〜 国際研修 〜

インドネシアにおける司法改革の動向
〜2002年度日本・インドネシア司法制度比較研究セミナーから〜

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１．はじめに

国際協力部は，2002年７月８日から同月30日まで，国際協力事業団（JICA）及び財団法人国際民商事法センター（ICCLC）の協力の下に，インドネシア司法省幹部職員，裁判官，検察官及び弁護士を対象とする研修を実施した。（参加者については，添付の資料１参照。研修カリキュラムについては，資料２参照。）

インドネシアは，1998年のスハルト政権崩壊後，民主的で公正な社会の実現を目指して様々な改革に乗り出しており，司法制度の改革も重要な改革テーマの一つと位置付けられている。我が国のインドネシアに対する法整備支援活動は，従来さほど見るべきものがなかったが，同国政府の支援要請を受け，2002年１月，法務総合研究所は教官２名を派遣して，同国司法制度に関する基礎的な調査を実施した。その結果，インドネシアでは，法令が一応整備されているが，その執行において多くの問題があり，例えば，司法関係者が腐敗しているとの指摘や判例が十分に公開されていないとの指摘があることが判明した。（なお，このとき現地調査を実施した当部の山下輝年教官が，本誌第３号［2002年５月発行］117頁以下に，研究論文「インドネシアの司法制度と司法改革の状況」を発表し，インドネシアの司法制度の現状について詳細に論じているので，併せて参照されたい。）

本研修は，我が国からインドネシアに対する法整備支援の可能性や内容を検討するため，上記調査に引き続き，同国の司法制度の内容とその改革の動向の詳細について必要な情報を得るべく実施したものであり，インドネシア研修員による発表を多く取り入れた。さらに，インドネシア研修員と直接にコミュニケーションを図るため，一部に通訳を用いたものの，ほとんどを英語で通訳を用いずに実施した。

本稿においては，この研修で得られた情報を要約整理するとともに，インドネシア研修員らによる発表内容の記録を紹介する。（添付資料３－１ないし３－９参照。）これら記録の労をとられた神戸大学大学院在籍（現国際連合日本政府代表部専門調査員）の岩谷暢子氏，早稲田大学大学院在籍の村井綾子氏，東京都立大学在籍の新美晶子氏に，この紙面を借りて厚く御礼申し上げる。また，本研修の実施に当たっては，大阪弁護士会の井関正裕弁護士（元大阪高等裁判所部総括判事），大阪大学法学部の茶園成樹助教授，日本弁護士連合会国際交流委員会副委員長の矢吹公敏弁護士を始めとする講師の方々，財団法人国際民商事法センター及び同財団を支える財界・学界の方々ほか多数の皆様から御協力をいただいた。改めて厚く御礼を申し上げたい。

おって，本稿中の意見にわたる部分は，筆者の個人的見解である。

２．本研修で得られたインドネシアの司法改革に関する情報

この研修中，９回，合計約27時間にわたるインドネシア側の発表を実施し，延べ12人の研修員がプレゼンテーションを行った。そのテーマは以下のとおりであった。

① 「インドネシア法務人権省の機構と役割，法体系」
② 「インドネシアの法曹養成制度，研修制度とその課程」
③ 「インドネシアの司法制度，司法行政とその課題」
④ 「インドネシアの民事訴訟手続」
⑤ 「インドネシアの民事訴訟の課題」
⑥ 「インドネシア法務人権省における司法改革の現状と課題，インドネシア司法制度の現状と課題」
⑦ 「インドネシアの刑事司法制度，汚職対策とその課題」
⑧ 「インドネシアの弁護士制度とその改革」
⑨ 「インドネシアの知的財産制度」

これらプレゼンテーションとそれに引き続く質疑応答の中で，インドネシア研修員らと日本側の参加者が活発な討議を行い，インドネシアの司法分野における現状の問題点とその背景を探り，日本の法整備支援の方向性を模索した。この項では，この討議を通じて得られた情報を要約整理する。（なお，討議内容の詳細については，添付の記録（資料３－１ないし３－９）を参照されたい。）

(1) 司法改革に関するインドネシア司法関係者の意識

インドネシア人自身が，「国内で政府の腐敗，縁故主義が問題となっており，腐敗の一掃，人権の保護，司法システムの強化に向けて改革が進行中である。」と意識していることが明らかであった。特に，司法改革に関して，研修員らは，「スハルト政権下では，開発と経済発展に重点が置かれ，司法が片隅に追いやられていた。今後は司法の改革が必要である。」と説明していた。世銀やドナー機関からの外圧の影響を見過ごすことはできないが，インドネシア司法関係者ら自身も，民主的な社会の実現のため，自国の遅れている司法制度を改革する必要があるという積極的な意識を持っていることが確認できた。

(2) 司法改革プログラム

インドネシアでは，司法改革に向けて，1999年から2004年までの５か年の国家開発計画（National Development Plan）が策定されているほか，毎年 Legislative Program を作成して立法計画を立てている。しかし，国会で多数の法案が審議待ちの状況であり，改革が計画通り進んでいるとは言えない。

2001年の憲法改正により，2004年までに憲法裁判所が設置されることとなり，また，下級裁判所の司法行政権は現在政府省庁が有しているところ，1999年の裁判所基本法改正により，2004年までに最高裁判所が下級裁判所（宗教裁判所を除く）の司法行政権を掌握するという One-roof system に移行することが決まっている。そして，これら改革を実現する法案起草のため，法務人権省，最高裁判所，最高検察庁のメンバーからなる常

任委員会が政府に設置されている。しかし，協議は難航しており，改革法案起草作業は遅れている。その原因は，司法の透明性を求める世論にこたえるために改革を決定したものの，憲法裁判所の権限や One-roof system の内容について詰めた議論をしていなかったことにある。

(3) 裁判官の研修制度

インドネシア最高裁判所教育研修センターは，下級裁判所裁判官の研修及び最高裁判所裁判官の研修を行っている。下級裁判所裁判官の研修コースは約５日間であり，地域ごとに行われている。カリキュラムは，経済法，環境法，人権法，知的財産権法，イスラム法，裁判官倫理等である。問題は，年間の研修員数が約500名にすぎないことであり，下級裁判所の全裁判官（約5,500名）の研修を終えるのに11年を要する計算である。

(4) 検察官の研修制度

インドネシア最高検察庁の教育研修センターが検察官を対象とする研修のカリキュラムは，検察官倫理，捜査手法（汚職，人権侵害，資産の捕捉など），マネーロンダリングなどの新法などである。問題は，研修実施者と研修員の双方にある。まず，研修の講師が不足している。講師の給料が低いため，フル・タイムの講師のなり手がなく，退官した検察官らに講師を依頼している。研修施設も不十分である。他方，研修を受けるべき検察官は，全般的に捜査能力が低く，教育訓練の必要があるにもかかわらず，研修を受けることが昇進等のメリットにつながらないため研修に魅力を感じず，また，ジャワ島以外に勤務する検察官は，家族を残してジャカルタに来ることを不安視し，研修を受けたがらない。

(5) 研修に関する他のドナーの動向

裁判所に対しては，IMF のほか，オーストラリア，欧米諸国がセミナーを開催したり，インドネシアの裁判官をオーストラリア，イギリスなどへ派遣するなどの援助をしている。検察庁に対しては，UN が倫理研修を計画中であるほか，EU が汚職捜査能力の向上を図り研修を計画している。オーストラリアが毎年数名の検察官を短期間招へいしているほか，フランスが修士プログラムへの留学を受け入れている。

(6) 人権侵害事件の処理

大量虐殺事件・拷問事件を刑事事件として処理するため，インドネシアは人権侵害事件を特別に立件し訴追する制度を新設した。人権侵害事件に適用されるのは，事後的に立法された法律なので，刑事法の一般原則である遡及処罰の禁止に触れるように見えるが，インドネシアでは，人権保護はかねて存在する慣習法の一部であると理論構成し，遡及処罰の問題を回避している。他方で，人権侵害事件として捜査を開始するには，国会の承認を必要とし，事後法が適用される範囲が拡大しないように配慮している。人権侵害事件を扱うのは人権裁判所であり，現在のところ，東ティモールの事件を扱うための人権裁判所が通常裁判所の系列に特別に設置されているが，今後は制度的に人権裁判所を設置する計画がある。現在捜査中のイリアン・ジャヤの人権侵害事件は，制度化された人権裁判所で審理される見込みである。

(7) 民事訴訟手続の問題点

インドネシアは，オランダ法の影響を受けたため，基本的に大陸法を継承しており，民事訴訟法の基本的な概念（例えば，処分権主義，弁論主義，主張責任，立証責任，既判力）については日本と共通の理解がある。しかし，日本と異なる点も当然ながら多い。インドネシアでは，統一的な民事訴訟法典が存在しない。オランダ植民地時代の法律であるHIR（ジャワ島），LBG（ジャワ島以外）が修正を加えられながら基本的に存続しており，これに加えて各種の特別法が制定されている。

インドネシア研修員らから指摘のあった問題点は次のとおりである。

① クラス・アクション制度の不存在

クラス・アクション制度がなく，環境法の分野で特別法により認められている程度である。そのため，当事者が多数に上る大規模訴訟の遂行が困難である。

② 無制限の上訴制度

上訴が無制限に認められており，勝訴者も上訴可能である。これが最高裁判所の未済事件増加の主な原因であり，毎月約150件ずつ最高裁に未済事件がたまっている。上訴理由の制限を検討中である。

③ 少数意見の併記

インドネシアでは少数意見が判決に記載されないのが従来の実務であったが，裁判の透明性を高めるため，下級裁判所を含めて，判決に少数意見を記載すべきであるという意見が有力化している。最近，最高裁判所の通達により，裁判所長が閲覧する特別の記録に少数意見を記載する取扱いを始め，商事裁判所においては少数意見を判決中に明らかにする事例が出始めている。将来的には少数意見を判決に記載することが制度化される見込みである。

④ 和解

インドネシアには調停制度がなく，訴訟提起される民事事件が多い。そこで，第一回期日において，裁判官が和解を勧告する制度を始めた。しかし，これは日本の実務と異なり，裁判官が期間を定めて当事者に和解交渉をさせるというものである。当事者が合意に達したら，裁判所がその合意のまま判決する。

⑤ 裁判所侮辱

インドネシアには英米法の「裁判所侮辱」による制裁がないほか，裁判所の命令に違反した場合の制裁措置が一切ない。そのため，特に，民事執行の場面において，手続が事実上ストップするという問題が発生している。

(8) 汚職対策

インドネシアの「汚職」とは，国家に損害を与える犯罪であり，日本のいわゆる汚職とは定義が異なるが，政府高官や官僚は国家に損害を加える反面で私腹を肥やすことが通常であろうから，その対象は実質的には相当程度重なるものと言えよう。汚職対策はインドネシアの国家的課題であり，検察庁が法執行機関としてその責任を担っている。しかし，汚職事件は巧妙な手口が使われることや検察官の捜査能力が低いことから，摘

発が困難であることも事実である。検察庁と警察が合同で「国家公務員捜査委員会」を設置しているほか，近い将来，国会と政府が合同で「反汚職委員会」を設立することとなっている。

(9) 弁護士制度改革

インドネシアで法廷活動の許される弁護士（advocate）となるには，最高裁判所の実施する試験に合格しなければならないが，質の低い弁護士がいることがかねて指摘されていた。インドネシアの７弁護士会（その最大のものはIKADIN，実質会員数約5,000名）は，最高裁判所と協力して1999年より弁護士倫理試験を開始し，2002年より弁護士試験を開始した。これにより，弁護士会が弁護士資格試験を実質的に行う体制が整った。現在（2002年７月時点），国会で，弁護士会が弁護士資格試験を実施する法案を審議中である。

(10) 司法関係者による自浄の努力

インドネシアでは司法関係者の腐敗や縁故主義が指摘されることがある。本セミナーにおいても，裁判所において事件の配点が裁判所長の裁量に委ねられており，裁判所長が恣意的に事件配点をするおそれがあること，最近まで民事執行事件に関して上級裁判所の裁判官から執行を中止するように求める“Powerful letter”（法律上の根拠はない。）が発せられる慣行があったこと，検察官が事件処理に「うま味」を見いだすことが多いこと，家族や同郷者の利益のために働くことが伝統的に美徳とされているため，家族や同郷者の事件に介入しようとする司法関係者が多いことが指摘された。しかし，インドネシア最高裁は専門の委員会を設置して腐敗対策に乗り出しており，最高検察庁も検察官の教育訓練に力を入れ，腐敗防止と摘発能力の向上に努めている。弁護士会は弁護士になる者に倫理試験を義務付けている。このように，インドネシア司法界内部で，自浄に向けての努力がなされている。

３．日本の支援

この研修の期間中，上記の発表の機会ばかりでなく，あらゆる機会を通じて，インドネシア研修員らから日本の支援に対する期待や意見を聴取することに努めた。聴取した結果を集約すると，次のとおりであった。

(1) 人材育成

日本は司法に携わる者が誠実に職務を遂行し，一貫した法の執行が実現している。この状況をインドネシアで実現するには，人材育成がカギになる。日本の統一修習制度が参考になるので，同制度についてセミナーや研修を行うなど，研修制度について日本の支援を期待する。

新任の裁判官，検察官らは，腐敗とは縁がなく意欲を持っているが，実務を数年間経験すると現実を知り，腐敗するおそれがある。裁判官や検察官になりたての若手に対して，司法の腐敗が国家に重大な損害をもたらすことを教えてほしい。また，外国ドナー機関は，インドネシアの高官から主に情報収集をしているが，若手からこそ情報収集を

して，若手のニーズに沿った支援をすべきである。

弁護士会は，弁護士資格試験の実施主体となったが，質の高い弁護士を確保するため，リクルートが今後の課題である。弁護士会自身がセミナーを開催しているので，ここに専門家を派遣するなどの支援を日本に望む。

検察庁に関しては，汚職事件捜査や人権侵害事件捜査など，政府高官や軍高官を被疑者とする複雑困難な捜査が山積しているにもかかわらず，検察官の捜査能力が低く，証拠収集や立証のノウハウが乏しいという大きな問題がある。この点に関して，日本の捜査官から支援を望みたい。

(2) 実務家の相互交流

日本の法制度や運用について，英文資料が乏しく，インドネシア側が情報を得る手段が乏しい。両国の情報を交換できるセンターをジャカルタに設置したり，日本から情報を提供する現地セミナーを開催するなど，両国の実務家が交流できる場をもっと作ってほしい。

法務人権省は，立法作業を進める上で，外国法の研究が必要であり，日本法の資料を提供してほしい。また，今後は行政訴訟の在り方が研究課題であり，日本の支援を望みたい。

(3) 裁判所運営の支援

裁判所の運営モデルを示すことのできる国は，アジアでは日本だけである。事件の配点，事件進行管理，記録の管理などの運営に関して，日本の支援を希望する。

インドネシアでは，民事事件の迅速な処理のため，裁判官による和解勧告を始めたが，今後は本格的に調停制度の研究を行う必要がある。調停制度に関して日本の支援を期待する。

(4) インドネシア各機関，外国ドナー機関との協調

日本が単独で支援活動を計画するのではなく，インドネシアが実施する活動や外国ドナー機関の活動に参加する形態の支援も検討してほしい。例えば，最高裁は５日間の裁判官研修を行っているが，AusAid（オーストラリア政府の援助機関）がこのうち１日間だけ加わっている。このように既存の研修に講師や専門家を派遣することもできる。検察庁では，AusAid のワーク・ショップが計画されているが，この機会に日本の専門家が講演することも検討できるし，EU が来年より資金源追跡の捜査手法の研修を計画し，アメリカは金融犯罪の研修を計画しているので，ここに日本が加わることも可能ではないか。

こういった連絡協調を進める上で，JICA ジャカルタ事務所がインドネシアの各司法機関と緊密に情報交換をすることを特に希望する。

日本・インドネシア司法制度比較研究セミナー参加者名簿

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	Mr.Wildan Suyuthi
	最高裁判所教育訓練センター長
2	ヤサルディン
	Mr.Yasardin
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3	ザフルラフ　サリム
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5	パラグタン　ルビス
	Mr.Parlagutan Lubis
	法務人権省知的財産権局法務課長
6	リディヤ　ササンド　パラパット
	Ms.Lidya Sasando Parapat, Sh.
	地方裁判所裁判官
7	アータ　テレシア　シララヒ
	Ms.Artha Theresia Silalahi, Sh.
	地方裁判所裁判官
8	ムハンマド　サルマン
	Mr.Muhammad Salman
	最高検察庁情報部長
9	ムハンマド　ユスフ
	Mr.Muhammad Yusuf
	最高検察庁教育部長
10	ムハンマド　ユスフィドリ　アドゥヤクサナ
	Mr.Muhammad Yusfidli Adhyaksana
	最高検察庁海外法務協力部長
11	メリー　ギルサン
	Ms.Mery Girsang
	弁護士

コーディネーター：森永ふみ子，呼子紀子
主任教官：丸山毅（山下輝年），事務担当：小宮由美（外尾健一）

資料２

日本・インドネシア司法制度比較研究セミナー日程表

月 日	曜	10:00 12:30	14:00 16:30	17:00	備考
7 ／ 8	月	オリエンテーション　10:15高検表敬 担当教官　山下輝年　丸山毅　11:45地検表敬 担当専門官　小宮由美　外尾健一	日本の統治機構，法務省の機構と役割 法務総合研究所 国際協力部長　尾崎道明		
7 ／ 9	火	日本の法体系と立法手続 国際協力部 教官　丸山毅	インドネシア法務人権省の機構と役割，法体系 イ法務人権省		
7 ／ 10	水	日本の法曹養成制度，研修制度 国際協力部 教官　山下輝年	インドネシアの法曹養成制度，研修制度とその課題(問題点と改革の動向を含む) イ裁判官		
7 ／ 11	木	日本の司法制度，司法権の独立 弁護士（元判事）　井関正裕	インドネシアの司法制度，司法行政とその課題(問題点と改革の動向を含む) イ法務人権省　イ裁判官 弁護士（元判事）　井関正裕		
7 ／ 12	金	質疑応答 国際協力部教官	京都地裁見学（民刑事の法廷傍聴，判事の説明） 引率：国際協力部　(15:00～17:00) 教官　丸山毅		
7 ／ 13	土	休み			
7 ／ 14	日	休み			
7 ／ 15	月	民事訴訟の基本原則(弁論主義，証明責任，既判力) 弁護士（元判事）　井関正裕	インドネシアの民事訴訟手続 イ裁判官 弁護士（元判事）　井関正裕		
7 ／ 16	火	裁判所の民事事件管理と配点．民事第１審手続における書記官の役割 大阪地裁 民事訟廷管理官　福本明弘　民事部主任書記官 橋本貢	インドネシアの民事訴訟の課題(問題点と改革の動向) イ裁判官		
7 ／ 17	水	判例公開制度について 弁護士（元判事）　井関正裕	発表会：インドネシアの司法制度とその改革動向 13:30～16:30 イ裁判官　イ法務人権省　於：国際会議室		
7 ／ 18	木	東京へ移動	14:15～14:30　15:30～アジ研着，オリエンテーション(生活面) 官房長表敬		
7 ／ 19	金	日本の検察制度・検察官の役割 アジ研教官　田辺泰弘	日本の刑事裁判制度（公判手続） アジ研教官　高須司江		
7 ／ 20	土	休み			
7 ／ 21	日	休み			

月日	曜	10:00 12:30	14:00 16:30	17:00	備考
7／22	月	最高裁見学	12:00～所長表敬 12:30～13:30昼食会(法曹会館)	汚職対策 (15:00～アジ研) アジ研教官　城祐一郎	
7／23	火	司法研修所見学	13:45～ 検事総長表敬	発表会：インドネシアの刑事司法制度、汚職対策とその課題(問題点と改革の動向を含む) (於最高検大会議室) イ検事	
7／24	水	日本の弁護士制度 (於：日弁連会議室) 弁護士　矢吹公敏	13:30～ 記念撮影	発表会：インドネシアの弁護士制度とその課題(問題点と改革の動向を含む) (於最高検大会議室) イ弁護士　弁護士　矢吹公敏	
7／25	木	矯正概略・府中刑務所見学		大阪へ移動	
7／26	金	知的財産権制度に関する日イ比較 大阪大学大学院法学研究科 助教授　茶園成樹		インドネシアの知的財産権 イ法務人権省	
7／27	土	休み			
7／28	日	休み			
7／29	月	民事第１審手続の流れ(ビデオ・プレゼンテイション) 国際協力部 教官　丸山毅		日本・インドネシアにおける司法改革 国際協力部　集団討議方式	
7／30	火	総括質疑応答　(OSICにて)		評価会　修了証書授与 (OSICにて)	

資料３－１

インドネシア法務人権省の機構と役割，法体系

日時：平成14年７月９日午後２時～午後５時
場所：法総研国際協力部
発表：ワヒド法務人権省開発庁企画センター長
　　サリム法務人権省法制局法令調整部次長
記録：神戸大学大学院生　岩谷暢子

An Outline of Ministry of Justice and Human Rights of the Republic of Indonesia Its Roles in Legislative Process

1. Outline of legal system and legislation of Indonesia (by Mr. Wahid)
(1) Types of regulations and their hierarchy
(2) Judiciary
(3) Legislature
(4) Executive
2. The Ministry of Justice and Human Rights and its role in legislative process (by Mr. Salim)
(1) The Constitution
(2) Cabinet
(3) The Ministry of Justice and Human Rights
(4) Legislative Process
(5) Current state of law reform

1. Outline of legal system and legislation of Indonesia (by Mr. Wahid)

The legal system of Indonesia has civil law basis, since formerly it used to be under the Dutch colonial rule. Almost all major courts still employ civil law systems in civil, penal, and commercial courts. However, it is currently under many influences from US and neighboring countries such as Singapore, Malaysia, Brunei and Thailand.

The characteristic of the Indonesian legal system is pluralism. The Dutch colonial government applied pluralism in Indonesia, and Dutch law was applied to Dutch, while the Adat law was applied to the indigenous. In addition to the Adat law, whose basis is Islamic law, there are also Islamic law (a part of community custom) and Regulations. This situation is due not only to the colonial rule but also to the social and economic situation of the country.

(1) Types of regulations and their hierarchy

The laws and regulations include, in the hierarchical order, the Constitution, the Decree of MPR (the People’s Consultative Assembly), the Statute (Act), Government Regulation in lieu of Act (Emergency law), Government Regulation, Presidential decree, and Local Regulation.

Since its declaration of independence in 1945, Indonesia had enacted several provisions of the constitution. The 1945 Constitution was applied until 1949, and Constitution of Federal States of Indonesia was in force from 1949 to 1950. The provisional constitution was in force from 1950 to 1959, and in 1959 President declared the 1945 constitution again.

Since Reform Era begun in 1998, the 1945 Constitution has been amended already for three times. The next amendment is expected in the August.

The Statute (Act) has to be decided and declared by the House of Representative (DPR) and president of MPR together. The Government Regulation in lieu of Act (Emergency law) requires the approval by the MPR. Governmental Regulations are enacted by the President to implement Statutes. Presidential decree is to be declared by President. Local regulations are drafted and enacted by the legislative body of each local entity (Provincial, District, and Municipality).

(2) Judiciary

"Yurispridensi" is the term coming from the Islamic term, and has different meaning from English. It means that Supreme Court decisions are taken into account by the lower court, although Indonesia does not adhere strictly precedence principle.

Concerning the system of Judicial Review just as mentioned this morning in the lecture, Indonesia Supreme Court has authority to review legislation only under the level of Governmental regulation. However, it is now under the consideration to set up the Constitutional court to review statute.

Supreme Court is the apex of all court of justice and located in Jakarta. Lower courts are divided into ordinary jurisdiction and special jurisdiction. At the level of District court, there are Administrative courts and General courts with civil court, criminal court, commercial court, juvenile court and human rights court. There are also Religious Court to deal with divorce and inheritance case based on the Islamic Family law, Military Court to deal with criminal offences committed by military personnel.

At the level of High Court, there are civil court, criminal court and military court.

(2) Legislature

MPR (People's Consultative Assembly) holds the power to amend and determine constitution. It consists of 700 members including religious representatives and social representatives and meet at least every 5 years to elect president.

DPR (House of Representative)'s main function is to pass legislation (Acts) and to supervise President. It consists of 500 members, and elected by the general election except the representative of military and police.

There will also be DPD (Regional House of Representative) consisting of representatives elected from all Provinces over the Indonesia, according to the Article 22D of the third amendment of the Constitution.

(3) The Executive

The Executive is headed by the President who is appointed by MPR. Vice-President is also appointed by MPR. The administration of policy is done through the government department, each headed by the Ministers appointed by the President. There are also "Coordinating Ministers" who supervise a number of related Portfolio Ministers. The non-department government institutions are also agencies of government, and their heads are appointed by the President.

Major law enforcement agencies are the Attorney General and Police. The Attorney General is responsible in prosecution of criminal offences. It also has a function as lawyer of state in civil case in which state is involved. The Police was recently separated from military. It conducts investigation of criminal cases in coordination with civil servant investigators.

In Legal reform since 1998, the Constitution has been amended for three times. In this process, a series of measures are being undertaken in order to restore the confidence in legal system, such as reforming outdated conflicting laws, laws which were enacted but does not reflect the desire of people.

Legal reform programme includes the development of law through legal education, the strengthening and enhancement of capacity of the law enforcement institutions and their personnel, the strengthening and enhancement of capacity of the judicial institutions and their personnel, the improvement of legal awareness of the people, with special attention to value of democracy, rule of law, human rights, and good governance.

< Q & A >

Q: What are the status of Human Rights Court and Juvenile court?
A: At a district court level in general, many courts already have special chamber to deal with those cases. But these special courts have been established to deal with very special cases. Concerning Human Rights Court, ad hoc tribunals have been working as the permanent court.
A: There is a human rights court for East Timor on ad hoc basis. But currently, the permanent court is being prepared to deal with cases of gross violation of human rights, the first cases of such being Ilian Jaya cases. These are still at the investigation stage, and the court itself is not open yet.

Q: What kind of cases will the Human Rights Court receive? Will they be as civil cases or as criminal cases?
A: It will deal with cases of cross-violation, civil and criminal, including the crime of genocide, crimes against humanity. It will render the judgment with punishment.
Q: Will that be the retroactive application of law?
A: Yes, since Irian Jaya cases were committed before the legislation. But it will base itself on customary international law as was the case in the Tokyo War Crime Tribunal.

Q: Concerning Constitutional Court, what kind of court is being considered? And what kind of basic structure and function will it have? When will it be established?
A: Among the amendment to constitution adopted last year, there is an article that refers to the constitutional court apart from general court system. According to the Article 24 C, its function will

be to review Acts conflicting with constitution, to settle dispute among government institutions, to dissolve political party and to settle dispute concerning general election.

Q: Who can seek review at that court?
A: I don't know in specific, but one has to bring case to Supreme Court before going to Constitutional Court.
A: The establishment of Constitutional Court is currently under consideration in standing committee, but it is not yet clear if it will be established inside Supreme Court or as separate court.

Q: Do you mean that the third amendment has become effective but it does not have any law to implement it?
A: That is right.

Q: But from literal understanding it looks that the amendment expects the establishment of a separate court.
A: This matter is still debated in MOJ.
Q: What is standing Committee?
A: It is a body consisting of those who were appointed by inter-department standing committee, including Judges, Public Prosecutors and Professors. My personal opinion is that it should be set as a separate court.

Q: Could you give me more specific example on measures and ideas concerning legal reforms programme?
A: The National Programme of Legislation is prepared for five years. It prioritizes the necessary legislation, and amendment and legislation are undertaken according to it.
A: This National Programme of Legislation is made according to the list of appeal from the citizens, importance, and the pressure from international community, in order to encourage the preparation and discussion on those bills. There are so many bills waiting to be considered, for example the bill for the election in 2004.

2. The Ministry of Justice and Human Rights and its role in legislative process (by Mr. Salim)

(1) The Constitution

Historically, Indonesia has been governed by three Constitutions since its declaration of independence in 1945. The first was the Constitution of 1945 which provided for a unitary state. When the Dutch transferred sovereignty to Indonesia in 1949, the second Constitution of the United Republic of Indonesia was enacted to establish the country as a Federal Republic. Only after a year, the third Constitution was adopted which returned Indonesia to a unitary structure. On July 5, 1959, the 1945 Constitution was reinstituted by the Presidential Decree and it is still in force.

The 1945 Constitution is the basic instrument of Indonesian government and the highest ranking of legislation. It had guided the basis for political stability, economic growth and social progress. In addition, the Pancasila (Five Principles) during Soekarno and Soeharto administration has played an influential role as a basic ideology of the state. The constitution consists of only 37 articles, 14 transitional provisions and one additional provision. It has established the basis of a centralized

government system, where the power and responsibility of government administration are concentrated upon the President.

The President based on this Constitution is one of the most powerful presidencies in the world. To carry out his power and responsibility, he presides over the executive branch. He holds legislative power of make a new law with the DPR's approval, according to the Act 14/1985. The president shall appoint and dismiss chief judges.

The Elucidation of 1945 Constitution explains the system of government based on the following principles:

a. Indonesia is a state based on law (rechtsstaat) and not on mere power (machtsstaat).
b. The government is based upon constitutional system and not on absolutism.
c. The highest authority of the state is in the hand of MPR as the embodiment of the whole of the People of Indonesia.
d. The President is the highest executive of the government of the state below the Majelis.
e. The President is not responsible to the DPR.
f. The Ministers on the state are assistants to the President, and they are not responsible to the DPR.
g. The authority of the head of state is not unlimited

(2) Cabinet

In his capacity as a chief executive, President has a prerogative right to establish cabinet. Article 16 of the Constitution gives extensive authority for the President to establish, to charge and abolish any departments. Under Megawati administration, the Cabinet consists of 3 coordinating ministers, 17 ministers who lead departments, 10 sate ministers who do not lead departments, and 2 ministerial-level officials, namely State Secretary and Attorney General. In addition, there are several non-department government institutions such as General Auditing Office, Bank of Indonesia, National Commission on Human Rights (Komnas-HAM).

(3) Ministry of Justice and Human Rights

- Function and Authority

The Ministry of Justice and Human Rights assists the President to execute a part of the government activities in the field of judiciary and human rights affairs. The minister holds a broad responsibility covering the following tasks and functions.

a. to promote legal awareness and legal culture;
b. to render legal advice to the President and the head of the other executive departments, non-department government institutions and other institutions;
c. to serve general legal administrative matters;
d. to implement legal research and development;
e. to make law and regulations necessary under his authority;
f. to govern, to direct, and to plan national law and legislation;
g. to ratify related international conventions;
h. to authorize legal entities and intellectual property rights;
i. to undertake all related matters of prisons and confiscated goods for the state;
j. to administer judiciary, lawyers, fiduciary, citizenship, and bankruptcy;

k. to undertake and manage fingerprint, grace, amnesty abolition, rehabilitation and civil investigators;
l. to undertake all related tasks of correctional institution

- Structure

Secretariat General undertakes all financial personnel and technical administrative support for all main units.

Directorate General of Legislation drafts proposed law and regulations necessary for MoJHR, harmonizes law and regulation drafts from other departments and government institutions and render advice to the President and the heads of the other executive departments.

Directorate General of Legal Administrative Affairs authorizes legal entities such as limited liability corporate, manages administrative matters of any application for fingerprint, citizenship, grace, abolition, amnesty, and governs international law cooperation.

Directorate General of Correctional Institution is in charge of prison management such as standardization of service, exit permits for prisoners, education and training, and health service.

Directorate General of Immigration is responsible for all immigration matters, investigates and controls all immigration crimes.

Directorate General of Intellectual Property Rights deals with all IPR matters, handles application of exclusive rights, promotes legal awareness for the public, and monitors IPR infringement cases.

Directorate General of Board of Public and Administrative Court is in charge of all administrative, financial, personnel and organizational matters for judges, clerks and other officials.

Directorate General of Human Rights Protection undertakes human rights promotion and protection for all citizens.

General Inspector investigates all administrative violations by the officials of MoJHR and recommends any appropriate administrative punishment.

National Law Development Agency sets up plans on national law departments legal system, carries put legal research, and provides national network with legal documentation

Research and Development Agency for Human Rights studies civil and political rights, disadvantaged groups and gross violation of human rights.

There are also experts in the field of economic and foreign affairs, political, social and security issues, environmental law, legal culture and development, and human rights violation.

The Ministry has also regional offices in every city of provinces to guarantee public accessibility to all legal services.

(4) Legislative Process

- Procedures of making central (national) legislation

A bill may come from any executive government as well as the DPR (Parliament). If the bill comes from the government, the legislative process should be subject to President decree No. 188/1998 concerning the law making process.

Subject to the provision, any department or governmental institution may take initiative to draft a bill, where appropriate. The Minister who takes initiative applies the bill to the President for its approval. Before submitting the initiative to President, it must consult with other department or government institution. The Director General of Legislation, on behalf of the Minister of Justice and

Human Rights, may preside the meeting to have a comprehensive legal conception. The initiative describes a historical background and purpose of the bill, basic legal ideas, scope and legal content of the bill, and academic result to support analysis for the bill.

Among the currently proposed bills are:
- Amendment to administrative litigation;
- Bill on anti-terrorism; Bill on extradition;
- Bill on Supreme Court;
- Bill on restoration of companies;
- Bill on Anti Corruption;
- Amendment to criminal procedure;
- Amendment on Limited liability Company; and
- Bill on Truth and reconciliation committee for human rights crime cases. There is also the Bill on Civil Procedure proposed in 2001.

- Procedure of making regulation (Government regulation)

According to Constitution, the President may issue government regulation and Presidential decree without any approval from DPR if the Act delegates. However, the content of these regulations which aims at implementing Act should be in conformity with the Acts.

The minister may issue any ministerial decree which is in line with the Acts. The minister has an authority to issue ministerial regulations which contain administrative matters.

- Procedure of making local regulation

The local government may introduce drafts of local regulation and submits to local house of representative (DPRD) for its consideration. The representatives discuss the drafts, and if they agree on it, the governor enacts it and promulgates it in local Gazette.

(5) Current state of law reform

Law reform effort is now being undertaken to meet considerable demands of people. Progress has been achieved in the field of eradication of corruption, human rights protection and strengthening law and regulation for enhancing judiciary system. Concerning the last point, the MoJHR has established the inter-state department standing committee to prepare the bill for judiciary to be unified into one law, and the other bill concerning the establishment of Constitutional Court and its relationship to the Supreme Court. Concerning the eradication of corruption, the MDP decree No. 11/1998 concerning the state administrators free and clean from corruption, collusion and nepotism was introduced. In this year, the Act No.15/2002 concerning Anti Money Laundering was also introduced, based on which the Center for Financial Analysis Report on Transaction and Money Laundering Report has been established. The Government introduced another draft bill regarding Anti Terrorism that is still under consideration by the DPR.

The Acts and regulations newly adopted or amended since 1998 other than above include:
- Act No. 39/1999 concerning Human Rights;
- Act No. 5/1998 concerning ratification of Convention against Torture and other cruel, inhuman or degrading treatment or punishment;
- Act No. 9/1998 concerning freedom of public expression; and

- President Decree No.181/1998 concerning National Commission on violence against women.

< Q & A >

Q: Have all of those proposals listed in the paper been submitted as bills and adopted by the Parliament?
A: No. Those already approved are only some of them, for example, Human Rights Court 26/2000, and Money Laundering Act 16/2002.

Q: Could I suppose that “the harmonization of law” as a role of the Ministry of Justice means the checking of the draft bills prepared by other Ministries?
A: Yes.
Q: But according to Mr. Wahid’s presentation, there seem to be still some conflicting legislation. What are the reasons for that? Does it mean that the Ministry did not review the draft bills at that time?
A: It does not necessarily mean so, but such situation can arise after some years since adoption. Usually, Director General is responsible of holding meeting for this harmonization process. But there is also alternative solution. If some revision is needed in the draft prepared by other Ministry, the Director General can send legal opinion to relevant ministers so that they can harmonize the draft bill to reach comprehensive consistency.

Q: Concerning the administration of lower court system, it is already three years since the proposal was made for the unified system. Has there been any progress for it in this three years?
A: Yes. The Cabinet established the Committee to unify the system. But they are very big duties. Efforts are being made little by little. There is also the undertaking to unify the education of lawyers.

Q: In such case, where will the trainees currently under the MOJ go?
A: The establishment of some separate institutions is now under consideration.
A: Securing the independence of judges is one of the important strategies for reform. The Committee is now considering the transfer of the authority in management of judges from MOJ to Supreme Court, but there has not been so much debate yet.
A: One of the reasons of this slow development might have something to do with the word and meaning of the independence of judiciary: whether the Independence concerns the judicial power or each court.
A: Management of Court personnel is still under the authority of MOJ. However, constitutional amendment intends to separate Courts from MOJ and transfer all authorities under the Supreme Court.

Q: Concerning the separate Constitutional Court, what are the issue at debate and the difference of opinion?
A: Act 14/1990 provides the Supreme Court with authority in financial, organizational and organizational matters, and Act 35/1999 provides that all of the authority shall be under the Supreme Court. So the status of the Constitutional Court is unclear.

Q: Is MOJ for or against the idea of the separate Constitutional Court?
A: The issue is rather on the authority of the Constitutional Court, especially the idea of judicial review.

A: The reasoning for the establishment of constitutional court is to separate judicial issues and political issues, such as dissolution of the political party and election.

Q: So the current debate on the Constitutional Court follows the idea in the Continental law, doesn't it?
A: Yes.
Q: If the basis is the civil law system, it would be natural to separate the court for judicial review which is a quite different role from other courts.
A: The problem is that "Mahkamah Konstitutie", the word that mean the constitutional judgment, also means the Constitutional Court. But currently, the Supreme Court authority to review law is limited to the laws below Act. The supporting reason for the unification is to avoid complex situation possibly caused by the introduction of double review system.

Q: Then why have you adopted the amendment for the constitutional court though there had not enough agreement on this matter?
A: This bill was introduced and approved in response to the strong desire from citizens for the transparency of application of law and the accessibility to recourse to amend the law.
A: But it seems clear that we should have a separate court if one understand correctly from the wording of provision that says "Judicial power will be exercised by the Supreme Court, other court, and a constitutional court".

Q: What happens if the other Ministry ignores the legal opinion of MOJ concerning a bill?
A: MOJ can try to convey their opinion through correspondence. And the draft needs to be approved by standing Committee in order to be submitted as a bill. So theoretically there shall not be any conflicting provisions.

Q: Are there any agency or division that can review the local legislation?
A: No. These kinds of review are only done for bills at national level.

(End)

資料３－２

インドネシアの法曹養成制度，研修制度とその課程

日時：平成14年７月10日午後２時～午後５時
場所：法総研国際協力部
発表：ウィルダン最高裁判所教育訓練センター長
　　ユスフ最高検察庁教育部長
記録：神戸大学大学院生　岩谷暢子

Education of Judges and Prosecutors in Indonesia

1. Education of Judges in Indonesia (by Mr. Wildan)
(1) Introduction
(2) Education of new Judges
(3) Education of professional Judges
(4) Conclusion
2. Education of Public Prosecutors in Indonesia (by Mr. Yusuf)
(1) Introduction
(2) The Qualification of the Public Prosecutors
(3) The Training system of the Public Prosecutors
(4) Current problems and suggestions
(5) The reform movement if this field

1. Education of Judges in Indonesia (by Mr. Wildan)

(1) Introduction

There are currently around 5,500 judges in Indonesia. In this presentation, I wish to provide the rough picture of training system for judges in Indonesia.

The Judicial system in Indonesia is based on the civil law system with some additional influence from Islamic law and customary law (Adat Law). Like all civil law system countries that recognize a dual jurisdiction of General or Ordinary Courts and administrative court, Indonesia also distinguishes two courts. In the current system in Indonesia, four types of court are recognized according to the Article 10 of the Basic Law of the Judicial Power (Law No. 14/1970). They are General Courts, Islamic Religious Affairs Courts, Military Courts, and Administrative Courts. Each type of courts has its own court of first instance and a court of appeal.

The General Courts and Administrative Courts belong to the Ministry of Justice and Human Rights, and the Islamic Religious Affairs Courts are supervised by the Ministry of Religious Affairs. The selection and training of the new judges are also supervised by each relevant department, in cooperation with the Supreme Court.

(2) Education of new Judges

Selection of candidates for New Judges

There are two categories of judges: career judges and non-career judges. The latter applies only to the Justices of the Supreme Court. So here, I will explain the training system for career judges.

To become a new judge, one should be highly knowledgeable and possess ability, spirit and integrity. The Ministry of Justice and Ministry of Religion provide candidates with special education to achieve these two qualities.

Those who are legal scholars aged between 25 and 35 and fulfill other requirements such as Indonesian citizenship, religious devotion and loyalty to Pancasila, as mentioned in the General Court Act (Law No.2/1986 and Law No.7/1989), can sit for the examination held by the Ministry of Justice annually. The successful candidates in this examination are admitted to the education at the Education and Training Center.

There are also opportunities for Court Clerks who have already obtained a degree of law to be admitted to this education. They need be below 45 years old, acquired permission from the Chief Judge of the concerned Court, possessing a good character and ability, and with the good evaluation in the list of employee's assessment. They also need to be physically and mentally healthy.

The educational period

The educational period is for six months. The curriculum consists of administrative matters, legal education including economic law, demographic law and environmental law, and code of conduct. After finishing the educational period and passing the final examination, the candidates are assigned to a first class District Court for two years, and deal with administrative and technical matters.

Assignment of District Courts Judges

The first instance courts in Indonesia are divided into two categories based on the number of cases handled and the number of judges: the first class courts and the second class courts. Candidates who have completed the educational period begin their career at the lowest rank (second class) District Courts. Those who reached the position of the Chief Judge of the First Instance Court will be promoted as judges of the Appeal Court, then the Chief Judge of the Appeal Court, and finally the Justice of the Supreme Court.

(3) The education of professional Judges

The Supreme Court Education and Training Center also provides professional judges with training in order to freshen and to improve their knowledge, especially in the developing fields of law. The training is aimed at the improvement of the skill of judges to support the maintenance of law and justice, the unification of the terminology and views, and improvement of the moral integrity and spirit.

The training is carried out based on the Basic Law for Public Functionaries (Law No.43/1999), the Supreme Court General Secretary Decree No. MA/Pansek/007/SK/IV/2002 on providing judicial technical training of judges and clerks of the court, and executing formation of the

above mentioned Decree.

The training takes around five days and is provided in each region. The curriculum includes economic law, banking, environmental law, human rights law, intellectual property law, Islamic law, code of conduct, judicial procedure and other issues. Although this schedule is already quite minimum, the number of judges who can receive training is only 500 each year out of 5,500. It means that it takes at least 11 years to provide one session of training to all judges. Please see the table on the last page of paper for the training schedules for year 2002. The training is to be provided at the 13 locations. This can show that the training for professional judges remain at a minimum level.

Beside these routine training conducted by the Supreme Court Education and Training Center, there is another type of training concerning technical case handling held by the Supreme Court in cooperation with other institutions for one week period. The focuses of those training are such as judicial skills, intellectual property rights, civil law, civil law procedure, administrative law, environmental law, etc. Some trainings are conducted abroad for around three months, hosted by the Government of Australia, the Government of France, and the Government of USA. After returning to Indonesia, the participants to those trainings are required to extend and disseminate their acquired knowledge to their colleagues.

The current situation of the cooperation of the Supreme Court Education and Training Center with other institutions is those with IMF, Australian Federal Court, The Asian Foundation, JICA, ICEL and UK.

(4) Conclusion

Although the training for judges remains very minimally today, it is definitely necessary to increase the frequency and expand the curriculum of these trainings. The increase of the budget is indispensable for this.

Also, in the current trend of rapidly developing international relations and globalization, the importance of the comparative study of various subjects of law cannot be overemphasized, especially of those concerning trade relations, environment law, and judicial procedure. The judges need to have practical knowledge of law in the neighboring countries both in the substance and procedure. This could be achieved step by step, for example, by exchanging legal materials between those countries, by exchanging training visits of judges, and then by cooperating together with those countries in comparative studies and training. Such cooperation in future should also include the issue of judicial training systems.

< Q & A >

Q: Your title is the head of the Education and Training Center, and the Appellate Court Judge at the same time. How could it be possible? What is the personnel organization of judges?
A: When a judge of the District Court is transferred to the Appeal Court, his status is an assistant judge. Similarly, when a judge of the Appellate Court is transferred to the Supreme Court, his status is an assistant judge who does not deal with case but serve other functions. My title is an Appellate Court Judge, and I serve as the head of the Center in that capacity.

Q: Is the training by the Center for all the judges?
A: Yes. The courses provided for judges of General Court of First Instance and Appellate Court are called training, and those provided for Justices of the Supreme Court are called refreshing.

Q: Currently the training for the candidates is provided in cooperation with the Ministry of Justice. However, who will train the candidate after 2004 when all the authority of court is transferred to the Supreme Court? Will the Center take care of candidates, too?
A: No, it is not likely to be so. Though the Center of the Supreme Court according to the Law No.35/1999 will be handling those training, it will still need the cooperation with other institutions and agencies. The Chief Justice of the Supreme Court has proposed expansion of budget and capacity of the Center, but it is not yet made into a bill.

2. Education of Public Prosecutors in Indonesia (by Mr. Yusuf)

(1) Introduction

The service of Public Prosecutors in Indonesia is carried out by the Attorney General Office. The Attorney General Office manages all matters related to the investigation, prosecution and the human resource management.

There are six Deputies of the Attorney General. They are: Deputy of Attorney General for Advancement; Deputy of Attorney General for General Criminal matters; Deputy of Attorney General for Specific Criminal matters; Deputy of Attorney General for Law Intelligence Affairs; Deputy of Attorney General for Civil and Administrative matters; and Deputy of Attorney General for Supervision. Deputy of Attorney General for Advancement is in charge of the recruitment of personnel. Those who met the requirement and passed the test will be granted as the new officials of the Attorney General Office.

(2) The Qualification of the Public Prosecutors

The Education and Training Center of the Attorney General Office conducts the training for new personnel for two weeks. During these two weeks, new personnel are trained in managerial matters in the Attorney General Office, including the personnel management, case management and other technical management. When they finish this period, they will be posted at offices all over the Indonesia, still as new personnel.

The requirements to be fulfilled by new personnel who wish to be granted as a prosecutor are as follows:
- Graduated from the faculty of law;
- Have good health and more than 160 cm height;
- Free from any administrative sanction nor criminal sanction;
- Have been granted as an official of the Attorney General Office based on the selective competition;
- Have at least two years experience as the official of the Attorney General Office; and
- Finished the training for a candidate prosecutor for four months.

If they have fulfilled those requirements, they will be appointed as a prosecutor by the Attorney General.

(3) The Training system of the Public Prosecutors

The Education and Training Center of the Attorney General Office is a center for education, learning and training activities for prosecutors in order to improve the professionalism, personal integrity and the discipline. It provides the Qualification level course training (managerial training) and Technical training. The Qualification level course training includes general administration, first level training for administrative and staff leaders (for Chief of District Attorneys) and mid level training for administrative and staff leaders (for Chief of High Attorneys). The Technical Training includes training for the candidate prosecutors (for four months), basic judicial intelligence training, advanced judicial intelligence training, training on general crimes, training on special crimes (corruption and human rights violations: those crimes for which the special procedure could be applied in accordance with the Act No. 8/1981, i.e., the procedure for which the territorial principle doesn't apply), civil and administrative legal action training, and intellectual property rights training.

Most of the lecturers of this center are experienced former prosecutors, but there are also professors, senior prosecutors and other experts from various department of the Ministry.

The curriculum of the Center is adjusted as necessary to the demand of the situation of crimes. Currently, there are four kinds of principle matters: basic matters concerning the morality, code of conduct and discipline; technical matters (such as those concerning corruption, human rights, information gathering and asset tracing), contemporary matters (such as those concerning new legislation on money-laundering), and supplementary matters.

(4) Current problems and suggestions

The prosecutors are reluctant to follow the technical training, since they do not think that they get positive effects from it, while they have to leave family to participate to the training. Most of the prosecutors have assumption that it is more beneficial to conduct case settlement than to follow training, since they can get more ' relations' and other benefits by conducting case settlement.

They are also reluctant to be definitive (permanent) lecturer, since the salary of lecturers is much less than that of the prosecutors.

In addition, the Education and Training Center lacks facilities such as model court room, reference books, computers, etc.

The quality of the participants, mostly new personnel from infamous universities, is not very good, and it is quite difficult to teach them.

Therefore, it is definitely necessary to improve facilities, to increase the salary of the lecturer and to enhance their quality. At the same time, the selection and posting of the prosecutors should be based on the professionalism, personal integrity and discipline, and not on the personal approach and other unfair measurements.

(5) The reform movement in this field

Currently, several policies have been undertaken under the Attorney General and the Deputy Attorney General for Advancement, in order to improve the quality and performance of prosecutors through the Education and Training Center. Among them are:

- to cooperate with donor agencies such as European Union, ADB, and hopefully JICA to improve facilities of the Center;
- to cooperate with qualified Indonesian universities as well as foreign universities, and hopefully the

Government of Japan and JICA, to enhance the quality of training. Currently the Center has concluded agreement with New Zealand to receive participants from Indonesia, and three participants have been sent so far.
- to encourage professional prosecutors to teach at the Center; and
- to reflect properly the result of training of each participants in the posting and promotion.

< Q & A >

Q: Does the "definitive lecturer" mean full time lecturer?
A: Yes.

Q: You mentioned that the salary of the lecturer is much less than that of Prosecutor. Is the situation same in the case of Judges and other civil servants?
A: Probably yes. Most of the lecturers apply to such post when they retire from the high-ranking officers. Although the salary of Prosecutors is based on the salary as civil servants and the other as functional servant (= "functional incentive"), the salary of the lecturer is based only on the former, and does not include the latter.

Q: Who prepare the training curriculum for candidate judges? Is that Ministry of Justice?
A: It is prepared by the Supreme Court (Head of the Center) under the instruction of Minister of Justice.
Comment (Japanese side): The education of lawyers, judges and prosecutors are conducted completely separately in Indonesia, which is very different from the system in Japan.

Q: What does judicial intelligence mean?
A: It is the strategy to overcome difficult condition in the investigation when the suspect is related to Military or the ruling party. The training focuses on the conduct of preliminary secret investigation and management of cases.

Q: What kinds of programmes are supported by the funds and international organizations?
A: In general, there are two types of such cooperation: invitation to the seminar course and dispatch of experts. Concerning EU, as it regards corruption to be critical problem in Indonesia, they plan to provide with training on asset-tracing and other issues (agreement is not signed yet). The Government of France has invited one participant to France to obtain a Master degree, and one more participant will be sent this year. The Australian Government invites several participants to attend 2-3 months short courses every year, under the ISDP project organized by Cabinet Secretary. There is also cooperation beginning between JICA and National Development agency. New Zealand has provided with scholarship for one Master degree and one Ph. D. And finally, Singapore is inviting participants to 3 days － 2 weeks seminar.
A: Concerning courts and judges, in 2001 and 2002, 3 seminars on the Supreme Courts and one on the Judicial Commission have been provided under IMF. Australia invited 40 judges to the seminar organized by Federal Court, and UK invited Supreme Court Justices in seminar in December 2001. Asian Foundation organized training on court management in May 2002, and JICA also invited us to seminar in February 2001. As of March 2002, several judges are sent to US and Australia.

Q(Indonesian side): As an official of the Department of Advancement, I wish to ask for cooperation

concerning the training on Money Laundering.
A(Japanese side): Honestly speaking, there is less experience in this field in Japan. There have been only three or four cases indicted. As far as I observe, money laundering has first developed in US and European countries when drug users were prevailing. Since it was very difficult to trace the money obtained from such drug selling, the authorities of these countries changed methods of investigation to search money flow where there are drugs concerned.
To establish the effective system, it is necessary to set up wide and excellent monetary reporting system in banking, as well as to disseminate the perception that transaction of big amount of money in cash is very strange and dubious.

Q: Do expert people who participated in those trainings become lecturers or are they just for their career development?
A: For the moment, the purpose of the participants is to improve individual capacity.

Q: But what many donors intend to provide seems to be “the training of trainers”.
A: Though that would be desirable, it is not yet possible to set up such systems for the financial reason.

Q: Yet, there may be some ways to do so without much financial burdens through the ad hoc lecturers and publication.
A: But not every participant is willing to do so, since they are more interested in practice than in training and education.
A: As far as Bar Association is concerned, participants to such programmes are expected to bring back acquired knowledge and share them in the Bar Association.
A: Though it is not official obligation, I will share the acquired knowledge in the method of my choice.
A: I myself am expected by the Chief Judge to bring back some inputs for legal reform movement in Indonesia.
A: As a judge, I see the training and its implementation very important, since Indonesia is now in the transitional period from civil law system into mixed system.

Q: Are there any foreign legal consultants dispatched by the foreign countries and international organizations in your office?
A: Not in the Supreme Court.
A: In the Ministry of Justice, IPR section and economy section have several foreign consultants.
A: In the Attorney General Office, experts from PWC, Australia, and Canada are dispatched to deal with Audit governance and to conduct nationwide research together with the Prosecutors in Legal Bureau.

Q: Is there any reform for fairer promotion system? What are the obstacles for that?
A: Yes. Deputy of Advancement has promised such reform, and there are some members in this delegation who come from bureau related to this reform.

Q: Concerning the unified examination and training system, what would be your response to such possible proposal?
A: Personally, the common training center seems desirable but not realistic in terms of finance.

A: There once used be such idea by the Minister of Justice in the latter period of Soehart era, but it was not realized because of the lack of firm will among the top politicians. But situation might change if the Court takes initiatives for reform.
A: There are three obstacles for it: the current system of budget, the amount of original budget, and even smaller amount for training in the budget of Supreme Court. In current situation, it takes 12 years to provide all judges with training. But we are still making every effort to find way to establish common system for all lawyers, financed by the other resources than national budget.
A: Members of the standing committee are proposing revision of the Supreme Court Act in order to establish common examination for lawyers. We need legal reason to make this idea reliable and supported, and your advice on this will be highly appreciated.
Comment (Japanese side): You will have opportunity to ask such questions in the visit to the LRTI in Tokyo.

(End)

資料３－３

インドネシアの司法制度，司法行政とその課題

日時：平成14年７月11日午後２時～午後５時
場所：法総研国際協力部
発表：リディア　ササンド裁判官（シビノン地方裁判所）
記録：神戸大学大学院生　岩谷暢子

Judicial System and Administration in Indonesia

1. The Outline of the Judicial System in Indonesia
2. Appointment of Judges
3. Conciliation procedure before trial
4. The administration system
5. Conclusion

1. The Outline of the Judicial System in Indonesia

The Indonesian judicial system has its basis in Article 24 of the 1945 Constitution, which states that judicial power shall be vested with the Supreme Court and other judicial organs established by the Act. The judicial system is further elaborated in the Act No. 14/1970. According to it, the judicial system is divided into four jurisdictions as follows:
1. Court of general jurisdiction, as regulated by the Act No.2/1986;
2. The state administrative court jurisdiction, as regulated by the Act No. 5/1986;
3. The Military Court jurisdiction, as regulated by the old act; and
4. The Religious court jurisdiction, as regulated by the Act No. 7/1989.

The Commercial Courts and Human Rights Court are still under the jurisdiction of general court for the moment. The Commercial Courts were established by the State Regulation for substitution Act No. 1/1998 supplemented by the Act No.4/1999, and set up in certain District Courts in Central Jakarta, Medan, Semarang, Surabaya and Ujung Pandang. The Human Rights Court was established by Act No.26/2000 and set up only in Central Jakarta.

The District Courts (Kabupaten) are set up in every main town of the region and every capital city of the 26 provinces. There are two kinds of District Court, the first level and the second level, depending on the number of cases and judges. Most of District Courts are second level, while the District Courts in Jakarta, Medan and Jog Jakarta are the first level. The Appeal Courts are in every capital city of the provinces. The Supreme Court is located in Jakarta, the capital city of the Republic of Indonesia. The Supreme Court is the highest court for all jurisdictions listed above, and its organization is regulated by Act No. 14/1985. Judges are assigned to different courts every 3-5 years on rotation basis. The youngest judges begin their career at the second level District Courts.

2. Appointment of Judges

The candidates for career judges who have finished the training are assigned at District Courts as court clerks for four years, and tested again for several subjects including an ethic code. After passing this test, they are registered as judges and assigned at District Courts. Women judges enjoy the special treatments. For example, they can refuse the rotation transfer. Judges are assigned to different courts every 3 −4 years on rotation, and those who have experience for more than 10 years are eligible for promotion as Vice Chief Judges of District Court.

Judges of Appeal Courts are appointed from the senior judges of District Courts who have been working as a judge for more than 15 years or have experience as Chief Judge or Vice Chief Judge for 5 years.

Every judge has duties to receive, to examine and to decide cases assigned to them, and cannot refuse cases for the reason of absence or unclearness of law.

Judges of District Courts in Indonesia handle civil and criminal cases based on civil and criminal code (KUHP: the material written law), Procedural Rules (KUHAP) and special Acts (such as special codes for corruption, for secure transaction and for limited liability companies, for example). When they cannot find applicable provision in the written law, they shall seek it in the customary principles in community law, though the freedom of judges in this respect is not as large as those in the common law system. Civil cases include litigation and application, and criminal cases include ordinary criminal cases, concise criminal cases, simple criminal cases and traffic cases.

Juvenile judges are appointed from general judges, and examine juvenile cases.

Commercial judges are appointed from general judges and examine bankruptcy cases and intellectual property cases (Patent and Trademarks).

Human Rights judges are also appointed from general judges, and examine genocide and torture cases.

Chief Judges of District Courts are responsible for administration of the court, allocation of the cases to judges, and supervision of the performance of judges. Vice Chief Judges help Chief Judges on those matters and allocate application cases and simple criminal cases to judges.

3. Conciliation procedure before trial

The Conciliation procedure before trial is called “dading”, and HIR articles 115 − 245 stipulate the function of judges in the conciliation process as peace makers having neutral position. The dading mechanism has several advantages in terms of validity of the conciliation reached and the shortening of the dispute settlement process.

4. The administration system

The registrars are responsible for the administration of the court, appointment of registrar clerks for recording of the trials, and appointment of bailiffs for execution of judgment. Their

operation is still done manually, since most of the courts in Indonesia do not have computers and other facilities due to the lack of budget. The Supreme Court and the Ministry of Justice has issued a three volumes practice manuals for the judicial officers in order to help shortening the period necessary for a trial. Those manuals are still under study for further improvement.

5. Conclusion

It is necessary to increase the training and seminar for judges in order to enrich the knowledge on various norms in written law and customary law, as well as in order to help the appointment of excellent judges on selective basis. It is also necessary for Indonesian Judges to learn more from other countries'system and experience, since the judicial system of Indonesia is now under the transformation from civil law system into a mixed system.

The administration of court must be supported by computerization in order to catch up with the increasing number of cases.

< Q & A >

Q: Concerning the appeal system, is District court always the court of first instance?
A: Yes.
Q: What are the conditions necessary for parties to appeal? What are they when appealing to the Supreme Court?
A: Anyone can appeal to a higher court if they are not satisfied with the judgment for any reason. Although there are some special conditions for the appeal to the Supreme Court, parties normally appeal without knowing them.
A: There are three conditions for appeal to the Supreme Court: when there was inappropriate interpretation of law; when there was abuse of power; and when the ruling was not in accordance with the criminal procedure.

Q: Will the appeal concerning the fact-finding of the High Court be also admissible in the Supreme Court?
A: If there is any new fact, it is possible to appeal to the Supreme Court within 14 days after the judgment for civil cases and within 7 days for criminal cases.
A: From the side of lawyer, the reasons for appeal would be the omission by judge of evaluation of the material evidence submitted, or non-reference of the provisions of law requested to apply.

Q: Would "review after cassation" be possible in the case of erroneous judgement? Or would it be limited only to the presence of new evidence?
A: The conditions for "review after cassation" are limited to only two: the presence of new evidence and the misconduct of judges.

Q: Going back to the issue of the condition for appeal, it seems that the reasoning for appeal is limited to the misapplication of law and that the fact-finding issues are not included, as far as I see from the Article 30 of the Act 14/1985 concerning Court of Cassation.
A: Yes, that is correct. The Supreme Court deals only with the matters concerning the application of law. Fact-finding and new evidence are matters for review.

Q: If the party find new evidence after the High Court decision but later than 14 days, could he request cassation or review?
A: For criminal cases, if new evidence is found within 14 days after the judgment, the party can request cassation, while if it is later than 14 days, they have to request review. This period is only 7 days for civil cases.
A: In Japan, the party cannot request review any more after the term of 14 day has expired. For that reason, the party must make every effort to find new evidences within 14 days.

Q: Wouldn't such a way lead to the increase of number of cases?
A: Yes, but the recourse for review is being kept in Indonesia because there are some case where the new evidence to prove defendant's innocence are found after 10 years has passed since judgment. Concerning civil cases, there are many parties who appear the court without neither proper legal counsel nor legal knowledge even if they are required to do so. The way to request review is kept for those people to be able to enjoy proper application of law.

Q: Are there many cases of review?
A: 20 % of cases dealt with in the Supreme Court are review cases.
A: Most of civil cases are appealed while the appeal rate for criminal cases is only 10 %.

Q: If a defendant who was originally found not guilty at the court of first instance and found guilty at the High Court based on new evidence submitted by Prosecutor, could he request review?
A: Yes, but according to Act No. 8/1981, the right to request review belong only to the defendant and its family. There have been only two instances admitted for review on the request of the public prosecutors, both based on the misapplication of law.
A: There is continuous argument concerning the right of the public prosecutors to request review.

Q: Concerning Appointment of Justice of the Supreme Court, what kind of people have been appointed outside the career judges?
A: They are retired judges, practitioners, and academic scholars with special qualification.
Q: How many are they?
A: There are 9 Justices out of 38.

Q: What is "proper test"?
A: It is a comprehensive test to see everything, such as personality, moral, performance and qualification as Supreme Court Justices. They have to attend the meeting of House of Representatives.
Comment (Japanese side): According to the news, it is reported that this test is to see if they have clear vision for reformation, as well as their qualifications such as integrity, no corruption, simple life, law degree, legal vision, mental and physical health, and experiences (at least for 15 years).

Q: And what does "psycho test" mean?
A: It is exactly a psychology test, consisting of for example drawing picture and word association games.
A: The purpose of this test is to discover some hidden aggressiveness and cruelty.
Q: Are there any candidates who fail in that test?
A: Though I do not know the specific number of the candidates who fail in this test, the total number

of successful candidates throughout this testing process is only around 42 out of 4000.

Q: In Japan, cases are assigned to judges automatically. But, you mention that case assignment is decided by Chief Judges. Do you see problems with it? And if so, is this problem included as agenda for Reform programme?
A: The largest reason for this is that there is room for discretion and preference by Chief Judges in assignment since most of administration is still done manually.
Q: And are there any particular problems in such case assignment practice?
A: Yes. For example, the selection of judges for new courts has been conducted not according to the specialty of each judge such as IPR and human rights, but according to the preference of Chief Judges.

Q: What does it mean that most of the allocation of cases are based on “like or dislike”?
A: Typical example is that a judge who is very intimate with Chief Judge can be assigned many cases while others do not.
Comment (Japanese side): In Japan, cases are assigned automatically in the order of receipt, and there is no room for discretion except for special cases to be assigned to special divisions upon the decision of Conference of Judges.

Q: What kind of training do the commercial court judges receive?
A: They will be trained on bankruptcy and intellectual property law for 3 weeks under the Ministry of Justice, 2 weeks under the Supreme Court, and 1 week to 10 days under IMF, before assigned to the commercial courts.
A: They will deal not with all the matters concerning commercial law, but only with the bankruptcy and intellectual property cases.

Q: The selection of Supreme Court Justices used to be the source of political conflicts in the past. How do you see the selection of Supreme Court Justices after the Soeharto era?
A: For me, it does not matter who may be the Justices, as long as they are proper and take case about us.
A: The scramble for power is today anywhere and not limited to the Judiciary. This might be one of the steps toward the democratic state. At the same time, the Judiciary is becoming more and more independent. There is an outstanding case in which the Supreme Court rejected the legality of dissolution order of the People’s National Assembly issued by the President Wahid at that time, when the People’s National Assembly tried to recall him. I assess this decision to be very remarkable, and I am optimistic about the future of the Judiciary in Indonesia.

Q: In Japanese court, there are special divisions established to deal with the cases of malpractice of doctors and construction. Is there also specialty of judges in these fields in Indonesia?
A: There are special courts such as commercial courts and human rights court. The malpractice of doctors is dealt with as a criminal case, and not as separate specialty.
A: Establishment of new court requires the Act. There is in fact some argument to establish court for medical cases, but it is not yet substantiated.

Q: How are the experiences of those special judges treated? Will they be accumulated as they follow promotion according to such special subject, or will they be simply posted again at the general courts

in rural area?
A: After they are given special training as commercial judges, they will deal only with bankruptcy cases and intellectual property cases, and rotate only those courts with commercial courts for the present. This is due to the limited number of commercial judges, and not mandatory rule.

Q: Concerning administrative court judges, I understand that their promotion take place only within the administrative courts system. Then, will he have to deal with civil and criminal cases when he becomes a Supreme Court Justice though his specialty is in administrative cases?
A: Yes, since a premise is that they can deal with any cases even if they are specialized.

Q: Is there any rotation between these two courts?
A: No.

Q: Since the commercial cases are appealed directly to the Supreme Court, wouldn't it be obstacle for commercial judges to become the Supreme Court Justices, unless they do not change the specialty?
A: Although there has not been any commercial judge who became the Supreme Court Justice, there is no such limitation either.
A: Some judges are selected to be trained as commercial judges. Those judges have to be young and relatively at the low ranking, and already determined to be Chief Justice or Vice Chief Justice of the District Courts with commercial courts at the next promotion. Though the promotional system of commercial judges is slightly different from that of other judges, there are no obstacles for them to become the Supreme Court Justices.
A: The point raised by Mr. Yamashita is very accurate, and it is now aimed that each Supreme Court Justice acquires each own specialty. It is true that the commercial cases are appealed directly to the Supreme Court, but we are trying to ensure that this situation do not become obstacle for them to become the Supreme Court Justices.

(End)

資料３－４

インドネシアの民事訴訟手続

日時：平成14年７月15日午後２時～午後５時
場所：法総研国際協力部
発表：アータ　テレシア裁判官
記録：神戸大学大学院生　岩谷暢子

The Civil Procedure in Indonesia

1. Principles
2. The Claims
3. Trial
4. Court Decision
5. The Appellate level
6. The Cassation level
7. Review
8. Q & A

1. Principles

The basic statutes for civil procedure in Indonesia are HIR (Het Herziene Indonesisch Reglement) which applies to Javanese and Madurese and RBg (Rechtreglement Biotengewesten) which applies to others. There are also other special laws providing procedure for certain types of cases. These laws are:

- Law No.1/1974 on Marriage;
- Law No. 14/1970 on Main Provision of the Judicial Power, as amended by Law No. 35/1999;
- Law No. 14/1985 on the Supreme Court;
- Law No. 2/1986 on General Court;
- Law No. 5/1986 on the State Administrative Judicial System;
- Law No. 7/1989 on Religious Court;
- Law No. 4/1999 on Commercial Court;
- Law on Intellectual Property Rights; and
- Circular letters of the Supreme Court.

All courts are composed by at least three judges unless determined otherwise by law, and one judge presides the session as a chairman. The session is assisted by the registrar who is in charge of making reports on the court proceedings. The court proceedings shall be open to public unless determined otherwise by law, and failure to do so shall result in the nullity of validity of the judgment. The deliberation inside the panel shall be secret.

A judge or a registrar must withdraw from the session if he/she has direct or indirect interest

in the case concerned or when he/she has family relations or is related by marriage to the third degree with the plaintiff, the defendant or the legal counselor, even though already divorced.

2. The Claim

A person or legal entity whose interest is damaged by others may file to the competent court a written claim containing a request to declare certain action of the others unlawful, with or without a claim for compensation (Claim case). Indonesian civil law also provides an application by one or more than one person containing a request for personal claim concerning birth certificate, adoption, civil registration, etc. (Application case). Application cases do not contain any dispute or infringement of law. The same procedure applies to both cases.

Competencies

The claim shall be filed to the competent court. In civil procedure, there are two kinds of competencies: absolute competence and relative competence.

- Absolute Competence

The Law provides absolute competence of each court to be determined by the subject matter of the case. For example, Law No. 5/1986 provides that the administrative disputes are under the authority of the Administrative Court.

- Relative Competence

Relative competence is the competence of district courts based on the territorial principle of the defendant domiciles. The exceptions to this are as follows:

a. If the defendant's domicile is unknown, the claim may be filed to the court where the plaintiff domiciles.

b. If the number of the defendant is more than one, the claim may be filed to the court where any of the defendant domiciles, on the choice by the plaintiff.

c. If either the plaintiff or the defendant domicile abroad, the claim shall be filed to the District Court of Central Jakarta.

d. If the claim's subject is concerning immobile property, it may be filed to the court wherein the immobile property is located.

e. If the competent court is determined among the parties concerned, the claim may be filed to the court determined.

Content of the Claim

The Claim must be in written form and contain the following:

1. The plaintiff's name, address, occupation or his legal counsel;
2. The defendant's name, domicile, occupation;
3. Distinct description of the substance on the matter of fact and on the legal ground;
4. Request for action by the court;
5. A legal letter of attorney, if a claim is made and signed by his legal counsel.

Judges must adjudicate only the matters demanded in the claim, and are prohibited to adjudicate on more than what was demanded.

To submit a claim the plaintiff shall pay the court fee in advance, whose amount shall be fixed by the Court Clerk. Then the claim will be registered in Case Register by the Court Clerk.

The plaintiff may request to the Chief Judge of the court for a “free of charge process” by submitting a statement of property issued by the head of village of the plaintiff’s residence. This statement shall prove that the plaintiff is truly unable to pay the court fee. The court ruling to grant the plaintiff for a free of charge process shall be also applicable in the appellate and cassation level.

3. Trial

Decision in the absence of the defendant

The claim may be declared forfeited if the plaintiff or his legal counsel failed to appear in court on the first and second session specified in summon though summons were properly issued, without submitting any legally accepted reasons. When the claim is declared forfeited, the letter of verdict will be sent to the plaintiff, and his court fee is not to be returned. Since the forfeiture does not concern the substance, the said plaintiff is entitled to submit his claim again after paying the court fee in advance.

If the defendant or his legal counsel failed to be present in court twice successively, or did not respond to the claim without any legally accepted reasons though he was properly summoned each time, or if the defendant was present at the first session but failed to be present in the next session though he was properly summoned, without legally accepted reasons, the court proceeds to examine the case further by ordinary procedure without the defendant’ presence. The claim will be granted unless the claim is proven to be legally groundless. If the defendant is absent but has sent a letter of objection concerning the absolute competence or the relative competence of the court, the defendant shall be considered present. Unless the judge admit the objection and decide otherwise, the case will be further examined on the substance of dispute.

Other objection not related to the competence of the court shall only be considered together with the substance of dispute. If the absent defendant thinks that his interest will be damaged by the execution of the decision of the court, he may file a letter of denial against the decision to the court which has decided the case in the first instance, within 14 days after the decision has been received. The denial of the defendant will abrogate the execution of the court decision unless the said court decision declares that the decision shall be executed regardless of the defendant’s denial or appeal.

Agreement of Conciliation/Compromise

If both parties are present in court, the judge has a duty to make effort to promote conciliation between both parties during the process. When this effort proves successful, an agreement of conciliation will be drawn up. The agreement shall be pronounced in a court open to public and will be given the same effect as the decision by law. The effect of the agreement is final and binding, and therefore, the case cannot be appealed to the higher court. The decision in this agreement will be executed even if one of the parties has agreed reluctantly.

In case of divorce, however, if they cannot reach any agreement, parties can withdraw and no agreement of conciliation will be drawn up. In addition, the case concerning divorce will be examined in closed doors.

Evidence

Civil procedure recognizes the following material evidence:

1. Documents or writing;

2. The testimony of a witness;
3. Symptom;
4. Confession of parties; and
5. Oath.

In practice, there is another evidence to be used by judge, i.e. the judge's knowledge. Judge's knowledge is matters the judge in court believes to be truth. Upon the request of both or either parties, the presiding judge may assign one or some experts. An expert at trial shall give a written or oral testimony under oath or affirmation to testify the truth in accordance with his best knowledge.

Preliminary Seizure (Injunctive measure)

At the written request by the plaintiff or as a part of his claim, judge may order to seize the disputed object on condition that:
a. The plaintiff may vanish his movable and/or immovable properties, or
b. The defendant' immovable property is under the plaintiff's authority, or
c. In divorce lawsuit, there is a necessity to prevent a wife as a plaintiff from losing the properties of her husband as a defendant.

The seizure is conducted to preserve the interest of the plaintiff, which may be damaged when his/her claim is not granted. If the claim is granted, the seizure therefore must be declared lawful and valid. If the claim is denied, the seizure must be declared void and null. The seizure conducted by registrar must be stated on a minutes and must be apprised to the defendant.

Court Decision

A court decision shall contain:
a. Heading of the decision stating "For the sake of Justice based on the belief in God Almighty".
b. Name, occupation, citizenship, address or residence of the disputing parties.
c. A clear summary of the claim and the defendant's reply.
d. Consideration and evaluation of each piece of evidence and all matters occurred in court during the hearing.
e. Legal grounds for the decisions.
f. Grounds for the decision relating to the court fee.
g. The day and date of the decision, name of the deciding judges, name of the registrar and the statement of the absence or presence of the parties.

The decision is void and null if it fails to contain any one of them. Any judgment of the courts shall be signed by the Chief Judge, the Judges who tried the case and the registrar who attended the session.

5. The Appellate level

The plaintiff or the defendant may file an appeal against the decision of the court in the first instance to the court of appeals in the same jurisdiction as the court of the first instance. A request for appeal shall be filed in written form by the petitioner or by their representative authorized for that purpose, within 14 days after the court decision has been announced or legally notified to him/her.

A request for appeal submitted later than 14 days shall still be received and registered by the Court Clerk with notification that the time limit for appeal has expired.

The petitioner for appeal may submit the memorandum of appeals containing the reason for it. The request for appeal and the memorandum of appeal shall be examined by the Court of Appeal judges. They examine whether the trial proceedings have been conducted in accordance with the procedural law and whether the decision is appropriate and equitable. Based on this examination, the court of appeal shall affirm, annul or amend the decision of the court of first instance

Where the Court of Appeal considers that the sessions of the court of first instance are incomplete, the Court of Appeal may hold the additional sessions or order the court of first instance to hold the additional sessions. Where the Court of Appeal does not agree with the decision of the court of first instance declaring incompetence to adjudicate the claim, the Court of Appeal may annul the decision and order the court of first instance to proceed with the trial.

6. The Cassation level

A party or his/her representative who is especially authorized by them may file a petition for cassation to the Supreme Court against the Court of Appeal decision within 14 days after the decision of the court of appeal or the last level of all sphere of jurisdiction has been announced to the petitioner. In submission of petition for cassation, the petitioner have to deliver a memorandum of cassation containing the reasons for it within the time of 14 days after the petition is noted in the registrar's book. Against the memorandum of cassation, the defendant in cassation may submit a counter-memorandum of cassation within 14 days. The examination of cassation shall be conducted based on letters, and only when considered necessary, the Supreme Court shall hear the parties or witnesses(very rare), or order the court at the first or appellate level that decided the case to do so.

The Supreme Court shall overrule decisions from all courts on the grounds that the court:
a. did not have jurisdiction or transgressed the limits of its jurisdiction:
b. mistakenly applied or evaded the law in effect:
c. neglected to file the conditions required by law and such failure threatens to revoke the decision.

7. The Review

A petition for review of a decision that has already attained permanent legal force can be brought only based on the following reasons:
(a) when the decision is based on a falsehood or deceitful tactics by an opposing party that become known after the case is decided, or the decision is delivered by judge involved in a criminal case;
(b) when evidentiary writings of a decisive character that could not be found at the time the case was examined are found after the case is decided;
(c) when the decision was made over the matters that was not demanded in the claim;
(d) when a part of the demand has not been decided without specifying the reasons for it;
(e) when same court or by courts of the same level rendered decisions to the similar parties on a common problem based on the same rationale but contradict each other;
(f) when judge made an error or an obvious mistake in decision.

A petition for review must be brought by the parties themselves, by their heirs or by their representatives who are specially authorized for it within 180 days. In the event the Supreme Court grants a petition for review, the Supreme Court shall revoke the decision for which the review was requested and thereafter examine and decide the case itself. The Supreme Court shall reject a petition for review if it opines that the petition lacks enough reasons.

8. Q & A

Q: In Japan, there is a Code of Civil Procedure which governs general procedure for civil cases. Is there any such generally applicable code for civil procedure in Indonesia? Or are procedures provided separately in various Laws depending on the jurisdiction of courts?
A: The only basic rules are HIR/RBg, and several Acts provides the procedures applicable to the specific court. We do not yet have a unified code. The Ministry of Justice recently started to consider the unification of code, but we must wait.

Q: Does the Ministry of Justice work on the unification of codes as new Code of Civil Procedure?
A: Yes. Actually, there has been a draft of Civil Procedure for general court which was proposed in June 1967, but it is not yet promulgated already for 35 years.
A: HIR/RBg are a sort of basic codes based on Dutch law. The place of these two statutes is higher than Laws concerning procedure for each court.

Q: Does Circular Letter of the Supreme Court have binding effect as a law? Is there any English translation?
A: Yes, but there is no English version.

Q: Is HIR a Dutch Statute, and still valid?
A: Yes.
Q: Has it been amended?
A: No.

Q: Then, should one read HIR to understand civil procedure in General Court?
A: Yes, and one also have to read the Law No. 2/1986 concerning the General Court.

Q: What does Law No. 14/1970 on Main Provision of the Judicial Power stipulate?
A: This is about one-roof system of Judiciary under the Supreme Court. It will be completed in five years.

Q: Does each court have different procedure?
A: No, all the procedures are based on HIR, and several Acts provide certain special procedures for each court. For example, the Law No. 5/1986 on the State Administrative Judicial System provides fast procedures in the Administrative Court, and Law No. 7/1989 on Religious Court provides procedure concerning Muslims.
A: HIR and RBg are the primary source for civil procedure. At the same time, Laws concerning procedures in very specific cases have also been developed. Law No. 7/1989 on Religious Court stipulated specific procedure based on Islamic law, and Law No. 4/1999 on Commercial Court provides special procedure for Commercial Court.

Q: Is there any law concerning the execution of civil judgment?
A: Yes, they are also contained in HIR. There are also several letters concerning the implementation of HIR in this regards.

Q: Would there be any case over which more than two courts have jurisdiction?
A: Possible case is the one concerning the separation of property in divorce. If both parties are Muslims, the jurisdiction of divorce claim belongs to the Religious Court, including the separation of the property. But if there arises any dispute on it, the parties can submit the claim to the General Court.
A: HIR and RBg are still valid as the provisions for civil cases. Concerning the overlapping jurisdictions among the courts, there are provisions in Laws on the distribution of jurisdiction. In the above mentioned example, the parties are free to choose either court, but they need to be married in Islamic way in order to be entitled to bring case to the Religious Court.
A: Concerning the overlapping jurisdictions among the courts other than divorce case, in principle, one court must refuse the case when the other court has the absolute competence on that case.
A: The jurisdiction of divorce case depends on the methods of marriage. When a marriage is conducted under the Islamic law, the jurisdiction for that marriage belongs to the Religious Court, and when a marriage is a civil marriage, the jurisdiction will be under the Civil (General) Court.

Q: Are HIR and RBg “Civil Procedural Law” or “Dutch Law”?
A: They are valid as Civil Procedural Law.
Q: Are Acts mentioned at the beginning are supplement or amendment of the HIR?
A: No. Rather, they have relation of general law and special law.

Q: Are the kinds of evidence listed on p.6 stipulated in the HIR?
A: Yes, and Law 1/1974 also specify them.

Q: Are HIR and RBg in Dutch or translated in Indonesian?
A: Yes, they are translated into Indonesian. The substance of these two codes is almost same, except that the applicable areas are different.
A: It is true that these two codes are very old. But they have undergone several changes by deleting and abolishing unnecessary provisions. The deletion and abolishment of provisions are decided by the House of Representatives. HIR and RBg originally contained criminal procedure, too, but the part relating to the criminal procedure was abolished and new Law of the Criminal Procedure was enacted. On the other hand, we still use HIR and RBg because most of their provisions are still valid for civil procedure.

Q: What does “symptom” means?
A: The concept is quite close to the presumption. It is a mean to supplement material evidence and testimony when they are very weak or not available. For example, law stipulated that the court can presume parental relation when a child has been taken care of by A and B since his birth, even if there is no evidence to prove that A and B are the parents of that child.

Q: In Japan, the composition of court is a single judge in principle, except for very complicated case. Is collegiate basic in Indonesia?
A: Yes. In civil court, most of civil cases are dealt with by three judge court, and complicated cases or cases of heavy penalty are dealt with by the five judge court. The single judge only deals with

application cases (personal claims), some criminal cases, and juvenile cases.

Q: Do three judges compose the court even for small amount and simple case?
A: Yes. There are no criteria of the amount of claim. There are no small claims procedures nor summary court. We are very busy, therefore.

Q: Concerning the testimony of witness, can plaintiff and defendant testify as witnesses?
A: No, they are not available as witness. Witness must be other than them. Plaintiff and defendant need to bring their witness.

Q: Then, what happens if there are no one else who knows the truth other than plaintiff and defendant, and if they cannot make testimony?
A: Then the oath has its effect. Judges or defendant may ask plaintiff to make oath.
A: If such case involves injury, then, the party will have criminal proceedings first to determine the nature of the injury, where the victim can testify as witness. The parties can settle dispute on compensation based on the result of the criminal proceedings.

Q: Does it mean that criminal testimony is also available in the civil procedure?
A: No, it does not mean that the testimony in the criminal proceedings is directly available in civil process. But if the relevant testimony is referred in the judgment, the parties can claim compensation based on that part.

Q: Does the court examine evidence even when there is a confession?
A: The confession can have evidential effect if it is admitted in written reply of the defendant.

Q: What kind of error can be the reason for the review?
A: Fatal error which affect the interest of the party.
A: In principle, the court of first instance and Court of Appeal deal with both the fact and law, while the Supreme Court deals only with law. However, the issues concerning the fact are exceptionally received by the Supreme Court when new evidence was found and if the result would have been totally contrary with that evidence.
A: One example I know is the case concerning divorce and wife's claim for a part of the husband's salary as a civil servant. Though both court of first instance and court of appeal admitted most of the claim, wife appealed to the Supreme Court to obtain the full claim, and the Supreme Court decided similarly. However, it was found that the husband was no more the civil servant, and the request for review was admitted for the reason of judge's error.

Q: Are any error accepted as a reason? Is there any limitation to be a reason for review?
A: It can be any error, small or fatal.

Q: How often is the decision reversed in this regard?
A: There are not so many reversed decisions.

Q: When does the first day of 180 days begin in the case of review?
A: For (a), when the decision is finalized, and for (b), when the concerned evidence is discovered and certified. For (c) (e) and (f), the decision is announced, and for (d), when the decision is finalized.

Comment (Japanese side): Then the reasons of (c), (d) and (f) look like the third appeal, since such matter should have been apparent already at the time of judgment.

Q: But since the Supreme Court is a body that examines only law, it seems that the number of the cases to be appealed shall be already screened. Why are there so many cases registered in the Supreme Court?
A: This problem is mainly due to the absence of the criteria for appeal to the Supreme Court. Even very small claim is accepted. In one case the party appeals to claim more amount, and in other case the party lost appeal in order to delay the execution.
A: This is the problem with the Indonesian Judicial system, and one of the reasons is the absence of the strict requirement for the second appeal. The Supreme Court is trying to limit cases by screening them, but some argue that the appeal is rights of people, at the same time. At present, the efforts are being made by regulating requirement in the Circular Letters, by utilizing the ADR, and by giving Judges some authority to dismiss the case.

Q: To provide you with some overview of the effort employed in Japan to reduce the caseload of the Supreme Court, firstly, Summary courts were established for the small amount claims. The case can be appealed to the Court of Appeal at highest, so it can reduce the number of the appeal to the Supreme Court to some extent.

Secondly, the period for submission of Appeal Brief is limited within 15 days, and otherwise the case will be dismissed without considering the merit.

Thirdly, courts increasingly use the ADR system. 32 % of the cases at District court and 33 % at Court of Appeal are settled in compromise in the court. Since the agreement and decision are final, these cases do not go to the Supreme Court.

Fourthly, the Supreme Court was given discretion concerning the selection of the appeal case, except for the cases involving constitutional cases. As a result of this, the number of the case appealed to the Supreme Court was reduced to the 100 to 200 cases a year.

Lastly, the Supreme Court utilizes the Supreme Court Researches to assist Justices. These Researchers are very excellent, and Justices can concentrate on the examination of the case.
A: I will include your comments in my report of this seminar.

Q (Indonesian side): Is there any academic argument concerning the criteria for admissibility in the Supreme Court?
A (Japanese side): Once there were many arguments when the Supreme Court used to consider the merit of the each case until the 1998 Amendment of Code of Civil Procedure was introduced. However, there is not much argument any more. It is very tolerant for the Indonesian Court to receive any cases, but it is very difficult to maintain that in practice.

(End)

資料３－５

インドネシアの民事訴訟の課題

日時：平成14年７月16日午後２時～午後４時30分
場所：法総研国際協力部
発表：ヤサルディン最高裁判所調査官
記録：神戸大学大学院生　岩谷暢子

Issues and Problems with Civil procedure in Indonesia

1. Introduction
2. History of Civil Court Procedure
3. Fundamental Principles
4. Some problems
5. Reform movement

1. Introduction

The importance of the Procedural Law cannot be overemphasized, since however perfect the structure and substantive laws might be, they would not be able to function without clearly established procedural laws. The primary source of law for civil procedure in Indonesia is inherited from the Dutch colonial government. Consequently, some problems have currently arisen. I wish to discuss some of such problems and reform movements.

2. History of civil court procedure

(1) Pre-independence period
The Dutch colonial period

On 5 April 1848, the governor General of the Dutch East-Indies JJ Rochussen enacted the statute called “Inlandsch Reglement” which contained civil court procedure for indigenous people and timur asing (people from the Middle East and India) in Java and Madura Island. This statute was developed into HIR.

Subsequently in 1927, the Dutch East Indies Governor General enacted the statute called “Rechts Reglement Voor de Buitengewested (RBg). This statute was for indigenous people and timur asing outside Java and Madura Island.

A statute “Reglement op de burgerleijke Rechitsvordering (RV)” was enacted to govern the court procedure for the people come from European countries.

There was no significant change over these procedural systems during the Dutch East Indies period.

The Japanese Occupation period

There were almost no new regulations since the occupation of Dai Nippon Military Government on March 1942 until 1945. Dai Nippon Military Government announced that all government institution and statutes were valid as far as they did not contradict the Military Government.

However, one significant step was taken by the Japanese authorities. It abolished the special court for European people (Raad Van Justitie) and the procedural law for that court. Since that time all population came under the jurisdiction of the Tiho Hooin Court, as a Court of first instance.

(2) Independence period

The Constitution was promulgated on 18 August 1945, one day after the proclamation of Indonesian independence. Pursuant to article II of transitional provision, all existing state institution continued to function and regulation remained valid unless new ones were established in conformity with this Constitution. As a consequence, civil court procedure continued to be valid until now.

3. Fundamental principles

In Indonesia, there is no unified law relating to civil procedure. There are a number of dispatched source of law applicable in courts, for example the Law No. 2/1986 concerning General Court, Law No. 5/1986 concerning State Administrative Court, Law No. 7/1989 concerning Religious Court and Law No.4/1999 concerning commercial court. Those are procedural laws for each court. The Supreme Court has issued handbooks (I and II) as a guideline for all court procedures.

There is no mediation process as in other countries, but Judge normally asks parties in the beginning of the court proceedings if they wish to have time for reconciliation.

Overview of simple actions in civil court is as follows:

- The plaintiff brings a suit and pays the cost.
- Court determines the day of trial and summons the defendant.
- On the first day of trial, judge advice the parties for reconciliation.
- Judge read statement of claim delivered by plaintiff to defendant
- Defendant delivers reply
- Plaintiff delivers defend.
- Defendant delivers re-reply.
- Plaintiff and defendant deliver evidence (letters and witnesses)
- Conclusion from plaintiff and defendant
- Judgment (a case should be finished in 6 months)
- Execution of judgment

4. Some problems

Indonesia's National Development Planning Agency, in cooperation with the World Bank, conducted a diagnostic study on the development of law in Indonesia in March 1997. One of the primary conclusions of study was that laws in Indonesia, including civil court procedure, are still in much the same position as it was in the early period of the new order. This situation has caused

some issues.

(1) Class Action

The first and most important objective of class action is to afford people greater access to justice, but unfortunately there was no sufficient procedure of class action in Indonesia. It is just regulated by the government regulation in field of environmental law. Actually long before class action was regulated, some lawyers had tried to file class action suit such as Bentul Remeja case, River Ciujung pollution case, and Patal Senayan case. But all of these cases faced obstacles because of the lack of procedure. So far, there are only two Laws that recognize class action (Law No. 23/1997 environmental case, and Law No. 8/1999 consumer protection). The general provisions of the class action procedure have not been drafted yet.

(2) Dissenting Opinions

The publication of the dissenting opinion and its procedure are now urgently required by many Indonesian lawyers, since people want to know the reason of disagreement of judges in opinion. This requirement mainly comes from the necessity to restore the confidence in Justice again. Although there is no regulation concerning dissenting opinion, in practice, commercial court has issued dissenting opinions in BPPN v. PT. Muara Alas case and also Supreme Court in Joko Chandra case.

(3) Restriction of cases

Almost all the cases from lower court are brought to the Supreme Court, since Indonesian system does not restrict the case to be brought to the Supreme Court. As a result, it has the backlog problems, and more than 16,000 cases are pending in Supreme Court. According to the data, there are almost 950 cases brought to Supreme Court per month, but the number of cases received is around 800.

(4) Contempt of court

Unlike other countries, Indonesia does not have the contempt of court procedure. So if there occur any misbehavior in the court or disobey to the court order, the court can do nothing. Many prosecutors complain this situation.

(5) Mediation

Mediation is an alternative way of resolving disputes or claims outside the trial procedure. It provides parties with opportunity to negotiate a mutually agreeable solution of the dispute rather than the resort to court adjudication. Most of Indonesian Lawyers urged to establish a mediation procedure in court, but unfortunately there is no act nor draft so far.

5. Reform movement

In this reformation era, most Indonesians argue that legal and judicial reform is urgently required. In recent years, there have been a number of strong and consistent criticisms against civil procedure system in Indonesia, particularly on access to justice, inefficiency, and delay. Access to justice is the principle that all citizens should have a reasonable avenue to court in order to pursue and enforce their rights. In response to those criticisms, Indonesian government has announced reform movement, including the reform to ensure the timely solution of cases and to minimize the cost.

In this reform movement, Minister of Justice and Human Rights prepared a draft of civil court procedure to the House of Representatives, together with the suggestion to such problems as mentioned above. Supreme Court has issued the Supreme Court rule No. 1/2002 regarding the Class Action procedure. The Supreme Court has also submitted the draft amendment of Act 14/1985 on the Supreme Court containing the proposal to restrict cases to be appealed to the Supreme Court. In this way, the Government intends to replace all the old and outdated acts and regulations.

The Supreme Court has issued Circular Letter No.1/2002 instructing the judges to promote reconciliation between the litigants actively. It has also issued the prohibition for the judges and clerks to meet the parties during the process of trial.

< Q & A >

Q: In common law, there is Jury system in the court of first instance, and only one judge presides in the court. Therefore, the dissenting opinions are applicable only in appeal court and the Supreme Court. In Japan, too, the dissenting opinion is admitted only in the Supreme Court. However, the commercial court who practices it in Indonesia is the District court. Is there any trend to follow such practice other than commercial court?
A: Commercial Court seems to be only one at the level of District Court.
A: At the District Court, the dissenting opinions of judges are only to be written in the "special book" administered by the Chief Judge, but not to be included in the decision, nor in the case file.
A: This is because of the necessity to regain confidence of the court which was once lost in time of Crisis of trust. Therefore, the Supreme Court announced in its Circler Letter to recognize such authority to the commercial court in order to ensure more transparency.

Q: Is "special book" closed to the public? What is the use of it?
A: Although it is not published, it is not closed, and petitioners can request to read them.
A: Dissenting opinions are at present admitted only in the commercial court. The Circular Letter only states that the dissenting opinion in the collegiate, if any, can be written down, and so far, only commercial court makes them open to public. The "special book" is a internal book for a reference of the Supreme Court to see the performance of each judge.

Q: Does that "special book" also contain the majority opinions and fact-finding of the case?
A: There are two volumes, one concerning the court administration, and other containing the case. In the latter volume, there are mentions concerning the name of the judge, case number, date, his opinion, and its grounds.
A: Article 12 of the Criminal procedural law also contains the reference of the "special book".

Q: I heard that executions of judgment especially in small amount claims are problems in Indonesia. I think it is a big problem, since it may reduce the meaning to seek recourse in law if it is not executed. What do you think is the cause of the problem?
A: Yes, they are big problems, I admit.
A: There are several reasons for it, for example, some plaintiff brings claim knowing that the defendant has no money, or the disputed property was not seized.
A: Typical pattern is the refusal of losing party to obey the decision. In such case, the plaintiff has to file new claim for execution and conduct execution with cooperation of police. Execution used to be

interrupted or stopped by the powerful letter from the higher authorities, but not any more after the current Chief Justice has announced the suspension of the powerful letter.
A: There are mainly three patterns. The first case is when the disputed property was handled over to other. In this case, the judgment is executed by police in accordance with relevant article. The second case is when the losing party has no property. In this case, the plaintiff has to wait until he gets property and sue with new claim. The third case is when the losing party neglect decision. In this case, judge asks police to execute the decision.

Q: But couldn't the court seize the property before judgment?
A: Yes. The court can do so.

Q: When can one ask for the seizure and on what ground?
A: The seizure will be conducted by the court clerk when the judge admits the request by the plaintiff. It will be done before the judgment.

Q: If the plaintiff request seizure, do they have to pay guarantee?
A: Yes, they have to pay seizure fee.
A: The first thing the lawyers must do is to make a list of the property of defendant, and to ask court to seizure them as guarantees so that the judgment can be executed when they win. Otherwise the verdict will be meaningless.
Comment (Japanese side): That is the same in Japan, too.

Q: What is "powerful letter"? Do organs other than the Supreme Court issue them?
A: Yes, also Ministers used to do so, but not any more.
Q: Will "powerful letters" revive when current Chief Justice retires?
A: No, I do not think so, since this commitment is not only his but also of all judges.

Q: Still, not the higher authorities but your colleagues may influence you. Is there any system to check such pressure?
A: I must confess that there are many influence and pressures like that. In order to prevent such situations, the Supreme Court has issued several Circular Letters concerning ethical conduct of judges.

Q: Is there any legal base for the "powerful letter"?
A: I am not sure, but if any, the possible provision is the Article 32 of the Act 14/1970 stating that "the Supreme Court shall have jurisdiction to give guidance, criticism, and prohibition letter on which it views important".
A: The "powerful Letter" is actually illegal and extra judicial. There is no such provision. The one referred by Mr. Yasardin is the one just providing the supervision of the Supreme Court, and not the power to stop the execution of judgment in any sense.

Q: Could you provide us with overview of the law concerning contempt of the Court?
A: The notion of the "contempt of court" in Japan is not the one in the common law concept which gives court a broad authority. It is a civil law concept that judges should have control over the order in a courtroom in order to keep security. A judge can issue order to make bothering person silent.

(Briefing on the “Contempt of Court” in Japan)

The nature of the punishment is not criminal but administrative. Therefore Judge can issue the sanction at his own discretion inside and outside the courtroom to the one who disobey his order. The law provides the sanction of confinement not more than 20 days and payment of non-penal fine not more than 30,000yen. Those sanctions will not appear in the criminal record.

The typical case of the contempt in court is the yelling and making noises by hitting something inside or outside the courtroom, when a case (mainly criminal) in proceeding is related to the extremists. In such case, Judge first orders them to be silent. And if they do not obey the order, the judge immediately issues an order of punishment. The bothering person will be taken to the custodian room in the court by bailiff and security guard officers.

I have experienced only one case, in which the one of the observers loudly condemned presiding judge. That judge issued an order to confine him.

Q: Is there any sanction other than custody?
A: Yes, there is a payment of the small amount. The relevant articles say that the confinement shall be executed within 24 hours and payment within one month, but in practice they are executed immediately.

Q: Will the one responsible be examined by other body?
A: Normally No. His sanction is immediately decided by the judge, since his behavior is apparent to judge and anyone in the courtroom.

Q: Have you seen the lawyer and judge fighting in the court?
A: I should say that they are always fighting on the law, but not by physical violence. However, some exceptional extreme lawyers sometimes disobey the order of the court intentionally.
A: There used to be several cases in which lawyers were confined in the custody around 1960 to 1970. Now they are cooperating in the court.

Q: Is there any applicable provision in case the prosecutors injured the internal emotion of the party more than necessary, or overdo his role?
Q: Is that law also applicable to impolite judges?
A: Though sometimes prosecutors complain or criticize such impoliteness of judges, there is no way to correct them.
A: Although it is theoretically possible to apply it to judges, it never happens in reality. There is other way to correct or to avoid such judges by dismissal. And if their behavior is considerably bad, those who are concerned can bring petition to the Special Committee to examine his quality.
A: It is quite standard thing for the Courts in Japan to be very silent and in order.

Q: How can the public know the case if no camera or memo taking is allowed in the court?
A: The simultaneous broadcasting is not the only way to ensure transparency. The important thing is that public can have precise and comprehensive report in a few days by newspapers and by other media.
A: The direct report is not allowed in Japan. But media can use drawing instead of picture to report the proceedings.
A: This is to avoid the change of attitudes of the witness by the presence of the cameras and videos.

Q: Can reporters interview Judges?
A: It is not prohibited, but normally judges do not accept interviews. There was only one case last year, but very rare.
A: In Japanese concept, Judges do not speak about the case outside the court.
Comment (Indonesian side): In Indonesia, it depends on judges. Some accept interviews and others not.
Comment (ditto): I agree with Mr. Yamashita. I think judges should not comment on the case outside the courtroom.
Comment (ditto): In the new ethic code of August 2001, there are mentions concerning things judges should not do, including to comment on case of his charge outside the courtroom, to publish the opinion before the judgment, and to comment on the other judge's judgment.

(End)

資料３－６

インドネシア法務人権省における司法改革の現状と課題

インドネシア司法制度の現状と課題

日時：平成14年７月17日午後１時30分～午後４時30分
場所：法総研国際協力部
発表：サリム法務人権省法制局法令調整部次長
　　リディア　ササンド地方裁判所裁判官
記録：神戸大学大学院生　岩谷暢子

Current Problems of Judicial Reform Movement
at the Ministry of Justice and Human Rights of the Republic of Indonesia
The Current Problems in Indonesian Legal System

1. Current Problems of Judicial Reform Movement at the Ministry of Justice and Human Rights of the Republic of Indonesia (by Mr. Salim)
(1) Introduction
(2) Outline of the Ministry of Justice and Human Rights
(3) Legislative Process
(4) Present Problems of Judicial Reform Movement
(5) Rethinking Judicial Reform Movement

2. The Current Problems in Indonesian Legal System (by Ms Lidya)
(1) Introduction
(2) Indonesian Legal System
(3) The Current Problems in Indonesian Legal System
(4) Conclusion

3. Q & A

1. Current Problems of Judicial Reform Movement at the Ministry of Justice and Human Rights of the Republic of Indonesia (by Mr. Salim)

(1) Introduction

Historical Background

Since its declaration of independence in 1945, Indonesia have had three Constitutions: 1945 Constitution, the Constitution of Federal States of Indonesia, and Provisional (interim) Constitution of 1950. The 1945 Constitution was adopted on 18 August 1945, the next day of the declaration of independence, and was applied until 1949. The second Constitution, Constitution of Federal States of Indonesia was in force from 1949 to 1950. This Constitution consisted of 197 articles and was

quite long. It intended to establish the Federal Republic (United States of Indonesia), but ended in short-lived federation due to not being compatible with aspiration of people. Then, the Provisional Constitution consisting of 146 articles was enacted in August 1950, by which Indonesia returned to a unitary structure. Soon, however, the political debate arose in Parliamentary session on the Constitution concerning which of Islam or Pancasila should be the foundation of state. (Pancasila is the five basic principles: (a) God almighty; (b) Just and civilized humanity; (c) Unity of Indonesia; (d) Democracy guided by the wisdom of representative deliberation; and social justice for all Indonesian.) As a result, people supported the latter (Pancasila), and in 1959 President Soekarno issued Presidential Decree which declared the return to the 1945 Constitution again, which, together with Pancasila, played important role for national stability especially from 1968 to 1998.

1945 Constitution and its basic principles

The Elucidation of 1945 Constitution explains the system of government based on the following principles:

a. Indonesia is a state based on law (rechtsstaat) and not on mere power (machtsstaat).
b. The government is based upon constitutional system and not on absolutism.
c. The highest authority of the state is in the hand of MPR (People's Consultative Assembly) as the embodiment of the whole of the People of Indonesia.
d. The President is the highest executive of the government of the state below the Majelis (MPR).
e. The President is not responsible to the DPR (House of Representatives).
f. The Ministers of the state are assistants to the President, and they are not responsible to the DPR.
g. The authority of the head of state is not unlimited

After the third amendment, new articles on human rights protection were inserted, which provides the right to life, right to have family, right to develop oneself, equality before the law, freedom of religion, freedom of expression, etc. Several articles provide with the basis for control and restriction on the power of President, and legislative and other constitutional power was transferred to the DPR.

Currently under the President Megawati, the Cabinet consists of 3 coordinating ministers, 17 ministers of departments, 10 state ministers, and other government institutions.

(2) Outline of the Ministry of Justice and Human Rights

Historical background

The Ministry of Justice was established on the day of independence in August 1945. Later in 1960, the Supreme Public Prosecutors Office was separated from the Ministry of Justice under the re-instituted 1945 Constitution. In the meantime, the structure of the Ministry was reorganized and its name was changed into the Ministry of Law and Legislation, and in 1998, it was re-named as the Ministry of Justice and Human Rights. Its missions are defined as planning of national policy of legislative process, legal administrative service, and Human rights protection.

Function and Authority

The Ministry of Justice and Human Rights assists the President to execute a part of the government activities in the field of judiciary and human rights affairs. The minister holds a broad responsibility covering the following tasks and functions.

a. to promote legal awareness and legal culture;
b. to render legal advice to the President and the head of the other executive departments, non-department government institutions and other institutions;
c. to serve general legal administrative matters;
d. to implement legal research and development;
e. to make law and regulations necessary under his authority;
f. to govern, to direct, and to plan national law and legislation;
g. to ratify related international conventions;
h. to authorize legal entities and intellectual property rights;
i. to undertake all related matters of prisons and confiscated goods for the state;
j. to administer judiciary, lawyers, fiduciary, citizenship and bankruptcy;
k. to undertake and manage fingerprint, grace, amnesty abolition, rehabilitation and civil investigators;
l. to undertake all related tasks of correctional institutions

Structure of Organization

Secretary General is responsible for all general administrative matters (personnel, finance, organization and structure), management of education and training for civil servants, and support for all other units.

Directorate General of Legislation prepares the drafts of laws and regulations necessary for the Ministry of Justice and Human Rights, harmonizes drafts of laws and regulations from other departments and government institutions, and give guidance for legislative drafting standard to the President and the heads of the other executive departments. He coordinates initiative meetings of inter-department drafting commission to reach a comprehensive and harmonized legal concept of law and regulation. He also undertakes international legal cooperation, and represents the Ministry of Justice and Human Right in DPR sessions.

Directorate general of Legal Administrative Affairs handles civil rights matters such as legislation of legal entity and document authorization. He also manages administrative matters concerning citizenship, criminal procedures (grace, abolition and amnesty), appointment of the Public Notary, Civil servant investigators, etc.

There are also Directorate General of Immigration, Directorate General of Correction and Directorate General of Intellectual Property Rights.

Directorate General of Judiciary Board is in charge of all administrative, financial, personnel and organizational matters for judges, clerks and other officials.

Directorate General of Human Rights Protection is in charge of promotion and protection of human rights for all citizens, including services to prisoners, guide and counseling.

General Inspector investigates all administrative violations by the officials of Ministry of Justice and Human Rights and recommends any appropriate administrative punishment.

National Law Development Agency sets up plans on national law departments legal system, carries put legal research, and provides national network with legal documentation

Research and Development Agency for Human Rights studies civil and political rights, disadvantaged groups and gross violation of human rights.

(3) Legislative Process

According to the MPR degree XX/MPRS/1066 and III/MPR/2000, the hierarchy order of law is as follows in the hierarchical order:

- Constitution,
- Degree of MPR (the People's Consultative Assembly),
- Statute (Act),
- Government Regulation in lieu of Act (Emergency law),
- Government Regulation,
- Presidential decree, and
- Provincial Decree (Local Regulation)

Legislative procedure for Act and Government Regulation in lieu of Act (Emergency law)

Legislative procedure for Act and Government Regulation in lieu of Act are stipulated in the President decree 188/1998 for act and Government Regulation in lieu of Act and DPR decree for any bill introduces by DPR and ordinary session for discussion bill.

The Statute (Act) has to be decided and declared by the House of Representative (DPR) and president of MPR together. The Government Regulation in lieu of Act (Emergency law) requires the approval by the MPR. Governmental Regulations are enacted by the President to implement Statutes. Presidential decree is to be declared by President.

Legislative procedure for the delegated regulations

Concerning the delegated regulations, three procedures are provided for the delegated regulations at the central level, those at the governmental level, and those at the local level accordingly.

- Procedures of making central (national) legislation

A bill may come from any executive government as well as the DPR (Parliament). If the bill comes from the government, the legislative process should be subject to President decree No. 188/1998 concerning the law making process.

Subject to the provision, any department or governmental institution may take initiative to draft a bill, where appropriate. The Minister who takes initiative applies the bill to the President for its approval. Before submitting the initiative to President, it must consult with other department or government institution. The Director General of Legislation, on behalf of the Minister of Justice and Human Rights, may preside the meeting to have a comprehensive legal conception. The initiative has to describe a historical background and purpose of the bill, basic legal ideas, scope and legal content of the bill, and academic result to support analysis for the bill. When the draft is agreed among the Ministry of Justice and Human Rights and the concerned Ministries, the draft will be sent to the President.

In case that the bill comes from DPR, the procedures is governed by the DPR decree 03/DPR RI/I 2001-2002 concerning the DPR's standard operation procedure. The authority of DPR has been extended by the second amendment of the Constitution which determined DPR as the Legislative Body. Any bodies established by DPR may propose bills. The bills have to be discussed in the Commission or special standing committee before submitted to the plenary session, which gives the final decision. The President shall enact the bill within 30 days after its submission

to him and the bill shall be published in a State Gazettes by State Secretary.

- Procedure of making Governmental regulation

According to Constitution, the President may issue government regulation and Presidential decree without any approval from DPR if the Act delegates. However, the content of these regulations which aim at implementing Act should be in conformity with the Acts.

The minister may issue any ministerial decree which is in line with the Acts. The minister has an authority to issue ministerial regulations which contain administrative matters.

- Procedure of making local regulation

Local regulations are drafted and enacted by the legislative body of each local entity (Provincial, District, and Municipality). The local government may introduce drafts lf local regulation and submits to local house of representative (DPRD) for its consideration. The representatives discuss the drafts, and if they agree on it, the governor enacts it and promulgates it in local Gazette.

(4) Present problems of Judicial Reform Movement

Judicial Reform Movement has began in 1960 as a part of national development programme. National Law Development Institute was established to initiate and coordinate such efforts. Recently, this body has increased its authority since it has been reorganized as National Law Development Agency. Many progresses have been achieved since then. There have been many fundamental changes when entering the new order of the post Soeharto period, and Judicial Reform Movement is one of them. These fundamental changes have had impacts on many matters. The most significant is the amendment to the Constitutions. Most of the legislative power was transferred to the DPR, according to the amended provision of Constitution defining DPR was sole law-maker, and the power of President in this regard was decreased, who used to have authority to be consulted by DPR and to introduce bills.

Development of international relations and open character of the Indonesian legal system also have great impacts on the Indonesian legal system and Judicial Reform Movement. Impact of foreign enforced law has lead to the Hybrid law (mixed jurisdiction), establishment of constitutional court, and other reform of the judicial system.

Currently, there are ideas in the Standing Committee to unify judiciary regulations and to integrate training institute in order to improve standard requirements for legal practitioners. There are many more problems to be solved before the submission of the draft bill concerning the Supreme Court.

(5) Rethinking the Judicial Reform Movement

<u>National Policy Direction</u>

At present, the government leads all new policy for drafting law and regulations based on the national Policy Direction. This Direction includes:

- to organize comprehensive and integrated national legal system;
- to enhance moral integrity and professionalism of the law enforcing officers;

- to carry out a judicial process that is fast, simple and transparent, free from corruption, collusion and nepotism
- to revise mechanism of relations between the government and DPR in formulation of law and regulation in order to prevent not preferable competition between the two.

Suggestions

Firstly, the cooperation between the President and Government in legislative process must be increased and strengthened. Legislation should be carried out based on the effort for efficiency, and the competition between two bodies would have an adversarial effects.

Secondly, more understanding of foreign law system is necessary since the base of the Indonesian legal system is pluralism, as well as because there are growing influence and interaction from the foreign laws. Currently, several cooperation programmes in this field are undertaken between the foreign donors.

Improvement of human resource especially junior drafters is also important at the same time. In this regards, seminars and training courses like this are also very important for those improvement.

Other suggestion includes supporting the improvement of facilities, dissemination of law material through internet, and integrated national legal system both in the human resources and organization.

2. The Current Problems in Indonesian Legal System (by Ms Lidya)

(1) Introduction

For historical reason, the Indonesian legal system is based on the civil law system adopted from the Dutch system, and all the decision by judges are also based on this system for a long time, i.e., Judges must base their consideration and decision on the written law in considering and deciding cases.

According to the transitional provisions of the Constitution, the written laws in Indonesia to be used by judges are as follows:

- The act
- State regulations
- Regulation in general
- Presidential Decrees
- Ministry decrees
- Provincial Regulations
- District Regulations

Judges also apply Jurisprudence and Adat laws. Jurisprudence is not binding in the legal sense, but most judges follow it.

Since its independence, Indonesia has achieved many progresses. However, in the reformation period after the President Soeharto, some of development that Indonesia has achieved, especially economy, were destroyed, and also some disintegration problems have arisen in Aceh, Ambom, and Irian Jaya. The new government has been trying to improve those situations through the new state guidelines called GBHN Tap. MPR. Law reform is one of the efforts and is stated in article A of GBHN. Some of issues concerning this reform were already explained by Mr. Salim. I wish to explain other matters.

(2) Indonesian legal system

The Indonesian judicial system has its basis in Article 24 of the 1945 Constitution, which states that judicial power shall be vested with the Supreme Court and other judicial organs established by the Act. The judicial system is further elaborated in the Act No. 14/1970. According to it, the judicial system is divided into four jurisdictions as follows:

1. Court of general jurisdiction, as regulated by the Act No.2/1986;
2. The state administrative court jurisdiction, as regulated by the Act No. 5/1986;
3. The Military Court jurisdiction, as regulated by the old act; and
4. The Religious court jurisdiction, as regulated by the Act No. 7/1989.

The District Courts are set up in every main town of the region and every capital city of the 26 provinces. There are two kinds of District Court, the first level and the second level, depending on the number of cases and judges. The Appeal Courts are in every capital city of the provinces. The Supreme Court is located in Jakarta, the capital city of the Republic of Indonesia. The Supreme Court is the highest court for all jurisdictions listed above, and its organization is regulated by Act No. 14/1985.

In administering their job, they are bound by the written law, both substantive and the procedural. According to the article 24 of the Constitution concerning judicial power, and a series of acts, every judge has duties to receive, examine and decide the case that has been delivered to them, and cannot refuse cases for the reason of absence or unclearness of law. When they cannot find applicable provision in the written law, they shall seek it in the customary principles in community law, though the freedom of judges in this respect is not as large as those in the common law system. They still have to interpret the written law in order to be relevant with the living law in the community. This means that judges also have to have understanding of the living law in the society that often changes according to the needs of the society, especially in this globalization period.

(3) The Current Problems

<u>Application</u>

One of the current problems is the diversity of law and regulations that Judges apply. On this point, the consistency and unified application of norm are necessary.

<u>Civil Procedure</u>

The second problem is concerning the Code of Civil Procedure. The basic rules of civil procedural law HIR (Het Herziene Indonesisch Reglement) and RBg (Rechtreglement Buitengewesten) need to be improved or replaced by the new civil procedural act. There are several acts concerning the procedure for the courts of particular jurisdiction. However, the basic codes for civil procedure are still IR and RBg, which were enacted around 1846 by Dutch colonial system. Though judges can manage to do their jobs with these old codes, there are many new issues not dealt with by them, for example, class action and legal standing, mediation in the court, and conjunction before the cases is examined by judges.

a. Class Action

Though there has not been any reference in the written law concerning the Class Action,

several courts have dealt with claims by many or mass plaintiffs, and the number of such claims is growing, particularly in the environmental cases. In order to provide procedural basis for his kind of claims, the Supreme Court has issued the Circular Letter 1/2002 concerning the Class Action Procedure. However, there is no provisions updated concerning the legal standing.

b. Mediation

Mediation is often utilized in the courts as a method of Alternative Dispute Settlement. Article 130 of HIR and Article 154 of RBg state that judges have the duty to conciliate the litigants, but they do not provide any procedure for it. To respond to the needs from the society especially the business sector, the Supreme Court has issued the Circular Letter 1/2002 concerning the procedure of conciliation. Its application is quite successful so far.

c. Dissenting Opinion

Since the discussion in the collegiate must be kept secret in principle, the opinion of each judge is not made open in the decision even when he/she has a dissenting opinion. However, in the current trend calling for transparency in Justice, people wish to know the reason of disagreement of judges. So far, there are no regulations concerning dissenting opinion in decisions, but the Supreme Court says that it is preparing the Circular Letter 1/2002 concerning it.

Administrative management

In most District Courts, especially those outside the Java Island, the administration of courts are still done manually, since most of the courts in Indonesia do not have computers and other facilities, due to the lack of budget. At this moment, judges have to buy computer for the court works by themselves. The Supreme Court and the Ministry of Justice has issued a three volumes practice manuals for the judicial officers in order to help shortening the period necessary for a trial. Those manuals are still under study for further improvement.

Independence of Judges

Until several years ago, there had been a strong influence of the executive over the judiciary. Most people thought that this was because the Ministry of justice held authority concerning the finance and administration of judges. Therefore, the new Act No. 35/1999 was issued to improve the article 14 of the Act 14/1974 concerning the authority of the Ministry of Justice, and those authorities were transferred to the Supreme Court. Currently, Indonesian judges feel more free and independent in deciding cases even special cases related to the power.

Overload of the Supreme Court

There are so many cases that have not been decided yet by the Supreme Court. This is due to the fact that there are no restrictions for appeal to higher courts. The restriction concerning the requirement for appeal is now under consideration.

Duration

The examinations of the cases in district court for civil matters take too long. This might be due to the litigants themselves. The Supreme Court has issued a Circular letter which states that the judges in district court have to decide cases within the 6 months.

The welfare of the judges

For many years, the welfare of judges has been ignored. Although the government began to improve the welfare of judges by increasing salary since 1995, the inflation and decline of the Indonesian economic development continue and situation of judges has not been improved. Salary of the judges needs to be increased again in order to guarantee adequate welfare to judges.

(4) Conclusion

The legal system of Indonesia, still based on civil law system, is currently under the transformation into the mixed system, and judges (especially young judges) are trying to apply common law styled system as long as not contrary to the written law. Therefore, the seminars focusing on comparative law like this are very important for us to obtain many positive inputs for the law reform.

3. Q & A

Q: Each country has its own traditional background on Human Rights. What is the definition of Human Rights in Indonesia? Is that a new concept after Soeharto resignation or traditional concept? Is that similar to US type or your own concept?
A: The concept of human rights is not new one, and they were already included in the 1945 Constitution. 1950 Constitution also had many articles on Human Rights. Current Constitutional provisions provide for example basic freedoms, right to develop themselves, right to have family, right to justice, personal freedom, right to participate in government action, etc. Now, the Act No. 39/1999 concerning Human Rights provides definitions of Human Rights. It defined Human Rights as rights of anyone owned by birth. Any States, Law and Government must be in accordance with Human Rights. Act concerning Human Right was enacted in 23 September 1999, in order to respond to many human rights violation after the resignation of Soeharto, especially in East Timor and Aceh.
A: Human Rights provisions were already in incorporated in 1945 Constitution. It provided the equality before the law (Article 27 (1)), the right to work (Article 27 (2)), and the right to education (Article 31).

Q: Are the procedures for the courts of four jurisdictions provided separately? And what issues are within the jurisdiction of the Religious Court? Which Court deals with the case concerning the contracts such as loans between Muslims, General Court or Religious Court? How are the jurisdictions distributed?
A: While the Basic code of procedure is HIR and RBg, each Court for these jurisdictions has own procedures (Acts) to be applied specifically for their cases. As long as there is no reference in those Acts, the HIR and RBg are to be applied. Religious Court is handling only the divorce case between Muslims and inheritance, and civil cases are to be dealt with in the General Court.
A: As has been already explained, there are four jurisdictions in the judicial system under the Supreme Court, and the religious court is one of them. The religious court is the court for Muslims and those who practice Islam. More than 90% of Indonesian population is Muslims, and they have Islamic law which governs wide range of civil matters. Among those matters, the religious court has jurisdiction concerning marriage, inheritance and the last will. The marriage matters include marriage, divorce, adoption, custody, and separation of property in divorce. Most of the cases in the

religious court are divorce. The procedure is provided by the Act concerning the Religious Court. Concerning the difference from the jurisdiction of general court and the distribution of jurisdictions, in case of marriage, it is decided according to the way the registration of marriage was submitted, to the religious court or to the ordinary court. As long as the registration of marriage is submitted to the religious court in accordance with Islamic law, the case concerning that marriage is to be received by the religious court even if one of the parties ceased to be a Muslim. In case of inheritance, it is decided based on the religion of the inheritor when the religions of inheritor and inherited are different. If the case happened to be received by both general court and religious court at the same time, the court of jurisdiction for that case will be determined by the committee in the Supreme Court that coordinates the works if four courts.

Q: What happens to the case of a creditor who wants to execute his claim from the successor of the debtor? Does he have to go to religious court first to confirm the successor of the debtor before going to civil court for execution?
A: Yes, the determination of successor in such case and the execution of the creditor are dealt with separately, and in the case above, the creditor has to go to religious court. But normally, religious court prepares for district court the statements concerning the successors.

Q: How low is the salary of the judges in Indonesia?
A: It is among the highest in the salary of civil servants, but just as much as the salary of the receptionist in the private companies. It is far from enough, and most judges have to rely on the dual income. We have to enjoy just minimum welfare.
A: the situation is the same for the Prosecutors. It is possible for us to survive with it, but in order to buy things, we have to do side-job such as writing articles.
A: The situation is far from that are enjoyed by judges in other countries. We wish to have at least standard welfare, not the minimum.

Q: Then, how do you feel about the practice of lawyers in Indonesia to charge foreign clients very high charge?
A: We do not have particular feeling about it, since it is natural and just for lawyer to earn money. If we wanted to earn a lot of money, we should have chosen to be lawyers. But as we chose to be judges and prosecutors at our own will, we do not feel envy to lawyers.
A: Indonesian Lawyers charge their clients in accordance with the international basic standard. Since lawyers are not taken care of by the government like judges and prosecutors, we have to earn from our clients.

Q: Do such lawyers deal only with the cases in commercial court?
A: No, the commercial court deals only with the bankruptcy and IPR cases, and all other cases are dealt with by the Civil Court.

Q: In Japan after the end of bubble economy, there was criticism that the protection under commercial and bankruptcy law are only in name, and the law for the civil bankruptcy was introduced as a response. Is there any similar trend in Indonesia?
A: Yes, the latest bankruptcy laws are the Act No. 1/1998 and Act No. 4/1999.
A: The Ministry of Justice and Human Rights is currently preparing the draft of new Act to amend the existing bankruptcy law.

Q: The name of the Ministry for Justice in Indonesia is the Ministry of Justice and Human Rights. In Japan, too, there is also an ongoing effort to establish the Department of human rights under the Ministry of Justice. However, some people claim that the establishment of such department under the Justice Ministry would impair the fairness since the violations of human rights are often committed by the government. What is your opinion?
A: The Human Rights issues used to be dealt with by the State Minister for Human Rights Protection, but those matters were transferred to the Ministry of Justice and Human Rights under the Megawati Cabinet. Now the Ministry of Justice and Human Rights is responsible for all issues concerning the protection and promotion of human rights, and there is no more State Minister for Human Rights Protection. Concerning such claims as mentioned, there is also independent National Human Rights Commission in Indonesia.

Q: Many countries have problems with the long duration for the settlement of cases at the district courts. What kind of efforts are undertaken or planned to be undertaken in Indonesia to solve that problem?
A: The Indonesian courts are trying to solve them by limiting the period for the court proceeding after the first day of hearing. The period of the court proceeding is limited to seven days if both parties live in the same district and to fourteen days if parties live on different district. This period can be extended for three more days on request. If the plaintiff is absent on the first day of oral hearing, the court proceed the case without the plaintiff, and if the defendant is absent, the court waits up to two days, and proceed without the defendant after the third day on. However, since the law does not provide any more provisions concerning the redress in case of absence and other procedures, there is no other way than to appeal when the parties do not agree with the decision rendered by the court. The Court also utilizes the conciliation and mediation procedures in order to reduce its burden.

(End)

資料３－７

インドネシアの刑事司法制度，汚職対策とその課題

日時：平成14年７月23日午後２時～午後５時
場所：最高検察庁大会議室
発表：ユスフィドリ最高検察庁海外法務協力部長
記録：東京都立大生　新美晶子

丸山教官　司会を務めさせていただきます法務総合研究所の丸山です。このセミナーの趣旨はインドネシアの司法関係者との議論を通じて両国間の相互理解を図ろうというものです。本日は，インドネシア最高検察庁ユスフィドリ部長に「インドネシアの刑事司法制度，汚職対策とその課題」をテーマに発表していただきます。

ムハンマド・ユスフィドリ最高検察庁海外法務協力部長による発表

御紹介ありがとうございます。今回の発表は最高検察庁から参りましたムハンマド・サルマン，ムハンマド・ユスフと私ムハンマド・ユスフィドリで行いたいと思います。このような発表の席にお集まりくださり，ありがとうございます。このような機会を頂いたことに心からの御礼を申し上げたいと思います。インドネシアの現状についての報告，意見の活発な交換の場となれば幸いと思います。

それでは，インドネシアの司法改革における検察官の役割についてお話したいと思います。

Attorney General Office は，日本の最高検察庁と同様の組織であると考えていただいていいと思います。しかし，私どもはこれを省庁（Department）とは考えていません。最高検察庁の長官は，最高検察庁の最高位の者でありますが，同時に議会の議員でもあります。大統領の元での行政機関の内の一つです。最高検察庁はインドネシアの首都ジャカルタにあります。最高検察庁の下に高等検察庁があり，ほとんどのインドネシアの州に最高検察庁の支部があり，現在では30あります。そして，インドネシア全国で317の地方検察庁があります。一番下の役所として，120の支部があります。

国家機関の内での位置付け

最高検察庁は，大統領の下にある行政機関の１つです。

特徴としては，主に公訴における司法権を持っています。公訴権について特に触れたのは，公訴権以外にも，特別犯罪に関しては捜査権も有しているからです。

もう１つの特徴としては，検察官の職務，権限については独立性があるということです。インドネシアでは各司法の機関の独立性が強く要請されています。政府からの干渉を受けないよう，独立して職務を遂行することができるように強い要請があります。したがいまして，最高検察庁長官は職務，権限，機能に関して独立性を持っています。

人材

最高検察庁は，全国で16,000人の職員がいます。そして10,000人以上の事務管理部門の職員がいます。全国に5,700名の検察官がいます。

法的根拠

主なものとして，検察官に関する1991年法律第５号があります。つまり，検察機関の職務，機能はこの法律によって規定されています。そして，この他にもインドネシア刑法，刑事訴訟法や，重要なものとして汚職撲滅に関する1999年法律第31号があります。

組織の構造

パワーポイント用の資料の最後のページを見て下さい（添付省略）。一番上に最高検察庁長官が最高職位としてあります。最高検察庁長官，副長官の下に６つの等位の部があります。

Deputy Attorney General for advancement は，主に人材育成と総務に関しての業務を行っています。その他にも監督部があり，内部監査業務をも行い，監督に関する監査業務を行っています。その他にも，諜報部があります。重要なものとしては，特別犯罪部があります。ここで，汚職などの事件を扱っています。そして，民事及び国家行政に関する部もあります。通常の犯罪に関しては通常犯罪部があり，部長がいます。その下には４つのセンターがあります。こちらの４つのセンターは教育研修・法律情報・情報及び犯罪統計・研究開発のセンターです。そして，その下にそれぞれ州の高等検察庁，その下に地方検察庁，更に下に地方検察庁の支部があります。

研修システム

基本的には２つの種類の研修システムになっています。１つは，管理部門の研修です。こちらは基礎的な一般事務管理研修と言えます。組織の事務管理を中心に研修を行います。管理職になるためのリーダーシップを養う研修をも行います。２つ目が技術的な研修です。技術研修の中で重要なのが，検察官候補を対象とした研修です。

監督管理

最高検察庁は，実際には議会による規制を受けています。特に，法律委員会の監督を受けています。こちらの委員会では，定期的な議会の審議会以外でも議会が検察官を呼び，説明を求める機会もあります。そして，内部監査に関しては監督部の部長の下で行われます。毎年，国家開発財政監査人によって監査を受けます。しかしながら，通常では上役による監督を受けています。そして御存知のように，インドネシアは現在改革の時期にあり，あらゆるメディアや，NGO などの社会からの検察に対する批判を受けています。

人権について検察庁の役割・機能

検察官は主に刑事事件の起訴を行います。そして特別犯罪，特に，汚職（国家予算に関与するような犯罪）に関しては，捜査も行っています。そして，新しいことですが，人権侵害・人道に反する事件については，2000年の法律第26号によって捜査権，公訴権を有しています。それ以外にも，民事訴訟における国家賠償事件で国の代理人も役割としてあります。この役割を果たすためには，その事件の関係人から委任状を受け取る必要がありま

す。この委任状（Letter of authorisation）なしでは，民事訴訟で出廷することができません。

最後に最も重要な点として，検察官は公共の法律と秩序を守り，強化していくという重要な役割があります。

統一刑事司法制度について

３つの主な機関があります。この統一刑事司法制度の最も重要な機関として警察，検察，裁判所の３つがあります。警察官・検察官・判事以外にも弁護士，行政サービスなどがこの統一刑事司法制度を占めています。この点に関しては，テーマと少々異なるため，時間を割いてお話することができません。

司法制度での新しい点としては，人権裁判所の役割があります。この人権裁判所は，国際社会からの強い要請にこたえる形で設立されました。スハルト政権の崩壊後，改革の時代を迎えてから，国際社会からインドネシアに対して，特に旧東ティモールで行われた人権侵害とそれに関与した政府の役人，軍人を裁くことに対して，国際社会から強い要請がありました。このような国際社会からの圧力以外にも，1990年代のころにはNGOなど様々な人権団体などが強く政府に働きかけてきました。そこで1999年に議会と大統領が人権擁護に関する1999年法律第39号を作り，その１年後，2000年法律第26号により，人権裁判所を設立しました。その結果として，インドネシアの最高検察庁の検察官は，人権侵害の事件に関して，捜査及び起訴，公訴の権限を持つようになりました。こちらにいるムハンマド・ユスフ氏は人権侵害を専門としている検察官です。

現在，人権裁判所で扱われている事件は，旧東ティモールで起きた人権侵害についてです。カントリーレポートの資料（添付省略）の最後に，人権裁判所で行われた主に東ティモールに関しての件数が記載されていると思います。このように，過去に起きた人権侵害について，新しい法律で裁くということは，法律の遡及に関する原則に反すると思います。しかし，このように遡及的に適用され，新しい法律に組み込まれたということは，インドネシア政府が人権擁護に積極的に取り組んでいるということの現れであると思います。これは，国際社会からの旧東ティモールで行われた人権侵害事件を裁くことへの強い要請を反映して行われたものと思います。しかしながら，この問題に関して，インドネシア内部で意見が統一されたとは言えません。現在，インドネシアは開発途上であるため，国際社会からの要請に反発する力がないということも，理由としてあります。しかし，これは政府が国際社会からの要請のみではなく，自ら旧東ティモールでの人権侵害に対する救済の努力の現れでもあると思います。この旧東ティモールに関する人権侵害に対する人権裁判所を設立する法的手続は，通常の裁判所をつくる手続とは少し異なります。遡及して行うため，議会の承認を要します。法律制定より過去に起きた事件を裁判にかけるということは，刑事事件の原則に反するためです。そのため，国民の意思を反映する議会の承認を要します。現在12件あり，そのうち８件がジャカルタの人権裁判所で扱われていて，４件が捜査中です。旧東ティモールでは何百名ともいう人権侵害の被害者がいて，1999年に国民投票を経て，政府による取組が始まりました。

汚職事件

まず始めに，インドネシアでの「Corruption」という言葉の定義についてお話ししたいと思います。日本で一般的に使われている「汚職」という単語とは相違点があると思います。

インドネシアでは，汚職の対象になるのは公務員のみではなく，一般市民をも含みます。これが日本との違いの１つではないかと思います。２つ目の特徴としては，主観的要件，つまり自分及び親族の財産を増やす目的があることです。そして，汚職を犯した者にはかなり厳しい罰則を科しています。

現在の変革期においては，汚職は，世間や国際社会の関心の高い事柄です。スハルト政権崩壊の原因の一つとして，政府がはびこる汚職に対する規制や対策を講じることができなかったことが挙げられます。この汚職事件は，法律に基づいています。この法律の下で，検察官は汚職の事件に関して特別に捜査，起訴する権限があります。汚職の事件件数は，1990年代の中央銀行の資金援助事件以外の汚職事件が現在52件あります。州検察局で扱われた汚職事件の件数は４月までで471件あります。このような汚職事件がインドネシアの経済に損害をもたらしているので，政府が対策を講じるために立ち上がったというわけです。汚職事件の対処に関しては，実体法によって対処するということです。この汚職事件に対応するために，議会がそれに対する法律を制定しました。検察以外にも汚職に対応する機関があります。もちろん裁判所の判事も日々汚職に取り組んでいますが，今年に入って警察も新しい法律によって権限を得ました。しかしながら，汚職事件の捜査は，警察には新しいことだと言えます。従来，過去に警察によって捜査された汚職事件は，裁判所によって法的根拠がないとして却下されていたためです。現在では，議会や政府はなるべく多くの機関が汚職に関して捜査できるように働きかけています。汚職対策の別の機関としては，KPKPN（国家公務員に対する監督委員会）というものがあります。公務員，議員の全員がKPKPN に対して，独自の資産の公開を行わなければならないという決まりがあります。この制度を設けることによって，インドネシアで汚職や癒着，縁故主義などを削減していこうという動きがあります。そして議会と大統領は新しい機関，汚職対策委員会を設立しようとしています。しかし，この新しく計画されているのは，議会で審議中ですが，新法によってKPKPN と新しい機関が統合される可能性が高いと思います。

汚職事件の対策に当たっての障害

日本でも同じだと思いますが，汚職，贈収賄はホワイトカラーによる犯罪です。テレビやメディアを通して，日本の検察機関がよく機能していると聞いています。インドネシアにも，日本と同じようにホワイトカラーによる犯罪があります。そして御存知のように，このような知的犯罪は巧妙で，様々な法律から逃れようとするものです。現在インドネシアでは，政府の高官に対して，汚職事件を働いた者を罰するように働きかけています。これは，現在政府の高官で汚職，癒着，縁故主義に関わっている者には厳しい状況です。スハルト元大統領の事件は起訴，裁判には至っていませんが，健康状況が悪化しているということがその理由として挙げられています。スハルト元大統領以外にも，議会の議長も現在起訴段階にあります。これらの犯罪が有罪か無罪かという結果を見るだけではなく，政

府が汚職に取り組んでいるということを社会にアピールしようという姿が現れています。以前権力を持っていた人が，現在厳しい状況に追いやられているということです。もちろんインドネシアの検察官は優秀ではありますが，このような巧妙な犯罪を追い詰めることは簡単ではありません。したがって，検察のみで取り組むのは無理ですので，他の機関からの助力が必要です。汚職事件に対応して最高の結果を得るためにも，国家開発監査官の監査を受ける必要があります。汚職事件の解明には長い時間がかかります。しかし，時間がかかるという理由で国民の支持を受けられないという状況があります。汚職事件解明の障害として，施設などの利用が限られているということがあります。汚職事件を捜査するに当たり，大きな予算が必要になります。したがいまして，現在財政的な援助を政府から受け，技術的な援助を他の機関から受けています。こういった汚職事件に取り組むに当たって，他の機関との調整や協力が重要になってきています。もう１つの障害として，現存している法的な文化と言いますか，事前捜査や証拠を提出するに当たって，一般市民に規制が加えられている状況があります。一般市民は法執行機関に対して，恐怖心があり，情報やデーターを提供することができないような状況にあると言えます。このような法的な文化を向上させるためには，国民の法意識を高めることが大切であるとともに，司法機関に対する信頼を高めることが必要であると思います。

汚職事件に取り組むに当たり，検察官の役割，機能

この戦略の１つとして，検察官の能力の向上も必要です。高潔性，プロ意識などを高めていくことが必要です。これは検察官が複雑な犯罪に取り組むに当たり，能力の向上が要求されているということです。もう１つ，関連機関との調整を強化していくことがあります。関連機関に対して，司法の強化のために，検察官に関する現存の法律の改正が求められています。

国際化の問題

犯罪の国際化などの大きな問題が現在あります。国際社会に参加していくためにも，検察官は国際的なセミナーや研修に定期的に参加しています。その一環として，今回のように日本政府のお陰で，研究コースに検察官が参加しています。そして，他の国々との協力が推奨されています。MOU（Memorandum of understanding）や代表団の交流などが挙げられます。そして，こういった国際社会からの信頼を得るためにも，インドネシア政府としては積極的に人権やマネーロンダリングなどの問題に取り組んでいきたいと思います。

先ほどから申しています問題に取り組むに当たって，組織内での弱点を説明させていただきたいと思います。まず，回りからのサポートが得られていません。２つ目として，前政権から引き継がれているシステムが効果的ではないということ，政府からの資金が十分ではないということがあります。

しかしながら，一方では良い点もあります。最近ですが，検察官の中でも修士，博士の学位を持った者が増えています。そして，変革の時期を迎えて，政府の改革への高い意識が見られます。最後になりましたが，国際社会からのサポートを受ける機会があるということです。

発表は以上となります。以降は意見の交換と批判を受け，これからの司法改革に役立てていきたいと思います。この研修の目的のために用意させていただきましたデータがありますので，それを提供できたと思います。

本日はありがとうございました。

丸山教官　ありがとうございます。それでは少しの休憩の後に質疑応答に入りたいと思います。

質疑応答

丸山教官　質疑に入りたいと思います。質問に関しては司法に関して，どの範囲でも構いません。発表に関係していないところでも構いません。

質問　インドネシアの検事総長は，捜査中止命令書「SP3」と呼ばれるものを発行することができると聞いています。この「SP3」が汚職捜査を中断させるために発行されているということが新聞に出ていて，その結果検事総長が汚職捜査に不熱心だという見方があると聞きます。一方検事総長が変わって，ダルスマンという新検事総長が改革派で，捜査中止命令「SP3」を撤回する命令を出したり，また，別のときには捜査中止命令書「SP3」を出したりしていると聞いています。質問としましては，汚職事件において「SP3」はどのような意義と規模を持っているのかということです。

回答（検察官） 1991年法律第５条によりますと，検事総長が捜査をいったん中止する権限がありますが，これは特に汚職事件に関してであります。この条項がある理由としては，証拠が不十分である，又は時効が完成したときなどに捜査を中止するためです。証拠が不十分な場合においては，更なる証拠が出てきたときに，捜査を再開することができるとあります。このような条項があるかと言いますと，証拠不十分な状態なまま起訴しても，裁判所で却下され，結果的には不起訴になってしまうため，法の平等性を保つという目的があります。

質問　法の平等とは，証拠が不十分の汚職犯が釈放されてしまうのと証拠が十分そろった犯人が処罰されるという，その点の公平を求めているということでしょうか。

回答（検察官）スハルト元大統領の事件においても，前検事総長によって延期されましたが，今の検事総長になった時点で新しい証拠が出てきたので，捜査が再開されました。先ほど申し上げました平等とは，容疑者がだれであろうと，犯罪に対して証拠が十分あればその事件は起訴されるということです。

質問　パワーポイントの資料（添付省略）の「Weak point」と書かれている点ですが，具体的にはどのようなことであるのでしょうか。「Less effective and efficient system」とはどのようなことでしょうか。

回答（検察官） １つ目の，国民からの支持，協力が得られないということは，国民一般もありますが，特に罪を犯したと思われる容疑者に近い人が，事情を理解していても，容疑者を守ろうとして，隠したがるということです。一般国民としては，デモなど起き，私たち

に対する追求は厳しいのですが，容疑者周辺の人や，政府機関であっても，証言しないということです。

回答（検察官） 過去32年間にわたる前政権の政治的・司法・立法の構造を見ましても，１人の大統領に依存していたということがわかります。彼自身の政策，戦略を重視しすぎていたということがわかります。したがって，前政権からのシステムが引き継がれていたということは，短い時間ではそれを改めることができなかったということです。現在，私たちが直面している問題とは,汚職犯罪に取り組むに当たり,様々な資源が不足していること，初動捜査が上手くいかないことが挙げられます。したがいまして，国家の監査が降りますが，それぞれのケースの報告書を作成するにも，最高検察庁では資源不足によって事件の報告書をまとめることができないという状況にあります。効果的ではない制度が引き継がれたことによって，事件を処理する能力が限られ，未処理の件数が増えているということがあります。

質問　同じところに「Lack of budget supports」というところがありますが，汚職対策の障害として「Obstacles」の中に「Lack of facilities and resources」という点について関連したことですが，現在どのようなことが具体的に不足しているのでしょうか。そして，予算がもしあれば，どのように事件の処理がよくなると考えていらっしゃるのかお聞きしたいと思います。

回答（検察官） 仮にという話になりますが，予算が十分であれば，検察庁で取り扱う汚職の件数を増やすことができます。検察の職務の中で，例えば，従来の証拠集めの方法だけではなく，ハイテクな証拠収集，例えば，盗聴などもできると思います。そして，検察官の能力の向上を図ることができるのではないかと思います。かつ，様々な特殊な事柄に対しての研修を行うことができると思います。

回答（検察官）非常に具体的な例ですが,証拠収集のときに別の町や市に行くような場合に，滞在費，コピー費用などの必要経費として使うことができると思います。実際には，現在は自分たちのお金で証拠集めを行っています。

質問　感想を申し上げたいと思います。私は，長年，大学で教鞭をとってきた者ですが，本日，大きな問題になっている，汚職とはその国の歴史，伝統などに絡まっていると思います。これを一つの法律的な手段だけでもって改めていくというのは，限界があると思います。そういたしますと，もう少し気長に教育という局面で汚職が生じないように小さいときから教育したり，大学の法学部などで，適切なアプローチをするということが必要だと思います。ですから，質問が２つあるのですが，インドネシアで，現在の教育の現場において，どのくらいの比重が置かれているのでしょうか。

回答（検察官）御教鞭をとっておられたということで,よくわかっておられると思いますが，私たちの国は帝国制でした。このような状況が，王にプレゼントして，気に入られようとする状況を生み出しました。そして300年にもわたってオランダによる支配を受けていました。初等教育だけではなく,家族からのサポートも必要であるということが分かりました。こういった汚職の問題というものは，長期的展望によって解決していかなくてはならない

と思います。

質問　昔の司法試験には，刑事政策に関しての問題がありました。大学でもそのような授業があり，それを司法試験に取り込んでいました。インドネシアではどのような方法，対策で法学部生に教育しているのでしょうか。

回答（検察官）　インドネシアにおける教育においては，解釈学がとられています。刑事政策などを取り入れるべきであるという意見もあります。現在では，刑事政策については，修士課程に取り入れられています。しかし，学部レベルにおいて，刑事政策については，触れられていません。

回答（検察官）　少し付け加えさせていただきますと，汚職，癒着，縁故主義についてですが，縁故主義は歴史などと関係あると思いますが，汚職と癒着は習慣が強いのではないかと思います。モラルや宗教に基づいた行動をとるべきであるといったことを重視しています。どうしたら高潔なる検察官となるのか，という教育を施しています。しかし，今現在は，理想とできるような検事総長を探し続けているという状況です。

質問　最近の破産事件で，第一審では破産宣告がなされたのに，法律の解釈が問題になって，上訴審で破産宣告が取り消されたケースがありました。裁判官によって法律の解釈が変わらないような試みはなされているのでしょうか。

回答（検察官）　破産法に関しては，新しい法律が裁判官の役割を果たしていると思います。先ほどのことはカナダの事件についてだと思いますが，裁判官の判断の正当性とは，システムが答えを出すのではないかと思います。権力のある人が，何らかの影響を最終的に及ぼすのではないと思います。

回答（裁判官）　経済犯罪とは，非常に新しい問題だと思います。裁判所の方でも一生懸命取り組んでいるところです。弾劾制度がインドネシアにはありませんが，全く裁判官の職責について問うものがないというわけではありません。最高裁が裁判官の質の向上，正しい裁判などを図っています。一種のチェック機構が最高裁判所にあります。批判がある場合には，一生懸命聞くという態勢にありますが，そのときには証拠を持ってきてほしいという状況です。裁判官もきちんと証拠を持って有罪，無罪の判断をしているので，それを理解してもらえないとなかなか辛い状況です。

回答（弁護士）　法制度にも問題があり，実際に弁護士の顧客にも問題があり，実際に法律を作った人にも問題があります。しかし，もっとも問題なのは，法の適用面に関してであり，裁判官に問題があることは否定できないと思います。

丸山教官　予定の時間を超過しておりますので，残念ですが，ここで今日のセミナーを終了させていただきたいと思います。ありがとうございました。

資料３－８

インドネシアの弁護士制度とその改革

日時：平成14年７月24日午後２時～午後５時
場所：最高検察庁大会議室
発表：メリー・ギルサン弁護士
記録：早稲田大学大学院生　村井綾子

Lawyers System of Indonesia and Its Reform

1. Background
2. Legal Basis Regulating Advocate
3. Qualification and Training System for Advocate/Individual Lawyer
4. Statistic of the Member of Bar Association
5. Domestic Problem
6. International Problem
7. Conclusion
*Questions and Answers

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1. Background

Before we discuss in more detail on the Lawyer System of Indonesia, we would like to describe in advance on the definition of advocate as a profession whose presence at this time in Indonesia for the justice has been felt as a need

The profession of Lawyer had been known since long time ago since the Roman Age under Caesar Justitianus who was know with his Codification 600 BC where the advocate profession had been deemed as a noble profession (officium nobile) and the person who perform the job is called" "operae liberalis" "which is now called Advocate/ Lawyer.
The Indonesian culture actually has not been familiar with the profession of advocate because during under colonial, who rule the country under absolutism, gave no opportunity for the people to freely express their opinion as the citizen either through court or the prevailing legal system at that time. The Indonesian people with its communal nature was treated as a number only based on "pars pro toto" principle and "participate beginsel."
The term Human Rights, imported from developed countries/west, was also not known. So was the term "advocate profession" which grew in the democratic environment was not known at that time.

The term and definition of advocate and lawyer as a profession in law, in the history is known as Advokat & Procureur in the Netherlands, or barrister and Solicitor in England, and Advokat in Singapore; the term lawyer used in United States is now used internationally.
Initially, the term Procurer or Lawyer or solicitor was used only for those who performed special

function in the court procedure, while beyond that it was handled by advocate or barrister, but now this term has no longer difference in all countries and the term Procurerur has gone and now replaced by the term advokat/advocate or lawyer.
The term Pengacara Praktek is only known in Indonesia.
The term Penasehat hukum (legal advisor) as a profession in legal field is not known as legal profession in international level. The term Penasehat Hukum as a legal profession is known only in Indonesia as an official term, which blurs the term advocate as a profession. The work done by an advocate to provide legal advice is not a separate profession because giving legal advice has been included the profession of the advocates themselves.

Under the Draft Law on Advocate which is being discussed by the Legislature (People's Assembly and House of representatives) sates in article a that "advocate is individual whose profession is to provide legal services either in the court or out of court by the individual who has been granted a license according to the Law.
International Bar association Conference or IBA decided on the principles and status of Lawyers, not of Legal Consultant or Legal Advisor, in which one of the member is National Order van Advokaten (NOVA) or Bar Association of the Netherlands and IKADIN (Indonesian bar Association) is advocate.

2. Legal basis regulating Advocate

There is no Law yet in Indonesia which provides regulation specifically for advocate as an element of the legal enforcement. The present Draft is being debated.
What we have regarding advocate at present are:

1. recterlijike Organisatie (R.O), State gazette 1848 No 57 Concerning The Structure of Judiciary and Trial Policy- Chapter VI on Advocate and Lawyer.
2. Law No 14 of 1970 concerning Basic Provision of Judiciary, Chapter VII on Legal Aid.
3. Law No 8 of 1981 concerning Criminal process Law, Chapter I and Chapter VII on LEGAL AID, etc.

The above regulations still apply because Law on Advocate ha snot yet been issued.
According to Law No 14 of 1985 it is stated that supervision of the legal advisor is handled by the Supreme Court and government. Also mentioned in the elucidation of the law is that especially in performing his/her duties, the legal advisor is under the supervision of Supreme Court and government.
Article 54 par 1 of Law No 2 of 1986 concerning General Judiciary provides:
Chief of The Court of First Instance shall supervise the work of the Legal Advisor and Notary under his jurisdiction and report the result to Supreme Court and Minister of Justice.
It can be seen from the above provision that the state's authority and officer are given authorities to supervise and if necessary to take action in case there is any infringement of the Code of Ethic of Advocate, that is by Supreme Court and Minister of Justice, while High Court and Court of First Instance shall supervise the lawyers who practice under their respective jurisdiction.
The question is how the supervision be done by the Supreme Court and Judiciary institution on the advocates who run their functions and profession as legal enforcer serving the justice and the people.
In practice we can find many instances where representation of the client in the court is handled by non advocate whose qualification is still a question, called bamboo lawyer or pokrol bambu. To avoid this situation Minister of Justice of R.I on behalf of government has in 1985 introduced the position of advocate as an element of the judiciary based on Decree of Minister of Justice No 1 of 1965

concerning Procureur. Of this regulation Supreme Court (MA) and High Court had issued regulation and instruction concerning“registration of Advocate”, “ Pengacara Praktek” (Lawyer who has been granted license to practice in court under the high court jurisdiction) and lawyers who has not been granted a license, incidental lawyer such as civil servant, etc.
This provision can be seen in the decree of MA No 5/ KMA/1972 concerning Legal Aid Provision which was renewed by the Manual Letter of MA No 047/TUN/III/1989, and SEMA (Circulatory Letter of Supreme Court) No 8 of 1981 which provides stipulation on the Granting of license for “Advocate” and “lawyer” and Letter of MA No MA/Kumdil/8033/IX/11987. This authority implementation was without involvement of the advocate association, thus it can be said that the role of advocate association at that time was very small in the implementation and supervision of the regulation in relation to the advocates.

Only in 1988 was that MA begun to involve IKADIN , the Indonesian Bar association, (established in 1985) and IPHI (Association of the Indonesian Legal Advisors) which was established in 1987 to the extent of code of ethic examination. IKADIN is granted authority to hold examination on code of ethic of the advocate, whilst IPHI is given authority to hold examination for “Pengacara Praktek”.

Such a minimum participation by the bar associations is understandable because in practice there are many bar associations and there has not been unity in the opinion or perception as to the profession of an advocate. This situation was utilized by the government for the benefit of its political power because with this disunity it will be easier for the government to interfere in the affairs of the advocates as the guardian of the constitution.
Only later in 1998, with the establishment of Forum Komunikasi Advokat Indonesia (Communication Forum of the Indonesian Advocates) which is the forum for IKADIN, IPHI, and AAI (a new bar established in 1990), then MA through his letter No 1 of 1998 concerning Manual for Implementation of the Recruitment for Pengacara Praktek, and through letter of the chairman of Supreme Court No KMA/1177/II/1999 officially authorized FKAI to hold code of ethic examination in 1999 and make certification of code of ethic as the condition to be met for attending the examination.

In view of the urgent need for a Law which stipulates the advocate profession then the advocates via their organizations have urged the government to discuss the Draft law immediately and make it to become the Law on Advocate.

During there reform era in Indonesia there was a time where the position of supreme Court was vacant in 2000, therefore there was no clear guideline as to the examination of advocate and legal advisor which in the past it was handled by High Court. Therefore FKAI took initiative to hold examination of code of ethic for the lawyer in 2001.
So was IKADIN, and this has cause friction between IKADIN and FKAI (in this matter, IPHI and AAI).

3. Qualification and Training System for Advocate/Individual Lawyer

It is important that an advocate or individual lawyer shall be qualified. They are known from their capabilities and expertise in handling the case entrusted to them. The client prospect would not entrust his/her case to a lawyer whose qualification and expertise has not been known in handling legal case.

Therefore qualification in any relevant aspect relating to the profession of an advocate is very important.
Pursuant to Code of Ethic of IKADIN and also under the Draft Law on Advocate which is now being discussed at MPR/DPR (People's Assembly and House of Representative) article 2 and 3 stipulate criteria to be met by an advocate, namely that he/she must:

1. be an Indonesian national
2. have domicile in Indonesia
3. not a civil servant or armed force or police
4. have the age of min 25 years old
5. have diploma in law from state university or accredited universities.
6. Pass the examination held by advocate
7. Apprentice at least 2 years under a law office of advocate
8. Have never been convicted as a criminal
9. That the advocate who has been appointed as meant in item I may perform his profession by specializing in certain field in accordance with the provisions of prevailing regulation.
10. Master the law in theory and practice.

Beside that the advocates must also respect and run their profession in accordance with the code of ethic of the organization under which he/she is a member.

The profession of an advocate is a free profession which is not subject to hierarchy or order of the supervisor, and receives instruction only from his/her clients based on freedom of contract and shall keep confidentiality of the client affairs. Therefore an advocate must comply with Code of Ethic. This obligation is a must because the profession of an advocate which a noble profession is not simply a financial oriented but there is included also a moral responsibility for the justice and the people of Indonesia.
An advocate who run his /her profession shall not act simply for the reason to win his /her client's case that he/she may not infringes his/her conscience and the living sense of justice.
Therefore any law degree holder who wishes to become an advocate must attend code of ethic examination in advance, which is held by the bar under which he is a member. After passing the examination he can follow the examination to become an advocate.
In March 2002 KKAI (Working Committee of the Indonesian Advocates) which the union of 7 bar organizations initiated by IKADIN was established. KAI coordinated by IKADIN has been successful in their effort to hold examination of Code of Ethic and examination of advocates.

Implementation of the examination which was formerly performed by High Court has not changed to the hand of the bar association. In April 2002 KKI in cooperation with the Supreme Court has held examination for advocates for which all of the subject to be tested are prepared by the bar associations and the checking is also handled by the bar. The Supreme Court was only acting a supervisor. This is a new breakthrough in the advocate sphere leading toward an independent profession without interference from authority or third party in enforcing the justice.

A law degree holder who has passed the examination of advocates and code of ethic will be officiated by the bar organization at Supreme Court, after that they can process their license to the organization which hold the examination and signed by Supreme Court. After obtaining the license hen an advocate may run his profession as an advocate which is acknowledged by the state.

The advocate who has obtained license to practice may run his/her own law firm or remain joint the other firm or bigger law firm.
Further stipulation as to Law Firm has not been available but in practice if some one wishes to start his own law firm under small scale, it can be run by the advocate him/herself after he has been granted a license.

4. STATISTIC OF THE MEMBER OF BAR ASOCIATION

Total member of the bar association has been growing fast in Indonesia and we now have 7 bar associations. This fast growth is due to the fast entry of new professionals and different in the interest of the bar. IKADIN is the biggest association and involved in many activities and participation in several events held by the bar association itself and government.
The number of advocate/individual lawyer has been increasing year by year. This year, the Supreme Court of Indonesia in cooperation with Indonesian Advocates Working Committee has held examination for Pengacara Praktek. Out of 73,000 examinees only 3317 people passed the examinations. This figure is almost same year by year. Thus, every year we have more than three thousand new lawyers, which is an amazing figure. Therefore in view of the rate of the entry, it is a must that there shall be a well organized system of training and recruitment in legal practice.

IKADIN (Indonesian bar Association)

IKADIN is the biggest bar association in Indonesia with total member of around 10,000 lawyers all over Indonesia.
In Jakarta alone there more than 1000 members registered under branch bar, West Jakarta, East Jakarta, central Jakarta and south Jakarta.

In the frame work for improving the IKADIN pursuant to its by Law it is required that each member shall pay his member ship which amount is different according to the capability of the member of the Bar in respective area. Each member of IKADIN is entitled to have membership card as the sign of identity of IKADIN.
Of the title member of Advocate registered in Supreme Court until year 2000 there are 13.000 members al over Indonesia. Actually this figure is still far from adequate in few of the total population of Indonesia which is more than 200.000.000 peoples.
IKADIN has extensive agenda intended to improve the quality and mastery of each the member of IKADIN among other through national forum, seminar on new law is should by legislature, performing critic or recommendation government in relation to certain policy of the government concerning state administration.
IKADIN as the organization of the Advocate has stimulated in each articles of corporation that each of the member shall provide legal assistant to those who are not able to pay, and for this purpose IKADIN cooperate with government institution in establishing posbakum (Center for legal Aid) to the justifiable meaning that each advocate shall not only perform his/her profession for financial purposes but also provide legal services to the people whose an able to pay for the fee of the advocate.
Advocate as a profession and its problem at present.
The implementation of the profession of the Advocate is facing some problem among which, the main problem among other are:

5. Domestic problem:

Since there is no law yet stipulating the profession of advocate to protect the advocate in running his/her function as a legal enforcer and as a noble profession like that of law on prosecution and basic law of judiciary for Judge.
This has caused constrain to the advocates themselves in determining their attitude as legal apparat and causes a concern for the people as their function and status of the advocate.
Its is often that in his/her routine activities as advocate he/she is refused by the investigator to represent their client or deemed to be a sucker of the client or broker of the case and requested to assure that the case will be won, sometime they are torture and beaten by the must because of defending non popular case like rapping, maid to become the defender because of defending of the client, detained by police, subpoenaed to become witness on the case he/she defend and other ill treatment who does not respect the right of an advocate as a legal enforcer.

6. International Problems

Like of master or capability of an advocate either in the field of application of the legal science and the law master do to minimum training obtained when he/she as a student and after he/she became an advocate causes some problem in legal enforcement in Indonesia. An Advocate who does not the legal science and has no wide knowledge on the legal science which develop in line with the activity international trade in the globalization era will an able to provide legal service to his/her client, there for only few advocate who handle the case of international level and there is an mage that such kind of case is only handle by the few.
Beside that lack of English mastery has become a constraint to the advocate in running his/her profession in handling international client. Like knowledge to translate what the client wants becomes a significant constrain. Inability to draft in English and to translate the philosophy of international contract has also become a constraint that must be counted in running the profession as an advocate.
Beside that, the lacking ability of the advocate association to supervise and to give sanction to the member who miss behave or miss conduct causes the people to question the function and role of the advocate and also lack to an certain for the justice at national legal or international.
We can see this in various cases in the court where the advocate thanks for the justice in national sense only whilst the interest of the international society in justice thorough court Indonesia is avoided or neglected.
The knowledge system of legal certain for the justice in Indonesia has become a constrain in running international business and affair and there for investor an International businessman have become reluctant to invest in Indonesia and also has lower their trust in the advocate, prosecutor, judge as the low enforcer in Indonesia.
This has brought negative impact on the Indonesia people in doing business at international level.

7. Conclusion

In our opinion it ids the time now that their must be a law stipulating the profession of advocate for creating the truth and justice as a noble profession (officium nobille) where an advocate revising instruction from his/her client shall provide legal defense to all people without any discrimination base on racial, religion, culture, social economic, status, political, and gender status, and beside that there also demanded to act professionally as legal enforcer that must defense the public interest

(public defender). Independence of the advocate can realize if there is no intervention from other institution, based on stipulation set out in the law on the advocate. They need for protection of the profession of advocate is very important.
IKADIN together with the other six Bar Association of Indonesia has been success full to break down the recruitment system Pengacara Praktek which in the past was help by High Court and their license from supreme court. But since March the Bar Association has been given authority to held assimilation for the advocate candidate and lawyer in cooperation with the Supreme Court.
Their need for a well organize requiting system to become an advocate is important and should be more selective in the sense that a new graduate that easy to become an advocate, but he/she must have certain quality.
Maybe the system can be started from curriculum improvement as well providing facilities leading to the purpose that the law graduate, after graduate, would be more capable in their practice of the law having been given adequate legal science.
There for it is necessary that cooperation between government and the Bar association be established to prepare quality training and continuing education for the advocate in order to improve their quality and professionalism as advocate.
The training maybe a short term but should be held periodically in order to improve the quality of the legal enforcement and legal certainty for the people.
How ever until present there is no system here for improvement of the quality including training system in Indonesia to create a reliable, quality and professional advocate do to the limitation as mentioned able and also do to no strict enforcement of the code of ethic to the member of the association who has broken the court.
We expect that without training in Osaka we would be able to study more of who the legal system and lawyer system applied In Japan which we could implement in our organization, IKADIN, and especially to improve our professionalism as advocates.

Questions and Answers

Q: About the bar association in Indonesia, is the name “IKADEN” the word in Indonesia?
A: “IKADEN” means the “Bar association” in Indonesia. In addition, AAI means “Association Advocate Indonesia”.

Q: In common law countries, the member of a “bar association” includes judges, public prosecutors, and scholars, as well as judges. What is the situation about the members in Indonesia?
A: In Indonesia, the members of the bar associations are advocates only.

Q: According to your report, the candidate for lawyers should graduate from university. What is the difference between “university” and “accepted university”?
A: There is not specific difference between them. Both words means schools that have high educational level.

Q: How many national universities are there in Indonesia?
A: I am not sure.

Q: Where in abroad do law professors go to study? To the United States or Europe? For example, France or Germany?
A: Law professors go to the United States or Europe. In addition, some scholars go to Australia recently. I myself learned in Melbourne.

Q: You said that the members of the bar association are advocates only. So, are jurist-judges, lawyers, public prosecutors, and scholars co-operative each other?
A: They do not often work together. Especially lawyers are different from other jurist. Lawyers work only for clients like doctors.

Q: Are there any political conflicts between 7 bar associations?
A: There are certain conflicts of political interests. Some decades ago, there is only "IKADEN", but a little while, it was separated into 7 associations. It is so hard to bring them to the same direction.
Comment (Japanese side): That kind of situation is seen in Japan.

Q: Could you explain more clearly the difference between the term of "advocate" and that of "legal advisor"?
A: It is so complicated. Those terms do not necessary means jurists who have the license from government.
Q: About the license, from where advocate obtain license?
A: Some advocates obtain from "Supreme Court", and others obtain from "high court". License system is also complicated because there is not specific law for lawyers. It is a bitter legacy in the old age of Holland administration.

Q: In a year, how many people pass the bar exam?
A: Out of 70,000 candidates, only 3,000 can pass it in a year.

Q: About the bar exam, what do you mean by the phrase "qualification is given by Supreme Court"? Isn't the qualifications given by the Ministry of Justice?
A: Qualification is given by "Supreme Court" or "High Court". I myself applied for "the Supreme Court".
Q: Not for the Ministry of Justice? Sounds strange…
A: I mean…The Ministry of Justice via the Supreme Court will give the license. But it is true that both institutions are involved in this procedure.

Q: Is there only ONE bar exam in a year?
A: Yes.
Q: Who organizes the exam?
A: Bar associations do.

Q: According to the bankruptcy law, there must be two people for bankruptcy filing. In my opinion, it is a little bit inconvenient. How do you think of this requirement about bankruptcy procedure?
A: Although it may take longer time to file, we think it legitimate. The reason is that some people abuse their right to file, if only one person can do it.

Q: About the current situation of collecting credit in Indonesia, it is said that some one pay a large

amount money to judges in order to make an escape from the collecting procedure. Is it true?
A: It is true that some clients ask advocate to pay money. However, as an advocate, I never advise my clients to do it. Rather, I will ask such clients to “DO IT YOURSELF”.

Q: How do you think about the current situation of Corruption in Indonesia?
A: Although there are some corrupt judges and lawyers, we are fighting against this matter. If you know some corrupt jurists, please tell me their name right now.

Q: How do lawyers in Indonesia charge the fee?
A: In Indonesia, we don’t have fixed charge for the clients. But in fact there is a certain informal standard about charge. Charge includes such as agreement fee, communication charge, and translation charge.

Q: Are there any plans to make something about fixed fee?
A: No.
Comment (Japanese side): In Japan, bar association is severely criticized by the Japan Fair Trade Commission for the fixed charge of lawyers. So it will be abolished in the future.

Q: In order to become a lawyer, how do the candidate prepare for the exam?
A: Before taking the bar exam, candidate must experience a certain period of training after they graduate from universities. The law for prospective lawyers is now under discussion in the diet. According to the draft law, the most important requirement is to pass the bar exam.

Q: Do you have “arbitration” procedure in Indonesia?
A: Yes, we do.

(End)

資料３－９

インドネシアの知的財産制度

日時：平成14年７月26日午後２時～午後５時
場所：法総研国際協力部
発表：ルビス法務人権省知的財産権局法務課長
記録：神戸大学大学院生　岩谷暢子

Intellectual Property Rights in Indonesia

1. Introduction

In Indonesia, the section in charge of Intellectual Property Rights is the Directorate General of Intellectual Property Rights (DGIPR) in the Ministry of Justice. Under this DGIPR, there are Secretarial of Directorate General, Directorate of Copyright, Industrial Design, Topography of IC and Trade Secret, Directorate of Patent, Directorate of trademarks, Directorate of Cooperation and IP Development, and Directorate of Information Technology. There is also the Patent Appeal Commission which receives appeal petitions concerning patent application.

2. Historical Background

Historically, Intellectual Property Rights Law was introduced by the colonial Dutch Government in 1840s. The first law for the protection of intellectual property was introduced in 1884, and Trademark law in 1885, Patent law in 1910 and Copyright law in 1912. Since the transitional provisions of the 1945 Constitution states that all laws, regulations and institutions of the colonial period were to be retained as far as they did not contradict the new Constitution, some of these laws (Copyright law and trademark Law) are still valid.

The Patent Law, on the other hand, was declared in contradiction with the sovereignty of Indonesia, since although the filing of patent application could be made at Patent Office in Jakarta, the examination of such application had to be made in the Netherlands. Therefore, the Government of Indonesia introduced in 1953, the first regulation concerning patents, and two decrees

In 1953, the Minister of Justice introduced two decrees regarding the provisional filing of patent application. Decree of the Minister of Justice No. JS.5/41/4 provided the provisional filing of domestic patent applications, while Decree of the Minister of Justice No. JG.1/2/17 provided the

provisional filing of foreign patent applications.

In October 1961, the Government of Indonesia enacted Law No.21 regarding Company and Trademark ("1961 Trademark Law") to replace the colonial Trademark Law. This 1961 Trademark Law was the first Intellectual Property law legislated by the Government of Indonesia. In its preamble, it is stated that the purpose of enactment of this law was to protect the public against counterfeiting goods using a trademark which is already known for the good quality. However, under this law, the protection accorded to the owner of a registered trademark was not more than the one accorded to the first-user of the similar trademark.

On 10th May 1979, Indonesia ratified Paris Convention for the Protection of Intellectual Property, based upon the Presidential Decree No.24. On ratification, Indonesia made reservations concerning articles 1 through 12 and article 28 (1).

On 12th April 1982, the Government of Indonesia enacted Law No.6/1982 concerning Copyright, which replaced the colonial copyright law in 1912. This Law was intended to encourage and to protect the process of creating and disseminating works in field of science, arts and literature as well as to accelerate the growth of educational and intellectual life of nation. This law was amended by the Law No.7/1987.

Before 1988, the Intellectual Property Rights Office used to be one of the departments under the Ministry of Justice. In 1988, the Government of Indonesia established the Directorate General of Copyright, Patent and trademark, based on the Presidential Decree No.32.

The bill on Patent Law No.6/1989 was approved by the House of Representatives on 13 October 1989 and ratified by the President on 1st November the same year. It took effect on August 1991 after the two years of preparatory period.

The problem concerning the 1961 Trademark Law was solved by its replacement by the Law No.19/1992 concerning Trademark ("1992 Trademark Law"), which specified that the protection shall be accorded to the registered trademarks.

In the process of ratification of the TRIPs agreement, the Government of Indonesia reformed and prepared a series of laws concerning Intellectual Property Rights. In 1997, The 1987 Copyright Law was amended by the Law No. 12/1997 concerning copyright, the 1989 Patent Law was amended by the Law No.13/1997 concerning patents, and the 1992 Trademark Law was amended by the Law No.1/1992 concerning trademarks.

3. Current Situation

International Conventions on Intellectual Property Rights which Indonesia has ratified are:
- Agreement establishing the World Trade Organization (by Law No.7/1994);
- Paris Convention for the protection of Industrial Property,
- Convention establishing the World Intellectual Property Organization (WIPO) (both by the Presidential Decree No. 15/1997);
- Patent Cooperation Treaty (PCT) and Regulation under PCT (by the Presidential Decree No.

16/1997);
- Trademark Law treaty (by the presidential decree No. 17/1997)
- Berne Convention for the Protection of Literary and Artistic Works (by the Presidential Decree No. 18/1997); and
- WIPO Copyright Treaty (by the Presidential Decree No.19/1997).

There are still some treaties which Indonesia has not ratified. But procedures concerning the applications, registrations and classifications are conducted in accordance with the internationally established standards. At the same time, the Government of Indonesia is now undertaking several legal reforms towards the ratification of treaties concerning patent. Patent Law No.14/2001 and Trademark Law No. 15/2001 are such latest legislations. New legislation would also be necessary when required in the field of enforcement. Efforts are being made through these adjustments of legislations in order to ensure the implementation of international standards.

The Government of Indonesia is also preparing legislations in new area, such as Trade secret Law 30/2000, Industrial Design Law No. 31/2000, and Layout Designs of Integrated Circuit Law No. 32/2000. Plant Varieties Law No. 29/2000 is administered by the department of Agriculture, not by the DGIPR.

4. The Function of the DGIPR

The mission of the DGIPR is to provide the legal protection and to promote enhancement of creative works by administering an Intellectual Property Rights system in Indonesia. Law enforcement is a key for success, but there are still some problems due to insufficient legal system itself, insufficient public recognition and the lack of common recognition on Intellectual Property Rights, quality of the existing legal provisions, and lack of transparency in judicial procedure.

Concerning legal system, there have been many progresses to harmonize domestic provisions with the minimum standard of TRIPs agreement. One of such progresses is a series of amending legislation in 1997. These amendments appoint Commercial Court as the court to handle Intellectual Property Rights cases, and provide procedure for the court. Besides settlement in Commercial Court, the Parties concerned may also settle their disputes by arbitration and by other alternative dispute resolution.

One of the reasons for the insufficient law enforcement is the lack of common recognitions and conflicting views on the Intellectual Property Rights by public. One such example is the “Market dilemma”. Intellectual Property Rights system does not necessarily fulfill the needs of consumers who always look for cheaper goods, since product price tends to rise when their methods or names are protected under Intellectual Property Rights system.

Another reason is the prevalence of counterfeiting of goods. In this regard, the law enforcement system must be improved, by introducing a special division for Civil Servant Investigators (PPNS) at the DGIPR.

5. Patent Appeal Commission

The Patent Appeal Commission is a special independent agency which operates within the

DGIPR. It consists of a chairperson, expert members and senior examiners. To examine appeal petitions, it shall establish a hearing board with odd number of members, at least three persons, and one of them shall be a senior examiner who did not carry out the substantive examination of the relevant application.

One can file an appeal petition concerning the refusal of an application based on substantive reasons and considerations. An appeal petition shall be in writing by the applicant or by his proxy to the Patent Appeal Commission and shall describe the objections to the refusal of application in detail. The Patent Appeal Commission shall render its decision at latest within 10 months from the date of the appeal petition. If the Patent Appeal Commission refuses the petition, the applicant or his proxy may bring a legal action against this decision to the Commercial Court within 3 months from the date of receipt of the decision of refusal, and further appeal to the court decision may only be filed to the cassation.

6. Patent Attorneys

There are at present 43 Patent Consultants in Indonesia, and most of the applications are done through them. Though most of them are already qualified and with law degrees, the DGIPR is considering to set up a unified system for patent attorneys and for law enforcement officers

< Q & A >

Q: What is a commercial court?
A: A commercial court is a court which deals with Intellectual Property Rights and bankruptcy. In Indonesia, commercial courts are set up in six locations.
Q: Are Indonesian commercial courts composed by the judges who are lawyers and judges who are technicians, as is the case in Germany?
A: No, all judges in commercial courts are lawyers. When they need technical examinations, they ask expert witness to do so.

Q: In several Christian countries, it is not ethically allowed to arrange the organs of the animals, and there is strong protest against cloning. How is the situation in Indonesia? Does Indonesian Patent law include animals as its subject?
A: Indonesian Patent law excludes those inventions against religion, morality and public order from its subject for protection. It also excludes all living creatures except microorganism. There are no religious obstacles against the animal cloning, and these exception clauses are drafted in accordance with the minimum standard in TRIPs agreement.

Q: Are compulsory licenses issued in Indonesia?
A: I think neither compulsory nor relative licenses are issued in Indonesia.

Q: Many developing countries in WTO protest TRIPs. How is the Indonesian reaction?
A: There are several anti-biotic NGOs who protest against it.
A: The idea of Intellectual Property Rights is the one developed in industrialized countries. To apply them in Indonesia, not only legislation but also education and social introduction are necessary. Particularly, the traditional concept of common property is still prevailing in Indonesia and the

property is not regarded as source of the wealth, while the idea of Intellectual Property Rights is based on the established system of individual right to property.
A: The idea that the Intellectual Property Rights is a new form of imperial monopoly is very strong in India, China and other countries, and their protests against TRIPs are based on such idea. However, the background is a little different in Indonesia. The protest in Indonesia is rather based on economic reason, that counterfeiting of goods prevails due to the poorness of people who cannot afford expensive goods. On the other hand, it is not the case in field of health, since the Indonesian Patent law does not recognize those inventions concerning health as the subject of protection under the law.

(From here, Indonesian participants ask questions, and a Japanese scholar answers.)

Q: How one can become a patent attorney in Japan?
A: The qualification is based on the national examination. The subjects of this examination include Intellectual Property Rights law, laws concerning industrial property and technology. Though many applicants for this examination used to be technicians, nowadays more people who studied law apply. In Japan, main component of works of patent attorneys are drafting of application for registration, rather than handling of cases.

Q: What kind of education is provided for them?
A: There is no formal education for the patent attorneys. Their qualification is based only on examination.

Q: Who run the examination?
A: Patent Office does.

Q: Does one have to graduate the Faculty of Industry to be a patent attorney?
A: There is no such qualification, although it would be difficult to be successful patent attorney without substantive knowledge of technology.

Q: What are the relations of attorneys and patent attorneys?
A: Those two are separate qualifications. In Japan, those who can represent party in court are attorneys only. However, patent attorneys can exceptionally represent party in case concerning the decision of Appeal Broad in Tokyo High Court. Currently, a draft bill is being prepared to entitle patent attorneys to represent parties in infringement cases if together with attorneys.

Q: According to your paper, the requirement of industrial applicability is not included, though the purpose of the Patent law is defined as the development of industry. How does it mean?
A: The industrial applicability is of course one of the requirement. What I meant is that this requirement is not so strict since most of applications already meet this. Rather, it is quite rare particularly in the case of plant and animals that the patent is not industrially applicable.
There are arguments whether the patent can be accorded to the mere discovery of the DNA and genome. Opinions in Japan are negative, and they think that patent shall not be accorded to such discovery whose purpose is not yet unknown. However, this is another issue.

Q: But it seems that directions in US and other countries are different. They have enacted legislation

concerning plant varieties since plants are not industrially applicable and therefore not included as a subject for protection under the Patent Law.
A: That might be true, but also there must be religious reasons behind that. It is up to each country to decide the criteria of "industrial applicability". Japan adopted wide criteria, except for the invention concerning medicals.

Q: What kind of cases are most in number?
A: Among 600 cases brought to the District Court as civil cases in 2002, the most in number was the cases concerning Patent, and cases concerning Unfair competitions, cased concerning Copyrights and cases concerning Trademarks follow.

Q: To which court can one bring an action, only to Tokyo District Court and Osaka District Court?
A: One can bring case to any District Court in Japan. At the same time, those cases that can be brought to the District Courts in eastern half of Japan can also be brought to Tokyo District Court, and those cases that can be brought to the District Courts in western half of Japan can also be brought to Osaka District Court. Tokyo District Court and Osaka District Court have specialized section concerning patent, utility model, IC programme and copyrights, and 70 % of all cases concerning Intellectual Property Rights are dealt with by these two courts.

Q: According to your explanation, no formality is needed for copyrights, while the transfer is not valid without such registration. It seems to me that the difference of these two provisions is in contradiction.
A: They are not in contradiction, since copyright automatically derives by the creation of the copyrightable works and does not need any registration. However, to certify the transfer of copyright, especially in case of double transfer, the registration is required.

Q: However, how one can secure the subject of license or transferred rights to be copyrightable works if there is no registration for the original work itself?
A: Although such case can often happen, no one examine the nature of the subject at the time of registration, unless it becomes an issue in a suit. The nature of the works as an object of transfer is left to the risk of the one who conclude a transfer contract. However, this kind of situation does not arise in case of licensing, since the copyright still remains at the original owner.
Q: In Indonesia, licensing is a form of transfer.
A: The legal nature of transfer may vary according to the systems of each country. In Japan, licensing is to allow the party action otherwise illegal, and the license does not have to be exclusively one.

Q: Are there any implementing decrees for each law?
A: Yes, there are several implementing rules for them since they are very complicated. For example, for Trademark Law, there are Trademark Law implementation Rules and Trademark examination Manuals.

Q: What kinds of things are protected as geographical indication?
A: Those specified in TRIPs are protected as a part of place of origin. Generally in Japan, misleading indications of origins are regarded as unfair competition. However, TRIPs prohibits all geographical indications concerning wines and spirits regardless of being misleading or not.

Therefore, to be in accordance with TRIPs, Liquor law prohibits all geographical indication for the wines and spirits. This law is administered by the Ministry of Finance through the approval mechanism of the selling of liquors.
What about in Indonesia?
A: There are no actual cases or specific procedure in Indonesia so far, since it is quite short time since they are stipulated in decrees.

(End)