Preliminary Draft Version – My Apologies for the Incomplete References

# Some notes on the Future of Indonesian Legal Education

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## Introduction

Education in law is probably one of the fields of scholarship most resistant to globalisation, as the nature of law and the nature of legal education are still national in orientation. In particular when a country does not share its national language with other countries law and legal education will be particular to that country. Clearly, law is increasingly subject to the same global influences and legal systems increasingly interact. No national or even local law escapes the influence of processes of internationalisation and transnationalisation. Legal transplants and hybrids can be found anywhere. We moreover see a growing recognition among lawyers that we live in a world of legal pluralism, where different normative systems may be applicable to one set of facts at the same time. Nonetheless, we do not seem to be heading towards a single system of global law, or even a single 'plural' system of global law.

In the absence of global law, global legal education will be difficult to achieve. It is unlikely that we will find ourselves in a situation that existed in Europe from the late Middle Ages until approximately the 19th century, where students could study Roman law wherever they thought this made sense and then return to their home country to become a legal practitioner. On the other hand, with the rise of English as a global language, American and Australian law schools have become attractive targets for Asian law students. It is moreover increasingly common that law students receive part of their training in a jurisdiction and language other than their own, for instance through exchange programmes. What the effects of this are on legal practice has been little explored. Before they become active in practice, 'foreign' graduates do need extra training, for they are not familiar with the basic structures and characteristics of the legal system of their home country. This does not only apply to the laws in place, but also to the modes of argument. In fields other than business law, a full legal training abroad is not going to produce the kind of lawyers the market is looking for. For Indonesia, this means that the future of the Indonesian system of legal education lies in Indonesia, not abroad.

While most of the contents of law may be difficult to be transnationalised, forms of legal training lend themselves better to being adopted in other countries. The experiences with the exportation of the American 'Socratic model' of legal education may have been problematic (Gardner 1980), many other forms of teaching lend themselves very well for transnational borrowing. As I will show later on in this paper, it seems that Indonesia does not use the opportunities offered here to the full, despite repeated attempts. I will argue that the reasons are not limited to 'conservatism' on the part of Indonesian law lecturers, but that they also lie in fundamental problems with the current substance and nature of Indonesian law.

This paper will present a few suggestions as to how we could achieve a brighter future for Indonesian legal education. I will start with a brief historical overview of the evolution of legal education in

Indonesia and its problems. I will then discuss some of the main criticisms of legal education at present, focusing on the most comprehensive account I know of, which is an article by the former Dean of Universitas Indonesia, professor Hikmahanto Juwana. I will argue that these criticisms are correct on many issues, but sometimes ambivalent or contradictory, and I will add a few points to them which I think are important.

The most important of these points concerns debates in Indonesia about the nature of legal education. These are – as anywhere – mainly concerned with the question how 'legal' a training in law can and should be and to what extent law schools should offer an academic or a professional training to their students. Both questions, however, are plagued by the present state of doctrinal legal studies in Indonesia. Because of the extreme limitations in the use of sources of law, the objective to teach 'pure' law leads to sterile, theoretical approach, that is neither academically challenging, nor very useful for practitioners. This is not due to the points of departure of the 'pure' law-adherents, which make sense, but to structural problems in the Indonesian legal system and how it produces law.

Next, I will consider whether alternatives such as 'progressive law' or 'socio-legal studies' can resolve these problems. I think that these approaches may offer useful contributions to an otherwise 'empty' doctrine, but that they cannot replace a legal approach that incorporates basic elements of legal reasoning. My conclusion will be that in order to improve its legal education Indonesian lawyers need to change their approach to legal reasoning , and that currently Indonesia is at the crossroads of either redeveloping the art of legal reasoning, or delaying its reintroduction for many years to come.

## Two types of criticism

Although the word 'crisis' is not often used, assessments of the current state of Indonesian legal education are not overly positive. Negative assessments of Indonesian legal education have actually been common since the end of the 1950s. Before we start to look at them, however, it may be wise to look briefly into what a negative assessment of legal education may denote more broadly.

The first type of criticisms concerns the role of law in achieving political objectives, and how lawyers are trained to become capable of providing such contributions. They are typically made by politicians, who mostly see law as a hindrance in realising their plans. The best-known example probably is Soekarno's view that lawyers were not useful for realising the objectives of the Revolution. They needed to get rid of their frame of 'legal certainty' and should stop slowing down social and political change. By contrast, Soeharto wished to establish a system that would contribute to the goals of economic development and modernity. This required an altogether different sort of lawyer with an altogether different sort of training (Soetandyo 1992).[1]

If we put this into a slightly more theoretical perspective, we may want to bring in Gustav Radbruch, who argued that any legal system tries to obtain an equilibrium between three objectives (Radbruch's triangle). The first is legal certainty, the second justice in individual cases, and the third the social utility of law. It is not so difficult to see that according to Soekarno law put too much emphasis on legal certainty. In fact, the entire legal system should be geared towards what Soekarno

[1] Both Presidents did subscribe to a broader general framework, which is the political project of legal unification in Indonesia. This required a particular form of legal training, oriented towards creating a single national law and getting rid of the intricacies of *adat* and religious law.

defined as social utility. Under the New Order, legal certainty was at least officially restored to its original position, but individual justice went down in the equation.[2] The period after *Reformasi* has seen a renewed emphasis in public discourse on individual justice and social utility. We will indeed see that most criticisms on legal education aim at the degree of formalism taught to students and how this leads to individual injustices.

The second type refers to criticism made within the legal community about the skills jurists acquire,[3] so it concerns how the community of lawyers looks upon legal education. It takes the basic points of departure of a modern law system for granted, but then looks at the question whether law students acquire sufficient skills to become good legal professionals. Generally, most emphasis here is put on the demands of what are considered the 'core' legal professions: the judiciary, the public prosecutor, the bar, and notaries. To these I would like to add a few other 'branches' such as legal scholars, legal drafters, government jurists, private firm jurists, etc. While these groups certainly have different ideas about the ways in which law can and should contribute to Radbruch's objectives, they have been trained in the system themselves and internalised all of them to a degree. Therefore, their criticisms will be partly derived from the political objectives the legal system is to serve, but they will be more concerned with 'technical aspects' of legal education. Or in other words, the first line of criticism is concerned with the 'moral' orientation of law graduates, the second more with the skills they obtain.

A brief historical overview of problems in legal education in Indonesia

Legal education in Indonesia was carried over from the Netherlands Indies. While it is mostly assumed that the objectives of the Netherlands Indies government to start legal education of Indonesian jurists were to produce 'legalistic' lawyers, who were to serve the interests of the colonial government, this view is incorrect. Dutch politicians were divided about the future of the Netherlands Indies and about the role of Indonesians in its administration, and these divisions showed themselves in the nature of legal education. Those who finally established the *Rechtsschool* (1909) and later the *Hogerechtsschool* (1924) were liberals, who supported autonomy for the Netherlands East Indies.

The education at these schools paid much attention to 'legal theory', but very much so in a context of jurisprudence. In this respect it was no different from legal education in the Netherlands. If one looks at the text books used, they paid much attention to insights from 'supporting sciences' such as philosophy, political science, sociology, etc. These supporting sciences moreover made up an important part of the curriculum,[4] where they replaced Roman law. According to the main founder of the Hogerechtsschool, Paul Scholten, it made no sense to introduce Roman law in the Netherlands Indies context (Djalins forthcoming). One should not forget that *adat* law was still of major importance at that time and that knowledge of the social sciences was indispensable for a proper evaluation of claims made about *adat* law.

[2] The longer the New Order lasted, the more an objective *outside* these 'internal' aspects came to be important – when Soeharto more or less destroyed the integrity of the judiciary to serve the personal interests of himself and his family and cronies. He thus replaced legal certainty for businesses with political certainty.
[3] Such a distinction is already implicit in Soetandyo 1992 and has also been followed by Hikmahanto 2006.
[4] Unlike claimed by Hikmahanto 2006.

That the system of education had the capacity for educating critical lawyers is difficult to deny if one looks at the number of law graduates who came to play a role in the movement for independence. But also within the colony they showed no hesitation in criticising the government and played an important role in denouncing injustices committed by the Netherlands East Indies government (Djalins forthcoming). The assessment that the colonial educational system produced uncritical government-abiding lawyers is thus incorrect.[5]

Just as most Netherlands East Indies law was retained after Independence, so was the Netherlands East Indies system of legal education. It soon appeared that under the new conditions adaptations would have to be made to respond to the requirements of the legal system of the new state. The number of jurists required was much higher than the law faculties could produce. Although their number increased, they could not compensate for the number of Dutch lawyers who left the country at independence or during the 1950s. The decision of the government to abolish the *adat* courts further stimulated the demand. This process was accompanied by economic problems, which made it very difficult for the state to keep up a legal system. Both professional lawyers and law students faced a shortage of virtually everything – paper, ink, legal journals, and salaries.

To make matters even more difficult, the legal profession and the law schools had to make the transition from a Dutch language legal system to an Indonesian language one. Since there was no way to replace the entire Dutch language legal heritage all at once, lawyers made their own translations of Netherlands Indies laws, without much co-ordination. This led to conceptual confusion and many debates about correct 'legal language' (Massier 2008). In fact, many of these debates were actually about law, but blamed language for the problems, as if language could somehow be unlinked from law (Massier 2008). Unlike their colleagues in most former British colonies Indonesian lawyers became increasingly isolated.[6] With the decline of the command of the Dutch language, Dutch legal rulings and texts that could be useful sources for comparison and inspiration were no longer accessible. Probably worse was that the entire body of Dutch-language case law laid down in law reports became inaccessible even to those who had access to the few libraries that still kept them.

Political conditions also seriously deteriorated from the point of view of jurists. With the decline of democracy during the 1950s, the autonomy of the legal system became further endangered.[7] Above I referred already to the pressure put on the judiciary by Soekarno's Guided Democracy. Jurists felt very much under pressure and the Supreme Court under Wirjono Prodjodikoro struck compromises that were detested by much f the legal community (Pompe 2006: ). Soekarno's ideas also influenced the law faculties and the ideas about how law should be taught. The objective of legal certainty, which for the previous generation of lecturers had been leading, was swept aside as 'conservative' and should be replaced by the idea of social utility. This opened up the way for perspectives where 'social considerations' should determine what the outcome of the law should be. At least in theory this made the social sciences important as an instrument for determining what the major social

[5] Cf. Soetandyo 1992.

[6] This has partly to do with the nature of the common law, which is shared as a body of law that can be developed within diverse jurisdictions. Practically, the same result can be achieved if texts are shared between civil law countries, as is for instance the case in Belgium and France.

[7] I should like to point out that the autonomy of law can be threatened from two sides: first, from the inside, when law becomes increasingly fragmented and the legal system finds no way to deal in an effective manner with this, second, from the outside by political pressure. Of course the two are related.

problems were and how in concrete cases these should determine the law.[8] Although one could argue that such a dimension could be brought under the legal source of 'habit' (or custom), in fact it added 'political conviction' outside legislation as a source.[9] Combined with declining standards within the law faculty, a result of the problems discussed so far, this drove some excellent legal scholars abroad.[10]

This situation changed after 1965, when a new political regime replaced the preferences of its predecessor with its own. Initially, many jurists hoped for a return to the rule of law and to a legal education that would become 'normal' once again, not subscribing to the idea that the Civil Code was a mere guideline and emphasising the autonomy of law (Lev 1978). These objectives were initially shared by a part of the new establishment, but it soon turned out that the true power holders had different ideas. Soeharto was interested in a working legal system in as far as it could produce a state that would be acceptable in the eyes of the international world and in the eyes of investors. He certainly was averse to any autonomy for the legal system and eventually managed to remove this autonomy from the judiciary in such a way that it still has not recovered.

Soeharto's main objective was for the law schools to produce jurists who lacked an independent mind set. This was not at all what one of his early Ministers of Justice, Mochtar Kusumaatmadjah, envisaged. Mochtar in fact became one of the most important advocates of legal education reform and took several initiatives to this end, some of which we will deal with in the next section. In the most general sense we can say that Mochtar's aim was to re-establish the link between the legal professions and legal education. When he became Minister of Justice in 1974, this link had almost completely been lost. Although the period of Guided Democracy seemed to promote social science subjects to be taught in the law faculties, this never really took off. The teaching of core legal subjects had moreover lost much of its scientific embedding. But neither did students learn how to 'apply' the law, or even better to 'do' law. Legal reasoning had become lost as an element of legal education.[11] Mochtar took the initiative to have students make 'legal memoranda', supported 'clinical legal education' by legal aid offices linked to universities, and promoted the introduction of social science subjects into the law curriculum. As we will see in the next section, not much of this was realised in practice (Reksodiputro ..). The intellectually stifling New Order with its authoritarian Pancasila discourse further closed the minds of Indonesian law graduates, making many otherwise critical jurists depart from assumptions that Indonesian society is harmonious and that all problems can be resolved by *musyawarah dan mufakat* (Lev , Bourchier). Neither does it seem that a better link with practice was established (Budijardjo et al. 1997).

<u>The current state of Indonesian legal education: recent criticisms</u>

[8] I still have to do further research to determine to what extent this also happened.
[9] A good example is the Supreme Court judgment on *adat* inheritance among the Karo Batak of 1961 (see Irianto 1994), even if the formula used in one of the most famous Supreme Court cases using it was 'humanity, public justice, and the essence of equal rights for man and woman'.
[10] A good example is criminal law lecturer Han Bing Siong (see Massier 2008).
[11] It should be noted that legal reasoning has never been very prominent in legal education in the Netherlands Indies and Indonesia. In the Netherlands students mainly learned this during the courses in Roman Law. As already mentioned, in the Netherlands Indies social science subjects took the place of Roman law. The numbers of graduates were moreover so small that there was little problem in teaching them this when they started to be employed. However, as long as precedent was important in legal courses, students were at least familiarised with the basics of legal reasoning – and that was still the case at least until the mid-1950s.

I will now turn to the present state of Indonesian legal education, which despite 15 years of *Reformasi* is still very much a New Order heritage. The most comprehensive and critical account on this issue is the one from 2006 by Hikmahanto Juwana, professor at UI and former dean of the law faculty. Although it is not fully representative of the positions others have taken on this subject, it does cover all the major issues raised. For his reason his article offers an excellent point of departure for an assessment of current criticisms.

Hikmahanto's main point is that legal education in Indonesia is legalistic. It produces graduates that are good at memorising and are faithful to legal doctrine. They have not gained a broad understanding of the law, but are apparently trapped in its details; 'it can reasonably be said that the law in Indonesia has been reduced to regulations' (5). This is no surprise, according to the author, because 'the core legal education curriculum that was in effect during the colonial government period is still in effect today'.[12] The same text books are used for years and teaching methods are one way communications (9-10).

Several reasons account for this system, according to the author. He is very critical of the lecturers, who are co-opted into a self-perpetuating system, where new lecturers are recruited by the old ones who will ensure that the former will replicate their teaching method (5). Lecturers are moreover often more interested in working 'off campus'. A culture has emerged in which students will never think critically about a subject, because the answers expected from them at exams should be as close to what they have been dictated as possible. Library facilities are so limited that they offer hardly relief, but even if in place they are not much used (10). The number and quality of law journals is moreover so low, that they are not of much interest to the serious law student (11).

This 'culture' is reinforced by the preference of 'the majority of graduate employers', for 'the type of graduate that knows laws and regulations as opposed to the one that has a broad understanding of the law.' Even society is at fault, according to Hikmahanto, as 'the society stereotypes law faculty graduates into being very legalistic, good in memorizing, and above all faithful to legal doctrine' (6).

The problems have been exacerbated, according to Hikmahanto, because the curriculum introduced in 1993 tries to achieve both an academic and a professional education, which cannot be achieved in three and a half to four years (7). The current Credit Semester System moreover leads to unbalanced packages composed by the students themselves and does not stimulate accumulation of knowledge from one subject to the other (8). Graduates today are neither 'employment ready', nor are they sufficiently trained academically. On top of that, professional training for judges and public prosecutors replicates university training, by the same professors. Hikmahanto pleads for a reorientation towards academic training in universities and genuine professional training later on. There should moreover be more uniformity in legal curriculums throughout Indonesia, so as to prevent 'gaps' between them (12).

There are a few inconsistencies in Hikmahanto's analysis. Thus, while he first argues that graduate employers prefer the type of graduate produced today by Indonesian law faculties, he later on refers to their complaints and says that the same employers deem them unable to compete with graduates

[12] '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.' (5). As I have argued earlier on this view is not supported by the facts told in Massier 2008 and Djalins (forthcoming)..

from other countries' (6). Similarly, lecturers are described as lacking knowledge of legal practice, whereas they seem to be working off campus all the time – surely they should learn something there.

That being said, most of his points do make sense and are supported by my own observations. Hikmahanto then proceeds to suggest a number of solutions. First, he says, students should obtain 'universal knowledge of the law'. This will make them competitive to lawyers who graduated abroad; 'this is critical in an era of globalization where Indonesian law faculty graduates demand to possess a universal understanding and knowledge of the law as well as that of legal jargon' (15).

Secondly, he pleads for a 'distinct separation between academic (university) and professional legal education'. The 1993 curriculum should be abolished and 'the amended curriculum need not be burdened with the elements of professional legal education'. Graduate employers should be made aware of the fact that graduates are not 'ready for immediate professional service'.

Thirdly, legal education should be aimed at making graduates obtain the required competencies (a 'Competenecy Based Curriculum'). Graduates should be able to 'see an event or fact from a different perspective', they should 'have the skills to undertake investigations of available legal materials and resources'. Such research should not be 'research as it is known in the social sciences', but it 'corresponds with legal research books written and published in America or England'. Finally, graduates should be able to present an argument 'in a persuasive manner' (17).

He finally discusses a practical plan for Introducing three different types of Master programmes, one preparing for an academic career, one aimed at professional education, and one that further deepens the knowledge of a student in a particular field. While these are practicable suggestions they are not as relevant as they may seem, as by far most Indonesian students enter into employment immediately after their Bachelor's. For this reason I will not deal with this matter in the following discussion.

*Analysing the criticism*

The main point, I think, where Hikmahanto is wrong, is were he states that the objectives of Indonesian legal education are neutral. There is no longer a problem as serious as during Guided Democracy or under the New Order, but the objectives of Indonesian legal education are very much contested. Where the author argues that these objectives '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' (6),[13] I would say that even *within* faculties there is such contestation. In fact the whole movement for 'progressive law' or the movement for 'legal realism' Indonesian style has its roots in a different view of what the legal system should achieve. Those involved in this movement are not so much interested in legal certainty, but emphasise the importance of justice (and link it to social utility). On the other hand, those who emphasise economic development think that legal certainty should be bolstered and that justice is not so important. They prefer 'legalistic' lawyers, or otherwise lawyers who are so pragmatic that they can always find a way out for their business interests. In short, while the relation between legal certainty, justice and social utility is always dynamic, in Indonesia it is both unsettled and contested – which makes reform of legal education a highly political issue.

[13] The author is not completely consistent on this point, as earlier on in his article he complained about the differences between law faculties in this respect. However, this is only a minor issue.

This issue is directly linked to the role of the social sciences in law. One group of jurists, which seeks its inspiration form the Legal Realists and the *Freirechtslehre*, argues that law students need much more training in the social sciences and that the law must be 'found in society' (thus linking it to the well-known Article 5(1) in Law 48/2009 on the Judiciary). The best known representative of this current is the so-called 'progressive law' group. Some of these scholars go quite far in arguing that laws and regulations are often unfair and should be overturned if they do not accord with justice. The main problem with this position is clearly that it is not so easy to define what justice is, something that has been acknowledged by others who are in principle quite positive about more emphasis on individual justice.

The other group, to which Hikmahanto seems to belong, is opposed to any role for the social sciences in law.[14] Just as the social science supporters have the 'progressive law', their opponents have 'pure law'. Basing themselves on the ideas of Hans Kelsen, the best known representatives of this group are Airlangga professors Peter Machmud Marzuki and Philippus Hadjon. Although some of their writings are quite nuanced,[15] their basic position is not: there is no place for social sciences in legal method. Hikmahanto's argument that the general objective of Indonesian legal education should be for law students to obtain 'universal knowledge' of the law seems related to this position, as he puts much importance on the possibility for access of Indonesian students to foreign legal materials (for instance through westlaw and lexis nexis).

In this manner a debate that should actually be one within the legal discipline has become one about what law is. It is not even mainly about what the proper sources of law are, but about the proper method of legal reasoning. The question is how it is possible that such a situation has evolved, with one side claiming that we should get rid of legal positivism and the other side claiming that any influence of the social sciences in law is illicit.

I think the answer lies in the evolution of Indonesian law as described above. The problem with using 'pure law' is that legal reasoning in Indonesia has become seriously underdeveloped. This has partly to do with the methods taught in law school, but even more with the falling into disuse of different forms of legal interpretation. Of all the legal sources officially recognised in Indonesian – international treaty law, constitution, legislation, case law, habit/custom, and doctrinary writings – only the first three are effectively employed. Major forms of interpretation that used to be common in the 1950s – systematic interpretation, teleological interpretation, historical interpretation and interpretation based on legislative history – have become rare or non-existent. There is little juridical debate in law journals, case law remains in the few journals that publish it and on the website of the Supreme Court, legislative history is virtually inaccessible and there are hardly incentives for law professors or legal practitioners to start using them again.

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[14] Hikmahanto's attitude towards the social sciences is somewhat ambivalent. On the one hand he says that 'social sciences are very beneficial and helpful to law faculty graduates (12). But on the other he criticises the Legal Sciences Consortium (KIH) and the Commission for the Discipline of Legal Sciences (KDIH) for having introduced too many social science subjects to the study of law, which 'has had the effect that law faculty graduates appear to have lost direction when it comes to the practice of law' (12). However, Hikmahanto clearly goes too far when he asserts that 'research and writing of a thesis are based on a method known as social research', where 'many of the legal issues would be better covered and handled using a doctrinal research approach'. Having gone through many of the thesis found in the UI library, I know for sure that extremely little social science is to be found in the average thesis at UI, and one wonders how then we should understand the social sciences.

[15] E.g. Marzuki 2008.

If the only source we can use for legal interpretation is different forms of legislation, there cannot be much of a legal debate from which students can learn what law should be about. Hikmahanto seems to suggest that we should use foreign law for this purpose. While that may work for certain legal problems I am sure that it will not for many others, simply because Indonesian values underlying many legal rules are different from those found in other jurisdictions. It is no coincidence that law has become something 'national' and even within a national system it is often difficult to get to a degree of consensus – but that is what we have a democratic legislative process for. Moreover, Indonesian students who have had their legal training exclusively abroad, will only work in those particular sections of the legal profession where their foreign experience assists them in contacts with foreign investors or drafting contracts in English. Large segments of the legal system will continue to be ruled exclusively by national law in the national language. Even in a country with an open economy like the Netherlands the majority of law students obtain there degree without having received a single class taught in English. So this does not seem a feasible option.

It is unsurprising that those who want to achieve change turn to the social sciences – what else should they turn to? It should moreover be acknowledged that in any legal system social scientific knowledge should play a role. For instance, if we speak of a tortuous act as an act that 'violates the unwritten law one should obey in social intercourse', finding that law requires study of what the rules on social intercourse are. Similarly, if we speak of 'the interest of the child' it may be useful to use psychological insights. If we want to use a teleological interpretation our focus is on what the law wants to achieve, which is something we cannot determine if we do not make a proper assessment of the effects of the law in practice. It makes much more sense to employ the social sciences for such evaluations that to rely on the personal ideas of the judge in question. It was precisely because *adat* law was so important in the Netherlands East Indies that the social sciences made up such a large part of the curriculum. Would more of the social sciences then be the solution?

Although I think that knowledge of the social sciences, preferably in the form of socio-legal studies, is important for lawyers and will sustain their capacity for well-informed legal reasoning – potentially serving all three objectives of Radbruch – the main challenge for Indonesian legal education lies elsewhere. This solution, I think, offers much more of an answer to Hikmahanto's list of problems than what he himself suggested.

Indonesian law faculties should return to being 'faculties of law' rather than 'faculties of legislation'. This means that law teachers should offer their students the rich materials needed for proper legal reasoning, following more than just textual analysis. This is no plea for an extra course in legal method, but a plea for teaching students how to find these materials and use these methods. In this way the current juxtaposition between socio-legal approaches and 'pure law' can be overcome and law may regain the autonomy it has lost over the past decades.

How can this be done practically? First, students should be taught how to resolve cases. From they one in law school they should be discussing real or fictive cases and how these should be resolved legally. In order to do that properly more legal materials than just legislation must be used. This demands from lecturers that they look for relevant case law, that they go out themselves to find parliamentary records, that they make available good doctrinal writings and that they write these themselves if none are available.

By far the most important task ahead for Indonesian law lecturers is to start making an inventory of the Supreme Court precedents available and that they start commenting on them.[16] This will help to achieve legal certainty and it will be excellent for the Supreme Court to be subjected to such scrutiny. No one can possibly have objections against this, I think. We all know that Indonesia does not follow the principle of 'stare decisis', but that does not reduce the role of precedent to a mere illustration. It is the only way, in any legal system, to bring about a national legal discourse and to find that if case law points to the wrong solutions the law should be changed or the Supreme Court should be convinced that they have to change their ways.

**Conclusion**

Indonesian law as a discipline is not in good shape. This is no wonder given its turbulent history, with political regimes trying for almost 40 years to undermine the autonomy of law. As I have argued in this paper, many of the problems in legal education actually follow from these problems. At the same time, they are also at the basis of the continuation of this situation. Because legal discourse can only develop when the different institutions making up the legal system communicate with one another, it is difficult for any single one of these institutions to resolve the problems, but if none of them does anything, everything will just remain the same.

To my mind, law faculties and their lecturers should take the lead in reviving Indonesian law. For this purpose they should make available to their students the legal materials that are currently lying in court dockets or on the internet. They should publish in depth analysis of legal fields, using all the legal sources recognised in Indonesian law – even if it takes more of an effort than for an American or Dutch colleague. Practically speaking a very important barrier to this purpose has been lifted by the Supreme Court's initiative to publish its case law. Former Supreme Court advisor Sebastiaan Pompe has complained that Indonesian practising lawyers pay no attention to it and just continue business as usual. It is now up to the law faculties not to fall into the same trap. If Indonesian law students are consistently put to this task, the groundwork for well-organised law reports will be put into place.

I do not see how turning to foreign sources of law can resolve the current problems. Law may be globalising, but most of the law in Indonesia is distinctly Indonesian and should be treated and developed as such. Certainly other legal systems are important and can be used as a source of comparison and inspiration. However, effective use of foreign law requires a well-developed national legal system (see Bedner forthcoming). It is up to Indonesian jurists to develop it now that the conditions are more favourable.

I thus see the future of Indonesian legal education at the cross-roads. Either the challenge to turn it into a discipline with rich sources of law and interpretation will be taken up and Indonesian law students will be benefitting from these riches – or otherwise nothing happens and we will see the same debates continue for many years to come.

[16] Fortunately there are some examples of lecturers taking up this challenge, and in the process reversing all kinds of myths about what the judiciary has actually done in interpreting particular legal provisions. An excellent example is the almost completed thesis of Herlambang Perdana Wiratraman on freedom of the press.

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