

Perkembangan pemikiran hukum di Indonesia dan hubungannya dengan kemampuan yuris untuk memahami hukum yang sensitif konteks

Adriaan Bedner



Van Vollenhoven Institute
for Law, Governance & Society



**Universiteit
Leiden**



‘Pemikiran hukum’:

What are jurists supposed to do?

- analysis of legal sources
- using the method of legal interpretation
- in line with the objectives of the legal system
- to develop the legal system, or
- to determine the legal outcome of a (potential) case

Legal education in Indonesia and the Netherlands until the 1970s

- Orientation on theory
- Way of teaching & examination
- Skills
- Role of *yurisprudensi*



Continuity & change

Netherlands



Indonesia



Lectures & Working Groups

Mostly lectures

More attention for skills:
resolving cases

Continued emphasis on 'theory'

Continued integration of legal
institutions

Fragmentation of legal
institutions

Law becoming an increasingly
open system

Formalism versus 'anything
goes'



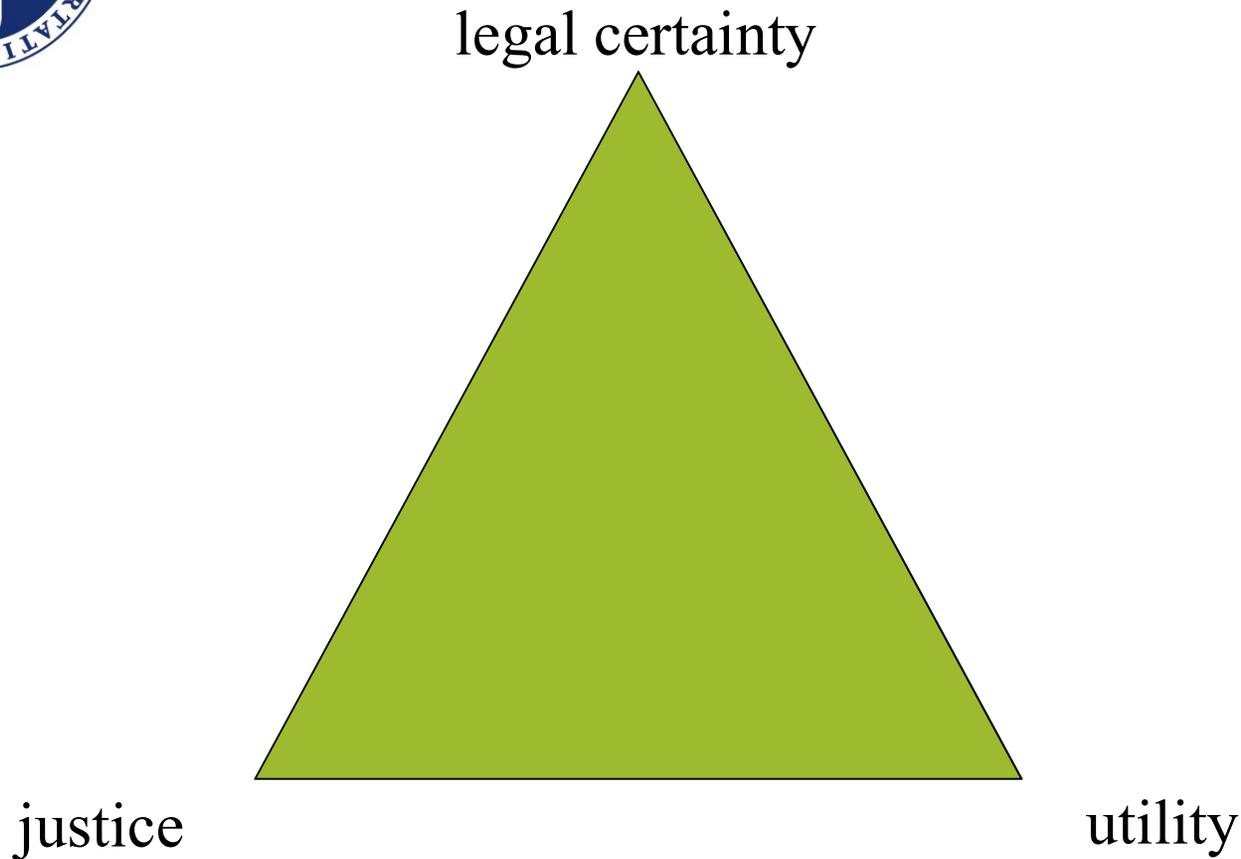
Analysis of legal sources

- customary international law
- treaties
- constitution
- legislation
- ~~• case law (*yurisprudensi*)~~
- ~~• custom~~
- ~~• doctrine~~

Do Indonesian law students actually study all these sources???



In line with the objectives of the legal system



How to find a balance?



Methods of interpretation 1: Grammatical





Methods of interpretation 2: Systematic





Methods of interpretation 3 :

History of the Statute





Methods of interpretation 4:

Teleological interpretation



Which of these methods are actually used in Indonesian legal reasoning?



“Yang sensitif konteks”



Dalam penemuan hukum [..] seharusnya hakim dengan paling cermat belajar tentang masyarakat dan bagaimana berbagai aliran masyarakat berusaha untuk mewujudkan tujuan mereka sebaiknya mungkin.

Paul Scholten
(Algemeen deel, 459, 1931)

Conclusions 1

What is doing law about?

- Doing law is about interpreting legal sources
- Using more sources enables more nuanced interpretations
- Different forms of interpretation can promote different objectives of the legal system

Conclusions 2

What are the advantages of teaching students this 'richer' form of legal reasoning?

- It helps to make students think
- Studying law becomes fun
- It contributes to a more just society

Pertanyaan

How can we teach our students to use these methods of interpretation in an effective manner and make them more sensitive to social context?