

**PUBLISHING CONSOLIDATED VERSION OF ACTS IN NATIONAL LEGAL
INFORMATION AND DOCUMENTATION NETWORK (JDIHN)
AS A WAY OF IMPROVING LEGAL CERTAINTY:
AN INSPIRATION FROM AUSTRALIAN FEDERAL REGISTER OF LEGISLATION**

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ABSTRACT

Throughout the time, the Government of Indonesia has put a lot of effort to address the issue of lack of legal certainty in Indonesia. One measure that has been taken is to increase the accessibility of legislation through the establishment of National Legal Information and Documentation Network (JDIHN). This article will look into legal documentation best practices in other jurisdiction, the Australian Federal Register of Legislation that publishes Consolidated Version of Acts, referring to Venice Commission, as an inspiration to pick up relevant and applicable principles that can be used to enhance legal certainty.. Indonesia should consider publishing Consolidated Version of Acts as a solution to the complexity of tracking down the latest version of the Acts. In Indonesia, Acts can be amended by an “Amendment Acts”, another Act, and also by Constitutional Court Judgement. Eventhough JDIHN have provided all of this information, these documents remain as separate documents, bringing potential confusion for people to accurately identify which provisions of the Acts are still in force. This paper concludes that it is worth for JDIHN to try enhancing their service by publishing a Consolidated Version of Acts. As a start, it can choose some prominent Acts regulating business and economy activities and formulate the Consolidated Version of those Acts.

Keywords: legal certainty, consolidated version of Acts, National Legal Information and Documentation Network (JDIHN), Australian Federal Register of Legislation.

A. INTRODUCTION

Legal certainty is one of the main themes of law. Wroblewzky described legal certainty as predictability in the law-making or law-applying activities.¹ In the subjective perspective, legal certainty is treated as the subject’s feeling concerning the stability of law and legal security.²

Beside of its prominent importance in law discourse, it also has been one of the biggest challenge faced in law development and implementation.

In the context of business and economic development in Indonesia, critics have been given toward the lack of legal certainty of the country’s law related

¹ Jerzy Wroblewzky, “Functions of Law and Legal Certainty”, Dialnet, <https://dialnet.unirioja.es/servlet/articulo?codigo=2065008> , (accessed 2nd August 2019),p. 314.

² *Ibid.*

to business and economy. President Susilo Bambang Yudhoyono mentioned legal certainty as an important concern for investors and it was reported that there were various overlapping between central and local government regulations resulting as lack of legal certainty.³ That statement was made in 2005. However, the problem of legal certainty still exists today. Some US Multinational Companies, for instance, expected the Government of Indonesia to ensure legal certainty, as well as to revamp bureaucracy and improve infrastructure.⁴

Investors in the agriculture industry also mentioned about their fear on land issue and await for legal certainty.⁵The pressing demand for legal certainty by the business community can be understood. Without legal certainty, it is more difficult for businesses to understand investment options and furthermore it presents barriers to greater economic expansion in the country.⁶

Throughout the time, the

Government of Indonesia has put a lot of effort to address this issue. One of the measures that have been taken is to increase the accessibility of legislation through the establishment of National Legal Information and Documentation Network (JDIHN) by Presidential Regulation Number 33 Year 2012 on National Legal Information and Documentation Network. This measure certainly aims not only to answer business community's demand in particular but also the need for legal certainty in general. This paper will propose some recommendations to refine JDIHN's legal document's quality to improve legal certainty in business and economic development in Indonesia. However, these recommendations certainly can also be projected to improve legal certainty in the other law area. This article will look into legal documentation best practices in other jurisdiction, the Australian Federal

³ Susilo Bambang Yudhoyono, "Indonesia's Era of Growth, Dynamism and Progress", Asia Society, <https://asiasociety.org/australia/indonesias-era-growth-dynamism-and-progress>, (accessed 2nd August 2019).

⁴ The Jakarta Post, "US Firms Decry Lack of Legal Certainty", The Jakarta Post, 28 June 2013, <https://www.thejakartapost.com/news/2013/06/28/us-firms-decry-lack-legal-certainty.html>, (accessed 1st August 2019).

⁵ Business and Human Rights Resource Centre, "Indonesia: New land law needed to give investors legal certainty & avoid conflict with indigenous communities", Business and Human Rights Resource Centre, 20 July 2019, <https://www.business-humanrights.org/en/indonesia-new-land-law-needed-to-give-investors-legal-certainty-avoid-conflict-with-indigenous-communities>, (accessed 1st August 2019).

⁶ IDLO, "Improving Legal Certainty Through Education In Indonesia", IDLO, 29 January 2019, <https://www.idlo.int/news/highlights/improving-legal-certainty-through-education-indonesia>, (accessed 2nd August 2019).

Register of Legislation, as an inspiration to pick up relevant and applicable principles that can be used to strengthen JDIHN.

B. DISCUSSION

1. Brief Context of the Australian Legal System

This part will give a brief picture of Australian Legal System, especially about their source of law and the governmental system. This background is important to help us draw the line about which things will be relevant to Indonesia. Firstly, Australia is a common-law country where judge tries to apply the law principles consistently and developed a common set of legal principles and procedures.⁷ Judge in the lower court is bound by the precedent (decided cases).⁸ However, the sources of law in Australian legal system originates from 3 main sources:⁹

1. Law made by parliament, which includes statues and delegated legislation;
2. Judge-made law; and

3. International law as ratified by the Australian parliaments.

Each of these sources of law have different legal databases arrangement. The court decision, as the source of the common law has their own legal databases system, developed by the Courts¹⁰, by University (e.g. AustLII)¹¹, or by corporation (e.g. Westlaw)¹². Separate legal databases are developed for the legislation/statutory law. It is usually provided by the government of each jurisdiction.

It's also important to take into account that Australia is a federal state where two levels of government rule the same land and people.¹³ Each level of government has at least one area of action in which it is autonomous and there is a guarantee of this autonomy.¹⁴ In other words, the regional authorities enjoy constitutional status where their power is

⁷ Australia inherit this system from the British Legal System. See: Claire Macken and Madeleine Dupuche, *Law Essentials: Foundation in Australian Law*, (Sydney: Thomson Reuters, 2012), p.9.

⁸ Vines, P. *Law and Justice in Australia: Foundation of the legal system*. (Oxford University Press, 2013).

⁹ Claire Macken and Madeleine Dupuche, *Op.cit.*, p. 29.

¹⁰ For example, the High Court of Australia has their own case databases here: <http://www.hcourt.gov.au/publications/judgments>

¹¹ Australasian Legal Information Institute is a legal databases provided by joint facility of UTS and UNSW Faculties of Law. It can be accessed here: <http://www.austlii.edu.au>

¹² Westlaw Australia provides Australian case database that can be accessed here: <https://www-westlaw-com-au.virtual.anu.edu.au>

¹³ John Gerring, Strom Thacker, and Carola Moreno, "Are Federal Systems Better Than Unitary Systems?", 2017, <https://www.bu.edu/sthacker/files/2012/01/Are-Federal-Systems-Better-than-Unitary-Systems.pdf>, p.3.

¹⁴ *Ibid.*

inherent rather than delegated.¹⁵ It means that in terms of legislation making, each of the government: the Federal Government/the Commonwealth and the State Government have their own authority to pass the laws in the framework provided by the constitution. Therefore in terms of legal database for legislation, both the Commonwealth and every States have developed their own databases.

Giving this background, the most relevant aspects of Australian Legal Databases that can be considered to strengthen Indonesia's JDIHN is the legislation/statutory law database. The case-law databases, even though are very impressive and well-developed, will not be discussed in this paper. I would also like to limit the study on the Federal Register of Legislation that was administered by the Commonwealth (Federal) Government for the reason of its role similarity with JDIHN in terms of managing the central regulation databases.

2. The Need of Consolidated Version of Acts to Improve Legal Certainty

Accessibility of legislation is one of legal certainty checkpoints.¹⁶ Referring to Wroblewzky, legal certainty provides the predictability of law-applying activities. The accessibility of legislation then is very important to help people know the law so they can align their conducts with it, and eventually able to predict the application of the law. This principle is also known as foreseeability of the laws.¹⁷

In their checklist of Rule of Law, the Venice Commissions of The Council of Europe uses 2 measurements to measure the foreseeability of the laws. One of them is to see the clarity of the Law historical record (repealed, amended). Furthermore it also questions whether the amendments are incorporated in a consolidated, publicly accessible, version of the law.¹⁸ It can be said that the consolidated version of the law is the "latest version" of the law if it has been amended or revised. It's interesting that providing a consolidated version of the law, where the amendments or revisions are being incorporated into one single document can be considered as a measure to improve legal certainty.

¹⁵ *Ibid.*

¹⁶ Venice Commission of the Council of Europe, *The Rule of Law Checklist*, (Strasbourg: The Council of, 2016), p.25.

¹⁷ Venice Commission of the Council of Europe, *Op.cit.*, p.25.

¹⁸ *Ibid.*

The Federal Register of Legislation provides this consolidated version of the law by updating the law document everytime amendment or revision happened. For example, in the screenshot provided below of the Acts of Interpretation Acts 1901 document, we can see the status of the law (still in-force), and that it's the latest version, means that all amendment and revision done toward this act has been

incorporated into a single document. Under the title of the document on the right window, we can also see the detail of the date when the last compilation process is being done (20 December 2018). It means that if the reader knows that some changes have happened after that date, they may carefully read the document, realizing that some parts of the act may have been changed but not yet recorded.



Picture 1: Screenshot of Acts Interpretation Act 1901 in Federal Register of Legislation

In Australia, the existence of this document is essential since an Act can be changed by another Act which is not necessarily have the same title. This

practice is uncommon in Indonesia. In Indonesia an Act usually will be revised by another Act with the same title. For example, a “Company Act” will be revised

by an “Amendment of Company Act”. In Australia, a part of “Company Act” can be revised by an “Amendment of Company Act” or any other acts such as “Criminal Act” or “Terrorism Act”. In a slight thought, these two laws have very little connection with Company Law. Therefore, without any single consolidated document, there’s high possibility that people will lose track on the current provisions of the law. A single consolidated document will compile all of the changes made to that law so people will only need to access this one document to find the most updated version, include the information about all of the other acts that change or amend that act.

3. The Need of Consolidated Version of Acts in Indonesia Legal Database

This consolidated version of the law is interesting to be discussed in Indonesia context since we have different practice on documenting the amendment of the law. As mentioned above, first of all, it’s uncommon in Indonesia to revise an act partially with another act which has little correlation with it. The amendment of an act usually done by another act with the same title but with addition of “amendment” word to indicate the original and the amendment version. The

Amendment Act will contain not the full version of the acts, but only the parts of the acts which are changed (revised/revoked).

It means that in Indonesia, the original and the revision act will be documented as separated documents, both are still inforce. When people want to find the latest version, they will have to read both documents and identify by themselves which parts are still inforce and which parts have been revoked or revised by the revision act version.

Things may get more complicated when the act is not only revised once but twice or even more. It means that people have to read the documents one by one and find out the provisions which are still in-force by themselves. This practice of changing the law several times even more commonly used in delegated legislation, making it’s more challenging for people to track down the latest version of the legislation.

Another development that should be taken into notice is the existence of the Constitutional Court that also can declare that the material content of a section, article, and/or part of a law referred to is contrary to the Constitution of the State of Republic of Indonesia of the Year 1945

and therefore does not have legal binding force.¹⁹ It means that parts of an Act can be revoked by the Constitutional Court – and it’s even harder to be tracked if people don’t have adequate knowledge and skill to read the judgment.

Since its establishment in 2003, the Constitutional Court had reviewed many laws, some of them are related to business/economy activities. In 2014, The Office of Attorney General had realized the importance of compiling the result of the Court judgment to help the prosecutors, particularly, to track down

the most updated provision of an act, based on the Court’s judgment.²⁰

Referring to the compilation made by the Attorney General, it can be seen that some actshad been reviewed more than once by the Court. It means there is a possibility that there are more than one parts of the act that is impacted by the Court’s decision. This table below compilesparts of some acts which I considered to be prominent in business and economy activities that were declared unconstitutional by the Constitutional Court Judgement until 2014.

Table 1: Compilation of some Acts Related to Business and Economy that Were Impacted by Constitutional Courts Judgment Until 2014

No.	Acts	Part of Acts Declares Unconstitutional	Constitutional Court (CC) Judgment Number
1.	Law No. 39 ofthe Year 2007 Regarding the Amendment of Law No. 11 of the Year 1995 Regarding Customs	Art. 66 (1)	54/PUU- VI/2008
2.	Law No. 30 of the Year 2004 Regarding Notary Profession	Art. 66 (1)	49/PUU-X/2012
3.	Law No. 41 of the Year 1999 Regarding Forestry	Art. 1 number 3	45/PUU- IX/2011
		Art. 4 (3)	
4.	Law No. 37 of the Year 2004 Regarding Bankruptcy and &	Art. 6 (3)	071/PUU- II/2004

¹⁹ Article 57 (1) Law No. 24 of the Year 2003 Regarding the Constitutional Court as amended by The Law No. 8 of the Year 2011 Regarding the Amendment to the Law No. 24 of the Year 2003 Regarding the Constitutional Court.

²⁰ Dede Riki, et.al, *Himpunan Perubahan Undang-Undang Berdasarkan Putusan Mahkamah Konstitusi*, (Jakarta: Kejaksaan Agung Republik Indonesia, 2014), p.ii.

No.	Acts	Part of Acts Declares Unconstitutional	Constitutional Court (CC) Judgment Number
	Suspension of Debt Payment Obligation	Art. 224 (6)	
5.	Law No. 13 of the Year 2003 Regarding Employment	Art. 65 (7)	27/PUU- IX/2011
Art. 66 (2) part b			
Art. 169 (1) part c		58/PUU- IX/2011	
6.	Law No. 22 of the Year 2001 Regarding Oil and Gas	Art. 1 number 23	36/PUU- X/2012
Art. 4 (3)			
Art. 11 (1)			
Art. 12 (3)		002/PUU- I/2003	
Art. 20 (3)		36/PUU- X/2012	
Art. 21 (1)			
Art. 22 (1)		002/PUU- I/2003	
Art. 28 (2) & (3)			
Art. 41 (2)		36/PUU- X/2012	
Art. 44 (1), (2), & (3)			
Art. 45 (1), (2), & (3)			
Art. 48 (1)			
Art. 49			
Art. 59 part a			
Art. 61 part a & b			

No.	Acts	Part of Acts Declares Unconstitutional	Constitutional Court (CC) Judgment Number
		Art. 63	
7.	Law No. 18 of the Year 2004 Regarding Plantation	Art. 21	55/PUU-VIII/2010
		Art. 47 (1) & (2)	
8.	Law No. 4 of the Year 2009 Regarding Mineral and Coal	Art. 6 (1) part e	10/PUU-X/2012
		Art. 9 (2)	
		Art. (10) part b	32/PUU-VIII/2010
		Art. 14 (1)	10/PUU-X/2012
		Art. 14 (2)	
		Art. 17	
		Art. 22 part e & f	25/PUU- VIII/2010
		Art. 51	30/PUU- VIII/2010
		Art 52 (1)	25/PUU- VIII/2010
		Art 55 (1)	30/PUU- VIII/2010
		Art. 60	
		Art. 61 (1)	
Art. 75 (4)			
9.	Law No. 17 of the Year 2012 Regarding Cooperation	Whole Act	028/PUU-XI/2013

Referring to the selected data above, it can be seen that the Constitutional Court Judgment may have a small or great impact on the acts. The most noteworthy

cases are Law No. 22 of 2001 on Oil and Gas that has 16 articles declared as unconstitutional by the Constitutional Court, Law No. 4 of 2009 on Mineral and

Coal which have been reviewed three times by the Constitutional Court, and Law No. 17 of 2012 on Cooperation which the whole act was declared unconstitutional and no longer has binding force. Imagine that this court's judgment, which significantly affects the substance of the legislation, is a separated legal document from the act itself. So there's possibility, people read the act, and they don't realize that some parts of it had been declared unconstitutional, or simply saying, being revoked by the Constitutional Court. Here we can see the relevance of the Venice Commission's legal certainty criteria where legal certainty is not only about the accessibility of the law but also whether there's availability of a consolidated version of the law.

I can see that JDIHN, to some extent has projected that all of the situations explained in this subsection may become a challenge. JDIHN, therefore, had tried to provide the status of the law as complete as possible. The status of the law covers the law precedes it, and come after it, and also every amendment made to it. When the law had been reviewed by the Constitutional Court, I noticed that JDIHN also provide that information. However, all of these documents remain as separated documents which means

people still have to do their own investigation to conclude the latest-version of the law.

Here I would like to propose that JDIHN make a special consolidated version of the act that incorporates all revisions made to the act, includes the Constitutional Court judgment in one document just like the one has been done by the Australian Federal Register of Legislation. It means that apart from the separate documents and information that will remain there, the JDIHN make extra effort to combine it and present it as the consolidated version, the "last version" of the act that can be easily retrieved by society in general. In this consolidated version, JDIHN can make note to the provisions to show that it has been changed or revoked by the Constitutional Law. For example, if the provision has been changed by the first amendment act, we put a star (*) behind the provision number. If it has been changed by the second amendment act, we put two star (**). If It has been revoked by the Constitutional Cour, we put a hashtag (#). To make all of this note clearer, JDIHN can develop "Endnote" (elaborated in the last part or this paper) to give information about each amendement or Constitutional Court Decision. This

consolidated version will be updated everytime the act being changed by an amendment act or by Constitutional Court Decision. By doing this, people will only need to find this consolidated document to have the most updated version of an act.

As a pilot project, JDIHN may pick some prominent acts related to business and economy issue and start to make the consolidated version of those acts. After successfully doing it, JDIHN may expand the project. I would like to suggest JDIHN extend the project to the other central regulation, includes the delegated legislation, still focusing on those which regulates business and economy activities. For longer term, it's possible to extend it also to all the law and make it the standard of law document provided by the JDIHN.

4. Considering Developing Endnotes to Help Navigation

Another feature in the Australian Federal Register of Legislation is the "Endnotes". Endnotes provide information about the compilation and the compiled law. In every Endnote, there will be 4 sections which consist of information about the endnotes, abbreviation key, legislation history, and amendment history. In this paper I would like to highlight endnote 3 and endnote 4 in particular.

Endnote 3 gives information about the legislation history in general. This kind of documentation is really important especially when we really need to track down the historical development of certain law. The picture below shows a brief picture of how it looks like.

Endnote 3—Legislation history				
Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts Interpretation Act 1901	2, 1901	12 July 1901	12 July 1901	
Acts Interpretation Act 1916	4, 1916	30 May 1916	30 May 1916	—
Acts Interpretation Act 1918	8, 1918	11 June 1918	11 June 1918	—
Acts Interpretation Act 1930	23, 1930	14 Aug 1930	s 3: 27 Oct 1930 (s 3(2) and gaz 1930, p 2093) s 4-6: 14 Aug 1930	—
Acts Interpretation Act 1932	24, 1932	30 May 1932	30 May 1932	—

Picture 2: Screenshot of Endnote 3 of Act Interpretation Acts 1901

It can be seen that in endnote 3, we can track the history of the act since the very beginning of its formulation in 1901. If endnote 3 gives general information

about the history of the act, endnote 4 gives more detailed history on the provisions on the act as can be seen below:

Endnote 4—Amendment history	
Provision affected	How affected
Part 1	
Part 1 heading.....	ad No 52, 1964 rep No 46, 2011
Part 1 heading.....	ad No 46, 2011
Heading preceding s 1.....	rep No 52, 1964
s 1A.....	ad No 46, 2011 am No 10, 2015; No 130, 2018
s 2.....	rs No 10, 1937 am No 37, 1976 rs No 46, 2011 am No 10, 2015
s 2A.....	ad No 24, 1932 rep No 10, 1937 ad No 52, 1964 rep No 216, 1973 ad No 46, 2011

Picture 3: Screenshot of Endnote 4 of Act Interpretation Acts 190

Even though look like a simple thing, it can be a huge help for people to navigate the history of the provisions in the act. In this, I think JDIHN has a lead by providing all versions of the acts both separately but still on one page so people can access them easily if they want to compare the provisions. The Australian Federal Register on Legislation, on the other hand, provides the latest version in on page and those which are not in force anymore in another screen – so it may require more effort from the people to find the documents.

I do think it's worth to consider adding endnote as a feature in the consolidated document that will be provided. Endnote helps people not to only have the last version but also to know where everything comes from accurately. All of these things hopefully can lead to the improvement of the legal certainty.

C. CONCLUSION

Accessibility of law is one aspect of legal certainty. The existence of National Legal Databases aims to provide accessibility of law to the society.

However, alongside with accessibility, legal certainty can be improved by providing a consolidated version of the law. Taking inspiration from the Australian Federal Register of Legislation, JDIHN may enhance its content by providing an extra document, tailored by JDIHN, to provide the consolidated version of the acts which incorporated all revisions that had been made, include those which came from the Constitutional Court Judgment, and also considering to develop endnotes section in this document. The proposal I made in this paper is for JDIHN to start a pilot project by sorting the most prominent acts which regulate business and

economy activities and make their consolidated version.

The availability of this consolidated version of acts is expected to help the business community to have an easier way on finding the latest version of the law and therefore gain better understanding which constructs the initial step of realizing legal certainty in Indonesia. Of course this idea can be expanded to other areas of law. JDIHN has made a great contribution in providing law for society. I do believe it's time for another innovation to add more value to what has been done all of this time.

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C. Legislation

Law No. 24 of the Year 2003 Regarding the Constitutional Court as amended by The Law No. 8 of the Year 2011 Regarding the Amendment to the Law No. 24 of the Year 2003 Regarding the Constitutional Court.

BIOGRAPHY

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