



INDONESIA-NETHERLANDS LEGAL UPDATE 2022

DIGITALIZATION, INNOVATION AND SUSTAINING LEGAL RELATIONSHIPS

19-29 September 2022, Jakarta, Indonesia

The Indonesia-Netherlands Legal Update (INLU) is a biennial event, building on the success of the INLU in November 2014 in the Hague and the INLU in January 2018 and December 2019 in Jakarta. The INLU is designed as an open platform of panels where policy makers, experts, researchers, and practitioners from Indonesia and the Netherlands meet to present and discuss topics and updates in the field of rule of law in both countries. INLU is aimed to highlight achievements of the long standing bilateral cooperation as well as to identify how the relationship between Indonesia and the Netherlands can strategically strengthen and develop both institutional relations and individual capacity, as well as to address new and current problems in upholding the rule of law.

The INLU 2022 takes place on 19-29 September in Jakarta on the theme “Digitalization, Innovation and sustaining legal relations.” Under this theme, INLU will also align with the Indonesian National Planning Document for Law Reform (RPJMN) as well as the Sustainable Development Goals (SDGs) as a globally established results framework, relevant both for Indonesia and the Netherlands.

The first day of the INLU will be organized as a public symposium and a panel discussion on restorative justice, featuring government officials and other relevant policy makers for a larger audience (300+ participants). The opening is followed by two weeks worth of substantive panel workshops in smaller groups. The panels are also an opportunity for participants from both countries to exchange knowledge, share experiences, and develop networks within their more specific niche of work. INLU2022 will be concluded by a closing ceremony with heads of judicial institutions of bilateral cooperation.

Background

The Netherlands and Indonesia have a longstanding relationship in rule of law cooperation. The two countries' legal systems share several commonalities in substantive law and legal structure which facilitates the comparison of legal practices and experiences as well as an effective exchange of information. Over the years Indonesian and Dutch legal institutions, researchers and practitioners have been actively collaborating in the legal sectors through research, technical collaboration, and cooperation projects. An extensive network throughout Dutch and Indonesian academia, civil society, the private sector, and government have developed, including hundreds of Indonesian alumni who studied law or other legal studies in the Netherlands.



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In November 2014, the Indonesian Working Group of the Knowledge Platform Security and Rule of Law (KPSRL) organized the first Indonesia Netherlands Legal Update (INLU) in The Hague, the Netherlands. The conference looked at trends and developments in both Indonesia and the Netherlands; and identified themes for post-2015 legal cooperation. The discussions during the first INLU demonstrated that many of the fundamental issues in the Indonesian rule of law reform process, such as public trust in legal institutions, access to justice for common citizens, and the quality of legal education, are part of the debate in Indonesia as well as in the Netherlands and are therefore attractive subjects for further exchange of ideas and experiences and future cooperation.

In January 2018, the second Legal Update was organized in Jakarta with great success. The conference was attended by three hundred participants and honored by the presence of the Indonesian Minister of Justice and Human Rights, the Indonesian Minister for National Development Planning, as well as the President of the Supreme Court of the Netherlands (HogeRaad) and the Head of the Indonesian Supreme Court (Mahkamah Agung). The conference identified several new challenges and key issues for future cooperation, such as cybercrime, which in due course informed further exchanges and operational collaboration in research, education, and knowledge programming.

In December 2019, the third INLU conference was organized in Jakarta with the main theme “Law, Legal Education and the Circular Economy” and an emphasis on “Access to Justice.” As in this year’s conference, reference was made to the Indonesian National Planning Document for Law Reform (RPJMN) as well as the Sustainable Development Goals (SDGs). The various topics in the field of law and legal education that were discussed in INLU 2019 were based on the day-to-day experiences of participating institutions from Indonesia and the Netherlands, ensuring their practical relevance. As previous INLU editions, the public symposium and panel discussions of INLU 2019 were well attended.

INLU2022 will focus on the role of digitalization and innovation within the justice sector and the challenges that both rule of law systems in Indonesia and the Netherlands have faced during the global Pandemic. Panels are organized on the topics of restorative justice, probation service, environmental law and climate change, business law & human rights, economic reform, private equity & debt enforcement, access to remedy, the ombudsman & access to justice, effective judicial argumentation, and new legal mechanisms at the supreme court. Additionally, INLU 2022 will also review the challenges and suggestions of the previous updates whilst focusing on how to sustain legal regulations beyond donor funded projects.

Objectives

- To highlight successful knowledge collaborations, education and research between Indonesia and the Netherlands in the fields of rule of law.
- To address the challenges that the global pandemic of COVID-19 virus posed to the rule of law systems in both countries and the lessons learned.



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- To discuss new developments in education, research and knowledge in both Indonesia and the Netherlands.
- To strengthen networks and relationships between Indonesian and Dutch organizations, as well as to look for opportunities to expand connections to international networks and organizations.
- To review the progress of agreed priority areas in the previous INLU

Participants

- Indonesian Government and official Institutions
- Netherlands' Government and official Institutions
- Indonesian and Dutch Universities, including students
- International Organizations and donors
- Embassies and donor organizations
- Indonesian and Dutch Civil Society Organizations
- Corporate sector representatives
- Indonesian alumni from Dutch Universities
- Media

INLU 2022 Committee

Chair

- Indonesian Institute for Independent Judiciary (LeIP) represented by Director Liza Fariyah

Vice-Chair

- Center for International Legal Cooperation (CILC) represented by project team Emily van Rheenen and Adeline Tibakweitira

Country Coordinators

- Theresia Dyah Wirastri
- Yvonne Kezia D. Nafi

Members (+ representatives)

- Embassy of the Kingdom of the Netherlands in Jakarta (Mark Hengstman, Dewi Barnas)
- Mahkamah Agung RI (Astriyani, Aria Suyudi, Wiwiek Awiasi)
- Hoge Raad (Aafke Woller van Welie, Hans Storm, Lieselotte Heederik)
- Ombudsman Republik Indonesia (Diah Suryaningrum, Junika P.R. Rajagukguk)
- Nationale Ombudsman (Stephan Sjouke, Peter de Meij)
- Judicial Training Center Mahkamah Agung - The Netherlands Studiecentrum Rechtspleging/SSR (Anna Tahapary, Tonnie Hulman, Peter de Meij, Sari Seruni)
- Direktorat Jenderal Pemasyarakatan (Sari Seruni, Deddy Eduar Eka Saputra)



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- Reclassering Nederland (Michiel van Herpen, Raymond Swennenhuis)
- Van Vollenhoven Institute Leiden University (Santy Kouwagam)
- Atma Jaya Catholic University of Indonesia, The Faculty of Law (Asmin Fransiska, Yanti Fristikawati)
- Business Law Department, Bina Nusantara University (Stijn van Huis)
- Indonesia Jentera School of Law/Jentera (Aria Suyudi)
- Pathfinders (Maaike de Lange, Swati Methi)
- Institute for Criminal Justice Reform/ICJR (Maidina Rahmawati, Iftitah Sari)
- Indonesian Judicial Research Society/IJRS (Dio Ashar)
- Indonesian Center for Environmental Law/ICEL (Grita Anindarini)
- Indonesia Ocean Justice Initiative/IOJI (Karenina Lasrindy)
- Stichting Socio-Legal Consulting (Santy Kouwagam)
- Independent experts (Peter de Meij, Sari Seruni, Lieselotte Heederik)

Simultaneous Translations Bahasa Indonesia – English and vice versa are provided for every panel.

INLU 2022 will be organized in a hybrid format so that participants from outside of Jakarta/Indonesia can join.



Panel descriptions week 1

Monday, 19th of September 2022 Opening Ceremony

INLU 2022 will be opened with welcome remarks by Dutch Ambassador to Indonesia H.E. Lambert Grijns, followed with opening remarks by the Indonesian Minister for Law and Human Rights, H.E. Prof. Yasonna Hamonangan Laoly. The opening ceremony, which will be attended by all panel convenors, will set the tone and expectation for the whole two weeks of INLU from the perspective of the Indonesian and Dutch government.

Location : Erasmus Huis Jakarta

Time : 13:00-16:00 (on-site registration and lunch start at 12:00)

Panel 1 : The Restorative Justice Approach in Indonesia's Criminal Justice System to Accommodate Access to Justice for All

Convenors : The Consortium of Restorative Justice (Institute for Criminal Justice Reform/ICJR, Indonesia Judicial Research Society/IJRS, Indonesian Institute for Independent Judiciary/LeIP) and Stichting Restorative Justice Nederland

Coordinator : Dio Ashar (IJRS)

Moderator : Andreas Nathaniel Marbun,S.H., LL.M. (Researcher of IJRS)

Speakers

- Dewo Broto Joko Putranto, S.H., LLM. (Director of Law and Regulation, Ministry of National Development Planning/Bappenas)
Restorative justice framework and roadmap in Indonesia
- Dr. Sunarta,S.H., M.M. (Vice Attorney General of Indonesia)
Restorative justice approach in criminal justice
- Dr. Andi Samsan Nganro, S.H., M.H. (Vice Chief Justice of the Supreme Court of Indonesia)
Reconstruction of restorative justice approach in the settlement of criminal cases
- Dr. Annemieke Wolthuis (Stichting Restorative Justice Nederland and Vice Chair of the European Forum for Restorative Justice)
Restorative justice in the dutch criminal justice system Restorative justice practice in Netherlands and the role of prosecutors
- Dr. Sugeng Purnomo, S.H., M.H. (Deputy of Law Enforcement Coordination, Ministry for Political Legal and Security Affairs)
Harmonisation of restorative justice policies in the Indonesian criminal justice reform
- Maidina Rahmawati, S.H. (Program Manager of Institute for Criminal Justice Reform/ICJR)
Indonesian criminal justice reform through restorative justice approach

Rapporteur : Iftitah Sari

Objectives :

1. Understanding the framework and scope of the restorative justice approach in Indonesia.



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2. Sharing experience and lessons learned from the restorative justice approach in the Netherlands and European countries.

Description :

The Indonesian government is in the process of transforming its criminal justice perspective by accommodating a restorative justice approach. According to the National Mid-Term Plan (RPJMN 2020-2024), the implementation of restorative justice's approaches in the Indonesian criminal justice system is a national priority. This signals that the public's/law enforcement perspective has shifted away from the conventional punitive approach focusing solely on sanctions imposed on the perpetrator, to a restorative approach – providing redress for negative impacts of criminal acts on victims, perpetrators, as well as communities.

Indonesian legal institutions already have implemented restorative justice policies of the RPJMN 2020-2024 through their respective internal regulations, for example, the Attorney General Office Regulation Number 15/2020 regarding the Non-Prosecution Disposal based on Restorative Justice Principles (PERJA 15/2020), and Police Regulation No. 18/2021 regarding Criminal Justice Handling Based on Restorative Justice Principles. However, those regulations only accommodate a small part of potential restorative justice principles and approaches.

The implementation of restorative justice is expected to be further regulated by the Bill of the Indonesian Criminal Code (RKUHP), the revision of the current criminal code, which was based on the Dutch Criminal Justice System. It is important that the Bill will more clearly define the concept of restorative justice and its scope in Indonesia, particularly in the criminal justice system. Restorative justice should be regarded to accommodate justice for all, aimed at restoring relations within the community that have been disturbed by the harmful effects of the criminal act.

In this panel - through the exchange of thoughts and experiences - the current changes in the Indonesian Criminal Justice System around restorative justice will be compared with how the Dutch Criminal Justice System has transformed over the years and lessons learned will be identified.

Tuesday, 20th of September 2022

Panel 2 : Using Administrative Law Enforcement to Halt Environmental Pollution and Damage Effectively

Time	: 12:00-13:30 (WIB)
Location	: Atma Jaya University (Auditorium Yustinus)
Topic	: Administrative sanction, administrative fine (bestuurlijke boete), administrative coercion (bestuursdwang) and administrative monitoring and inspection
Convenor	: Indonesian Center for Environmental Law (ICEL)
Coordinator	: Grita Anindarini (ICEL)



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Moderator : Difa Shafira (Researcher of ICEL)

Speakers :

1. Dr. Rasio Ridho Sani (Director General for Law Enforcement of Environment and Forestry of MoEF)
2. Prof. Michael Faure (Maastricht University)
3. Grita Anindarini, S.H., LL.M. (Program Director of ICEL)

Rapporteur : Grita Anindarini (ICEL)

Objectives :

1. To identify best practices in utilizing environmental administrative law effectively.
2. Lesson learned concerning the administrative law enforcement implementation in Indonesia and Netherlands

Description :

The enactment of Omnibus Law on Job Creation (Law No. 11 Year 2020), has had a significant impact on Indonesia's environmental law enforcement strategy. The law amends parts of the Environmental Management and Protection Act (Law No. 32 Year 2009) and stipulates administrative sanctions as a response to halt environmental pollution and damage. These changes are adopted by Government Regulation No. 22 Year 2021 which gives the mandate to the Government (Ministry of Environment and Forestry) to further regulate environmental inspection and administrative sanctions. The administrative sanctions in the environment and forestry sectors do not only have the aim to halt the violation, but also to punish the perpetrator and restore the environment. Therefore, in developing the implementing regulations, the Ministry of Environment and Ministry of Forestry need to consider the following issues: 1) the procedure of environmental inspection, particularly using the digital system; 2) the concept of administrative fines; 3) how to use administrative coercion effectively; 4) the intersection between administrative law enforcement with other law enforcement mechanisms (mainly criminal enforcement).

History shows how the regulatory framework of environmental administrative law enforcement in Indonesia has been informed by the framework applied in the Netherlands. Indonesia's Environmental Act of 1997 and its amendment of 2009 were developed by, among other means, conducting a comparative study to the Netherlands (under the INSELA project). The concept of administrative coercion and administrative fines were also inspired by the *Algemene wet Bestuursrecht* (AwB). Government Regulation No. 24 Year 2021 on Administrative Sanctions, for example, uses the terms *bestuursdwang* (administrative coercion) and *gijzeling* (*paksa badan*). Therefore currently, comparison between the environmental legal frameworks of Indonesia and the Netherlands will be helpful to identify best practices in utilizing environmental administrative law effectively.

This panel aims at identifying innovative legal strategies that have been proven most effective in the area of environmental law enforcement. Further, it seeks to explore possibilities for future cooperation between Indonesia's stakeholders and Dutch experts in the field of environmental law.



Panel 3 : People-Centered Justice: Turning Ambitions into Actions in Indonesia (2 Sessions)

Location : Atma Jaya Catholic University of Indonesia (Auditorium Yustinus 14th Fl.)

Time : 14:00-16:30(WIB)

Convenors : The Pathfinders for Peaceful, Just and Inclusive Societies and Open Government Partnership (Pathfinders); and Indonesian Judicial Research Society (IJRS)

Coordinator : Swati Mehta (Pathfinders)

Moderators : Mr. Donny Ardyanto, Program Manager, Kurawal Foundation and former member of the Task Force on Justice for Session 1; Ms. Swati Mehta, Pathfinders for Session 2; and Mr. Dio Ashar Wicaksana, Executive Director, Indonesia Judicial Research Society for Open Discussion

Speakers :

Welcome and introductory remarks by Ms. Linggawati Hakim, Adviser to the Minister of Law and Human Rights, Indonesia

Session 1: Setting the context: people-centered justice at a global and national level

1. Ms. Swati Mehta, Acting Program Director, Justice for All Program, Pathfinders for Peaceful, Just and Inclusive Societies
2. Ms. Adna Karamehic-Oates, Snr. Program Officer, Open Government Society
3. Ms. Arsa Ilmi Budiarti, Knowledge Manager, Indonesia Judicial Research Society
4. Ms. Pratiwi Febri - Head of Research, Organization Development, and International Advocacy, Indonesia Legal Aid Foundation (YLBHI)
5. Windu Kisworo, PhD, Field Program Manager, IDLO Indonesia

Session 2: Using data and evidence for people-centered justice policy and services

1. Ms. Slavica Zerajik, Head of Unit for Organization of Judiciary and Monitoring of the Reform in the Judicial sector, Ministry of Justice, North Macedonia
2. Mr. Luis Carlos Guevara Hernández, Department of Planning, Colombia
3. Mr. Dewobroto Joko Putranto, Director, Law and Regulation, Ministry of National Development Planning (Bappenas), Indonesia
4. Dr. Martin Gramatikov, Program Director, KUCS, HiiL

Concluding remarks, by Pathfinders for Peaceful, Just and Inclusive Societies

Rapporteur : Leah Guyot (Pathfinders)

Objective : The panel discussion seeks to bring together representatives from the government and civil society within Indonesia and outside to discuss:

1. Indonesia's progress on SDG 16.3 (equal access to justice for all) and how can it be demonstrated at a global level, say at the second SDG summit in 2023;
2. how can international processes like the High-level Political Forum and the second SDG Summit be leveraged to accelerate action at the national level; and
3. the ways in which international actors can support measurable progress towards achieving justice for all in Indonesia.



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The session will contribute to INLU's focus on the importance of digitalization and innovation to ensure people-centered justice at scale.

Description :

The last four years have seen an increased mobilization around the need to provide equal access to justice for all, sparked by the adoption of SDG 16. Indonesia is an integral part of the [Justice Action Coalition](#), a multi-stakeholder, high-ambition coalition of countries and organizations, championing equal access to justice for all. As the movement of justice continues to strengthen its political platform, gains steam in terms of resource mobilization and branches out through global, regional and national networks and collaborations, we need bold action to collect data and evidence required to inform decision making and make measurable progress.

Indonesia has taken a series of steps to promote people-centered justice. With the 2011 Legal aid Law, the 2014 Village Law, the 2019 Access to Justice Index, and the 2020 Open Government National Action Plan, Indonesia is very much a leader on people-centered justice, both in the region and at the global level. There is much to be learned from the Indonesian experience in formulating evidence-based policies and laws through a consultative and participatory process. Excellent examples of these processes are the Index of Anti-Corruption Behaviour developed by Bappenas and BPS, the Index of State Law by the Indonesian Legal Roundtable (ILR), the Index of Corruption Perception by Transparency Indonesia (TI), the Index of Human Rights Performance by the Setara Institute, the Index of Indonesian Government and Partnership, and the Access to Justice Index developed by a civil society consortium together with Bappenas. Co-created with the government and a number of justice sector CSOs, the [OGP National Action Plan](#) 2022-2022 included several reform 'commitments' including five on justice specifically.

It is in this context that the [Indonesia Judicial Research Society](#), [Open Government Partnership](#) and [Pathfinders for Peaceful, Just and Inclusive Societies](#) are organizing a hybrid panel discussion at the INLU (Indonesia Netherlands Legal Update) 2022. The session will examine how Indonesia's progress can be linked with and highlighted at the global processes on justice. It will also seek to explore ways in which data has been used in other countries to develop people-centered policies and its relevance in the Indonesian context.

Wednesday, 21st of September 2022

Panel 4 : The Value of Probation Service

Location : JS Luwansa Hotel

Time : 10:00-12:30 (WIB)

Convenors : Saxion University of Applied Science, Reclassering Nederland, Direktorat Jendral Pemasyarakatan and CILC



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Coordinator : Sari Seruni & Adeline Tibakweitira

Moderator : Sigit Budiyanto & Adeline Tibakweitira

Speakers :

1. Attila Nemeth, Professor Saxion University of Applied Science.
2. Anouk Visser, Senior researcher Saxion University of Applied Science.
3. Ferry van Aagten, Unit Manager Reclassering Nederland
4. Ali Aranoval Center for Detention Studies (CDS) (TBC)
5. Heni Yuwono, Secretary General Direktorat Jenderal Pemasyarakatan

Rapporteur : Raymond Swennenhuis

Objective : This panel aims to create awareness on the social value of probation work to move the perception of law enforcement agents and the public from a punitive approach towards probation.

Description :

In recent years, the relationship between the society and the public administration has changed. Society has become more data driven as a way of accountability and control. Public organizations are subject to social control and accountability. This also applies to correctional services both in the Netherlands and Indonesia. To meet their social responsibilities, correctional institutions need to have an insight into what their social costs and benefits are and how these can be substantiated. The social costs can be made transparent by means of a social cost-benefit analysis (SCBA). Such an analysis essentially provides an answer to the question whether a certain approach/correctional measure is worth the investment the institution and the government is making after all. The welfare, advantages, and disadvantages as a result of certain activities or interventions (often also referred to as measures) are examined as well. A distinction is made between financial and economic values in which financial (monetary) values relate to concrete revenues or income based on market prices, and economic values that relate to all other wealth flows that are separate from the market, such as improved living enjoyment in a neighborhood or improved quality of life for clients of correctional institutions.

This panel will look at the effectiveness of probation - a period during which a person who has committed a crime has to obey the law and be supervised by a probation officer, rather than being sent to prison - and compare studies from the Netherlands and Indonesia. It will address two key questions: To what extent is the necessary data available or can be made available to give an insight to the impact of probation service? And how can this be used to move the society from punitive approaches to probation service?

Panel 5 : Probation Service and Prosecution: Client/Contractor or Equals?

Location : Hotel Luwansa

Time : 14:00-16:30 (WIB)

Convenors : Reclassering Nederland and Ditjen Pas

Coordinator : Adeline Tibakweitira & Sari Seruni

Moderator : Sari Seruni & Jochum Wildeman

Speakers :



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1. Monique Vinkesteijn, deputy chief prosecutor, eastern region of the Netherlands
2. Ferry van Aagten, unit manager Probation Service, eastern region of the Netherlands
3. Pujo Harinto, Director of Probation and Child Alleviation
4. Representative from the Public Prosecution (TBC)

Rapporteur : Raymond Swennenhuis

Objective : To explore the professional relationship between the Probation Service and the Prosecution Service with the aim to optimize both their contributions to a correct and effective criminal justice system.

Description :

Ditjen Pas and Reclassering Nederland work together in two projects (TMT+ New Narratives in Corrections and Alternative Sanctions and Peer 2 Peer 4 Justice) with the ambition to enhance cooperation in the criminal justice chain. The probation service and prosecution service are both actors in the criminal justice system that depend on each other and are an important duo in administering criminal law. The probation service draws up a risk analysis of offenders on the instructions of the court, the prison, or the Public Prosecution Service, based on an independent assessment. Hence, there is a hierarchy instigated by their respective roles as anchored by law.

This panel aims to highlight the relationship between the prosecution and probation service, focusing not only on the rules and regulations that govern the cooperation but also the practical level of establishing a fruitful cooperation. The following aspects will be discussed: What should be done to strengthen the cooperation between the probation and the public prosecution service in Indonesia to carry out their tasks in harmony; What are good practices and examples where improvements can be made. Are there dilemmas in the work that highlight their respective goals and where working practices might collide? How does the hierarchy between the two organizations affect choices in policy and practice?

The speakers will discuss the above aspects based on concrete examples. This includes care for victims; the goals of tailor-made interventions for offenders; role of the 'special' public prosecutor for probation; out of court settlements; relation with the offender and his social network; responsibility towards the ministry of Justice; discretionary space of both institutions in policy making and practice.

Thursday, 22nd of September 2022

Panel 6 : The Role of the Courts to Tackle Climate Change: Update of Environmental Cases between Indonesia and Netherlands

Time : 13.00 – 15.00 Jakarta Time

Location : Atma Jaya University (Auditorium Yustinus)

Topic : Climate Change, Human Rights and Access to Justice



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Convenor : Indonesian Center for Environmental Law (ICEL), Indonesian Institute for Independent Judiciary (LeIP), Faculty of Law University of Indonesia (FHUI), Center of Environmental Law and Climate Justice FHUI

Coordinator : Grita Anindarini (ICEL)

Speakers:

1. Hon. Justice Nani Indrawati (Indonesia Supreme Court)*
2. Dr. Margaretha Wewerinke-Singh (Assistant Professor of Public International Law at the Grotius Center for International Legal Studies, Leiden University)
3. Prof. Andri Gunawan Wibisana (Faculty of Law, University of Indonesia)
4. Raynaldo G. Sembiring, S.H. (Executive Director of ICEL)

Moderator : Syaharani (Researcher of ICEL)

Rapporteur : Grita Anindarini (ICEL)

Objectives :

- Forming peer learning and exchange ideas forum between Indonesia and Netherlands' judges and lawyer in handling climate change litigation, particularly related to duty of care, human rights and scientific evidence's aspects;
- Ensuring people's access to justice to demand better climate policy through court decisions.

Description :

Climate change litigation has begun picking up around the world. Beside pushing legal policy to reduce greenhouse gasses, litigation has become one of the available measures used by the public to push the government and company to be more accountable and ambitious in forming climate's policy. Potentially, climate litigation will produce legal reforms, particularly in the field of environmental law. Some of the notable climate cases took place in the Netherlands. Dutch Courts (from District Court until Hoge Raad) have decided two landmark cases (i.e., Urgenda v Dutch Government and Milieudefensie v Shell.) which has been a catalyst not only for the climate movement but also for climate law reform. Both cases used the duty of care combined with human rights law as legal basis to examine the government and company's obligations. Scientific data – mostly from IPCC's report - played an essential role in the case as well. In these landmark cases pertaining to climate change, the Dutch courts assigned liability to a government institution and a private company.

Reflecting on the situation in Indonesia, Indonesia conducts many economic activities that likely contribute to climate change, for instance in the forestry and energy's sectors. Some legal reforms relating to these sectors were the result of court decisions, particularly in forest-land fires and illegal logging' cases. Strict liability, precautionary principle, in dubio pro natura principle, corporate crime liability and environmental restoration are some of the legal principles that have been applied by Indonesian courts. Those cases have contributed not only in halting and stopping the deforestation, but also in reducing greenhouse gasses (GHG). One of the interesting things is most of the cases were brought by the Ministry of Environment and Forestry as the plaintiff against a company. As an important country with a significant role in the global climate agenda (particularly considering that Indonesia has the world's second largest tropical forest and is one of the largest producers of coal), climate change litigation will potentially have significant impacts in Indonesia.



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Just like in the Netherlands, Indonesia's courts may play a significant role in halting and reducing GHG emissions via judicial decisions in the future. Therefore, the participants in this panel will exchange experiences about how to use Human Rights, duty of care and scientific evidence in climate change cases. Thus, in the framework of legal innovations in the field of climate change litigation, two main issues will be discussed. First, the problem of interpreting the scientific basis of climate change claims, as competing claims concerning scientific evidence will inevitably play a role in climate change disputes. Second, the position of human rights in adjudicating environmental and climate cases. Finally, considering that some landmark climate cases have been produced by Dutch courts, this panel seeks to explore opportunities to establish a peer-to-peer platform on climate change litigation and to develop strategic legal cooperation in the future.

Panel 7 : Blue Environmental Law and Justice

Location : Atma Jaya Catholic University of Indonesia (Auditorium Yustinus 14th Fl.)

Time : 15:30-17:30 (WIB)

Convenors : Indonesian Ocean Justice Initiative (IOJI), Atma Jaya Catholic University of Indonesia, University of Utrecht, Leiden University

Coordinator : Karenina Lasrindy (IOJI)

Moderators :

1. Grace Gabriella Binowo (Director, IOJI)
2. Asmin Fransiska, S.H., LL.M. (Dean of the Faculty of Law, Atmajaya Catholic University).

Speakers :

1. Prof. Dr. Frank Biermann (Professor of Global Sustainability Governance at Utrecht University)
2. Dr. Mas Achmad Santosa (CEO, IOJI)

Panelists :

1. Tatit E. Witjaksono, S.E., M.Tr(Han) – (Deputy for Policy and Strategy, Indonesia Maritime Security Agency)
2. Stephanie Juwana, S.H., L.LM. (Director, IOJI)
3. Dr. (HC) Marzuki Darusman, S.H. (Chairman and Founder, The Foundation for International Human Rights Reporting Standards, Former Attorney General and Former Chair of National Commission on Human Rights)
4. Fadilla Octaviani, S.H. (Director, IOJI)

Rapporteur : Karenina Lasrindy (IOJI)

Objectives :

1. Exchange of knowledge on current challenges in the legal field related to ocean governance in Indonesia and the Netherlands.
2. Explore innovations in the legal framework which incorporate the concept of strong sustainable development into ocean governance.
3. Discuss the role of digitalization to support enforcement at sea.



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4. Highlight existing and future initiatives to better protect fishers from human rights abuses; and
5. Highlight some existing and possible future international collaborations between the Netherlands and Indonesia on all four aforementioned issues.

Description :

Environmental (protection) law should provide instruments that can create a safe and sustainable ocean. But in fact, environmental law, and sustainable development since the formulation of its concept originated from the Stockholm 1972 conference are often perceived within the framework of economic growth. The effectiveness of environmental law is influenced by various factors, particularly: countries' development paradigm, enabling conditions (sufficient democratic space, good governance, and effective rule of law), scientific data, and management capacities. Therefore, to effectively solve the problems, the implementation of the concept of strong sustainability, good governance, sufficient democratic space and effective rule of law in ocean governance is needed.

As evident from its policy priority of economic development, Indonesia's current government has a focus on economic growth while facing continuous environmental degradation and reduction of ecosystem services. With the persisting issues of climate change, maritime security, and human rights abuses within the ocean landscape, the role of so-called blue environmental law has become more prevalent. Responding to these issues, protection of the oceans requires a focus on strong sustainability supported combined with ample democratic space, good governance, and effective rule of law. Environmental law should ensure strong protective measures for the maintenance and restoration of ocean ecosystems including marine biodiversity, that are critical for its ecosystem services, peoples' livelihoods, and global climate change. Moreover, it is essential that law enforcement in the ocean is strengthened, enabling swift and consistent responses to violations.

This panel first introduces the topic of "the importance and future of Blue Environmental Law and justice" to the public. Then three panels will be held on 1) the role of digitalization in supporting enforcement at sea 2) innovative legal frameworks for the application of stronger sustainable development in the Blue Carbon ecosystem governance and 3) human rights at sea: protecting the workings at the fishing industries through the international collaboration to support SDG16.

Friday, 23rd of September 2022

Panel 8 : Business and Human Rights

Location : Atma Jaya Catholic University of Indonesia (Auditorium Yustinus 14th Fl.)

Time : 10:00-12:00 (WIB)

Convenors : Faculty of Law Atma Jaya Catholic University of Indonesia

Coordinator : Asmin Fransiska (Lecturer of Human Rights Law and Dean of Faculty Law Atma Jaya University)

Moderator : Dr. Yanti Fristikawati

Speakers :



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1. Prof. mr. (Martijn) MW Scheltema (Professor of Business Law, Erasmus University Rotterdam, Partner at Pels Rijcken law firm)
2. Dr. Kristianto P.H. Silalahi, S.H., M.Hum, (Lecturer of Environmental Law, The Law Faculty of Atma Jaya Catholic University of Indonesia)
3. Erlinda Ekaputri (Country Director of Wildlife Works Indonesia)

Rapporteur : Tivana Candini, S.H., LL.M (Lecturer of Business Law, The law Faculty of Atma Jaya Catholic University of Indonesia)

Objectives :

1. To discuss the UN Guidelines on Business and Human Rights, Roundtable on Sustainable Palm Oil (RSPO) and other UN human rights instruments, as well as the current EU Directive on Sustainability Due Diligence; and the promotion of sustainable and responsible business practices.
2. To identify cases and good practices in order to find pathways to sustainability and human rights protection, in the era of digitalization and post-pandemic society.
3. To develop ideas of accountability and sustainability of state and business sectors.

Description :

There is a clear connection between Human Rights and business practices regarding the need for the protection of vulnerable groups. The responsibilities among States and Business activities and management holders are increasingly recognized at the international level, through many guidelines and international agreements. The UN Guidelines on Business and Human Rights state that both governments and companies have a responsibility to protect human rights and must take measures to prevent human rights violations against society, including the environment as their habitat and as a social determinant.

One of the challenges for the business sector is how to prevent and reduce conflicts between companies and indigenous people or other local communities. Palm oil companies are a notable example. At least since 2015, there have been 776 conflicts in Indonesia that involve palm oil companies. The causes for conflicts vary, but a majority of complaints concern land grabbing, illegal activities conducted by the companies, unheard voices of the local society, discrimination, labor rights, violence against women and children, and environmental issues.

This panel will discuss the UN Guidelines on Business and Human Rights, Roundtable on Sustainable Palm Oil (RSPO), the UN Documents on Labor, Women and Children Protection, as well as the current EU Directive on Sustainability Due Diligence and the impact of these instruments on fostering sustainable business practices and the responsibility they assign toward companies to protect human rights and the environment. Whereas the Indonesian government issued the Indonesia Sustainable Palm Oil (ISPO) standards, the questions are to what extent does ISPO comply with international standards and what could be improved? In addition, the panel is eager to find a balance between the stakeholders.



The panel has the objectives to identify legal innovation on economic and social solutions from the best practices in Indonesia, The Netherlands, and other countries and to find pathways to sustainable business practices that include human rights protection, which is especially urgent in the era of digitalization and the post-pandemic society.

Panel 9 : Prospect of Economic Law Reform to Prepare the Post-Pandemic Economic Recovery (2 sessions)

Location : Indonesia Jentera School of Law (Jentera)

Time : 13.30 – 15.30 and 16.00 – 18.00 (WIB)

Convenors : Indonesian Institute for Independent Judiciary (LeIP) and Indonesia Jentera School of Law (Jentera)

Coordinators : Alfeus Jebabun (LeIP) and Aria Suyudi (Jentera)

Moderators : Session 1: Nisa Istiani, S.H., LL.M. (Lecturer at Al Azhar University); Session 2: Alfeus Jebabun, S.H., M.H. (Researcher of LeIP)

Speakers :

Session 1: Prospect of economic law reform

1. Hon. Justice Syamsul Maarif, S.H., LL.M, PhD. (Justice at Supreme Court of Indonesia/Working Group of Ease of Doing Business)
Initiatives and efforts taken by the Supreme Court of Indonesia in carrying out economic law reform.
2. Prof. mr. (Martijn) MW Scheltema (Professor of Business Law, Erasmus University Rotterdam)
Economic law reform in the Netherlands during and after covid-19 pandemic.
3. Tanti Dian Ruhama, S.H., M.H. (Coordinator of Law and Human Rights Enforcement in Directorate Law and Regulation BAPPENAS)
Economic law development planning policies.
4. Ibrahim Sjarief Assegaf, S.H., LL.M. (Partner at Assegaf Hamzah & Partners)
Perspective of legal practitioners on the development of Indonesian economic law.
5. Dr. Aria Suyudi, S.H., LLM. (Lecturer at Jentera Law School)
Prospect of the development of Indonesian economic law after the end of the Ease of Doing Business Survey.

Session 2: Civil decision enforcement system

1. Dr. Ridwan Mansyur, S.H, M.H. (Registrar of the Supreme Court of Indonesia)
Current initiatives from the Supreme Court in strengthening the civil decisions enforcement and prospect of institutions that conduct enforcement.
2. Oscar Jans (Board Member of Koninklijke Beroepsorganisatie van Gerechtsdeurwaarders/KBvG)
Best practice of civil decisions enforcement conducted by institutions outside the court in the Netherlands.
3. Liza Farihah, S.H. (Executive Director of LeIP)



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Improvement of system and policies to strengthen an effective and efficient civil decisions enforcement and institutional design on the civil decision enforcement.

4. Ibrahim Senen, S.H., LLM. (Armand Yapsunto Muhamamsyah & Partners / Lecturer at Faculty of Law Universitas Al Azhar Indonesia)

Rapporteur : Alfeus Jebabun (LeIP)

Objectives :

1. To discuss the experience of the Dutch Government in carrying out economic law reforms to minimize the impact of the covid-19 pandemic and important frameworks that already existed and were created during the covid-19 pandemic for post-pandemic economic recovery, including:
 - a. Improvement of the debt settlement system through debt restructuring.
 - b. Civil court decisions enforcement system.
 - c. Improvement of the movable property guarantee system.
2. Discussing the Indonesian Government's plans in preparing economic law reform and other opportunities that need to be considered to strengthen the Indonesian economic law in the post-pandemic recovery.
3. Discussing the strategy of prioritizing Indonesia's economic law reform to respond to the needs of post-pandemic economic recovery.

Description :

One of the important agendas after the Covid-19 pandemic, especially in the legal sector, is economic law reform in the context of economic recovery. Resolving the crisis due to the covid-19 pandemic could be seen from two perspectives. First, to provide the legal protection and legal certainty for the community, both in positions as creditors and debtors, to provide opportunities to survive. Second, to prepare for the future that is economic recovery.

Many countries utilize the momentum of this pandemic to reform their economic laws. The Netherlands, for example, has ratified the Court Approved Restructuring Plan Act (*Wet Homologatie Onderhands Akkoord-WHOA*), after several years previously ratifying the regulation on Scheduling Debts for Individuals (*schuldsaneringsregeling voor natuurlijke personen*) which is optimized to accelerate debt settlement.

In the beginning of 2020, the Government of Indonesia issued various regulations to reduce the destructive impact of the pandemic on the economic sector. Unfortunately, this did not include a specific policy to improve the legal system and prepare for post-pandemic recovery. Meanwhile, the current legal frameworks on civil and economic law have become main obstacles in creating a legal infrastructure to encourage business opportunities in Indonesia and the ease of doing business. So far, reforms have been carried out only partially by Ministries/Agencies based on their respective powers, such as: establishment and improvement of the rules on mediation, small claim court, as well as electronic-based court administration.



Enforcement of court orders also remains a major problem in Indonesia's legal infrastructure. LeIP's research on civil court decision enforcement found three underlying problems. First, lack of legislative and executive support in guaranteeing and ensuring civil decision enforcement. Second, laws and regulations hamper effective and efficient civil decision enforcement. Third, the weak competence and authority of the bailiff.

One of the important debates regarding civil decisions enforcement system improvement concerns the institution which best can carry out this role. There are two views on this issue. First, a notion to establish a new institution outside the court to enforce the civil decisions, such as Koninklijke Beroepsorganisatie van Gerechtsdeurwaarders (KBvG) in the Netherlands. Second, to augment the position of the bailiff of the first instance court, by providing financial, infrastructure and personnel capacity enhancement.

In view of these developments, LeIP and Jentera School of Law have organized a panel that will discuss the prospect of economic law reform as a foundation for post-pandemic economic recovery. This topic is closely related to the Economic Law Reform agenda of the Indonesian National Medium Term Development Plan (RPJMN) and builds on the conclusions of the Panel "Establishing an Effective Civil Decision Enforcement System" of INLU 2019.

Panel descriptions week 2

Monday, 26th of September 2022

Panel 10 : Private Equity & Debt Enforcement.

Location : Online

Time : 10:00-12:30 (WIB)

Convenors : Stichting Socio-Legal Consulting & Van Vollenhoven Institute Leiden University

Coordinator : Santy Kouwagam (VVI)

Moderator : Santy Kouwagam (VVI)

Speakers :

1. Nanda Amalia (VVI): Reality of Marital Property after Divorce
2. Lewi Aga Basoeki (Allen & Overy): Legal Framework on Online Payments
3. Raditya Kosasih (APPDI/GoJek): (Upcoming) Data Protection Law
4. Oscar Sagita (IKAPI-Indonesian Curators' Association): Suspension of Payment: Procedure & Practice.
5. Marjolein van den Bosch (Omni Bridgeway): Third-party Litigation Funding and its role in Legal Development.

Rapporteur : Santy Kouwagam (VVI)

Objective :

1. Sharing knowledge and experience in dealing with the Indonesian legal system and bureaucracy.



2. Identify weaknesses, areas for improvement, and their appropriate approach by focusing on both quality and efficiency of the legal system.
3. To forge new relationships and sustaining legal cooperation concerning Private Law between Dutch and Indonesian actors, particularly in the area of contracts and liability.

Description :

This panel focuses on personal law and property by paying attention to the increasing role of digital technology. It will first discuss people's way of navigating the justice system to gain insights into law in action and legal reality of different classes of society. What happens with people's property after divorce? What can people do in case their debtors avoid paying their debt? The panel will then discuss the role of courts in regulating breach of contracts and this panel focuses on personal law and property by paying attention to the increasing role of digital technology. It will first discuss people's way of navigating the justice system to gain insights into law in action and legal reality of different classes of society. What happens with people's property after divorce? What can people do in case their debtors avoid paying their debt? The panel will then discuss the role of courts in regulating breach of contracts and payment obligations and identify areas of reform to improve legal certainty.

Panel 11 : Access to Remedy- Loss of Housing

Location : Erasmus Huis

Time : 14:00-16:30 (WIB)

Convenor : Center for International Legal Cooperation (CILC); Van Vollenhoven Institute Leiden University (VVI) and Erasmus University Rotterdam

Coordinator : Emily van Rheenen (CILC) & Santy Kouwagam (VVI)

Moderator : Dr. Tristam Muliono (Universitas Parahyangan)

Speakers :

1. Prof. mr. (Martijn) MW Scheltema (Professor of Business Law, Erasmus University Rotterdam)
2. Dr. Erna Dyah Kusumawati (Universitas Sebelas Maret Surakarta)
3. Charlie Albajili, S.H. (LBH Jakarta)
4. Dr. Santy Kouwagam, Van Vollenhoven Institute Leiden University (VVI)
5. Dr. Surya Tjandra (Universitas Atma Jaya)

Rapporteur : Dianwidhi Michelle

Objective :

This panel will focus on Access to Remedy in case of loss of housing in Indonesia. It will showcase a study that has been performed in the past year that maps all the (national and international) actors that are involved in access to remedy particularly for Indonesian nationals in case of loss of housing.

Description :

Access to remedy for the rights of stakeholders remains a salient problem. Improving the mechanism for remedy-seeking and identifying the actors involved is a relevant cause and currently an underdeveloped research area. In many cases, actors such as sponsors, the operating company, development banks, commercial banks and the government are involved in loss of housing issues, but the remedy landscape



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is at best a patchwork, if any meaningful access to remedy which can be accessed in practice exists at all. To date, no mechanism exists which aims at reaching solutions which include all these actors (including credible escalation mechanisms). A recent study has been done on Access to Remedy in Indonesia that includes a stakeholder mapping by the Speakers. Their research results will be introduced. In the research they highlight two main reasons for loss of housing 1) evictions and 2) natural disasters. Both topics are discussed and their (national and international) remedies are explained. The panel aims to include a discussion on the following question: What kind of (dispute resolution) mechanism can be implemented or created for inclusive access to remedy; by considering all interest-holders and the roles of all actors involved in Indonesia?

Tuesday, 27th of September 2022

Panel 12 : Role of the Ombudsman in Access to Justice

Time : 14.00 – 16.30 (WIB)

Location : Ombudsman Republik Indonesia

Topic : Role of the Ombudsman in Access to Justice

Convenor : Nationale Ombudsman & Ombudsman Republik Indonesia

Coordinator : Peter de Meij, Emily van Rheenen, Junika Rajagukguk, Diah Suryaningrum

Moderator : Diah Suryaningrum

Speakers :

1. Dr. Johanes Widijantoro, S.H., M.H. (Commissioner of the Indonesian Ombudsman)
2. Mr. Reinier van Zutphen (LL.M.) (Dutch Ombudsman)
3. Drs. Linda Reijerkerk (Director, Center for Conflict Resolution)

Objectives :

1. Obtain an understanding of how the Ombudsman contributes to access to justice
2. Exchange experiences and best practices of the Indonesian and Dutch Ombudsman
3. Identify the added value of Fair Treatment Approach/Propartif for access to justice

Rapporteur : Peter de Meij

Description :

The Indonesian and Dutch Ombudsman offices have had a longstanding cooperation which goes back to even the start of the Indonesian Ombudsman Office. Over the last 10 years, cooperation has been ongoing through respectively a research project on Strengthening Indonesia's Ombudsman in the Regions (SIOR,2013-2016) as facilitated by Leiden University, a project to introduce a fair treatment approach (Propartif) in Indonesia's Ombudsman offices as facilitated by IDLO (2016-2019) and currently a project as facilitated by CILC (2020 – 2023) which aims to continue to foster the institutional relationship and further embed Propartif in the Indonesian Ombudsman Office.

Whereas both Indonesian and Dutch Ombudsman offices have a mandate to handle complaints by citizens about unfair treatment by government institutions, it has been essential to promote fair treatment, both by the Ombudsman institution itself and to other government institutions. The fair treatment approach has been applied by the Dutch Ombudsman since 2009 and with that experience it



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has worked with the Indonesian Ombudsman to also introduce the concept in Indonesia. A trademark of the Propartif approach is the emphasis on fairness and transparency achieved when interacting more informally with communities, based on mediation skills. This method uses an open attitude, explains the problem in depth, and is primarily polite and respectful. This makes people feel that they have been treated fairly. This also makes the government more accountable, especially in terms of handling complaints to accelerate the settlement of complaints.

Through the Fair Treatment Approach and the Ombudsman role of receiving, investigating, and resolving complaints and mediating conflicts, as well as monitoring activities, ombuds institutions represent a key pathway to enhance access to justice. They can offer an alternative to court proceedings, which may often be lengthy and costly, and help to ensure that the rights of marginalized and vulnerable groups are upheld. The links between the Ombudsman, the Fair Treatment Approach (Propartif) and Access to Justice will be presented and discussed by the panel.

Panel 13 : Effective Argumentation in Decision Writing

Location : Grand Mercure Harmoni Hotel

Time : 14:00-16:30 (WIB)

Convenor : The Netherlands Studiecentrum Rechtspleging (SSR) & Balitbang Diklat Mahkamah Agung Republik Indonesia

Coordinator : Sari Seruni

Moderator : Ennid Hasannudin

Speakers :

1. Anne Tahapary (Senior course manager SSR)
2. Balibatbang Diklat MA (tbc)
3. Indonesian judge (tbc)
4. Karima Kaddouri (Communication trainer SSR)

Rapporteur : Sari Seruni

Objective : Exchange best practice experiences of Indonesian and Dutch Legal Education and Training in developing effective arguments in Decision Writing

Description :

For more than 10 years, the Dutch Training and Study Center for the Judiciary (SSR) has been collaborating closely with the Indonesian Judicial Training Center (JTC) to set up the initial training for Indonesian judges and improve the quality and skills of judges, registrars, and other judicial personnel in Indonesia. The scope of the cooperation includes both the management of the Training Center and the technical side of training. This includes the development of JTC's strategic planning (RENSTRA), assessment of candidate judges, evaluation of training programs, and the introduction of blended learning techniques and e-learning (which was particularly relevant during the pandemic).

More specific training has been organized on technical topics such as the role of spokespersons for the courts or on decision writing. Each case before a court will result in a written decision by (a panel of)



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judges. These judicial decisions will have to meet certain requirements and include reference to relevant evidence and relevant law, the view of parties, argumentation, and motivation of the judge why a certain decision has been rendered and options of appeal. Decisions should also be clear and accessible for parties.

Candidate judges are given training in decision writing during their initial education program (PPC). Indonesian judges are also guided by decision making templates to help draft their decisions and ensure that decisions meet legal requirements. With an eye on the requirement that a court decision needs to be clear and well-motivated for parties involved, it is important for the decision to have a clear argumentation and logical structure. To that effect the grammatical aspects and language used in decisions are also very relevant. If a decision is reader friendly, easy to understand and well-motivated, justice seekers are more inclined to accept decisions. Well written decisions help increase the transparency of and accountability for court procedures and that way contribute to the improvement of access to justice.

The Indonesian-Dutch cooperation on decision writing involved both a technical training on decision writing skills, but also the development of a module for the Indonesian Training Center. The set-up of this session will start off with a presentation on how the module was developed and elaborate on elements of quality decisions. This will be followed by a discussion which is also envisioned to touch upon comparative aspects of Indonesian and Dutch decisions.

Wednesday, 28th of September 2022

Panel 14 : New Legal Mechanisms to Protect Legal Unity

Location : Bina Nusantara University, Anggrek Campus

Time : 10:00-12:30 (WIB)

Convenor : Business Law Department Bina Nusantara University & Judicial Reform Team Office
Mahkamah Agung

Coordinator : Stijn van Huis and Astriyani Achmad

Moderator : Astriyani Achmad, S.H., MPPM.

Speakers :

1. Hon. Justice Annelies Röttgering (Justice of Criminal Chamber at Hoge Raad)
2. Hon. Justice Dr. Suhadi, S.H., M.H. (Chief of Criminal Chamber at Mahkamah Agung)
3. Dr. Dian Rositawati (Judicial Reform Team Office Mahkamah Agung)
4. Prof. Shidarta (BINUS University)

Rapporteur : Stijn van Huis

Objectives :

The proposed panel will look at novel legal mechanisms in Indonesia and the Netherlands and discuss the following matters:

- Background: Why was it considered necessary to create new legal mechanisms in which the Mahkamah Agung and the Hoge Raad obtained more possibilities to fulfill their law-making



function? Why is case law development no longer sufficient? What's the impact of these internal regulations toward court, judges and the public in general?

- Legal status: What is the legal status of a circular as Mahkamah Agung guideline? And what is the status of a Hoge Raad judgment as answer to a prejudicial question? To what extent are judges required to abide by the new directions provided?
- Legal practice: How are the experiences with these new legal mechanisms in the last 10 years? What are the strengths and what are the weaknesses of each legal mechanism?
- Take away: What can we learn from both experiences with the new legal mechanisms?

Description :

About ten years ago, the Mahkamah Agung and the Hoge Raad both adopted new legal mechanisms that had the objective to increase legal unity: the Mahkamah Agung has issued internal regulations that responds to various judicial matters and conflicting legal issues as a guidance for courts and judges in deciding cases, while the Hoge Raad obtained the competency to pass judgment on prejudicial questions concerning pressing legal issues arising in concrete cases at lower courts.

Since the introduction of the one-roof system in Indonesia, the Mahkamah Agung has expanded its authority to regulate organizational and judicial matters by issuing internal regulations (Surat Keputusan Ketua MA/SKKMA, Peraturan Mahkamah Agung/PERMA and Surat Edaran Mahkamah Agung/SEMA). The Supreme Court issues internal regulations to fill the legal vacuum due to the absence of legislation. These include the issuance of PERMA for Small Claim Procedure, or PERMA on Minor Crimes and the Amount of Fines. The increasing number of internal regulations issued by the Supreme Court is an indication of the strengthening of the Supreme Court's power in law-making.

Through several Chief Justice Decrees, the Supreme Court introduced the chamber system in 2010, consisting of five chambers: the civil law, penal law, Islamic law, administrative law and military law chambers. In the chambers' annual plenary meetings legal issues are discussed that according to the members of the Supreme Court chamber require guidance, because current court judgments on the legal issue are inconsistent or because it is a novel legal issue which needs to be resolved. The legal solutions agreed upon by the Supreme Court Chambers are subsequently published in Supreme Court circulars (Surat Edaran Mahkamah Agung; SEMA) which serve as guidelines for judges at lower courts in order to ensure consistent court judgments and increase legal unity in Indonesia's legal system.

With the same objective of increasing legal unity, the Law on Prejudicial Questions was introduced in the Netherlands in 2012. The prejudicial question is a new legal means for first-instance or appellate courts that handle a complex case, to ask the opinion of the Hoge Raad. The legal issue at hand must be a matter that is widely considered as a pressing legal issue. The prejudicial question is a legal mechanism that makes it possible for lower courts to ask for guidance from the Hoge Raad at a much earlier stage – as previously lower courts had to wait for a judgment to reach the Supreme Court in appeal in cassation. By offering the possibility of prejudicial questions, it was anticipated that in the Netherlands court judgments on novel pressing legal issues would become more consistent. In short, the novel law-making



devices of the Hoge Raad and the Mahkamah Agung both have the same objectives: consistency and legal unity.

Panel 15 : Implementation of Restorative Justice by the courts in Indonesia and the Netherlands.

Location : Mahkamah Agung (Conference Center Room, 12th floor)

Time : 14:30-17:00 (WIB)

Convenor : Mahkamah Agung RI and Hoge Raad der Nederlanden

Coordinator : Emily van Rheenen (CILC), Liza Fariyah (LeIP) and Raynov Gultom (LeIP)

Moderator : Raynov Gultom, S.H. (LeIP)

Speakers :

1. Honorable Chief Justice Syarifuddin of the Mahkamah Agung RI
2. Honorable President Dineke de Groot of the Hoge Raad der Nederlanden
3. Hon. Justice Marjan Boerlage (Justice of Tax Chamber at Hoge Raad)
4. Hon. Justice Desnayeti M., S.H., M.H. (Justice of Criminal Chamber at Mahkamah Agung)

Rapporteur : Raynov Gultom (LeIP)

Objectives :

1. To discuss legal framework of restorative justice and its implementation in Indonesia and the Netherlands
2. To reflect on the effectiveness of existing restorative justice practices in Indonesia and the Netherlands
3. To discuss the possibility of cooperation between Indonesian and the Netherlands in developing restorative justice practices.

Description :

Restorative justice has been globally recognized as a reformation in the criminal justice system which attempts to put more focus on victims of crime. This system resolves criminal acts by involving all parties – not only the perpetrators, but also victims and the community. The state assists in the recovery process, so that later when offenders return to the community, they understand their mistake, victims have healed and the community can regain its balance. This system has been proven effective in various countries.

Restorative justice has become a centerpiece in discourse around law enforcement in Indonesia since the establishment of National Medium Term Development Plan (RPJMN) 2020-2024 in which the implementation of restorative justice in the criminal justice system is laid down as one of the national priority projects. This was followed by law enforcement agencies introducing internal regulations regarding the implementation of restorative justice. While the existence of internal regulations demonstrates a commitment to implement a restorative justice approach, a closer look shows that currently they only partially do so. In practice, Indonesian law enforcement agencies focus heavily on outcome, although restorative justice in essence relates to the process. Indonesian law enforcement



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agencies do not yet make full use of the potential of restorative justice approaches in their internal regulations.

The Netherlands is one of the many countries that has adopted restorative justice within its criminal justice system. The expansion of restorative justice practices in the Netherlands not only has been influenced by internal, but also external forces – the development of EU law being a major factor. Restorative justice is implemented through various methods and throughout the justice process, ranging from the prosecutorial phase to detention stage, although oftentimes still on an ad-hoc basis. Currently, a legislative proposal is being put forward to adopt additional restorative justice principles into the Dutch Criminal Procedure Code.

In this panel legal institutions, researchers, and practitioners from Indonesia and the Netherlands will share ideas, views, and experiences regarding the implementation of restorative justice in both countries. The discussion will be held in a hybrid format to ensure wide participation beyond the audience of legal academia and practitioners.

Thursday, 29th of September 2022 Closing Ceremony

Following a series of 15 panels of INLU 2022, the closing ceremony will conclude and reflect upon the discussions that have unfolded during the past 2 weeks. Appointed representatives will share the results and the way forward for Dutch-Indonesia collaboration in the field of rule of law. The closing ceremony will also feature bilateral discussions between equal Dutch and Indonesian institutions, including the Ombudsman and the Supreme Court of both countries - as well as a keynote remark from the Indonesian Minister of Coordinating Ministry for Political, Legal, and Security Affairs, H. E. Prof. Dr. H. Mahfud Mahmodin,S.H., S.U., M.I.P. (tbc).

Location : Erasmus Huis

Time : 14:00 - 18.00 WIB

Welcoming Remark: H.E. Lambert Grijns Ambassador of the Kingdom of the Netherlands

Keynote Remarks: Indonesian Minister of Coordinating Ministry for Political, Legal, and Security Affairs, H. E. Prof. Dr. H. Mahfud Mahmodin,S.H., S.U., M.I.P. (tbc)

Talk show:

1. Mahkamah Agung Republik Indonesia – Hoge Raad
2. Ombudsman Indonesia – Nederlandse Ombudsman
3. Direktorat Jenderal Pemasyarakatan – Reklassering Nederland

Moderator: Liza Fariyah (LeIP) and Maresa Oosterman

Key findings of the INLU 2022:

1. Theresia Dyah Wirastri (INLU 2022 country coordinator)
2. Dian Rositawati (Judicial Reform Team Office Mahkamah Agung) (tbc)

