



Universiteit Leiden
Faculty of Law
Van Vollenhoven Institute
for Law, Governance, and Development

Indonesia Netherlands Legal Update

November 20-21, 2014

Content

Welcome	3
Programme	4
Panel sessions	7
Map	18
Venue	19

Welcome

Dear participant,

It is a pleasure to welcome you on behalf of the Working Group Indonesia to the first Indonesia Netherlands Legal Update. A special welcome goes to our Indonesian participants, who kindly join us in the Netherlands.

For many years, Indonesian and Dutch legal institutions, researchers and practitioners have collaborated in programmes of research, technical assistance and bilateral exchange concerning Indonesia's legal system. These programmes have contributed to rule of law promotion and capacity development, as well as generated important insights into the functioning of Indonesia's legal system. This Update seeks to build on these foundations and further expand and deepen the cooperation.

The conference will offer a platform for discussion of important and relevant legal developments in both Indonesia and the Netherlands. We thereby aim to help strengthen the current and future bilateral cooperation between Indonesia and the Netherlands in the fields of security and rule of law, as well as assist in identifying priorities for future legal cooperation and/or applied research.

In addition to the plenary sessions, which we hope will lead to new insights and debates, the Update offers eight different panels in which you can participate. Please find a short description of all panels in this booklet alongside some practical information.

We would like to thank the Royal Netherlands Embassy in Jakarta and the Secretariat of the Knowledge Platform Security and Rule of Law for their kind support.

We wish you all a very inspiring Update and our foreign guests a pleasant stay in The Netherlands.

On behalf of the Working Group Indonesia,

Adriaan Bedner, Dennis Janssen, and Jan van Olden

Programme

Thursday 20 November

15.30 h	Welcome & registration
16.45 h	Opening
	Dr Adriaan Bedner, moderator Van Vollenhoven Institute for Law, Governance and Development, Leiden University
16.50 h	Welcome
	H.E. Dr Herman Tjeenk Willink Minister of State and former Vice-President of the Council of State
16.55 h	Welcome
	Chargé d'Affaires ad-interim of the Indonesian Embassy in The Hague
17.00 - 18.30 h	Roundtable discussion
	Roundtable discussion on the state of affairs of the rule of law in Indonesia and the role of the Indonesia Netherlands Legal Cooperation, followed by a plenary discussion, with an introduction by Ms Nicola Colbran , Human Rights and Development Lawyer, former Director of AusAID's Australia-Indonesia Partnership for Justice <i>Sense and Simplicity: Dutch-Indonesian Legal Cooperation</i>
19.00 h	Dinner at the Carlton Ambassador Hotel Informal dinner with all conference participants

Programme

Friday 21 November

9.00 h	Welcome & coffee Location: the panel meeting rooms
9.30 h	Morning panel sessions
	1 Institutional Reform Location: Meeting Room 2, The Hague Institute for Global Justice
	2 Watchdog Institutions Location: Meeting Room 1, The Hague Institute for Global Justice
	3 Business and Investment Practices Location: Meeting Room 3, The Hague Institute for Global Justice
	4 Access to Justice I Location: Beatrixzaal, VNG
12.00 h	Lunch Location: The Hague Institute for Global Justice

13.30 h Afternoon panel sessions**5** Access to Justice II

Location: Beatrixzaal, VNG

6 Asset Recovery

Location: Meeting Room 3, The Hague Institute for Global Justice

7 The Indonesian Corruption Eradication Commission (KPK)

Location: Meeting Room 1, The Hague Institute for Global Justice

8 Legal Education

Location: Meeting Room 2, The Hague Institute for Global Justice

16.30 h Plenary discussion

Location: Meeting Room 1, The Hague Institute for Global Justice

Perspectives on the Rule of Law in Indonesia and the Future of the Indonesia Netherlands Legal Cooperation
 Moderated by **Mr Peter van Tuijl**, Global Partnership for the Prevention of Armed Conflict, GPPAC

18.00 h Drinks

Location: lunchroom, The Hague Institute for Global Justice

Panels

Friday 21 November

1

Location: Meeting Room 2, The Hague Institute for Global Justice

Moderator: Mr Willem van Nieuwkerk, Center for International Legal Cooperation/CILC

Institutional Reform

Since the start of the 'reformasi' period in 1998, the Indonesian judiciary has undergone major changes in various aspects, including the publication of judgments, the improvement of the case management system, the establishment of a new judicial training centre, and the introduction of the chamber system. The Netherlands has contributed in important ways to support some of these reform initiatives. However, despite many achievements in judicial reform in Indonesia, public confidence in the judiciary is still quite low. In the light of the current condition, this panel will focus on the theme Public Confidence in the Courts. The panel will present the opinion of two officials from the Indonesian Supreme Court, two independent observers, and two Dutch experts.

- 9.30 **Strengthening Public Confidence through Judicial Transparency and Public Services**
Dr Ridwan Mansyur, Legal and PR Relations Bureau of the Supreme Court of the Republic of Indonesia
- 9.45 **Reforming Judicial Training and Education to Strengthen Judicial Professionalism**
Dr Agus Subroto, Judicial Training Institute of the Supreme Court of the Republic of Indonesia
- 10.00 **Strengthening the Function of the Supreme Court to Promote Consistency of Decisions**
Ms Dian Rositawati, Indonesian Institute for the Independent Judiciary/LeIP

- 10.20 **Important Elements of Public Confidence in the Indonesian Courts: a Preliminary Analysis**
Mr Binziad Kadafi, Indonesian Center for Law and Policy Studies
- 10.35 **Transparency of Dutch Criminal Procedure: a Basis for Confidence in the Courts?**
Dr Marijke Malsch, Netherlands Institute for the Study of Crime and Law Enforcement/NSCR
- 10.50 **Dutch Experience: Public Confidence in the Courts**
Mr Reinier van Zutphen, Board of Trustees Center for International Legal Cooperation/CILC
- 11.10 Discussion
- 11.50 Wrap-up
Ms Dian Rositawati, Indonesian Institute for the Independent Judiciary (LeIP)

P 8

2

Location: Meeting Room 1, The Hague Institute for Global Justice

Moderator: Dr Adriaan Bedner, Van Vollenhoven Institute for Law, Governance and Development, Leiden University

Watchdog Institutions

Presently, modern states under the rule of law no longer rely on the judiciary alone to ensure that the executive performs its tasks in an appropriate manner. A range of so-called 'watchdog' or 'guardian' institutions overlook specific fields of government activity to make sure that the government maintains human rights standards and does not engage in corruption or maladministration. These institutions have experienced various problems, both in Indonesia and in the Netherlands. Learning from one another's experiences and finding transnational allies is therefore essential. This panel will explore the functioning of watchdog institutions in Indonesia and the Netherlands in order to locate the most fruitful areas of cooperation.

National Human Rights Commissions: Looking for Legitimacy and Confronting the Government

9.30 Ms Sandra Moniaga, Komnas HAM

- 9.45 Ms Laurien Koster, The Netherlands Institute for Human Rights
- 10.00 Questions

Ombudsmen: The Search for a Proper Division of Tasks with Other Watchdog Institutions and Lessons from Cooperation

- 10.10 Mr Budi Santoso, Ombudsman Republic of Indonesia
- 10.25 Mr Stephan Sjouke, National Ombudsman of the Netherlands
- 10.40 Questions

10.50 Coffee break

Judicial Commissions: Finding the Right Tasks and Maintaining Relations with the Judiciary

- 11.00 Mr Asep Rahmat Fajar, formerly Komisi Yudisial
- 11.15 Dr Suzan Verberk, Council for the Judiciary
- 11.30 Questions
- 11.40 Discussion on the future of cooperation
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3

Location: Meeting Room 3, The Hague Institute for Global Justice

Moderator: Dr Laurens Bakker, Department of Sociology and Anthropology, University of Amsterdam

Business and Investment Practices

While law is intended to streamline and regulate investment practices, the result achieved depends strongly on the clarity and unity of the legislation and on the practices of those involved. Investments in land and natural resources involve actors with diverse and even conflicting interests. The panel looks at the 'state of affairs' of investment practices in this field in order to come to an understanding of the functioning of the law in relation to the needs, considerations and other strategies that actors deploy to achieve their goals.

- 9.30 **Getting the Deal Done: Implementing Investments Within and Beyond the Law**
Dr Laurens Bakker, Department of Sociology and Anthropology, University of Amsterdam

- 9.45 **Investment Conflicts in East Kalimantan: Blessings and Curses of Natural Resources**
Mr Mohamad Nasir, University of Balikpapan
- 10.00 Questions and comments
- 10.15 **Lawyers and Land Acquisition Business Strategies?**
Ms Santy Kouwagam, Van Vollenhoven Institute for Law, Governance and Development, Leiden University
- 10.30 **An Overview of Issues and a Proposal for Improvement: Fifteen Years of Practice under the Amended Indonesian Bankruptcy Law**
Mr Kevin Omar Sidharta and Dr Gustaaf Reerink, ABNR Counsellors at Law
- 10.45 Questions and comments
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- 11.00 Coffee break
-
- 11.15 Comments
Dr Michiel Kohne, Anthropology of Law, Wageningen University and Dr Eric de Brabandere, Grotius Centre for International Legal Studies, Leiden University and lawfirm Lexlitis Centre
- 11.30 Discussion
-

4

5

Location: Beatrixzaal, VNG

Access to Justice I and II

In spite of progress made in Indonesia in terms of democratization and building a sound legal framework over the last fifteen years, common Indonesians still have problems in accessing legal institutions and obtaining legal protection where needed. While there have been notable improvements in for example the legal framework for recognizing communal land rights, as well as in addressing labour conflicts and managing forestry areas, these improvements have largely failed to strengthen the capacity of common Indonesians to use legal procedures to defend their interests.

In 2009 a National Strategy on Access to Justice (Stranas) was adopted to make legal institutions more accessible, and since 2010 national legal aid programmes have been established. This Legal Update provides an opportunity to take stock and to discuss the results achieved, the progress that has been made so far, and identify issues that may become part of future Indonesian Netherlands cooperation initiatives.

The aim of the four (sub-)panels about Access to Justice is to explore the concept itself, its mechanisms and three social arenas where access to justice manifests itself as a major source of injustice.

- Gender as an arena of injustice, where women and children are the weaker parties in conflicts of marriage law and inheritance law and often are denied even the fundamental right of a legal identity.
- The rural arena where land tenure remains insecure and where mining and palm oil activities are spreading, causing many serious land conflicts.
- The urban arena where the city government often neglects the interests and rights of the poorer parts of the population in favour of real estate developers and where local communities often lack any tenure security.

- 9.30 **Session 1: Introduction to Access to Justice**
Moderator: Mr Jan van Olden, Working Group Indonesia

Concept, Mechanisms and Programmes

Dr Myrna Safitri, Epistema

Access to Justice for Women

Ms Nurshyahbani Katjasungkana, APIK

Discussant:

Ms Enny Nurbaningsih, BPHN, followed by general discussion

- 10.45 **Session 2: Gender Justice**
Moderator: Prof Keebet von Benda Beckmann, Associate of the Max Planck Institute for Social Anthropology, Halle

Access to Justice for Women in Marriage and Matters of Inheritance

Prof Sulistyowati Irianto, Universitas Indonesia

Child Marriages as an Injustice

Ms Mies Grijns, Java Village Foundation, Van Vollenhoven Institute

Discussant:

Ms Samira al Zwaini, Plan Nederland, followed by general discussion

12.00 Lunch break

13.30 **Session 3: Land Conflicts and Access to Justice in Rural and Urban Areas**

Moderator: (tbc)

13.30 **The New Indonesian Village Law and the Recognition of the Rights of Indigenous People on Land and Natural Resources**

Mr Yando Zakaria

Human Rights Violations in Forestry Areas and the Need for Policy Reform

Ms Sandra Moniaga, Komnas HAM

Discussant:

Dr Mia Siscawati, Universitas Indonesia, followed by general discussion

14.50 **Urban Land Disputes and Access to Justice for Kampong Dwellers in Bandung**

Dr Gustaaf Reerink, ABNR Counsellors at Law

Reallocation of Land as a New Instrument in Urban Planning and the Basis of Legal Protection in the Netherlands

Prof Hendrik Ploeger, TU Delft

Discussant:

Mr Herlambang Wiratraman, University of Airlangga, followed by general discussion

6

Location: Meeting Room 3, The Hague Institute for Global Justice

Moderator: Dr Pinar Ölçer, Criminal Law, Institute for Criminal Law and Criminology, Leiden University

Asset Recovery

International asset recovery represents a highly complex, multi-levelled and fragmented process, involving a multiplicity of actors and variety of concerted actions. All 'phases' of international asset recovery regard proceedings which must be conducted by different law enforcement and judicial authorities. Thus, all national procedural, substantive, organizational and practical parts must somehow 'fit' together, in order to form a chain of recovery. In this panel, law enforcement experts from both countries will depict the chain of recovery in their own systems, identifying overarching and specific difficulties and correlations between issues in distinct sub-systems of asset recovery. The discussion will focus on the question what further research should be conducted or legislation and practices should be developed which would help solve some of these difficulties.

13.30 **Update On Asset Recovery Initiatives in Indonesia**
Mr Rifqi Assegaf, UKP4

Contributions by **Mr Luhur Istighfar**, Indonesian Public Prosecution Service, and **Mr Agus Santoso Hadiwarsito**, PPATK

14.15 Coffee break

14.30 Ordering of the issues in categories of (1) substantive law; (2) procedural law; (3) organizational and (4) practical issues by **Dr Pinar Ölçer**

14.35 **Developments in Asset Recovery, Crime Should Not Pay**
Mr Dirk ten Boer, Public Prosecution Service (OM), The Netherlands

15.20 Coffee break

15.35 Ordering of issues in categories of (1) substantive law; (2) procedural law; (3) organizational and (4) practical issues by **Dr Pinar Ölçer**

15.40 Discussion

7

Location: Meeting Room 1, The Hague Institute for Global Justice

Moderator: Mr Peter van Tuijl, The Global Partnership for the Prevention of Armed Conflict/GPPAC

The Indonesian Corruption Eradication Commission (KPK)

The Indonesian Corruption Eradication Commission (KPK) was established by law in 2002. Since its inception, the KPK has achieved an impressive record of results. While appreciating its successes, concerns about the development of the KPK have also been raised. Is the KPK not focused too much on building its own capacity instead of helping to reform other state agencies? And with such great power to call directly upon public support, what are the implications for the KPK's own accountability? The panel will seek to discuss these concerns and how the KPK can strive to transfer its knowledge to other state agencies working on corruption, as well as what international donors can do in support of corruption eradication in Indonesia in the next five years.

- 13.30 **KPK an Introduction**
Dr Sofie Arjon Schütte, U4 Chr. Michelsen Institute, Norway
- 13.50 **How Does the KPK Perceive its own Development?**
Mr Bambang Widjojanto, KPK
- 14.05 **The KPK as Seen by Other Agencies Working on Corruption**
Prof Adrianus Meliala, UI/National Police Commission (Kompogas)
- 14.20 Panel discussion followed by questions and answers with the audience
- 14.45 Coffee break
- 15.00 **Legal Support for Corruption Eradication: Lessons Learned**
Mr Kees Kouwenaar, Centre for International Cooperation, VU University Amsterdam
- 15.10 **Technical Support for Corruption Eradication: Lessons Learned**
Dr Anick M. van de Craats, Netherlands Forensic Institute
- 15.20 Panel discussion followed by questions and answers with the audience

8

Location: Meeting Room 2, The Hague Institute for Global Justice

Moderators: Dr Ingrid Westendorp and Dr Adriaan Bedner

Legal Education

Qualified and skillful lawyers will raise the quality of legal institutions, law firms, and legal departments of companies. Both in Indonesia and in the Netherlands discussions are ongoing about how to find a proper balance between knowledge and skills in legal education and whether or not law should be taught in its pure form or in connection with other social sciences. In this panel, first the existing problems and challenges as regards improving legal education will be discussed. Next, possible solutions will be examined by looking into different teaching methodologies and ways to connect legal education to legal practice.

- 13.30 **Legal Education Reform in Indonesia**
Prof Hikmahanto Juwana, University of Indonesia
- 13.50 **Fundamental Challenges to Improving Indonesian Legal Education**
Dr Adriaan Bedner, Van Vollenhoven Institute for Law, Governance and Development, Leiden University
- 14.05 Discussion
- 14.30 Coffee break
- 14.45 **Problem-Based Learning: the Maastricht Experience**
Dr Ingrid Westendorp, Faculty of Law, Maastricht University
- 15.00 **Implementing Problem-Based Learning and Changing the Curriculum at the Faculty of Law of Udayana University: Challenges and Creative Solutions**
Dr Ni Ketut Supasti Dharmawan, Faculty of Law, Udayana University
- 15.15 **Six Years of Legal Education Projects in Indonesia: What Did We Learn?**
Ms Leonoor Akkermans, CINOP Global
- 15.30 Discussion

Questions Indonesia Netherlands Legal Update 2014

The organizers have formulated a number of general questions to provide a framework to the discussions on the Indonesian-Netherlands Legal Update. These issues will be addressed in the plenary sessions on Thursday and Friday afternoon.

- What are the most notable general or systemic problems afflicting the realisation of rule of law and access to justice in Indonesia?
- What similar problems do Indonesia and the Netherlands experience in realising the rule of law and access to justice, and how do the two countries deal with those?
- What can be learned from their experiences? More specifically: what mechanisms to resolve these problems of rule of law and access to justice that have proved their value in the Netherlands could be useful for Indonesia?
- Where are the connected origins of the Indonesian and the Dutch legal system still relevant for co-operation in this field?
- What can be learned from past experiences in co-operation in this field between Indonesia and the Netherlands for future programmes?
- What possibilities may emerge in this field under the presidency of Jokowi?

Organizers

The Update is organized by the Van Vollenhoven Institute for Law, Governance, and Development, Leiden University, on behalf of the Working Group Indonesia and supported by the Royal Netherlands Embassy in Jakarta and the Secretariat of the Knowledge Platform on Security & Rule of Law.

The Working Group 'Indonesia - Justice and Development' is a networking group under the Knowledge Platform Security & Rule of Law. This Dutch network focuses on the exchange of knowledge and experiences regarding legal co-operation between Indonesia and the Netherlands and relevant current developments in the legal and security sector in Indonesia.

The Knowledge Platform Security & Rule

The Knowledge Platform Security & Rule of Law aims to promote knowledge exchange and to identify, define and answer research questions with the aim of underpinning Dutch development policy in fragile and conflict affected settings and its implementation more adequately; thereby contributing to its effectiveness. To achieve this, the Platform brings together an international network of the most qualified practitioners, policy-makers, academics and business, online and offline. The keywords in this endeavor are demand-oriented, problem-oriented, multidisciplinary and high-quality content grounded in practice and designed for impact.

The Secretariat of the Platform is run jointly by The Hague Institute for Global Justice and the Conflict Research Unit of Clingendael.

Map



Venue

The Hague Institute for Global Justice

Sophialaan 10

2514 JR The Hague

T +31 (0)70 302 8130

Location of plenary sessions

Location of panel sessions 1, 2, 3, 6, 7, 8

Carlton Ambassador

Sophialaan 2

2514 JP The Hague

T +31 (0)70 363 0363

Location of Dinner

20 November 19.00 h

VNG

Beatrixzaal

Nassaulaan 12

2514 HP The Hague

T +31 (0)70 373 8393

Location of panel sessions 4 and 5

Court Garden Hotel

Laan van Meerdervoort 96

2517 AR The Hague

T +31 (0)70 311 4000

Hotel of majority of foreign participants



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