

THE INDONESIAN LEGAL SYSTEM – An Overview

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Introduction

The Indonesian legal system is complex because it is a confluence of three distinct legal systems. Prior to the first appearance of Dutch traders and colonists in the late 16th century and early 17th century, indigenous kingdoms prevailed and applied a system of *adat* (customary) law. Dutch presence and subsequent colonisation during the next 350 years until the end of the Second World War left a legacy of Dutch colonial law. A number of such colonial legislation continue to apply today. Subsequently, after Indonesian declared independence on 17 August 1945, the Indonesian authorities began creating a national legal system based on Indonesian precepts of law and justice.

These three strands of *adat* law, Dutch colonial law and national law co-exist in modern Indonesia. For example, commercial law is grounded upon the old Commercial Code (*Kitab Undang-Undang Hukum Dagang* or *Wetboek van Koophandel*), a relic of the colonial period. However, commercial law is also supplemented by a large number of new laws enacted since independence. They include the Banking Law 1992, Company Law 1995, Capital Market Law 1995 and Antimonopoly Law 1999. *Adat* law is less conspicuous. However, some *adat* principles such as ‘consensus through decision making’ (*musyawarah untuk mufakat*) appear in modern Indonesian legislation.

Constitutional Structure

To understand modern Indonesia's legal system, some background must be given regarding the Indonesian constitutional structure. Indonesia is a unitary republic established pursuant to the constitution declared at independence, commonly called the 1945 Constitution (*Undang Undang Dasar 1945*). During the 32-year period when President Soeharto was in power, the 1945 Constitution was never amended. Shortly after Soeharto's resignation in May 1998, the 1945 Constitution was amended four times: in 1999, 2000, 2001 and 2002. Proposals for future amendments are currently being discussed by the newly formed Constitutional Commission.

After the four recent constitutional amendments, the 1945 Constitution provides for three representative bodies at the national level: the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat* or MPR), the House of People's Representatives (*Dewan Perwakilan Rakyat* or DPR), and the House of Regional Representatives (*Dewan Perwakilan Daerah* or DPD).

The DPR is 550-strong and consists of elected representatives from Indonesia's 69 electoral districts. Its main function is to consider and pass legislation and it meets throughout the year. The DPD, which was created pursuant to the 2001 constitutional amendment, consists of 128 elected members with each of the 32 Indonesian provinces having four representatives. Although some commentators equate the DPD to a senate in a bi-cameral system, in the Indonesian context the DPD has more limited powers. It has the authority to propose, evaluate and monitor legislation which affect regional autonomy. It also has the power to comment on proposed legislation affecting tax, religion and education. As such, it is more of an advisory and supervisory body than a true upper-house in a bi-cameral Westminster parliament.

The MPR currently has 678 members comprising the 550 DPR members, and the 128 DPD members. Prior to 1999, the MPR was the supreme national body with extensive constitutional powers to make constitutional amendments, appoint and dismiss the President and Vice President, and issue high level legislative and policy resolutions. After the four constitutional amendments, the powers of the MPR are more limited. The MPR powers today largely revolve around amending the constitution and impeaching the President and Vice President.

In 2004, in accordance with the constitutional amendment of 2001 and for the first time in Indonesian history, the nation directly elected its President and Vice President. Incumbents are elected for a term five years and are limited to a maximum of two consecutive terms. Susilo Bambang Yudhoyono, a retired general, was elected President in October 2004 and Jusuf Kalla, a prominent businessman, was elected Vice President. The next presidential election is scheduled for 2009.

Following the recent constitutional amendments, the powers of the presidency have also been curtailed significantly compared to the situation during the Soeharto era. Nevertheless, as head of state, head of government and the supreme commander of the armed forces, the President of Indonesia still wields extensive authority. Overall, it is probably fair to say that, under the revamped Indonesian constitutional system, the new centres of power are the DPR, the Presidency, and the regional authorities.

Legislation

Modern Indonesian legislation come in a number of forms. In August 2000, the MPR issued the following official hierarchy of legislation:

- 1945 Constitution (*Undang-Undang Dasar 1945*)
- MPR Resolution (*Ketetapan MPR*)
- Law (*Undang-undang*)
- Government Regulation Substituting a Law (*Peraturan Pemerintah Pengganti Undang-undang*)
- Government Regulation (*Peraturan Pemerintah*)
- Presidential Decree (*Keputusan Presiden*)
- Regional Regulation (*Peraturan Daerah*)

Applying the above hierarchy of legislation is not without problems. For one thing, with the recent constitutional amendments and reduction in power of the MPR, the legislative force of past MPR resolutions is being reviewed. In addition, there are also other legislative instruments in current use which are not listed in the above hierarchy. They include Presidential Instructions (*Instruksi Presiden*), Ministerial Decrees (*Keputusan Menteri*) and Circular Letters (*Surat Edaran*). Moreover, at times there are inconsistencies between specific legislative instruments.

Once promulgated, legislation is published in the *State Gazette of the Republic of Indonesia (Lembaran Negara Republik Indonesia)*. Certain types of legislation such as Laws and Government Regulations are accompanied by an official explanatory memorandum called the Elucidation (*Penjelasan*). The Elucidation is published in the *Supplement to the State Gazette (Tambahan Lembaran Negara)* and is generally authoritative for purposes of interpretation. In addition to the *State Gazette*, there is a sister publication called the *State Report (Berita Negara)* which contains government and public notices.

Courts

The Indonesian judicial system comprises several types of courts under the oversight of the Supreme Court (*Mahkamah Agung*). Following the civil law tradition of The Netherlands, Indonesian courts do not apply the common law principle of precedent.

Most disputes appear before the courts of general jurisdiction, with the court of first instance being the State Court (*Pengadilan Negeri*). There are about 250 State Courts throughout Indonesia, each with its own territorial jurisdiction. Appeals from the State Court are heard before the High Court (*Pengadilan Tinggi*), of which there are around 20 throughout Indonesia. The High Court is a district court of appeal. Appeals from the High Court and, in some instances from the State Court, may be made to the Supreme Court located in Jakarta. The Supreme Court can hear a cassation appeal (*kasasi*) which is a final appeal from lower courts. It can also conduct a case review (*peninjauan kembali*) if, for example, new evidence is found which justifies a re-hearing.

In 1998, the Indonesian authorities established the Commercial Court (*Pengadilan Niaga*). Initially, the Commercial Court is tasked to handle bankruptcy and insolvency applications. Its jurisdiction can be extended to other commercial matters. Appeals from the Commercial Court proceed direct to the Supreme Court. There is also a State Administrative Court (*Pengadilan Tata Usaha Negara*) which hears administrative law cases filed against the government.

In 2003, as a result of the constitutional amendment of 2001, the Constitutional Court (*Mahkamah Konstitusi*) was established. The Constitutional Court has jurisdiction to hear disputes concerning various matters including: the constitutionality of legislation; general elections; the dissolution of political parties; and the scope of authority of state institutions established pursuant to the 1945 Constitution.

Government

From the geographical perspective, the nation is divided into 32 provinces (including the two special provinces or regions of Yogyakarta in central Java and Aceh in northern Sumatra) and the capital district of Jakarta. Each province is administered by a provincial government with its own popularly-elected representative assembly called the Regional House of People's Representatives (*Dewan Perwakilan Rakyat Daerah* or DPRD – which is not to be confused with the DPD). The provincial government is headed by a Governor who is also elected by the provincial population.

As a result of the regional autonomy legislation enacted in 2000 and implemented gradually from 2001, greater autonomy and powers have been devolved to regional authorities. Overall, the administrative structure is as follows:

<u>Territory</u>	<u>Head</u>
Nation (<i>Negara</i>)	President (<i>Presiden</i>)
Province (<i>Propinsi</i>)	Governor (<i>Gubernur</i>)
District/Municipality (<i>Kabupaten / Kotamadya</i>)	Regent/Mayor (<i>Bupati / Walikota</i>)
Sub-district (<i>Kecamatan</i>)	Sub-district Head (<i>Camat</i>)
Ward (<i>Kelurahan</i>)	Ward Chief (<i>Lurah</i>)
Village (<i>Desa</i>)	Village Chief (<i>Kepala Desa</i>)

From the operational perspective, the country is administered chiefly through government departments. A department is equivalent to a ministry. The typical departmental structure from an operational basis is as follows:

<u>Unit</u>	<u>Head</u>
Department (<i>Departemen</i>)	Minister (<i>Menteri</i>)
Secretariat (<i>Sekretariat</i>)	Secretary General (<i>Sekretaris Jenderal</i>)
Inspectorate (<i>Inspektorat</i>)	Inspector General (<i>Inspektur Jenderal</i>)
Directorate (<i>Direktorat</i>)	Director General (<i>Direktur Jenderal</i>)
Division (<i>Badan</i>)	Head of Division (<i>Kepala Badan</i>)
Centre (<i>Pusat</i>)	Head of Centre (<i>Kepala Pusat</i>)
Bureau (<i>Biro</i>)	Head of Bureau (<i>Kepala Biro</i>)

Apart from ministers who oversee individual departments, there are a number of senior ministers, called Coordinating Ministers (*Menteri Koordinator*), who each oversee a number of related portfolios. In addition, there are other officials holding ministerial rank, including the Attorney-General (*Jaksa Agung*), the Secretary of State (*Sekretaris Negara*) and the Commander of the Indonesian Armed Forces (*Panglima Tentara Nasional Indonesia*).

Legal Professionals

There are at least three distinct branches of legal professionals in Indonesia. They are the notaries, advocates and legal consultants. A notary (*notaris*) is a legally trained semi-

public official appointed by the Department of Justice & Human Rights (*Departemen Kehakiman dan Hak Asasi Manusia*) to notarise deeds (*akta*). The semi-public nature of a notary's office arises because he is a government appointee who, at the same time, conducts a private professional notary practice.

A notarised deed, also called an authentic deed (*akta otentik*) is a formal deed prepared by and executed before a notary. At law, some legal documents require notarised deeds. Notarisation verifies that the deed is properly executed by the parties and, at law, the deed is conclusive proof on the matters to which it refers. To establish a company, for example, requires the assistance of a notary since the deed of establishment (*akta pendirian*) must be executed in his presence.

Since a notary is a government appointee, he does not provide legal advice to parties appearing before him. The parties to a transaction should have obtained independent legal advice and agreed upon the matters contained in the deed prior to appearing before the notary. In this way, the notary acts as a neutral party who prepares, witnesses and authenticates documents, and subsequently archives the signed original in his office. At present there are about 140 notaries throughout Jakarta. Parties are free to engage any notary they desire to authenticate their documents. Many notarial fees are charged in accordance to a scale issued by the Department of Justice & Human Rights although the fees for some matters are negotiable.

Advocates (*pengacara*) are lawyers in private practice with formal legal training. They are the Indonesian equivalent of attorneys in the United States and barristers and solicitors in England. Many advocates focus on litigation; others also provide general legal advice. Due to the limited size of their practices, advocates in smaller firms may not have sufficient expertise to provide commercial law advice on international business transactions.

Legal consultants (*konsultan hukum*) began to emerge as a distinct group of legal professionals in the late 1960s when foreign investors started to venture into Indonesia in significant numbers. Most of them are also advocates although they may refrain from accepting litigation cases. Many legal consultants have completed advanced legal training overseas and prefer to specialise in providing legal advice and documentation for corporate, commercial, banking and cross-border matters.

Researching Indonesian Law

Those undertaking Indonesian law research face the major hurdle of sourcing material. Indonesian legal information is not widely available through print or online media, although recent improvements in the latter are making significant progress to the benefit of researchers. The main print media are the *Government Gazette* and its sister publications. The problem is that these publications are often behind schedule. The Government Printing Office (*Pusat Penerbitan PNRI*) also publishes individual legislation on a case-by-case basis. Although these are useful and relatively inexpensive, they are not entirely error-free.

The other print media providing legal materials are books, journals and other publications. Most are in the Indonesian language and their standards of presentation and analysis vary widely. Many of these publications are available only in Indonesia or in specialist Indonesian collections in overseas libraries.

Online media promises to be a useful means to make Indonesian laws more readily available to the public. Certain Indonesian government departments and agencies have begun to make available on their websites key legislation in their respective fields of interest. One of the more sophisticated sites is the website (www.baepam.go.id) maintained by the Capital Market Supervisory Board (BAPEPAM or *Badan Pengawas Pasar Modal*).

One of the best non-governmental websites currently available for legal research is Hukumonline (www.hukumonline.com). Partially funded by USAID, Hukumonline provides a comprehensive database of past and current Indonesian legislation which can be viewed over the Internet. Operating since 2001, this website is updated regularly and also contains interesting legal commentary on current Indonesian legal developments. Hukumonline is currently available only in the Indonesian language.

One major limitation of Indonesian legal materials from most print and online sources is that they are presented in a non-consolidated form. For example, a statute like the Banking Law 1992 is available as it was first enacted in 1992. Its major revision, the Banking Amendment Law 1998, is available as a separate statute. Most publishers do not make the effort of consolidating the amendments, with the result that researchers have to undertake their own 'cut-and-paste' effort to create a consolidated legislation. Another obvious limitation with many Indonesian print and online sources is that they publish their material almost entirely in the Indonesian language. This creates a major hurdle for foreign researchers who are not familiar with the language.

Indonesian Business Legislation Online

In an effort to overcome some of the problems with sourcing Indonesian legislation, there is an Indonesian-English online subscription service available from Indobizlaw Online (www.indobizlaw.com). Indobizlaw Online currently has on its database more than 50 business legislation including critical ones such as the Company Law 1995, Banking Law (Consolidated) 1998, Antimonopoly Law 1999 and Oil & Gas Law 2001. Each legislation is available in its Indonesian text together with a high-quality English translation. Moreover, a piece of legislation is consolidated wherever possible. As the Indobizlaw Online database expands over time, this should facilitate better access to Indonesian business legislation for the benefit of English-speaking professionals.

