

1976

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Recommended Citation

June S. Katz & Ronald S. Katz, *Law Reform in Post-Sukarno Indonesia*, 10 INT'L L. 335 (1976)
<https://scholar.smu.edu/til/vol10/iss2/10>

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Law Reform in Post-Sukarno Indonesia

Sukarno, Indonesia's president for two decades,¹ did not give a very high priority to law reform, as indicated by his statement to a group of lawyers in 1961 that "one cannot make a revolution with lawyers."² Since his fall from power, however, there have been many efforts to bring Indonesia closer to its goal of becoming a "Negara Hukum" (state based on the rule of law).³ The purpose of this article is to describe the systematic progress that has been made in this direction.

Perhaps the best way to chart this progress is to trace the career of an Indonesian leader, Professor Dr. Mochtar Kusumaatmadja, who has been very active in the law reform area. His career may be viewed in three stages, which parallel the recent stages of law reform in Indonesia.⁴ During the first stage—the latter part of the Sukarno regime—Professor Mochtar had to live outside of Indonesia because his view of law differed sharply from that of Sukarno.⁵ In the second stage—the early years of the Suharto government when law reform activity centered in the law schools—Professor Mochtar was dean of the state law school

*Both authors received the J.D. degree from Harvard Law School in 1972. During the preparation of this article, they were working on a grant from the International Legal Center, New York.

¹1945 through approximately 1965.

²Speech to Persahi (Law Association) Congress, Jogjakarta, 1961, as reported to HUKUM DAN MASJARAKAT (JOURNAL OF LAW AND SOCIETY), NOMOR KONGRES 1, 1961, p. 2.

³See *Kompas* [an Indonesian daily newspaper], "Negara Hukum Yang Demokratis Belum Terwujud" (A Democratic State Based on the Rule of Law Does not yet Exist), July 17, 1973, p. 8. All translations in this article are by the authors unless otherwise indicated.

⁴It should be noted that we are tracing only the aspects of Professor Mochtar's career which most directly relate to law reform. His career has many other aspects as well, such as chief law-of-the-sea negotiator for Indonesia, university rector, and private law practitioner.

⁵Sukarno's concept was called "revolutionary law" and its foremost proponent from the legal field was the chief justice of the Supreme Court, Wirjono Prodjodikoro, who once stated to a meeting of lawyers: "In facing acts of official bodies, which seem rather extraordinary and unusual, don't jump to the conclusion that those acts are not valid because they are in conflict with the law." *Hukum dan Masyarakat*, NOMOR KONGRES I, 1961, p. 44. The idea seemed to be that the Indonesian citizenry in a time of revolution must simply blindly trust the government, which alone knew what was right.

Professor Mochtar's opinion of this is that "the revolutionary history of Indonesia and the preservation of 'the revolutionary spirit' by its leaders up to the latter part of 1965 was not conducive to a balanced appreciation of the role of law in society." Mochtar Kusumaatmadja, *Law and Development: The Need for Reform of Legal Education in Developing Countries*, 4 PADJADJARAN [law journal of the University of Padjadjaran, Bandung] 3, December 1971.

in Bandung and chairman of the sub-consortium of law schools, a group of the four leading Indonesian law schools⁶ which joined forces in 1969 to reform legal education. In the third stage, beginning in early 1974, Professor Mochtar became Indonesia's Minister of Justice and instituted a great deal of activity in the ministry's law reform machinery which had previously lain relatively dormant.⁷

Stage I: The End of the Sukarno Era

During this period, while virtually no law reform activity was occurring in Indonesia, Professor Mochtar spent his time studying at the law schools of Harvard, Yale,⁸ and the University of Chicago. This study of the common law undoubtedly added new perspectives and ideas to his previous studies of the Dutch and Indonesian legal systems, ideas which he later, where suitable, adapted to an Indonesian context.

The most important of these ideas was Roscoe Pound's concept of law as a tool of social engineering. This theme, modified to Indonesian specification, constantly recurs in Professor Mochtar's speeches and writings:⁹

The history of social legislation ever since the advent of the New Deal in the thirties and more recently the advancement of the civil rights cause in the U.S. are striking examples of the effectiveness of law as a tool of social engineering

The need for and scope of law as a tool of social engineering in developing countries is much greater than it is in well-established societies where changes occur gradually, by well-established legislative mechanisms and the incremental process of judicial decisions. Although the techniques used are the same—court decisions and legislation—the need for their conscious employment as a tool of engineering is greater because of the greater expectation and urgent desire for change (and betterment) coupled with a newly found sense of power and confidence.

It is obvious, however, that this use of law . . . requires much more than mere knowledge of law in the traditional sense. Just as an engineer needs to know something about soil mechanics and strength of materials, so the lawyer in a developing society needs to know the interaction between law and other factors of development, mainly social and economic, implying a functional analysis of the legal system as a whole and of particular social norms and institutions.¹⁰

⁶Padjadjaran University (Bandung), University of Indonesia (Jakarta), Airlangga University (Surabaya), and Gadjah Mada University (Jogjakarta).

⁷See S. Tasrif "Tanggapan atas Prasaran Prof. Dr. Mochtar Kusumatmadja S.H. (Response to the Suggestion of Prof. . .) in MOCHTAR KUSUMATMADJA, PEMBINAAN HUKUM DALAM RANGKA PEMBANGUNAN NASIONAL (LAW REFORM IN THE CONTEXT OF NATIONAL DEVELOPMENT) (Bandung: Lembaga Penelitian Hukum dan Kriminologi, 1972), p. 13. See also Daniel Lev. *The Lady and the Banyan Tree: Civil Law Change in Indonesia*, 14 AMERICAN JOURNAL OF COMPARATIVE LAW 282, 292 n. (1965). See also welcoming speech of the Minister of Justice to the National Research Workshop, Bandung, 11 September 1974, p. 2 (mimeo).

⁸Where he had previously received an LL.M. in 1955.

⁹See "Sapu Baru di Departemen Kehakiman" (New Broom in the Justice Department), *Tempo* [an Indonesian weekly news magazine], March 2, 1974, p. 50.

¹⁰Kusumatmadja, *Law and . . .*, pp. 6-7.

Concepts such as the above were not congruent with the highly politicized atmosphere of Sukarno's Indonesia. After Sukarno lost power in late 1965, however, intellectuals like Professor Mochtar were welcomed back to their homeland.

Stage II: Legal Education Reform

When Professor Mochtar returned, he focused his attention on a basic legal institution—the law school—which had not changed since Dutch times.¹¹ He examined that institution in the context of the new role Indonesian lawyers were to play:

The problem of relating the aims of legal education to the needs of a newly independent, developing society, though obvious enough once one comes to think of it, nevertheless was a problem which was not deliberately dealt [with] until quite recently.

It is obvious that a newly independent, developing society requires more of its lawyers than a colonial society. One principal difference lies in the fact that lawyers in a colonial society, unless they belong to the colonizing (expatriate) group, do not participate in the policy decision making process . . . All that they were expected to do mainly was to assist in the maintenance of the established order.¹²

What follows from the new policy-making role to be fulfilled by lawyers in Indonesia, Professor Mochtar believes, is that they must be capable of using law as a tool of social engineering. That is, they must receive an education encompassing not only the technical aspects of law itself but also the social, political, and economic factors with which law is constantly interacting.

Among the first tasks that such a concept of law and legal education required was a revision of the law school curriculum to meet Indonesia's post-colonial needs. This Professor Mochtar supported,¹³ first at Padjadjaran Law Faculty, then at the three other leading law schools in the sub-consortium of law schools, and finally at all Indonesian law schools.¹⁴ Since 1972 this new curriculum has been providing Indonesian law students with a much more well-rounded education than they had previously received. The minimum curriculum includes, aside from the traditional courses in positive law, courses in introduction to law, government, sociology, anthropology, economics, criminology, comparative constitutional law, and philosophy of law. Also, students must write a thesis (usually 40-50 pages) on a subject of their choice in their final (fifth) year of study.

¹¹Kusumaatmadja, *Law and . . .*, p. 10; also, Mochtar KUSUMAATMADJA, *PEMBINAAN HUKUM DALAM RANGKA PEMBANGUNAN NASIONAL (LAW REFORM IN THE CONTEXT OF NATIONAL DEVELOPMENT)* (Bandung: Lembaga Penelitian Hukum dan Kriminologi, 1972), p. 6.

¹²Mochtar Kusumaatmadja, *Problems of Legal Education in Indonesia: Challenge and Response*, 3 PADJADJARAN 3, 6, April, 1971.

¹³Mochtar Kusumaatmadja, *Kurikulum Fakultas Hukum (Law Faculty Curriculum)*, 2 PADJADJARAN 3, December 1970.

¹⁴See Decision of the Minister of Culture and Education No. 0198/U/1972 concerning a guide for the Minimum Curriculum of Indonesian State and Private Law Schools, 30 December 1972.

As important as *what* is taught to Indonesian law students, according to Professor Mochtar, is *how* it is taught:

The lecture method commonly used, especially in countries with the continental tradition of law teaching, induces passivity on the part of the student. Experiments with other methods of teaching requiring more active participation on the part of the student, *e.g.*, the periodic writing of short papers, the "Socratic" method of question and answer, and seminar type discussions have shown remarkable results though it must be admitted that not all these methods are easy to implement.¹⁵

The hope is that active teaching methods will produce lawyers who actively try to better the status quo rather than those who passively accept it. In order to encourage these methods, teaching methodology seminars and upgrading courses for teachers have been instituted.¹⁶

In addition, to meet "the common complaint . . . that the law school graduate knows "practically nothing" when he enters law practice and that this situation should somehow be corrected by changing the way law is taught at the law schools,"¹⁷ clinical legal education programs have been set up at Padjadjaran Law School and several others. The most common such program is legal aid. "By interviewing clients, drawing up reports analyzing the case, and relating it to the relevant legal provisions of the law, the law studied in the classrooms comes to life. . . . Perhaps more important is the student's involvement through the program in the problems of the poor. Participation in the program gives students the chance to make the principle that 'every man is equal before the law' come true. The Legal Aid Program may thus become an important means to correct . . . attitudinal problems. . . ."¹⁸

Another aspect of clinical legal education to which Professor Mochtar accords much importance is legislative drafting.¹⁹ Under a program recently started at the University of Padjadjaran, students are getting carefully supervised experience in this field, which had been unknown to them before. This has been a part of Minister Mochtar's plan to link up the governmental law reform body, which has financing and an official status but little manpower,²⁰ with the legal academic community, which has manpower but little money or influence. The general idea is that lawyers and the law should have a bigger role in the

¹⁵Kusumaatmadja, *Problems* . . . , p. 11; difficulties of implementation occur because older generation law professors want to retain the ways of the Dutch-run law schools at which they gained their degrees (*Id.*, p. 7, n.).

¹⁶*Id.*, pp. 5, 16, 17. See also June Katz and Ronald Katz, *Teaching Methodology and Indonesian Legal Education*, 27 *JOURNAL OF LEGAL EDUCATION*.

¹⁷Kusumaatmadja, *Problems* . . . , p.11; see also KUSUMAATMADJA, *PEMBINAAN* . . . , p. 8.

¹⁸Kusumaatmadja, *Law and* . . . , p. 12. The "attitudinal problems" referred to here are those which still remain from colonial times when lawyers were viewed simply as preservers of the status quo.

¹⁹See "Menteri Baru dari Kampus" [A New Minister from Campus], *Tempo*, March 2, 1974, p. 47.

²⁰See note 7 above and accompanying text.

development process: "Up until now economic experts have thought and acted as if legal experts do not exist and are not needed for development plans."²¹

The execution of the basic field research necessary for lawmakers to legislate intelligently and for the law schools to reform themselves has become another important link between law faculties and the law reform process.²² Padjadjaran University Law Faculty was among the first to establish a research institute: ". . . it is separate from the educational division of the law school, which is in fact one of its main objects of research."²³

Projects which this institute has already completed deal with economic law,²⁴ the prison system, and—as mentioned above—legal education. One aspect of the latter project was a survey of the university law libraries in Indonesia, the result of which was a recommended "minimum law library"²⁵ to support the above-mentioned minimum curriculum.²⁶

Another very important project of the institute has been an inventory of the case law of the High Court of West Java,²⁷ which has served the purposes of both education and governmental reform. On the educational side, the project

²¹*Tempo*, "Sapu Baru . . .," p. 50, quoting Professor Mochtar.

²²See opening speech of the Minister of Justice at the Workshop on Legal Research (mimeo), held at Bandung, West Java, 11 September 1974, p. 1: ". . . this workshop shows the added understanding or interest in the role of scholarly research meetings and legal research in the field of national law reform."

²³Kusumaatmadja, *Problems . . .*, p. 15. The research institute is also separately financed so that it provides extra remuneration to the otherwise very poorly paid law lecturers. This keeps law lecturers around the university more by lessening the necessity for them to seek outside income. See KUSUMAATMADJA, *PEMBINAAN . . .*, p. 5.

²⁴See the SURVEY OF INDONESIAN ECONOMIC LAW (Bandung: Lembaga Penelitian Hukum dan Kriminologi) in five volumes, *AGRARIAN LAW* (1972), *BUSINESS LAW* (1973), *TAXATION* (1973), *MINING LAW* (1974) and *LABOR LAW* (1974).

One of the purposes of this Survey, which was co-directed by Professor Mochtar, was to fill in the huge gap in the field of Indonesian economic law, which is rarely taught in Indonesian law schools even though it is crucially important to Indonesia. To further fill in this gap, Professor Mochtar has established a graduate program in economic law at the Padjadjaran Law Faculty.

²⁵See Mochtar, Kusumaatmadja, "Perpustakaan Minimum Fakultas Hukum" (The Minimum Law Faculty Library) in *Laporan Pertemuan Sub-Konsorsium Ilmu Hukum dengan para Dekan Fak. Hukum Negeri Seluruh Indonesia* (Report of the Meeting of the Law School Subconsortium with the Deans of all Indonesian Government Law Schools) (Bandung: Sub-Konsorsium Ilmu Hukum, 1973), part III, 4. The library report (Robert Hornick, *A Report on the Condition of University Law Libraries in Indonesia at the Present Time*, December 15, 1973), which is unpublished, also recommends that law libraries become repositories for government proclamations, which are often difficult to obtain. In this way these documents are not only preserved but also they become available for law students to study.

Another library-related project of the research institute at the Padjadjaran Law Faculty was the compilation of the only bibliography of Indonesian legal works. Eddy Damian and Robert Hornick, *Bibliografi Hukum Indonesia* (1945-1972) (Indonesian Legal Bibliography), (Banking: Lembaga Penelitian Hukum dan Kriminologi, 1974), 2nd ed.

²⁶See notes 13-14 above and accompanying text.

²⁷See Mochtar Kusumaatmadja, R. Poewoto Gandasoebrota, et. al., *YURISPRUDENSI JAWA BARAT* (The Case Law of West Java), 2 vols. (Bandung: Lembaga Penelitian Hukum dan Kriminologi, 1974).

immeasurably widens the amount of written cases which students can study;²⁸ before, such cases were extremely difficult to obtain. On the governmental side, the project enables a court to study its own precedents and the precedents of other courts who adopt this system. It also gives advocates more material from which to formulate arguments, and it makes the whole judicial process more public—a very healthy development in a society which has experienced severe problems of corruption.²⁹ Written decisions tend to bring forth reasoned opinions; these decisions have a precedential effect which is not easy to set aside unless, again, there are rational reasons. All these factors militate against extra-judicial factors entering into the judicial process.

Stage III: Revival of the Governmental Law Reform Process

This court project, with its connection between the legal academic community and the law reform process, provides a logical transition from the second, more academically oriented stage of Professor Mochtar's career to the third stage as a government minister. In fact, one of Minister Mochtar's first acts has been to expand this court project so that it not only affects more courts but also so that it affects more aspects of the operations of these courts. Now, for example, the Ministry of Justice, aided by many of the academics who worked on the West Java court project, is preparing to provide Indonesian courts with manuals of procedure and model forms.³⁰ The purpose of these aids, heretofore non-existent, is to unify the previously divergent procedures of these courts. This would be a major step toward the Indonesian government's goal of unifying the law.³¹

Another important change that Minister Mochtar has been making is the revival of the Institute of National Law Reform (*Lembaga Pembinaar Hukum Nasional*, LPHN), which had been a dormant part of the Ministry of Justice.³² The Institute has been given a new name,³³ a greatly increased budget, and a new

²⁸See Kusumaatmadja, *Yurisprudenis* . . . , p. 3.

²⁹In 1970 President Soeharto appointed the so-called Committee of Four to investigate corruption in Indonesia. See *Sinar Harapan* (an Indonesian daily newspaper), July 18-24, 1970, for the reports of this Commission.

The first Indonesian five-year plan states in Chapter XIII (p. 97) on Legal Order and Information that "the influence of extra-judicial factors upon the courts should be eliminated to preserve the objectivity and independence of the judge."

³⁰See Mochtar Kusumaatmadja, *Opening Speech of the Third National Law Seminar* (mimeo), March 11, 1974, p. 3. The policies of this speech are similar to the policies mentioned in the legal chapter of Indonesia's second five-year plan (Repelita II, 1974/75-1978/79, Chapter 27 on law), which Professor Mochtar was instrumental in drafting. See *Tempo*, "Menteri Baru . . .," p. 49.

³¹At the present time there are many systems and parts of systems of law valid in Indonesia, among which are Dutch law, Islamic law, and at least nineteen different varieties of customary law. Minister Mochtar's position on this: "Isn't it time we made a thorough change?" See *Tempo*, "Menteri Baru . . .," p. 48. See also REPELITA II, Chapter 27, p. 1.

³²Kusumaatmadja, *Opening* . . . , p. 1, 4-5 and REPELITA II, Chapter 27, p. 5; see also note 7 above.

³³The new name is Agency of National Legal Development (*Badan Pembinaan Hukum Nasional*—hereafter Legal Development Agency).

organization.³⁴ An important part of this reorganization has been to bring the law schools and the legal profession closer to the law reform process. These groups are represented on Committees of Experts which meet with regard to each field of law.³⁵ Thus far a number of scholarly meetings and research efforts have already taken place, meetings and efforts which well summarize the current state of law reform in post-Sukarno Indonesia.

A workshop on legal research, for example, was held in Bandung in September of 1974. This workshop was the beginning of a national plan of legal research oriented toward Indonesia's development plan and coordinated by the Legal Development Agency. Previously university law school research had been on an *ad hoc* basis.³⁶

To facilitate this research, several further steps were taken. A workshop on the preparation of a network of legal information and documentation was convened in Jakarta in December, 1974, with the purpose of organizing law libraries into a network of repositories for government documents.³⁷ Also, two universities were given the very basic task of making an inventory of Indonesia's laws.³⁸ There have been so many legal systems and parts of legal systems valid in both past and present Indonesia that the task of law reform cannot move ahead without agreement as to what the current law actually is.³⁹

Perhaps even more basic than an agreed-upon base of laws is an agreed-upon legal terminology, which was the subject of another scholarly meeting sponsored by the Legal Development Agency. Not only do many of the ethnic groups of Indonesia have their own language (which is often better understood by them than the Indonesian language) but also much of the legal terminology is still in Dutch. It is therefore very important, according to Minister Mochtar,⁴⁰ that legal language be made uniform, usable, and understandable to the people.⁴¹

After legal language has been improved and an inventory of the laws has come into existence, the actual process of law reform can begin. The modernization of the legal system was the subject of five other scholarly meetings which the Legal Development Agency has sponsored. The first of these, held in Jogjakarta in

³⁴Interview with Minister Mochtar, November 30, 1974.

³⁵There is also a non-law Committee of Experts composed of economists, sociologists, etc.

³⁶See speech of the Minister of Justice opening the Workshop on National Research (mimeo), Bandung, September 11, 1974.

³⁷See note 25 above; see also Kusumaatmadja, "Law and . . .," p. 14.

³⁸Airlangga University has the task of inventorying the written positive law and Gadjah Mada University is to inventory the unwritten positive law.

³⁹See note 31 above. Another factor making it very difficult to know just what the law is in Indonesia is that as a rule new legislation repeals old laws on the same subject only insofar as it conflicts with them. This tends to give old laws a vague half-life of indefinite duration.

⁴⁰Welcoming speech of the Minister of Justice to the Symposium on Law and Language (mimeo), held November 25, 1974, at Medan, North Sumatra.

⁴¹To accomplish these ends, the Legal Development Agency has given a research grant to the University of Indonesia.

December, 1974, dealt with customary law. There are at least nineteen different varieties of customary law now valid in Indonesia,⁴² some of them distinctly non-modern.⁴³ Professor Mochtar seeks an up-to-date customary law, one which preserves the old while according with the new.⁴⁴

Achieving the correct balance between the old and the new was the subject of the next three symposia: Symposium on Legal History,⁴⁵ Symposium on the Influence of Culture on Criminal law,⁴⁶ and Symposium on the Legal Consciousness of a People in Transition.⁴⁷ As has been noted above,⁴⁸ Minister Mochtar feels that it is of little use for Indonesia to copy mindlessly the legal institutions of other countries with completely different histories and cultures. On the other hand, Indonesia must modernize if it is to prosper in a technological world: for example, "where the need exists to attract foreign investments, the two opposite pulls of past experience and expectations of a bright future makes this area an uneasy path to tread requiring much ingenuity and political courage."⁴⁹

The fifth law reform symposium⁵⁰ sponsored by the Legal Development Agency dealt with an evaluation of the prison system. One of Minister Mochtar's major goals is to transform the prison system so that it is no longer based on a penal concept but rather on a concept of rehabilitation. As in many countries, however, the problem with such a transformation is lack of money.⁵¹ In general, however, Minister Mochtar's efforts toward law reform have not been hampered by a lack of government funding. The government has tripled its financial commitment to law reform in the second five-year plan,⁵² a commitment which has enabled law reform to take the quantum leap in activity described above. If activity continues at this level, then Indonesia cannot help but progress toward its goal of being a state based on the rule of law.⁵³

It is, of course, too early to judge exactly what will come from these efforts, how much resistance they will meet and how fast they will take effect. At a minimum, however, there have already been tangible results in the field of legal education and in the other areas there is now a workable framework in which reform can occur.

⁴²See B. TER HAAR, *ADAT LAW IN INDONESIA*, E.A. Hoebel and A.A. Schiller trans. (New York: Institute of Pacific Relations, 1948).

⁴³For example, there is no such thing as a promissory contract in customary law.

⁴⁴*Tempo*, "Menteri Baru . . .," p. 48.

⁴⁵Held in Padang, December, 1974.

⁴⁶Held in Bali, January, 1975.

⁴⁷Held in Semarang, November 1974. From the location of this symposium and the two mentioned immediately above, one can see that Minister Mochtar has determined that a truly national legal system cannot merely be proclaimed from Jakarta as has been done in the past.

⁴⁸See Text accompanying note 10 above.

⁴⁹Kusumaatmadja, *Law and . . .*, p. 15.

⁵⁰Held in Bandung, February, 1975.

⁵¹*Tempo*, "Menteri Baru . . .," p. 49.

⁵²From less than \$24 million to \$75 million.

⁵³See note 3 above.