Indonesia-Netherlands Rule of Law and Security Update

UNIVERSITAS ATMA JAYA
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Panel Descriptions

Overview of Panels (some panels have simultaneous translations, as indicated)

Session 1 (09.30-11.30hrs)	Language	Convenor(s) / Moderator	Room
1) Progress towards SDG16 in ensuring equal access to Justice	Ind	IDLO / BAPPENAS - Nisa Istiani	
3) Legal Reasoning	Ind	VVI / JSSP - Adriaan Bedner	
5) Preventing and Combatting Cybercrime ** simultaneous translations available*	Ind	Kemitraan / Nico Tuin – Rosyadi	
7) Preventing Land Conflicts	Eng	VVI-UI Willem van der Muur	
9) Investment challenges ** simultanous translations available*	Eng	IKADIN Irwan Habsjah / ABNR Gustaaf Reerink	
11) Towards better regulation	Eng	CILC – Imam Nasima	

Session 2 (12.30-14.30)	Language	Convenor(s)	Room
2) Paralegal Support and/or Natural Resources	Ind	IDLO / BRG – Adri Gunawan	
4) Judicial Training ** simultaneous translations available*	Eng	SSR/JSSP, Sari Seruni	
6) Asset Recovery	Eng	Kemitraan / Universitas Indonesia - Refki Saputra	
8) Early Marriage	Ind	VVI – Sita van Bemmelen	
10) Ethnic & Religious Minorities and Conflict	Eng	Atma Jaya University – Asmin Fransiska	
12) he Future of Indonesia-Netherlands Rule of Law Cooperation **simultaneous translations available*	Eng	Komnas HAM / Nuffic NESO - Sandra Moniaga, Peter van Tuijl	

Panel Descriptions

Panel 1) Progress Towards Achieving SDG16.3 in Ensuring Equal Access to Justice for All

Convenors: BAPPENAS / IDLO

In September 2015, the United Nations Member States adopted the 2030 Agenda, including for the first time a goal aiming to "promote the rule of law at the national and international levels, and ensure equal access to justice for all" (Sustainable Development Goal or SDG16.3).

Anticipating the adoption of SDG16.3, Indonesia has been one of the pilot countries advocating for innovative approaches to governance in national planning and monitoring, demonstrating how appropriate indicators to measure Access to Justice in the national context can be developed.

Indonesia's commitment to enhance Access to Justice also shows from its National Strategy on Access to Justice (NSA2J) and Law 16/2011 on Legal Aid, seeking to meet its constitutional obligation of realizing "the right of everyone to get recognition, security, protection, and fair legal certainty and equal treatment before the law as a means of protection of human rights" and to provide legal assistance to the poor to ensure access to justice. The NSA2J was also incorporated into the Indonesian National Medium Term Development Plan (RPJMN) 2015-2019. Since then, several efforts were carried out by government agencies and civil society to implement the Law on Legal Aid and enhance Access to Justice.

National Development Planning Ministry (Badan Perencanaan Pembangunan Nasional or BAPPENAS) organized a 'Comparative Justice Policy Workshop' in The Hague, the Netherlands in December 2015 with the Indonesian Ministry of Law and Human Rights (BPHN), the Netherlands Ministry of Foreign Affairs, the Open Society Justice Initiative (OSJI) and IDLO. This in order to share experiences, to learn from the Dutch approaches and legal frameworks regarding to Access to Justice and Legal Aid, and to strengthen networks. This initiative was followed-up by a second event on a regional level, the 'ASEAN Regional Consultation on SDGs, Access to Justice and Legal Aid', in May 2016 in Jakarta, together with BPHN, the Indonesian Legal Aid Foundation (YLBHI), UNDP, OSJI and IDLO. IDLO is now working with some of the parties mentioned above to develop an Access to Justice Index and a second initiative on strengthening the legal aid system and service capacity.

Furthermore, a well-functioning Ombudsman institution can contribute to expanding the people's access to justice, as well as increasing public trust and enhancing the government's legitimacy. The ability to file a complaint represents a constitutional right and enables citizens to make themselves heard and to defend their position in cases of conflict with regard to government bodies.

The Indonesian Ombudsman (ORI), through cooperation between the Dutch Ombudsman (NO), the Centre for Conflict Resolution and Mediation (CvC), the Van Vollenhoven Institute (VVI), VU University Amsterdam and Indonesian mediators and researchers, is integrating a“Fair Treatment Approach,” which aims to transform the attitude of civil servants towards citizens from one of suspicion to one of empathy and shared interest, while at the same time enhancing the trust of citizens in the government. This approach aims to de-judicialize society and reduce litigation costs and administrative procedures.

The Rule of Law and Security Update 2018 provides for a good momentum to take stock of challenges met, developments and successes made so far in relation to Access to Justice efforts and implementation of SDG16.3 in Indonesia.

The key questions on this panel are: (1) What is the progress made and are the priorities set for Indonesia for SDG16.3 implementation? (2) What are the lesson learned and the most critical challenges faced by Government of Indonesia on SDG 16.3 Implementation? (3) How might the expansion of legal aid services, the development of an access to justice index, and the capacity strengthening of ORI contribute to achieving SDG 16.3?

Moderator: Nisa Istiani, SH, MLI (IDLO)

Speakers/Panelists
Prahesti Pandanwangi, SH, Sp.N, LLM (Director of Law and Regulation of National Development Planning Ministry or BAPPENAS)
Prof. Drs. Adrianus Meliala, Ph.D, MS.i, MSc. (Ombudsman of The Republic of Indonesia)
Febi Yonesta (Indonesia Legal Aid Foundation - Yayasan Lembaga Bantuan Hukum Indonesia)
Andri Gunawan (Indonesia Legal Roundtable or ILR)

Panel 2) Natural Resources Management

Convenors: IDLO / Badan Restorasi Gambut - BRG (Peatland Restoration Agency)

Damage to the environment often coincides with harm to indigenous populations and rural communities living near forests, water, agricultural lands and plantations. Management of natural resources in Indonesia does not sufficiently take into account the interests of these groups.

From a rule of law perspective, the illegality and frequent breaching of the law (illegal logging, fishing and exploitation of land) and the protection of indigenous communities’ rights are the most noticeable legal aspects of this environmental theme. There is necessity to conduct legal empowerment of local and indigenous communities and creating village paralegals that will help gain recognition of their

legal status and restore their rights over land and forest. By legal empowering, village paralegals are expected to giving legal assistance for rural and indigenous communities facing criminalization and tenure conflict.

Under the Indonesia-Netherlands Rule of Law Fund from the Dutch Government, as managed by IDLO, a number of projects focus on natural resource management, for example, a project being implemented by the Epistema Foundation focusing on forest and peat land; a project by nongovernmental organization (NGO) Prakarsa Borneo and the University of Amsterdam (UvA) on nature reserve areas being claimed by oil palm plantation, timber, gas, coal and oil extraction companies and local communities at the same time (TIRAM project); and finally, a project by the Van Vollenhoven Institute (VVI) of Leiden University together with the Indonesian Center for Environmental Law (ICEL) and the Indonesian Ministry of Environment and Forestry (MoEF) in relation to industrial pollution in watersheds (MERW project).

Given the local context, local environmental regulations and distinct characteristics of indigenous peoples (varying from region to region), initiatives are often geographically focused. A discussion could center on commonalities, lessons learned and exploring how paralegals and local initiatives could eventually feed into national policy and regulations or produce pilot models, which are to be replicated and expanded to other geographical areas.

The Key Questions in this panel are: (1) How do village paralegals contribute to resolving the tenure conflict? What are the lessons learned and the challenges faced by the village paralegals?; (2) What legal framework is needed to decrease the number of land disputes and resolve the land disputes in Indonesia?; (3) What collaboration that can be created between village paralegals and the government?

Moderator: Andri Gunawan Wibisana SH, LLM, Ph.D (University of Indonesia)

Speakers/Panelists
Dr. Myrna Asnawati Safitri (Peat-land Restoration Agency / Badan Restorasi Gambut (BRG))
Yustina Murdiningrum (Epistema Foundation)
Muhammad Nasir (Prakarsa Borneo)
Raynaldo Sembiring (Indonesia Center of Environmental Law (ICEL))

Panel 3) Legal Reasoning

Convenor: VVI – Leiden / Judicial Sector Support Programme (JSSP)

Legal reasoning is at the heart of the juridical praxis. Judges, attorneys, legal consultants and other jurists all engage in interpreting legal rules in the light of particular cases, in order to attain a satisfactory outcome. This means an outcome that meets the sense of justice and legal certainty, and that is in line with the rule's

or law's (public) purpose. In order to serve and balance these three objectives, a formalist (or 'grammatical') approach to legal interpretation does not suffice. Jurists need to have at their disposal a more elaborate set of interpretational tools, including systematic, 'law-historical', and teleological interpretation.

In the Netherlands such a non-formalist approach to legal reasoning was championed in particular by Paul Scholten. His ideas were quite influential in legal education in the Netherlands-Indies , not in the least because of the key role Scholten played in establishing the *Rechtshogeschool* in Batavia during the 1920s. The importance of justice and social purpose as objectives of law and legal interpretation was underlined time and again by the first director of the school, C.C. van Helsdingen. Nonetheless, both in the Netherlands and the Netherlands-Indies legal formalism continued to be influential in legal reasoning and it certainly coloured the discourse about the role and position of the judge. In the legal philosophical debate whether judges merely are the 'trumpet of statutes' or whether they 'create law', Dutch jurists coined the concept of *rechtsvinding* as a kind of compromise.

In post-war Netherlands it took until the late 1960s-early1970s before renowned jurists as Wiarda, Schoordijk and Leijten further developed the ideas of non-formalist legal interpretation, in line with the development of the social welfare state. In his brilliant booklet 'Judge and Politics' the Belgian professor Van Gerven explicitly argued that judges in fact do create law and that judicial rulings (*jurisprudentie / yurisprudensi*) constitute a source of law. Published in 1974, his analysis at first elicited hostile reactions from many (older) jurists who were unwilling to concede formally what had been practice for a long time.[1] Today, no one – whether in Belgium or the Netherlands – will take issue with Van Gerven's finding.

Indonesia followed a different trajectory after independence. Material and political conditions for a long time impaired the development of case law as a legal source. As a result, the debate has continued to center on the opposition between formalism and legal realism in an either/or fashion, instead of looking at ways to reconcile the two approaches. This was recently demonstrated by Herlambang Wiratraman and Widodo Dwi Putro, who interviewed jurists across Indonesia about this matter.[2]

This panel addresses the current state of legal reasoning in Indonesia and the Netherlands. It looks at debates and practice concerning judicial lawmaking, and in particular the ways in which the highest judges guide lower courts through their judgments or other means. One focus of attention is the organisational and material conditions needed for supporting legal reasoning. The panel will also look at legal education; how law faculties (can) use the presence of Supreme Court judgments in

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[1] Bouckaert's study of 19th century-Belgium and France already shows how hollow the denial of judicial lawmaking powers were during the golden age of legal formalism (*legisme*).

[2] Widodo Dwi Putro & Herlambang Perdana Wiratraman (2015), 'Penelitian Hukum: Antara Yang Normatif Dan Empiris', *Digest Epistema*, 5(2), 3-16.

their teaching in a way that is beneficial to students; and how the juridical can build a shared knowledge base.

Introduction & Moderator: Prof Adriaan Bedner (VVI-Leiden)

Speakers/Panelists
Prof Takdir Rahmadi, Mahkamah Agung
Saldi Isra, Mahkamah Konstitusi
Universities: Herlambang Wiratraman, Widodo Dwi Putro,)
mr. M.C.W. Feteris, President, Dutch Supreme Court (*Hoge Raad*)

Panel 4) Judicial Training in Indonesia and the Netherlands.

Convenor: Studiecentrum Rechtspleging, (SSR); Judicial Training and Research Centre of the Supreme Court of Indonesia (JTC) and Judicial Sector Support Program (JSSP)

This panel will introduce and share experiences of the Dutch Training and Study Centre for the Judiciary (SSR) and JTC with implementing a number of judicial training and training capacity development oriented projects in Indonesia. After an introduction of the JSSP programme, the panel will reflect on what worked and what can be improved. The focus will be on the organisation and structure of a Judicial Training Centre. We will not only compare mission and vision of the training centres, but also look at its impact on the training centre. This will be followed by an overview of the workshops which were conducted at JTC and PTC over the last couple of years. We will give a short impression of one or two of the workshops and also explain why some were more successful than others. We will conclude with a showcase of a two concrete training programmes: a leadership and management training on an advanced level for leaders of courts and a spokespersons training for (future) spokespersons of courts. One of them already had its pilot, the other is expected to have the pilot in Spring 2018.

Both training programmes were developed by JTC and SSR, including Indonesian and Dutch experts. After this we will open the discussion using statements and dilemma's to discuss further why some programmes and projects were successful and others were not. We will close the panel with an overview of our future co-operation within the JSSP, which will focus mainly on the initial training programme, which will start in 2018 as well. Some elements of this cooperation will be training of mentors and tutors, assessment and evaluation tools and the possibilities of using blended learning methods.

This panel might be of interest for (future) judges, prosecutors as well as mentors, tutors, trainers and the staff of judicial training centres.

Moderator: Seruni Lissari Saerang (Judicial Sector Support Program)

Speakers/Panelists
Remco van Tooren, Vice-President of the Board of SSR
Tonnie Hulman, Director SSR
Anne Tahapary, Senior Course Manager - International Cooperation SSR
Zarof Ricar - Head of Indonesia Judicial Training Centre (JTC)
Ennid Hasanuddin - Senior Trainer at JTC (high court judge)
Willem F. Saija - Senior Trainer at JTC (high court Judge)

Panel 5) Preventing and Combating Cybercrime.

Convenors: Kemitraan / Nico Tuijn, senior justice Court of Appeal's-Hertogenbosch, department of criminal law

Globalization in various sectors, in particular communication and technology, has expanded by leap and bound. Disclosure of information, coupled with easy and vast access to data and information brought civilization to a more enhanced and more complex level, which benefits the development of technology related crime, such as cybercrime. In the era of technology, cybercrime becomes an inevitable risk that comes along with profoundly damaging result. Financial institution, whose business is relied upon technology, is becoming the most vulnerable party that may be threatened by cyber attack. However, current trend shows that cybercrime had widen to less expected party, for instance hospital. The recent ransomware, WannaCry, had attacked two hospitals in Indonesia and even attacked many more around the globe.[3]

Cybercrime is a form of crime that exploits the digital world to take the rights of others, for instance to commit fraud, corruption and money laundering and to take advantage of others by breaking the law for personal gain. Indonesian banks have suffered money loss as much as billions of rupiahs due to cybercrime.[4] Even more, customer data that should be private and securely kept may be leaked and be used for illegal purposes.[5] This will be more damaging if the attacked data is government-related secret information.

Like a crime, combating cybercrime is not just the responsibility of law enforcement. However, collaboration and cooperation among all parties including the community will at least minimize this form of cybercrime.

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[3] https://www.cnnindonesia.com/teknologi/20170513191519-192-214642/dua-rumah-sakit-di-jakarta-kena-serangan-ransomware-wannacry.
[4] https://news.detik.com/berita/d-3499375/polisi-tangkap-sindikat-pembobol-rekening-rp-12-m-di-palembang. See also https://bisnis.tempo.co/read/577437/cyber-crime-terjadi-di-bank-besar.
[5] http://bisniskeuangan.kompas.com/read/2017/04/04/070000026/pencurian.data.nasabah.potret.carut-marut.perbankan.

Preventing and combating cybercrime is of paramount importance for the stability of societies. Cybercrime is developing with an enormous pace and intensity. For the year 2020 it is estimated that 50 % of all crimes will be cyber related. The cybercrime damage for citizens and the society as a whole is huge already. The threats for the future are also obvious. Government and business firms are responsible for vital functions in society (defence, infrastructure, energy, hospitals) and their IT systems are vulnerable. There will be attempts by terrorist groups to attack these systems.
In Europe not all policy makers and practitioners (like police officers, prosecutors and judges) are aware of this key challenge. The legal community has to deal with a lot of questions when cyber issues are at stake. Legislation is often behind and old fashioned legal approaches cannot lead to adequate solutions. There is a contrast between the old and the new world. The old world is represented by the often territorial approach of national criminal justice systems, the new world is the digital reality where borders do not exist.

Thus, by understanding the aforementioned issues, we need to scrutinize the development of investigation's technology to comprehend method in handling such cases. Three main concerns shall be examined to overcome this matters:

- Indonesian domestic regulations shall be adequate to facilitate law enforcers utilizing related technology;
- Capacities of related law eforcers and/ or stakeholders shall be enhanced in utilizing such tools; and
- Infrastructures shall be established.

We are in need to rethink legal concepts. How is the view on this in Indonesia? How to handling the electronic evidence in process and stages? Also human rights issues need to be addressed, like the 20th century concepts of privacy. (For instance: can the police/investigator legally seize smartphone instead of relevant data in the device?) More specific one might discuss the reform of the judiciary and the investigation methods to use electronic evidence, the battle against corruption committed with cyber methods, the modernisation of the criminal procedure (hacking by the police/investigator, checks by judicial authorities). Including the cooperation between law enforcement in national level, Asia and in Europe relating electronic evidence. If so, is this cooperation adequate?

Kemitraan (Partnership for Governance Reform) will facilitate discussion to examine the specific theme related on cybercrime which will be spelled out in several points, as follows:

- Indonesia cyber security; trends of cybercrime;
- Legal framework and practice; electronic evidence handling; practice and standard;
- Challenges in investigating cybercrime; modernisation criminal procedure law and how to dealing with privacy issue;
- Ajudicating Cybercrime in judges views;
- Law enforcement cooperation in national and international level.

Moderator: Rosyada (Kemitraan)

Speakers/Panelists
Dr. Sigit Priyono, M.Sc; Assistant Deputy Coordination Telecommunication and Informatics-Indonesian Coordinating Ministry for Political, Legal, and Security Affairs:*"Indonesia Cyber Security Readiness, Strategy and Obstacles"*
Teguh Arifyadi , SH., MH., CHFI; Head of Investigation and Enforcement Sub directorate Ministry of Communications and Information Technology Republic of Indonesia:*"Cybercrime: Legal Framework and good practice in Indonesia"*
Brigjen Pol. Dr. M. Fadil Imran, M.Si, Director Cybercrime Unit BARESKRIM POLRI "*Cybercrime trends; challenges in the fight againts cybercrime in Indonesia"*
Nico Tuijn, Senior Justice Court of Appeal 's-Hertogenbosch: *"Challenges in the Netherlands in the fight against cybercrime*"
Vauline Frilly, S.Kom, EnCe; Digital Forensic practitioners; Wikrama Utama; Kemitraan Consultant:*"Digital Forensic in Electronic Evidence Handling; Practice, standard and privacy"*

Respondent
Dr.M. Syarifuddin, SH.,MH ; Vice Chief Justice of Indonesia Supreme Court:*"Adjudicating Cybercrime in Indonesia; the view of judges"*

<u>Panel 6) Towards Successful Cross Border Asset Recovery: What Must be Improved in Indonesia?</u>

Convenors: Universitas Indonesia / Kemitraan

One of 2030 agenda for Sustainable Development Goals in peace and security issues is to significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime (SDGs 16.4 goals). This goal has been agreed upon as sustainable development requires systems and institutions that work effectively for the people, and not just for those in power. This is as equally true for those that live in advanced economies and those that live in the poorest countries.

Nowadays, Indonesia faces serious challenges from corrupt practices and embezzlement of public assets, with a staggering negative impact on its political, social, and economic development. It is estimated that state losses amount to approximately US$ 9.72 billion while between 2001-2012 the total amount of assets stolen is estimated around US$ 554.89 billion. Most of these stolen assets are spread out all over the world, their transfer facilitated by improvements in financial, transportation, and communication technologies that have made it easier for corrupt leaders and other "politically exposed persons" to conceal massive amounts of stolen wealth in offshore financial centers trhrough legal business transactions into different jurisdiction. This situation becomes a problem for law enforcer to trace

the illegal assets. However, the current instruments on asset recovery involving regulations and technical mechanisms cannot balance to overcome this difficulty.

It is, nevertheless, fundamental for relevant authority to comprehend the conception of asset recovery, which consist of four main parts; tracing, freezing, confiscation, and repatriate. The success of a preliminary investigation in any asset recovery effort is dependent on locating the stolen assets successfully, and thinking like the perpetrators of these financial crimes, is often essential in this effort. By examining the asset recovery process in its entirety, it is obvious that tracing, as the first step and also attached to other steps, determines the success of asset recovery.

Thus to accomplish this, relevant authority shall be facilitated with regulations that give the widest measure to enable tracing the illegal assets, whether domestic or in abroad, and equipped with sufficient capacity.

Kemitraan and University of Indonesia (NICHE Project) will facilitate a discussion to examine the specific theme related on cross border asset recovery, titled *"Towards Successful Cross Border Asset Recovery: What Must be Improved in Indonesia?",* which will be spelled out in several points, as follows:

- Obstacles and challenges from international asset recovery practices; lessons learnt from successful cross border asset recovery;
- Effectiveness of asset tracing efforts such as to identify obstacles within regulations;
- Posibilities for collaborative work among related institutions in data collecting, asset management and mutual legal assisstance;
- Scrutinizing the prerequisite capacities to implement effective and successful cross border asset recovery

Moderator: Refki Saputra (Kemitraan)

Speakers/Panelists
Yusfidli Adyaksana, Asset Recovery Center, Attorney General Office Republik Indonesia
Soemarsono, Subdirectorate Mutual Legal Assisstant Minister of Law and Human Right Republic Indonesia
Paku Utama, Asset Recovery Expert
Ahmad Qisai, Program Manager Kemitraan
Arief Afriansyah, International Law Faculty, Universitas Indonesia

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<u>Panel 7) Land Rights and the Prevention of Conflict</u>

Convenors: VVI-Leiden / Universitas Indonesia

Land and natural resource conflicts between rural communities and the state and/or plantation corporations continue to be rampant and widespread in Indonesia.

According to the KPA (*Consortium for Agrarian Reform*), in 2016 there were 450 agrarian conflicts nationwide, involving the contestation over almost 1.3 million hectares of what state agencies claim as state land. Six hundred thousand hectares is part of plantation concessions (mostly palm oil) while 400 thousand hectares concerns 'state forest'.

In order to put an end to these conflicts as well as prevent future ones, the Indonesian government has recently adopted a new agrarian reform programme. It intends to distribute more than 12 million hectares of state forest to indigenous and local farming communities, thus reducing the pressure on land. In some cases disputed state forest may be directly transferred to communities claiming it, in other cases it would constitute a substitute for the land claimed.

In this effort the government appears supportive of the idea of community-based land and natural resource management. However, the legal framework for communal land rights is still incomplete and the actual recognition and implementation of community-based land rights has been slow. CNN Indonesia reported earlier this year that out of the 2.5 million hectares scheduled for distribution in 2016, less than 13% was actually released. Moreover, communal land governance involves challenges current laws and practices do not adequately address. How should individual tenure security on communal land be arranged? And how can democratic governance of land within these communities be guaranteed?

These challenges will be the focus of the proposed panel. The guiding question is the following: 'In your view, which are the most important changes in the legal system and/or administration practices to decrease competition and conflict over land between communities and agricultural investors?'

Participants from various backgrounds and sectors will discuss Indonesia's legal framework, the current land reform policies and the potential role of various stakeholders in the prevention of conflict. The main concern of the panel is to assess how protection against land dispossession can be effectively realized, while sustaining economic development and a safe and secure investors climate.

Moderator: Willem van der Muur (VVI, Leiden University)

Speakers/Panelists
Noer Fauzi Rachman - Staf Khusus Kepala Staf Kepresidenan
Myrna Safitri – Badan Restorasi Gambut (BRG)
Tisnanta – Universitas Lampung
Lilis Mulyani (LIPI/University of Melbourne) TBC

<u>Panel 8) Early Marriage</u>

Convenors: Universitas Indonesia / VVI – Leiden

Indonesia marriage age is caught between a strict international law norm which prohibits marriage of persons under the age of 18, a domestic legal norm of 16 for girls and 19 for boys, and local norms which prescribe a wide variety of proper age for marriage. This situation is further complicated by the Islamic norm that prohibits pre- and extra-marital sex and in many regions, serves as a driver for early marriage.

At present an estimated 25 percent of girls marry under the age of 18 and around 7 percent under the age of 16. There are signs that after decades of steady decrease, the average child marriage rate in several provinces plateaued at this level, or has sometimes even been increasing. This is a worrying situation for the government, that aims to prevent child marriage and supports the Sustainable Development Goals, including SDG 5.3, that reads: "Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation". The complicated normative situation drives the state agents charged with registering marriage towards different strategies to accommodate early marriages to fulfill the needs and wishes of local population. While the main problem of many early marriages, for girls, concerns its consequences (problems in childbearing and reproductive health, halted schooling, trapped in generational poverty, etc.), the solution is often sought in further raising the age of marriage rather than addressing these negative consequences. Research indicates that there are different types of early marriage, based on agency of the teenagers involved and of various reasons to get married, and that they require different types of regulation or other ways of being addressed.

This panel seeks to bring together researchers, development agencies, practitioners, NGOs and policymakers to discuss the possibilities for a differentiated approach.

Moderator: Sitta van Bemmelen (LBH-Apik)

Speakers/Panelists
Lenny Rosalin, Deputi Tumbuh Kembang Anak KPPPA RI
Lies Marcoes - Rumah KitaB
Sulistyowati Irianto - Universitas Indonesia
Sarah Spronk - Embassy of the Netherlands
Anggara - Koalisi 18+

<u>Panel 9) Investment Challenges</u>

Convenors: IKADIN / ABNR-Law

Investment promotion is a main focus of the Jokowi administration. It has taken measures to reduce the administrative burden for foreign investors by the creation of a one stop shop for investment licenses, improve coordination between government institutions, and loosen foreign investment restrictions. The

administration has also simplified the permitting process and opened up 19 sub-sectors for local small and medium-sized enterprises.

Most of the above measures are taken at the administrative/policy level. At the same time, many investment-related laws, such as the Indonesian Civil Code and the Commercial Code, have never been amended since independence. Other laws, such as the Company Law and Bankruptcy Law, have been amended, but may need to be updated to further stimulate foreign as well as local investment.

This panel seeks to identify the main legal challenges for both local and foreign investors in doing business in Indonesia and analyze how these challenges could be overcome. Given the fact that many investment-related laws have Dutch roots, an exchange of ideas between Dutch and Indonesian participants is particularly fruitful.

Moderator:

Speakers/Panelists
Corporate Sector: representatives of IKADIN, Eurocham/INA/Dutch Business Network, Dutch companies, Indonesian lawyers and arbitrators
Representative of the BKPM, OJK, Ministry of Trade
Academia: Hikmahanto Juwana (UI), Bas van Zelst (Maastricht University), Eric De Brabandere (Leiden University)
Syamsul Maarif: Hakim Agung
Freddy Harris: Dirjen Administrasi Dep HukumHam

Panel 10) Ethnic & religious minorities and conflict

Conveners: Atma Jaya University

After the New Order's imposition of a uniform, national model of cultural Indonesian citizenship, the early years of *Reformasi* meant a surge in rights protection of groups who were in some way different from the national mainstream. The Human Rights Law of 1999 and the Constitutional Amendments, including the establishment of a Constitutional Court, were a huge step forward. Under President Abdurrahman Wahid further steps were made towards a more plural system. *Khong Hu Cu* was officially recognised as a religion and *adat* communities started to be acknowledged as the embodiments of valuable local traditions. This development has been taken further by several actors. Recently the Constitutional Court acknowledged the right of minority religions socalled *aliran kepercayaan* to have their religion mentioned on their identity cards. A similar positive result was achieved by the Ombudsman and KOMNAS HAM when they managed to convince the government to provide identity cards to *Ahmadiyah* refugees on Lombok.

On the other hand, many developments go against this trend and conflicts concerning religion and identity abound. New legislation and some interpretations of

human rights provisions often excludes minorities from voicing their opinions and the government in many cases fails to give protection to those who are persecuted for their beliefs or ethnicity. The emotions concerning the alleged blasphemy by the former Jakarta Governor has indicated how high emotions can rise when such issues are concerned and how precarious the stability of Indonesia's plural society is.

This panel addresses the question what laws, policies and actors constitute main stumbling blocks on the road to achieving a more inclusive, plural society and how to address religious and ethnic conflict.

Moderator: Dr. Asmin Fransiska, LL.M (Atma Jaya University)

Speakers/Panelists
Alissa Wahid (GusDurian Indonesia Network)
Yuniyanti Chuzaifah, Vice Chair, Komnas Perempuan
Dr. Surya Tjandra, LL.M, Atma Jaya Catholic University
Siebrich Visser, Human Security Collective (HSC)

Panel 11) Title: Toward Better Regulation (update of the regulatory reform in Indonesia 2015-2017)

Convenors: CILC / PSHK

The current regulatory practice in Indonesia is believed to hinder the business operations. The policy-making process seems complex and incomprehensible, as there is no single entity responsible for ensuring the quality and providing a measurable oversight mechanism. OECD has suggested to tackle this problem by improving the co-ordination of the national and sub-national level regulatory frameworks, as well as by reviewing/reducing unnecessary regulatory burdens (OECD, Indonesia Policy Brief: Regulatory Reform, March 2015).

In addition, the need to improve the quality of regulations can be related to the on-going effort of the Government of Indonesia in implementing Goal 16 of the Sustainable Development Goals. Better regulation is not only meaningful for the country, but it will also contribute to build 'a peaceful, just and inclusive society'. Under the recent progress of Goal 16 in 2017, for example, it is reported that 'opaque, burdensome and inefficient regulations and procedures nurture opportunities for corrupt officials to extract bribes or unofficial payments'.

The Indonesian Ministry of National Development Planning (Bappenas) has launched the 'regulatory simplification' program in 2015, in order to improve the quality, efficiency, and effectiveness of the regulations in the country (Bappenas, Strategi Nasional Reformasi Regulasi [The National Strategy of the Regulatory Reform], 2015). The initiative that seems to be continued up to now, as the 'regulatory reform' is promoted by President Jokowi as one of his priorities.

In the last few years, The Netherlands has supported the Government of Indonesia in improving the technical capacity of its legislative lawyers. This support has been realized in a series of short-courses financed through NUFFIC and implemented by the Centre for International Legal Cooperation (CILC) in the Hague. It was an 'interdepartmental approach' involving the Ministry of Law and Human Rights (2009, 2011, and 2016), the Ministry of State Secretary (2011), the Ministry of Finance (2013), and the Legislative Body of the Parliament (2017).

The courses have been successful in delivering improved potential capacity within the Indonesian state institutions, as there is a pool of sufficient legislative lawyers available, but the 'big picture' seems still unavailable. This all happens, while the on-going regulatory reform has exactly required the improvement of the coordination at all levels, as well as the quality of the legislative lawyers.
This panel aims to discuss the regulatory reform initiatives in Indonesia and the similar policy in the Netherlands. The key questions are (1) how such a policy can reduce the regulatory burdens and improve the quality of legislation, as well as (2) what conditions will be needed for Indonesia to take this path.

Moderator: Imam Nasima (CILC)

Speakers/Panelists
Bayu Dwi Anggono (Director of Center for the Study of Pancasila and Constitution/Puskapsi).
M. Nur Sholikin (Executive Director of the Indonesian Centre of Law and Policy Studies/PSHK).
Jan Janus (Retired Coordinating Senior Counsel of the Directorate of Legislation of the Ministry of Justice).
Jan ten Hoopen (Former Chairman of the Advisory Board on Administrative Burden/ACTAL).

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12) <u>The Future of Indonesia-Netherlands Rule of Law cooperation</u>

Convenors: Komnas HAM / Nuffic-NESO Indonesia

Indonesia and the Netherlands have a long and substantial track record in collaboration on Rule of Law and Human Rights issues. A number of Universities in Indonesia and the Netherlands have ongoing relationships, involving higher education as well as joint research. Legal institutions on both sides equally have longstanding bilateral relationships, such as the MA and the Hoge Raad and the Ombudsman in both countries. In addition, considerable investments have been done in technical training as well as institutional capacity development, most recently under the ongoing Dutch Rule of Law Fund managed by IDLO, the Judicial Sector Support Programme (JSSP) coordinated by CILC and LeiP, the Netherlands

Initiative for Capacity Development in Higher Education (NICHE) as well as Tailor Made Trainings under the NFP and STUNED programs, managed by Nuffic.

From a longer-term perspective, Indonesian and Dutch civil society organizations have intensively collaborated, networked and conducted joint advocacy over decades, starting during the Suharto period, on important issues regarding human rights, gender equity and environmental sustainability. Today, these kind of mutual relationships continue to exist under the Strategic Partnerships for Dialogue and Dissent, and other forms of collaboration. Finally, at an individual level, hundreds of Indonesians have studied in the Netherlands in academic fields relevant to Rule of Law, Security and Human Rights issues. A great number of alumni fulfill important roles in this regard, in Government, Independent State Institutions, the Corporate Sector, Academia and Civil Society.

With such an extensive track record and multiple layers of institutional relationships between the two countries, what can be done to mutually support each other to address current challenges, foremost in finding a balance or new forms of integration between Rule of Law, Human Rights and Security?

The panel will start with an introduction by Jan van Olden, former Coordinator of the Indonesia-Netherlands Council for Legal Cooperation, followed by inputs from key informants from the Indonesian and Dutch side to reflect on the future of the biateral collaboration. In this respect, the panel will provide room to respond to highlights/inputs during the first day and the morning of the second day of the Update, which will be collected and presented by the moderators. The purpose of the panel is to present ideas and recommendations to inform the next phase of the collaboration.

Three questions will structure the discussion:
*) Where does/can the track record and added value of the Indonesian-Netherlands relationship respond best to current challenges?
*) Are there any significant gaps or obstacles and what needs to be done to overcome these?
*) What can be improved in how the relationship is structured between Indonesia and the Netherlands?

Moderators: Sandrayati Moniaga (Komnas HAM) / Peter van Tuijl (Nuffic Neso)

Introduction: Jan van Olden, former Coordinator Indonesia-Netherlans Council for Legal Cooperation.

Speakers/Panelists:
Prof. DR. Enny Nurbaningsih, SH, Head, National Law Development Agency (BPHN)
Asfinawati, Executive Director, Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI)
Willem van Nieuwkerk, Executive Director, Centre for International Legal Cooperation (CILC)
Prof. Adriaan Bedner VVI-Leiden