



# INDONESIA

## INDONESIA-NETHERLANDS RULE OF LAW FUND

Indonesia has made remarkable progress in tackling its social, political and economic challenges. Progress in the country has brought about substantial improvements in the standard of living and access to basic services for an increasing number of people, and the 2014 elections marked the latest milestone in the consolidation of Indonesia's democracy.

Despite these tangible developments, considerable challenges remain as Indonesia seeks to achieve its development objectives of poverty reduction, eradication of corruption, ensuring equal access to justice, protection of citizens' rights and abolishment of discrimination against marginalized groups. In addition, natural resources are facing serious threats, and vulnerable groups and populations living in under-served regions still have limited access to social services, energy and employment. Conflicting laws and regulations in both the national and local level also hinder Indonesia from realizing its full economic potential and enhancing sustainable and inclusive growth and development.

Indonesia seeks to address the unfinished business of the Millennium Development Goals, while playing a pivotal role in advancing the 2030 Agenda for Sustainable Development. In that context, Indonesia has much to share with, and learn from other countries, creating ample opportunity for increased regional rule of law cooperation.

### RULE OF LAW FUND

Indonesia and the Netherlands have a long-shared history of cooperation in the field of rule of law. The common heritage of legal systems creates an opportunity for collaboration between Dutch and Indonesian justice sector institutions. Indonesia is a partner country of the government of the Netherlands for development cooperation, and in this spirit, the Indonesia-Netherlands Rule of Law Fund program was established to support rule of law initiatives.

### PROGRAM OBJECTIVES

The International Development Law Organization (IDLO), with support from the Embassy of the Kingdom of the Netherlands in Jakarta, Indonesia, is implementing a program under the Indonesia-Netherlands Rule of Law Fund (RoL Fund) with an aim to support the development of effective, accountable and inclusive justice sector institutions, and ensure equal access to justice in Indonesia. Project activities under the Rule of Law Fund seek to strengthen ties and coordination between Dutch and Indonesian actors to enhance service delivery, capacity building and accountability of the justice sector in Indonesia.

### PROGRAM ACTIVITIES

Under the RoL Fund, IDLO is responsible for identifying and supporting the design of new projects that will contribute to the achievement of the program's objectives.

#### Making Environmental Regulations work for the People (MERW)

Industrial activities in Indonesia can often have a negative impact on communities living along rivers. Regional governments have difficulties monitoring and acting upon industrial water pollution cases, as clear strategies, guidelines and mechanisms to hold those responsible accountable are often absent. Pollution victims are frequently forced to deal with the issue themselves, and tend to settle for low financial compensations, leaving wider environmental challenges unresolved.

The MERW project is implemented by a consortium of organizations under the lead of the Van Vollenhoven Institute (VVI) of Leiden University, in cooperation with the Indonesian Ministry of Environment and Forestry (MoEF), the Indonesian Center for Environmental Law (ICEL), as well as environmental NGOs and senior Indonesian researchers. The consortium is working together to



build the capacity of government and civil society organizations to strengthen and enhance local mechanisms that enable regional governments to hold those responsible for industrial water pollution accountable, while seeking to balance different types of regulation.

### Capacity Strengthening of the Indonesia Government on Cross-Border Asset Recovery and Mutual Legal Assistance (SIGAP)

Indonesia is facing challenges from embezzlement of stolen assets, which has a negative impact on the country's political, social, and economic development. Asset-recovery procedures prove to be complex, time-consuming and require expertise and political will. The procedures also require various government bodies to coordinate their actions and engage in resource-intensive processes. To respond to these issues, the Indonesian Attorney General's Office established an Asset Recovery Centre (Pusat Pemulihan Aset or PPA) dedicated to managing all asset recovery-related issues.

The SIGAP project is implemented by the Partnership for Governance Reform Kemitraan in cooperation with the Asset Recovery Centre (PPA) of the Indonesian Attorney General Office. Kemitraan is working with relevant government agencies and international experts on improving the effectiveness of the PPA in performing cross-border asset recovery and mutual legal assistance management.

### Electronic Evidence and Management in Corruption Trials

Corruption can be difficult to uncover, especially as technology is increasingly used to conceal corrupt behavior. Corruption cases handled by the Corruption Eradication Commission (KPK) that involve electronic evidence, such as e-mails or social media posts, subsequently allowed in court, have contributed to a conviction rate of 100 percent. Yet, judges do not always allow electronic evidence in courts, and standard operational procedures providing guidance on electronic evidence handling and a digital forensic lab that meets international standards are lacking. Moreover, existing laws in relation to electronic evidence handling often contradict one another.

In response to these challenges and opportunities, the Partnership for Governance Reform – Kemitraan – is implementing a project together with the Institute for Study and Advocacy for Judicial Independence

(LeIP) to improve the admissibility of electronic evidence in corruption trials in Indonesia. The project focuses on strengthening the regulatory framework in Indonesia in line with international standards. Working closely with the KPK, the Attorney General's Office, Supreme Court, the Indonesian National Police, Indonesian Ministry of Law and Human Rights and Indonesian Ministry of Communication and Information, the project also aims to strengthen the capacity of law enforcement and justice actors in the use of electronic evidence by improving guidelines for the digital forensic laboratory, increasing knowledge and skills of law enforcement officers and judges, and enhancing access to international networks on electronic evidence handling.

### Strengthening Legal Empowerment of Peatland Villages to Enhance Access to Justice

Fires are afflicting forests and peat lands in Indonesia. This is problematic because these areas are often declared de facto open areas for which the government grants licenses to concession companies. Overlapping permits can result in farmers being displaced on their own lands, tenure conflicts and the criminalization or eviction of rural communities.

To address these issues, the Epistema Institute is implementing a project to strengthen the legal empowerment of forest and peat land villages through paralegal support in the districts of Pulang Pisau (Central Kalimantan province), Musi Banyuasin (South Sumatra province), and Kepulauan Meranti (Riau province). Under the project, community members are trained to become paralegals and offer legal support, village heads are trained in formulating village regulations, and lastly, the creation of head of district regulations is promoted.

### Towards Inclusive Natural Resource Management

Sustainable management of natural resources in Indonesia is negatively affected by overlapping land permits, with local governments, companies, local populations and indigenous people simultaneously claiming the same land. In East Kalimantan, the government has identified several nature reserve areas, but in the same area there are vast coal deposits, oil palm plantation sites and timber, gas, oil and coal extraction companies. Beyond this, local communities claim ownership of land based on historic or customary rights. The extensive decentralization of land authority adds to the

complexity, with vague regulations, competition between government institutions in issuing permits and exclusion of local populations. Dispute resolution mechanisms lack clarity and fairness, which restricts the ability of local governments to settle overlapping concessions or deal with non-compliance of license holders.

The Balikpapan-based NGO Prakarsa Borneo, in cooperation with the University of Balikpapan and the University of Amsterdam, is implementing a project to strengthen the capacity of district and provincial governments, civil society organizations and indigenous people for accountable and participatory law making and law enforcement in relation to natural resource management.

### Enhancing Democracy and Citizens' Trust in Governance: Adopting a Fair Treatment Approach in Indonesia's Ombudsman Offices

The Ombudsman of the Republic of Indonesia handles citizens' complaints about public service delivery and maladministration. Often, similar complaints are filed, or citizens return with additional grievances, leading to the refiling of cases and extra legal and administrative costs. The Ombudsman of Indonesia seeks to improve its service delivery, its effectiveness when handling complaints and its relationship with citizens and other stakeholders.

Vrije Universiteit, Amsterdam University, the Dutch National Ombudsman, the Van Vollenhoven Institute from Leiden University, the Centre for Conflict Resolution and Mediation and the National Mediation Centre are implementing a project that aims to enhance citizens' trust in the government by introducing the Fair Treatment Approach in Indonesia's Office of the Ombudsman. Over the last ten years, the Dutch National Ombudsman has adopted the Fair Treatment Approach, which focuses on improving the attitude of civil servants towards citizens, from one of suspicion into one of empathy and shared interests. The approach aims to reduce litigation and administration costs through direct and informal contact between public authorities and citizens to find alternative solutions. Complaints are handled in a shorter period of time and with a higher level of satisfaction and trust in democracy. The project will set up a road map to introduce the Fair Treatment Approach in Indonesia, while taking into account regional differences and gender.

### Towards an Effective Court Decision Enforcement System

An ineffective court decision enforcement system in Indonesia leaves many who win their court case behind disappointed, as verdicts are not properly enforced. Hearings are often delayed, existing mechanisms are still based on Dutch law from 1848, and Indonesia's Supreme Court's internal regulations are not sufficient enough to ensure that court decisions are implemented effectively. The government has identified court decisions enforcement as one of the factors preventing effective judicial dispute resolution, particularly impacting business contracts. Moreover, lack of effective court enforcement in divorce cases prevents divorced women with children from obtaining their rights, for example concerning alimony and child custody.

In response to these issues, the Indonesian Institute for an Independent Judiciary is implementing a project that aims to deliver a comprehensive overview of the key challenges and problems through analysis and in-depth research. A policy paper with recommendations as well as a roadmap identifying clear steps and recommendations will be produced to improve the court decision enforcement system.

### Strengthening Access to Justice through Legal Aid Organizations and Gender-Based Structural Legal Aid

In 2011, Indonesia adopted a law on legal aid which includes a national budget for legal aid providers to deliver access to justice and legal aid services to the poor. However, there is a lack of legal aid lawyers and organizations throughout the country, and most are concentrated in the big cities. There are 405 accredited organizations, employing 2,070 advocates expected to provide legal aid services for 28 million people.

Once a lawyer starts working in legal aid, he or she does not necessarily have the sufficient skills for delivering legal aid services with a human rights, gender equality and social justice perspective. Many organizations also deal with a limited administrative capacity and struggle to meet the requirements in conducting legal aid reimbursement. Another key challenge is improving institutional mechanisms to ensure the quality of legal assistance, for example through the development of minimum standards of

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legal aid services, as well as monitoring and evaluation of legal aid service delivery.

The Indonesian Legal Aid Foundation, the Indonesian Legal Resources Center, and the Indonesian Legal Aid Association for Women are implementing a project together to expand access to justice and strengthen the capacity and quality of legal aid services. The project will seek to increase the number of legal aid lawyers, build the capacity of legal aid organizations – including their capacity to handle gender-based cases – and improve legal aid policy to facilitate women’s needs for legal aid.

### Promoting synergy and collaboration

Under the Rule of Law Fund, IDLO is working to facilitate information sharing between key Dutch and Indonesian partners. IDLO joined the “Indonesia: Justice and Development” Working Group led by the Dutch Knowledge Platform on Security and Rule of Law (KPSRL) to further the creation of synergies between these relevant actors. IDLO is also convening workshops to promote knowledge exchange around innovative practices and access to new networks within Indonesia and the ASEAN region. In December 2015, IDLO hosted a Comparative Justice Policy Workshop at its branch office in The Hague, and in May 2016 co-organized an ASEAN Regional Consultation on the Sustainable Development Goals, Access to Justice and Legal Aid in Jakarta. In January 2018, a two-day conference, the Indonesia-Netherlands Rule of Law and Security Update 2018, was held in Jakarta. Co-organized by IDLO, the conference assessed the lessons learned from rule of law and security collaboration between Indonesia and the Netherlands over the last decades and discussed the future of this collaboration in light of developments in both countries in the fields of law and development cooperation.

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