



Universiteit
Leiden

The Netherlands

**Het Nederlands hoger onderwijsrecht: een
thematisch commentaar op de Wet op het hoger
onderwijs en wetenschappelijk onderzoek**

Louw, R.G.

Citation

Louw, R. G. (2011, June 9). *Het Nederlands hoger onderwijsrecht: een thematisch commentaar op de Wet op het hoger onderwijs en wetenschappelijk onderzoek*. Leiden University Press, Leiden.

Retrieved from <https://hdl.handle.net/1887/17700>

Version: Not Applicable (or Unknown)

License: [Licence agreement concerning inclusion of
doctoral thesis in the Institutional Repository
of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/17700>

Note: To cite this publication please use the final published version (if applicable).

SUMMARY

This book is entitled 'The Dutch Law on Higher Education'. It concerns the law relating to higher education, which includes both academic education and higher professional education. It also relates to the institutions that are responsible for providing education: the universities, the universities of applied science, the Open University and other higher education institutions, as well as those organisations that are closely connected to them. These comprise the teaching hospitals, the Netherlands Organisation for Scientific Research (NOW), the Royal Netherlands Academy of Arts and Sciences (KNAW) and the National Library of the Netherlands (KB).

The law on higher education is largely set out in legislation, both government legislation and regulations established by the institutions. The jurisprudence of the different courts is also important. This dissertation does not address the internal regulations of the institutions as these differ from institution to institution and therefore have a limited local significance. The most relevant form of legislation for this dissertation is the Higher Education and Research Act (WHW), which regulates not only the relations between the institutions and the government, but also those of the institutions and their staff and students. This Act stipulates prescriptions – at times very detailed – on the internal business of these institutions, such as how their management boards are structured and the arrangements for co-participation by staff and students.

The WHW to a large extent determines the relationship between government and the institutions. The assumptions about the question of what form this relationship should take and what the responsibilities of government and the institutions should be in the area of higher education have undergone considerable change in the course of time. This can be seen in the regular amendments to the legislation on higher education that have been introduced over the years. The question is whether the division of responsibilities of government and higher education institutions as set out at a particular point in time are still adequate and whether it is possible to increase the independence of the institutions in relation to that of the government, naturally without prejudicing the responsibility of the government. The primary aim of this work is to provide an answer to this key question.

To facilitate this aim, this dissertation will describe and analyse thematically current higher education law based on the WHW. The subjects that will be addressed include: institutions, the open education system and regulation, quality assurance and accreditation, funding, teaching, examinations and the awarding of diplomas, staff, students, the management structure of the institutions, co-participation, legal protection for staff and students and the relationship between the universities and the teaching hospitals.

These subjects will be addressed in turn and commented on in the different chapters of the dissertation. At the end of each of these chapters the key question will be addressed and conclusions will be drawn; where necessary alternatives will be proposed. The final chapter of the dissertation will outline all the conclusions.

This description and analysis will highlight the principles and concepts relevant for higher education, thereby serving a second objective of the dissertation: to improve awareness of legislation on higher education and to give greater insight into this legislation.

According to current opinion, the government is responsible for:

- the system of higher education and research, and specifically for taking decisions on the accession of institutions and – should there be indications for this – the (enforced) expulsion of institutions from the system, as well as regulating procedures for accession and expulsion,
- . the presence within the system of a range of educational programmes that meet the different societal needs,
- the presence of an adequate system for monitoring the quality of teaching and research,
- the accessibility of higher education for eligible candidates,
- adequate funding of higher education and research, and
- the effective deployment of government resources and thereby also an effective structure for the system.

To enable the government to meet its responsibilities, it has a number of authorities. This dissertation proposes placing these authorities at a higher level of aggregation and allowing several other authorities to lapse.

Three principles will be formulated in this dissertation. These principles and the proposals based on them that will be formulated in this dissertation are as follows:

1. Increasing the independence of the institutions, including in the area of the teaching programmes offered.

The independence of the institutions means on the one hand that the government only has those authorities in relation to the institutions that are assigned to it by law, and on the other hand that the institutions have the freedom to do what they wish provided this contributes to achieving their aims or serves these aims and provided they observe the conditions set out in the WHW and other Dutch legal rules – both written and unwritten.

This independence is a pre-requisite for efficiency. Moreover in this way the responsibility is placed where it belongs. Independence on the part of the institutions is a means of preventing government legislation being used to avoid responsibility, ensuring it is not used as an alibi by the managers of the institutions. A further

consideration that advocates in favour of greater independence for Dutch academic universities and universities of applied science is the fact that they no longer operate exclusively within the national market. They are now players in the international market of knowledge institutions, where there is fierce competition for the best staff and students. Dutch institutions need to be attractive for these staff and students. To achieve this, not only is it necessary that the teaching and research at Dutch universities are of a high standard, but it is also important that the institutions offer attractive initial and post-initial programmes and PhD tracks. The Dutch government should ensure that the institutions are capable of this and should not impede the curricula by imposing bureaucratic procedures and criteria derived from national concerns.

Reflecting this principle, this dissertation proposes shifting the point where government direction applies from the level of the educational programme to a higher level. For accreditation this is the institution and for funding, the domain. A domain is more comprehensive than a programme. Examples of domains are: historical sciences, behavioural sciences, non-western language and cultures. The domain replaces the programme only for the purposes of funding. The department as such will continue to exist. Students continue to study in a department and not in a domain.

In the proposed structure an institution will be accredited as an university or a university of applied science if it provides academic teaching and scientific research, or provides higher professional teaching and carries out research that is focused on professional practice, and providing it meets the following conditions:

- the organisation and implementation of the system of quality assurance meet the demands that can be imposed on it, bearing in mind what is common practice internationally,
- the continuity of the institution is safeguarded, and
- the integrity of the management of the institution is adequately guaranteed.

Accreditation is awarded by the Minister. In terms of the question of whether the first condition is met, the Netherlands-Flemish Accreditation Organisation makes a (binding) recommendation to the Minister.

Along with the decision on accreditation, the institution is also assigned the domains requested/desired by the management of the institution. The legal title and any further civil effect (appointment to particular professions, for example) are only connected to programmes that form part of one or more of the domains assigned to the institution.

Only accredited institutions can be funded. The Minister determines those domains for which an institution can be funded. In doing so he applies the criteria of 'added value' and 'macro-efficiency':

- given the nature and content of the teaching programmes offered by the institution or the particular way in which the programmes are taught at the institution, there has to be added value for the higher education system and research, and

- the funding may not in the long term result in substantial disadvantages or unduly negative effects for the existing range of programmes at the institutions funded or for the exploitation of the capacity and infrastructure at these institutions.

Ministerial authorities relating to the locations of programmes should cease. These authorities are neither necessary nor desirable. Moreover, they are not found in the Education and Professional Teaching Act, oriented towards the WHW.

2. The creation of a level playing field for all higher education institutions in the Netherlands, as far as possible.

This is essential for fair competition between the Dutch institutions on both the national and international market. Based on this principle, this dissertation proposes selecting a more modern and open system for higher education. This means that institutions that meet the required quality standards in terms of their teaching and research should be eligible for accreditation. Designated non-commercial institutions should have the opportunity - if they so desire - of obtaining government funding. This principle also means that the differences between public and special institutions should be eliminated. This can be achieved by converting all those institutions that are still public, into special institutions. The category of idealistic institutions with their limited mission should be eliminated as such. These are after all simply universities. The conditions stipulated by the government relating to the quality of teaching and research should be the same for funded and non-funded institutions.

3. Standardisation.

A level playing field for funded and non-funded institutions also means that all types of special regulations for funded institutions, that in themselves have nothing to do with the funding, should be terminated as far as possible. That which is common practice in society can and should also apply to institutions of higher education. This includes personnel policy, employment conditions, co-participation and legal protection for staff. This means, for example that the Works Councils Act (WOR) will apply in full to institutions of higher education, and that as a consequence of this the co-participation of students has to be organised separately, but in line with the principles of the WOR and the statutory regulations on client councils in the care sector. This means that the student councils will have no right of consent, at least not with regard to intended decisions of the management relating to the strategy and structure of the organisation. Students are and will remain transient for the institution.

These proposals will increase the independence of the institutions, whereby they will be in a better position to maintain and where possible improve their position in the international market in which they as knowledge institutions operate. The Minister decides on accreditation and funding, but equally – if there are grounds for this – on the withdrawal of accreditation and funding.

Finally, with regard to the formation of university medical centres, this dissertation will give an indication of how the relation of the universities to these centres should be set out in law.

