

FIFTY YEAR OF LEGAL COOPERATION BETWEEN INDONESIA AND THE NETHERLANDS, HOW DID IT WORK OUT?

Fifty years of legal cooperation with Indonesia is something to celebrate. Since the 80ties, when I [founded](#) the Netherlands Council for Legal Cooperation with Indonesia (now known as CILC) together with Jan Michiel Otto and others, I have put my heart and soul in it. Even after my retirement, I still enjoy the many friendships and contacts that came with this cooperation. But friendship was not what it was all about, so thinking back, I also wonder: how did it work out? Were our projects useful, can we point to some lasting results? How is the Indonesian legal system doing today?

Weak spots

Sometimes news reports about legal developments in Indonesia are pretty worrying. In January 2019, ex-Governor Ahok of Jakarta was released from prison after serving a sentence of two years 'for blasphemy'. The popular Ahok, who is non-Muslim and from Chinese ancestry, had argued in a campaign speech that his political adversaries had wrongly used a verse from the Koran to encourage voters not to vote for him because he is not a Muslim. During his trial, mass demonstrations 'to defend Islam' took place in front of the court house.



Ex-Governor Ahok during his trial

Another case that made the headlines is the one of Mrs Baiq Nuril, a 41-year-old bookkeeper at a school, who was receiving sexually suggestive phone calls from the head of her school. She started recording these calls for her own protection. A colleague then used the recording to file a complaint against the headmaster and the recordings went viral on social media. The headmaster lost his job, but Mrs Baiq Nuril was sentenced to six months of jail and \$34.000 of damages for violation of the law against electronic distribution of

pornographic materials. The Mahkamah Agung (Indonesian Supreme Court) rejected a revision of her case, but the Parliament asked for amnesty which was granted by President Jokowi in august 2019.

These are just two cases leading to incomprehensible verdicts and Indonesian friends with whom I discussed these cases were just as upset about them as I was. They illustrate the fact that the Indonesian legal system still has numerous and undeniable weak spots, and one of them certainly is the judiciary. The system is also unfair as it seems unable to provide sufficient protection to fundamental rights of individuals and vulnerable minorities, but it also leaves serious crimes unpunished.

Steps forward

At the same time, it is undeniable that Indonesia has made huge progress in the area of democratic institutions and rule of law, much of which was done within the context of international legal cooperation. Since the downfall of Suharto and the subsequent period of 'reformasi', direct elections are being held for almost all public offices, from village heads to the president. Civilians can appeal against government decisions to Administrative Courts that were designed and established with help from the Netherlands. There is an active Ombudsman which is inspired by the Dutch model. A Constitutional Court was established to review new and existing legislation and since 2011, citizens who cannot afford to hire an advocate, can apply for free legal aid. These are all important steps

forward, but apparently the resulting system is still far from perfect. Building and reforming legal institutions does not automatically lead to a just society. Establishing the rule of law is a complex and slow process that involves a change of the role and function of law in society. It is a process that goes beyond the scope of regular development projects and perhaps even beyond the fifty years of legal cooperation especially when one takes into account the difficult situation at that time where Indonesia's legal system was in.

Decline of the legal system

In the turbulent and unstable times after 1949, the role and function of the law more and more became subordinate to politics and military power. Soekarno once said that "It is difficult to make a revolution with jurists" and it is hardly surprising that Soekarno showed little interest in the proper maintenance of Indonesia's legal system. After Soekarno launched his 'Guided Democracy' in 1959, the independent judiciary in fact ceased to exist. The situation did not much improve when Suharto seized power in 1967. Sebastiaan Pompe's book, ['The Indonesian Supreme Court, A study of institutional collapse' \(New York 2005\)](#), which describes the decline and finally the collapse of the judiciary during the 40-year period after Indonesia's independence is well worth a read.

It was only after the establishment in 1985 of the 'Netherlands Council for Legal Cooperation with Indonesia' that the first steps to improvement were taken. One of the first joined projects included the compilation and printing of 2000 books with an up to date collection of prevailing legislation for all Indonesian judges, which had been not available until that time. The then vice-president of the Indonesian Supreme Court, Mr Asikin Kusumaatmadja, put together a team of 'flying judges' that provided training to judges all over Indonesia in how to use this compilation of legislation and how to look up relevant articles and provisions. Pretty basic support actually and indeed a long way to go.



Soekarno addresses the masses in 1945

Nation building

Another part of the explanation why the system is still so weak is that Indonesia is in fact still coping with a fundamental process of becoming a nation. What kind of society will Indonesia become? This process of 'nation building' started already before World War II with the activities of the nationalist movement in the Dutch Indies and got a huge boost during World War II and the subsequent struggle for independence. After 1949 Soekarno saw the formation of an inclusive society, under the banner of 'Unity in Diversity' and with the Pancasila*) as its philosophical fundament, as his primary mission. The seizure of power by

Suharto after the failed coup of September 1965 was extremely violent. The anti-left campaigns initiated by the army under guidance of Suharto finally resulted in an estimated 500.000 to 1 million people dead and 12.000 arrested political detainees. Under the New Order of president Suharto there was no place for Indonesians with leftist ideas, a situation that has not really changed to today. In those years Islamic organisations were also strictly controlled and supervised by the State.

After Suharto's downfall in 1998, democratic forces were freed and an era of 'reformasi' began, but extreme and intolerant Islamic groups, such as FPI also benefitted from the new democratic freedom and since then are trying to enlarge their influence, sometimes using the regular democratic institutions, but often through intimidation with the help of gangs of thugs. These confrontations and the heated debate on the place of Islam and other religions in Indonesian society certainly put

pressure on the judiciary -as the Ahok case shows- and hamper the normal democratic process of legislation. It has for example a paralyzing effect on the complicated process of drafting the new criminal code which started almost thirty years ago. The last version of the draft code was heavily criticised by inter alia human rights organisations and women's organisations because it could easily contribute to violations of fundamental rights, such as freedom of speech, of religion, women rights etc. All in all, the poor condition of the legal system in the 1980s as well as the growing pains of the process of becoming one nation have hampered and slowed down the efforts to establish the rule of law.

The value of international cooperation

In sum, what has been the value and impact of the legal cooperation between Indonesia and the Netherlands? Was it a sensible thing to do, fifty years ago, to engage in a long-term legal cooperation with Indonesia under Soeharto? Or was the late professor Wertheim right when he wrote in the Amsterdam University Journal 'Folia Civitatis' in 1986 that 'this cooperation about the rule of law with the Suharto regime is a foolish thing to do'? In those early years we used to defend the initiative to set up this legal cooperation by saying this program was supposed to open the windows of a closed and neglected legal system. We also stated that, indeed, it was foolish to expect quick results, but that exchange of new ideas and exchange of people and training of teachers, judges and other jurists were a necessary first step for further improvements in a hopefully better future.



Training Legislative Drafting at CILC, The Hague

In a [recent article](#) in NRC/Handelsblad about democratic regimes with a dictatorial past, Thomas Carothers – founder and Director of the Democracy and Rule of Law Project at the Carnegie Endowment, Washington DC - seems to prove us right. Interestingly he takes Indonesia as an example of a young and vital democracy that, contrary to countries such as Hungary and Brazil, seems to be able to cope with its internal disagreements in a democratic way in spite of its autocratic history. Carothers sees the international support received by Indonesian NGO's and democratic organisations during the Suharto period (including Dutch-Indonesian legal cooperation) as an important factor that contributed to the vitality and resilience of Indonesia's democratic institutions nowadays. And indeed, in legal education, law drafting and also in the judiciary, nowadays jurists who followed international training programs occupy key positions and sometimes form small nuclei of new initiatives and change. Many human rights, legal aid and environmental organisations that received support from the Netherlands do still exist and some have indeed grown bigger and stronger. Interestingly enough, a number of these NGO's (e.g. PSHK, LEIP and ICEL) also do cooperate in a constructive and creative manner with ministries such as Bappenas, Environment, Forestry and even with the Mahkamah Agung to initiate reforms or new legislation. At the many seminars and meetings that are part and parcel of the Indonesian administrative culture it is the young, highly educated (often with a degree from abroad) and well-informed representative of a NGO or a law faculty who comes up with a sharp analysis and a proposal to do things differently.

Another interesting direct result of the Indonesian Dutch legal cooperation over the past years is the fast-growing popularity of socio-legal studies, which is a field of study that enables Indonesian jurists to do research in the way the legal system is functioning. In a [recent interview](#) in 'Hukum Online'

which is a widely read Indonesian digital law journal, Adriaan Bedner (professor in Law and Society in Indonesia at the Van Vollenhoven Institute, Leiden) states that until now, critical socio-legal research in problems of access to law or in the effects of a newly adopted law was not very common in Indonesia, but that he now sees the emergence of a new generation of jurists (researchers as well as practitioners) – often with a degree from abroad – that is eager to engage in this type of critical research.

So -without overestimating the results and effects of the cooperation so far- we may conclude that it indeed helped to open the windows of the Indonesian legal system and to offer new perspectives for legal reform. The fifty years of legal cooperation between the Netherlands and Indonesia certainly helped the ideal of the rule of law and the numerous already existing 'building blocks' to survive to this day. Legal cooperation between our two countries has also an important future role to play in supporting Indonesian institutions and the new emerging generation of jurists that persevere in defending and further building the rule of law.

**) Pancasila (=Five Principles) is the official basic philosophy of the Indonesian State. The five principles are: Belief in the Almighty God, A just and civilized humanity, A unified Indonesia, Democracy and Social Justice.*