

## Indonesia's National Law Development Centre: A Potential Model for Developing Countries

In 1974 Indonesia's Five-Year Development Plan unveiled an ambitious program for law reform,<sup>1</sup> the beginnings of which were reported in this journal.<sup>2</sup> Because nothing of this scope had ever been attempted in the Indonesian legal world—indeed, there are very few development plans anywhere which single out law as a factor in development—it was then hard to predict how this program was going to work out.<sup>3</sup> In the meantime, however, enough experience has accumulated so that it is now possible to make a preliminary assessment of the program by describing and evaluating the institution which is its moving force—the National Law Development Centre.<sup>4</sup>

### I. The Centre's Background

There are some facts and figures which indicate the depth of the commitment which the Indonesian government has made to the Centre. The clearest objective manifestation of this commitment is that since its creation in 1974, the National Law Development Centre's budget has steadily risen from \$350,000 per year to \$4.8 million per year and the number of its employees has risen from 32 to 165. It is in the process of building itself a large new headquarters, which will include Indonesia's first national law library. In 1977

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<sup>1</sup>*The Second Five-Year Development Plan (1974/75-1978/79)*, Chapter 27, "Law." See also Mochtar Kusumaatmadja, *Hukum, Masyarakat, dan Pembinaan Hukum Nasional* [Law, Society, and National Law Reform] (Bandung: Institute of Legal Research, 1976). The author of the last-mentioned article is presently the Minister of Justice of Indonesia and, as such, is the person most responsible for the reforms and innovations described in this article.

<sup>2</sup>Katz and Katz, *Law Reform in Post-Sukarno Indonesia*, 10 INT'L LAW. 335 (1976).

<sup>3</sup>*Id.* at 342.

<sup>4</sup>*Id.* at 340-41.

alone it will have sponsored eight seminars, fifteen academic projects, and twenty suggested drafts to new laws. The individuals involved in these activities represent all major segments of the Indonesian legal profession—judges, prosecutors, private practitioners, and academics.

The National Law Development Centre had previously existed under another name but it had languished during the political chaos of the Sukarno years and their aftermath.<sup>5</sup> In 1974, it was reconstituted with the same rank as a Directorate General within the Department of Justice,<sup>6</sup> a reconstitution which greatly increased its bureaucratic prestige and power.

It was also reorganized from within so that it could effectively implement its programs. As part of this reorganization, three major divisions were created—the Division of Legislation, the Division of Law Documentation, and the Division of Research and Law Development.

## II. The Division of Legislation

The Division of Legislation adds a new aspect to law reform in Indonesia; before it was created there was no Indonesian institution—not even in the House of Representatives<sup>7</sup>—systematically preparing drafts of proposed laws for discussion and future implementation. In the past, legislation had been prepared in a more haphazard fashion, with the result that some very important pieces of legislation had not been effective.<sup>8</sup> Under the new system, on the other hand, drafts of laws are prepared by national committees of law teachers, private practitioners, and government lawyers *before* the enactment of a particular law becomes a matter of urgency. This procedure gives the experts time to consult among themselves and, more importantly, to consult with those people who are most interested in the outcome of a particular law.

For example, work was done recently with respect to a possible new copyright law. Invited to give their views on the subject were writers, publishers, film-makers, and the like, in short, the groups which will be most affected when such a law comes into being. This grass roots type of participation is potentially an important step toward democracy in a country where grass roots input into lawmaking has heretofore been uncommon except during periods of revolutionary chaos.

The Division of Legislation of the National Law Development Centre has

<sup>5</sup>*Id.* at 340.

<sup>6</sup>The Directorates General of Indonesia agencies are the highest functional arms through which policy is implemented.

<sup>7</sup>See *Agar Bappenas Yakini* [So that the National Planning Board is Certain], *TEMPO* [a respected Indonesian news magazine], 19 March 1977 at 14.

<sup>8</sup>See Katz and Katz, *The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural and Legal Systems*, 23 *AM. J. COMP. L.* 653 at 666-668 (1975).

been quite active and has plans to continue this pace. In 1976-77 it produced eight drafts of laws;<sup>9</sup> in 1977-78 it plans to produce twenty-five more;<sup>10</sup> and in 1978-79 it plans to add another twenty-two.<sup>11</sup>

These draft laws, most of which cover basic areas, are especially necessary in Indonesia where many of the older laws are outmoded or no longer recognized as valid. Dutch law remained in effect in Indonesia (insofar as it was not superseded by new law) until 1963. In that year, one in which nationalistic feeling ran high, the entire civil code was revoked,<sup>12</sup> and a concept known as "revolutionary law" was applied by the Sukarno government.<sup>13</sup> That government and many of its laws were undone in 1965 by the New Order of President Suharto. All of these changes have created a real gap in Indonesia's legal order and a great need for new laws which are in accord with Indonesia's governmental system and society today. The Division of Legislation of the National Law Development Centre is working to create a basis for such laws in a professional rather than in a political way. In the past, as the pamphlet describing the National Law Development Centre states:

The political atmosphere during the period of 1958-1968 . . . was not favorable for the law development program. The Institute itself, which tended to be more of a political forum since the majority of its members were representatives of political groups, was not able to function as a working body. It was, therefore, not surprising that the institute did not produce satisfactory results. . . .<sup>14</sup>

Now, however, with technically neutral laws, the hope is that Indonesia will advance toward its goal of being a state based on the rule of law (Negara Hukum).

### III. The Division of Research and Law Development

This Division has been established in order to support the projects of the Division of Legislation. The functions of this Division fall under three headings—legal research, legal seminars, and training.

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<sup>9</sup>On the subjects of commercial law, communications law, civil procedure, private law, child abuse, manufacturing requirements, navigational safety, and rehabilitation of prisoners.

<sup>10</sup>On the subjects of testing building materials, fishing, fishing docks, fishing sales cooperatives, regional industry, protection of domestic industry, warehousing, arbitration, ship insurance, ship mortgages, aircraft mortgages, general mortgages, public disturbances, land use, protection of sea life, judicial administration, prison system, agriculture, housing rental, quarantine, forensic medicine, manpower, air transportation, private workers' insurance and farm machinery safety.

<sup>11</sup>On the subjects of juvenile courts, electricity, the construction industry, the press, the film industry, the distribution industry, animal quarantine, animal health, pesticides, plant disease, agricultural information, production standardization, metallurgical production testing, chemical production testing, textile production testing, industrial design, transfer of technology, environmental protection, land transport, international religious-social-cultural aid, maritime courts and cultural preservation.

<sup>12</sup>Lev, *The Lady and the Banyan Tree*, 14 AM. J. COMP. L. 282 at 284 (1965).

<sup>13</sup>Katz and Katz, *supra* note 2 at note 5.

<sup>14</sup>*The National Law Development Centre* (Jakarta: National Legal Development Agency, 1976) p. 3.

### A. Legal Research

This section is engaged in the type of work indicated by the title. What is particularly significant is that its research projects are given out partially on a basis of geographical distribution in order to insure that the National Law Development Centre is truly national.

Indonesia is a country composed of many different ethnic groups, language groups, and cultural groups. The Javanese have tended to dominate, in part because of their numbers,<sup>15</sup> but other local groups are very important to the nation and its unity.<sup>16</sup>

To prevent these other groups from feeling left out of the law reform process, a conscious effort has been made to include them. This policy may not always result in the best work-product because many of the outer islands are less developed than Java. However, the policy does increase the possibility that drafts of laws will reflect a national will, a reflection which will greatly increase the acceptability of the laws after they are enacted.

Another important side-effect of the research projects run by the Centre is that these projects are enabling many Indonesian law teachers to make a living as law teachers. Before the creation of the National Law Development Centre, it was not possible for law teachers to live on their salaries, so that they had to supplement them by outside work of a non-academic nature, usually law practice.

Now many law teachers can supplement their incomes by working on research projects of the Centre. Not only does this improve their teaching by keeping them up-to-date and providing new perspectives but it also has given the Indonesian law teaching profession a new self-confidence and self-respect. The Indonesian legal profession, led by these more self-confident and aggressive law professors, is beginning to emerge from the second-class citizenship it suffered during the Sukarno years.<sup>17</sup>

A direct benefit of the work of the legal research section is the much needed enlargement of the body of Indonesian legal scholarship. For example, one project now under way is a study of the customary laws in force in the various parts of Indonesia, an important subject most systematically studied in the 1930s and 1940s by two Dutch scholars.<sup>18</sup> By late 1977 the National Law Development Centre had produced over thirty publications, including works by most of Indonesia's leading legal thinkers.<sup>19</sup>

<sup>15</sup>Over two-thirds of Indonesia's population live on Java.

<sup>16</sup>Civil war has occurred on several occasions in Indonesia's thirty-two-year history.

<sup>17</sup>Katz and Katz, *supra* note 2 at 335.

<sup>18</sup>TER HAAR, ADAT LAW IN INDONESIA, 2nd ed. trans. Hoebel and Schiller (1948); VAN VOLLENHAVEN, ADAT LAW CIRCLES AND NATIVE LEGAL COMMUNITIES, trans. and ed. Schiller (trans. undated, original Dutch published 1931).

<sup>19</sup>See, for example, Kusumaatmadja, *Pembaharuan Pendidikan Hukum dan Pembinaan Profesi* [The Legal Profession and the Reform of Legal Education] SIMPOSIUM PEMBAHARUAN PEN-

## B. Legal Seminars

Many of these publications are collections of papers written by Indonesian lawyers, judges, and scholars for the numerous legal seminars sponsored by the National Law Development Centre. Nine of these seminars occurred in the 1977-1978 fiscal year, all of them related to either present or future draft laws of the Centre's Legislation Division.<sup>20</sup>

Aside from their intrinsic value, the seminars, like the legal research projects mentioned above, have important side effects. First among these is the unifying effect which the seminars have on the diversity of peoples and cultures of which Indonesia is composed. The sites of seminars are constantly rotated so that almost every area has at least one. The participants are representative of all areas in Indonesia, a fact which facilitates cross-fertilization. In an archipelago state with poor communications facilities, such meetings provide a basis for nation-building which did not previously exist in the legal field. Before the National Legal Development Centre came into being, the few such meetings which were held invariably took place in Java, most often in Jakarta.

This increased communication feeds into the law drafting process and makes it more representative. It also provides a forum for new ideas by bringing people out of their provincial environments into a stimulating national arena. Numerous seminar participants from outlying areas expressed the feeling that for the first time they felt they were part of a national effort. Not only had they been to Jakarta and other areas to study national law, but others had come to their area to receive its input into the national effort.

## C. Training

Self-evaluation and self-criticism have been two important aspects in the evolution of the National Law Development Centre. Indeed, it was out of dissatisfaction with previous Indonesian law reform efforts that the Centre arose in the first place.<sup>21</sup>

The Centre therefore is constantly looking for new ways to improve the Indonesian legal system. An important part of this activity consists of training programs which the Centre runs for its own staff, for practitioners, for

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DIDIKAN HUKUM DAN PEMBINAAN PROFESI HUKUM [Proceedings of the Symposium on the Legal Profession and the Reform of Legal Education] 33 (1975); Hartono, *Peranan Kesadaran Hukum Rakyat Dalam Pembaharuan Hukum* [The Role of the Legal Consciousness of Society in Law Reform] SIMPOSIUM KESADARAN HUKUM MASYARAKAT DALAM MASA TRANSISI [Proceedings of the Symposium on the Legal Consciousness of Society in a Period of Transition] (1975); GAUTAMA, *PENGANTAR HUKUM PERDATA INTERNASIONAL INDONESIA* [A Guide to Indonesian Private International Law] (1977).

<sup>20</sup>The subjects of the 1977-1978 seminars are mortgages, juvenile courts, land law, distribution system, air-sea-land transport, legal education reform, communications system and economic law.

<sup>21</sup>*The National Law Development Centre, supra* note 13 at 3.

academics, and for government officials. These training programs are numerous, inexpensive and easily accessible.

An important subject of training programs recently has been legislative drafting. Having determined that legislative drafting was to be one of its high priorities, the Centre soon found out that one of the reasons why legislative drafting was a weak link in the Indonesian legal system was that legal drafting in general was not taught in law schools. The Centre therefore has arranged for the training of people involved in legislative drafting, especially law teachers, who can pass this important skill on to their students. Many of these training programs are conducted in cooperation with the Consortium of Law Schools, a group of leading law schools which under the auspices of the Department of Education has as its primary duty the improvement of legal education in Indonesia.

The National Legal Development Centre's training programs also help to unify Indonesia's legal culture. Prior to these programs, a diversity of local laws, legal procedures, and even legal terms of art tended to be perpetuated by local law schools and local training programs. Now, however, these national programs can teach unifying ideas and methods. More importantly, these unification efforts are not forced from above but rather are the result of the consensus which arises from national seminars.

This national aspect of the current law reform efforts in Indonesia cannot be overemphasized because of the strong localistic tendencies in a country like Indonesia. With respect to legal terminology for example, terms as basic as "constitutional law" were not uniformly used by the various law schools before the National Legal Development Centre began solving that problem by holding a seminar on legal terminology.<sup>22</sup>

#### **IV. The Division of Law Documentation**

National unification of Indonesia's legal system is also the moving idea behind the Division of Law Documentation. Obviously it is impossible to have a truly national legal system unless all the laws of the nation are accessible, preferably in one place. Yet, before the Division of Law Documentation was established,<sup>23</sup> many of Indonesia's laws were not even easily accessible to people living in the nation's capital.

Now the Division is not only collecting all of the national laws in its Jakarta headquarters but also it has established branches in the provinces to collect all

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<sup>22</sup>Katz and Katz, *supra* note 2 at 341.

<sup>23</sup>One effort to create a national legal documentation center was beginning under the auspices of the University of Indonesia just before the Division of Law Documentation was established, and this effort has now been subsumed in the work of the Division.

of the local laws. An inter-library loan system makes the entire system available to any user.<sup>24</sup>

The Division of Legal Documentation has also created some basic reference works without which a national legal documentation system would not be viable. These works include a listing of Indonesian laws by subject,<sup>25</sup> an Indonesian legal bibliography,<sup>26</sup> a periodical index,<sup>27</sup> and a listing of the papers given at all national legal seminars.<sup>28</sup>

The success of this national documentation system depends not only on its creation, of course, but also on its continued use and maintenance. Recognizing this, the National Legal Development Centre has engaged in two other activities: seminars and training programs. Training a core of librarians who can deal with legal materials has been a high priority of the Centre, and several seminars on the advantages and the availability of legal documentation have been held in different parts of the country.<sup>29</sup>

One further activity of the Division of Legal Documentation is the publication of a law journal, *Hukum Nasional* [National Law]. It not only publishes scholarly articles but also reports about research activities, new developments, and important court decisions.<sup>30</sup>

## V. Conclusion

Indonesia's National Legal Development Centre has begun to fulfill Indonesia's law reform goals as set out in the latest five-year plan. More than that, what was once a mere plan has now become embodied in a functioning modern institution. There is now a base from which law reform, which in a developing country is always in danger of being overwhelmed by political and social factors, can grow in a professional, nonpolitical manner. Although this development in itself is not sufficient to solve the multitude of problems which face a developing country such as Indonesia, it does mean that one of the preconditions for a successful attack on those problems has been met.

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<sup>24</sup>*Membenahi Tumpukan Peraturan* [Tidying up a Pile of Regulations], TEMPO, 19 March 1977 at 12.

<sup>25</sup>*Daftar Subyek Peraturan Perundangundangan R.I. 1968-1975* [A list of the Subjects of Indonesian Laws 1968-1975] (Jakarta: National Legal Development Centre, 1976).

<sup>26</sup>*Daftar Kepustakaan Hukum* [A List of Legal Literature] (Jakarta: National Legal Development Centre, 1976).

<sup>27</sup>*Daftar Indeks Majalah Hukum* [Index of Legal Periodicals] (Jakarta: National Legal Development Centre, 1977).

<sup>28</sup>*Daftar Nama Penceramah, Pemrasaran/Pembicara Utama dan Judul Uraian Dalam Pertemuan Ilmiah* [A List of Lectures, Speakers and Subjects at Legal Seminars] (Jakarta: National Legal Development Centre, 1977).

<sup>29</sup>See, for example, *Agar Bappenas* . . . *supra* note 7 at 13.

<sup>30</sup>It should be noted that Indonesian court decisions are not regularly reported in any publications like the West Reporter System.

