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Editorial: Moulding our Minds

This issue includes three papers that might at first look appear not to have much connection, however, they represent three aspects of the way that bioethics is associated with reshaping our minds.

The first is by Professor Lara López-Hernáez who is currently in resident at AUSN Arizona exploring mindfulness techniques for personal development. The results in schools, and in other circumstances suggest that these practices can help enhance mental well being and also outcomes. It will be interesting to see its relationship to decision-making and bioethics education.

The second is results of a AUSN Masters thesis research on the situation of Informed consent in dental practice in Bangladesh through a survey on dental practitioners' knowledge, attitudes and awareness by Dr. Shahana Dastagir. Although informed consent was gathered for surgical operations, there was less use of informed consent for other examples of dental practice. Bioethics education can provided on both sides of the patient- doctor relationship to a new mindset.

Hilaire Tegnan and Saldi Isra review legal pluralism in Indonesia, making an example of the complexities of legal traditions and societal norms in Post-Colonial Developing Countries. Legal systems also shape our mind, and customary law is also reviewed.

We look forward to publishing more papers soon, and will be including some from the 16th Asian Bioethics Conference, just held 4-8 November in Manila, the Philippines. The conference saw 150 persons from every inhabited continent joining in a feast of bioethics. The Asian Bioethics Association (ABA) Board and General Annual Meeting welcomed the forthcoming ABC17 in Jogyakarta, Indonesia, 29 November – 3 December 2016, and ABC18, to be held in Korea in late October 2018. Asian bioethics continues to grow from strength to strength.

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Mindfulness techniques in schools. Academic & personal development of participants

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Abstract

The purpose of Mindfulness is to arouse conscious attention in the present moment and so to achieve higher levels of physical and mental wellbeing. Its study and implementation has had therapeutic purposes in clinical settings, but it is something new in educational settings. In this paper the methodology of the ".b" is described, which has used Mindfulness techniques with high school students. This proposal consists of nine sessions where activities are performed to help keep the focus on body sensations in different situations -at breathe, eat, sit, and lie down or walk-. The material consists of sheets, who train a scattered mind, calm, recognition of negativity and concern and how to live with the difficulties without rejecting them. A review of studies about the implementation of Mindfulness programs obtains very positive results in personal and academic student development. Teachers have also shown decreased exhaustion, increase of compassion, improvements in the classroom organization, on team tasks and on interactions with students. Its implementation in schools is more effective among high-risk students, with a long-term practice, with the involvement and when teachers are trained and maintain continuity in their own practice. To ensure the success and quality of these programs, it is opts for a quality and applicable research -high number of participants, involving of the entire educational community, longitudinal results comparison in different countries and cultures, and the creation of specific instruments for each program.

Key Words: Mindfulness, teacher training, personal development, academic achievement, educational community

1. Introduction

Mindfulness is the practice of awareness in the present moment, a technique originated in Buddhist thought 2500 years ago. During the last thirty years, this practice has been secularized and simplified to fit a Western context (Weare, 2012), whose purpose is to try to alleviate the suffering caused by dysfunctional forms of behavior. In the 1970s, mindfulness was linked to intervenions in health problems and Jon Kabat-Zinn introduced a structured eight-week program with which psychologically positive results were obtained, reducing anxiety and getting some physical improvements, such as relief for patients experiencing severe and chronic pain (Kabat-Zinn, 2005). Since then, interventions have proliferated around the world and scientific evidence suggests that the practice of mindfulness has a wide range of potential applications (Weare, 2012).

Mindfulness practice belongs to the "Vipassana" tradition, it means to live the present moment as it is, objectively and without reacting, learning to accept what cannot be changed. To perform activities of daily life consciously, invites us to be fully awake and alert at every moment; and events such as eating, washing dishes, talking telephone or peel an orange for example, offer us an opportunity to know ourselves more deeply and enjoy more peace and inner balance (Thich Nhat Hanh, 2007). The key to physical and mental well-being is the emotional balance and practicing Mindfulness techniques we are going to change our mind, creating conditions to see clearly the reality around us and solve problems that before we were unable to solve (Simon, 2011).

If we use Mindfulness effectively, we have the necessary foundation to live our life in a more productive way, conscious and peaceful (Gunaratana, 2012), learning to focus attention on the immediate experience, moment by moment, with the curiosity of an open mind and accepting everything that happens to us (Bishop et al., 2004). Mindfulness is extracted from a line of contemplative traditions, but the new skills are learned in a very practical way, through the experience applied in everyday life (Goldstein and Kornfield, 1987) and of attention in every activity we do (Segal, Williams and Teasdale, 2002). The opposite of this attention is the senselessness, state in which we live most of the time, since we are usually worried with ruminations on the past and planning for the future (Weare, 2012). This senselessness makes us to see our experience through a filter of judgments and labels that promote our behavior, with the mind disconnected of the body, so we are not aware of signs of stress or clues about the negative emotions that the body provides us (Weare, 2012).

The regular practice of Mindfulness makes us more pleased and happy, addition to awaken us other positive emotions related to a long and healthy life, increased physical and mental strength and a more satisfying relationships (William and Penman, 2010). It has been found that a high percentage of violent adolescent students perform actions with social and health risk, highlighting drug use (Cerezo and Mendez, 2012). In this sense, Mindfulness reduces dependence on alcohol and drugs, hypertension, chronic pain, cancer, fighting colds and other diseases by strengthening the immune system (William and Penman, 2010). With daily practice of some very simple Mindfulness techniques, we can

focus our energies on achieve a good physical and mental health, emerging further integrative functions that generate more neural connections, as regulatory body functions, coherence, emotional balance, flexibility of responses to the different situations of life, loss of fear, understanding, empathy and high levels of morality and intuition (Siegel, 2012).

The most common Mindfulness courses have been practiced to reduce stress (Mindfulness-Based Stress Reduction "MBSR") or depression (Mindfulness-Based Cognitive Therapy "MBCT"). However, today it being carried out other beyond clinical areas, such as ".b" project, conducted in the UK schools. Its participants are guided by the teacher through simple exercises that increase their awareness in the present moment, discussing the experiences that arise in the group and seeking its relationship with everyday life. This practice gives special attention to the feelings that arise of the body, such as breathing, contact between the body and the chair, the sensation of your feet on the floor and other sensations related to actions such as standing, walking, laughing, among many others. These exercises are prepared to continue outside the classroom and to be performed in the normal routines of daily living (Mindfulness in Schools Project, 2011).

This study seeks to highlight the ".b" program to the education community and show whether the application of Mindfulness techniques brings benefits to participants. Also find out if there are limitations to its implementation in schools, with the aim of proposing improvements in its implementation.

2. The ".b" project in the schools

It would be interesting to apply Buddhist teaching and its four immeasurable thoughts in schools, especially in the infant stage (González-Caldei, 2013). However, the ".b" project is nonsectarian, this is just a practice based on Mindfulness in the schools, whose main objective is to teach to maintain conscious attention at every moment, through nine sessions, one per week. The first international conference on ".b" in schools was held in London in March 2013, where teachers and experts met, and Professor Willem Kuyken, director of the research Mindfulness unit at the University of Exeter, presented some of the latest results. This project was written in 2007 by three professors from the UK with teaching experience in secondary schools and in the teaching of Mindfulness; Richard Burnett, Chris Cullen and Chris O'Neil. Currently, it is carried out in the schools by Richard Burnett and Chris Cullen, expressing that: *"We were both finding great benefits in ourselves, and we thought put into practice these techniques in classes where we taught (...) the response of the students was amazing and it inspired us to create a program where they could find fun and would be accessible and effective in their lives (...). Now the idea is carried out in twelve countries" (*Cullen, 2013; cited in Crossley-Holland, 2013).

The teaching of ".b" is provided in Oxford once a year, since 2009, attended by several teachers and researchers from around the world. The project is a collaboration between Oxford, Cambridge and Exeter Universities, which are finding valuable benefits of its implementation. The program is flexibly designed to involve everyone, whatever their ideology, religion or culture (Weare, 2012) and to make it applicable in any context (Mindfulness in Schools Project, 2011). It is taught among teachers and researchers first, in order to implement it between student's volunteer groups later, or other specially selected, with stress, depression or anxiety problems. Currently, over two hundred teachers have been trained to teach it and more than two thousand teenager's students have participated in it (Kuyken et al., 2013).

The program material consists of ten books, which are composed of tabs working the mindfulness topic, such as coaching a scattered mind, learn to calm themselves, to recognize the worry, to live in the moment moving and acting consciously, to recognize and stop negative thoughts and live with the difficulties without rejecting them, since these teach us to grow. Students should think and deduce ideas, in addition to practical activities that are discussed in small groups. The first book is the introduction, followed by a handbook for the teacher, another student manual and a DVD with videos and images shocking about each content -in the website www.mindfulnessinschools.org it can be found tabs and pictures of the program sessions that serve as examples.

All activities are performed in a practical way, some of the most important are: sustaining attention in all bodily sensations eating chocolate, do a sweep of sensations in our body when one is lying (Technical "Beditation"), focus on the sensations of the feet and back when sitting (Technical "FOTBOC"), count seven while breathing and eleven while expires (technique "7/11"), or observe body sensations when walking as undead within the class, among others. They are simple awareness exercises to give all students an idea of the importance of mindfulness, so that they can return to this practice later throughout their life (Mindfulness in Schools Project, 2011). According to the results of numerous studies, the practice of Mindfulness in the school can lead to immediate benefits, because at the end of the course, students say they feel generally happier, calmer and more full, they can concentrate better and having more tools to deal with stress and anxiety (Hennelly, 2011; Huppert and Jonshon, 2010 and Weare, 2011).

At the end of the course, a questionnaire, about perception one has of the same, is completed in order to further improve it. These instruments and research studies conducted by Cambridge, Oxford and Exeter University, have shown that Mindfulness interventions in the schools are generally enjoyed and appreciated by the participating students, reporting positive experiences and significant

changes in their lives subsequently (Mindfulness in Schools Project, 2011).

In the article, published in "*The Guardian*" (Crossley-Holland, 2013) the impact it is having the implementation of the project ".b" in schools in the UK is described, showing an analysis of interviews conducted with students who participated. Students say that in times of stress and tension before an exam, they are more aware of their inner state and they attend "7/11" technical or "Beditation" practice among other techniques learned. These are some of the impacts that the course has had on students, teachers and some parents: *"After practicing Mindfulness accept more things and do not criticize people so much, I now understand that people are different and accept you cannot change that (...) My thinking is more rational (...) I keep my mind focused and find before the answer to my problems (...) I started to think more positively (...) I learned to make better decisions for my present and my future (...) I am calmer, more relaxed and less stressed"* (Mindfulness in Schools Project, 2011; cited in Crossley-Holland, 2013).

When teenage students are more present in every activity, they are more able to deal situations from a fresh perspective and make better use of the learning content (Weare, 2012). Moreover, students are better able to cope with everyday stresses on tests, social relations, sleep and family problems because Mindfulness struggle against the difficult mental states, such as depression, ruminations, anxiety and low moods (Weare, 2012).

The ".b" has a solid foundation of scientific evidence, with tests that have been conducted after the courses, such as randomized controlled trials and brain imaging tests.

3. Scientific findings of the implementation of Mindfulness in Schools

Several studies about ".b" program in the schools have been published in reputable scientific journals. Participants were teenage students in most cases, teachers and parents, chosen on the basis of voluntariness. It has been demonstrated that the continued practice of Mindfulness can provide beneficial results, including positive effects on emotional and social skills, greater ability to control our own lives, greater acceptance of experience as it is, better manage difficult feelings, keeping calm, besides increasing the strength, compassion and empathy (Baer, 2003; Salmon et al., 2004).

More and more studies in the field of Mindfulness in schools are coming to the conclusion that these techniques are viable and promising. Interventions in schools are generally acceptable and there weren't reports of adverse effects (Burke 2009; Harnett and Dawe, 2012). Hennelly (2011) conducted a comprehensive study of Burnett, Cullen and O'Neill (2011) ".b" program with 68 high school students, using a questionnaire and interviews with teachers and parents to triangulate the data. The instruments were used longitudinally immediately after the course and six months later, to assess the immediate and sustained changes in mindfulness, ego-strength and wellbeing. Statistical analyzes established significant differences between participants and control groups in each of the study variables, also found that all these positive changes were even more significant in the long term.

The author focuses its thematic analysis on the theories of self-regulation, self-determination and self-efficacy (Braun & Clarke, 2006; Deci and Ryan, 2000; Bandura, 1977; cited in Hennelly, 2011), to describe the effects of mindfulness training in motivation, confidence, competence and effectiveness of adolescents. It follows that the ".b" program is associated with immediate improvement and months after the course in the general operation and welfare of participants, in addition to identifying cognitive and behavioral changes, so it is proposed as a viable and effective program in enhancing strengths and personal development of high school students.

The Mindfulness program in the schools taught by conscientious teachers, that is, those who maintain continuity in their own practice, leads to a significant reduction in behavioral problems and depression scores, especially in students with clinically significant problems before intervention (Joyce et al. , 2010). Kuyken et al. (2013) evaluate the acceptability and effectiveness of the ".b" program on mental health and well-being of 522 adolescents in twelve secondary schools in the UK. They conducted a randomized, with stressed young between 12 and 16 years old, and other mental health problems. Participants had fewer depressive symptoms, lower stress and higher welfare in monitoring and after the course, compared with the control group. After three months follow-up, it showed that those who practiced more often Mindfulness techniques had even greater well-being and less stress than those who practiced only sporadically.

Huppert and Johnson (2010) launched a study with 155 students to which attention was measured, resilience and psychological wellbeing. The results showed that there is a positive and significant association between the amount of practice Mindfulness and improvement in attention and psychological well-being, which is positively related, at the same time, with personality variables, such as kindness and emotional stability. Of the limitations of the study, the authors concluded that further work is needed to improve the training program, so they decided to create a definitive randomized controlled trial with subjective and objective measures with longer-term follow-up. To do so, they took into account the comments of students and teachers involved, additional consultations with colleagues and consideration of the needs of each particular teenager (Burnett, 2010).

Franco et al. (2011) have shown through the questionnaire of "self-concept and self-actualization" (AURE) the Mindfulness practice in schools is valid and appropriate to promote personal growth and self-realization among adolescents. The authors suggest the use of these techniques as a complement to other programs aimed at personal and emotional development of students. In this sense, Leon et al. (2009) try to find significant relationships between mindfulness -with the "Scale of Mindfulness" designed by them- and emotional intelligence -with the test "TMMS-24 / Trait Meta Mood Scale" - in a sample of 344 students of 1st and 2nd year of high school. They verify the significant and positive relationship between attention and emotion, so they propose the development of mindfulness through the implementation of Mindfulness techniques in the schools.

Ruiz et al. (2014) launched the project "Growing with attention and mindfulness" in the continuous evaluation finding the participants - students of a school in Madrid - increased their capacity for empathy, improving relations, reducing anxiety, symptoms of attention deficit and hyperactivity and increasing academic performance.

Franco et al. (2010) evaluated the levels of psychological distress in a group of 68 secondary teachers, in the experimental and the control group by the scale "Symptom Checklist-90-R / SCL-90-R" before and after the implementation of training program in Mindfulness. Statistical analysis showed a significant reduction in the three general measures of psychological distress (Global Severity Index, Distress Symptoms Positive and Positive Symptom Total Index) and in all its dimensions (somatization, obsession-compulsion, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation and psychoticism) in the experimental group compared with the control group. The monitoring showed that in the experimental group, the results remained after four months the end of the intervention.

Lawlor et al. (2012) studied mindfulness among 286 children aged 11, 12 and 13, with the conscious scale of children "MAAS-C", modified version of the test to assess attention in adults. The results indicated that Mindfulness is related to emotional disturbance, emotional well-being and happiness. Razza et al. (2013) evaluated the efficacy of an intervention based on Mindfulness and yoga techniques, with twenty children from 3-5 years old. The results indicated significant effects on self-regulation, especially among children who were at increased risk of dysfunction of it. Greenberg and Harris (2012) made a review of research on Mindfulness practice with children and young people, both clinical and school settings treatment and prevention of health. They conclude that the Mindfulness intervention is a feasible and effective method to increase resilience and self-esteem and to improve the treatment of health disorders in clinical populations. In regard Rosa-Alcázar et al. (2014) also found that high self-esteem is one of the most important predictors and heavier in psychological health.

The Mindfulness techniques in the school also have a positive influence on learning problems, since it requires complex cognitive processes such as attention, concentration and executive function, or higher-order thought processes that govern the working memory, planning, reasoning problem resolution and multi-tasking (Semple et al. 2010). These authors evaluated the impact of Mindfulness program between students of 9-13 years old were having academic difficulties, and the results showed significant improvements in measures of attention and reduction of anxiety problems and behavior, compared to students who had not participated. Mindfulness practice in the schools has shown a very high impact on the intellectual, improving sustained attention, visual-spatial memory, working memory and concentration of students (Jha Krompinger and Baime, 2007; Chambers et al., 2008; Zeidan et al., 2010).

Saltzman and Goldin (2008) launched a program based on Mindfulness learning techniques for eight weeks, among children aged 9-11 and their parents, whose evaluation was based on objective measures of self and parent reports. The results indicated improvements for children and parents, attention, emotional reactivity and in some areas of meta-cognition. Beauchemin et al. (2008) launched another program based on mindfulness techniques over five weeks, among 34 adolescents with learning difficulties. They concluded that the practice of mindfulness reduces anxiety and increases faith in themselves, promoting social skills and positive educational outcomes.

The study of Gustems and Calderon (2014) relates the character strengths with the test "Values in Action Inventory of Strengths" and psychological well-being, with the test "Brief Symptom Inventory" and its impact on the academic performance of 98 student teachers, concluding that the strengths of nature (goodness, justice, teamwork, love and honesty) are positively related to psychological well-being of the students, and indirectly to the academic performance of them. Gallego et al. (2010) conducted a study to verify the impact of Mindfulness techniques on levels of academic achievement, self-concept and anxiety in a group of students of 1st year of high school. In the experimental group a significant increase in academic achievement, an improvement in all dimensions of self-concept and a significant decrease in anxiety states it was observed.

Studies have also been conducted on the impact of Mindfulness among teachers. Flook et al. (2013) conducted a pilot randomized controlled trial in a course about stress reduction "Mindfulness-Based stress reduction / MBSR" adapted to teachers. The results suggest that the course may be a promising

intervention, showing significant reductions in psychological symptoms of exhaustion, increased self-pity, improved classroom organization and performance of team tasks. By contrast, participants in the control group showed increased stress.

Singh et al. (2013) measured the effects of early childhood education students that took a course about Mindfulness among their teachers over 8 weeks. The results showed a decrease challenging behaviors of students and increased their compliance to requests from the teachers, while a decrease in the negative social interactions and increased in suit isolated.

It was also demonstrated that mindfulness training for teachers is effective in changing the teacher-student interactions, bound to improvement of their health in the workplace, which encourages the participation and learning of students (Roeser et al., 2012). Moreover, through a comparison between two groups of teachers who participated in a program of this nature, it was found that the Mindfulness techniques were more effective in supporting teachers working with students in high-risk environments (Jennings et al. , 2011).

Teachers are one of the professional groups most affected by psychological problems (Franco et al., 2010). The improvement in attention by Mindfulness practice is correlated with changes in the direction of psychological symptoms, exhaustion and sustained attention in teachers (Flook et al., 2013). However, teachers do not receive enough training on how to teach these techniques and many of them are not even aware of the importance of their own practice, as this is most effective when is taught by teachers who have developed it (Mindfulness in Schools Project, 2011). Teachers who practice mindfulness, are better able to create positive change, both inside and outside the classroom, they are able to focus more clearly the key ideas, to set priorities, develop improved materials for the classroom, to focus without distractions, to create peaceful and orderly climate and to induce a better behavior in their students (Mindfulness in Schools Project, 2011).

However, the results of the implementation of Mindfulness programs in schools, show that short, brevity in practice and discussions, prevent participants obtain long-term results; while these were created only as a tool for those who wish to use it and delve into it later (Mindfulness in Schools Project, 2011). Getting a welfare state is substantive work, an exercise that must be maintained over time and that never ends, so a course of a few weeks is not enough (Burnett, 2010).

Moreover, research on these programs show little applicability, since the number of participants is not sufficient and does not involve the entire school community and even less to Families (Burnett, 2010). The comparison of the results of the application of the same program in different locations or countries with different culture is also missing, together with the promotion of longitudinal studies that show what happens after a year of implementation, and if participants continue to practice or not outside the centers (Mindfulness in Schools Project, 2011).

In turn, the instruments that measure the results of the implementation of these techniques, in most cases are adapted, but are not specific for a particular program. With all this, it should promote plans to implement this practice in the schools, taking into account the importance of clearly articulating the objectives, in terms of who it may concern, to keep in mind the level of motivation of the participants, considering the ethical part program and teacher training as a key in it teaching (Burnett, 2010).

4. Conclusions

Mindfulness practice provides greater self to participating students, greater acceptance of experience as it is, better manage difficult feelings, keeping calm, increased strength, self-esteem, compassion and empathy, fewer depressive symptoms, lower stress and greater well-being. Better academic results are also seen, improved intellectual abilities, sustained attention, visuo-spatial, working memory, concentration and in some areas of meta-cognition. These techniques increase the clarity of feelings and emotions on a personal level, therefore, its development in the schools can be central to student learning and their affective and emotional development (Leon et al, 2009). Mindfulness has the potential benefit of improving attention and social skills, reducing test anxiety and the maintenance of calm (Ruiz et al, 2014). Rempel (2012) obtained some of these results after continued practice with students, proposing integrate activities based in Mindfulness with children and youth in schools.

Teachers who have participated in these programs have shown improvement on a personal level, professional and interacting with students and colleagues. In this sense, Burnett (2010) commitment to teacher training as a key element in teaching mindfulness, and the continuity of their own practice. The limitations found in the reviewed studies show that the Mindfulness practices are innovative in educational settings, but in most cases are implemented by external researcher's clinical setting, without continuity or integration into the regular educational curriculum. They do not include training experiences for educational counselors, so that training in Mindfulness techniques in the core curriculum of the educational counselor is proposed.

The success of these programs lies in its long-term practice, so should increase their duration. Only through continued practice it can reach beyond the states of calm, throwing a more penetrating light on the functioning of our suffering (Burnett, 2010).

In the adult world, Mindfulness is characterized by an extremely open mind to the internal investigation itself: "I only say that this is a work in progress, we

never know where it will end (...)" (Feldman, cited in Burnett, 2010). "There are no limits either in technique or in the program, everything is open and therein lies its wealth (...)" (Cullen, in Mindfulness in Schools Project, 2011). It has also been seen that family involvement is essential, in this sense the Mindfulness techniques are organized to take place in a wide range of contexts and persons, are nice and fun for participants and can take place in all contexts, because they are universal and simple to practice. The ".b" program has very low implementation costs and a fairly rapid positive impact on students, teachers and families (Mindfulness in Schools Project, 2011).

As said, it is proposed to improve these programs increasing its duration in time, training of educational counselors and teacher, and involve the entire school community, which suggests a thorough review of its implementation and reinforcement in the spirits of research (Greenberg and Harris, 2012) offering new directions (Rempel, 2012) because so far it is not being easy to measure the practice of mindfulness from an empirical perspective (Burnett, 2010).

Be attentive to what happens, learn to observe the stress and anxiety as their own body and know us more deeply it is a universal right for all human beings (Mindfulness in Schools Project, 2011). The implementation of Mindfulness programs in schools should provide students a way to combat stress and pressure in a difficult world, having as main objective their personal development and creating a society with greater welfare. The current school and professional panorama requires that the involvement of different educational agents go beyond the mere transmission of academic content, they should be aware that their participation must contribute to the overall development of all (Alvarez and Bisquerra, 2011).

Notes

1- See www.neru.dhamma.org/ for more information about Vipassana.

2- ".b" means: stop -dot-, breathing and being

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Informed consent in dental practice in Bangladesh: A survey on dental practitioners' knowledge, attitudes and awareness.

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Abstract

The core issue in the concept of informed consent is grounded in the principle of patient autonomy. Informed consent is the process of providing the patient or, in the case of a minor or incompetent adult, the parent with relevant information regarding diagnosis and treatment needed, so that an educated decision regarding treatment can be made by the patient or parent. The objective of this study was to

determine the knowledge, attitudes and awareness of general dental practitioners (GDPs) regarding informed consent. This was a cross-sectional study comprising 53 respondents including general dental practitioners from a Government Dental College (N=25) and two Private Dental Colleges (N=28). Subjects were collected purposively. The study involved an interview with a written self-administered structured questionnaire consisting of 20 items used to assess dental professionals' knowledge and attitudes towards informed consent in Dhaka Dental College, Bangladesh Dental College and City Dental College. Data were analyzed using statistical software namely SPSS version 20 for Windows and both descriptive and inferential analysis were used as appropriate. Research findings were narrated through elaborated tables and graphs with descriptions. By assessing the knowledge, attitude and practice regarding informed consent, the results of this thesis may be used to help plan strategies to promote greater knowledge of informed consent. Emphasis should be given in undergraduate and postgraduate training to legal dental jurisprudence and legal medicine as this is essential for dentists to protect themselves from civil litigation (trespass, assault or battery) and even criminal proceedings for common aggravated or indecent assault.[1]

1. Introduction

1.1. Informed Consent in Dentistry

Long gone are the days when patients would enter a dental office, sit quietly in an operator chair and allow the dentist to perform whatever treatment he deemed necessary, and then pay the fee in full on the way out with no questions asked. Today's patients are better educated in the age of the Interent, more informed and less trusting than the patients thirty years ago. In current daily practice, medical specialists and the dentists come across common ethical issues.

The core issues in medical ethics are the ethics of the doctor–patient relationship, patient's confidentiality, and the need to obtain informed consent, whereas bioethics deals with all-encompassing moral issues in medicine and biomedical sciences (McCullough and Chervenak, 2007; Mahmood 2005; Dierks et al., 1999). The concept of informed consent is grounded in the principle of patient autonomy. Informed consent is the process of providing the patient or, in the case of a minor or incompetent adult, the parent with relevant information regarding diagnosis and treatment needs so that an educated decision regarding treatment can be made by the patient or parent. The informed consent form should provide a source of consistent information about treatment with the larger goal of protecting patients from harm and ensuring their autonomy (Jefford and Moore 2008; Faden et al., 1986). The concept of informed consent is rooted in moral, cultural, and legal principles (Bal, 1999). Informed consent is often perceived as necessary for legal protection against malpractice claims (Meisel and Kuczewski, 2006).

In order for informed consent to be useful, the patient must be provided sufficient information relating to the treatment of procedure. Furthermore, the information contained in the document must also be clear and understandable to patients

Several professional organizations and government entities have recognized the importance of consent by issuing guidelines for informed consent, and minimum legal requirements also exist at the state level (Nattinger et al., 1996; Bottrell et al., 2000). Generally guidelines for informed consent are less specific in dentistry than in medicine (Estrada et al., 2000). There is a limited discussion on this issue in the dental literature within Bangladesh despite the importance of this subject to dental providers of this country. The American Dental Association's Principles, Code of Professional Conduct, and Advisory Opinions state, *"The dentist has a duty to respect the patient's rights to self-determination and confidentiality." It goes on to explain that, "… professionals have a duty to treat the patient according to the patient's desires, within the bounds of accepted treatment … the dentist's primary obligations include involving the patient in treatment decisions in a meaningful way, with due consideration being given to the patient's needs, desires and abilities …."*[2] The American Academy of Pediatric Dentistry (AAPD) requires informed consent forms to include a description of the proposed procedure, known risks, alternative treatments, opportunity to ask questions, all terms specifically and simply stated, and places for signatures of dentist, office member, and a witness.[11] When a person does not have the capacity to consent however, issues of autonomy become more complicated. For patients under the age of majority or adults with diminished mental capacity, informed consent should be obtained from a parent (Sfikis, 2003). The parent is presented with all elements of a valid informed consent followed by documentation in the patient's chart with signatures (Watterson, 2012).

Informed consent is not simply a piece of paper signed by a patient or a guardian. It is the process of communication between a doctor and a patient in which a patient grants permission for the proposed treatment based on a realistic understanding of the nature of the illness, description of procedure, risks and benefits, and treatment alternatives, including no treatment at all. When a form is utilized, it is best to

[1] This paper is based on a dissertation from the Masters in Bioethics and Global Public Health (MBGPH) Program of American University of Sovereign Nations (AUSN), United States of America (USA).

[2] Current policies, adopted 1954–2007. Chicago: American Dental Association, 2008.

use simple words and phrases, avoiding technical terms, so that it may be easily understood. A modified or customized consent form is preferred over a standard form and should be in a format that is readily understandable to a lay person (American Dental Association, 2007; Watterson, 2012; Australian Capital Territory Government Health Directorate. Policy, 2012; American Medical Association, 2013; Tait et al., 2005; ACT 2008).

A doctor-patient, especially a dentist-patient relationship is a special one as the patient seeks help from the dentist for relief from pain and for restoration of their oral health. They permit the dentists to see, touch and manipulate structures in and around the oro-facial region and also divulge information about themselves they wouldn't normally reveal. They do this because they trust the dentist to maintain their confidentiality and also believe that dentist will act in their best interests. But there is an increasing awareness among patients regarding their rights as a consumer of health care services (ACT 2008). [19] Currently, the medical and dental professions are facing an ever increasing rate of malpractice suits (Meisel and Kuczewski, 1996), found that patients felt they were ill informed about their treatments and that all treatment options were not discussed with them. They also felt that dentists assume that they understood everything that was told to them when in reality they did not. Patients facing such situations may seek legal aid for redresser of their grievances.

A 5 year retrospective survey on dental malpractice claims in Teheran, [3] found that in 57% of clinical cases, and 40% of non-clinical cases, dentists were found to be guilty of malpractice. In a similar study in Turkey (Gundogmus et al., 2005) 48% of the dentists were liable for malpractice suits which included negligence, inappropriate treatment, and diagnostic failure. In a Riyad study it was found that mistakes during treatment were the most frequent allegation and in 87% of the cases the dentist was found to be the guilty party. Therefore, one of the most important legal safeguards and moral obligations of dentists to their patients are obtaining consent for any course of health care action (Al-Ammar and Guile, 2000).

Literature reviews regarding obtaining consent in dental practice have shown that most dentists agree as to the importance of consent before performing any dental procedure (Avramova and Yaneva, 2011). The American Academy of Pediatric Dentistry (AAPD) recognizes that informed consent is essential in the delivery of health care. The informed consent process allows the patient or, in the case of minors, the parent to participant retain autonomy over the health care received. Informed consent also may decrease the practitioner's liability from claims associated with miscommunication. Informed refusal occurs when the patient/parent refuses the proposed and alternative treatments (American Dental Association 2007; Watterson, 2012.; Chen et al., 2007). The dentist must inform the patient/parent about the consequences of not accepting the proposed treatment and obtain a signed informed refusal. It is recommended by the ADA that informed refusal be documented in the chart and that the practitioner should attempt to obtain an informed refusal signed by the parent for retention in the patient record. An informed refusal, however, does not release the dentist from the responsibility of providing a standard of care.[14] If the dentist believes the informed refusal violates proper standards of care, he/she should recommend the patient seek another opinion and/or dismiss the patient from the practice (American Dental Association, 2007). When a form is utilized, it is best to use simple words and phrases, avoiding technical terms, so that it may be easily understood. A modified or customized consent form is preferred over a standard form and should be in a format that is readily understandable to a lay person (American Dental Association 2007; Watterson, 2012; Chen et al., 2007; American Medical Association, 2013; Tait et al., 2005).

Informed consent and informed refusal forms should be procedure specific, with multiple forms likely to be used. For example, risks associated with restorative procedure will differ from those associated with an extraction. Separate forms, or separate areas outlining each procedure on the same form, would be necessary to accurately advise the patient regarding each procedure (American Dental Association, 2007). Consent for sedation, general anesthesia, or behavior guidance techniques such as protective stabilization (i.e., immobilization) should be obtained separately from consent for other procedures (American Academy of Pediatric Dentistry, 2013ab). Consent may need to be updated or changed accordingly as changes in treatment plans occur. For example, when a primary tooth originally planned for pulp therapy is determined to be non-restorable at the time of treatment, consent will need to be updated to reflect the change in treatment (American Dental Association, 2007).

1.2. Concepts of Consent to Treatment

Consent to treatment consists of three essential characteristics namely competence, voluntariness and knowledge. Competence means that the patient has sufficient ability to understand the nature of the treatment and the consequences of undergoing or refusing the treatment. 'Voluntariness' means that the patient has freely agreed to submit to the treatment without any coercion or force. 'Knowledge' means that sufficient comprehensible information is disclosed to the patient regarding the nature and consequences of the proposed and alternative treatments (Chen et al., 2005). All these factors are influenced by the level of health literacy of the patient.

[3] for dental malpractice claims in Tehran, Iran (Electronic Version). Journal Forensic Legal Medicine, doi:10.1016/j.jflm.2008.08.016.

The concept of health literacy and its influence on patients ' ability to provide informed consent will be further addressed in detail later in the review.

1.3. The Ethical Basis for Consent to Treatment

Consent of treatment is based on two ethical principles namely, the principle of autonomy and the principle of beneficence.

Autonomy: The predominant model in the past still adhered to by many health care professionals is the concept of paternalism. This concept implies that the doctor is knowledgeable and skilled, therefore the best person to make judgments without involving thepatient when deciding a therapeutic regimen. A shift in attitude has taken place after World War II with the Nuremberg Trials, resulting in the Nuremberg Code and The Declaration of Helsinki which stated that the voluntary consent of the human research subject is absolutely essential and that consent should be based on sufficient knowledge and understanding. In these regulations we see the concept of patient autonomy in health care. Autonomy may therefore be crudely defined as a person's ability to decide and act on the basis of rational thought and deliberation (Bridgman 2002). When a patient is given control over decision making with respect to his bodily integrity it indicates respect for the patient's autonomy. This is reflected by obtaining a voluntary and informed consent from the patient or a guardian before a clinical intervention.

Beneficence: In simple terms, Beneficence is a moral obligation to act in the interest or benefit of others. All health care providers have a duty to care for the patient and all health care actions performed should be done with the best interests of the patients in mind. A conflict between patient autonomy and beneficence can result when both patient and clinician differ in what they both consider as 'in the best interest'. In such situations, a decision should be made based on the attitude of the patient and the dentists' technical judgment. In practice dentists may come across patients who seek out knowledgeable, skilled, and trustworthy doctors , but thereafter prefer to let that doctor lead in the decision making. On the other hand, the dentist will also come across patients who have strong views and want to be involved in every step of the decision making process.

1.4. In the Context of Indian Law

According to the Indian Civil law -Indian Contract Act of 1872,[4] [31] a doctor patient relationship is considered to be a contractual and legal agreement for professional services. Section 13 of the act defines consent as when "two or more persons agree on the same thing in the same sense." Section 14 of the same act defines 'free consent' as one that is "given without the existence of coercion, undue influence, fraud, misrepresentation or mistake". Therefore according to this act, a contract is valid only if it is entered into with the free consent of the parties concerned in this case, the dentist and patient (Indian Contract Act 1872, Sections 11-18) The Indian Criminal Law also deals with consent under the Indian Penal Code of 1860 under Sections 87 - 92. (IPC 1860).[5]

Who can give consent? The age of consent is bound by legal definitions and within the context of the Indian law there are two schools of thought. Section 90 of the Indian Penal Code of 1860[32] states that " Consent by intoxicated person, person of unsound mind or a person below twelve years of age is invalid"

This therefore implies that a person above 12 years of age can consent to medical/surgical/dental treatment if it is intended for their benefit and undertaken in good faith.

On the other hand, according to Sec. 11 of the Indian Contract Act of 1872[6] - a competent person of sound mind who has attained the age of majority of 18 years (according to the Indian Majority Act of 1875) can legally enter into a contract. Since the dentist-patient relationship is essentially a contract, it implies that only persons 18 years of age and above can enter into a doctor- patient contract and can give consent for treatment (Bastia et al., 2005; Murkey et al., 2006).

In order to understand the evolution and importance of informed consent it is essential to have background knowledge of the other types of consent which are routinely used in dental practice. They include:

Implicit (tacit) consent: This is the most common type of consent one encounters in a dental clinic or hospital. Here consent is implied when the patient indicates a willingness to undergo a certain procedure or treatment by his or her behavior. For example, consent for an oral examination is implied by the action of opening one's mouth.

Explicit consent: This type of consent is given orally or in writing. It is required for minor examinations or invasive procedures. It is preferable that a disinterested third party act as witness to the consent.

Proxy consent (Substitute consent): This type of consent is utilized in the event the patient is unable to give consent because he/she is a minor or mentally unsound/unconscious. In such situations a parent or

[4] Indian Contract Act 1872, Sections 12-14. Retrieved from: http://indianlawcases.com/Act-Indian.Contract.Act,.1872.-2384

[5] Indian Penal Code 1860, Sections 87-92. Retrieved from: http://indianlawcases.com/Act-Indian.Penal.Code,1860-1515

[6] Indian Contract Act 1872, Sections 12-14. Retrieved from: http://indianlawcases.com/Act-Indian.Contract.Act,.1872.-2384

close relative can provide proxy consent. Loco parentis (Krishnan and Kasthuri, 2007).

In an emergency situation in case of children, when parents / guardians are not available, consent can be obtained from the person bringing the child for dental examination or treatment (For example: school teacher, warden, etc.).

"Verbal consent: Verbal consent is where a patient states their consent to a procedure verbally but does not complete a written consent form.

Valid Consent: Consent is valid if the following four elements have been satisfied:

1 .Patient is competent to give consent

2. Full information of risks, benefits, alternatives and costs has been provided

3. Consent is freely given, and

4. Consent is specific to the procedure." (ACT Health Procedure Consent to treatment, 2008).

The study of Singh et al. (2010) among dental and medical health professionals found that the medical professionals had greater awareness of Consumer Protection Act (CPA) when compared to dental professionals.

Similarly, postgraduates and private practitioners of both professions had significantly more awareness than the graduates and academics respectively. The lack of awareness of CPA among dentists and graduates in particular implies that they are ill-equipped to deal with litigations that may arise in their dental practice.

Most likely the current infrastructure in medical and dental colleges is not sufficient to deal with the problems. To design a curriculum on bioethics it is necessary to assess the knowledge and attitudes of the students who are at the initial stages of ethical practice. [3] In view of these observations, this study conducted to explore the knowledge and attitude about informed consent among dental professionals of Dhaka City, Bangladesh.

1.5. Rationale

Currently, the medical and dental professions are facing an ever increasing rate of malpractice suits (Meisel and Kuczewski, 1996). A study by King (2001) found that patients felt they were ill informed about their treatments and that all treatment options were not discussed with them. They also felt that dentists assume that they understood everything that was told to them when in reality they did not. Patients facing such situations may seek legal aid for redress of their grievances. Tahir et al. (2009) found that the first year graduates were more cognizant of the importance of obtaining consent and practiced taking informed consent from the patients in comparison to third and fourth year students. 68% of the students felt that consent was essential to protect the dentist while only 9% felt that it was an essential patient right.

In a questionnaire study conducted by Avramova and Yaneva (2011), among Bulgarian dentists, it was found that though most dentists took consent while treating children, they were less prudent in taking consent while treating their professional colleagues, relatives, friends and longtime patients.

In a study among private dental practitioners in India, found that only 49% practitioners sometimes obtained the consent. The fact that only half take informed consent could probably be due to hurry, lack of time or negligence on the part of the dental professionals (Farhat, 2013). Another study in India found that 18% of the dentists stated that they would refuse to give a copy of the consent form. This reaction could stem from the basic lack of knowledge regarding the dentist's legal obligation to provide a patient with the copy of consent form, or from fear/guilt due to incomplete, incorrect, misleading or destroyed information in the consent form that would put the dentist in an unfavorable position (Bastia et al., 2005). 46% of the dentists would give the consent form only after asking the reason for the request, while only 36% said they would provide consent form willing if it was requested by the patient. The study further highlighted the lack of patient record maintenance on part of the dentist either for purposes of documenting present and future treatment plans or as a means of protecting the dentist in the event of future litigation on part of the patient (Kotrashetti et al., 2010)

In a cross sectional study done in Bangladesh regarding informed consent revealed that 100% dentist agreed to the importance of informed consent although 19% of them did not consider failure in obtaining consent as an offence. 63% of the participants did not agree to the notion that written consent would make dentistry difficult while the remaining 37% feared that dentistry would be difficult if written consent was made mandatory (Khan 2012).

The healthcare landscape in Bangladesh is complex. The majority of the people are poor and the public health system is under-resourced and over-burdened. Sickness is a well-known cause of indebtedness and poverty. Beside this, social, cultural, economic and educational variables affect the physician–patient relationship. These variables also form divides between doctors and their patients. The majority of people lives in rural areas and tends to place greater value on health than on the principle of personal autonomy. As a result, different demands are placed on the process of informed consent. A combination of factors, including the patients' background, lack of knowledge the value they assign to their dental health and their beliefs about personal autonomy, determine their positions on the 'right to know'–'right not to know' spectrum. In the other hand dental surgeons of Bangladesh may not feel obliged to take a verbal or written consent thinking that a patient may not understand its importance.

In the perspective of Bangladesh, the studies indicate that the dentist needs to be serious about

dental ethics in their practice. It was therefore hoped that the findings of this study will provide an opportunity for all Bangladeshi dentists to improve their education and therefore their potential to comply with both the ethical obligation and the legal requirement of gaining valid consent before the start of any type of dental treatment.

2. Objectives and Definitions

2.1. General Objectives

The aim of this study is to assess knowledge, attitudes and awareness of general dental practitioners (GDPs) regarding informed consent in Dhaka city, Bangladesh. The study population was BMDC (Bangladesh Medical and Dental Council) registered dental surgeons, working in Dhaka Dental College, Bangladesh Dental College and in City Dental College.

The structured questionnaires were distributed among 53 registered dental surgeons.

2.2. Operational Definitions

Surgical intervention - In Dentistry it is any of a number of medical procedures that involve artificially modifying dentition; in other words, surgery of the teeth and jaw bones.

Endodontic treatment - It is a sequence of treatment for the infected pulp of a tooth which results in the elimination of infection and the protection of the decontaminated tooth from future microbial invasion.

Prosthetic treatment - The ADA defines it as "the dental specialty pertaining to the diagnosis, treatment planning, rehabilitation and maintenance of the oral function, comfort, appearance and health of patients with clinical conditions associated with missing or deficient teeth and/or oral and maxillofacial tissues using biocompatible substitutes."

Orthodontic treatment - Orthodontic treatment is a way of straightening or moving teeth, to improve the appearance of the teeth and how they work. It can also help to look after the long-term health of your teeth, gums and jaw joints, by spreading the biting pressure over all your teeth.

Dental hygiene and Scaling - Dental scaling involve removing plaque (soft, sticky, bacteria infested film) and tartar (calculus) deposits that have built up on the teeth over time for maintain patient's dental hygiene.

2.3. Informed consent

The interview took approximately 15-20 minutes. There was no risk or hazard to the respondents to participate in this survey. The respondents did not receive any benefit or reimbursement from answering the questionnaire. This research was not funded by any institution, and there is no financial reward to the researcher or institutions involved. The information that the respondent provided was totally confidential and were not disclosed. It was only be used for research purposes. The name, address, and other personal information were removed from the instrument, and only a code was used to connect the name and the answers without identifying the respondents. Signed consent was obtained from the participant and all the information shared among the participant.

2.4. Data Analysis

Both descriptive and inferential statistics will be used and it was present in the form of tables and diagrams. Demographic Variables were analyzed by frequency and percentage distribution. Data was analyzed by statistical software SPSS version 20.

3. Results

3.1. Demographics

A total of 50 dental surgeons participated in this survey. Out of 53 targeted participants, 1 failed to provide the filled in questionnaires in the specified time and 2 did not complete the questionnaires correctly, so the forms were excluded from the study. Out of 50 dental surgeons, 76% were male and 24% were female. Among them 60% had a bachelor's degree and 40% had a Post-Graduation degree in dentistry .Out of these 20 Post-Graduate dental surgeons, 4 (8%) had a Diploma (DDS), 10 (20%) had a Masters (MDS) and 6 (12%) had a PhD in dentistry. The duration of the dentist's practice ranged from 2 years to 35 years (Table 1). 25 GDPs attached with government dental college and rest 25 working in private dental college.

Table 1: Years of Dental Practice

Years of Dental Practice	N	%
< 5	30	60
5 -9	9	18
10 -20	7	14
>20	4	8
Total	50	100

Table 2: Place of Employment

Place of Employment	N	%
Dhaka Dental College (Government)	25	50
City Dental College (Private)	12	24
Bangladesh Dental College (private)	13	26
Total	50	100

3.2. Scope of dental services offered

General information: 41 GDPs offered all general dental treatments including consultation and treatment for oral and maxillofacial surgery, Endodontic, orthodontics, prosthodontics and maintaining oral hygiene with scaling. 9 GDPs informed that they don't offered orthodontics treatment.

3.3. Knowledge of informed consent

Table 5 shows that 96% of the dentists have knowledge about informed consent. In this study 94% agreed that they had sufficient knowledge about verbal and written consent as well as. On the other hand 70% of GDPs had no idea about Implied consent.

Table 5: Responses regarding knowledge attitudes and awareness towards informed consent.

Knowledge	YES N (%)	NO N (%)
1. Do you know what informed consent is?	48 (96%)	2 (4%)
2. Do you know what a verbal consent is?	47 (94%)	3 (6%)
3. Do you know what an implied consent is?	35 (70%)	15 (30%)
4. Do you know what a written consent is?	47 (94%)	3 (6%)
5. Do you think it is necessary to take informed consent?	50 (100)	0.0
6. In which areas of dental treatment do you consider it is necessary to obtain informed consent?		
A. In all cases	15 (30%)	35 (70%)
B. Only in:		
i) Dental hygiene/cleaning	2 (4%)	48 (96%)
ii) Surgical intervention	50(100%)	0
iii) Endodontic treatment	20 (40%)	30 (6%)
iv) Prosthetic treatment	32 (64%)	18 (36%)
v) Orthodontic treatment	41(82%)	9(18%)
7 .Do you obtain parents 'informed consent when treating their children?	48 (96%)	2 (4%)
8. Do you disclose the charges of the treatment to your patient?	32 (64%)	18 (36%)
9. Is the written consent obtained in the local language?	41 (82%)	9 (18%)
10. When you were a patient, is informed consent taken from you?	16 (32%)	34 (68%)
11. Are you aware that one copy of the informed consent from should be given to the patient if asked for?	7 (14%)	43 (86%)
12. What are consent forms for?		
A. To protect the doctor	32 (64%)	18 (36%)
B. To protect the patient	3 (6%)	47 (94%)
C. Both	15 (30%)	35 (70%)

All surveyed GDPs stated that they think it is necessary to take consent before starting any type of treatment procedure. Similarly 100% of dentists considered it is necessary to obtained consent in case of all type of surgical procedures.

In non-surgical procedures like Orthodontics however, only 82% of GDPs took consent from their patient. The figures for Prosthodontics were 64%, and Endodontics 40%, and in the case of dental hygiene and scaling only 4% GDPs took consent from their patient. Only 30% GDPs took consent for all cases.

This study also revealed that 96% of respondents obtained parent's consent when treating their children.

This study revealed that 64% GDPs did not disclose the charges of the treatment to their patient. Only 36% GDPs informed their patient about the treatment cost before starting their treatment (Table 5).

Our study also revealed that only 12% of the dental professionals agreed that they take signatures even if it is a verbal consent. On the positive side, 82% said that they obtained written consent in the local language; the remaining 18% obtained consent in English, as they have some foreign patients as well as (Table 5).

In current study 32% of participants responded that the consent was obtained from them while they were a patient and 68% of participants responded negatively about obtaining Informed consent when they were patients.

A total of 86% dental practitioners reported that they are not aware that one copy of informed consent form should be given to the patient if asked for. Only 14% of practitioners were aware regarding this matter. But only 4% of them actually give them though.

A majority 32 (64%) of GDPs stated that consent forms are to protect the doctor. Only 6%said it was to protect the patient. One third 30% said it was for both (Table 5).

3.4. Attitudes towards informed consent

In the current study, 56% reported that they took only the verbal consent before treating their patients. Only 28% took written consent and only 16% of dental surgeons took both verbal and written consent before treatment.

On the other hand, the study revealed that only 12% of dental professionals agreed that they take signatures even if it is a verbal consent. On the other hand, 80% GDPs stated that they found obtaining written consent is time consuming.

All the participants 100%responded that they obtain the informed consent before starting the treatment procedure. The study found that only 8% of dentists obtained consent from their long time patient, while 14% obtained it from relatives, 24% from friends and 52% took consent from their colleagues when treating them.

In case of illiterate patients, 35 GDPs 70% reported that they took only verbal consent from their patients. Of the remaining, 16% took the patient's thumbprint, 4% GDPs stated that they took the relative's signature and 10% of GDPs stated that they obtained verbal consent, as well as the patient's thumbprint on the consent form.

Forty two percent of GDPs stated that they discussed the various treatment modalities available at their clinic with their patients before starting treatment. Fifty eight percent of GDPs reported that they did not explain the various treatment modalities available (Table 5).

The healthcare landscape in Bangladesh is complex. The majority of the people are poor and the

public health system is under-resourced and over-burdened. Sickness is a well-known cause of indebtedness and poverty. Social, cultural, economic and educational variables affect the physician–patient relationship. These variables also form divides between doctors and their patients. The majority of people lives in rural areas and tends to place greater value on health than on the principle of personal autonomy. As a result, different demands are placed on the process of informed consent. A combination of factors, including the patients' background, the value they assign to health and their beliefs about personal autonomy, determine their positions on the 'right to know'–'right not to know' spectrum. Consequently, all patients need to be assessed for their value systems. Such evaluations have to be explicit, as they will determine the amount of information that is required to be given to the patient on the disease, diagnostic procedures and treatments.

Table 6: Responses regarding attitudes towards informed consent

Attitudes	Yes	No
1. What is the form of informed consent that you obtain in your practice?		
A. Verbal	28 (56%)	22 (44%)
B. Written	14 (28%)	36 (72%)
C. Both of them	8 (16%)	42 (84%)
2. Do you take signature even it is a verbal consent?	6(12%)	44(88%)
3. Do you take patient consent before treatment?	50 (100%)	0
4. Do you take patient consent after treatment?	0	50 (100%)
5. Are there any patient from whom you might not wish to obtain informed consent?		
A. Colleague	36 (72%)	14 (28%)
B. Relative	42 (84%)	8 (16%)
C. Friend	38 (76%)	12 (24%)
D. Long time patient	46 (92%)	4 (8%)
E. None of them	3 (6%)	47 (94%)
6.Type of consent obtained from an illiterate patient		
A. Verbal consent	35 (70%)	15 (30%)
B. Patient's thumbprint	8 (16%)	42 (84%)
C. Signature of relative	2 (16%)	48 (96%)
D. Verbal consent and thumbprint	5 (10%)	45 (90%)
7. Before starting the treatment do you inform the patient of all the treatment options available?	21 (42%)	29 (58%)
8. Do you think taking written consent time consuming?	40 (80%)	10 (20%)

4. Discussion

4.1. Sample representativeness

This study surveyed on one Government and two well-regarded private dental colleges in Dhaka City with a 96% response rate. The dentists who responded in this current study were not representative of all Bangladeshi dentists. Because they worked in Government and two well-regarded private dental college hospital in Dhaka City. As a result, many have postgraduate qualifications and treat patients with complicated oral health problems who have been referred to them. It is also likely that there is peer pressure to provide quality care, including ensuring that their patients give informed consent. These factors would not influence many Bangladeshi dentists, especially those who work in rural areas. It is therefore possible that the dentists who responded to the questionnaire were more aware of the need for informed consent from patients than many other Bangladeshi dentists.

4.2. Knowledge of consent

In the current study, 96% of the dental professionals acknowledged what informed consent is. Our results are in accordance with a study conducted in Bathinda city, Punjab, India (Gupta et al., 2015) found that 97.4% of the participants regarded consent as an integral part of dentistry. Another study conducted in Khyber Pakhtunkhwa by Farhat et al (2013) revealed that 99% participants had knowledge regarding informed consent.

There were 94% of the dentists in this study who agreed that they had sufficient knowledge about verbal consent. Similarly, in the study conducted by Farhat et al (2013) it was found that among the types of consent, 84% had sufficient knowledge about verbal consent. In the current study 56% reported that they took only the verbal consent before treating their patients. Less than one third 28% took written consent and only 16% of dental surgeons took both verbal and written consent before treatment. A study conducted in Bangladesh by Khan and Taleb (2012) stated that only 15% obtained written consent from their patient, but the majority was satisfied with verbal consent.

In this study all GDPs stated that they think it is necessary to take consent before starting any type of treatment procedure. A similar type of study conducted by Kotrashetti et al. (2010) in Belgium reported 100%, and other study conducted by Avranova and Yaneva (2011) in Bulgaria reported 98%.

A study conducted in Bangladesh by Khan and Taleb (2012), it was revealed that 100% dentist agreed to the importance of informed consent although 19% of them did not consider failure in obtaining consent as an offence.

On the other hand in the current study, 80% of GDPs stated that they found obtaining written consent is time consuming. Over one half (56%) reported that they took only the verbal consent before treating their patients. This could probably be due to patient load, lack of time, or negligence on the part of the dental professionals (Farhat et al., 2013). It also

demonstrates very significant deficiencies in the dentist's understanding of the consent process itself.

In the present study, only 15% of dentists took consent in all cases, which is lower than a study conducted in India in 2015 by Sanchit Pradhan (Chate, 2008), which reported 25% of respondents obtained consent in all types of treatment. In Bulgaria[24] a study in 20xx found 87.5% respondents obtained consent in all types of treatment.

In the current study, 100% dentist considered it is necessary to obtained consent in all types of surgical procedure s and 40% obtained consent during endodontic treatment, which are comparatively more than the study conducted by Sanchit Pradhan (Chate 2008), and more than the study conducted in Bulgaria (Avramova and Yaneva, 2011). (12.5% during surgical intervention and 6.5% during endodontic treatment), respectively.

The above response shows the importance of Informed consent was not uniformly practiced for all treatment procedures and some procedures were considered eligible for obtaining consent.

In this current study, 14% obtained written consent of their patients that are comparatively lower than the study conducted in Bulgaria (37.5%, Avramova and Yaneva 2011), Lahore (59.2%; Ferrus-Torres et al. 2011), and Belgium (64%, Kotrashetti et al. 2010). Another study conducted in Bangladesh by Khan and Taleb (2012) stated that only a few (15%) obtained written consent from their patient, but the majority were satisfied with verbal consent (Khan and Taleb, 2012). In the present study, 28(56%) participants obtained verbal consent which is comparatively more than the study conducted in Lahore (12.8%, Ferrus-Torres et al. 2011). Only 14% took written consent in the present study that shows a low percentage of responses because written consent provides information of the details and costs of their proposed treatment to the patients. The importance of obtaining written consent was also described in of the study conducted in Spain (Lopez-Nicolas et al. 2007), which found that in 78% cases of dental malpractice during treatment, there was no written consent (Singh et al. 2010).

Sometimes obtaining informed consent prior to treating children can be difficult (Chate, 2006). But this study revealed that 96% of respondents reported obtaining parent's consent when treating their children. So it is clear that respondents in the current study believed in obtaining consent for their child patients.

In current study it was found that only 8% of dentists obtained consent from their long time patient, while 14% obtained it from their relative, 24% from their friends and 52% took consent from their colleagues. It may be due to very significant deficiencies in the dentist's understanding of the consent process itself.

In a questionnaire study conducted by Avramova and Yaneva (2011) among Bulgarian dentists, it was found that though most dentists took consent while treating children, they were less prudent in taking consent while treating their professional colleagues, relatives, friends and longtime patients (Sfikis, 2003).

In this study, 86% of dental practitioners informed that they are not aware that one copy of informed consent form should be given to the patient if asked for. Only 14% practitioners aware regarding this matter. In a study among general dental practitioners in India, it was found that 18% of the dentists stated that they would refuse to give a copy of the consent form (ACT, 2008). This reaction could stem from the basic lack of knowledge regarding the dentist's legal obligation (Singh et al., 2010) to provide a patient with the copy of consent form, or from fear/guilt due to incomplete, incorrect, misleading or destroyed information in the consent form that would put the dentist in an unfavorable position.

In the current study revealed that only 12% of the dental professionals agreed that they take signatures even if it is a verbal consent. This was in accordance with the study conducted by Avaramova and Krassimira (2011). This was a rather low percentage because written consent provides some evidence that patients have been informed of the details and costs of their proposed treatment.[24]

In our study, 50 (100%) of the dentists informed that they take consent for all types of surgical procedures. This could probably be due to the risks of complications following third molar or impacted canine extraction are well documented (Ferrus-Torres et al., 2011) and the use of consent forms for patients to sign prior to such surgery is widespread in dentistry (Ferrus-Torres et al., 2011; Rubinos Lopez et al., 2013; Ghafurian, 2009).

In the current study 64% of GDPs stated that consent forms are to protect the doctor. Only 6% said it was to protect the patient, while 30% said it was for both.

In a study among general dental practitioners in India (Kotrashetti et al, 2010) it was found that 70% practitioners felt that taking consent was a necessary safeguard for the doctor alone, while only 27% felt that it was also necessary to protect both the doctor and the patient. The results are similar.

5. Conclusions

The importance of consent to treatment cannot be overemphasized. It is believed that the best arguments in favor of fully informed consent are moral rather than legal. The current study concluded that dental practitioners have an unbalanced knowledge about informed consent and the attitudes of some respondents towards its use in clinical settings was found dissatisfactory. This study opens a new vista for more detailed research among other dental practitioners in other parts of the country.

The results of this study indicate certain key areas of deficiency in the knowledge and understanding of informed consent among the dentists. Though GDPs

stated that they think it is necessary to take consent before starting any type of treatment procedure. This study indicates that theoretically most dentists are aware of their ethical, legal and moral obligations to take consent from their patients, but in practice many fail to do so. It was noticed that GDPs were less aware of the concept of written consent and its importance. The importance of consent to treatment cannot be over emphasized. It is believed that the best arguments in favor of fully informed consent are moral rather than legal. In the perspective of Bangladesh, survey findings demand that the dentist needs to be serious about dental ethics in their practice, and the more they are exposed to moral issues, the more they would be aware of the need for good clinical practice.

The findings provide an opportunity for all clinicians to improve their education and therefore their potential to comply with both the ethical obligations and the legal requirement of gaining valid consent before the start of any treatment. More emphasis should be given in undergraduate and postgraduate training on legal jurisprudence and legal medicine as this is essential for dentists to protect themselves from civil litigation (trespass, assault or battery) and even criminal proceedings for common aggravated or indecent assault. A further study on the same topic with larger sample size across the country could be undertaken in the future.

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Legal Pluralism In Post-Colonial Developing Countries: The Case of Indonesia

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Abstract

It has been over 70 years since Indonesia proclaimed her independence in August 1945. However, the 350 years of the Dutch colonization is still impacting the life of the Indonesian people. The difficulties faced by the Indonesian legal system as the government tries to accommodate *adat* and religious principles within the national law and the extent to which this legal mechanism affects the

everyday life of the Indonesian people from the legal perspective are the main focuses of this paper. It discusses the characteristics as well as the evolution of the Indonesian legal system which is assumed to have derived from the Europe Continental Law through colonization. The research, conducted in 5 cities, reveals that several problems hinder the Indonesian legal system: the foreignness of the law, the neglect of customary law, half century of military and totalitarian regimes, corruption within the State's apparatus and unsynchronized law.
Keywords: Legal pluralism, adat law, post colonial developing countries

1. Introduction

In contemporary Indonesia, as in many other post colonial countries, three strands of laws prevail, namely State Law (*Hukum Negara*), *Transnational* Law (treaties and conventions as well as regulations imposed by international organizations such as World Trade Organization, the European Union, the World Bank, the International Monetary Fund, the United Nations) and customary law (referred to as *adat* law or *hukum adat* hereafter) as the government struggles to incorporate the rights of its traditional communities (*Masyarakat adat*)[7] within the state's legal system. However, the recognition of these rights either by the colonial administration or the political regimes that ensued was the starting point of a "weak legal pluralism" as Griffiths puts it, for it was done "rather in an ambiguous way and subject to the state's regulatory control".[8] The political concept known as *Era Reformasi* (Reformation Era) ensuing the fall of the Suharto's regime in May 1998 is regarded as the Indonesian government's attempt to bring about political, legal and social changes in response to the people's demand for greater individual freedom, democracy, equality before the law and justice for everyone. But more importantly, it was a call for more regional autonomy and a greater recognition of *adat* rights to village resources.[9]

2. The Pre-independence Legal System

The Indonesian legal system came into existence after the proclamation of independence on August 17, 1945. This constitutes a critical moment in the Indonesian judiciary affairs because it marks the 'replacement' of the colonial legal order set by the Dutch with a 'national legal system'. The Indonesian Constitution, the 1945 Constitution (*Undang Undang Dasar 1945* or *UUD 1945*) is the basic law upon which every law and regulation is based. All laws enacted by the Dutch administration during colonization were to be repealed because they "contravened the Constitution".[10] In fact, before establishing the Indonesian 1945 Constitution, "only Dutch rules and regulations were applied throughout the archipelago to the detriment of the indigenous" as Marzuki (2011) observes. Marzuki also argues that "no modern law existed until the adoption of the Reglement op de *Rechterlijke Organisatie en Het Beleid der Justitie* (Regulation of Judiciary and the Policy of Justice), abbreviated as R.O. *Algemene Bepalingen van Wetgeving* (General Provision of Legislation), commonly abbreviated as A.B., *Burgerlijk Wetboek* (Civil Code), referred to as B.W., *Wetboek van Koophandel* (commercial Code), commonly called W.v.K., and Bepalingen *Betrekkelijk Onvermogen, Misdrijven, Begaan ter Gelegenheid van Faillisement en bij Kennelijk, Mitsgaders bij Surseance van Betaling* (Provision on Crimes related to Bankruptcy and Insolvency)". These laws have been enacted by Royal Decree of May 16, 1847 and officially promulgated in the Netherlands-India Gazette of 1847 No. 23. The law preceding the colonial-made constitution called *Regeringsreglement*, commonly abbreviated as R.R. was patterned on the 1848 Netherlands Constitution as Marzuki claims. The R.R. was used as basic law made by Dutch Crown and the Netherlands Parliament in charge of controlling the colony. Such a law was based on the article 59 paragraphs 2 and 4 of the then amended Netherlands Constitution. The R.R. was enacted on January 1, 1848 and began effective in 1885. In the Netherlands, this was just a basic regulation to carry out government power, but in the colony, it was deemed as a constitution, argues Marzuki. In January 1, 1942, the R.R., was replaced by the *Indische Straatsregeling* commonly abbreviated as I.S,[11] which was also deemed as a constitution to the Indonesian but considered by the colonizer as a law just like the R.R. It was the I.S., the so called constitution that really brought distinction between ruler and indigenous Marzuki argues. In a view pretty similar to Marzuki's view, Robert R. Strang (2008) makes the following observation:

"Like many other former colonies of Continental Europe, Indonesia generally follows the civil law tradition. During the colonial period, the Dutch maintained a dual criminal justice system within Indonesia-one court system for the Dutch and other foreigners living in the colony and a second court system for indigenous Indonesians, the pribumi."[12]

[7] See Article 18b of the Indonesian 1945 Constitution
[8] See Franz and Keebet Von Benda Beckmann, 2001
[9] See Kurnia Warman, 2010, 213-70
[10] See Peter Mahmud (2011), *An Introduction to Indonesian Law*, Chap. I. p.2
[11] Read Soetandyo Wignjosoebroto, *Negara Hukum dan Permasalahan Akses Keadilan di Negeri-Negeri Beerkembang Pasca- Kolonial*, Konferensi dan Dialog National Jakarta, 9-10 Oktober 2012
[12] See R. Strang (2008), *More Adversarial, but not Completely Adversarial: Reformasi of the Indonesian Criminal Procedure Code*. Fordham International Law Journal Vol. 32 Issue 1

3. The After Independence Legal System

"Where men build on false grounds, the more they build, the greater is the ruin."[13]

It is widely assumed that the Indonesian legal system is based on the Roman-Dutch law due to three and half centuries of Dutch occupation (1602 – 1945). However, prior to the first appearance of Dutch traders and colonists in the late 16th century and early 17th century, indigenous kingdoms prevailed and applied a system of *adat* (customary) law. The Dutch presence and subsequent colonization during the next 350 years until the end of World War II left a legacy of Dutch colonial law. A number of such colonial legislations continue to apply today. Subsequently, after independence was proclaimed on 17 August 1945, the Indonesian government began to create a national legal system based on Indonesian precepts of law and justice. As a consequently, three strands of law, i.e., *adat law*, Dutch colonial law and Islamic law co-exist in modern Indonesia. For example, commercial law is grounded upon the Commercial Code 1847 (*Kitab Undang-Undang Hukum Dagang* or *Wetboek van Koophandel*), a relic of the colonial period. However, commercial law is also supplemented by a large number of new laws enacted since independence. They include the Banking Law 1992 (amended in 1998), Company Law 1995, Capital Market Law 1995, Antimonopoly Law 1999, and the Oil & Natural Gas Law 2001. Although *adat law* is less conspicuous, some *adat* principles such as "consensus through decision making" (*musyawarah untuk mufakat*) appear in modern Indonesian legislation. Islamic laws came up and have greatly influenced Indonesian National Marriage Law (Act No. 1 year 1974), Islamic Court Law (Act No. 7 year 1989), Zakat/ Alms law, Wakaf law, Islamic banking law, and so forth. Islamic law in Indonesia applies only in civil matters, however in Aceh province, the northernmost province of Indonesia, Islamic law also applies for certain offenses such as adultery, gambling, khalwat (intimate partner gathering without marriage bound), and selling and drinking alcohol. The legal bases of such laws are local regulations (Qanun).

4. The Role of the adat law (*hukum adat*)

When Indonesia achieved independence in 1945, it inherited a justice system combining traditional, colonial and Islamic legal influences as discussed earlier. The Dutch administration had dealt with the plurality of customary norms and institutions by establishing a hybrid legal system that applied different laws to different racial groups. Europeans were subject to Dutch law and Indonesians to traditional customary or *adat* law. But the notion 'adat law' was not recognized by the Dutch administration still it was brought up by Snouck Hurgronje in his work 'De Atjehers'.[14] The formal position of customary local institutions changed in 1999 when a broad process of regional autonomy was initiated by *Era Reformasi*, the political era that came into being after the fall of President Suharto and his *New Order*. *Law No. 22/1999 on Regional Governance* authorized district governments to rearrange village governance structures —including dispute resolution mechanisms — along inclusive and democratic lines.[15] In accordance with regional autonomy, the law established democratically elected village parliaments and devolved a greater degree of executive authority. On the "judicial" side, article 101(e) gave binding authority to village heads, together with the *Adat* Council, to resolve disputes. The Nagari government in the West Sumatera Province is a good example.[16] Customary justice systems in Indonesia have contributed immensely in the dispensation of justice services to poor and vulnerable people. *Ada*t law is a law that originates with the people in the most direct sense. *Adat* law courts are accessible and familiar to the local people and that is what makes them popular. Generally, every actor involved into *adat* legal system such as neighborhood heads, village heads, religious leaders are based in the village, known to community members and accessible. By contrast, state legal institutions are often located in distant district capitals. A concomitant strength is speed of action. Lengthy resolution processes can impact on the livelihoods of the poor, particularly where economic rights are at stake. In their *Reassessing Customary Law Systems as a Vehicle for Providing Equitable Access to Justice for the Poors*, Minneh Kane, J. Oloka-Onyango and Abdul Tejan-Cole wrote:

Customary Law systems have many valuable features. They are flexible; they evolve as communities evolve and provide communities with a sense of ownership, in contrast to formal legal systems that are perceived as alien to a considerable number of people in Africa. Customary law tribunals are inexpensive, accessible, and speedy. Their proceedings are easily understood by users of the system. They are useful when the formal state institutions are unable to reach the people, or where such institutions have broken down or are affected by civil strife and conflict.

Even though Customary Law prevails in almost every aspect of people's lives, it still faces many obstacles that make it ineffective. In fact, it is important to note that prior to colonialism *adat* law was presided over and adjudicated by traditional cultural leaders, who were often knowledgeable

[13] Read Thomas Hobbes (1651), *Theviathan*. p. 166

[14] See Peter Mahmud (2011), *An Introduction to Indonesian Law*. Chap. I. p.4

[15] See Law No. 32/2004 on Regional Government (Indonesia), which replaced Law No. 22/1999 on Regional Government

[16] See Hilaire Tegnan, 2015

about it and vested with the authority of their communities to translate it. Transferring the adjudication of *adat* law to formal courts has in certain respects caused *adat* law to lose its original strength. *Ada*t system has been reduced into a secondary source of law for the formal courts, and therefore the law that emanates therein is subordinate, if not so much in the same way as their colonial predecessors did. This is observed by Samuel Clark et al. when they argue:

"When the new republic was formed in 1945, national policy promoted a uniform legal system. Institutionally, legal pluralism was viewed as inimical to nationhood and modernity. Nonetheless, the 1945 Constitution and subsequent amendments have provided conditional recognition of traditional customary law. This level of recognition is very limited, however: judges are required by law to "explore, follow and understand the legal values and sense of justice which exists in society". While judges are obliged to take into account the outcomes of non-state justice deliberations, in reality they are free to ignore or pay lip service to this requirement, and indeed many do […] Adat is a default legal source, applicable only informally or where regulations are silent." At least from the state's perspective, written state law will always trump customary law.

H.M. Hadin Muhjad (2011) on the other hand believes that the customary legal system that was handed over by the Dutch administration during colonialism period does not reflect the realities of Indonesian people's life today. He argues: *"We (the Indonesians) have been greatly misled by ruse of Dutch made law which was established back then for the Dutch colonial interests. We are more willing to inherit this Dutch law than the law of our ancestors for sake of prestige. Yet the Dutch law prestige can not always address administrative issues at the village level. We forget that we have customary law that has been proven for centuries capable of preserving the natural and socio-economic governance of society. We prefer to underestimate the quality of customary law, because it is considered as archaic or plebeian, so consequently we lost our civilization or habit."*

5. The Role of the Islamic Law (*hukum Shariah*)

The existence of Islamic courts in Indonesia dates back to a nineteenth century Dutch decree establishing a system of Islamic tribunals on the islands of Java and Madura. The decree created collegial courts in which a district-level religious official called the *penghulu* acted as chair and was assisted by member judges chosen from the local religious elite. The courts were vested with power to decide over family disputes, but execution of the courts' decisions required an executory decree from the civil court. The system was expanded to south Kalimantan in the 1930s, but at the same time the jurisdiction over inheritance was transferred to the civil courts. At independence, the Islamic judiciary was placed under the authority of the Ministry of Religion, which used executive powers to expand the system to other parts of the country. On 29 December 1989, Law No. 7 of 1989 on the Religious Court (*Pengadilan Agama*) was passed by the People's House of Representatives or *Dewan Perwakilan Rakyat* (DPR). This law proves the important of the Religious Court in Indonesian law and the community in general. The Religious Courts can be found at the municipal level and Religious High Courts are located in the capital city of each province. The jurisdiction of the Indonesian religious courts also include inheritance cases as well as some cases involving economic transactions based on Islamic law. In 2004, the administrative supervision of the Islamic judiciary was transferred from the Ministry of Religion to the Supreme Court. In 1999, the province of Aceh was granted special autonomy status that included the authority to enforce Islamic law. The Dutch did not seek to regulate the administration of Islamic law beyond the territory of Java, Madura, and parts of Borneo. In other parts of the colony, the matter remained under the control of local authorities.[17] Other areas, including Aceh, Jambi, Sambas, Pontianak, east coast of Borneo, South Sulawesi, Ternate and Ambon had separate Islamic tribunals staffed by judges called "*qadi*" (sometimes written "*kadi*" or "*kali*") or "*hakim.*[18] Finally, in West Sumatra, religious issues were decided by an assemblage of customary or *adat* leaders and religious officials that was called the "Friday Council".[19] It is important to note that even though Islamic law seems to have strong power in many areas, Religious Judicature Act, declares the Supreme Court to be the highest judicial authority on matters of Islamic law.[20] The Indonesian Islamic Courts have jurisdiction over marriage and divorce. The Marriage Act deals with the substantive law of marriage and divorce. However, when new courts were created in other parts of the country after independence, the jurisdiction of these new tribunals was defined more broadly to include both matrimonial causes and inheritance. Many discrepancies in the jurisdiction of Islamic Courts in different areas remained until the passage of the Religion Law in 1989, which, for the first time, established a uniform jurisdiction for all Islamic tribunals nationwide. Islamic law has contributed not only into bringing notions like morality, ethics and decency within the politic arena, but it also helped maintaining public order. Leaders

[17] Read Marck E. et al., *The Islamic Legal System in Indonesia*

[18] Examples of decisions made by Islamic tribunals from south Sulawesi and Ternate can be found in 29 Adat Rechtbundels: Bezorgd Door de Commissie Voor Het AdatRecht 37-201 (1928).

[19] See Supomo, *supra* note 17, at 74.

[20] See Religious Judicature Act, Act No. 7/ 1989, and art. 3-5(1)

have used the powers granted them through the decentralization laws to implement regulations relating to the wearing of Islamic dresses, proscribe conduct such as prostitution, gambling, and sale or consumption of alcohol, the insertion of Arabic programs at school, the prohibition of sexual intercourse before marriage and the administration of the Islamic Tax (Zakat). However, despite the fact that the majority of the Indonesian population is Muslim, the post independence government did not opt for the implementation of Islamic Law (*Hukum Shariah*) in Indonesia, the world largest Islamic State. Studies suggest that this was mainly due to political reasons as well as the divergence among the world Islamic Schools as noticed by Francois Borella (2008). In fact, Borella argues that between 750 and 850 AD, four Islamic Schools of Law gradually gained power as the orthodox interpretation of the Sharia giving birth to *fiqh* or legal science. Named after their author, these four schools of law spread today throughout every major Islamic State or *dar al Islam* (House or Country of Islam): North Africa and Sub-Saharan is *maliki* (founded by Malik ibn Anas),[21] Egypt, the Middle East, and Central Asia are *hanafi* (founded by Abu Hanifa an-Nu'man), Saudi Arabia and Qatar are *hanbali* (founded by Ahmad ibn Hanbal), [22] Eastern Africa and Asia are *chafi'l (*founded by Muhammad ibn Idris ash-Shafi'i). [23] These schools have different views on technical matters.[24] Islam, clearly, could not be the foundation of the Indonesian legal system in that the Indonesian population, contrary to many Islamic States is not homogenous. The Indonesian "founding fathers" understood this when Sukarno declared that Indonesia should rest on nothing but the doctrine of *Pancasila* (Sanskrit for "five principles") defined in the constitution as "a belief in the one supreme God; just and civilized humanity; the unity of Indonesia; democracy guided by the inner wisdom of deliberations among representatives; social justice for all the Indonesian people. Proclaiming Indonesia as an Islamic state at the dawn of independence was too controversial a decision to be realistic, the minority Christians would have objected and those in Eastern Indonesia might have been tempted to secede as Robert Cribb puts it.[25]

[21] See Hisham M. Ramadan (2006), Understanding Islamic Law: From Classical to Contemporary, Rowman Altamira, ISBN 978-0759109919, p. 26-27

[22] Ibid. p. 24-29

[23] See Abdullah Saeed (2008), The Qur'an: An Introduction, Routledge, ISBN 978-0415421256, p. 17

[24] Read Francois Borella (2008), *Elements de droit constitutionel*. Paris Presses de Sciences Po, p.344

[25] Read Donald K. Emmerson (1999), Indonesia Beyond Suharto, Polity, Economy, Society, and Transition. M. E. Sharpe, Inc. Armonk, New York. Chap.I, p.21. See also Adam Schwarz and Jonathan Paris (1999), *The Politics of Post- Suharto Indonesia*. Council on Foreign Relations Press, New York.

6. Mistakes within the Indonesian Legal System

6.1. Law was acquired instead of innate

In the authors view, two mistakes occurred in the shaping of the Indonesian legal system: first, the legal system was imposed from above on a discriminatory basis and second, it did not evolve from the Indonesian tradition, principles and way of life. Wignjosoebroto (2012) helps explain this assertion when he observes that the concept of *Rechtsstaat* (from which the Indonesian legal system is derived) is foreign to Indonesian civilization. He claims that *"it involves a populist revolution that occurred in Western civilization, since law is the product of a nation's history".* In a view identical to Mazurki, Wignjosoebroto argues that the then Dutch colonial administration clearly separated the areas of jurisdiction law in Indonesia: one that applies to Dutch citizens and other Westerners, and one for non-European population groups. Indigenous population groups on the other hand were under a system referred to as "*zijn eigen gewoonte, gebruiken en godsdienstige instellingen*" (indigenous traditions, customs and religion). Wignjosoebroto concludes that this dual system has helped create a legal gaps. [26] Much in the same position as Wignjosoebroto, Taiwo (2009) observes that the legal system in Britain emerged as a single element, among several others, in a movement toward epochal social transformation from feudalism to capitalism, from the middle ages to the modern age. He claims that the transformation had multiple facets: philosophical, economic, political, legal, religious, social, and so on, and that legal system did not emerge in isolation from these other elements, although they did not all evolve at the same time. The victory of the legal system was part of the triumph of a way of life that was all-encompassing in its effects while in Africa the legal system was not introduced as part of a program of general social transformation. It was not the outgrowth of a system of interrelated organic institutions. Quite the contrary, it originated as a tool, a weapon in the arsenal of the colonial authorities for the singular purpose of keeping the colonies and protectorates safe for the colonizers and the natives in their place. It was a part of the coercive institutions fabricated by the colonial state to secure its rule over unruly "natives." As such, there was no interest on the part of those responsible for its introduction to plant the whole seed from which a fully grown plant might have been cultivated. Nor was there any chance that an organic system could have been replicated in the dependencies for logical and practical reasons.[27]

[26] See Soetandyo Wignjosoebroto, *Negara Hukum dan Permasalahan Akses Keadilan di Negeri-Negeri Beerkembang Pasca- Kolonial, Konferensi dan Dialog National Jakarta*, 9-10 Oktober 2012

[27] See Olufemi Taiwo (2009), *How Colonialism Preempted Modernity in Africa*. Indiana University Press. p. 168-169.

Table 1: Law making process

Age of Respondent	Type of answer, Gender & Number of Respondent					
	Bottom-up		Top down		other	
	Sex of Respondent		Sex of Respondent		Sex of Respondent	
	Male	Female	Male	Female	Male	Female
18-28	75	61	22	16	4	6
29-39	17	13	10	14		1
40-50	12	15	2	5	2	
51-61	11	1	6			2
62-72	5					
TOTAL	**120**	**90**	**40**	**35**	**6**	**9**
%	**72**	**67**	**24**	**26**	**4**	**7**
Combined %	**70**		**25**		**5**	

Table 2: the impact of Western law

Age of Respondent	Type of answer, Gender & Number of Respondent							
	Yes		Maybe		No		No Idea	
	Sex of Resp.		Sex of Resp.		Sex of Resp.		Sex of Resp.	
	M	F	M	F	M	F	M	F
18-28	26	21	46	44	26	12	3	6
29-39	11	5	5	15	9	4	2	4
40-50	6	4	6	8	3	8	1	
51-61	7		7	3	3			
62-72	4				1			
TOTAL	54	30	64	70	42	24	6	10
%	33	22	39	52	25	18	4	7
Combined %	**28**		**45**		**22**		**5**	

Table 3: The people's view on the Indonesian Legal System

Age of Respondent	Type of answer, Gender & Number of Respondent							
	Reliable		Biased		Confusing		No idea	
	Sex of Resp.		Sex of Resp.		Sex of Resp.		Sex of Resp.	
	M	F	M	F	M	F	M	F
18-28	21	13	24	23	52	46	4	1
29-39	3	5	5	6	18	16	1	1
40-50	3	5	4	6	8	7	1	2
51-61	13	1	2		2	2		
62-72	2		1		2			
TOTAL	42	24	36	35	82	71	6	4
%	25	18	22	26	49	53	4	3
Combined %	22		24		51		3	

Table 4: the connection between the legal system and *adat*

Age of Respondent	Type of answer, Gender & Number of Respondent							
	Yes		Maybe		No		No idea	
	Sex of Resp.		Sex of Resp.		Sex of Resp.		Sex of Resp.	
	M	F	M	F	M	F	M	F
18-28	45	32	25	22	29	28	2	1
29-39	13	7	7	8	7	12		1
40-50	6	5		6	10	8		1
51-61	7	1	3	1	7	1		
62-72	3				2			
TOTAL	74	45	35	37	55	49	2	3
%	**45**	**34**	**21**	**28**	**33**	**37**	**1**	**2**
Combined %	**40**		**24**		**35**		**2**	

Table 1 is the result of the research I conducted on the questions as to whether law making process should be top down or bottom-up, and whether or not the inheritance of a colonial legal system is beneficial to Indonesia. The research shows that 70% of the respondents think law emerges from below. It can be inferred from this study that a great majority of the Indonesian population believes that law should not be imposed from above, so therefore it was detrimental to Indonesia to import law. Table 2 justifies this.

As can be noticed from Table 2, 22% of the 300 respondents think that bringing in colonial legal system was not a good idea, 28% believe it helped Indonesia and 45 % are in doubt. It can be inferred that the 45% in doubt could mean that the Indonesian legal system is so complex a system that much of the population has little or confusing knowledge about it. It could also be inferred from the above result that if a vast majority of the people is in doubt then colonial legal system inheritance was not a good idea as it seems to have brought about legal confusion instead of legal certainty – one of the core principles of the law. The above data is justified by Table 3. When asked what their opinion on the Indonesian legal system was, the respondents again adopted the same view.

The data shows that 51% of the respondents think that the Indonesian legal system is confusing, 24% find it biased while only 22% think it is reliable.

6.2. The neglect of customary law

"It is true indeed that, in the profound ignorance of letters, which formerly overspread the whole western world, all laws were entirely traditional, for this plain reason, because the nations among which they prevailed had but little idea of writing"[28].

The second clog within the Indonesian legal system is its failure to take its roots in the Indonesian customs. According to Article 7 paragraph (1) of Law No. 12 / 2012, the following is the hierarchy of laws in Indonesia:

1. The Indonesian Constitution (*Undang-undang Dasar 1945*);
2. The Provision of People's Consultative Assembly (MPR);
3. Statutes (*Undang-undang*) / Interim Emergency Laws (*PERPU*);
4. Government Regulation (*Peraturan Pemerintah*);
5. Presidential Regulation (*Peraturan Presidenor PP);*
6. Provincial Regulation (*Peraturan Daerah or Perda*);
7. District Regulation (*Peraturan Kota*).

Much like within the 1945 Constitution, no room is made for *hukum adat* whose condition has remained the same as during colonialism. In Western Europe, the tiny part of the world whose civilization has dominated the rest of the world, customary laws were at the epicenter of the legal systems. The term *Common Law* which means law developed as a result of custom and judicial decisions suffices to prove this reality. Clarence Darrow (1922) agrees that custom is the true driving force of the law. During the pre-revolutionary period in America, the thirteen colonies developed their own judicial systems despite the enormous influence of the England common law legal system each had its own local variations and customs to which strong attachment developed[29]. The importance of customs in shaping the legal system is demonstrated by Clarence Darrow (1922) when he argues that men from the earliest time arranged themselves into groups; they traveled in a certain way; they established habits and customs and ways of life. These "folk-ways" were born long before human laws and were enforced more rigidly than the statutes of a later age. Slowly men embodied their "taboos," their incantations, their habits and customs into religions and statutes. He emphasizes that a law was only a codification of a habit or custom that long ago was a part of the life of a people, and that the legislator never really makes the law; he simply writes in the books what has already become the rule of action by force of custom or opinion, or at least what he thinks has become a law.[30] However, Darrow goes on to say that neither conscience nor religion (though it is a higher and more binding on man than human law) is the foundation of the law. In fact Darrow believes that religion is controversial as it rests on interpretation, and even the things that seem the plainest have ever been subject to manifold and sometimes conflicting construction. He therefore concludes that religious doctrines do not and clearly cannot be adopted as the criminal code of a state.[31] As for conscience, Darrow argues that it is purely a matter of environment, education and temperament, and is no more infallible than any habit or belief. None of the generally accepted theories of the basis of right and wrong has ever been the foundation of law or morals Darrow observes (pp. 7-9). He claims that the true driving force of the law is custom– the folkway. These customs and folk-ways must be so important in the opinion of the community as to make their violation a serious affair. Such violation is considered evil regardless of whether the motives are selfish or unselfish, good or bad. Darrow concludes that laws which interfere with the habits, customs and beliefs of a large number of people never receive the assent of so large a percentage as to make people conscious of any wrong in violating them, and therefore people break them when they can (p. 79). I

[28] See Sir William Blackstone (1765-1769), *Commentaries of the Laws of England.* p.60

[29] Read Sandra Day O'Connor (2003), *The Majesty of the Law, reflection of the Supreme Court Justice*. Chap 22

[30] Read Clarence Darrow (1922) *Crime: Its Cause and Treatment,* the Pennsylvania State University *Electronic Classics Series* 2004. p.9, 78

[31] Ibid. p. 7

surveyed 300 people in 5 major towns on the question as to whether or not the legal system reflects their culture. Table 4 displays what the survey came up with.

The data informs us that most Indonesian people have mixed views on whether or not the legal system really mirrors their culture as only 40% answered affirmative while 35% think otherwise. The 24% that answered 'maybe' also proves that the Indonesian culture is yet to be fully incorporated within the legal system. However, it is important to note that Parliament members are not always to blame. The neglect of customary laws has partly to do with the inefficiency of some customary institutions which have renounced their duty of holding the Parliament accountable for failing to uphold *adat* principles. Most *adat* institutions seem to lack any interest in the law making process and would rather handle petty crimes while living off government handouts.[32]

6.3. Half Century of Military and Totalitarian Regimes

The first Indonesian organisation of armed forces was established on 22 August 1945 and was called the Badan Keamanan Rakyat (BKR/People's Security Board) aimed at 'maintaining security together with the people and related state bodies'. However when President Sukarno took power, he changed the name of BKR to Tentara Keamanan Rakyat (People's Security Army/TKR) on 5 October 1945 marking the birth of the Indonesian military. This date even today is considered the anniversary of the Indonesian Armed forces.[33] The involvement of the army in political arena after Indonesian independence is due to the fact that the very soldiers who fought for independence and later reorganised themselves to form the military base of the nation had a prior history of being members of political organisations and the militia wings of political parties during the Dutch colonial era. Two important events contributed into the influence of the Army in politics:[34]

1. The declaration of martial law in 1957 allowing the military to get involved in politics as they ran the state of emergency; and
2. The introduction of the 'middle way' concept in 1958 by the then Army Chief of Staff A.H Nasution.

The middle way basically provided the opportunity for TNI (the new Indonesian Military) to become involved in the government on the basis of the "Asas Kekeluargaan" principle (the Family Principle). These ideas were later developed by the New Order under Suharto who took power following the political violence of 1 October 1965 as the representative of the military then referred to as *Angkatan Bersenjata Republik Indonesia* (ABRI)- Indonesian Armed Forces, ABRI). Suharto was officially inaugurated president in 1968. Elections[35] were held in 1971, but they were tightly controlled by the government. The government-backed Golkar (Golongan Karya) party secured most of the seats in the House of Representatives, as it would in each of the elections held at five-year intervals thereafter. Similarly, the People's Consultative Assembly or *Majelis Permusyawaratan Rakyat* (MPR) routinely returned Suharto to the presidency, unopposed, at five-year intervals. He then used the military to build personal power and a dictatorship. To support his efforts, Suharto established a pyramid base whereby he controlled all resources of power.[36]

Table 5: Number of ABRI seats in DPR from 1967 to 1999

Year	ABR SEATS	TOTAL SEATS
1967	43	350
1968	75	414
1969	75	460
1985	100	550
1992	100	550
1997	75	550
1999	35	550

Source: Ikrar Nusa Bhakti, Sri Yanuarti and Mochamad Nurhasim, *Military Politics, Ethnicity and Conflict in Indonesia*. Crise Working Paper No. 62 January 2009

Similarly, the military was not only involved in politics but in the legislative. In fact during *Orde Baru* the military held a certain number of seats in the House of Representatives and the People's Consultative Assembly.[37] During Suharto's administration the demand of military group that one-fifth of the members of provincial district assemblies, approximately one-fourth of the members of Parliament, and one-third of the members of the

[32] During an interview at his office on December 18, 2014, Dr. Risnaldi, a DPRD Member told me that adat leaders do not make use of the procedure given to them for having a say in legislations in West Sumatra. He explained that not making use provided means signifies that adat leaders simply do not submit reports of their concerns to the local DPRD.

[33] Read Ikrar Nusa Bhakti et al., *Military Politics, Ethnicity and Conflict in Indonesia*. Crise Working Paper No. 62 January 2009. p.6

[34] Ibid. p. 7

[35] Under both Sukarno and Suharto' regimes no direct free and democratic elections were held. Their terms were extended only through votes in unrepresentative parliaments. The Parliament during that time period was unrepresentative because a vast majority of the seats was held by military officers chosen by the president since all the political parties were banned back then (see table 5).

[36] Read Ikrar Nusa Bhakti et al., *Military Politics, Ethnicity and Conflict in Indonesia*. Crise Working Paper No. 62 January 2009. P.6

[37] Adam Schwarz and Jonathan Paris (1999), *The Politics of Post- Suharto Indonesia*. Council on Foreign Relations Press, New York. p. 3-15

People's Congress be appointed by President Suharto's military establishment was agreed to in late 1969 with nearly no major opposition from the political parties. However, the 360 members of Parliament not appointed by the military were to be elected on the basis of party preference rather than individually.[38] Table 5 presents the number of seats held by the armed forces during Suharto's presidency:

Vital to the *New Order* and how it worked were Indonesia's army forces. They maintained the domination of the state over society. They justified their intervention in civilian politics under the doctrine known as *dwifungsi*,[39] the dual function. According to this idea, the armed forces has two closely related roles; to defend the country not only from conventional military threats originating abroad, but also from domestic dangers of any kind, military, politics, socioeconomic, cultural, or ideological. The armed forces implemented the interventionist dual-function doctrine by placing active and retired military personnel in the assembly, parliament, and provincial and district legislatures; in executive and staff positions in central, provincial, and district administration; in positions of formal and informal authority over Golkar; and by keeping the population under surveillance through territorial command that covered the country from Jakarta to the outermost islands and down to every village. Serving officers occupied roughly one-fifth of the seats in every regional legislature, where they reported to their local commanders, and in national parliament and assembly. Serving and retired officers were appointed to post in civilian government for reasons of patronage and control. Nearly half of the provincial governorship and district headship, by far the most important civilian government positions in the regions were also in military hands.[40] However, since the advent of *Era Reformasi*, the Indonesian Military has given up its *duafungsi* and has returned to its primary duty that is to defend the integrity of Indonesia and its people against possible attacks both from within and outside.[41] The unprecedented example of the non-involvement in politics is the role it played during the impeachment process of President Abdurraman Wahid in July 2001. The military refused to back him up when he attempted to hold onto power by issuing an emergency decree to dissolve the Parliament that filed two separate censures of MPR against Wahid alleging corruption and incompetence.

6.4. Corruption within the State's apparatus

"CORRUPTION does not happen merely, because we have BAD PEOPLE, but also because we have a BAD SYSTEM"[42]

Corruption has long been one of the most critical problems that undermine the Indonesian administration. The symptoms of this social disease were felt as early as during President Sukarno's regime. In no way this means that corruption did not exist under the Dutch colonial administration. The period ensuing independent is relevant as it marks the birth of a new State capable of running its own affairs. After independence was gained, two political regimes, i.e. the Sukarno and the Suharto regimes considered by most Indonesian as well as foreign scholars as the most totalitarian and the most corrupt regimes Indonesia has ever had, contributed into plundering the vast majority of the wealth the country has. Although some of Suharto's policies are deemed to have brought about considerable economic growth, many of his actions worked towards the very opposite direction of the alleged achievement. A large share of Indonesia's wealth was concentrated in the hands of the president's family and their associates.[43] Bhakti argues that Suharto's regime created a lot of problems to Indonesians, including human suffering, corruption, collusion, nepotism, economic dependency on foreign debt, and economic collapse. Apart from that, during the Suharto period, there was no political freedom at all.[44] Since its advent, Era *reformasi* (the political era that came into being after the collapse of Suharto and his *Orde Baru*) vowed to rid the sociopolitical and legal fields of corruption by embarking on massive reforms; hence its name. Today however, though these reforms sound beautiful, they seem unable to eradicate corruption.[45] Not only has corruption taken roots within the central government, but it has also spread throughout nearly every Indonesian province.[46] The *Era Reformasi* having realized the escalation of corruption in Indonesia decided to go at war with it by creating a commission for its eradication or *Komisi Pemberantasan Korupsi* (KPK). KPK is a state agency which, as it says, in the course of performing its duties and authority is independent and free from any influences. Since modern corruption in Indonesia is catalogued as an extraordinary crime, the creation of KPK is based on the need for its systematic

[38] Read Donald K Emmerson (1999), *Indonesia Beyond Suharto, Polity, Economy, Scietty and Transition*. Chap. 2 p. 44-45

[39] Under Suharto's regime, the dual function (dwifungsi) of the military as both a defence force and a participant in civilian politics and governance was legitimised by Law No. 20/1982 on State Defence Regulations.

[40] Read Donald K. Emmerson (1999), *Indonesia Beyond Suharto, Politics, Economy and Transition*. p. 44-48

[41] Read Adam Schwarz and Jonathan Paris (1999), *The Politics of Post- Suharto Indonesia*. Council on Foreign Relations Press, New York. p. 11-15

[42] A quote in KPK's Annual Report 2007

[43] Read Adam Schwarz and Jonathan Paris (1999), *The Politics of Post- Suharto Indonesia*. Council on Foreign Relations Press, New York. p. 5-15

[44] See Ikrar Nusa Bhakti, *The Transition to Democracy in Indonesia: Some Outstanding Problems.*

[45] See KPK's Annual Repports from 2004 to 2014.

[46] Ibid.

eradication.[47] According to Law No. 30 of 2002, KPK is vested with the authority to:

1. coordinate with other institutions authorized to eradicate corruption;
2. supervise institutions authorized to eradicate corruption;
3. to perform pre-investigations, investigations, and prosecutions against corrupt acts;
4. to perform preventive actions against corruptions; acts and;
5. to monitor state governance.

KPK investigates acts of corruption committed by Government officials (The trial of former Minister for Religious Affairs (2005) along with his former Secretary General and the arresting of former Chief of BKPM (Investment Coordinating Board), Governor, Regent, Mayor, Members of Parliament, Board of Directors of State-Owned Enterprises, National Police, and Civil Servants. It basically holds everyone having public authority accountable for their actions before the Indonesian people. Today, KPK regards itself as a "catalyst of corruption eradication and governance reform".[48] The battle to eradicate corruption in Indonesia is not a recent initiative. In fact, several institutions aiming at the eradication of corruption had existed before the creation of KPK. Those institutions are: the Military Operation (1957), the Corruption Eradication Team (1967), the Commission for the Appraisal of the Wealth of Government Executives (KPKPN), and the Joint Commission for Corruption Eradication (2000). But according to KPK's Commissioners, those previous institutions were not focused on prevention efforts. There is no better place or institution to look for data on corruption than KPK. The following diagrams show the number of corruption cases prosecuted by KPK from 2004 up to 2014.

Table 6: Corruption cases prosecuted by KPK from 2004 to 2012

Tersangka/Terdakwa Berdasarkan Tingkat Jabatan Tahun 2012

NO	JABATAN	2004	2005	2006	2007	2008	2009	2010	2011	2012
1	Anggota DPR dan DPRD				2	7	8	27	5	16
2	Kepala Lembaga/ Kementerian		1	1		1	1	2		1
3	Duta Besar				2	1		1		
4	Komisioner		3	2	1	1				
5	Gubernur	1		2		2	2	1		
6	Walikota/Bupati dan Wakil			3	7	5	5	4	4	4
7	Eselon I. II dan III	2	9	15	10	22	14	12	15	8
8	Hakim							1	2	2
9	Swasta	1	4	5	3	12	11	8	10	16
10	Lain-lain		6	1	2	4	4	9	3	3
	JUMLAH	4	23	29	27	55	45	65	39	50

Source: KPK's Annual Repport.

The first and second columns show the numbers and types of professions while column number three to eleven display the years. The last row shows the total number of cases handled. The professions and their corruption cases from 2004 to 2012 are translated as follows: 1- DPR/DPRD Members: 65 cases; 2- Heads of Institution/Ministry: 07 cases; 3- Ambassadors: 04 cases; 4- Commissioners: 07 cases; 5- Governors: 08 cases; 6- Mayors/Regents and Deputies: 32 cases; 7- Civil Servants Echelon I, II, and III: 107 cases; 8- Judges: 05 cases; 9- Private Institutions: 70 cases; Others: 32 cases.

From 2004 to 2012 KPK has handled a total number of 337 corruption cases from the Indonesian most trusted Individuals and Institutions. Of all these corruption cases, the three government branches account for 128. The Table 7 is the number of corruption cases dealt with by KPK during the year 2013.

Table 7: Corruption cases prosecuted by KPK in 2013

Tersangka/Terdakwa Berdasarkan Tingkat Jabatan Tahun 2013

NO	JABATAN	2013
1	Anggota DPR dan DPRD	8
2	Kepala Lembaga/Kementerian	4
3	Duta Besar	
4	Komisioner	
5	Gubernur	2
6	Wali Kota/Bupati dan Wakil	3
7	Eselon I, II dan III	7
8	Penegak Hukum	4
9	Swasta	24
10	Lain-lain	7
	JUMLAH	59

10	Jawa
11	Jawa
12	Lam
13	Kalin
14	Kalin
15	Sula
16	Sula
17	Sula
18	NTB
19	Papu
20	Mala
21	Sing
	JUM

Source: KPK's Annual Repport.

The corruption cases concern the same types of professions as Table 6: 1- DPR/DPRD Members: 08 cases; 2- Heads of Institution/Ministry: 04 cases; 3- Ambassadors: 0 case; 4- Commissioners: 0 case; 5- Governors: 02 cases; 6- Mayors/Regents and Deputies: 03 cases; 7- Civil Servants Echelon I, II, and III: 07 cases; 8- Judges: 04 cases; 9- Private Institutions: 24 cases; Others: 07 cases.

In 2013 alone, KPK handled a total number of 59 corruption cases of which the three government branches account for 21. Table 8 presents the number of cases supervised by KPK in the year 2014.

Table 8: Corruption cases prosecuted by KPK in 2014

JENIS PERKARA

	2014
	15
	5
	20
	6
an	4
	5
	3
	58

PERKARA TPK BERDASARKAN JABATAN

NO	JABATAN	2014
1	Anggota DPR dan DPRD	4
2	Kepala Lembaga/Kementerian	9
3	Duta Besar	
4	Komisioner	
5	Gubernur	2
6	Walikota/Bupati dan Wakil	12
7	Eselon I, II dan III	2
8	Hakim	2
9	Swasta	15
10	Lain-lain	8
JUMLAH		54

)ASARKAN INSTANSI

Source: KPK's Annual Report.

[47] See the KKP's Annual Report 2004
[48] See KPK's Annual Report 2005

The types of professions are as same as in the two tables above: 1- DPR/DPRD Members: 04 cases; 2- Heads of Institution/Ministry: 09 cases; 3- Ambassadors: 0 case; 4- Commissioners: 0 case; 5- Governors: 02 cases; 6- Mayors/Regents and Deputies: 12 cases; 7- Civil Servants Echelon I, II, and III: 02 cases; 8- Judges: 02 cases; 9- Private Institutions: 15 cases; Others: 08 cases. The total number of corruption cases handled by KPK in the year 2014 is 54 of which the three government branches account for 29. From 2004 to 2014, KPK has investigated and repressed 450 corruption cases not to mention those dropped due to lack of sufficient evidence. Of these 450 cases, 77 were perpetrated by the Legislative. No wonder it seems to have lost the trust of the Indonesian people. The following data justifies this assumption (Table 9).

Table 9: The representability of the Parliament

Age of Respondent	Type of answer, Gender & Number of Respondent					
	Yes		Maybe		No	
	Sex of Respondent		Sex of Respondent		Sex of Respond	
	Male	Female	Male	Female	Male	Female
18-28	12	15	34	28	55	40
29-39	8	4	4	11	15	13
40-50	4	3	3	5	9	12
51-61	4		4	1	9	2
62-72	1		1		3	
TOTAL	29	22	46	45	91	67
% Male/Female	17	16	28	34	55	50
Combined %	**17**		**30**		**53**	

Table 10: evaluation of KPK's work

Age of Respondent	Type of answer, Gender & Number of Respondent					
	Yes		Maybe		No	
	Sex of Respondent		Sex of Respondent		Sex of Respond	
	Male	Female	Male	Female	Male	Female
18-28	77	50	19	26	5	7
29-39	22	19	3	8	2	1
40-50	15	8	1	9		2
51-61	15	3	1		2	
62-72	5					
TOTAL	134	80	24	43	9	10
% Male/Female	**81**	**60**	**15**	**32**	**5**	**7**
Combined %	**71.3**		**22.3**		**6.3**	

Table 11: the people's trust in the police

Age of Respondent	Type of answer, Gender & Number of Respondent							
	Yes		Maybe		No		More or less	
	Sex of Resp.		Sex of Resp		Sex of Resp.		Sex of Resp.	
	M	F	M	F	M	F	M	F
18-28	32	24	2	3	63	54	4	2
29-39	12	4	1		13	23	1	1
40-50	7	3		4	8	12	1	1
51-61	11	1			6	2		
62-72	5							
TOTAL	67	32	3	7	90	91	6	4
% Male/Female	40	24	2	5	54	68	4	3
Combined %	**33**		**3.3**		**60**		**3.3**	

The above data shows that a vast majority of the Indonesian people thinks the Parliament does not represent them. It is very common to hear the people say that the Parliament is staffed with folks who fight to advance their personal interests. It also can be seen from the above data that not a single year passes without a case of corruption from the Indonesian Parliament both at central and regional levels being prosecuted by KPK. Ever since its creation, KPK's actions have been criticized by some individual (mostly those who benefit from corruption) as unconstitutional. But for the vast majority of the Indonesian people KPK is contributing in establishing the rule of law in Indonesia. When asked what their opinion on the work of KPK is, this is what the respondents have to say (Table 10)

It can be inferred from the above data that the work of KPK is appreciated by a vast majority of the Indonesian people. Consequently, this shows that KPK has the support of the majority of the Indonesian in its struggle to build a corruption-free Indonesia.

Besides the legislative, corruption also prevails whitin the judiciary. It spreads from the locale Police to the Lower Courts before making its way to State's Higher Courts (the arrest of the Constitutional Chief Justice by KPK in 2013 is sadly one example). Under the 1945 Constitution, the Indonesian Police force or *Polisi Republik Indonesia* (POLRI) is vested with power to enforce the law. In fact, Article 30 section 4 of the Indonesian Constitution stipulates that POLRI, as an instrument of the state that maintains public order and security, has the duty to protect, guard, and serve the people, and to uphold the law. This makes the police the very first guardian of the law. Unfortunately it seems like POLDA has lost credibility in the eyes of the population. My study investigates the relationship between the police and the Indonesian population by respondents whether or not they trust their local police as well as the Indonesian Police in general. Table 11 provides answers to this question:

The research reveals that 60% do not have trust in the police. When I asked the reason why, most of the respondents pointed at corruption. The police officers are not to the only ones to blame, the system of recruiting police officers, too, has a great part of responsibility. In fact, although there is no official data, it is repeatedly heard that a significant sum of money needs to be paid to whoever has power within the police hierarchy if one wants to join the forces. Should this be true, a policeman might want to get back all the money he paid by unjustly and illegally taxing the population. There is a lack of data because the subject matter is corruption which is always underground, thus elusive. It can also be inferred from the above data that a vast majority of the Indonesian population thinks that the police does not or cannot provide justice. This really is detrimental to the rule of law whose purpose is to strengthen institutions of the state by increasing the people's trust inthem. The people's mistrust in the police contributes into weakening the justice system. Another major factor that contributes into weakening the Indonesian justice system is the corruption of the judges. The corruption within the judiciary has been exposed to the public by the Corruption Eradication Commission or *Komisi Pemberantasan Korupsi* (KPK) ever since its establishment in 2002 under Law No. 30 of 2002. From 2004 to 2014, KPK has investigated and repressed 450 corruption cases not to mention those dropped due to lack of sufficient evidence. Of these 450 cases, 77 were perpetrated by the Parliament members and 11 were committed by High Court judges. The arrest of the Constitutional Chief Justice in 2013 is the most critical of all the corruption cases prosecuted by KPK. In fact, on the night of 02 October, 2013, Constitutional Chief Justice, Akil Mochtar, the highest officials of the country and therefore head the highest institution of law enforcement in Indonesia (the Constitutional Court or *Makahmah Konstitusi* (MK)) was arrested by KPK. He was suspected of accepting bribes related to the election dispute case of two heads of the region, namely in Gunung Mas, Central Kalimantan and Lebak, Banten. The alleged corruption involved evidence of money around Rp. 3 billion in foreign currency and Rupiah. KPK steeped in this corruption case after receiving a report from the public since the beginning of September that year. Such a scandal not only ruins the reputation of the Indonesian Constitutional Court, but more importantly, it does help reinforce the skepticism of the Indonesian people toward their institutions. The Indonesian 1945 Constitution recognizes five courts: Public Courts, Religious Affairs courts, Military Tribunals, and State Administrative Courts, and Constitutional Court. When asking the Indonesian people what in their opinion all these courts suffer most, they mostly point at corruption. It is very common to hear people say that the Indonesian Justice System only works for the affluents, that 'all you need to win is money', says a respondent during the research.

6.5. Unsynchronized Law

The Indonesian Legislative order is set forth in Article 7 paragraph (1) of Law No. 12 / 2012 as follows:

- The Indonesian Constitution (*Undang-undang Dasar 1945*);
- The Provision of People's Consultative Assembly (MPR);
- Statutes (*Undang-undang*) / Interim Emergency Laws (*PERPU*);
- Government Regulation (*Peraturan Pemerintah*);
- Presidential Regulation (*Peraturan Presidenor PP);*
- Provincial Regulation (*Peraturan Daerah or Perda*);
- District Regulation (*Peraturan Kota*).

For the Indonesian legal system to be intelligible and effective there should be a vertical synchronization between the above Laws/Regulations (though no room is made for customary law). This means that each type of law must not conflict with any law higher than its own type in the hierarchy; and a law can amend or repeal a law lower than its own type in the hierarchy. Simply speaking, a Provincial Regulation or *Peraturan Daerah* (*Perda)* is legally valid, only if/when it does not contradict a law higher on the hierarchy; and, once passed, a *Perda* may be canceled by any statute higher on the hierarchy. Unfortunately however, numbers of contracting laws within the Indonesian Legislation help prove that conformity in laws is yet to be achieved. My study on the West Sumatran communal land (*tanah ulayat*) tenure came

up with some contradictions between central and regional laws.

Case 1: Provincial Government regulation No. 9/2000, *nagari* government is vested with authority over *tanah ulayat* for the benefit of all community members, yet there is a Presidential Decree (Decree No. 10/ 2001) promulgated in 2001 that says land administration throughout Indonesia should be centralized. This Provincial Regulation not only contradicts the Presidential Decree, but it is also in contradiction with Article 33 section 3 of the Indonesian 1945 Constitution which stipulates that land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.

Case 2: Indonesian Government Regulation No. 24/1997 in its Article 9 Section 1 says the types of lands subject to registration throughout Indonesia are the following:

1. land property, the right to cultivate, to build, and to use.
2. land management rights;
3. property for religious and social purposes;
4. apartment ownership;
5. mortgage;
6. State land.

Clearly the provision does not include *tanah ulayat* as land that can be registered. Nevertheless, the West Sumatran Local Government enacted Law No. 16/2008 which, unlike the Basic Agrarian Law, instructs on how *tanah ulayat* can be registered at the District Land Office. Is this Regional Regulation meant to improve or to challenge the Government Regulation No. 24/1997? The answer possibly lies in the hands of those who enacted these laws. Two other cases of contracting laws in other Indonesian Regions in addition to the above two are worth discussing.

Case 3: Madiun District *Perda* No 4 of 2001 on the Establishment of the Village Representative Body. This *Perda* aims to provide greater representation to women and youth. However, this Local Regulation was met with discontent from the village leaders on the ground that it contradicts Mministry of Home Affairs' (MOHA) Decision No 64 of 1999, which does not provide for this greater representation.[49]

Case 4: Tangerang City Perda No 8/2005 on Prostitution. This Regional Regulation forbids anyone whose attitude or behaviour is 'suspicious, making him or her appear to be a prostitute' from being on a road, hotel, or 'other places' in the city (art 4(1)). It also prohibits persons from working as prostitutes or running brothels (art 2(1) and (2)). This *Perda* violates some of the fundamental rights enshrined Indonesian Constitution such as equality before the law, and non discrimination. By targeting certain individuals the *Perda* breaks with one of the core principles of the law i.e. the generality of the law. This also contradicts the Indonesian Criminal Code (*KUHP)* as it does not guarantee the presumption of innocence. Finally, this *Perda* contradicts many sections of the Article 28 of the Indonesian 1945 Constitution. It also contradicts Law No. 39/ 1999 on Human Rights. There are numerous other cases but I have enumerated here just a few. In no way I argue that Indonesian legislative bodies are in war with each other as many of their laws contradict one another. Instead, I suggest that there should be more synergy with regard to the law making process for a more comprehensible and efficient legal system.

7. Conclusions

A number of studies suggest that Indonesia has known two legal systems i.e., the pre-independence and the after independence legal systems, and that legal pluralism in Indonesia is the consequence of colonialism. It is important to note that during the last decade or so, Indonesian legal system underwent a series of crucial reforms to the extent that it is no longer scholarly to assume that these two periods helped shape the Indonesian legal system. A third period known as *Era Reformasi* constitutes a major turning point within the Indonesian legal system in that it broke up radically with colonial legal tradition put in place before and after independence was obtained. It is also false to believe that legal pluralism is the product of colonialism in that the Indonesian people have been practicing it ever since Religion was introduced into Indonesia which is prior to colonialism. Though vital, the reforms brought up by *Era Reformasi* did not suppress *adat* and Islamic laws that make up the Indonesian legal system besides the National Law. Instead, it contributed to promoting them through decentralization process. The revilal of *nagari* government after the fall ofpresident Suharto as discussed in Chapter 3 is a good example. However, the changes brought about by *Era Reformasi* did not very much provide room for *adat* law within the Indonesian legal system as discussed above. Despite the ongoing effort to improve Indonesian legal system, several issues need to be addressed such as the hegemony of false/ corrupt ideas of the Western legal tradition, the neglect of *adat* laws, high level of corruption and nepotism, and weak and unsynchronized laws. In addition to these problems, which need to be addressed, the average Indonesian citizen, too, we have put some suggestions in Table 12.

[49] See Supreme Court Decision No 03 G/HUM/2002

Table 12: Things to do to improve the Indonesian legal system

Age of Respondent	Type of answer, Gender & Number of Respondent											
	Unify legal systems		Legal Pluralism		Prioritize Adat law		Judicial Freedom& Integrity		More Courts		Train Judges	
	Sex of Respondents											
	M	F	M	F	M	F	M	F	M	F	M	F
18-28	43	21	6	9	12	13	4	10	2	4	34	26
29-39	10	13	3	1	5	2	1	2	1	1	8	8
40-50	10	12	1	1	2	2	1	3			2	2
51-61	13	1	1		3	1					1	
62-72	3				2							
TOTAL	79	47	11	11	24	18	6	15	3	5	45	36
%	**48**	**35**	**7**	**8**	**14**	**13**	**4**	**11**	**2**	**4**	**27**	**27**
Combined %	**42**		**7**		**14**		**7**		**3**		**27**	

It can be concluded from the above data that a vast majority of the Indonesian people (42%) consider unifying legal systems as one of the major key solutions to addressing the Indonesian legal system problem. No wonder why most of them (52%) say they would rather choose State Courts in seeking justice (see Table 17). In addition to this 42%, 27% believe that training judges could also help solve the problems that the Indonesian legal system is facing.

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STATUTES

See Article 18b of the Indonesian 1945 Constitution

Supreme Court Decision No 03 G/HUM/2002

Religious Judicature Act No. 7/ 1989, and art. 3-5(1)

Law No. 32/2004 on Regional Government (Indonesia), which replaced Law No. 22/1999 on Regional Government.

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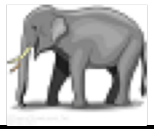

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