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Overview of Legal Systems in the Asia-Pacific Region: Indonesia

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OVERVIEW OF LEGAL SYSTEMS IN THE ASIA-PACIFIC REGION

Jointly Presented By
**THE ASIAN AMERICAN LAW STUDENTS' ASSOCIATION
and LL.M. ASSOCIATION**

Saturday, April 10, 2004
Harriet Stein Mancuso Amphitheater (G90)
Myron Taylor Hall ~ Cornell Law School

Presented By

Mr. Yosea Iskandar



INDONESIA **(CAPITAL: JAKARTA)** **FOUNDING MEMBER OF ASEAN**

Two equal horizontal bands of red (top) and white; similar to the flag of Monaco, which is shorter; also similar to the flag of Poland, which is white (top) and red

Indonesia is the world's largest archipelago; it achieved independence from the Netherlands in 1945. Current issues include: alleviating widespread poverty, implementing IMF-mandated reforms of the banking sector, effecting a transition to a popularly-elected government after four decades of authoritarianism, addressing charges of cronyism and corruption, holding the military and police accountable for human rights violations, and resolving growing separatist pressures in Aceh and Papua.

- *GEOGRAPHIC DATA* – total: 1,919,440 sq km; water: 93,000 sq km; land: 1,826,440 sq km; slightly less than three times the size of Texas
- *RACE* – Javanese 45%, Sundanese 14%, Madurese 7.5%, coastal Malays 7.5%, other 26%
- *LANGUAGE AND LITERACY* – Bahasa Indonesia (official, modified form of Malay), English, Dutch, local dialects, the most widely spoken of which is Javanese; age 15 and over can read and write
- *GOVERNMENT TYPE* – Republic
- *ADMINISTRATIVE DIVISIONS* – 27 provinces (propinsi-propinsi, singular - propinsi), 2 special regions (daerah-daerah istimewa, singular - daerah istimewa), and 1 special capital city district (daerah khusus ibukota)
- *LEGAL SYSTEM* – Based on Roman-Dutch law, substantially modified by indigenous concepts and by new criminal procedures code; has not accepted compulsory ICJ jurisdiction.
- *ECONOMY* – Indonesia, a vast polyglot nation, faces severe economic development problems stemming from secessionist movements and the low level of security in the regions; the lack of reliable legal recourse in contract disputes; corruption; weaknesses in the banking system; and strained relations with the IMF. Investor confidence will remain low and few new jobs will be created under these circumstances. In November 2001, Indonesia agreed with the IMF on a series of economic reforms in 2002, thus enabling further IMF disbursements. Negotiations with the IMF and bilateral donors continued in 2002. Keys to future growth remain internal reform, the build-up of the confidence of international donors and investors, and a strong comeback in the global economy.

OUTLINE DESCRIPTION OF THE LEGAL SYSTEM OF INDONESIA

I. Legal System Overview

1. Historical Background
 - a. Customary law - prior to the early 17th Century.
 - “consensus through decision making” principle
 - b. Dutch colonial law - until the end of World War II.
 - the Commercial Code 1847
 - c. National legal system - after independence.
2. Structure and Source of Law Background
 - a. 1945 Constitution
 - Amended four times; Oct. '99, Aug. '00, Nov. '01 and Aug. '02.
 - b. Constitutional Bodies (the most important ones)
 - i. People's Consultative Assembly (MPR).
 - comprising all the DPR members, appointed individuals representing the provinces, and other nominees.
 - ii. The House of People's Representatives (DPR).
 - consists of elected and appointed representatives
 - iii. The first direct elections for the presidency and vice-presidency are expected to take place this year.
3. Legislation
 - a. Hierarchy
 - 1945 Constitution
 - MPR Resolution
 - Law
 - Government Regulation Substituting a Law
 - Government Regulation
 - Presidential Decree
 - Regional RegulationAlso binding: Presidential Instructions, Ministerial Decrees and Circular Letters
 - b. Publication
 - State Gazette of the Republic of Indonesia and the Supplement to the State Gazette (Tambahan Lembaran Negara).
4. Judiciary
 - a. District Courts
 - The court of first instance
 - b. High Court
 - The court of appeal
 - c. Supreme Court (Mahkamah Agung).
 - cassation appeal (kasasi), final appeal from lower courts.
 - d. Other
 - Commercial Court.

- State Administrative Court
- Constitutional Court.

II. Legal Education Overview

1. Undergraduate Level
 - a. Provider
 - State and private
 - b. Credits requirement
 - 140 to 150 credit hour
2. Graduate School of Law
 - a. Graduate program (Master of Law)
 - b. Professional program (Notary Candidate program)

III. Legal Profession

1. Types of Legal Profession
 - a. Public: judges, public prosecutors
 - b. Semi Public
 - Appointed by the Department of Justice & Human Rights
 - Shall not provide legal advice
 - c. Private
 - Before UU 18 of 2003 in April 5, 2003 (Advocates were legal consultants who had license to represent client before courts)
 - After (Advocates are all legal consultants appointed by Bar Association).
2. Bar Associations
 - i. Current:
 - Several advocate associations
 - ii. After UU 18 of 2003 in April 5, 2003 (Advocate Bill),
 - Only one Bar Association
3. Other Specialized Legal Qualification
 - Capital Market lawyers.

IV. Legal Practice

1. Advocates
 - a. Appointment
 - Appointed by Advocate/Bar Association if fulfill: 2 years internship in law office and pass the bar exam.
 - b. Pro Bono
 - c. Foreign Lawyers
 - No representative office.
2. Other Forms of Legal Practice – in-house counsel and public servant
3. Other – legal fees, advertisement, etc – to be determined by Bar Association

V. English Web Pages

www.indobizlaw.com