with the presence of international legal obligations of the State, to be implemented in domestic law and, where possible, be sent to such obligations or, more commonly, to transform them into rules of its national law.

The relationship between national and international law is due, therefore, the dominant role of the state in establishing both national and international law.

Based on the approach to the law according to which there are two separate but interrelated systems of law, the right of domestic and international law in the domestic doctrine offered significantly different between a definition of international law. We present some of them.

Thus, in the six-volume "Course of International Law" states that international law can be characterized "as created and developed on the basis of concordance of the wills of the system of legal norms designed to regulate international relations in order to ensure peaceful coexistence, equality and self-determination of peoples."

The disadvantage of these and many other definitions, in our opinion, the fact that they contain extra elements and does not clearly identify the core content of the term "international law".

We can therefore offer a different definition, namely: international law – a collection system and the norms governing international relations.

Thus, the essence of international law is that it regulates the international (community) relations through international legal norms, which are inextricably linked as elements of a unified legal system.

Next, consider and determine exactly which international relations are governed by contemporary international law, as established by international law and what

they are, how international legal norms are inextricably linked in a relatively autonomous legal system, which as a whole regulates certain international relations . This, in particular, and is dedicated to the subsequent presentation.

At the end of this section also should pay attention to what the term “concept” international law “refers to” public international law “as a regulator of certain public international relations developing within the international community of states.

At the same time, there are other legal norms, the totality of which forms part of domestic law of a State and the terminology is referred to as “private international law.”

Under the legal doctrine can be found a variety of views on the relationship between international public law and private international law.

The author takes the view that private international law is a special part of domestic law.

Private it is because the controls in private, or civil, against individuals and entities. And the word “international” in this case reflects that the parties to these relations have a

different nationality or ethnicity. In other words, we are talking about civil relations with a foreign element. ” Rules of private international law, as part of domestic law of this State, establish what is the national law – in this or a foreign state, should apply in specific cases to regulate these relations. However, we should bear in mind that the concept of “international law” and “private international law” – it is quite diverse phenomena.

Interesting resources:

Sources of international law

The term “source of law”, according to the general theory of law – a form, which expresses a binding rule of conduct and which is attached to this rule as a legal norm (eg, constitution, law, edict, decree or order of the competent authority of the state, etc.) .

Accordingly, the sources of international law – is the form in which the expressed rules of behavior of the subjects of international relations and who report to these rules as an international legal norms.

Next begins specificity of international law, is very different in this respect from the domestic.

First, the norms of international law established by his subjects as agreed between them, expressing their coordinated and thus the general will. Therefore, such agreements are the sources of international law.

Secondly, as already mentioned, the subjective right under international law subjects have always opposed the subjective obligations of other subjects of international law.

In this regard, the sources of international law is quite natural to speak either as a source of subjective rights, either as a source of subjective commitment subjects of international relations. In most cases preferred to talk about subjective obligations, as due the subject can not they do not comply, not incurred the adverse legal consequences in the form of international sanctions. Subjective same law authorized entity may dispose of at their discretion, except having a peremptory norm.

So, in what forms can be expressed as an agreement between the subjects of international law on their international obligations, ie, what are the sources of international law?

First of all, one of the main sources of such an international agreement as a written agreement between the subjects of international law, governed by relevant rules of general international law. The collection and the system (subsystem) of such rules constitutes a separate relatively autonomous structure of international law (the industry), called the law of treaties, which devotes a special chapter XVI.

The next major source is international custom, which in Art. 38 Statute of the International Court of Justice is defined as “evidence of a general practice accepted as law”. In this definition, the question is, firstly, on State practice, and secondly, on their practice in a certain behavior in similar situations and, thirdly, the international community’s recognition of such repetitive behaviors legally binding, ie, on the tacit agreement of informing specify the behavior of the quality of international legal norms.

On the international customary speech, therefore, comes as a norm of general international law. And, in

particular, because the formation of local multi-stakeholder international custom, and although in principle possible, but it is very rare. Bilateral same custom makes no sense.

After the Second World War under the auspices of the United Nations and other universal international organizations was carried out substantial work on the codification of international customary norms, accompanied by their progressive development. As a result, many were made universal conventions in the field of diplomatic and consular law, succession of States, international treaty law, law of the sea and some others, ie, the convention codifying the customary rules of general international law.

The function of the General Assembly, according to Art. 13 of the UN Charter, is to facilitate the progressive development and codification of international law. That its function as the General Assembly shall, in particular, with the help of the International Law Commission, a subsidiary organ of the General Assembly.

Worked out according to the General Assembly of the Statutes of the International Law Commission, the expression "progressive development of international law" is used in the

sense of preparing a draft convention on the issues that are not yet regulated by international law or that law has not sufficiently developed in State practice, the expression “codification of international law” used in a sense, a more precise formulation and systematization of rules of international law in areas that already have extensive State practice, precedent and doctrine.

In practice, the codification of general international law, which deals with the Commission, is invariably accompanied by its progressive development. In line with modern understanding and codification, as shown by AP Movchan, is a systematization and improvement of general international law, implemented through the establishment and precise formulation of the content of existing standards, revision of outdated regulations and developing new standards to meet the needs of international relations and consolidate them into a single international legal instrument, which is designed with the greatest possible regulate the use of a particular area of international relations .*

This, in particular, shows how much easier to interpret and apply international treaties than custom. However, the latter does not lose its value because the States – participants of

the codification conventions are norms of these contracts, and for States not parties, they continue to act as a customary.

Of international custom is to be distinguished international custom, ie, rule of conduct of States, which they follow in their relationships, without recognizing it legally binding. For international usages include, for example, rules comitas gentium (comity), in particular the rules of diplomatic etiquette, and so-called diplomatic protocol, but such rules maritime ceremony (saluting the flag of a foreign state upon arrival at the port of warship, warships salute when meeting on the high seas, etc.).

In recent years, taking into account the international practice of States approved the concept of formal international treaty, which refers to a written agreement between the states, text of which is worked out by States in their negotiations, but that these states have not given legal force of an international treaty, as yet convinced of the necessity of compliance its provisions, and requiring compliance with those in the process of their relationship.

Situation informal international agreement arise for different reasons. For example, the state – part of the Final Act

of the Conference on Security and Cooperation in Europe have agreed not to make this Act by international treaty. In other cases, states have developed a bilateral treaty and have affixed their signatures to the text of Commissioners, setting the text of the treaty or otherwise, for its entry into force requires ratification by both countries. But the ratification was not followed by both or one of those states. There were also cases where several states have agreed to establish an international organization, and announced it officially agreed to their act, but worked out an agreement, the founding act of the organization and gave it a legally binding contract only a few years later. For example, the Council for Mutual Economic Assistance was established and became operational in 1949, what was issued an official communiqué, and the Charter of CMEA was passed in 1959

Important source of international law are also unilateral legal acts of States, in particular the act of commitment (often unsuccessfully called an act of promise), the act of recognition and an act of protest. The first two acts, tend to act in combination.

Act of commitment – this is a unilateral declaration of the state, through its competent authority that it commits itself

to a certain, in accordance with the terms and conditions set forth in the statement, the behavior in international relations, previously not covered by the international legal regulations or bringing in any some clarification, addressed to all other States or some of them and somehow brought to their attention (particularly in writing).

Recognition Act obligations addressee State generates for them corresponding to an obligation of this subjective right, of course, in accordance with the obligations set forth in the act of conditions (in particular concerning the validity of obligations).

We give some examples of the important acts of commitment from the practice of the Soviet Union. For example, in 1982, he pledged not to use nuclear weapons first, in 1983, announced the commitment not to be the first into space any kinds of space weapons, in 1986, announced his withdrawal from conducting any nuclear explosions .

Act of commitment, coupled with the act of his confession creates, obviously, the situation an intergovernmental agreement (generic term), in contrast to an intergovernmental agreement (the concept of species). Of

course, unilateral legal acts of commitment and recognition express the will of the States concerned, and thus achieved an agreement between them is their consistent and thus the general will on the establishment of a new or refine the existing international legal norms.

We add that within the period of his actions and subject to other conditions that accompany unilateral international obligation, it can not be canceled or changed, ie in conjunction with an act of recognition creates a relatively stable inter-state agreement.

The act of recognition – is an act (action or inaction) of a State by which it is in accordance with international law recognizes the legitimate legally significant situation created by actions of other states, since the existence of such a situation, he knew or should have known.

The last part of the proposed definition (with the word "because") expresses the duty of the state how to create a legally meaningful situation, and recognizing its legitimate to act in good faith. Moral and political principle of good faith plays in this Relationship role.

Create legally significant situations, of course, should not enter into conflict with a peremptory norm of general international law. Otherwise, the recognition emerged of the situation must be regarded as null and void.

Feature of recognition is that it can be pronounced by an act of the competent authority, turned to another state (for example, a proposal to the newly created state to establish diplomatic relations with it), or derived from its silent behavior, showing that it continues to perform its international obligations in accordance with applicable international treaties or customary rules of general international law. Undeclared state of protest against the established another state legally relevant situation within a reasonable period is generally regarded as its tacit acceptance, unless a legal nullity recognition when it comes to government actions that violate peremptory norms of international law.

Recognition of the opposite act of protest – is a statement of the state to refuse to recognize legitimate legally significant situation created by the behavior of another state, ie qualification of it in accordance with existing international legal regulations as illegal. The appeal shall be clearly

expressed and somehow communicated to the State to which it is addressed, and possibly to other interested states.

Naturally, the complaint must be legally prima facie, ie with sufficient evidence, grounded in principle can be challenged by the state that it is addressed.

Such is the general situation of unilateral legal acts of States. Unfortunately, the question of unilateral legal acts almost no developed doctrine of international law. There is also an obvious confusion with regard to the concepts of legal acts and legal facts, ie, under international law, events that are introducing these provisions into effect, giving rise to the relevant relationship. It seems that only in the domestic literature monograph RA Kalam karyana "international legality of unilateral legal acts of States" (Wiley, 1984) is far from an exhaustive study of this problem.

Returning to the question about the sources of international law, we repeat that act of the State's obligation in conjunction with the acts of giving it states that it is addressed, no doubt set in their relationship obligations and certain subjective rights, ie are a source of modern international law.

Sources of international obligations of States are, furthermore, acts, regulations states – members of international organizations or bodies with such States in the binding force of the constituent instruments of these organizations or bodies or have acquired such a character by virtue of well-established practice of the organization or entity.

Thus, according to Art. 18 of the UN General Assembly takes on the items listed in this article important issues binding decisions on UN member states, in contrast to the recommendations adopted by the General Assembly are not legally binding. In accordance with Art. 25 of the United States – Members of the Organization have agreed to abide by the decisions of the Security Council and implement them.

Finally, a source of international law applicable to the individual to the norms (relating to any particular case) are the decisions of international tribunals or courts are legally binding on the parties of the matter (the international dispute).

Thus, according to Art. 94 of the UN Charter, the members of the Organization pledged to carry out the decisions of the International Court of Justice in any case to which they are parties. In case if any party fails to comply with the

obligations incumbent upon it under the Court’s decision, the other party may apply to the Security Council, which is entitled, inter alia, decide to take action to bring the solutions into practice.

Chapter XI

THE HISTORY OF INTERNATIONAL LAW AND ITS SCIENCE

The history of law is the history of our race, and the embodiment of its experience. It is the most unerring monument of its wisdom and of its frequent want of wisdom. The best thought of a people is to be found in its legislation; its daily life is best mirrored in its usages and customs, which constitute the law of its ordinary transactions.

There never has existed, and it is entirely safe to say that there never will exist, on this planet any organization of human society, any tribe or nation however rude, any aggregation of men however savage, that has not been more or less controlled by some recognized form of law. Whether we accept the fashionable, but in this regard wholly unsupported and irrational theory of evolution that would develop civilization from barbarism, barbarism from savagery, and the existence of savage men from a simian ancestry, or whether we adopt the more reasonable theory, sustained by the uniform tenor of all history, that barbarism and savagery are merely

lapses from a primordial civilization, we find man at all times and under all circumstances, so far as we are informed by the records which he has left, living in society and regulating his conduct and transacting his affairs in subordination to some rules of law, more or less fixed, and recognized by him to be binding upon him, even though he has oftentimes been in rebellion against some of their provisions.

The recognition of the existence of law outside of himself, and yet binding upon him, is inherent in man's nature, and is a necessity of his being. And this is as much as to say that the very existence of human society is dependent upon law imposed by some superior power. While from our present standpoint the ultimate finite existence is that of the individual, and all true philosophy recognizes that society exists for the individual, and not the individual for society, yet it is also true that the individual is intended to exist in society, and that he must in many things subordinate his own will to that of society, and inasmuch as society can not exist without law, it is a necessary deduction of reason that the existence of law is coeval with that of the human race.

For, if the origin of law were to be sought in compact, a similar compact would suffice to abrogate it; and if it depended

on the force of the majority, the wrongfulness of disobedience to its behests would depend entirely upon its discovery and manifestation to the world.

Suppose two shipwrecked men thrown upon a desert island, far removed from all human society, far removed from all its agencies and instrumentalities for the prevention and punishment of crime, and one in wantonness kills the other, is the act any less a crime, because it may never be discovered, because it may never be reached by the avenging arm of justice, because the social compact has never been in force in that remote region of the earth. Our conscience and our common sense rebel against the inference of any distinction between such a crime and that of the ordinary murderer within the pale of civilization.

International Law History

About the end of the thirteenth century, there were more than one hundred ecclesiastical sovereign states within the limits of the German Empire. Now we can readily infer what all this means in the contest between Feudalism and the Roman Jurisprudence. The bishops were nurtured in this latter system, they were hostile to the usages of Feudalism, they had no desire to perpetuate the sway of their own families.

Consequently in all the ecclesiastical states the principles of the Roman Jurisprudence were to a greater or less extent introduced or restored. And precisely the same thing happened with the great Free Cities of the North, known as the Hanseatic League, to which we have already referred.

All these things contributed to establish the Roman System side by side with Feudalism in Germany and to perpetuate it. Even the transfer of the imperial title to the German monarchs, and the frequent visits of the German Emperors to be crowned at Rome, together with the sentimental desire on their part to revive not only the Roman Empire, but all the incidents of that Empire, including therein of course the Roman Jurisprudence, were powerful factors in the revival of the principles of the Roman Law in Germany. The Lutheran Reformation checked this movement by the enlargement of the powers of the petty feudal princes, who, in consequence of it, became absolute monarchs within their own dominions, and found the usages of Feudalism more in accordance with their selfish purpose than the principles of the Roman Jurisprudence. But the free spirit which first found vent in the American Revolution, and which speedily reacted upon Europe, ultimately leading to the French Revolution of 1789, began also to make headway in Germany about the same time,

and led to the promulgation of new codes of law both in Prussia and Austria, mainly upon the lines of the Roman Law, and ultimately to the adoption of the Code Napoleon, by all the States of Germany.

There is yet another phase of the great contest. In the course of it the Christian Church laid the foundations of modern International Law. Private International Law, as it has been called, or the Conflict of Laws, as it has sometimes been known, had been very fully developed by the Praetor Peregrinus at Rome in the administration of justice between Roman citizens and foreigners domiciled at Rome, and in controversies between foreigners themselves of different nationalities; and modern civilization has added little or nothing to the rules of the Roman Law upon this subject. But it was reserved for the Christian Church of the Middle Ages to deal with the nations as nations, and to procure them to deal with each other as members of the common family of States, upon principles of equity and justice, and in accordance with the tenets of Christianity. Feudalism was no more than organized brigandage; and it tended to make every nation, and every petty principality, and every man, the enemy of every other nation, and principality, and human being.

Feudalism was a state of society, in which every man capable of bearing arms may be said to have slept upon his arms, ever ready to be roused to the sound of battle, and in which every alien was regarded prima facie as an enemy. The Christian Church ever sought to superinduce a kindlier feeling, to induce the nations to refrain from border warfare, and to submit their controversies to arbitration; and many a controversy between nations in the Middle Ages was submitted to the Roman Pontiff as arbitrator. We may recall one famous controversy towards the end of the period, which is most interesting to us as having reference to our own America.

At the end of the fifteenth century, when Columbus had just discovered America, Spain and Portugal led all the nations of Europe and of the world in maritime enterprise. While the great Genoese, and Alonzo de Ojeda, and Amerigo Vespucci, and other famous adventurers, were engaged in the discovery and exploration of a new world for Castille and Leon, Bartholemew Diaz, in the services of Portugal, pushed southward along the coast of Africa and doubled the Cape of Good Hope, being the first to do so since the time of Pharoah Necho, King of Egypt. Following in his wake, the great Portuguese navigator, Vasco de Gama, sailed through the straits of Mozambique, plunged boldly into the unknown

wastes of the Indian Ocean, and reached the coast of Hindustan.

A controversy arose between Spain and Portugal as to their respective spheres of action and their dominion over the discovered region beyond the Ocean. The controversy was submitted to Pope Alexander VI as arbitrator. Drawing a meridian line north and south some distance west of the Azores, the Pontiff allotted all the discoveries west of that line to Spain and all east of it to Portugal. It so happened that a few years afterwards, in A.D. 1500, the Portuguese navigator Pedro Alvarez Cabral, bound on a voyage to Hindustan, was driven out of his course by a storm on the west coast of Africa, and came on the shores of Brazil. The land which he discovered was east of the meridian line drawn by Pope Alexander, and became Portuguese territory, while elsewhere to the west the power of Spain became dominant. The arbitration was a notable one; it was readily accepted by both parties; and it removed for all time all danger of conflict between Spain and Portugal in respect of their maritime enterprises and colonial acquisitions. (*Note. - The action of Pope Alexander VI, who has sins enough for which to answer without the imputation to him of sins of which he is not guilty, has been misrepresented by various writers who knew better, as an attempt on his part*

to give the islands of the sea, as though he claimed dominion over them, to Spain and Portugal. The act of the Pope, as is very apparent from the documents themselves in which the controversy was stated and decided, was purely and simply an arbitration, and not an evidence of any assumption of papal ownership or authority over these trans-Atlantic lands.)

Chapter XII

IMPLEMENTING THE UNITED NATION CONVENTION AGAINST CORRUPTION (UNCAC) 2003 IN INDONESIA

Indonesia took part in the fourth conference of state parties to the United Nations Convention against Corruption (UNCAC) in Marrakech, Morocco late last month.

Ratifying the 2003 convention through enactment of Law No. 7/2006, Indonesia can be perceived as building its commitment, both on a domestic and global level, to the fight against corruption.

The UNCAC was established based on the premise that corruption was threatening the values of democracy, sustainable development, ethical values and the rule of law. Corruption is also seen to threaten political stability since, in many cases, corruption involves assets deemed as important for a country.

Many agree that corruption is not just a domestic crime, but a transnational one that must be combated through international cooperation. The emphasis on international cooperation signifies a new phase in the war on corruption, which requires each state party to the UNCAC to provide assistance to other countries through various instruments that can be used to achieve the goal of an effective anticorruption drive.

As a party to the UNCAC, Indonesia is bound to meeting some fundamental obligations, including synchronizing its domestic laws with the anticorruption provisions that exist in the UNCAC, covering aspects of prevention, criminalization, international cooperation, asset recovery, technical cooperation and the exchange of information and mechanisms for implementation.

One crucial factor that could disrupt the synchronization of Indonesia's anticorruption regulations with the principles contained within the UNCAC is corrupt politics. In the realm of prevention, Indonesia has a big problem relating to the ethical values of public officials, which remain very poor. The absence of rules on conflicts of interest; the domestic regulation that allows corruption suspects to hold

state posts or graft convicts to contest regional elections; the absence of strong administrative sanctions to deprive public officials standing trial for alleged corruption of their salary and facilities, are just a few important points.

The poor code of ethics has paved the way for back-room negotiations over public policymaking processes between state officials, both in the executive and legislative institutions, and businesspeople. The rampant practice of brokerage in budgeting processes within the House of Representatives is evidence of the weak code of ethics enforced on public officials.

The government, too, seems to lack support for the establishment of anticorruption bodies. As a party to the UNCAC, Indonesia should follow the standard rules of the treaty, especially Chapter III, Article 36 on criminalization, which requires it to form competent, specialized bodies that ensure law enforcement measures are taken against people allegedly involved in graft, and to guarantee an independent legal process against corruptors. A state party is also responsible for providing special training and adequate resources for the agencies to perform.

In the case of Indonesia, the government did not allocate a budget for the Indonesian Ombudsman in the 2011 fiscal year; it lacks a budget for investigations into corruption cases conducted by the National Police and the Attorney General's Office; it failed to pay on time the salaries and incentives owed to judges at the regional corruption courts and members of the Information Commission, and it has failed to recruit a sufficient number of investigators at the Corruption Eradication Commission (KPK): currently, the KPK possesses only 77 investigators.

To dismiss suspicions that the ratification of the UNCAC is solely aimed at boosting Indonesia's image in the international community, it is important for the government to improve its commitment in the fight against corruption. One important thing is to show its seriousness in implementing the treaty through accelerating reform of political institutions, promoting accountable and transparent political parties, criminalizing vote-buying practices and raising the bar on the code of ethics for public officials.

The government also needs to improve its domestic commitment toward the synchronization of domestic laws with the UNCAC principles and evaluate the implementation of

UNCAC compliance. Some measures that would indicate Indonesia's adherence to the UNCAC include removing the clause on mandatory permits for investigating public officials suspected of being involved in corruption; imposing tough administrative sanctions on officials suspected and convicted of corruption; and abolishing remissions for graft convicts to strengthen the deterrence effect.

The government should also immediately adopt the criminalization of those involved in trading influence, illicit enrichment, and it should punish foreign officials who commit corrupt practices in Indonesia.

Indeed, the UNCAC can help to steer the country's anticorruption agenda in the right direction. However, without strong political commitment from the government and the House, the UNCAC will remain a toothless document.

Adopt from : *The writer is the deputy coordinator of Indonesia Corruption Watch*

Chapter XIII

THE SUBJECT OF INTERNATIONAL LAW

Subjects of International Law

Subjects of International Law can be described as those persons or entities who possess international personality. Throughout the 19th century, only States qualified as subjects of international law. After, the Second World War, more and more new actors emerged in the international legal arena such as the intergovernmental organizations created by States, Non-Governmental Organizations (NGOs) created by individuals, multinationals and even natural persons (i.e. individuals). These can now be considered as having to a large or sometimes limited extend the capacity to become international persons.

It is intended as a starting point for research on Subjects of International Law. It provides the basic legal materials available in the Peace Palace Library, both in print and electronic format. Handbooks, leading articles, bibliographies, periodicals, serial publications and documents of interest are presented in the Selective Bibliography section. Links to the PPL Catalogue are inserted. The Library's subject heading (keyword) Subjects of International Law is instrumental for searching through the Catalogue. Special attention is given to our subscriptions on databases, e-journals, e-books and other electronic resources. Finally, this Research Guide features links to relevant websites and other online resources of particular interest.

- States and non- State actors like individuals, international organizations, multinational companies and international non-government organizations are all governed by, or subjected to, international law. They are also called "subjects of international law". These subjects all have international legal personality. In other words, they have certain rights and duties under international law and they can exercise these rights and duties. ✐ *Do all subjects of international law have the*

same rights and duties? Give some examples of the rights and duties possessed by States, individuals and international organizations.

WHO IS A SUBJECT OF INTERNATIONAL LAW?

- A subject of international is (1) an individual, body or entity; (2) recognized or accepted; (3) as being capable of possessing and exercising; (4) rights and duties; (5) under international law. (Dixon)

- Subjects of international law are States and non- State actors like individuals and international organizations. Some argue that international non-governmental organizations and multinational companies also fall into the category of subjects of international law.

HOW DO WE DETERMINE IF AN ENTITY IS A SUBJECT OF INTERNATIONAL LAW?

- An entity is a subject of international law if it has "international legal personality". In other words, subjects must have rights, powers and duties under international law and they should be able to exercise those rights, powers and duties. The rights, powers and

duties of different subjects change according to their status and functions. For example, an individual has a right of freedom from torture under international law and States have a duty under international law not to torture individuals or to send them to a country where there is a likelihood of that person being tortured. ✐ *USA deports a Londres citizen to Londres where the citizen is tortured by the authorities. What are the rights, duties and obligations of the citizen, Londres and USA in this situation?*

- Legal personality also includes the capacity to enforce one's own rights and to compel other subjects to perform their duties under international law. For example, this means that a subject of international law should be able to:

(1) bring claims before international and national courts and tribunals to enforce their rights;

(2) have the ability or power to come into agreements that are binding under international law, for example, treaties:

(3) enjoy immunity from the jurisdiction of foreign courts; and

(4) be subject to obligations under international law (Dixon).

- Remember that all subjects of international law don't have the same rights, duties and capacities. For an example, a diplomat has immunity before foreign courts because he is an agent of the sending State. This is a privilege enjoyed by the State and not the diplomat personally. (in other words, even if a diplomat commits a crime, he cannot be brought before a foreign court to be prosecuted one State can bring a claim against another State before the International Court of Justice to enforce its rights, an individual on his own can't bring a claim against a State before the ICJ. States have all the capacities mentioned above and individuals have only a few.

Reading

"Legal English & Contract Drafting"

SALE AND PURCHASE CONTRACT
FOR INDONESIAN ORIGIN
TERMS : FOB MOTHER VESSEL

PARTIES TO CONTRACT

AS SELLER

AND

AS BUYER

Pages

CONTRACT NO. xxxxxxxxxxxxxx

CONTRACT DATE: xxxxxxxxxxxx

Total Number of Pages Including Cover and Annexure: 11

This contract made and entered into this xxth of January, 2013 by and between:

BUYER Name	:
Address	:
Tel	:
Fax	:
Email	:
Represented by	:

Director hereinafter

Referred to as <u>Buyer</u>

WHEREAS Seller agrees to sell and deliver and Buyer agrees to purchase, accept delivery of and pay for coal on terms and conditions set out in this Agreement.

NOW THIS AGREEMENT WITHNESSETH AS FOLLOWS:

DEFINITIONS:

In this Agreement unless the context otherwise requires:

1. "ADB" means Air Dried Basis
2. "AR" means as Received Basis
3. "ASTM" means the standards prescribed by American Society for Testing and Materials.
4. "Business Day" means the period between the hours of 8 am to 4pm on the day other than Saturday, Sunday or any public holidays.
5. "Demurrage" means a charge payable in the event the Seller is unable to complete loading a ship within to agree Lay time.
6. "Dispatch" means the charge payable in the event Seller completes loading the ship before the end of agreed Late time.

7. “Kcal/Kg” means kilocalories of energy per kilogram of coal.
8. “USD”, means (unless otherwise specified) he currency of the United States of America.
9. “Tonne”,”Tons”,”Tonnes”,”MT”, means a metric tonne of 1000 kilograms
10. “GVC” means the gross caloric value of the Coal.
11. “FOBT” means loaded Free on Board the Mother Vessel and Trimmed.
12. A fraction of a cent in any calculation shall be rounded up to the nearest cent if such fraction is one half of a cent or more, and shall be rounded down when otherwise.
13. “Pratique” means permission to do business at a port by a ship that has complied with all applicable local health regulations.

1. ARTICLE 1 – MATERIAL

Coal deliverable hereunder shall be Indonesia Steam (Non-Cooking) Coal in Bulk from PT

2. ARTICLE 2 – QUANTITY

Seller shall deliver and Buyer Shall purchase FOB MV shipments each consisting of 70.000 MT ± 10% for a period of 12 months at VESSEL'S option. The first shipment shall be on a trial basis and on successful completion of this shipment the Buyer shall reconfirm other shipments. The final loadable quantity will be decided by Master of the performing vessel and communicated directly to the Seller via the vessel's agent in Indonesia.

3. ARTICLE 3 – PRICE

3.1 USD 93.00 per Metric Ton (US Ninety Three Only) FOB Mother Vessel. Encourage in South Kalimantan, Indonesia, basis GVC (ADB) 61-6300 Kcal/Kg and Total Moisture (AR) 10%.

3.2 Price shall be reviewed every Three (3) Months from the first shipment which comes first and/or any force majeure or maybe subject to price raises that are beyond the control of the seller. All price increases are to be discussed in a business like manner by both parties prior to a shipment being made.

The parties agree that in the event of the fuel price increase from the Basic Fuel Price then the Price shall be adjusted through this following formula:

PP = {[CFP-BFP] x 10L} + BP

Description:

PP : Purchasing Price per Metric Tons after adjustment (In USD)

BP : Basic Price

BFP : Basic Fuel Price

CFP : Current Fuel Price, in this matter shall be the Current monthly Fuel Price granted by the authorized Government Agency in Indonesia (PERTAMINA) which is effective during the sale and purchase transaction.

4. ARTICLE 4 – SHIPMENT DATES

The Buyer to the Seller shall effect the first shipment immediately after 45 days from the date of opening of L/C.

Exact lay can for each shipment to be mutually discussed and agreed between Buyer and Seller.

5. ARTICLE 5 – QUALITY DETERMINATION

5.1 The quality of coal to be supplied hereunder shall be with the following typical specifications determined and analyzed as per ASTM standard by PT Sucofindo / Geoservice, Indonesia. All percentage used refer to percentage by weight.

Parameter	*Basis*	*Contract Specification*	*Rejection*
Total Moisture	ARB	16%	> 18%
Inherent Moisture	ADB	10%	>14%
Ash Content	ADB	.12.5%	15%
Volatile Matter	ADB	39%	44%
Fixed Carbon	ADB	By Difference	
Total Sulfur	ADB	> 0,32%	> 1%
Gross Caloric Value	ADB	6100 – 6300 kcal/kg	Below 6100 kcal/kg
HGI (as per ASTM Standard)		40	44
Size	0-50mm	90% min	

Seller shall appoint PT Sucofindo/ Geoservice Indonesia, as surveyors to carry out the sampling and analysis of the sample of the material shipped at the loading port which shall be final and binding on both parties. The surveyor on board the vessel shall draw the samples at the time of loading of the cargo on the mother vessel.

5.2 The method of sampling and analysis shall be determined according to ASTM Standard.

5.3 The costs of inspections for sampling and analysis described in this Article 5.1 shall be borne by the Seller.

5.4 The consignment should be accompanied by certificate of sampling and analysis as per ASTM standard.

5.5 At least 10 days prior to the 1st day oh the loading port lay can, Buyer has the option to appoint an independent inspection agency of his choice, to carry out a pre-shipment stockpile analysis of coal at each jetty from which the barge loading will be carried out. The inspections agency would report the total quantity

available for loading, the quality of coal available for loading and also indicate that the seller is holding the cargo in ownership. Nominations of vessel would be subject to readiness of at least 80% of the full shipment size and upon satisfactory reporting by the inspection agency on their pre-shipment inspections/analysis. All costs for this pre-shipment analysis would be borne by the Buyer.

5.6 Buyer shall have an option to appoint an independent inspection agency of his choice as a witness to carry out sampling and analysis at the time of loading.

5.7 One set of raw samples drawn by the surveyors on board the vessel shall be duly sealed and signed by the surveyors and handed over to the witnessing agency before leaving the mother vessel. If required, this sample may be used as the umpire sample, in case of any variation between the quality determined by the surveyor and the witnessing inspection agency.

6. ARTICLE 6 – QUANTITY DETERMINATION

6.1 The Seller shall appoint PT. Sucofindo/ Geoservice Indonesia, to determine the weight of cargo loaded onto the vessel and issue a certification of weight, which shall be final and binding on both parties.

6.2 The certified weight shall be determined by draft survey of the carrying vessel at the Loading Portutilizing the vessel's immersion scale of weight.

6.3 A fraction of a ton shall be rounded up if such fraction is *not less* than one half of one ton, and shall be rounded down otherwise.

6.4 Such quantity as certified by PT Sucofindo/ Geoservice Indonesia, shall be the basis for determination of the amount payable of the Buyer to the Seller for the shipment.

6.5 The cost of such draft survey shall be borne by the Seller.

7. ARTICLE 7 – PRICE AND QUANTITY ADJUSTMENT

In the event the quantity of coal supplied as determined by PT Sucofindo/ Geoservice Indonesia, may vary from the specification set out in ARTICLES 5 : QUALITY, then adjustment to the invoice shall be made in accordance with the following provisions.

7.1 If the actual Total Moisture (TM) as determined by PT Sucofindo/ Geoservice Indonesia, at the Loading Portis in excess of 16% (ARB), and such excess TM shall be deducted from the B/L weight for the purpose of invoicing, as per following formula :

BL Weight x (100 – (Actual TM – 16)

Adjusted Weight = 100

For actual TM less than 16%, no bonus is applicable

7.2 If the actual Gross Colorific Value (GVC) ADB, as determined by PT Sucofindo/ Geoservice Indonesia, varies from 6000 kcal/kg, then the price shall be adjusted by the following formula.

FOB Price x Actual GVC

Invoiced Price = 5900

7.3 Ash – A penalty of USD 0.25 per MT shall be applicable for each 1% of Ash above 13% up to 25% fraction pro-rata. *BEYOND 25% THE BUYERS RESERVE THE RIGHT TO REJECT THE CARGO*.

7.4 Buyers reserve the right to reject the cargo in the event the result of analysis by PT Sucofindo/ GeoserviceIndonesiais found to exceed/ go below the limits specified under the Heading 'Rejection' in Clause 5.1 of this contract.

8. ARTICLES 8 – PAYMENT AND DOCUMETATION

8.1 PAYMENT TERMS:

After signing of contract the Buyer shall open Irrevocable at SIGHT at HSBC in favor of the Seller open a Performance Bond in Five (5) bank working days amounting to 3% (Three Percent), of FOB value of contract. The entire shipment value shall be covered by the

Irrevocable Letter of credit at sight negotiable against following documents:

1. One (1) original plus four (4) copies of Seller's manually signed and stamped Commercial Invoice showing the basis on which the price is calculated in accordance with Clause 5,6, & 7.
2. Full set of "clean on board" charter party bill of lading consigned to the order of bank and notified applicant-marked freight payable as per charter party.
3. Manually signed One (1) original plus three (3) copies of certificate of sampling & analysis-issued in accordance with clause 3.
4. Manually signed One (1) original plus three (3) copies of certificate of weight issued in accordance with clause 6.
5. Manually signed One (1) original plus two (2) copies of certificate of origin issued by the Indonesia Chamber of Commerce of equivalent Government Authority.
6. Manually signed One (1) original plus one (1) copy of statement of Draft Survey issued in accordance with clause 6.

7. A undertaking statement declaring that copy of One (1) set of Negotiable Shipping documents are already sent by fax for Custom and port clearance at the destination, within 5 (five) business days from date of sailing of the vessel.

8.2 All bank charges at SELLER end shall be borne and paid for by SELLER. All bank charges at BUYER end shall be borne and paid for by BUYER.

8.3 TT Reimbursement is allowed

8.4 Charter party Bill of Lading is allowed.

8.5 Third party Document are acceptable, expect bill of exchange and Commercial Invoice.

8.6 Payments should be credited with 3 workings after all documents are submitted in bank.

9. ARTICLE 9 – VESSEL NOMINATION, LOADING TERMS AND DEMURRAGE/ DESPATCH SETTLEMENT

9.1 Buyer shall nominate the vessel at least fourteen (14) days prior to her ETA at the loading anchorage.

9.2 Coal shall be loaded to buyer's nominated vessel at the rate of 8,000 MT PWWD SHINC provided the nominated vessel is equipped with minimum 4 x 25 T cranes each fitted with minimum 8 cbm gras. In case of any breakdown occurring with either gear or grabs, the loading rate shall be pro rate on number of cranes and grabs working during such occurrence.

9.3 Lay time shall commence 12 hours after vessel's agent tendering NOR, unless loading is sooner commenced in which case time actually used for loading shall count as lay time WIPON, WCCON, WIFPON. In the event the seller is not unable to load the cargo upon vessel's arrival and tendering NOR as above, the seller will bi liable for all consequential losses including demurrage, etc.

9.4 If unable to load the full quantity as decided by the Master of the vessel, the seller be liable for that freight for the quantity short loaded. Such dead freight, if any, shall be adjusted through the L/C and deducted from the invoice value.

9.5 Stevedoring damage – any damage caused by the stevedores at the loading port shall be reported by the Master to the stevedores in writing within 48 hours of such occurrence. The seller shall be responsible for settlement of all stevedoring damage claims at load port directly with the master/ owners and in case of non settlement by the seller, than the buyer shall have the right to adjust the same against the L/C payment by a proper debit note.

9.6 Demurrage/ Dispatch rates per day shall follow the terms and conditions as per relevant charter party. Buyer shall declare the demurrage/ half dispatch rate of the charter party, and the time of vessel nomination. The seller shall be liable to pay to the Buyer all demurrage in respect of the time required to load the vessel in excess of lay time of the rate of the relevant charter party per day (pro-rata) for all time in excess of lay time. The buyer shall be

liable to pay to Seller Dispatch in respect of time of lay time saved in loading the vessel at the rate of the rate of the relevant charter party per day (pro-rata). The seller/ buyer (as the case maybe) shall notify the other party by facsimile of amount of Demurrage or Dispatch due at the completion of loading of each shipment.

9.7 Demurrage and dispatch money, under this agreement shall be agreed directly between Buyer and Seller, after completion of loading and issuance of the Statement of facts. Once the vessel is on demurrage, the time on demurrage shall not be subject to any lay time exception, and all time to count for calculation of demurrage. Demurrage/ dispatch calculation shall be made on the basis of 'Statement of Facts' signed by the Master/ Owner's agent at loading point. The seller or the buyer (as the case maybe) shall pay the other Party the Demurrage charge or Dispatch bonus at the loading port within 15 (fifteen) days after completion of loading. The demurrage/ dispatch amount to be settled out of the L/C.

9.8 Notice of Readiness shall be tendered at the nominated loading port/ anchorage any time day or night Sunday or Holiday include (ATDN SHINC) NOR shall be tendered

by the master or the vessel's agents or by chatterers by telex/ fax/ email. NOR is deemed accepted as soon as tendered in accordance with the contract. Master may tender NOR from place of stoppage assigned by the Harbor Master by wire or written notice.

9.9 Buyer shall give notice to Seller at least 7/5/3/2/1 day prior to the expected data of arrival of the nominated vessel suitable for loading at the Anchorage Loading Point.

9.10 Any time lost in waiting for completion of Seller's export formalities will be to seller's account.

9.11 The buyer reserves the right to nominated the performing vessel after they have received a certificate an independent surveyor of their choice, at seller's option certifying at least 80% of the cargo is ready at the jetty (ies), quality is as per contract and that the cargo is being helped in ownership by the seller. Cost of such certification if any will be buyer's account.

9.12 Seller's guarantee 1 (one) safe anchorage where the vessel shall always be afloat Seller also guarantee

suitable draft at anchorage point for the vessel and for loading the contacted quantity.

9.13 The loading of the vessel shall commerce within 2 days of arrival of the vessel at the load port otherwise the buyer have the right to move the vessel from the load port and forfeit the PB and also reserves the right to claim all damages for diverting the vessel or procuring cargo from other source/s at a higher price.

9.14 The loading should complete within 10 days of the arrival of the vessel at the load port otherwise the buyer has the right to sail the vessel and claim all damages including demurrage and dead freight, if any.

10. ARTICLE 10 – TITLE, RISK AND LIABILITY

10.1 Title with respect to shipment shall pass on to Buyer when Seller has received whatever payment due to him after adjustment for quality, quantity shortage, dead freight, demurrage stevedoring damages, if any, etc, for each shipment.

10.2 Risk with respect to shipment shall pass to the Buyer when the material passes the ship's side rail the loading port/ anchorage.

11. ARTICLE 11 – TAX AND DUTIES

All taxes, duties, levies, dues, etc, of the loaded onto the vessel if any, at the port of loading to be paid by seller and similarly, at the port of unloading shall be to Buyer's account.

12. ARTICLE 12 – BUYER'S OBSERVATION

Buyers at their own expense shall reserve the right at any time to observe or airport an observer/representative/third party international agency during mining and stockpiling of the coal for the shipment, sampling and analysis, loading and weighting at the stockpile/ jetty/ loading port/anchorage for which Sellers shall extend all necessary cooperation.

13. ARTICLE 13 – INSURANCE

Buyer shall at his or her own expense, arrange for suitable marine insurance covering for the material shipped by Seller.

14. ARTICLE 14 – LIMITATION ON ASSIGNMENT

Neither party may assign the whole or any part of its rights or obligation under this contract to a third party without the prior consent in writing of the other party.

15. ARTICLE 15 – FORCE MAJEURE

Either party shall be relieved of its obligations and responsibilities under this contract, if the performance of this Contract is wholly or partially prevented and/ or delayed by act of God and any other causes beyond the control of either party such as Fire, War and Flood. Either party shall promptly give notice to the other party of any force majeure event effecting its obligations under this contract along with documentary evidence and certified by certification of the same from Representative Chamber of Commerce. If such notice is given, the obligations and responsibilities of the party giving such notice as well as the corresponding obligations and responsibilities of the other shall be relieved to the extent made necessary by and during the continuance of force majeure.

In the event that a delay, interruption or failure occurs or is likely to occur, the party directly affected shall promptly notify the other party by cable or telex, and shall also within ten (10) day thereafter notify the other party in writing of particulars of the relevant event and supporting evidence as well as certification from the respective Chamber of Commerce.

The party so affected shall make its best efforts to remove the cause of delay in compliance with its obligations under this Agreement. Upon the removal of the cause of delay, interruption of failure, the party so affected shall notify the other party by cable of telex, and writing within ten (10) day thereafter, of such removal or resolution. Contacting party obligation to perform the contract shall continue to remain in force as soon as the force majeure condition ceases.

16. ARTICLE 16 – ARBITRATION

All disputes or difference what soever arising between the parties out of or relating to the construction, meaning and operation or effect of this Contract or the breach thereof shall be settled by arbitration in Singapore, in accordance

with the rules of Arbitration of International Chamber of Commerce (ICC) and the award made in pursue thereof shall be binding on both parties.

The arbitration shall be governed by English law and shall be conducted in English language. The Arbitration shall be borne by the losing party. Should there be no such losing party or winning party as in the case of a compromise, the expense shall be borne by initiating party, except in cases where the Seller and the Buyer agree otherwise on mutual consultation or where the Arbitrator gives a specific Award shall be respected.

17. ARTICLE 17 – LIABILITY

The liability of a party in respect of any claim brought by the other party based on failure of the first party to fulfill its obligations under Agreement shall be limited in any event to liability for loss suffered by the by the party aggrieved, excluding loss of profit and anticipated profit and all indirect or consequential loss or damage to the party aggrieved.

18. ARTICLE 18 – NO WAIVER

No waiver by either of any provision of this Contract shall be binding unless made expressly and expressly confirmed in writing. Further, any such waiver shall relate only to such matter, non- compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

19. ARTICLE 19 – APPLICABLE LAW

This agreement shall be governed by any construed in accordance with English Law and each of the parties hereby submits to the exclusive jurisdiction of the courts of SINGAPORE.

20. ARTICLE 20 – CONFIDENTIALLY

This agreement is confidential and shall not be disclosed expect to appropriate government Entities unless otherwise.

21. ARTICLE 21 – ENTIRE AGREEMENT

This contract contains the entire agreement between Buyer and Seller in relation to the sales purchase of coal and supersedes all prior negotiation, understanding and agreements whether written or oral in relation to the contract.

22. ARTICLE 22 – AGENCY

The Seller and the Buyer, respectively, may appoint an agent to perform all or any part of their obligations hereunder. A party that appoints an agent(s) to perform such obligations shall, as soon as is reasonably practicable notify the other Party in writing specifying the name and contract details of the agent(s).

In such event, the Party who was appointed an agent shall be directly and unconditionally responsible to the other Party in all respect as to the acts their agent performed within the scope or agency created.

23. ARTICLE 23 – BANKING INFORMATION

Buyer's Bank Information

Bank Name	:
Address	:
Telephone	:
Fax	:
Account Number	:
SWIFT Code	:
Bank Officer	:

IN THE WITNESS WHEREOF the parties here to have caused this Agreement to be dully executed as of the day and years first above written.

For and behalf of **SELLER**	For and behalf of **BUYER**
…………………………….	……………………………….
Sign, Seal and Stamp	Sign, Seal and Stamp
Name:	Name:
Position: Director	Position: Director

Witness for Seller	Witness for Buyer
…………………………	………………………..
Name:………………..	Name:………………
Passport/ID no:………	Passport/ID no:……..

VOCABULARY

This core vocabulary reference sheet provides key words and phrases used in legal settings when practicing law.

to abandon an action
according to law
arbitration
arbitration clause
assessment of damage
assignment
attorney - proxy holder
authenticate
to award a contract
bankruptcy
bankruptcy petition
to be in force
bilateral agreement
binding
breach of contract
(GB) - to dishonor (US)
to dispute
to draw up a contract
effective date
to endorse - to back
to enforce a law
exclusion clause - exemption clause
fair rent
to file documents
fine
first mortgage
fixed term contract
fraud - swindle
gentlemen's agreement
to give due notice
to have full legal powers
to honour (GB) - to honor (US)
illegal - unlawful
illegally
implement an agreement
in case of controversy
in force
in good faith
indictment
industrial property
to infringe
injunction
insolvent
invalidate

to break an	guarantee deposit	jointly and
agreement	patent office	severally
to break the law	patent pending	judge
cancellation date	per procurationem -	judgement
certificate	by proxy	jurisprudence
to certify	power of attorney -	justice
to cheat - to	proxy	lack of evidence
swindle	prescription	to lapse - to be
code	principal	statute-barred
come into force	procedure	lapsed
come to terms	protest	law courts
competent court	proxy	lawyer (GB) -
lease contract	public officer	attorney (US)
legal action -	to put on record - to	to lease - to rent -
lawsuit	take minutes	to let
legal adviser	quittance - aquittance	separate signature
legal assistance	to refund - to pay	to settle a dispute
legal charges -	back	to sign a receipt
legal fees	register a trademark	signature by proxy
legal department	registered	specimen signature
legal domicile	registration charges -	subcontractor
legal proceedings -	registration fees	sublease - sublet
legal action	to rent - lease - hire	to sublease - to

legal representative	resolution	sublet
lessee - tenant	responsibility - liability	to sue
letter of intents	revenue stamp	summon witnesses
liability in contract	to revoke	to take legal action
licensee	rights on industrial patent	to take someone to court
lien creditor	royalties	tax fraud
limitation period	rule - regulation	tenant
magistrate - judge	second mortgage	tenderer
mortgage		the regulations in force
notary public		third-party guarantee
notice		third mortgage
to notify		trial venue
omission		unpatented
partial agreement		upon notice
to patent		verbal agreement
patent		verdict
patent holder		witness
		written agreement

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Notes

1 By the mid-1950s, the union movement had a membership of around 2 million in 13 different federations. Union density (the share of employees in unions) reached around 20 per cent, which was high by developing country standards at that time. Most unions had close links with the political parties due to the political climate at that time, and labour unions had become effective tools to gain people's support. The largest union federation was SOBSI (*Sentral Organisasi Buruh Seluruh Indonesia*, All-Indonesia Central Labour Organisation), a left-wing union with close ties to the PKI (*Partai Komunis Indonesia*, Indonesian Communist Party), which claimed half of the country's workers as its members (Manning 1998: 203). See Ingleson (2001), and Elliott (1997) for a full-length study of the development of unions at the time.

2 A five-day, eight-hour working week was offeredas an alternative. As Manning has noted, the 40-hour working week was shorter than the common prescription in many countries in the region at that time, which was either 44 or 48 hours (1998: 202).

3. However, Law No.22 of 1957 incorporated many of the features of the 1951 Emergency Law. Themain differences were on the tripartite structures of the committees, which consisted of government officials and unions' and employers' representatives.

4 On 23 December 1998, the ILO and the Department of Manpower, witnessed by President Habibie, signed a Letter of Intent regarding the commitment of the Indonesia government to ratify the remaining three core ILO Conventions (and made Indonesia the first country in Asia- Pacific to ratify all eight of the ILO's core conventions), ILO technical assistance; and the establishment of 'the Tripartite Indonesian Task Force' as follow-up to the agreement. As noted by Iftikhar Ahmed, Director of ILO Jakarta Office, 'the immediate ILO technical assistance [was to] focus on national legislation on labour law reform, awareness raising on the fundamental human rights conventions of the ILO and their compliance in practice'.

5. The study is titled *Labour Market Analysis: Employment Friendly Labour Policy (2003),* or the 'White Book' as they preferred to call it.

6 State Owned Enterprises (BUMN) employees have been much freer to organise, as seen in the establishment of BUMN Union in 2004 which around 92 of 164 BUMN in all Indonesia belong to this union (*Tempo Interaktif 17* Juni 2004). The teachers, many of whom are civil servants united in the United Teachers of the Republic of Indonesia (PGRI), however, still face difficulties for their union to be notified by the Department of Manpower office, since the officials consider them not to be 'workers' (*Pikiran Rakyat* 4 March 2005).

7 As seen in the survey result report published in the early 2004 by the International Finance Cooperation, a private sector arm of the World Bank, there was strong consensus among the private sector in Indonesia in relations with the Manpower Law, that they demanded more flexibility within the industrial relations in Indonesia. (Cited in Prasetyantoko 2004).

8 Pompe argues that the newly established Commercial Court had in fact helped create unemployment in Indonesia as a result of its failure to provide reliable services due to its inefficiency and ineffectiveness because of corruption. Interestingly, Pompe was also one of the main drafters of the Commercial Court Law, as part of his job as the IMF Resident Legal Advisor in Jakarta, Indonesia. Based on the information provided by those who participated in the formulation of Manpower Law No.13 of 2003, the Commercial Court was their model when discussing the Industrial Relations Court (see Suryomenggolo 2004).

9 The very first sentence in the preamble of Law No.2 of 2004 on Industrial Relations Dispute Settlement is: 'That harmonious, dynamic, and fair industrial relations need to be put into practice in an optimal manner in accordance with Pancasila values'.

10 The lawyers, all from the Labour Division of the Legal Aid Institute of Jakarta, facilitated the initial meetings of the plan to file the review, collected signatures for the file, drafted the legal argument and filed the case to the Constitutional Court, as well as representing the union leaders at the Court's hearings.

11 *Forum Pendamping Buruh Nasional* in Jakarta is a network organisation for workers' facilitators that have links with the Catholic church of Indonesia. In 2007 FPBN

has at least 11 organisations affiliated from 11 dioceses aroundIndonesia. *Komite Buruh Cisadane* is an independent workers' forum based in Tangerang, Banten Province.

12 TURC has reported that many dismissals were closely related to the anti-union sentiment of the employers, so that dismissal for the sake of efficiency was in fact a camouflage for the cleansing of the union activists from the company (see Saptorini and Tjandra 2005).

PROFIL PENULIS

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Lahir di Balikpapan, 27 Februari 1968 Anak ke-3 dari 5 bersaudara.

Ayah bernama H. Muchtar, adalah seorang pensiunan PNS di Dinas Tata Kota Balikpapan

dan Ibu bernama Hj. Siti Jeidah beliau seorang wiraswasta dengan pendidikan yang sangat minim (SD)

- Menyelesaikan pendidikan pada SD Negeri 001 Balikpapan Tahun 1981
- Tahun 1984 menyelesaikan pendidikan pada SMP Negeri 001 Balikpapan, tiga tahun kemudian tepatnya Tahun 1987 berhasil menyelesaikan Pendidikan Menengah Atas pada SMA Patra Dharma Balikpapan
- Tahun 1990 Menyelesaikan pendidikan pada Universitas Mulawarman dengan jenjang studi Diploma 3 pada Fakultas Keguruan Ilmu Pendidikan program studi Bahasa Inggris
- Tahun 2000 menyelesaikan pendidikan Strata 1 pada Universitas 17 Agustus 1945 Samarinda pada Fakultas Hukum
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- Tahun 2020 Menyelesaikan Pendidikan Mediator
- Tahun 2020 Menyelesaikan Pelatihan Public Speaking
- Tahun 2020 menyelesaikan Pendidikan Doktoral Hukum pada Universitas Islam Sultan Agung Semarang
- Tahun 2020 sebagai Direktur Di Poltara Balikpapan
- Tahun 2020 sebagai Tutor di Universitas Terbuka.
- Menuangkan ide - ide kedalam sebuah buku pengajaran Bahasa Inggris buku Profesi Guru dengan edisi "Temukan Solusi dengan Plan Do Check Action " , Modul Hukum Adat dan Perkembangannya,
- Tahun 2021 Menyelesaikan pelatihan Content Creator Hukum.