INDONESIAN LEGAL SYSTEM
INTRODUCTION

Prof David K. Linnan
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CULTURAL BORDERLAND
INDONESIA

BACKGROUND TO LEGAL SYSTEM

Legally speaking, start on a technical basis post-Independence (1945)

History to account for diversity characteristic of system

Economic
Social
Political
Pre-Western colonialism in Asia, part trading between Far East (China), Middle East (water route to Europe) & East Indies as spice source

Portuguese & Dutch as early modern merchantile explorers (remember Columbus was looking for passage to fabulous East Indies in 1492 to break Portugal’s monopoly)

VOC root of colonial history pre-1700s with minimal govt & Dutch presence
ECON. HISTORY

BACKGROUND TO LEGAL SYSTEM CONT’D

19th Century first Dutch state monopoly exploitation (Culture System & agro-business), then so-called Ethical Policy coinciding with first modern globalisation wave (Suez opening 1870s)

20th Century strong Dutch presence from late 1800s, WWI commodities boom until 1930s economic crisis created heavy state economic involvement (oil & rubber)

At independence, primary industries with low levels of Malay human capital & private sector entrepreneurialism concentrated in ethnic Chinese community beyond Dutch businessmen (until 1958)
Cultural borderlands issues

Hindu-Buddhist earliest (arguable [Javanese] state forms, cultural accretion, left over in Bali)

Islamic influence from 1400s (syariah in now circa 89% Islamic majority country)

Chinese laborers & entrepreneurs imported as colonial policy, fix some socio-legal issues as clearly as importing African slaves did in US history
Indigenous population not homogeneous, in language, religion or culture, indirect rule & later “19th century multiculturalism”

Increasing formal European presence from 1700s, first (European) & second (Indigenous) class societies circa 1800-1941, Chinese commercial society

Indonesian “intelligensia” created in wake of Ethical Policy, nationalist leaders going back to 1920s (one people, nation, lang.)
POLITICAL HISTORY

BACKGROUND TO LEGAL SYSTEM CONT’D

Tradition of indirect rule & late Dutch subjugation of independent groups (Aceh & Bali post 1900)

Re colonial policy, heavy influx of Dutch 1850-1940 (comparison is 10,000 British civil servants in India, 200,000 Dutch in parallel govt structures so few Indonesians in responsible positions)

Nationalists product of colonial education system, not from traditional indigenous leadership & nationalism vs. ethnicism (problem of Indonesia as colonial construct as multi-ethnic empire)

Indonesians informally encouraged by Japanese to declare independence at end of WW II, on basis of 4 ½ years w/ Dutch replaced by Indonesians in civil government during Japanese occupation & 1945 Constitution drafted essentially by Committee under Japanese occupation
Independence struggle (fought 1945-1949) yielded two political constellations of modern legal importance

1. Anti-Dutch grouping of Nationalists, Islamicists & Communists (united only in opposition, problem on common vision at constitutional level on civil side)

2. Indonesian military as distinctive group, considered itself (perhaps mythically)
   a. Guarantor of national unity
   b. Beyond politics

This is where Indonesian law reform piece picks up
LEGAL PLURALISM

HISTORICALLY DERIVED PARALLEL LEGAL SYSTEMS LIVE ON

1. Islamic law (traditionally family law & inheritance, now areas like syariah financial markets too)

2. Adat law (former indigenous law, important in real property & ideology of specific “Indonesianess”, now decentralisation too)

3. National law (former colonial law for Europeans, now since 1949 evolving)
STATE VIEWS

1945 CONSTITUTION AS FOIL

1. Re Islam & nation, once & future Jakarta Charter discussion

2. Re nationalism, idea of “integralist” interpretations as matter of national unity 1966-1998, earlier 1950s history of parliamentary democracy immediately post-colonial

3. Expressly secular “Pancasila” state, in many ways to paper over differences of opinion since 1966, strong centralism
STATE VIEWS

1945 CONSTITUTION AS FOIL CONT’D

4. 1998 Political opening reopened unfinished political business re institutional change

5. Oddities of functional group participation (military) issues now changing ideas re branches of govt & decentralisation

6. Incorporates ideas also about “Indonesian socialism” (eg, art 33)

7. Significant social history embedded in concepts like specifically Indonesian “socialism”
PRIVATE LAW

CARRYOVER FROM PUBLIC LAW

Issues of:

1. Extent to which public law ideology (e.g., re control of economy) carries over to private law (Pancasila versus economic democracy)

2. Issues of extent to which private law is national versus adat versus Islamic in orientation

3. Issues of extent to which what was Dutch colonial law on national law side changes with time to a mixed system as part of legal modernization

4. Extent to which classic French influenced Dutch colonial codes are losing in importance to ad hoc law making, particularly in economic law area (1995 Company Law, 1995 Capital Markets Law, 1992 Banking Law, etc.)
LAW REFORM

IDEA SINCE LATE 1950s CONSTANT LAW REFORM

1. Concept of why law reform did not (yet) succeed important re future
   a. rent seeker
   b. kebatinan
   c. institutional disfunction
LAW REFORM

WHAT IS ACTUALLY GOING ON, ON THE GROUND

Manulife reading & different views of “law reform”

Implicitly, do you need law?