



SLEEI
Strengthening Legal Education
in Eastern Indonesia



Working Paper 2

Legal Skills

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Adriaan Bedner, Stijn van Huis and Bivitri Susanti



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Colophon

This paper is part of a series of 5 original working papers of the project “Strengthening Legal Education in Eastern Indonesia” written as key reference material for training law lecturers in Eastern Indonesia. Each paper discusses one of the core themes of the SLEEI project and explains the issues that come up when enhancing law courses on content regarding the themes. The papers also contain practical suggestions on how to integrate the enhancements in existing courses. These five papers compose the core of what will become the SLEEI manual for strengthening legal education. They are co-authored by Indonesian and Dutch experts who cooperate in SLEEI. All the papers as well as more information on the project, events and updates can be found on the SLEEI websites in [Bahasa](#)¹ and [English](#)².

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Authors

Adriaan Bedner (Professor of Law and Society in Indonesia at the Van Vollenhoven Institute, Leiden Law School, Leiden University), Stijn van Huis (Lecturer at the Law Department of Bina Nusantara University in Jakarta) and Bivitri Susanti (Lecturer at Jentera Law School, Jakarta (Pengajar dan Wakil Ketua Bidang Akademik dan Penelitian di Sekolah Tinggi Hukum (STH) Indonesia Jentera)

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Dorien Conway

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Leaves of Eastern Indonesia’s iconic lontar palm. Photo: J. Vel

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¹ <https://sleei.law.ugm.ac.id/>

² <https://www.universiteitleiden.nl/en/research/research-projects/law/strengthening-legal-education-in-eastern-indonesia>

³ <https://www.nuffic.nl/en/subjects/institutional-collaboration-projects/>

Legal Skills

Why focus on legal skills?

Legal skills are the competences a law graduate needs to have acquired to be capable of doing legal work – whether as a judge, a lawyer, a civil servant, legal staff in a company, etc.. One of the key objectives of legal education is that it produces such law graduates. Law combines scientific and vocational training and the majority of legal graduates end up in professions that require legal *skills* and not just legal *knowledge*. The labour market for jurists indeed demands that the graduates they hire are already capable of applying the knowledge of the legal system they acquire during their studies.

The self-assessments made by the universities in the framework of the SLEEI program found that lecturers and employers agreed that universities must focus more on teaching both general skills and primary as well as secondary legal skills. The general skills mentioned were critical thinking and analytical skills. Primary legal skills mentioned were case analysis and legal reasoning. Secondary legal skills included litigation and non-litigation skills and the application of law in different socio-cultural contexts.

TABEL 1 GRADUATE SKILLS THAT UNIVERSITIES WOULD LIKE TO IMPROVE

Type of Skill	Skills that need improvement
General	<ul style="list-style-type: none">• Critical thinking• Analytical skills
Primary legal skills	<ul style="list-style-type: none">• Legal reasoning (<i>penemuan hukum</i>)• Applying law to a case (case analysis, case resolving)
Secondary legal skills	<ul style="list-style-type: none">• Litigation (drafting pleas, arguing cases before a court etc.)• Non-litigation (ADR techniques, legislative drafting, contract drafting)• Socio-legal skills (ability to understand and use of law in particular socio-cultural contexts)

Legal skills can be divided into primary and secondary legal skills. Primary legal skills consist of the general legal skills one needs to have acquired to be able to *think as a lawyer*. Secondary legal skills concern the application of those skills in specific legal settings. The two main primary legal skills are juridical analytical skills (*analisa hukum*) and legal reasoning (*penemuan hukum*).

Secondary legal skills are all instances of *applying* primary legal skills in a special legal setting in the context of litigation and non-litigation. Secondary skills include legal writing, presenting a legal argument, legal drafting (which is quite complex because it requires a form of ‘reverse legal reasoning’), contract drafting, etc. Once students are able to resolve – or argue – cases by legal reasoning, it will be much easier for them to develop secondary legal skills. Hence, it is essential that students have acquired the primary legal skills before they learn secondary legal skills.

Primary legal skill 1: Legal reasoning

We have established that the two essential primary legal skills a law graduate must have acquired are legal reasoning and legal analysis. Legal reasoning is a topic addressed in all introductory courses in law (*Pengantar Ilmu Hukum*) across Indonesia. Some faculties also have specific courses on legal method, such as *penalaran hukum*. UNKRISWINA for example has a course called *Penalaran Hukum dan Analisis Yurisprudensi*. Courses on legal philosophy (*Filsafat Hukum*) also pay attention to legal reasoning. However, the self-assessments indicate that there is a need to improve the way students learn legal reasoning.

Before we continue with the different steps involved in legal reasoning it makes sense to provide a working definition of ‘legal reasoning’. ‘Legal reasoning’ means:

‘analysing legal sources, using the method of legal interpretation, in line with the objectives of the legal system, to determine the legal outcome of a (potential) case, or to develop the legal system’.

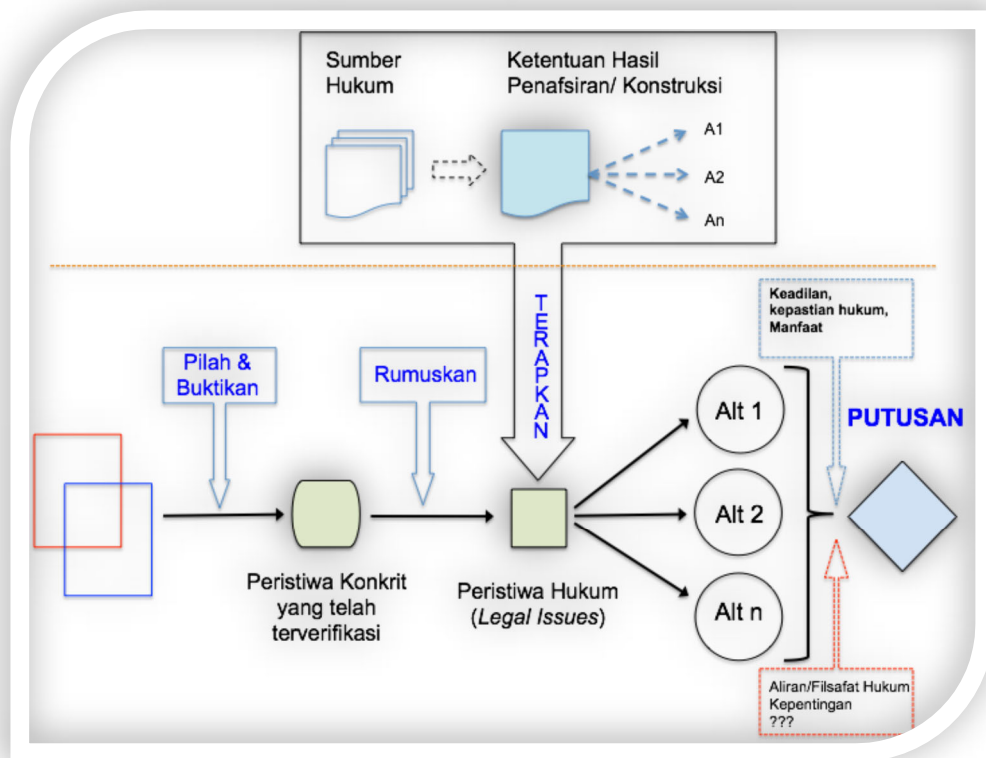
The definition shows that the legal skills of ‘legal reasoning’ and ‘case analysis’ are overlapping and complementary: legal reasoning requires legal analysis, and case analysis and case resolving, as a sophisticated form of juridical analysis, must be based on proper legal reasoning.

Proper legal reasoning is not a machinelike application of legal rules found in legislation. By using different sources of law, different methods of interpretation – and by using critical legal thinking and analytical skill – jurists can find solutions to legal problems that strike a balance between legal certainty, their sense of justice and the objective(s) the legal rules concerned aim to achieve.

It is important that students learn what legal reasoning is and practice its application. According to Shidarta (2009), the steps to legal reasoning in the Indonesian context are as follows.

1. Identifying facts to create a case structure or map that is believed as the real and factual case.
2. Connecting or submitting the case structure with relevant sources of law so that he/she can put it in legal terms.
3. Selecting the relevant sources of law and regulations in order to identify the policies underlying those rules, so that there is a coherent legal structure or map.
4. Connecting the legal structure and case structure.
5. Identifying possible solutions.
6. Deciding which solution is the best when viewed from the three objectives of the legal system: justice, legal certainty and utility.

Skema: Proses Penalaran Hukum⁴



The three objectives of the legal system

During their legal education Indonesian law students will learn which three objectives a legal system seeks to realize. The reason why they are important is that in resolving a case through legal reasoning jurists ought to strike a proper balance between these objectives. While sometimes they may be perfectly aligned, in other cases they are at odds with one another.

1. **Legal certainty.** In resolving a case, jurists should try to make sure that the outcome is in line with legislation, with the outcomes of similar cases that were decided earlier, or with any other source of law. While this seems to speak for itself, there are myriad cases where problems with legal certainty emerge.
2. **Justice.** General application of legal rules without taking the particular circumstances of the case at hand into account inevitably leads to injustices. Many notorious miscarriages of justice in Indonesia have been caused by the refusal of judges to interpret general rules in a differentiated way in the light of the facts of the case. A good example is the recent case of Ibu Nuril, a teacher who was convicted for defamation, when a recording she made of a phone conversation went viral. The recording revealed how her superior was sexually harassing her. Nuril had not even published the recording herself, nor had she given permission to do so. Like in many other defamation cases the problem here is that judges have not developed any more

⁴ Shidarta, *Karakteristik Penalaran Hukum Dalam Konteks Keindonesiaan*, (Bandung: CV Utomo).

subtle rules on evaluating criminal accountability but directly assume defamation when something not agreeable to the complainant has been published. They could do so for instance by evaluating the relevant clause in the ITE-law in the light of human rights principle of freedom of speech, but there are many more ways. Important is to understand the layered nature of law and connecting different values, principles and rules to one another.

3. **Utility.** This means that legal rules should be of general application and that they should serve a legitimate purpose in line with the public interest. Of the three principles mentioned this is the most difficult one to apply, because legislators or officials who in fact apply a rule in order to serve their or someone else's private interests will often appeal to legitimate reasons of utility, and it is often not so easy to reveal that this actually is a sham.

While these principles are not often mentioned explicitly in legal reasoning, they should form the backdrop for any form of legal reasoning. Students should learn that in resolving cases they can use different methods of legal reasoning to resolve a case with the objective of striking a balance between these principles.

Use of sources of law in the class room

Indonesian introductions to law list the same sources of law as are common in other civil law jurisdictions, such as the Netherlands. Commonly referred to in teaching are:

- international law (in particular treaties to which Indonesia is a party),
- the Constitution,
- legislation and
- circular letters of the Supreme Court.

The other sources of law are seldom referred to in the discussion of law or in legal reasoning, but are valid legal sources that are especially apt for students to develop their legal skills.

The other sources of law are the following:

- case law (*yurisprudensi*)
- custom (*adat* and/or *kebiasaan*)
- doctrine
- when a lecturer wants students to use these sources in a legal case analysis then students must be presented materials containing the sources relevant to the case at hand. These can be legislation, collections of caselaw, excerpts from doctrinal writings, and accounts about customary practices in particular economic or social fields.

Types of legal interpretation

Introductions to law in Indonesia refer to the following types of interpretation for legal reasoning:

- grammatical interpretation (focusing on the established meaning of the legal text, words)

- systematic interpretation (interpreting legal norms in the light of other legal norms, and general principles of law)
 - interpretation based on the history of the statute (interpretation based on the original meaning the lawmakers attributed to the legal text)
 - teleological interpretation (interpretation of legal norms in the light of their purpose)
 - Comparative interpretation (interpretation of legal norms in the light of interpretations of/legal solutions to similar legal issues offered by a different legal system)
- It is useful if introductory courses offer students clear examples of each method of interpretation, preferably *not* a fictitious case, but a ‘real’ one, from court decisions.
 - The methods of interpretation are closely intertwined with the sources mentioned above. Systematic interpretation is only possible if students have access to all the relevant legislation. Interpretation based on the history of the statute requires access to the minutes of the debates in parliament, just as teleological interpretation.

General legal theory

General legal theory must be applied to all major legal disciplines / subjects that students take after the introductory or general course(s). Such disciplines include civil law, criminal law, administrative law, family law, etc. Across the board, these courses now provide students with a basic knowledge of the particular field of law (or legal discipline) concerned. This basic knowledge includes:

- major principles of the discipline/subject (for example the principle of legality in criminal law)
- major concepts of the discipline/subject (for example what a legal person means in civil law, or how theft is defined in criminal law)
- legal theories specific to the discipline/subject (for instance the theory of the capacity to act [*handelingsbekwaamheid*] in civil law)
- major pieces of legislation relevant to the discipline/subject (legal codes, other statutes, lower legislation and – in particular – how they relate to one another and how they are structured)
- other sources of law and their importance to the discipline/subject (for instance how human rights are relevant to criminal law, circular letters from the Supreme Court about the application of general principles of proper administration in administrative law, or the landmark decision in civil law that cases concerning defamation in the press should first go to the Press Council).
- Which forms of legal reasoning are allowed in a particular fields and which ones are not (for instance in criminal law, where the principle of legality does not allow for analogous interpretation).

By the time students learn the different legal disciplines, they must be familiar with the main *sources* of law, the *objectives* law is supposed to serve, and the main *principles* and *methods* of legal reasoning. The introductions intend to provide students with a basic knowledge of what jurists do and how they do it. In order to be effective, they should make students familiar with the different terms and methods used in legal reasoning generally, but also provide clear examples of the application of these terms and methods.

Acquiring this basic knowledge serves as a first step on the way to independent legal reasoning. The next step is to provide students with the skills required to apply this knowledge. Most of these skills can be best learned through case analysis and case resolving.

Skills required for legal reasoning

Students must learn a number of skills before they are able to properly apply the theoretical model of legal reasoning discussed above. The first set of legal skills required are related to the ability to conduct a legal analysis. Students must acquire the skill of finding authoritative and reliable legal sources and analyse them in a juridical logical and systematic manner. The ability to find the proper legal sources is one of the main skills of a legal practitioner and cannot be taught in a short library course. In fact it requires constant practice.

- *Skill: Where and how can you find standard legal sources?*
- *Skill: Where and how can you find non-standard types of legal sources?*

Students must learn how to find reliable legal sources and how to distinguish between doctrine and less authoritative works. As the internet becomes increasingly important, students have to learn how they can search reliable sources on the internet: knowledge of reliable sites/data bases and the ability to use the right key words has become an essential skill for law students.

- *Legislation*, can be found at the internet and at the library (electronic and physical).
- *Lower level regulations* require a visit to the local government institutions.
- *Jurisprudence / case law* can be found at the directories of the Supreme Court and Constitutional Court MA / MK. Other options are searching online, data bases and jurisprudence books.
- *Doctrine* can be found in reference books.
- *Agreements/treaties*: via the internet.
- *Adat law*, through literature and empirical research.
- *Islamic law*: standard books, online: Kompilasi Hukum Islam

Why case analysis and case resolving?

- Resolving legal cases is the cornerstone of legal education all over the world; in common law and civil law countries. The starting point for this approach is the notion that students need not only hear about legal reasoning, but should actually *practice* it. Indeed, learning by doing something is the only way to truly acquire a skill.
- Theories and knowledge of the law are important assets, but to acquire the legal reasoning skills of a legal practitioner, students need to practice a lot and analyse and resolve legal cases.
- Cases can be real ones, especially from court decisions, but also legal issues on the media, which might or might not go to court, such as the legal aspects of the “*Penipuan Jamaah Umroh*” by the First Travel or whether or not the legislation process of the revision to KPK Law is lawful. Lecturers can also develop fictional cases for the purpose of discussion in the class that covers legal issues to discuss.
- It is particularly important to study the legal reasoning in court judgments so that the students can learn how law in practice and reflect on the strengths and weaknesses of the legal reasoning in the court.

There are 3 important points in using cases (court decisions and otherwise):

1. Students need to have time to read the case carefully before/during the session.
2. Lecturers need to develop key questions to lead the discussion towards the purpose of the course and to prepare feedback. Usually the types of questions that will make the students make efforts to understand the case and to think critically about the case
3. Students have time to discuss the case in the class and get feedback from lecturers.

A prerequisite for legal education that focuses on resolving legal cases is the availability of suitable cases. Although in Indonesia cases have become available online, Indonesian law faculties are still struggling with the legacy of 40 years of authoritarian government. Until well in the 1990s lawyers had difficulties in finding relevant pieces of legislation. Legislation is now widely available, but another important source of law – jurisprudence or case law – is still hard to access, mainly because it is not ordered in a systematic way. Supreme Court cases are available online, but many lack so-called ‘added value’ – information about the relevant legal topic they address, or the relevant clause in a statute that they interpret.

Another problem is the quality of the individual juridical rulings that can serve as examples of legal reasoning. The disarray into which judicial reasoning fell during the New Order regime has created two problems at the same time: 1) juridical rulings seldom provide good examples of sound legal reasoning, and 2) this makes it harder to use these rulings as a source *in* legal reasoning of later judgments. If a court ruling does not make clear *how* the judges reached their decision, it is hard to infer a general rule from it. Therefore, such a case cannot serve as a precedent.

How to use cases in the classroom

In ‘resolving’ legal cases – students actively use the disciplinary/subject/legal theory knowledge they have obtained. The complexity of the selected cases must correspond with the knowledge of the students. In the first two semester students start with straightforward cases that are easy to solve. During the following semesters gradually more complex cases are offered to them. The cases offered must be accompanied with questions that guide students well in conducting the analysis. When offered in the right way, case analysis will gradually develop the students’ critical legal thinking and analytical skills that are required to construct a proper legal reasoning based on legal theory. Because legal reasoning is a skill that students gradually acquire through practice, it is essential that case analysis and case resolving are offered throughout the curriculum and for each legal discipline.

For these reasons, lecturers must be careful in selecting cases and be aware of the quality of the legal reasoning of the cases that students must analyse. Lecturers should not use court judgments in which the legal reasoning is unclear (except as an example of ‘improper’ legal reasoning).

We propose that students practice their legal reasoning skills through the following methods:

1. *The analysis of legal sources*

- *Skill: academic reading skills:* The ability to read legal texts must be taught to the students. Students regularly must be trained in reading and analysing legal academic papers. Ask them to look up legal terms, and legal concepts that they do not understand.
- *Skill: Making a summary of a case:* A summary is not copy-pasting: students must rephrase, use their own words. A summary assignment must contain specific elements such as:
 - Background
 - The (legal) problem and research question
 - Methods used
 - The main argument of the author
 - Main findings, conclusions
- *Skill: critical thinking about law*
 - Students are asked to formulate a well-reasoned (legal reasoning!) opinion about the article / legal issue
 - Ask students to formulate a follow-up question
 - Give feedback to the students

2. *Constructing a legal argument*

- *Skill: to use systematic steps in formulating a legal argument, including*
 - Step 1: Make an inventory: what different legal solutions can we find in the literature for the legal problem?
 - Step 2: Legal reasoning: choose one of the legal solutions to the legal problem and formulate in a logical and systematic way why that is the best solution from a legal perspective.
 - Step 3: Conclusion. A brief description of the solution of the case

3. *Solving a legal case*

- *Skill: use the IRAC method*
 - **Issue:** What is the legal question that, when answered, determines the result of the case? Example: “Did Superman have an agency relationship with PT Cahaya Cemerlang due to his acting on behalf of this firm and following its instructions?”
 - **Rule:** A rule must be general. The rule describes which law or test applies to the issue. Frequently, the rule will be the definition of the principle of law applicable in the case. Example: “An agent may not use or disclose confidential information acquired through the agency absent an agreement to the contrary”.

- **Application/analysis:** Do not merely state a conclusion without also stating reasons for it. A student should use the facts of the case to explain how the rule leads to the conclusion. A conclusion without reasoning or explanation means that you have not used the rule and the facts to analyse the issue.
- **Conclusion:** The conclusion is the answer to the issue. State the result of your analysis. Example: “Saleh is liable for negligence”.

4. Examination of court judgments

- Analysis of procedure: Are the appropriate procedures followed by the judge?
- Analysis of the legal reasoning/legal justification of the judge: is the reasoning logical / systematic from a legal perspective? Can we find an alternative legal reasoning in legal literature (doctrine)? Has the judge applied principles of justice, legal certainty, proportionality and utility?
 - *In the classroom the students must learn how to apply legal theory to legal cases in a logical and systematic way. Students must dive in the relevant legal sources and legal literature and should not be allowed to use “shortcuts” and “free” (non-juridical) interpretation to arrive at a quick conclusion.*

Conclusion

In Indonesia, all institutions of higher legal education pay attention to case analysis and legal reasoning, in their legal education. Students learn these skills, however, mostly through special topical classes. The challenge is to adjust the existing curriculum in such a way that legal skills are trained more intensively and more systematically in the curriculum. Each university will review its current education offer and decide the teaching of which legal skills elements from above need improvement, be taught at an earlier stage, or taught more often. The idea is that the training of legal skills can be incorporated in the existing curriculum, through the semester planning. In this way, there is no need to change the curriculum, and negotiations about the adoption of new subjects can be avoided (that inevitably will be at the expense of the weight of other subjects taught).

If the proposed methods are applied to all legal disciplines, students will develop skills in **legal reasoning**. As said, legal reasoning generally is the ability to think like a lawyer: i.e. to think using juridical logic, “weighing” and taking all legal facts into account while considering legal principles such as justice, legal certainty, proportionality and utility, and thus is a skill which will better prepare students for the labour market and, in the end, will produce better lawyers.