PAYMENT OF A COMPENSATION PENALTY AS AN ADDITIONAL PENALTY IN CORRUPTION CASES (Its effectiveness in the effort to eliminate corruption)

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I. INTRODUCTION

Indonesian criminal law recognizes two kinds of penalty, namely, the principal penalty and the additional penalty. A principal penalty can be imposed by a judge upon a defendant in the absence of any additional penalty, but an additional penalty should be imposed along with a principal penalty. An additional penalty cannot be imposed separately (without imposing any principal penalty). The principal penalty for a corruption case is imprisonment, either temporary or for life. Law No. 31 of 1999 on the Eradication of Corruption even states that under certain aggravating circumstances the death penalty can be imposed upon a corrupter (see Article 2 paragraph 2 of Law No. 31 of 1999).

In corruption cases, either according to the old law (Law No. 3 of 1971) or according to the new law (Law No. 31 of 1999 which has been renewed by Law No. 20 of 2001), there is an additional penalty which is called "Payment of Compensation Penalty" (*Pembayaran Uang Pengganti*). In the old law (Law No. 3 of 1971) it is stated in Article 34 sub c which reads that upon a corrupter an additional penalty can be imposed which is:

"Payment of Compensation whose amount is the same as the value of the assets obtained by the defendant from committing corruption".

Even though Law No. 3 of 1971 has been replaced by Law No. 31 of 1999 which is renewed by Law No. 20 of 2001, due to the non-retroactive principle, its provisions are still binding in the prosecution of corruption committed prior to the enactment of Law No. 31 of 1999 (prior to August 18, 1999).

The new Law on the Eradication of Corruption (Law No. 31 of 1999 amended by Law No. 20 of 2001) maintains the existence of "payment of a compensation penalty" as an additional penalty for corruption cases. Article 18 paragraph 1 sub b of this Law states that upon a corrupter an additional penalty can be imposed, which is:

"Payment of Compensation whose amount is the same as the value of the assets obtained by the defendant from committing corruption".

It has been widely known that society in general will not be pleased if the result of law enforcement in corruption cases is only the corrupters being imposed with criminal law penalties, however severe the penalties are. It is the hope of society that law enforcement should also result in the recovery of the financial/economic losses which are caused by corruption. Effectively imposed, the payment of a compensation penalty will pressure a corrupter to strive hard to recover the economic/financial loss emanating from the corruption he committed, in addition to the imprisonment penalty (or even the death penalty) which is imposed upon him. Unfortunately,

as this paper further discusses, there are some legal problems that hamper the effectiveness of the application of this additional penalty.

This paper discusses two problems in this regard. The first problem is about how to determine the amount of the compensation penalty. The second problem relates to the legal consequence of non payment or partial payment of the penalty. The legal consequence in this regard is discussed in accordance with criminal law provisions as well as in accordance with civil law provisions.

II. PROBLEMS

A. The Amount of the Compensation Penalty

Law No. 3 of 1971 amended by Law No. 31 of 1999 amended by Law No. 20 of 2001 (all of them are about the Eradication of Corruption) defines a norm to state the maximum amount of the payment of compensation penalty. Both laws state that the maximum amount of the penalty "should be the same as the value of the assets obtained from corruption". (article 34 sub c of Law No. 3 of 1971 and article 18 paragraph 1 sub b of Law No. 31 of 1999).

Grammatically interpreted, the law requires a judge to identify assets emanating from the corruption the defendant committed and calculate their value prior to determining the amount of the payment of a compensation penalty to be imposed upon the defendant (the corrupter). Admittedly, it is not easy to identify one by one assets which come from corruption, and, accordingly, it is not easy to fulfill the legal requirement in accordance with the grammatical interpretation of the provisions of the law.

In Edi Tansil's case, for example, the amount of money gained by corruption by Edi Tansil was about Rp 1, 2 trillions (about US $ 120 million). This does not necessary mean that Edi Tansil obtained assets of the same value as the value of the money he gained corruptly from the state, because some of the money was transferred (or given) to other people or legal entities as bribes, donations or gifts. Some of the money was used to purchase assets which do not belong to Edi Tansil himself, but to a limited liability company. This raises the following legal problems:

(i) Can the assets be categorized as *"the assets obtained from the corruption"* even though the corrupter has no share in the limited liability company?
(ii) If the corrupter has only 20% of the shares of the limited liability company, how should the judge calculate the value of the assets obtained from the corruption: 20% of the value of the assets or 100% of the assets' value?

There is also a problem relating to the fluctuation of the value of assets. If by corruption a person gains money amounting to Rp 1 billion and uses the money to buy a plot of land and due to the fluctuation of land prices, the value of the land becomes Rp 2 billion how much should the judge determine the amount of the payment of a compensation penalty to be imposed. It is clear that the asset obtained from the corruption in this case (the plot of the land) is valued at Rp 2 billion. Nevertheless, it is odd for a judge to impose upon a corrupter a payment of a compensation penalty amounting to Rp 2 billion, if the legally admissible evidence shows that the amount of the money gained by corruption is only Rp 1 billion.

Apparently, judges find it is difficult to fulfill the grammatical interpretation requirement on identifying and calculating one by one assets that are obtained from corruption. In their

verdicts they often impose payment of a compensation penalty without specifying what assets are obtained by the defendant from corruption as well as calculating how much the value of the asset is. In Dicky Iskandar Dinata's case, for example, the verdict imposed upon Dicky was the payment of a compensation penalty amounting to Rp 800 billion (about US $ 80 million). The verdict never specified which assets were obtained by corruption. The verdict seems to ignore the fact that the money the defendant gained from corruption was used for currency speculation, which brought no profit to the defendant because he incurred a total loss.

B. The Legal Consequence of Non or Partial Fulfillment of the Penalty

In Law No. 3 of 1971 the legal consequence of non-fulfillment of payment of the compensation penalty can be found in the elucidation of Article 34 sub c which states that a "substitute imprisonment for fine penalty" should be applied in case of non-fulfillment of payment of the compensation penalty. This substitute imprisonment penalty is provided in Article 30 of the Criminal Code which reads:

(1) If the fine is not paid, the penalty is substituted with imprisonment.
(2) The minimum period of the substituted imprisonment is one day and the maximum period is six months.
(3) If there is an aggravating factor due to accumulation of offences or recidivism or due to the provision of Article 52 the maximum period can be extended to eight months.
(4) The substitute imprisonment may not exceed an eight month period.

According to the provisions of law as stated above, in the case of the non fulfillment of payment of the compensation penalty, imprisonment should be imposed. This substitute imprisonment may not exceed an eight month period. Accordingly, it is logical for a corrupter to choose the substitute imprisonment penalty rather than the payment of a compensation penalty. The substitute imprisonment penalty may not exceed 8 months, whereas the payment of a compensation penalty may amount to hundreds of billions or even trillions of rupiahs. If a corrupter is required to pay a compensation penalty amounting to Rp 800 billions, it is logical for him to choose being imprisoned for another 8 months rather than paying Rp 800 billions. In his logical calculation, it is difficult for him to obtain Rp 800 billion from fair and honest business in an 8 month period.

Under this system almost no corrupter fulfills the payment of the compensation penalty which is imposed upon him by the verdict of the judge. Consequently, it is difficult to compensate the financial/economic losses suffered by the state due to corruption. To overcome this problem the Supreme Court issued "Supreme Court Circular No. 4 of 1988". The essence of this circular is:

(i) If a judge imposes upon a corrupter the payment of a compensation penalty, it is recommended that no substitute penalty be stated in the verdict for the non fulfillment of the compensation penalty.
(ii) In case of non payment, the assets of the corrupter can be seized and auctioned in order to meet the amount of the payment of the compensation penalty.
(iii) If the seizure and auction cannot meet the amount of the payment of the compensation penalty, a civil lawsuit can be filed against the corrupter.

It is understood that Supreme Court Circular No. 4 of 1988 is aimed at ensuring the payment of a compensation penalty to recover the states financial/economic losses as far as

possible. From this standpoint filing a civil law suit against a non paying corrupter is more effective than imposing upon him a substitute imprisonment of no longer than 8 months. Admittedly, a judgment in a civil case ordering a defendant (a corrupter) to pay a certain amount of money to the state in order to compensate the state's financial/economic loss may also be unenforceable, if the defendant has no more assets or if the corrupter is very smart in concealing his assets. Nevertheless, an order to pay that is issued by a civil court can be regarded as a debt as long as it is still not fully paid. Accordingly, the obligation to pay this debt can be transferred to the wife and children (and all heirs) of the obligor (the defendant/corrupter), if it is still not fully paid upon the death of the corrupter. Article 1100 of the Civil Code states that a debt is transferred to the heirs of an obligor if it is still not paid by the time of the obligor's death.

Supreme Court Circular No. 4 of 1988 is still applicable after the enactment of Law No. 31 of 1999 as well as Law No. 20 of 2001, because the Supreme Court has never withdrawn the Circular. In practice, the Circular is no longer useful since the new law on the eradication of corruption threatens a more severe substitute penalty for non fulfillment of payment of a compensation penalty (if compared with the substitute penalty under Law No. 3 of 1971). Article 18 paragraphs 2 and 3 of Law No. 31 of 1999 provides:

(1) If the convict does not pay the compensation as stated in paragraph 1 sub b in the maximum period of 1 month after the binding verdict, his assets may be seized and auctioned by the prosecutor to cover the compensation penalty.

(2) If the convict has insufficient assets to cover the compensation penalty, imprisonment can be imposed for a period that is no longer than the maximum penalty of the principle penalty, in accordance with this law and the period for this imprisonment as stated in the judge's verdict.

Supreme Court Circular No. 4 of 1988 as well as Article 18 of Law No. 31 of 1999 (which is not amended by Law No. 20 of 2001) states that a corrupter's assets should be seized and auctioned in order to pay the compensation penalty. Nevertheless, the recommendation of the Supreme Court Circular to not state the substitute penalty for the payment of a compensation penalty is no longer useful, since Law No. 31 of 1999 amended by Law No. 20 of 2001 provides a severer substitute penalty in this regard. According to the new law, if a convicted corrupter does not fulfill his obligation in relation to the payment of the compensation penalty, the penalty can be substituted with an imprisonment penalty of the same period as the principal penalty. Since life imprisonment can become the maximum penalty for a corruption case, it can also be utilized as the substitute penalty for the payment of a compensation penalty in case of non-payment. Accordingly, the verdict in a corruption case may state as follows:

(i)The court herewith finds the defendant guilty of having committed corruption as provided in Article 2 paragraph 1 of Law No. 31 of 1999 which is maintained by Law No. 20 of 2001;
(ii)The court, accordingly, imposes upon the defendant imprisonment for a period of 5 (five) years;
(iii)The court, accordingly, imposes upon the defendant, a fine of Rp 1,000,000,000, - (one billion rupiahs) or imprisonment for 3 (three) months as the substitute penalty for non-payment of the fine;
(iv)The court, accordingly, imposes upon the defendant the payment of a compensation penalty amounting to Rp 800,000,000, - (eight hundred billion rupiahs) or life imprisonment as the substitute penalty of non payment of the compensation;

Law No. 31 of 1999 states that the death penalty can be imposed in corruption cases under

certain circumstances. Article 2 paragraph 2 of Law No. 31 of 1999 states:

In case corruption, as stated in paragraph 1, is committed under certain circumstances, the death penalty can be imposed.

Law No. 20 of 2001 aids in the elucidation of this Article by stating:

The "certain circumstances" in this provision mean the ones that can be used as aggravating factors, namely, if the corruption is committed against funds which are allocated for overcoming danger, national disasters, for overcoming the result of a widespread social riot, for overcoming economic and monetary crises, and for overcoming corruption cases.

Fulfilling the provisions of law as stated above, in theory the death penalty can be imposed as the substitute penalty for the payment of the compensation penalty. Accordingly, the court verdict may read:

(i) The court herewith finds that the defendant guilty of having committed corruption as provided in Article 2 paragraph 1 of Law No. 31 of 1999 which is maintained by Law No. 20 of 2001;
(ii) The court, accordingly, imposes upon the defendant imprisonment for the period of 5 (five) years;
(iii) The court, accordingly, imposes upon the defendant, the fine of Rp 1,000,000,000, - (one billion rupiahs) or imprisonment for 3 (three) month as the substitute penalty for non-payment of the fine;
(iv)The court, accordingly, imposes upon the defendant the payment of a compensation penalty amounting to Rp 800,000,000, - (eight hundred billion rupiahs) or the death penalty as the substitute penalty for non-payment of the compensation;

In practice we may also face the problem not of non-payment but of partial payment of the penalty. If the payment of a compensation penalty amounted to Rp 100 billion with imprisonment of 10 years as the substitute penalty and it is paid partially by the corrupter, Rp 10 billion for example, how long should the substitute penalty be? Logically, the substitute penalty can be mathematically calculated. If the corrupter pays only 10% of the amount stated in the verdict, logically he has to carry out 90% (100% - 10%) of the period of the substitute penalty. However, if the substitute penalty is life imprisonment or the death penalty, how can we make a mathematical calculation in the case of partial payment?

III. RECOMMENDATIONS

A. The Amount of the Compensation Penalty

As discussed above the law provides that the maximum amount of the payment of a compensation penalty is:
"the same as the value of assets obtained from corruption"
(Article 34 sub c Law No. 3 of 1971 or Article 18 paragraph 1 sub b of Law No. 31 of 1999 amended by Law No. 20 of 2001).

As also discussed above, in practice it is difficult to specify one by one and calculate assets which are obtained by a corrupter from the corruption he has committed. To overcome this problem, it is recommended that the word "assets" not be interpreted grammatically, but interpreted broadly, so that it means everything which can be enjoyed by a corrupter from

committing corruption. Fulfilling this interpretation, the amount of the payment of the compensation penalty should be the same as the monetary value of the corruption itself. If the proceeds of the corruption are used by the corrupter for gambling, it has to be noted that gambling is something that can be enjoyed by the corrupter who uses the money from corruption to pay for it. Accordingly the amount of the compensation penalty can be calculated as the same as the amount of money he uses to gamble. If the corrupter uses the money he gets from the corruption to conduct a business that fails, it has to be noted that conducting business is something that the corrupter can enjoy (even though the failure is not enjoyed by the corrupter). Accordingly, the amount of the compensation penalty should be the same amount of money he uses for this enjoyable business. Similarly, if the corrupter uses the corrupt money for paying prostitutes, the amount of the compensation penalty should be the same as the amount of money he uses to pay the prostitutes, since this is something the corrupter enjoys. Everything that can be enjoyed by using the proceeds of corruption can be regarded as "the assets obtained from corruption" as stated in Article 34 sub c of Law No. 3 of 1971 and Article 18 paragraph 1 sub b of Law No. 31 of 1999 amended by Law No. 20 of 2001.

This broad interpretation is easier and more practicable than a grammatical interpretation. Further, it also complies with the purpose of the legal provision in this regard, namely, to compensate the financial/economic losses suffered by the state due to the corruption. In reality, this interpretation has also been used by many judges, since most verdicts containing payment of a compensation penalty, there is no specification and calculation of each item of the defendant's assets, which the court deems obtained from corruption. The monetary value of corruption seems more decisive in determining the amount of the compensation penalty, if compared with the value of assets obtained from corruption.

B. The Legal Consequence of Non Payment According to Criminal Law Provisions

In corruption cases prosecuted under Law No. 3 of 1971 (corruption cases that are committed prior to August 18, 1999), it is recommended that Supreme Court Circular No. 4 of 1988 be applied. According to this Circular, the verdict should not specify the substitute penalty for non fulfillment of the payment of a Compensation Penalty. In the case of non payment or partial payment, a civil lawsuit should be filed against the defendant to obtain a civil court judgment ordering him to pay in full.

Unlike the old law (Law No. 3 of 1971) the new law (Law No. 31 of 1999 amended by Law No. 20 of 2001) provides a more severe substitute penalty for non fulfillment of the payment of a Compensation Penalty. Hence, it is recommended that the verdict containing a Compensation Penalty clearly state its substitute penalty, which should be as severe as possible.

Even though according to the new law the death penalty may be imposed upon a corrupter as a principal penalty, and even though the new law states that the substitute penalty for the non fulfillment of payment of Compensation Penalty may be the same as the principal penalty, the writer refuses to use the death penalty as the substitute penalty in this regard. The reason is that Article 18 paragraph 3 of Law No. 31 of 1999 clearly states that the substitute penalty is:

"the imprisonment penalty whose period does not exceed its principal penalty"

Accordingly, the substitute penalty should be the "imprisonment penalty". The death penalty is not an "imprisonment penalty". Therefore, it cannot be used as the substitute penalty for the non fulfillment of the payment of the Compensation Penalty.

The writer supports the use of life imprisonment as the substitute penalty in this regard. Life imprisonment is an imprisonment penalty, so that its use as the substitute penalty for non-fulfillment of payment of the Compensation Penalty is still justifiable by the provision of Article 18 paragraph 3 of Law No. 31 of 1999. Accordingly, the writer agrees with the court verdict which states:

(i) The court herewith finds the defendant guilty of having committed corruption as provided in Article 2 paragraph 1 of Law No. 31 of 1999 which is maintained by Law No. 20 of 2001;
(ii) The court, accordingly, imposes upon the defendant imprisonment for the period of 5 (five) years;
(iii)The court, accordingly, imposes upon the defendant, a fine of Rp 1,000,000,000, - (one billion rupiahs) or imprisonment for 3 (three) months as the substitute penalty for non payment of the fine;
(iv)The court, accordingly, imposes upon the defendant the payment of compensation amounting to Rp 800,000,000,000, - (eight hundred billion rupiahs) or life imprisonment as the substitute penalty for non-payment of the compensation;

The problem is: how to execute the life imprisonment penalty as the substitute penalty in the case of partial payment of the compensation penalty?

It is logical and fair that partial fulfillment of payment of a compensation penalty should result in a more lenient substitute penalty. As long as the substitute penalty is temporary imprisonment (like imprisonment for 5 years, 10 years or 20 years), it is easy to calculate the rest of the period due to the partial fulfillment of the payment of the compensation penalty. Mathematical calculation can be used for this purpose. If the corrupter pays only 10% of the amount of the compensation penalty, it is logical and fair for him to carry out 90% (100% - 10%) of the period of the substitute penalty. - To calculate 90% of imprisonment for 20 years is easy, but to calculate 90% of imprisonment for life is impossible.

To overcome this problem it is recommended that a court verdict containing payment of compensation penalty with life imprisonment as the substitute penalty clearly describes the condition, by which the life imprisonment can be changed into imprisonment for twenty years. The verdict should read as follows:

(i) The court herewith finds the defendant guilty of having committed corruption as provided in Article 2 paragraph 1 of Law No. 31 of 1999 which is maintained by Law No. 20 of 2001;
(ii) The court, accordingly, imposes upon the defendant imprisonment for a period of 5 (five) years;
(iii) The court, accordingly, imposes upon the defendant, the fine of Rp 1,000,000,000, - (one billion rupiahs) or imprisonment for 3 (three) months as the substitute penalty for non paying the fine;
(iv) The court, accordingly, imposes upon the defendant the payment of a compensation penalty amounting to Rp 800,000,000,000, - (eight hundred billion rupiahs) or life imprisonment as the substitute penalty for non-payment of the compensation. This life imprisonment can be changed to imprisonment for 20 (twenty) years if the defendant pays at least 10% of the compensation penalty;

By opening the opportunity to change life imprisonment into imprisonment for twenty years, it is easy to apply a mathematical calculation for cases of partial payment of the

compensation penalty. Nevertheless, the writer admits that this recommendation may be challenged by legal positivism lawyers by questioning the legal basis of the authority of a judge to change a penalty he imposes in his verdict.

C. Legal Consequences According to Civil Law Provisions

The previous discussion clearly describes that we have to differentiate the prosecution of corruption which is committed prior to 18 August 1999 and the prosecution of corruption which is committed after 18 August 1999. Corruption which is committed prior to 18 August 1999 is prosecuted under Law No. 3 of 1971, whereas corruption which is committed after 18 August 1999 is prosecuted under Law No. 31 of 1999 amended by Law No. 20 of 2001.

For corruption which is prosecuted under Law No. 3 of 1971, Supreme Court Circular No. 4 of 1988 should be applied. This means that a civil lawsuit should be filed against a corrupter who does not fully fulfill the payment of a compensation penalty.

For corruption which is prosecuted under Law No. 31 of 1999 amended by Law No. 20 of 2001, Article 18 paragraph 3 of Law No. 31 of 1999 (which is not amended by Law No. 20 of 2001) should be strictly implemented. The substitute penalty for the payment of a compensation penalty should be as severe as possible. The period of the substitute imprisonment penalty should be as severe as the maximum period in the principal penalty. If necessary and permitted by law, in the case where the compensation penalty amounts to tens of billions of rupiahs or trillions of rupiahs, imprisonment for life should be chosen as the substitute penalty. Otherwise, it will be difficult to pressure the corrupters to compensate the financial/economic losses suffered by the state due to the corruption they have committed.

In all corruption cases, which are prosecuted either under Law No. 3 of 1971 or under Law No. 31 of 1999 amended by Law No. 20 of 2001, a civil lawsuit should be filed in case of the death of a corrupter who has not yet fulfilled his obligation in relation to the payment of a compensation penalty. The lawsuit should, of course, be addressed not to the deceased corrupter, but to his wife, children or heirs. The legal basis of this lawsuit is Article 1100 of the Civil Code which states that a debt can be inherited by the debtor's heirs.

For this purpose the word "debt" should be interpreted broadly. "Debt" should not be interpreted only as "something emanating from borrowing". "Debt" should mean "an outstanding obligation to pay which is imposed by law". Accordingly, an unpaid obligation to pay the compensation penalty should also be regarded as a debt, which, according to Article 1100 of the Civil Code, can be inherited by its obligor's heirs at the time of the obligor's death.

The civil lawsuit demanding for the full payment of the compensation penalty can be filed by the prosecutors' office (or the Attorney General's Office, because in the Indonesian system prosecutors are within the Attorney General's Office and are under the supervision of the Attorney General). Article 270 of the Code of Criminal Procedures states that a verdict rendered by the court in a criminal case is enforced (executed) by the prosecutor. Filing a lawsuit for this purpose is within the framework of enforcing a court verdict containing payment of a compensation penalty. It is the implementation of the legal provision as stated in Article 270 of The Code of Criminal Procedures. Accordingly, to file this lawsuit the prosecutors' office (or the Attorney General's Office) is not required to obtain a power of attorney from any government agency.

IV. CONCLUSION

It should be kept in mind that "the reformation era" in Indonesia requires tougher law enforcement in corruption cases. The evidence of this requirement is the enactment of the new law on eradication of corruption (Law No. 31 of 1999 amended by Law No. 20 of 2001) to replace the old law on the same matter (Law No. 3 of 1971). If compared with the old law, the new law contains severer provisions, like:

(i) The new law states that under certain circumstances the death penalty can be imposed in a corruption case, whereas no provision relating to the death penalty is stated in the old law. (See Article 2 paragraph 2 of Law No. 31 of 1999 amended by Law No.20 of 2001).
(ii) The new law threatens a more severe substitute penalty for non or partial fulfillment of the payment of the compensation penalty compared with the substitute penalty stated under the old law. (Please compare Article 18 paragraph 3 of Law No. 31 of 1999 with the elucidation of Article 34 sub c of Law No. 3 of 1971)

The requirements of the reformation era as described above should be fulfilled by imposing severer penalties upon corrupters in corruption cases prosecuted during the reformation era, when compared with the ones imposed in corruption cases prosecuted prior to the reformation era. In relation to the payment of a compensation penalty, the requirement of the reformation era should be fulfilled by imposing upon corrupters a compensation penalty amounting to the same value as the monetary value of the corruption, and by imposing upon them a severe imprisonment penalty, imprisonment for life if necessary, as the substitute penalty in the case of the compensation penalty not being paid.

Von Feyeurbach with his "psychological pressure theory" (*psychologische angst teorie*) states that a severe penalty is needed to establish a psychological pressure which prevents every one from committing crime. According to this theory the payment of a severe compensation penalty and its severe substitute penalty, will at least establish the following psychological pressures:

- A psychological pressure on everyone that has an opportunity to commit corruption to prevent himself from committing it, because the legal consequences will be severe. The legal consequence under criminal law is suffered by the corrupter himself, but the legal consequence under civil law will be suffered not only by the corrupter, himself, but also by his wife, his children and all his heirs.
- A psychological pressure for every convicted corrupter, upon whom the payment of a compensation penalty is imposed, to strive hard to pay the compensation penalty in full, if necessary by retrieving and selling his concealed assets. Otherwise, his wife, children and all his heirs will inherit the obligation to pay the compensation penalty, if the compensation is still unpaid after his death.
- A psychological pressure from the wife, children and family members of a convicted corrupter, upon whom the payment of a compensation penalty is imposed, to insist the corrupter pay the compensation penalty in full. Otherwise, the obligation to pay the compensation penalty will be inherited by them.

Admittedly, so far we have had no empirical data to support the verity of this psychological pressure theory. Nevertheless, if our criminal justice system is successful in imposing severer criminal penalties upon corrupters who are prosecuted within the reformation era, they can show the public that the Indonesian government is more serious in its effort to

eliminate corruption, so that under no circumstances can anyone undermine our government's effort to eliminate corruption in Indonesia.

Session Three: Reform of the Legal Training System

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Paper- Justice A. R. Saleh, The Supreme Court of the Republic of Indonesia, Indonesia

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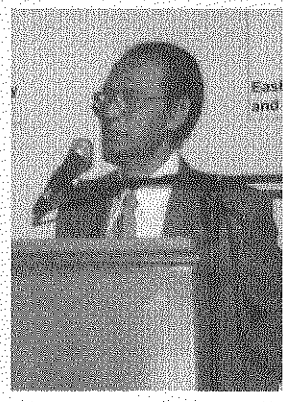

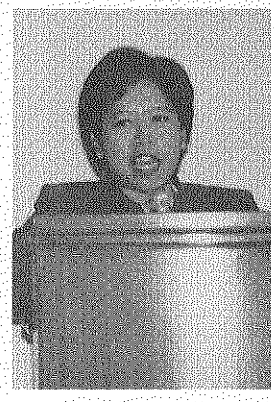

Please note that the following papers have not been edited for publication. The opinions expressed therein are those of the author's. They do not necessarily reflect the position of the departments or agencies that they represent.

REFORM OF THE LEGAL TRAINING SYSTEM IN JAPAN

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I. INTRODUCTION

"It is the people who operate a system. In realizing meaningful reforms of the justice system to respond to the new age in a fruitful way, as set forth in these Recommendations, if the human base that actually carries out the reforms is not well developed, the new system cannot be expected to function fully," the Justice System Reform Council[1] said at the beginning of Chapter III entitled, "How the *Legal Profession* which Supports the Justice System Should be". This chapter is one of the three major chapters of the Recommendations made on 12 June 2001. The words in this paragraph are symbolic but may include profound wisdom and a lot of implications for not only the Japanese justice system but also for other systems existing in society.

After the dawn of modern society with the end of 260 years of Tokugawas rule in 1868 (the first year of the Meiji period. In Japan, the beginning of Meiji is also called the "Meiji Restoration"), the concept of a legal profession was introduced into Japan, together with a western type of legal framework. The Japanese government established a legal training system as well as an examination system to select qualified individuals, and reformed such systems from time to time to meet the needs of the new era. After World War II, however, the National Bar Examination, which is the usual and almost the only entry into the legal profession,(for those wishing to be judges, public prosecutors, and practicing lawyers) was put in place. The Legal Training and Research Institute (of the Supreme Court) has been the only institute for training legal trainees who have passed the National Bar Examination. The framework of this system has been unchanged for more than 50 years, but is now facing a drastic change by the reform project, mainly because an increase in the number of legal professionals is a pressing need for current Japanese society. During the reform project, new issues as well as long term problems were revealed.

This paper will firstly give an overview of the Japanese legal training system including its history and characteristics, as well as a comparative study with some other countries. Then, it will focus on the current system looking at its specific features and problems, and will touch upon the reform which is now being undertaken, including the direction to go and issues to be solved in the future. Finally, I will try to give some recommendations for our Indonesian colleagues on more effective reform of the legal training system.

II. AN OVERVIEW OF THE LEGAL TRAINING SYSTEM IN JAPAN[2]

A. History of the Examination for Legal Professionals and the Legal Training System

Regarding practicing lawyers, the Meiji government recognized *Daigen-nin* by an

1 See Section IV in this paper.

2 This section is mainly based on the following materials: Jurist Special Edition, "In View of the Reform of the National Bar Examination" (5 August 1982, Yuhikaku Publication), Jurist No. 1170, "The Future of the Reform of the Legal System" (January 1st and 15th edition, 2000), 100 Year History of the Legal Profession (June, 1969, Hoso-Koron-Sha Publication)

ordinance to represent clients during court procedures in 1872, when the court system[3] started in Japan. *Daigen-nin* literally means "a speaker on behalf of another person" and is a classical expression of someone who is practicing law. The first public examination, called the Daigen-nin Examination started in 1876. Local authorities were in charge of holding the examination, however, the candidates who successfully passed the examination received a Daigen-nin license from the Lord Justice (Central Government Official, someone like the Minister of Justice). The graduates from the Faculty of Law of Tokyo University (established in 1877), and Doctors of Laws could receive a special privilege to become Daigen-nin without taking this examination. This Daigen-nin Examination System was maintained until 1892. The Digen-nin Examination was replaced by the Bengoshi Examination (Bengoshi is the current name for a practicing lawyer in Japanese) in 1893. Graduates from the Faculty of Law of the Tokyo University, Doctors of Laws, and a few other exceptional people were still given the above mentioned privileges. The Bengoshi Examination was maintained until 1922.

In regard to judges, the first national examination was held in 1884. It was called the Judge Recruitment Examination, which tested the applicants' legal knowledge in criminal and civil laws. Only persons who served as assistant officers for the court of the first instance for not less than one year could apply to take this examination. Daigen-nin, or those with Bachelors of Laws could become assistant officers without taking this test. Moreover, Daigen-nin who had at least two years experience with a bachelor's degree of laws could be appointed as judges without this examination. Other Daigen-nin having at least five years experience also enjoyed such privileges. Persons who served as assistant officers for the court of first instance for not less than one year could be appointed as public prosecutors. The Judge Recruitment Examination was maintained until 1887.

The examination was replaced by the *Bunkan-Exam-Koto-Examination* (Bunkan was the word which meant judge and public prosecutor at that time) in 1888. But the Bunkan-Exam-Koto-Examination was subsequently replaced by the Judge-Prosecutor Recruitment Examination in 1891. This Examination System was maintained until 1922.

Since the Bunkan-Exam-Koto-Examination had begun in 1888, judges and public prosecutors in Japan have been selected from those who successfully passed the common examination. The legal training system for future judges and public prosecutors began in 1888 and they were given practical training in the two types of courts for a year and a half each.

Since 1991, the examination has been divided into two categories, the First Examination and the Second Examination. Applicants who passed the First Examination were trained as legal trainees. At the same time, the public prosecution bureau was added to provide practical legal training, and the period of training was shortened to a total of one and a half years. But the candidates were required to pass the Second Examination before they attained the status of judges or public prosecutors. Law professors of the national universities or practicing lawyers who had experience of not less than three years were given privileges to be appointed as judges or public prosecutors without any tests. Graduates from the law faculties of the national universities could be legal trainees without passing the First Examination.

In 1923, a new examination and training system, called the Advanced Legal Course Examination began (the privileges for graduates of the law faculties of the national universities were abolished). The system consisted of a combination of the Preliminary Examination (essays

3 Subsequently, the Supreme Court (called *Taishinin*) was established in 1875.

and language writing tests such as English, French and German) and the Main Examination (essays and oral examinations on main laws). The candidates for legal professions (judges, public prosecutors, and practicing lawyers) had to pass both of the examinations to acquire the license of practicing lawyer. But those who completed high school (high school at the time was almost equivalent to a college level education in the current system in Japan) or who had equivalent academic knowledge were exempted from taking the Preliminary Examination. It was necessary for those who wanted to be judges or public prosecutors, to go through the practical legal training as legal trainees for one and a half years and to pass the final examination. In 1933, the system was reformed for practicing lawyers. They were also required to go through the practical training for one and a half years and to pass the final examination in addition to passing the Preliminary and Main Examination, but they were trained separately from those wishing to be judges and public prosecutors.

In 1939, the Government of Japan established the Legal Research Institute where the trainees for judges and public prosecutors were expected to spend their last three months. This system was maintained until 1948.

For your reference, women were not allowed to be legal professionals for a long time. Finally in 1933, female lawyers were admitted when the Lawyers Law was amended (The law went into effect in 1936.), and the first female practicing lawyers were admitted in 1940. It was an unwritten rule that the government refused to have females as judges and public prosecutors before the end of World War II (1945). The first female judges and female public prosecutor were appointed in 1949.

After World War II, Japan had to restructure the legal system under the New Constitution enacted in 1946, and the legal training system was no exception. The National Bar Examination Law was enacted in 1948, and was immediately put in force. The first National Bar Examination was held in 1949.

Since 1949 to the present time, the National Bar Examination has been maintained as the only examination to select future legal professionals (judges, public prosecutors, and practicing lawyers). The examination consists of two parts, the Preliminary Examination and the Secondary Examination. The Preliminary Examination is to test the applicants on their general knowledge, and applicants who complete the first two years in college are exempted from this examination. The Secondary Examination consists of three kinds of tests. Firstly, the applicants have to pass multiple choice tests on major laws, such as Constitutional Law, Civil Law, and Penal Law. Only applicants who successfully pass the multiple choices tests are allowed to proceed to the next step. Next are the essay tests. The number of subjects (mainly from the law) has been changed several times. At present, the applicants have to take six subjects (Constitutional Law, Civil Law, Penal Law, Commercial Law, Civil Procedure Law, and Criminal Procedure Law). These essay tests are the most important and difficult parts of the National Bar Examination. Applicants who pass the Essay Tests, can go forward to the final step. The final tests are the oral tests on the same subjects as in the essay tests except there is no oral test on Commercial Law at present.

After passing the National Bar Examination, the candidates to be legal professionals have to be legal trainees in the Legal Training and Research Institute (of the Supreme Court). The term of the training had been two years, but in 1999, the term was shortened to one and a half years. Each legal trainee who enrolls at the Institute is sent to a certain prefecture to be trained in a district court, district prosecutors office, and at a practicing lawyer's office, three months each, except for the first three months and the last three months when he/she gets lecture type

education in the Institute. Legal trainees have final examinations at the end of the training term. When they pass the final examinations, they are given an attorney's license to be practicing lawyers and are qualified to apply to be judges (assistant judges, whose judicial authority is restricted for the first five years), and public prosecutors. Since 1949, therefore, the examinations and training for all the future legal professionals have been conducted in an integrated and unified manner. Consequently, in Japan, all the attorneys have the same educational and training background and qualifications.

In short, the legal training system in Japan has evolved sometimes gradually, but sometimes very drastically in accordance with the changes in society and the legal system, and based on the needs of time for more than 130 years.

B. Characteristics

There are several characteristics of the current Japanese legal training system.

1. There is only one National Bar Examination in Japan. It is held once a year. It is almost the only way to acquire legal professional status (attorney). Thus, a certain level of quality among the legal professionals can be maintained throughout Japan.

2. Application for the Examination is open to anyone. No qualification is necessary. Any person without any age limitations, with all kinds of educational backgrounds, can apply. However, as shown before, the examination requires a certain level of knowledge of the law. So almost all the successful applicants are either graduates from law faculties of universities, or persons given equivalent legal education in the preparatory schools or institutions.

3. There is only one Legal Training and Research Institute in Japan. All the legal trainees in Japan attend the Institute, and receive a common educational background at least while they enroll at the institute. It gives them the opportunity to have certain common understandings regarding the role of the legal professions and their missions in society. The institute is under the Supreme Court and legal trainees are regarded as public officers and paid certain salaries. The salary for them is enough to support them during the training period[4].

4. At present Japan does not have law schools like the United States, and some other countries. So there are a lot of universities which have law faculties at the undergraduate level.

5. The number of successful applicants is very limited. Although the number has been increasing year by year, in 2002 for example, only 1,183 passed the National Bar Examination from more than 41,000 applicants. The success rate is only 2.85 per cent. Consequently, the number of legal professionals is very small. The total number of legal professionals was around 20,700 in 1999 (among them judges number around 2,100, public prosecutors, around 1,300, and practicing lawyers 17,300. In Japan, there are approximately 6,300 people per legal professional, whereas there are 290, 710, 740, and 1,640 in the U.S., U.K. (Britain), Germany, and France, respectively.[5]

4 The salary of legal trainees is 208,300 yen per month as of in 2002. Beside that they are provided with some monetary benefit such as family support allowance (the Rule of the Supreme Court concerning the Salary of Legal Trainees). For your reference newly recruited judges (assistant judges) and public prosecutors are paid 234,600 yen per month. (The Law concerning the Salary of Judges, The Law concerning the Salary of Prosecutors)

5 According to the "Recommendations of Justice System Reform Council", 12 June 2001

C. Legal Training Systems in Other Countries

1. U.K. (England and Wales)

There are two types of law professionals, barristers and solicitors. Accordingly, there are two types of legal training systems. Barristers tend to appear in the upper courts (Crown Court, High Court of Justice, Court of Appeal, and House of Lords) and have a right of audience there. Barristers cannot receive cases directly from clients, as a rule, so receive cases from solicitors who receive cases directly from clients. Solicitors, on the other hand, do not have automatic rights of audience in the higher courts. Solicitors do attend the lower courts such as the county courts and magistrates' courts and in certain circumstances can attend the Crown Court. So when solicitors receive a request from a client to represent them in the upper courts, they employ barristers for the advocacy. Barristers and solicitors are regarded as being equally qualified and independent legal professionals.

To become a barrister, firstly, it is necessary to get a bachelor's degree in law from a university or to pass a postgraduate diploma in laws (Common Professional Examination) after getting a bachelor's degree in another subject. Then, students have to take a professional vocational course (BVC) in one of the eight institutes designated by the General Council of the Bar (one of the organs of the United Bar Association of Barristers) for a year. Before taking the BVC, they are also required to take qualifying sessions held by one of the four Councils of the Inns of Court (Organs of United Bar Association of Barristers). After that, they have to go through practical training for a year under the supervision of a barrister who has at least six years experience. After the BVC, they are qualified as barristers. To become a solicitor, firstly, it is necessary to obtain the same academic qualification as barristers. Then they have to take a legal practice course (LPC) for a year in one of the advanced legal colleges or institutes. After that, they work as trainee solicitors for a two year period under the supervision of a qualified solicitor. After the two year period the trainee solicitor can be admitted as a fully qualified solicitor. A solicitor must have at least three years experience before he/she can open his/her own practice. In total, around 5,000 new legal professionals are admitted every year.

Judges are appointed from the more experienced barristers and solicitors, and they cannot be younger than 40 years old. England and Wales has a long history of a private prosecution system. However, in 1985 the Crown Prosecution Service was established and since then crown prosecutors have been appointed from qualified barristers and solicitors.

2. U.S.A.

Unlike the U. K., there is only one type of law professionals (attorney), but the bar examinations are carried out at the state level. To become an attorney, it is necessary to enter the law schools, which are regarded as graduate level, and students must study for three years.[6] In 1998, there were 181 law schools, certified by the American Bar Association, across the U.S., and more than 42,000 students entered the law schools in that year, but certain students of the law schools drop out because of poor academic performance. In the law schools, case methods, as educational measures, are commonly used based on precedents in the courts, rather than giving lectures based on the legal theories established by scholars. The law school students are required to acquire advocacy skills, as well as developing their legal mind through the analysis and the

6 In the U. S., law faculty is not attached to the undergraduate level, but some universities have pre-law courses or similar faculties, such as political science to my personal knowledge.

review of precedents. But as the main focus of the study is put on the analysis and review of precedents, it is said that law school students often fail to gain enough skills for court. After completing law school, it is necessary to pass the bar examination held in each state. The bar examination consists of multiple choice tests which are common throughout the U.S., and essay questions. The final responsibility of the bar examinations is vested in the Supreme Court of each state. The bar examinations are held twice to five times a year in each state, but the frequency of the examination differs from state to state.

Applicants who successfully pass the bar examination, are given a certificate to practice as lawyers from the Supreme Court of the state. The number of lawyers is increasing by around 30,000 across the United States every year (Around 57,000 new lawyers were admitted in the U.S. between 1996 and 1997). Judges and public prosecutors are appointed or elected from among the attorneys at state level. At the Federal level, the President appoints the judges (including U. S. Supreme Court Justices) and the U. S. attorneys with the approval of the Senate.

3. France

In France, candidates to be judges and public prosecutors are selected in the same national examination and trained in the same institute, but candidates for practicing lawyers are selected and trained separately. The system is somewhat similar to the Japanese one before WW II. To become judges or public prosecutors, firstly, it is necessary to take a bachelor's degree of laws or equivalent academic degree. Then, only the applicants who pass the competitive examination are allowed into the National Judiciary School (*L'Ecole Nacionale de la Magistrats*). Each applicant can apply for the entrance examination for the ENM only three times, and the age for admittance is 27 years or younger. The number of applicants who are admitted to the ENM is around 200 each year, and the success rate is only about 10 per cent. If admitted, they are trained in the school for two years and seven months and paid a salary by the government during the training period. At the end of the training period, the ENM students have to pass the final examination, but very few of them fail it. Judges and public prosecutors are basically appointed from among the graduates of ENM, based on academic record. A career system is exercised, and there are a lot of judges and public prosecutors who continue in their professions to the end of their career, but frequent mutual exchanges of their posts between the judges and the public prosecutors are not uncommon.

To become practicing lawyers, firstly, it is necessary to have a bachelor's degree of laws or equivalent academic degree. Then, they have/ to pass the entrance examination for the Provincial Lawyers Training Centers (CRFP). CRFP are 33 in total and one of them is located in each province of the court of appeal. Each applicant has only three opportunities to apply for the entrance examination. The success rate is between 20 to 30 per cent. If admitted, they are trained for one year in the CRFP, but they are not paid a salary. At the end of the training period, they have to pass the final examination, but very few of them fail it. In 1997, around 2,300 new legal professionals in total were admitted.

4. Germany

In Germany, there is only one category of legal profession, but the qualification is required not only for judges, public prosecutors, and practicing lawyers, but also for notaries as well. To acquire the qualification, firstly it is necessary to graduate from a four year law course in the state universities, then to pass the Primary Examination, which is similar to the current Japanese Bar Examination. After that, they have to be trained as legal trainees for two years. During this

period, legal trainees are regarded as public officers and paid a salary. They are given practical training mainly in the courts, prosecution offices, and the offices of practicing lawyers, but sometimes in other organizations such as legislative organizations, private companies, and so on. In 1998, around 9,800 legal trainees acquired the qualification to become legal professionals.

5. Korea[7]

In Korea, there is an almost identical legal training system to that of Japan. However, the proportion of judges (around 1,400) and public prosecutors (around 1,000) to practicing lawyers (around 3,700) is large compared to Japan (2,100, 1,300, 17,300 respectively). Recently, however, the number of practicing lawyers has been increasing much more than judges and public prosecutors, because of the big differences in the respective incomes.

6. China (People's Republic of China)[8]

In China, there was no unified legal training system. Courts and public prosecutor's offices, for a long time recruited their personnel according to their own regulations and methods. The reform of the legal system had been promoted in many ways to modernize their legal framework. The examination for practicing lawyers started earlier, and in 2001, a new law was enacted for the Unified Bar Examination. In 2002, the first Bar Examination was held and the examination for practicing lawyers was abolished. The Bar Examination consists of multiple choice questions covering basic laws such as Constitutional Law, Civil and Commercial Law, Criminal Law, Administration Law, and so on. Around 24,000 from 360,000 applicants passed the examination and they were given the qualification of legal professional. The training system for successfully passing the Bar Examination is still dependent on individual organizations, and is now being developed at a rapid speed.

III. CURRENT SITUATION AND PROBLEMS OF THE LEGAL TRAINING SYSTEM IN JAPAN[9]

As shown in the previous section, after the legal training system was established, it was reformed several times since the late nineteenth century. It seems that this unified and concerted system worked well, however, now it doesn't and it faces drastic changes due to some problems. The fact that the number of legal professionals is extremely small compared to other countries causes a lot of serious problems. The biggest issue is how to increase the number of legal professionals without a deterioration in the quality of service. Thus, this paper will show what the problems are and how they effect the enforcement of the administration of the Japanese legal system.

A. Academic Education in the Law Faculties of Universities

After the new Constitution was enacted in 1947, the Japanese fundamental structure as well as the legal system was radically changed. The education system was also reconstructed

7 According to the articles in the Kensatsu Geppo, No. 484 and No. 524

8 According to the article in the Kensatsu Geppo, No.536 and lecture delivered at Ministry of Justice of Japan by Mr. Shao Shixing Assistant Professor of the National Prosecutors College, at Ministry of Justice of Japan in June 2002

9 This section is mainly based on the following materials: Jurist No. 1170, "The Future of the Reform of the Legal System"(January 1st and 15th edition, 2000), Jurist No.1208, "Comments and Opinions on the Recommendations of the Justice System Reform Council"(September 15th edition, 2001)

based on the new laws and provisions, and the so-called 6-3-3-4 Education System[10] started. In accordance with economic growth, the importance of education had been emphasized more and more, to produce qualified and skilled workers. The percentage of those receiving advanced education has been continuously on the rise. According to the homepage of the Ministry of the Education, Culture, Sports, Science and Technology[11], 49.3 per cent of the total number of people in the corresponding age group (18 to 19 year-olds in Japan) entered universities or colleges in 2001.[12] In 2001, the number of university/college students was around 2.5 million, and there are nearly 700 universities/colleges (including public and private) across Japan. Among them, there are between 110 and 120 universities (of which only 25 or 26 universities are public ones and rest of them are private) which have law faculties or equivalent faculties, and around 45,000 new people entered into such faculties as undergraduate students in 2000.

Since the number of students is huge, most universities mainly provide them with lecture-type education in big classrooms. The Japanese legal system is based on the civil law system (European Continental Law) with some common law principles and concepts (especially, those of the United States). Thus, it is necessary for the students to learn the principles of the legal framework based on existing codes of major laws, and precedents rendered by the courts (especially the precedents of the Supreme Court). Some small class discussions are usually available, but such methods of study are usually used as supplementary ones.

As shown earlier, a very limited number of people pass the National Bar Examination, consequently, the majority of law students have to give up the examination even if they wanted to be legal professionals. The success rate for the National Bar Examination is less than three per cent (in 2002), and it is called the most difficult national examination in Japan.

Consequently, the majority of universities with law faculties (especially, private universities) cannot focus the students to be legal professionals, because the majority of students will choose other professions. Thus, universities tend to provide them with various kinds of classes on various laws from the very basic ones to the very sophisticated and profound theoretical ones, and students have to study a broad range of legal areas with some optional subjects. But for students who would like to be legal professionals, they must gain enough knowledge for the National Bar Examination (which requires students to focus on the six legal areas, such as Constitutional Law, Civil Law, Penal Law, Commercial Law, Civil Procedure Law, and Criminal Procedure Law) and enough skills to write essays in accordance with the requirements to survive the Examination. Especially in the more prestigious universities, many students try to pass the Examination, so they are not satisfied only with the lectures given by the professors at the universities. Such students tend to attend preparatory schools which provide them with such knowledge and skills. Many students belonging to the universities attend preparatory schools. It is called the "Double School" phenomenon. Moreover, many of the double school students tend to attend only the preparatory schools, and finally, they just graduate from the universities, but do not study all of the subjects provided by the universities. It may have a bad impact on the students and the education of the universities, and vise versa.

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10 It means that students study for 6 years in the elementary school, 3 years in the junior high school, 3 years in the high school, and 4 years in the college/university with some exceptions. The education in the elementary school and the junior high school (9-years) was made as a mandatory education for everyone. (Before WWII, the mandatory education was the first 8 years in elementary and post-elementary school.)

11 www.mext.go.jp/monkag2001

12 Only full time students are counted. The percentage in other countries is as follows: in the U.S. it was 45.9 per cent in 1998, in the U.K. it was 58.4 per cent in 1999, in France it was 43.0 per cent in 1991, and in Germany it was 30.3 per cent in 1998.

B. The National Bar Examination[13]

The current National Bar Examination System began in 1949, and for the first ten years or so the number of applicants successfully passing the Examination was around 300 per year. However, in accordance with the development of industry, the economy, and technology, society and people gradually changed and became more diverse and complicated. Legal disputes have been increasing and legal professionals have become extremely occupied with litigation. People involved in litigation have suffered from long procedures, and they cannot get adequate legal assistance because of the shortage of legal professionals (especially judges). Thus, various measures were planned and implemented to secure the number of legal professionals. The number of applicants gradually increased and also the number of people who passed the Examination increased. In 1964[14], the number, for the first time, exceeded 500, but by 1990 the number remained at around 500 due to various reasons. Among them, of course, the maintenance of high quality which was the one of the biggest issues, since it was thought that without having qualified legal professionals the legal system may easily lose the trust of the general public and it may ultimately collapse.

The Number of Applicants for the National Bar Examinations; Applicants who successfully passed the Exam; , the success rate; and so on by years (A: Applications, B: Actual Applicants, C: Applicants who successfully passed the Examination D: Success rate, C/B x100 (%)

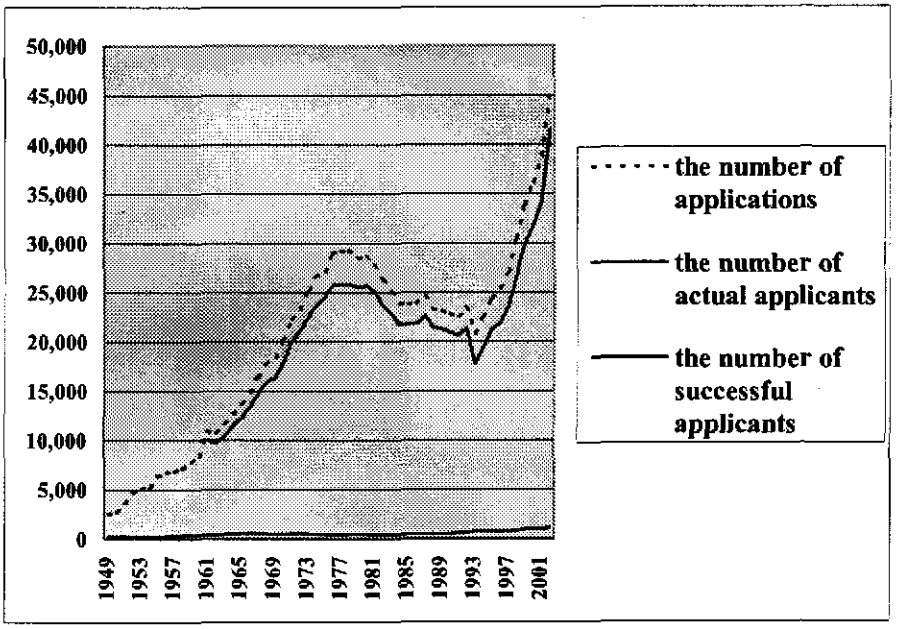
Year	A	B	C	D
1949	2,570		265	
1950	2,806		269	
1951	3,668		272	
1952	4,761		253	
1953	5,138		224	
1954	5,250		250	
1955	6,347		264	
1956	6,737		297	
1957	6,920		286	
1958	7,109		346	
1959	7,858		319	
1960	8,363		345	
1961	10,909	10,052	380	3.78
1962	10,762	9,761	459	4.70
1963	11,686	10,441	496	4.75
1964	12,698	11,393	508	4.45
1965	13,644	12,259	526	4.29
1966	14,867	13,419	554	4.12
1967	16,460	14,799	537	3.62

13 See the National Bar Examination Law. The law established, under the Minister of Justice, the National Bar Examination Administration Committee, which is allowed to act independently. The Committee, consisting of the Administrative Deputy Minister of Justice, the Secretary General of the Supreme Court, and a practicing lawyer designated by the Japan Federation of Bar Associations, works for fair and proper exercise of the examination. The Minister of Justice appoints examiners for each examination, based on the recommendation by the Committee. The number of examiners varies time to time, in December 2002, 172 examiners consisting of scholars and practitioners were appointed for the next year's Examination.

14 This year, the Special Judicial System Examination Committee demanded in its opinion that "the population of legal professionals be gradually increased, while making sure not to cause a deterioration in quality, so as to reinforce and improve the proper and smooth operation of justice and the legal lives of the people, because the number of legal professionals as a whole is deemed to be considerably insufficient."

Year	A	B	C	D
1968	17,727	15,937	525	3.29
1969	18,453	16,427	501	3.04
1970	20,160	17,847	507	2.84
1971	22,336	20,042	533	2.65
1972	23,425	21,082	537	2.54
1973	25,339	22,532	537	2.38
1974	26,708	23,826	491	2.06
1975	27,191	24,627	472	1.91
1976	29,088	25,890	465	1.79
1977	29,214	25,857	465	1.79
1978	29,390	25,920	485	1.87
1979	28,622	25,569	503	1.96
1980	28,656	25,768	486	1.88
1981	27,816	25,063	446	1.77
1982	26,317	23,773	457	1.92
1983	25,138	22,845	448	1.96
1984	23,956	21,759	453	2.08
1985	23,855	21,812	486	2.22
1986	23,904	21,864	486	2.22
1987	24,690	22,656	489	2.15
1988	23,352	21,428	512	2.38
1989	23,202	21,302	506	2.37
1990	22,900	20,967	499	2.37
1991	22,596	20,600	605	2.93
1992	23,435	21,423	630	2.94
1993	20,848	17,707	712	4.02
1994	22,554	19,396	740	3.81
1995	24,488	21,260	738	3.47
1996	25,454	21,909	734	3.35
1997	27,112	23,586	746	3.16
1998	30,568	26,755	812	3.03
1999	33,983	29,887	1,000	3.34
2000	36,203	31,729	994	3.13
2001	38,930	34,117	990	2.90
2002	45,622	41,459	1,183	2.85

The Number of Applications and the Number of Successful Applicants



As the data in 1985 below can show, serious concerns can be pointed out.

*Applicants for the Examination: around 25,000
*The applicants who passed the Examination (finalists): around 500
*Success rate: around 2 per cent
*The average age of finalists: 28 years
*The average times applying for the Examination: 6 times
*The percentage of undergraduate students among the successful candidates: around 10 per cent
*The percentage of postgraduate successful candidates who are not working: around 80 per cent
*The percentage of females among the successful candidates: 10 per cent

In Japan the age of graduation from university is usually 22 years old, so on average students applying for the Examination have to study 6 more years after graduation without jobs in order to pass the Examination. Thus, unless the families of the students (or applicants) are rich or someone can support them, they could not continue to study. Some intelligent students lose interest in the Examination, and choose different fields. Some other people try to pass the examination as soon as possible with the help of preparatory schools. So many preparatory schools have emerged and have enjoyed prosperous and lucrative businesses. But this does not improve the situation, but makes it worse, because students not only attend universities but also they depend on the curriculum and study manuals made by preparatory schools. Some academics and critics including government officials expressed concerns on the qualifications of the future legal professionals who are required to have a broad range of academic knowledge, logical ways of thinking, and an ability to solve problems by themselves with deep insights and perspectives in various matters they may face.

Moreover, the Japanese justice system has had to face very serious problems, because of the severe shortage of legal professionals.

(i) The long court procedures were the major obstacles for citizens involved in disputes. If the

public are not satisfied with the court procedures or the services provided by the legal professionals, they may use other means which may not be legal.

(ii) It was difficult for legal professionals to establish and promote the specific fields where they had expertise. Especially in view of the rapid development of scientific technology and the deregulations in commercial and international trade, some experts in specific fields were necessary.

(iii) The local distribution of legal professionals generates an unequal situation in terms of access to legal services. Since practicing lawyers offices are located mainly in large cities, it is inconvenient for people in rural areas to get good legal service.

Thus, some people in the justice system felt a pressing need to increase the number of legal professionals, as well as to reform the legal training system including the National Bar Examination. It was in 1987 that an ad-hoc committee was formed for deliberating fundamental issues regarding legal professionals, consisting of scholars, legal professionals, and executives in business and financial fields, based on the request by the then Minister of Justice.[15]

Firstly, the reform of the National Bar Examination was undertaken. It was aimed at increasing the number of applicants who pass the Examination, especially among young applicants[16]. In 1993, the number of applicants who passed the Examination reached 700, and 1,000 in 1999. However, the changes have not been significant.

There are still a lot of students who go to the preparatory schools, and such preparatory schools are earning a lot more than before. The success rate was up a little (3 to 4 per cent, an improvement of 1 per cent up), and the average age of the finalists went down a little (around 27 years old, around 1 year less).

C. Legal Training in the Legal Training and Research Institute

Applicants who pass the National Bar Examination have to be trained in the Legal Training and Research Institute. As described before, the Institute is under the Supreme Court, and the legal trainees are paid a salary[17] during the training period. Since legal trainees are assumed to have a basic knowledge of major laws and a legal mind, the education and training is focused more on practical skills rather than theory. The training consists of classroom lectures and practical on-site training.

Legal trainees are required to attend classes at the Institute for the first three months. They are divided into more than 10 classrooms[18]. Each class has five teaching staff. The teaching staff are seconded legal professionals, who are judges, public prosecutors, and practicing lawyers. Each of them gives lectures to the legal trainees in the five fields, namely, civil court procedures, criminal court procedures, prosecutors' work, practicing lawyers work in civil cases and practicing lawyers work in criminal cases. Sometimes they give some assignments based on past real case records. For example, the legal trainees are required to write sentences, judgments,

15 Based on the report of the committee, the National Bar Examination Law was partially amended in 1991.

16 In 1991, the National Bar Examination Law was amended, and as one of the measures, the priority system for determining successful candidates (called "Plan Hei") started from 1996. Plan Hei made it possible to secure a certain number of candidates who have taken the Examinations less than 3 times, due to a kind of privilege given to them.

17 The salary of legal trainees is 208,300 yen per month as of 2002.(See footnote 4.)

18 Formerly, there were 10 classes, however, in accordance with the increase of the legal trainees, the number of classes also increased. In 2002, there are 14 classes, and next year 2 classes will be added.

indictment sheets or final disposals, or other litigation documents based on the evidence and facts shown by past real case records. And on some occasions, they are given a past case and required to play some role (judge, public prosecutor, practicing lawyer, defendant, or witness) in mock court proceedings. Through such practical training, they learn actual practices. Moreover, they sometimes have the opportunity to attend lectures on various matters by prominent speakers invited from outside the Institute.

After three months, each legal trainee is sent to a certain prefecture. For example, if a legal trainee is sent to Yokohama, he/she will attend the Yokohama District Court[19] (civil and criminal divisions), Yokohama District Public Prosecutors Office[20], and a local practicing lawyer's office. Three months each are allocated to learn in each division. They learn actual practices based on actual cases from judges, public prosecutors, and practicing lawyers. They stay in the local district for 12 months in all.

After finishing practical training on-site, the legal trainees return to the Institute to review and finalize their practical training. Three more months are allocated for the purpose, then, they have to pass the final examination to get the certificate.

Throughout the 18 months, the legal trainees have their performance knowledge, and character graded by various methods. The legal trainees are appointed judges or public prosecutors based on their preference and also taking into consideration their academic record in the examinations, and their performance during their training.

Recently, around 100 legal trainees were appointed as judges, and around 70 legal trainees were appointed as public prosecutors, the others went into private practice.

The problems are:

(i) In proportion with the increase in legal trainees, the burdens on teaching staff and local legal professionals in charge of training also increased. Since the number of legal professionals is very limited especially in local cities, it is a big burden on them.
(ii) Recently, the period of the legal training has been shortened. So each division in the local offices has only three months to teach them based on actual cases. It is becoming more and more difficult to allocate appropriate cases to the legal trainees in such a short period, and train them effectively.
(iii) Most of the legal trainees have less experience in life, and it is not unusual that they lack general academic knowledge as well as common sense, because their only study in life is with study manuals and instructions provided by the preparatory schools for surviving the National Bar Examination. Thus, as supplements, the Institute and local offices sometimes organize cultural or academic events, plan study tours in various fields and areas, and so on. In fact, some of them annually visit UNAFEI to observe our activities, such as the International Training Courses, in relation to international cooperation.

D. Continuing and the On-the-Job Training

Knowledge and skills as judges, public prosecutors, and practicing lawyers may be

19 District courts are ordinary courts which deal with civil matters and criminal matters as the first instance courts. There are 50 district courts across Japan.

20 District public prosecutors offices correspond to the district courts. There are 50 district public prosecutors offices across Japan. But public prosecutors there deal with mainly criminal cases and juvenile cases, and not civil cases.

gradually gained through handling daily caseloads. In this sense, the training provided by the Institute (of the Supreme Court) cannot do it all. However, once they are appointed as judges (assistant judges initially), public prosecutors, or those who enter private practice, the work done by them is regarded as professional. So after acquiring legal professional status, each organization, namely the Supreme Court, Ministry of Justice or prosecutors office[21], or the Bar Association provide training for new members or relatively young members. Moreover, in accordance with the advancement in technology, globalization and evolution of society, each organization tries to provide its members with appropriate training programs.

For instance, for public prosecutors, there are various kinds of training programs. The Research and Training Institute of the Ministry of Justice is the organization that provides such programs for public prosecutors and other staff members in the Ministry of Justice.

For newly recruited public prosecutors, for example, there is a six-month training course. The training consists of lectures and actual case dealings in the Tokyo District Prosecutors Office. After about three years, they receive additional training based on their actual case disposals. For public prosecutors who have around six or seven years experience, another program focusing on economic or financial cases is provided. For rather senior public prosecutors who have around ten years experience, a management program is offered. More than that, there are other programs such as computer programming, special training focused on tax evasion cases in the Special Investigation Departments, and so on. To enable public prosecutors to gain general knowledge or common sense, some relatively young public prosecutors are sent to private offices, or other public offices. For international awareness, around 5 young public prosecutors are sent to foreign countries to study in graduate schools annually, around the same number are sent abroad for 5 or 6 months to study foreign criminal justice systems annually. Some public prosecutors as well as judges participate in each International Training Course and the International Seminar held by UNAFEI annually.

Judges are given similar types of training as public prosecutors. The biggest difference between judges and public prosecutors is that of their professional authority when they are newly recruited. A newly recruited Judge is usually appointed as an assistant judge in a district court. For the first five years, the judicial authority of an assistant judge is restricted. He/she can be a member of three judges court, but as a single judge, he/she can decide only limited matters such as detention orders at the investigation stage, and cannot preside over a trial in a single judge court. So a newly recruited assistant judge is expected to be trained by a presiding judge of the three-judge court or by other senior judges.

Practicing lawyers have fewer opportunities, but they often arrange study forums and train themselves.

However, because of the rapid advancement of technology and globalization, the training for legal professionals is still not sufficient. Basically, legal professionals in Japan are generalists covering all fields as far as legal matters are concerned. But more specialized experts should increase in number to cope with the difficult situation at present.

21 The public prosecution service consisting of the public prosecutors office is a part of the Ministry of Justice, but not subject to the direct control of the Minister of Justice. The head of the public prosecution service is the Prosecutor General who is a career public prosecutor, and thus the public prosecution service is protected from the influence of political power.

E. Exchange Programs among Legal Professionals

As shown before, Japanese legal professionals have equal qualifications, and many judges and public prosecutors pursue their professional careers near the end of their mandatory retirement age. The career system is carried out both in the judiciary and public prosecution service. A relatively small number of judges become public prosecutors in the middle of their careers, and vise versa. It happens that some practicing lawyers become judges or public prosecutors, but not too often. However, some judges and public prosecutors exchange posts for around three year terms to learn from each other.

Some people recommend that judges should be appointed from amongst practicing lawyers (or public prosecutors) who are well trained and experienced like in the United States.

F. Problems with the Legal Training System in Japan

As stated above, the biggest problem the current Japanese legal training system faces is the shortage of legal professionals. In general, they perform well in their respective fields, however, sometimes they cannot afford to meet with the expectations of their clients or citizens in Japan, because they are too busy to manage their most pressing workloads.

To supplement this situation, some paralegals have been utilized. For example, paralegals can help clients do paper work related to the court procedures, but they cannot attend court to pursue the procedures for the sake of the clients.

Assistant public prosecutors are recruited based on in-house types of examinations, and they can pursue the court procedures as far as is so designated. However, they are not given qualifications as legal professionals. Summary court judges are usually appointed among those who pass the in-house type of examinations among the court clerks. They are not qualified as legal professionals similar to the assistant public prosecutors. There are some problems related to these matters, and there is a lot of discussion in this regard. However, these problems can be solved in a constructive and progressive manner so as not to disappoint the paralegals who have important roles in the justice system or the lawyers who are specially trained.

Moreover, as stated above, there are other issues interrelated to one another. There are a lot of local cities and towns without sufficient numbers of practicing lawyers. According to the recent survey by the Supreme Court, 119 jurisdictions out of 253 (Jurisdiction means that it has either a district court or its branch within the area) have none to four practicing lawyers within the area.[22] It means that it is inconvenient for local people to access the justice system. This situation also affects court procedures; civil cases especially, are said to take a long time to settle in court. Thus, some citizens involved in civil disputes, tend to settle the case outside the courtrooms. The justice system may alienate the citizens from using it.

The competitive National Bar Examination system has produced a group of elite, who are however not fully exposed to 'real society', and not knowledgeable in various fields. Especially for judges and public prosecutors, it is said that they are raised in a greenhouse, because of the career system, and some of them are very distant from the feelings of the ordinary people.

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22 "Justice System Reform", by Koji Sato, Morio Takeshita, Masahito Inoue, Yuhikaku, 20 October, 2002, page 225

Finally, due to the rapid changes of the world in accordance with the advancement of technology and globalization, it is said that it is extremely difficult for Japanese legal professionals to keep pace with such changes, because most of them cannot afford to have specific expertise due to their wide responsibilities.

These problems may not have instant and perfect solutions, however, now Japan is moving toward a vigorous reform of the system so that it can better serve the citizens to meet their trust and expectations.

IV. THE ISSUES OF LEGAL TRAINING SYSTEM REFORM IN JAPAN[23]

The lengthy discussions[24] on the future reform of the legal system, initiated by focusing on the legal professionals and their roles in Japan called upon political will. Some members of the Liberal Democratic Party (LDP, the ruling political party in Japan) became interested in the issues, and they established an ad-hoc research committee inside the Party in 1997, and made some reports and recommendations regarding the reform of the Japanese justice system. Finally, the Law Concerning Establishment of the Justice System Reform Council was enacted on 9 June 1999, and came into force on 27 July 1999. On the same day as the law was put into effect, the Council was established under the Cabinet[25] and immediately began its devoted endeavor. Over a period of 2 years, it held more than 60 meetings, a number of public hearings in major cities, interviews on experts, and received opinions from the general public through the internet etc. It finally submitted its Recommendations[26] to the Cabinet on 12 June 2001. The Recommendations covered all the issues relating to reform of the justice system. In responding to the Recommendations, the Law concerning the Promotion of Justice System Reform was enacted on 16 November 2001, and came into force on 1 December 2001. At the time, the Headquarters for the Promotion of Justice System Reform was established in the Cabinet to enforce the Law. To assist the Headquarters' work, a secretariat, consisting of public officials seconded from some governmental offices, was set up. The Headquarters is also supported by a councilors' committee[27] for discussions on specific issues related to the Justice System Reform and to hold meetings in order to realize the reform suggested by the Recommendations. By 29 November 2002, the Diet adopted the draft laws[28] relating to the establishment of Law Schools.

This section will show the points of the Recommendations and the further developments after the Recommendations, in terms of legal training, as well as new issues stemming from the reform program.

The Recommendations clearly set the aims and targets to increase the legal population

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23 This section is mainly based on the Recommendations of the Justice System Reform Council-For a Justice System to Support Japan in the 21st Century-The recommendations are available in English. See: www.kantei.go.jp/foreign/judiciary/2001/0612report.html

24 Especially when and after the Ad-hoc Committee for deliberating fundamental issues regarding the legal professionals was formulated in 1987. See III. B.

25 The members of the Council were 13 (University Professors at Laws, Attorneys including a former judge and a former public prosecutor, Business Executives, and others). They were appointed by the Cabinet with the approval of the Houses of the Representatives, and Councilors, according to the Law.

26 Recommendations of the Justice System Reform Council-For a Justice System to Support Japan in the 21□£st□£ Century- (Hereinafter referred to as simply "the Recommendations".)

27 One of the important issues was the legal training system.

28 They are following laws:

(1) The Law for the partial amendment of the School Education Law

(2) The Law to Ensure the Interrelationship between the Educational Programs at Law Schools and the National Bar Examination, and so on

(3) The Law for the partial amendments of the National Bar Examination Law and the Courts Law

substantially as follows;

(i) Immediately increasing the number of successful candidates passing the National Bar Examination with the aim of reaching 1,500 successful candidates in 2004.
(ii) While paying heed to the progress in the establishment of the new legal training system, including law schools, the aim should be to have 3,000 successful candidates for the new National Bar Examination in about 2010.
(iii) Through these increases in the legal population, by about 2018, the numbers of legal professionals actively practicing is expected to reach 50,000.

A. Increasing the Number of Legal Professionals, by the Establishment of Law Schools

Thus, the Recommendations strongly recommended the establishment of law schools as one of the measures to increase the number of legal professionals, and also as a part of the new legal training system.

The Recommendations said that Law schools should be established, with the aim of starting to accept students by April 2004. The following are the main points of the plan for law schools made by the Recommendations.

(i) Law schools should be established as postgraduate schools, where practical education especially for fostering legal professionals will be provided.
(ii) The standard training term should be three years, and completion in two years as a shortened term should be recognized.
(iii) Applicants should be selected, with the principle of securing fairness, openness and diversity, by considering not only their admission examination results but also their grades at undergraduate schools and actual performance overall.
(iv) To expand diversity, students from faculties other than law and working people, etc., should be admitted.
(v) Law schools should provide educational programs that, centered on legal theory, introduce practical education, with a strong awareness of the necessity of building a bridge between legal education and legal practice.
(iv) Law schools should provide thorough education so that a significant ratio of the students who have completed the course (e.g. 70 to 80 per cent of such students) can pass the new national bar examination.
(v) The small group education system should be adopted with regard to the educational methods. A sufficient number of teachers should be secured for the purpose.
(vi) A certain ratio of practitioner-teachers should be secured.

This will be the first experience for Japan to have law schools, and the plan seems to be attractive. If the plan goes well, the number of more qualified legal professionals, with various academic backgrounds will increase at a rapid pace in Japan, and will work to meet the various expectations of the public.

However, there will be some issues to solve in the future. For example, the law faculties at undergraduate level will be maintained. So the educational program for undergraduate students and for law school students may be duplicated to some extent. The students of the law faculties may have classes of legal theory again in the law schools with the students who graduated from other faculties. Moreover, it takes a longer time to acquire a certificate before applying for the National Bar Examination, for such students from the law faculties compared with the former

system.

On the other hand, for the graduates from other faculties, it may be difficult to gain enough theoretical ground compared to those who graduated from law faculties in a short time. Moreover, they have to learn some practical issues such as basic skills concerning fact finding within the three years.

Each law school will have to recruit substantial numbers of practicing lawyers or other practitioners, as teachers, to maintain small class education. It may be difficult to secure qualified practitioners, and it will cost a lot and this may be reflected in the tuition at the law schools.

There might be some conflict regarding the respective roles between the law schools and graduate schools of laws, and that may affect the management of the private universities and law schools. Theoretically, law schools may differ from the graduate schools of law, but in the past, some applicants for the National Bar Examination proceeded to the graduate schools to maintain their studentship. Moreover, some law schools may produce promising scholars from among those who study the law from a practical viewpoint. So some universities will find difficulties in managing the graduate schools because there may be a decrease in the number of graduate students.

On the other hand, the universities having law faculties may be interested in establishing law schools so that they may attract students by providing them with more opportunities and possibilities for their future.

B. The Management of the New National Bar Examination System, and the New Legal Training System

The Recommendations said that the new National Bar Examination System should be introduced after law schools are open. The Recommendations also offered some measures for a smooth transition to the new system. The points are:

(i) The National Bar Examination should be transformed into a new one that responds to the educational programs at law schools;
(ii) A specific system should be established to ensure the interrelationship between the new National Bar Examination and the Educational Programs at law schools;
(iii) Those who have completed the course at law schools that have achieved accreditation should be awarded the qualification of candidacy for the new National Bar Examination;
(iv) Proper routes for obtaining the qualification of legal professional should be secured for those who have not gone through law schools for reasons such as financial difficulty or because they have sufficient practical experience in the real world;
(v) The number of times one is allowed to take the new National Bar Examination should be limited, e.g., to three times;
(vi) The new National Bar Examination should be introduced as an examination aimed at the first candidates to complete the course at law schools in the shortened two-year term, which is projected to occur in fiscal year 2005;
(vii) For about 5 years after the introduction of the new National Bar Examination, the current National Bar Examination should be implemented in parallel to the new Examination;
(viii) The priority system for determining successful candidates on the existing National Bar Examination (Plan Hei) should be abolished in 2004, when the number of successful candidates for the current Examination is expected to reach 1,500.

The Recommendations also made proposals regarding the New National Bar Examination:

(i) The new National Bar Examination should be designed taking the educational programs at law schools into account, and should have the purpose of judging whether candidates are equipped with enough knowledge and abilities to think, analyze and express themselves so as to be qualified to start practice as legal professionals if they take the apprenticeship training provided following the Examination.
(ii) For securing the co-relationship between the new National Bar Examination and the educational programs at law schools, a mechanism should be established to, for example, exchange opinions of parties involved in law schools as well as external well-informed persons who can be appropriately reported to and the results reflected in the National Bar Examination Administration Commission.

In short, the New National Bar Examination will aim at switching the selection system based on "One Time Examination" or "the Evaluation on a Single Point" into a new system based on "Process of Education". However, there might be remaining problems. When the number of law schools increases, and it may be unavoidable that some prestigious law schools will emerge and become the top law schools. Some others will not. The preparatory schools may again try to catch such people who want to enter the good law schools. Again such "One Time Examination" may be duplicated before entering law schools.

And the way of implementing the new National Examination for many candidates will be time consuming and will be a heavy burden on the limited number of people who are in charge of the Examination.

The Recommendations did not deeply explore legal training for the successful candidates of the new National Bar Examination, but they did say;

(i) Apprenticeship training provided after the introduction of the new National Bar Examination should be designed to cope with the increase in the number of judicial apprentices (legal trainees). At the same time, properly devised training programs should be provided, in light of the educational programs at law schools, placing on-site training at the core.
(ii) The stipend system should be reconsidered.
(iii) With regard to the administration and operation of the Legal Training and Research Institute, the cooperative relationship among the three branches of the legal profession should be further strengthened, and mechanisms should be established whereby opinions of persons involved in law schools as well as external well-informed persons will be appropriately reflected.

As the apprenticeship training depends on the results of the new systems such as the law school system and the new National Bar Examination, apprenticeship training was not clearly defined at the time of the Recommendations. However, a substantial increase in the number of successful candidates for the new National Bar Examination will be inevitable in the near future, so it may be necessary to accelerate the applicable measures. The capacity for the Legal Training and Research Institute is around 1,500 and it will reach saturation point in a couple of years or so. Moreover, local offices of courts, public prosecutors, and practicing lawyers will have to receive the legal trainees and provide them with on-site training programs which will be a very heavy burden on them. Some effective measures should be undertaken immediately for effective training.

C. Developments after the Recommendations[29]

After the Recommendations were submitted to the Cabinet on 12 June 2001, immediate action was taken in accordance with the Recommendations. Since the law schools are within the category of "schools" under the School Education Law, and are regulated by the Ministry of Education, Culture, Sports, Science, and Technology, the Ministry, in August 2001, began to consider the conditions or requirements for the establishment of law schools[30].

The draft law for the partial amendment of the School Education Law was submitted in October 2002, and was subsequently adopted by the Diet. According to the new School Education Law, law schools are positioned as graduate schools for professionals. The main issues pointed out by the Recommendations were incorporated into the law.

(i) The standard training term is set for three years, but for students that have acquired fundamental knowledge of laws, the term can be shortened to two years.
(ii) All applicants for law school are required to take a vocational aptitude test held nationwide. Applicants for the short-term course should take the other examination for the evaluation of legal knowledge. On the other hand, other applicants may be tested and selected in various ways by individual law schools. Law schools should receive a certain ratio or a majority of students who have graduated from faculties other than law and working people.
(iii) Every law school is required to have a certain ratio of practitioners as teaching staff.
(iv) The law school's activities should be under continuous and careful examination by an independent organization of well-informed persons to conduct third party evaluations.

As stated before, on 1 December 2001, the Headquarters[31] for the Promotion of the Justice System Reform was established in the Cabinet to make practical plans and to enact necessary laws for the purpose of the realization of legal system reform, paying the greatest respect to the Recommendations. The Headquarters drafted "the Plan for the Promotion of Legal System Reform" in March 2002, and promoted the drafting of the necessary laws.

The Japan Times[32] recently reported (Nov. 30 2002) the adoption of the laws[33] by the Diet as follows:

Law Education Bills Enacted by the Diet

The Diet on Friday[34] enacted into law two bills aimed at improving the system for educating legal professionals. The bills, approved by the House of Councilors after passing through the House of Representatives on Nov. 12, are intended to pave the way for

29 References: The information from the homepage of Prime Minister's Official Residence, and "Legal System Reform" See footnote 17.

30 The Central Education Committee attached to the Ministry did the job. The Committee is divided into some smaller sub-committees. The group of experts formulated the sub-committee for the law schools, held meetings and then issued the final recommendations in August 2002.

31 Members of the Headquarters are all Cabinet members headed by the Prime Minister. The Headquarters is supported by the Secretariat consisting of a number of public officials seconded from the relevant Ministries, and a councilors committee consisting of 8 well-informed experts.

32 An English newspaper based in Tokyo, Japan

33 (1) The Law to Ensure the Interrelationship between the Educational Programs at Law Schools and the National Bar Examination, and so on

(2) The Law for the Partial Amendments of the National Bar Examination Law and the Court Organization Law

34 29 November 2002

a more comprehensive legal education system linking law schools, bar examinations and legal apprenticeships. One of the laws is aimed at expanding the number of legal professionals in Japan through increased educational opportunities, setting up a new bar exam, and linking them with the process of legal apprenticeship. It will be introduced in 2004. Under the existing system, people can enter the legal profession based solely on how well they do on national bar exams. The second law calls for a revision of the national bar examination law that would require those who are not graduates of law schools to take a pre-exam before qualifying to take the bar examination. It would also limit the number of times an individual can take the new national bar exam to three times in five years and shorten the period of legal apprenticeships to one year from 18 months. A new bar exam for law school graduates would be introduced in 2006. The current exam will be kept until 2010 for those who do not attend law school. The pre-exam would be introduced in 2011.

As shown above, the combination of three-years of education (or two-years of education for specific people) in law schools, the new National Bar Examination and one-year of practical training as legal trainees are expected as new measures to expand the number of qualified legal professionals[35].

Now the Japanese Legal Training System is facing substantial change whether we want it or not.

V. FUTURE PERSPECTIVES – THE MAINTENANCE OF A TRAINING SYSTEM TO PRODUCE QUALIFIED AND RESPONSIBLE LEGAL PROFESSIONALS IN RESPONSE TO THE PUBLIC'S TRUST AND EXPECTATIONS

A. Possible Problems and Solutions for the New System

The Japanese Reform of the Legal System, if it works, will produce substantial numbers of legal professionals in a relatively short time. We are required to ensure the quality of legal service to the citizens, and have to be ready to take any necessary steps to avoid problems.

1. Education in the Universities

The role and function of education in the law faculties at undergraduate level should be fully considered. The Recommendations said that the function of the law faculties in the past will not change, as far as they produce and send human resources to various sectors in society. However, the Recommendations commented as follows:

(i) Education at undergraduate law faculties after the introduction of law schools is expected to be vitalized as a whole in a situation where universities compete with each other in developing their own characteristics and identities to divide the burden of legal education with law schools. For example, the academic minor system with basic legal education as a base can be introduced by aiming at providing broader educational programs.
(ii) With respect to the term for completion of programs at the undergraduate stage, it is desirable that the so-called grade-skipping system be applied as appropriate.

35 The Asahi Newspaper wrote, "Whether the law schools can acquire students from various backgrounds may be the key." The article said that 98 universities (26 public universities) are now under consideration as to whether they can have law schools in the future. The details of each of the law schools will be announced by around next fall.

2. Maintaining the Quality of Legal Professionals

As shown in this paper, the number of Japanese legal professionals has been very small compared with other major countries, because only a few candidates have annually been able to pass the very strict and competitive National Bar Examination. After the introduction of the new system, the number of legal professionals will increase drastically. (If the system works well, it is expected to increase to 2.5 times the present number by the year 2018.) It implies the risks of deterioration of the quality not only in their academic level but also in their ethics.

The Recommendations accessed this issue as follows:

(i) Law schools should take on the role of training high quality legal professionals who will lead the justice system into the 21st century. To ensure the fruitful realization of that end, significant labor, time and funds should be invested in human and physical resources, including teachers, educational programs and methods. The responsibility of those involved with universities and with the legal profession is grave, and, with a deep appreciation for the graveness of that responsibility, those parties must devote efforts to the establishment and operation of law schools.
(ii) In order to train and secure legal professionals with the character and capabilities (including legal ethics) fit to support the justice system in the 21st century, continuing education should be developed as a part of a comprehensive and systematic approach to legal training. In this respect, it seems to be significant for legal professionals currently engaged in legal practice to study subjects in advanced and up-to-date fields, international fields and interdisciplinary fields by appropriate means including taking classes at law schools, so as to update the legal knowledge required for providing the most appropriate legal services and broaden their views and activity areas. Voluntary and positive efforts of the parties concerned are called for.
(iii) What is appropriate with regard to professional ethics in connection with the expansion in scope of activities (of practicing lawyers) should be studied, and the observance of professional ethics should be secured by improving ethics training, properly applying the official disciplinary system, etc.

Indeed, the new system was also aimed at producing more qualified legal professionals, as well as increasing the legal population, but with regard to maintaining the quality of legal professionals, it would not be an easy task, and it would be necessary to undertake appropriate measures using various means.

3. Budgetary Issues for Courts and Public Prosecutors Offices

The Recommendations said that in the process of increasing the legal population as a whole, the number of judges and prosecutors, as well as the staff supporting the justice system, such as court clerks, or staff in public prosecutors offices, should be increased greatly. For your reference, the Supreme Court estimated that it would be necessary to have 500 more judges during the next 10 years. The Ministry of Justice expressed the opinion that it would be necessary to increase the number of public prosecutors by 1,000.

It means that the budget for paying salaries for judges and public prosecutors should be expanded substantially. It is extremely difficult because of the economic recession in Japan, and other circumstances. It would also be necessary to call for the understanding of the people of Japan, as costs will increase. Of course, the quality of the judges and public prosecutors, and the

level of their service and performance, should be maintained to meet with the high expectations of the public.

4. Access to Practicing Lawyers Especially in the Local Areas

In the process of increasing the number of practicing lawyers, measures to secure the number of practicing lawyers in local areas are also necessary. It is desirable for everyone to have easy access to some practicing lawyers, but even if the number of practicing lawyers increases, the majority of them may head to the mega cities such as Tokyo, Osaka and Yokohama. In this sense, it is recommended that the bar associations send, at least on some days a month on a regular basis, lawyers to the local areas where none, or only a few lawyers are available.

It may be necessary for the government to consider establishing a public defender system or to expand the system of defense lawyers for defendants in criminal cases and to establish similar systems in civil cases.

In these cases, there might be difficult issues to be resolved between the defense lawyers' independence, and the private nature of lawyers in that they need to be paid. There are issues that arise in the establishment of a public defense service, surrounding the quality of service a public defender might provide if his/her remuneration is a lot less than that of a private lawyer. This can also apply to the civil law.

5. Recruiting More Judges from Practicing Lawyers

As was shown earlier, in Japan, most judges are recruited from those who have just finished their training and graduated successfully from the Legal Training and Research Institute. The system itself will be maintained, but practicing lawyers are expected to expand their activities to carry out their social responsibility. The Recommendations said. "...it is desirable for lawyers to more positively engage themselves in such other legal professions as judges and prosecutors so that they can contribute to the administration of a justice system that can respond to public expectations and public trust... considering that it will become necessary to vigorously promote the appointment of lawyers as judges, the bar associations have to make more efforts than ever to ensure that numbers of qualified member layers will be able to accept those appointments."

This is regarded as equally important for both of the parties, career judges and practicing lawyers to the betterment of the justice system reform.

6. Judges Role in Speedy and Appropriate Procedures

Judges, especially presiding judges may be expected to play more important roles in procedures, than other parties, such as public prosecutors or practicing lawyers, including pre-trial or mediation procedures. Strong leadership based on a strengthened legal authority will be necessary to promote speedy trials and to secure fairness. Against the obstruction of procedures by other parties or intentional non-cooperation without due reason, presiding judges should be provided with specific legal power. In terms of the methods of court proceedings, such parties who do not obey judges' legal orders, should be criminally liable.

B. Other Issues to Promote Reform for a Better System

Needless to say, producing qualified legal professionals is not an easy task, and it cannot be achieved in a short time. What the people in the justice system need to do is to make a strong and sustained effort. Trial and error is sometimes part of the education process. The best system in one county may not work in another country. However, some points should be pointed out for the future Japanese legal training system.

(1) Better legal training systems should always be sought, not only in relation to candidates to be legal professionals, but also existing legal professionals, with the aim of providing broad and profound knowledge and wisdom overriding technical and practical knowledge of laws to see issues in the right perspective, to enhance humanity, to feel the happiness, sorrow and pain of others, and to inspire a sense of internationalization.
(2) Exchange programs among different professions, not only among legal professionals but also within different fields should be encouraged. Seeing is believing, and experience makes the person.
(3) People who manage the administration of the justice system should always be ready to take the necessary steps for the reform of the training system, being sensitive to changes in domestic and international society and the needs of the people in society.

VI. RECOMMENDATIONS

As stated above, it is a time and labour consuming task to produce qualified legal professionals. So it is necessary to make practical, but comprehensive and sustainable plans with long-term, mid-term, and short-term targets. It may be easier and effective to have limited targets, such as to produce a handful of elites who will be leading figures as the first step, then, gradually, the number of such elites should be enlarged. At the same time, measures should be taken for legal professionals as a whole.

Such a huge job inevitably needs the strong political will of the nation. However, it is the task of the practitioners who work in the justice system, to make every effort to move the people towards the right direction.

There are several points to recommend to my colleagues in Indonesia, but solely based on my own opinions.

It is recommended:

(i) To consider the necessity of holding a national examination for candidates applying to be legal professionals, to consider academic ability, and to grade them. (for the first step, it may be useful to organize a committee or an organization consisting of well-informed people to deliberate the issue comprehensively.);
(ii) To find promising people as candidates to be future legal professionals from the broader pool of human resources (for that purpose, to establish scholarship programs for intelligent students with financial difficulties to continue study, and to encourage such people to study at the law faculties of universities);
(iii) To promote or to expand on-the-job training programs to educate legal professionals by utilizing available resources;
(iv) To promote exchange programs among legal professionals, in order to give them more opportunities to get to know each other and get to know details of each other's work;

(v) To hold seminars and conferences among legal professionals to discuss the focal points among them, so that they have a common understanding as legal professionals;
(vi) To promote comparative study by scholars and practitioners. (Without doubt, learning about the various types of legal training systems in the world is very important. To participate in UNAFEI programs could be one of the opportunities for practitioners to open their eyes to the world and to broaden their views. After close deliberation, it may be considered appropriate to incorporate some legal training systems exercised abroad into the domestic system with necessary modifications).

VII. CONCLUSION

In this paper, I've tried to show the Japanese legal training system as an example, to provide our colleagues in Indonesia with the raw materials necessary to start the discussion. What I wanted to say was that the current situation is the result of accumulated practices of past legal education and training, and that the current situation will eventually help us to formulate the future situation. In the case of Japan, it took around 130 years to develop, with much trial and error, and I think it has achieved a certain level of success.

Still, the Japanese system is now facing some substantial reform for its betterment. It will also take some time for the new system to develop. Until then, I suppose we will have to strive for better implementation of the current system, and make minor refoms little by little.

We cannot produce qualified legal professionals in a day. We cannot establish a perfect system for that purpose, and even if we can establish a better one than that of present, it rests with the people who operate it. We cannot do anything but make continuous efforts towards the goal that we are now heading for.