

VILLAGE JUSTICE IN INDONESIA

Case studies on access to justice, village democracy and governance

February 2004

Acronyms

ADB	Asian Development Bank
BAPPENAS	Badan Perencanaan Pembangunan Nasional (National Development Planning Board)
BAPPEDA	Badan Perencanaan Pembangunan Daerah (Regional Development Planning Board)
BPD	Badan Perwakilan Desa (Village Parliament)
CAS	Country Assistance Strategy
CGI	Consultative Group on Indonesia
DPRD	Dewan Perwakilan Rakyat Daerah (Regional Parliament)
GDS	Governance and Decentralization Survey
GOI	Government of Indonesia
ICG	International Crisis Group
KDP	Kecamatan Development Program
KUHAP	Kitab Undang-Undang Hukum Acara Pidana (Criminal Procedure Code)
KUT	Kredit Usaha Tani (Farmers' Credit Union)
LBH	Lembaga Bantuan Hukum (Legal Aid Institute)
LKMD	Lembaga Ketahanan Masyarakat Desa (Village Community Resilience Council)
LLI	Local Level Institutions
LMD	Lembaga Musyawarah Desa (Village Consultative Council)
NGO	Non Governmental Organization
NMC	National Management Consultants
PCD	Project Concept Document
PKK	Program Kesejahteraan Keluarga (Family Welfare Program)
Polsek	Kepolisian Sektor (Sub-district police office)
SCRAP	Support for Conflict Ridden Areas Project
TAF	The Asia Foundation
TPKD	Tim Pelaksana Kegiatan Desa (Village Implementation Team)
TI	Transparency International
UDKP	Unit Daerah Kerja Pembangunan (inter-village forum)
UPK	Unit Pengelola Keuangan (Financial Management Unit)
UPP	Urban Poverty Project
UU	Undang-Undang (law)

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Executive Summary

Getting the justice system to work better is one of Indonesia's most important tasks—particularly for the poor. Poor people in Indonesia have long been let down by their justice system. The failures of the system contribute to poverty and insecurity and, with the weakening of the local military and other repressive controls of the New Order, have contributed to rising levels of conflict and vigilantism.

Most studies of the justice system focus on formal legal institutions: the police, prosecutors and courts. Reform proposals follow suit. Yet justice is not simply the realm of the state and its formal legal organs. People speak of a 'just' outcome when referring to resolving disputes not only through the courts but also through mediation and negotiation. Comprehensive strategies for improving poor people's access to justice should thus encompass both formal and informal dispute resolution, starting with people's experiences and not just the legal system.

In Indonesia, though, both informal and formal justice institutions have served the poor badly. In an environment where people's existing institutions have tended to fail them, what kinds of reform strategies are likely to succeed? This paper starts by seeking to understand how poor people in Indonesian villages resolve disputes and what kinds of factors in particular enable them to succeed. It analyzes eighteen cases in which Indonesian village communities have sought access to justice, tracks how these attempts have unfolded and examines the considerations that guided people's choices at each stage. In doing so, it aims to (i) understand the preferences and expectations of villagers in resolving disputes and defending their interests; (ii) identify patterns in the interaction between poor communities, village institutions and the legal system; and (iii) identify what factors enabled poor village communities to defend their interests successfully in an environment of institutional weakness.

The paper is based on eighteen ethnographic case studies from fourteen different locations in nine provinces in Indonesia. Most of the cases studied were of corruption in village development projects. The researchers used these cases as entry points for wider research on dispute-resolution. Over a thirteen-month period, the research team conducted interviews with over five hundred people, ranging from ordinary villagers to academics, NGOs, community and religious leaders, project consultants, lawyers, political leaders, government officials and police, prosecutors and judges.

Main Findings from the Case Studies

A. Informal dispute resolution

Villagers and village leaders preferred to resolve disputes informally. Several considerations informed this preference. First, they perceived informal mechanisms to be cheaper, quicker and easier to use than the formal legal system. Time, distance and cost were especially serious obstacles in rural areas where, in one place, it took villagers three days and the equivalent of half the minimum monthly wage to travel to the district capital for police interviews. Second, villagers perceived informal negotiation to be less socially disruptive than using the legal system. Their emphasis on harmony largely reflected the realities of village life, where people are known to and depend on one another, but it also reflected a fear of revenge and—for village leaders—a desire to preserve the status quo and avoid external scrutiny. Finally, villagers knew little about the law, distrusted it and perceived it to be beyond their control. "If a dispute goes to the police, we

don't know what happens...we can't control the process," said one villager. "If you report a case in Indonesia," said another, "it's like you're reporting a master to his friends."

Efforts at resolving village level cases tended to be led by community leaders or project facilitators, not by ordinary villagers themselves. This reflected several factors. First, most of the cases studied were community level cases, not household ones. Villagers with no position of responsibility thus had few individual incentives to become involved. Second, villagers preferred to act through figures whom they had elected to be their leaders and who had better access to informal and external networks of support. Finally, the history of impunity for the perpetrators of corruption made some ordinary villagers feel that their efforts at combating it would be futile.

Despite preferring to resolve problems informally, village communities were unable to do successfully using existing village institutions in cases where there were large power imbalances between the parties. Village institutions were especially inadequate in cases where the perpetrators were government officials or had close ties to them. As a result of these power imbalances, the perpetrators did not fear social sanction or did not take the threat of legal sanction seriously. In cases without these power imbalances, village communities were able to resolve problems informally. They were able to do so through mobilizing social and political pressure and by using the threat of legal sanction to improve their informal bargaining power. As one community leader in Semarang said, "If we report the case to the police, we don't expect the police to do anything, but we do hope it will work as a threat against the perpetrator."

Even though village communities preferred to resolve problems informally and were aware of the well-known weaknesses of the legal system, they were willing to use the legal system as a last resort for defending their interests in cases where their existing village institutions had failed.

B. Formal dispute resolution

Villagers' access to the legal system tended to depend on whether they had facilitators with links to legal aid NGOs, local government or the management structures of the village development projects studied. Such facilitators provided access to information, helped community leaders with organizing skills and linked community leaders with civil society groups capable of monitoring the legal system's performance.

On the whole, the police and prosecutors performed poorly. Their performance was characterized by intransigence, institutional lethargy and allegations of corruption. Police and prosecutors themselves identified a number of factors influencing poor performance. Inadequate operational budgets hampered investigations and, when combined with the lack of internal accountability structures, created a structural incentive for the police and prosecutors to engage in corruption and rent seeking. High levels of hierarchy and bureaucracy, combined with seniority-based promotion systems and distorted systems of rewards and punishments, encouraged delays and limited the incentives to do well. Most importantly, there were few accountability mechanisms between police, prosecutors and the public.

The courts, however, worked better than expected. Once cases passed through investigation stage and were brought to the courts, trials proceeded largely without delay, perpetrators were punished and for the most part, trial participants were satisfied with their experiences in court.

Thus, on the whole, the legal system was able to overcome local power imbalances to sanction the perpetrators of corruption. The cases set a valuable precedent against corruption and helped to build some level of community trust in legal institutions. However, execution of court decisions was problematic. In none of the cases that went to trial was the court verdict fully executed. Poor communication back to the communities of the results of legal action also reduced the impact of the positive precedents. This made them reluctant to use the legal system in future for similar cases.

Characteristics of success

The main characteristics of success were socio-political. They included the existence of community facilitation, grassroots mobilization, external scrutiny, transparency and links between justice-seekers, civil society organizations and external institutions. The successful cases had three main characteristics in common:

First, all successful cases had a dedicated ‘case leader’ or facilitator who could organize collective action and link villagers to external assistance. The most effective case leaders were socially or politically powerful or were backed by outside institutions that were independent from local power structures, such as the management structures of the development projects studied or religious organizations.

Second, the case leaders built links and coalitions with legal aid lawyers, local media and NGOs to raise public awareness of the cases and scrutinize the performance of legal institutions. Transparency and scrutiny applied by media and civil society coalitions was an aide to successful resolution, not a guarantee. But it did make it harder for police and prosecutors to engage in foul play and strengthened the hand of reformists who could be found within the system. Indeed, coalition-building efforts were most successful when civil society groups built networks with reformers inside the legal system or government. Irfanuddin, a reform-minded judge from Lampung, noted that the support of NGOs and coverage from media protected him from external threats and freed him from internal pressures to deliver a verdict in favor of the accused regardless of the evidence.

Third, the cases that succeeded were those that attracted a wide range of constituents. Taking cases to the formal system appeared to lift them into the public domain, mobilizing a range of constituents whose interests coalesced around those of village communities—in a way that informal village institutions alone could not. Legal aid lawyers and NGOs were able to use the cases as opportunities for broader advocacy; the World Bank was able to use the cases as opportunities to show its seriousness about combating corruption; and local governments were able to use them to show their seriousness about combating corruption from donor projects.

Implications

This report recommends a two-track strategy: (i) structural reforms to be put in place by the government to address the endemic institutional weaknesses of the legal system and to enhance informal dispute resolution; and (ii) case-driven donor legal empowerment interventions that focus on building demand, providing facilitation, organizing skills and access to external assistance, and creating small, visible examples of success. The strategy inherent in this view is that reform takes place not simply through top-down systemic change but through setting precedents and creating visible examples of success. It involves

targeting assistance at high profile cases and supporting the efforts of reformist individuals within the justice system to help them build networks with other reformists and civil society organizations.

The report makes three main recommendations to the Government of Indonesia. First, the government should put in place structural reforms to the legal system to (i) improve the quality of personnel, though overhauling recruitment, selection, promotion and transfer policies; and (ii) improve working conditions, in particular ensuring that police and prosecutors have operational budgets. These measures should not be put in place, though, without also instituting measures to improve systems of accountability. Second, the government should enforce and strengthen the regulations concerning investigations, through (i) enforcing regulations that hold police and prosecutors accountable for obstructing investigations, (ii) enforcing regulations requiring police and prosecutors to provide information to the public about the progress of corruption cases, and (iii) establishing regulations to limit the duration of investigations. Finally, the government should put in place measures to enhance informal dispute resolution and bridge the court-community gap, through (i) ensuring that district regulations to ensure a democratic election process for village parliaments (BPD) are made a priority; and (ii) assessing policy options for establishing village tribunals or conciliation councils that provide state recognition to a representative village dispute resolution process, such as the *barangay* system in the Philippines.

The report makes recommendations to donors, NGOs and other institutions concerning both the principles of legal empowerment and the way in which legal empowerment interventions can be integrated with community development programs. First, we recommend an integrated, case-driven approach to legal empowerment in which access to justice interventions are thought of as part of a broader effort at advocacy and community mobilization, not as a stand-alone activity. Such efforts should focus on providing legal assistance on a case-by-case basis, helping to ensure that the interventions are made relevant to villagers' legitimate self-interest. They should use the cases as opportunities for providing legal assistance, supporting community mobilization, fostering links to civil society and supporting civil society organizations to monitor the performance of the legal system. Second, the report recommends that access to justice projects should not privilege the courts as a means of dispute resolution. The aim of such projects should not be to raise litigation rates but to open up people's choices and improve the way that both the informal and formal institutions of justice serve poor people.

Finally, the report recommends that village-level development programs can be good vehicles for access-to-justice interventions. These interventions would (a) help build up local organizing skills and provide the facilitation and brokerage skills necessary for villagers to access the legal system should they choose to do so, on a case-by-case basis; (b) help the legal system to work better for village communities once they reach court, particularly through linking village communities with civil society organizations and strengthening institutions that monitor the performance of the police, prosecutors and courts; and (c) help to ensure that the progress and results of cases are communicated actively back to the communities at hand. Such interventions require intensive facilitation in the form of legal aid activists, project facilitators or paralegals.

These kinds of broad-based local justice interventions can complement a national reform program in a way that avoids ineffective legalisms and focuses assistance on where it is most wanted. In doing so, they can go some way towards strengthening poor people's representation, enabling them to resolve their disputes successfully, and supporting Indonesia's efforts at reform.

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Part 1

Introduction

I. Introduction

Cries for help from the community go unheard by those in power. It is better to concentrate on working, to fill our stomachs, than worry about this problem anymore. The community is weak. It's better just to stay quiet. – Resident of Ayawan, Central Kalimantan

Poor people in Indonesian villages have long been served badly by the justice system. Informal justice institutions, such as local custom (*adat*) and village government, are constrained by village hierarchies and local power imbalances. Formal justice institutions—the police, prosecutors and courts—are biased and remote. As a result, many choose to bury their grievances instead of seeking redress. But in the absence of the repressive controls imposed under the New Order, such disputes have often spilled over into violence and vigilantism. The weaknesses of the justice system help to perpetuate these problems. They also contribute to poverty and insecurity and constrain the political legitimacy of the government.

Much is written on the failures of the justice system in Indonesia, but little on what works well. In a country with a weak legal system, widespread corruption and a history of top-down control of political institutions, what enables poor communities to defend their rights and interests successfully?

This paper examines how poor village communities have sought access to justice in an environment where existing institutions have, more often than not, failed them. The New Order government instituted policies that weakened traditional dispute-resolution mechanisms, created authoritarian villages with few avenues of redress for poor people, and made the legal system weaker, more corrupt and less accessible. But since the fall of the Soeharto government in 1998, Indonesia has undergone a period of social, political and economic change. Although Indonesia's transition has been difficult and uncertain, it has created openings for the justice system to serve poor people better. Village governance reforms, rising conflict and insecurity, and the lifting of restrictions on political activity in the countryside have created fluidity in the wider environment for village justice. In this fluid environment, a number of poor communities have attempted to defend their rights despite being marginalized from the justice system. In some cases, they have succeeded.

This paper examines such attempts. It examines the steps village communities took to defend their interests, the considerations that influenced their choices at each stage, and the kinds of things that enabled or prevented them from seeking redress successfully. The aims of the paper are to:

- Understand the preferences and expectations of villagers in resolving disputes and defending their interests, both informally and through formal legal institutions
- Identify patterns in the interaction between poor communities, village institutions and the legal system
- Identify what factors enabled poor village communities to defend their interests successfully in an environment of institutional weakness

The underlying aim of the paper is to understand what kinds of interventions, if any, would be likely to strengthen village representation and poor people's access to justice. The paper is part of the research of Justice for the Poor, a World Bank-funded local level justice program in Indonesia. The Justice for the Poor program complements the wider legal reform strategy of the World Bank in Indonesia, which identifies legal reform in its most recent Country Assistance Strategy as one of the top priorities for governance reform and poverty reduction. Together with the other donors that form the Consultative Group on Indonesia (CGI), the World Bank views legal reform as an essential element of Indonesia's transition.¹ Both the Indonesian government and people also consistently cite justice as one the top priorities for reform.

Yet most reform efforts in Indonesia have centered on national level policy. Comparatively little work has been done on the way the system works at the local level. The purpose of the Justice for the Poor program is to develop a sub-national justice reform and dispute-resolution strategy to improve poor people's access to justice institutions (formal and informal) and the likelihood of a just outcome from them.

The functioning of local level justice is the result of a complex and interdependent set of factors. These include the performance of lawyers, judges, prosecutors and the police; the strength of legal aid foundations, NGOs and local media; and the strength of informal institutions of justice, such as *adat* dispute-resolution mechanisms and ad-hoc community initiatives for dispute resolution. Opportunities for combating poverty through local justice reforms are thus not limited to structural reforms to the formal legal system. Several kinds of non-structural interventions would also improve poor people's interactions with the justice system, such those focusing on court monitoring, widening access to the justice system, and strengthening local capacity for dispute-resolution outside the courts.

Because many of these interventions concern political norms and social institutions, the kind of strategy required for them is different from that required for traditional legal reform approaches based purely on the formal institutions of the law. The Justice for the Poor program thus has wide-ranging aims: (i) to strengthen village representation and improve the quality of village governance; (ii) to improve access to the legal system and enhance its levels of transparency and public monitoring; and (iii) to improve and widen access to alternative mechanisms for dispute-resolution. The program supports these objectives through conducting analytical work on local level justice, designing interventions for local legal reform and dispute-resolution, and strengthening local-level partnerships among reformers.

This paper is part of the Justice for the Poor analytical program. Its other major research initiative, 'Mapping Reformers', builds on the village justice case studies and focuses on the legal system itself. It aims to identify reformers within legal institutions and obtain their internal perspectives on the problems of the legal system and what the best strategies would be to improve it. Its wider aim is to highlight the voices of reformers from within the system and work with them to develop strategies for reform. The 'Mapping Reformers' analytical paper will be produced in the first half of 2004.

The papers are part of a broader set of World Bank research initiatives that explore the changing role of local institutions in Indonesia in the post-New Order era. These initiatives include work on the changing role of village governance (Evers 2000); studies on Local Level Institutions (LLI) (Wetterberg 2004); a study of village corruption (Woodhouse 2004); a study on conflict and rural violence (Barron & Madden 2004; Smith 2003); and studies in progress of women migrant workers and on community development and conflict resolution (see Barron and others 2003). The central organizing question of the studies is to

understand the changing nature of transitional institutions and the kinds of things that would enable them to work better.

Why Indonesian village justice matters

Indonesia is the fourth-largest country in the world and one of the most diverse. It has a pluralistic legal system that mixes modern, post-independence legal codes and legislation with former Dutch colonial law, Islamic law and customary (*adat*) law.² It has between 200-300 distinct ethnic groups and *adat* groups, whose customs people use to resolve disputes along with village governance institutions and the courts (see Benda-Beckmann 1984; Haverfield 1999; Hooker 1978a, 1978b; Lindsey 1998). But for a country of such size and complexity, surprisingly little documentation exists about the way in which people use the justice system. Compared to many other countries, it is under-studied.

Yet understanding how people use the justice system in Indonesia is critical. Indonesia is at a juncture. The New Order government homogenized, co-opted and corroded many of the informal institutions through which people resolved disputes and defended their interests, putting in their place a powerful, centralized bureaucracy backed by a strong military. Since the fall of the New Order, the strength of both the military and the central bureaucracy has decreased. But it is not clear in many villages what will replace it. In this period of flux and instability, the failures of the legal system to provide security and help resolve disputes have contributed to heightened levels in Indonesia of conflict and rural vigilantism (see Barron & Madden 2004). The weaknesses of the justice system have contributed to many of the insecurities that poor people face in their day-to-day lives, such as insecurity of land tenure, conflict and ensuing insecurity of assets, lack of voice and low accountability from government, and corruption and elite capture of development funds.

Indonesia's transition is taking place along several fronts. One of these is administrative, though it has profoundly political implications. The decentralization laws of 1999 devolved power over most functions of government to district governments, including the power to re-establish traditional village forms and pass district-specific *adat*-related legislation. The laws also contain provisions for village governance that are intended to make villages more democratic but give wide leeway to district legislatures to determine how this takes place. Decentralization thus creates the potential for greater variance in local governance structures and the way people use customary law. Examining case studies of village justice is a lens through which to see how the social, political and legal changes wrought by Indonesia's transition are playing out at the village level across the country. The cases give insights into the institutional functioning of village democracy and social change in a country undergoing transition.

II. Cases studied

This report is based on eighteen case studies conducted in fourteen different districts in nine provinces across Indonesia. The findings drawn are based on in-depth qualitative interviews with over 500 people. The respondents included ordinary villagers, village leaders, project staff, lawyers, journalists, NGO and legal aid workers, religious leaders, academics, local government officials, district parliament members, and police officers, prosecutors and judges.

Approach

This paper conceives of access to justice not simply as access to the legal system but as enabling poor people to represent themselves and reach outcomes that they perceive to be just, whether through the legal system or informally. As such, the paper focuses not on the legal system alone but also on the range of other forums through which people in Indonesian villages resolve disputes, such as village government, the complaints procedures of development projects, and—though they rarely feature in this paper because the village communities studied seldom used them for corruption cases—traditional *adat* institutions.³ The paper refers interchangeably to this range of institutions as ‘village forums’, ‘village institutions’ or ‘informal mechanisms’. Although they are formal, village and local governments are included in the ‘informal’ category because they are outside the formal justice sector.

Which cases and why

Most of the cases examined are cases of corruption in village poverty projects funded by the World Bank. A number of considerations informed this choice. Although corruption is only one of the several kinds of problems—such as theft, land and inheritance—that cause disputes in village communities, it captures best the range of issues that concern this paper. Corruption of village poverty funds is a community-wide and not just a personal problem. It affects the poorest and most marginalized groups at whom funds are directed. The issue intimately involves village leadership, social hierarchies, and the other factors that influence poor people’s access to justice. The perpetrators of village corruption almost always hold authority and power, so, because of Indonesia’s history of patronage and corruption, cases where poor people have reached a ‘just’ outcome are unusual enough to warrant examination. Finally, although corruption is a crime in Indonesia, it is often treated as a civil dispute and so affords a rare opportunity to examine how communities handle disputes both informally and through the formal legal system.⁴

Choosing such cases introduced a selection bias. The projects have standardized procedures for resolving corruption cases and have local facilitators who are responsible for helping villagers to address complaints such as corruption. The projects are also funded by the World Bank, which has the power as a last resort to suspend funds to district governments if they do not prevent large-scale corruption. In practice this is hard to do, and the World Bank played only a background role in the cases studied. Nevertheless, villagers’ attempts to protect their funds in the corruption cases studied did differ in certain ways from similar attempts made elsewhere in Indonesia.

The cases did, though, provide an entry-point for the research teams to identify and study non-corruption cases and to conduct research on the broad preferences of villagers and their wider experiences in resolving village disputes. The findings contained in this report are based on these wider discussions as well as on analyses of the cases themselves. The non-corruption cases studied displayed similar dispute-resolution patterns to the corruption cases studied, providing some verification for the research findings. Other World Bank studies, such as the ongoing research on conflict and community development, will illuminate further the ways in which village communities resolve disputes, particularly those that turn violent (see Barron and others, 2003).

Methodology

The case locations were selected to cover a broad range of communities, with different levels of income, urbanization and proximity to legal institutions; different types of cultures; and differing strength of *adat* institutions. Data for the case studies were gathered through in-depth interviews of the main actors involved and analyses of any existing background information, such as lawyers' reports, government correspondence, supervision reports and World Bank *aides-memoire*. In each location, the researchers attempted to interview most of the people involved in the case to document their perceptions and experiences. In most instances, the research teams returned several times to the case locations to verify information and better understand the various layers of truth evident in each case.

The research teams then attempted to 'triangulate' the data—to layer the descriptions over one another to identify overlaps and inconsistencies in different versions of the same story. The teams mainly did so by mapping people's different versions of each story against a timeline and by thus attempting as far as possible to reconstruct each case. The research teams identified respondents through the help of local facilitators and other community members, and conducted interviews either individually or in small focus groups. Respondents sometimes participated by drawing maps and diagrams for the research teams.

The case studies provided an entry point for the research teams to interview villagers not simply about the particular cases at hand but also about their general perceptions and experiences of dispute-resolution. The provided an entry point also to identify other kinds of cases to be studied. Although fourteen cases are of corruption, the remaining four are of wrongful arrest or land conflict. Data about villagers' preferences and expectations are thus based on a wider (though still limited) range of cases than corruption alone.

The case studies do not attempt to be fully representative. They attempt instead to reconstruct in rich detail the social reality faced by the villagers and to understand from the actors' perspectives what kinds of choices they faced, what motivated them, and what kinds of interventions would have enabled them to resolve their problems better. Yet enough patterns and consistencies emerged across a wide range of cases and locations to shed light on village dispute resolution and the issues poor people commonly confront in dealing with the legal system. The patterns identified from the case studies are compared to the existing literature on village justice in Indonesia and data on perceptions of the justice system in Indonesia, drawn from a range of sources (see Asia Foundation 2001; ADB 2001; Bappenas 1997; Benda-Beckmann K. 1984; Lindsey 1999; Pompe 2003).

Main patterns

The box overleaf previews the main patterns identified in the case studies. We examine these patterns further in Part 2.

Box 1: Main findings from case studies

1. Informal dispute resolution

- Village communities preferred to use informal village institutions to resolve problems, perceiving informal dispute-resolution to be quicker, cheaper and easier than using the formal justice system.
- Efforts at resolving village-level corruption cases tended to be led by community representatives or project facilitators, not ordinary villagers themselves.
- Although village institutions succeeded in resolving a few corruption cases, as a whole they failed to do so successfully, mainly because (a) there were large power imbalances between villagers and the perpetrators of corruption, or (b) the perpetrators did not fear the threat of legal sanction.
- In cases where village institutions could not succeed, village communities expressed a willingness to use the legal system as a last resort for representing themselves.

2. Formal dispute resolution

- Access to formal legal institutions tended to depend on the presence of facilitators with links to legal aid NGOs, local government or the management structures of the village development projects, who could lead, facilitate and organize broader community action.
- The police and prosecutors tended to be unresponsive, though the courts operated better than expected.
- The legal system was—in certain circumstances—able to overcome local power imbalances to sanction the perpetrators of corruption in ways that informal systems were not.
- But the wider community impact of such successes was mixed. The cases set a valuable precedent against corruption and helped to build some trust in the law. However, delays in the execution of court decisions and poor communication back to the communities about successful cases made them reluctant to use the legal system in future to resolve similar cases.

3. Patterns of success

- The elements of success were mainly socio-political. Cases that succeeded were those in which community leaders mobilized at the grassroots, had links to civil society and had the backing of strong outside institutions.
- The success of village communities in resolving corruption cases through the justice system lay in the capacity of the formal system to mobilize a range of constituents whose interests coalesced around those of village communities, where village institutions alone could not.

III. Legal history, institutional failure and political change

The cases studied in this paper are situated in a specific historical and political context, which influences how the villagers chose to solve their problems and how the justice system behaved.

Legal history

The period between 1950-1957 is considered the freest period of Indonesian history for the politically articulate (Ricklefs 1981: 237). During this period, there were considerable upheavals in the newly established legislature, but the judicial system stood out as being respected and perceived as honest despite its shortage of trained personnel. From the 1950s to the early 1960s, the judiciary expanded, although, in a significant development for village communities, indigenous courts at village level were phased out (Pompe 2003: 6). During this period, the management of the judiciary was founded on a merit-based system that rewarded both seniority and performance. It was also fairly differentiated. Positions were assigned based on skill, jurisdiction, workload, and political exposure. These systems, which assured a standard of judicial quality, broke down in the New Order period (Pompe 2003).

Sukarno's introduction of Guided Democracy (*Demokrasi Terpimpin*) in 1959 formally subsumed the law under the power of the executive and scotched hopes for the emergence of an independent legal culture (Lindsey 1998: 7; Wignyosoebroto 1994: 209-223). From then on, the legal system was considered an arm of the executive, not a check upon it. Soeharto's authoritarian New Order government further marginalized the police, prosecutors and courts, leaving institutions that, at the end of the New Order period, were weak and compromised. A lack of strong leadership and political support has hampered the national efforts that have since been made to reform them.

Formal justice: the police, prosecutors and courts

Our legal system is like a spider's web; if it's a little insect that flies past it will be caught, but if it's a bird that comes along, it will just break the web. Village leader, Lampung

The systemic weaknesses of the Indonesian legal system are by now well known (see Bappenas 1997; Mahkamah Agung 2003; Pompe 2003). They include a lack of independence, endemic corruption, poor human resource development, poor management and low levels of accountability. The administrative, budgetary and management-related structures of the formal legal system have contributed to these weaknesses. They include:

- Poor quality of personnel and legal training
- High levels of corruption, where justice is perceived to be 'for sale': *mafia peradilan* (judicial mafia)
- Recruiting, budgetary and human resource structures that create structural incentives for corruption
- Poor internal management and a lack of meritocracy in the legal system
- Lack of independence and vulnerability to political intervention

At the local level, the head of the district court was a regular member of the *musyawarah pimpinan daerah*, an informal consultation among the military, the local government, the police and prosecutors. Such consultations enabled the military and local government to place direct pressure on the courts to act in a way conducive to the interests of the executive. This further limited the independence of the local judiciary.

This lack of independence is compounded by a lack of transparency. The police, prosecutors and courts also have few formal mechanisms of public accountability or oversight. Although court decisions are technically in the public domain, they are not routinely published, which means that civil society groups have few opportunities to expose the weaknesses and inconsistencies in court decisions and, by extension, indications of bribery and misconduct. There is also no system of witness protection in the Indonesian legal system for general cases, only for human rights cases.⁵

Although the police structure stretches down to the sub-district (*Polsek*) and in theory to village level (although in rural areas this is rare), the lowest level of courts in the Indonesian legal system is at the district level. In remote areas, district capitals can take up to a few days to reach. This limits the accessibility of the police, prosecutors and courts in rural areas.

Informal justice: *adat* institutions and village leadership

Despite Indonesia's extraordinary diversity, its 65,000 villages are characterized by some stark similarities. In 1979, the New Order introduced legislation that made each village an administrative unit at the lowest level of government hierarchy and introduced village government structures that concentrated village power almost entirely in the hands of the village head. Village heads were effectively accountable only upwards to their superiors, not to ordinary villagers. Apart from a village head, each village was required to have a village community resilience council for development planning (LKMD) and a village consultative council (LMD), now replaced by the village parliament (BPD). The village head appointed the members of these councils, which concentrated his power even further.

This system gave villagers few avenues through which to defend their interests. The only non-traditional avenues available were the state-sanctioned ones, but these were geared towards supporting the interests of the village head. Complaints in villages tended to be resolved through *musyawarah*, a process of group deliberation leading to consensus. But *musyawarah* were organized by the village head, who thus had little incentive to help solve problems that were detrimental to his interests.

Box 2: What are village institutions?

This report uses 'village institutions' to refer to (i) village government (ii) the forums created by projects such as KDP to make decisions and resolve disputes at the village or inter-village level and (iii) traditional *adat* institutions, though these were rarely used by villagers for the disputes studied and so do not feature prominently in the report.

Village government

Villages in Indonesia are lowest administrative unit of the government structure, which is set up as follows:

- *Negara* (Nation)– *Presiden* (President)
- *Propinsi* (Province) – *Gubernur* (Governor) (elected by provincial parliament, DPRD I)⁶
- *Kabupaten/Kota* (District/Municipality) – *Bupati/Walikota* (District/Municipality head) (elected by district parliament, DPRD II)
- *Kecamatan* (Sub-district) – *Camat* (Sub-district head) (NB after decentralization, now a part of the district)
- *Kelurahan* (Urban village) – *Lurah* (Urban village head – appointed)
- *Desa* (Rural village) – *Kepala Desa* (Rural village head – elected)

Each village is divided up further into hamlets (*dusun*) and neighborhoods (*RW/RT*), who have their own heads

- *Dusun* (Hamlet) – *Kepala Dusun* (Hamlet chief)
- *RW/RT* (Neighborhood) – *Ketua RW/RT* (Neighborhood head)

Village government in Indonesia has changed since the days of the New Order. Under the New Order, the village head was responsible for maintaining harmony and helping villagers to resolve their disputes, along with neighborhood and hamlet chiefs. Apart from the village head, the main forums for discussing community needs or resolving disputes were the village consultative council (LMD) and the village community resilience council for development planning (LKMD). But the village head appointed the members of these councils and effectively had authority over them, so there was no counterweight to his power.

The decentralization laws passed in 1999 contained provisions for village governance that were aimed at making villages more democratic. The main arm of village government is still the office of the village head, which is still responsible for helping to ensure that village disputes are resolved. But Law 22 of 1999 replaces the old, undemocratic village consultative council (LMD) with a new village parliament (BPD). BPD members are elected and have the right to recommend that the village head be dismissed if he fails to account for his actions. The BPD thus has the potential to act as a counterweight to the village head, as political rivalry may prompt its members to help groups of dissatisfied villagers to seek redress. But because the law gives district governments power to work out the implementing arrangements for BPD elections, its impact is likely to vary from place to place.

Project forums

In addition to village government institutions, development projects either set up semi-official forums (such as water user groups) or give institutional backing to pre-existing ones. The 'musbangdus', 'musbangdes' and 'UDKP', which are public meetings held at (*dusun*), village (*desa*) and sub-district (*kecamatan*) level respectively, are forums used by KDP to make project decisions and air complaints. Project facilitators are present at the meetings and help to organize them, so if villagers raise complaints, the facilitators support community efforts to seek redress and can call on the management structure of the project to help if necessary.

The effect of this homogenization and standardization was to weaken traditional forms of social organization and, by extension, alternative institutions for people to mount challenges to the existing order. World Bank studies conducted in Indonesian villages found that although such mandatory government organizations tended to increase total social capital, they marginalized and excluded poor people (Wetterberg 2004). But even where traditional institutions remained strong, they often excluded the poor and marginalized. Common perceptions of traditional village institutions romanticize them as harmonious and representative. Yet traditional village institutions too were battlegrounds for the control of power and

resources in which powerful families tended to dominate and the poor and marginalized were excluded. They did not always operate effectively for dispute resolution (see Benda-Beckmann, F & K 2001).

Examples of justice in an environment of failure

With the background of such serious institutional weakness, one would expect groups of dissatisfied poor people almost never to be able to defend their rights and interests successfully using the existing institutions. The cases studied by this paper are of attempts made by poor people to do so. They illustrate the conditions under which the institutional impasse is breached and the patterns that characterize success for village communities. They also highlight the extent to which Indonesia's transition is playing out at the local level in Indonesia and help identify what the potential entry points are to enable village communities to represent their interests more successfully.

Part 2

Findings from case studies

Introduction

The main body of this section is divided into five parts.

1. **Case overview.** This describes the cases that were analyzed and presents an overview of the patterns found.
2. **Main actors.** This identifies the main actors and institutions and examines their roles.
3. **Informal dispute-resolution.** This section compares the way that the informal mechanisms of dispute-resolution were used to resolve the cases. It examines how villagers' preferences and expectations contributed to the choices they made, and analyzes how successful the informal methods were in resolving the problems at hand.
4. **Formal dispute-resolution.** This section compares the way that the formal mechanisms of dispute-resolution were used to resolve the cases. It examines how the expectations of the main actors contributed to the choices they made, describes their experiences and analyzes how successful the police, prosecutors and courts were in resolving the case study problems. It examines why the formal system worked successfully for some cases but not others.
5. **Case impact.** This section examines the general outcome and impact of the cases.

I. CASE OVERVIEW

1. Description of cases

All of the disputes but four are cases of corruption from village development programs. Nine are from the *Kecamatan* Development Program (KDP), a \$1 billion village governance and development project funded by the World Bank in over 20,000 rural villages nationwide. Three are from its urban counterpart, the \$100 million Urban Poverty Project (UPP); another is from a government-run micro-credit program, *Kredit Usaba Tani* (KUT) (Farmers' Credit Union). The remaining cases arose in the corruption study sites. One was a case of wrongful arrest in West Sumba. The other three were community land cases in Lampung. They were chosen because they highlighted the strategies used by coalitions of civil society organizations, religious institutions, legal aid lawyers and local media in representing the interests of village communities. A detailed description of each case is in Annex Two.

The funds from the World Bank programs are in the form of a loan to the Government of Indonesia, and so belong to the state. Theft of these funds thus constitutes corruption by Indonesian law, which refers to corruption as the misuse of funds that causes "loss to the state" (*merugikan keuangan negara*). [See Law 31/1999, Part II, Articles 2 & 3].

Table 1: Description of cases studied

Location	Perpetrators	Description of dispute & amount	Actors seeking resolution	Process of resolution	Outcome
Bukit Kemuning, Lampung <i>Rural but accessible</i>	Government official	A <i>camat</i> (sub-district head) attempts to embezzle Rp 125 million (\$14,705) from a World Bank village poverty program. Village leaders report him to the police and monitor the trial with the help of an activist legal aid lawyer. The World Bank, civil society and local media also monitor the trial. The prosecutor attempts to obstruct investigations, but pressure from legal aid lawyers, NGOs, media and the World Bank combines to overcome this. The offender is found guilty of corruption and sentenced to a year in prison, repayment of funds and a fine of Rp 50 million (\$5880). After some prosecutor foot-dragging, he is imprisoned.	Village leaders Project facilitators Legal aid lawyer Local media NGOs World Bank	<u>Informal:</u> <i>No attempt made</i> <u>Formal:</u> <i>Prosecutors obstruct</i> <i>Courts successful</i>	Successful resolution through courts.
Mamodu, West Sumba, NTT <i>Rural, remote</i>	Government official	Government audits reveal that a local parliament member has embezzled Rp 60 million (\$7060) and Rp 22.5 million (\$2645) from two village poverty projects while in office as village head. Project staff and local government make several failed attempts to pressure the offender to repay the stolen funds. After a long delay with the prosecutors' office and pressure from the local regent (who invokes the World Bank's censure of similar cases in the region) the offender is tried, found guilty and sentenced to a year in prison, repayment and a Rp 5 million (\$590) fine.	Community leaders Project facilitators Local government District head (<i>bupati</i>)	<u>Informal:</u> <i>Attempts fail</i> <u>Formal:</u> <i>Prosecutors stall</i> <i>Courts successful</i>	Successful resolution through courts
Ayawan, Central Kalimantan <i>Rural, remote</i>	Government official	The village head embezzles Rp3.5 million (\$410) from KDP and Rp 13million (\$1530) from another village development program. Despite confessing and promising to repay the funds, he returns only a small portion. Attempts to hold him legally accountable are met with threats and intimidation from the police. There are few prospects of a negotiated or a formal resolution, and	Community leaders Project facilitators	<u>Informal:</u> <i>Attempts fail</i> <u>Formal:</u> <i>Police obstruct</i>	Unsuccessful. Case stalled & villagers have given up resolution efforts.

		villagers have largely given up.			
Tangerang, Banten <i>Urban</i>	Official with powerful connections	A person appointed as head of the village's credit union steals Rp1 billion (\$117,650) intended for a farmer's credit scheme. Local media and an anti-corruption NGO help put pressure on the local prosecutor's office to investigate. The offender flees but is tried in absentia and sentenced to eight years in prison. The case bore symbolic significance for bringing a corrupt union chief to trial.	NGOs Media	<u>Informal</u> <i>No attempt made</i> <u>Formal:</u> <i>Prosecutors stall</i> <i>Courts successful</i>	Successful resolution through courts but perpetrator has fled.
Tambusai, Riau <i>Rural</i>	Project facilitator	A local facilitator of a World Bank village poverty project is accused of embezzling Rp 94 million (\$11,060). The threat of criminal legal action and imprisonment forces the offender to start repaying the stolen money. As yet, Rp27 million (\$3175) remains outstanding, and an absence of public scrutiny of the legal process has let the case stagnate.	Project facilitators	<u>Informal:</u> <i>Attempts successful with threat of legal sanction</i> <u>Formal:</u> <i>Prosecutors stall</i>	Successful informal resolution.
Maniang Pajo, South Sulawesi <i>Rural</i>	Project facilitator	A project facilitator disappears with Rp51 million (\$6000) from a World Bank village poverty program. Villagers pressure the facilitator's alleged accomplice - the elected project financial manager - to repay the stolen funds, and report the case to the police. Once the money is repaid, legal action stalls	Community leaders	<u>Informal:</u> <i>Attempts successful</i> <u>Formal:</u> <i>Police stall</i>	Successful informal resolution but perpetrator scape-goated.
Rowosari, Semarang, Central Java <i>Peri-urban</i>	Project facilitator	A local facilitator of a World Bank urban poverty project runs away with Rp100 million (\$11,765), possibly with the co-operation of a group of powerful villagers elected to manage the funds. The community makes no attempts to resolve the problem informally. The project area manager reports the case to the police, but it stagnates.	Project facilitator	<u>Informal</u> <i>Attempts fail</i> <u>Formal:</u> <i>Police stall</i>	Unsuccessful. Case stalled & villagers suspect the police have been bribed.
Bintoro, Demak, Central Java	Villager	Three members of a board elected to manage the funds of a World Bank urban poverty project are accused of embezzling Rp 94 million (\$11,060). A team of active community members tries various informal strategies -	Team of community members	<u>Informal:</u> <i>Innovative and successful attempt</i>	Successful. Community satisfied with result.

<i>Urban</i>		including a threat of legal sanction - to get the money back so it can revolve back into the community. They are partially successful, as the old board has been disbanded and most of the money repaid.	Project facilitator		
Cipadung, Bandung <i>Urban</i>	Villager	A person elected to manage funds from a World Bank urban poverty project embezzles Rp 100 million (\$11,765) to build a private Islamic school. Grassroots community leaders form a team to investigate the corruption and report their findings to the police. The case is with the prosecutors' office, which has returned it to the police three times to collect more evidence. Community members are frustrated with the delays.	Team of community members	<u>Informal:</u> <i>Attempts fail</i> <u>Formal:</u> <i>Case stalls between police and prosecutor</i>	In progress. Community members dissatisfied with perceived delays.
Lebakwangi, West Java <i>Rural</i>	Villager	The head of a local financial unit for a World Bank village poverty program is suspected of embezzling Rp107 million (\$12,560). After half-hearted attempts at resolving the case through community meetings, the case is reported to the police. But due to the absence of community and local government pressure, the case stagnates.	Project facilitators Community Local Government World Bank	<u>Informal:</u> <i>Attempts fail</i> <u>Formal:</u> <i>Police stall</i>	Unsuccessful through formal and informal process.
Seruyan Tengah Central Kalimantan <i>Rural, remote</i>	Villager	A former <i>adat</i> leader and member of district parliament, now the individual elected to manage funds from the World Bank KDP project, embezzles around Rp 40 million (\$4705) from four villages. Despite a strong sense of social sanction, he does not return the money. Distance, time, expense and traditional institutional rivalry between the police and the prosecutors see the case stuck at the investigation stage despite significant public scrutiny of the legal system.	Community	<u>Informal:</u> <i>Attempts fail</i> <u>Formal:</u> <i>Case stalls between police and prosecutor</i>	Case stalled in formal system.
Sakkoli, South Sulawesi	Villager	The elected head of a village project implementation team steals Rp 27.5 million (\$3235) from a World Bank village poverty program. The village head reports the case when he discovers that the village is not eligible for the next	Village Head	<u>Informal:</u> <i>No attempt made</i> <u>Formal:</u>	Unsuccessful. Case stalled and villagers have given

<i>Rural</i>		round of project funds. But the police dismiss the crime as civil, and prosecutors stall, saying they have lost the report.		<i>Prosecutor stalls</i>	up.
Wanareja, Central Java <i>Rural, but close to district capital</i>	Villager	The project treasurer of a World Bank village poverty program embezzles Rp250 million (\$29,410) intended for micro-credit groups. Villagers seek to resolve the case legally after attempts at out-of-court settlements fail. A political party forum starts the process, followed by a report by a village head. The offender is tried, found guilty and imprisoned, but a government official allegedly implicated is not investigated. The money has yet to be returned.	Village head Local politicians	<u>Informal</u> <i>Attempts fail</i> <u>Formal</u> <i>Prosecutors & courts successful</i>	Successful through courts but money not returned to community.
Grobogan, Central Java <i>Rural</i>	Villagers (but allegedly also government official)	Villagers elected to manage a World Bank village poverty project are taken to court for embezzling Rp 24 million (\$2825). They are found guilty and imprisoned, but the alleged corruption mastermind—the village head—escapes sanction through alleged bribery.	Community members (BPD head) Project facilitators	<u>Informal</u> <i>Attempts fail</i> <u>Formal:</u> <i>Courts successful</i>	Successful through courts but perpetrators scapegoated.
Lampung Selatan, Lampung (three cases) <i>Rural</i>	Land conflict	A strong coalition of NGOs (Legal Aid), academics, media, bar association members, and government officials acts as a mediator in three cases of land conflict between communities and a company, the state forestry agency, and a state-owned plantation.	Community members NGOs, civil society coalition	<u>Informal</u> <i>Cases successful</i>	Successful attempts at mediation have reduced conflict.
Dikira, West Sumba, NTT <i>Rural, remote</i>		District police accuse a village head and seven others of murdering a police officer. The villagers are detained and tortured in jail. The Catholic Church intervenes to hire them a lawyer and ensure a fair trial. Despite pressure from the police and prosecutor, the district court finds the villagers innocent. But the case is sent to the Supreme Court, which finds four of the villagers guilty.	Journalist Catholic Priest	<u>Informal</u> <i>No attempt made</i> <u>Formal</u> <i>Courts successful</i>	Formal system partially succeeds.

2. Type of resolution

The disputes can be divided into three categories:

1. Those that were settled informally, without engaging the formal justice system.
2. Those that were reported to the police or prosecutors but went no further and so remain unsettled.
3. Those what went through the formal justice system and were settled in court.

These categories are simplified for the purposes of this paper. In reality, they are not mutually exclusive. Most attempts to resolve cases through the formal justice system were made because attempts at informal settlement had failed, whereas the attempts to reach an informal settlement succeeded when there was a threat of legal sanction.

The table below provides an overview of how cases were resolved.

Table 2: How corruption cases were resolved

Resolution of cases		Case settled informally	Case only reaches police/prosecutor		Case settled through courts
			Still in progress	Case stalled	
Alleged perpetrator	Government official or other powerful figure			Ayawan	Bukit Kemuning Mamodu Tangerang ¹
	Project staff	Tambusai ² Maniang Pajo ²		Rowosari ³	
	Villagers (elected to manage project)	Demak	Bandung	Lebakwangi ⁴ Seruyan Tengah Sakkoli	Wanareja ⁵ Grobogan ⁵

1. In Tangerang, one of the perpetrators was not charged.

2. The Tambusai and Maniang Pajo cases were reported to the prosecutor but stalled there. Most or all of the money has been repaid in each case.

3. In Rowosari, one of the perpetrators was a project facilitator. The other was a villager elected to manage the project, connected to a powerful Muslim religious leader (kyai).

4. The Lebakwangi case is going to trial, but only for one of the minor perpetrators.

5. The alleged mastermind of the Grobogan case and one of the alleged perpetrators of the Wanareja case were not brought to court. Both of them were government officials. Those charged were the villagers who also were implicated.

II. MAIN ACTORS

The main actors involved in the disputes studied were:

- **Perpetrators.** These were either government officials, project facilitators or ordinary villagers
- **Justice-seekers.** The primary justice-seekers were village leaders, who acted on behalf of villagers
- **External parties.** The main external parties were (a) project facilitators & project management; (b) local government; (c) the World Bank; (d) media & civil society; and (e) legal aid lawyers
- **Formal legal system.** *Kecamatan* or district police, district prosecutors and district courts.

1. Perpetrators of corruption

In all of the corruption cases, the perpetrators were government officials, project staff or villagers elected by their peers to help manage the project. But although all of the perpetrators had some formal authority (defined as occupying a formal position in relation to the project), they were not as socially or economically powerful as one another. Government officials, who had formal authority and high status, tended to be most powerful. The project facilitators who stole money tended to be outsiders and so were relatively independent of local power structures. Villagers elected by their peers to help run the projects tended to wield the least power, especially vis-à-vis the outside world.

Box 3: Profiles of perpetrators

- **Government official, Sumba.** In Mamodu, West Sumba, the perpetrator was a village head who later became a member of the district parliament. As village head, he openly misused World Bank money that villagers intended to use in a micro-credit scheme to raise cows, claiming that he had a right to use the money as he saw fit. Villagers were too fearful to protest, and local project facilitators were unable to convince him to repay the money. Local prosecutors charged him with corruption only after a two-year delay, when the district head (*bupati*) intervened, getting the governor's formal permission to prosecute a standing parliament member.
- **Project facilitator, Riau.** In Tambusai, Riau, the perpetrator was a KDP project facilitator. There, he and villagers elected as project treasurers regularly embezzled small amounts of money for their own purposes and flouted project rules. But after an audit, the KDP project management threatened to sack him. The facilitator was about to propose to his girlfriend and, feeling betrayed by his impending dismissal, immediately stole a much larger sum. Eventually, when threatened with legal sanction, he repaid much of the stolen money.
- **Villager, Bandung.** In Bandung, the perpetrator was a devout Islamic scholar whom the local community had elected to act as treasurer of funds from the Urban Poverty Project (UPP). But because of staff changeovers, there was no local project facilitator to supervise the project for five months. With no supervision, the scholar was able to misuse the money intended for micro-credit groups to fulfill his own personal dream of building an Islamic school. Grassroots community leaders formed a team to recover the funds and reported their findings to the local police. Local community members have not forgiven the scholar and continue to shun him socially.

2. Justice-seekers

Box 4: Profiles of justice-seekers: Demak

“This money has to go to the poor,” was the rallying point that a project facilitator in Demak used to mobilize a team of strong-willed community members to retrieve money embezzled from the Urban Poverty Project. The team’s key figures were grassroots community leaders in their small neighborhood: Kurnen, a retired bureaucrat who 15 years ago had pushed local government for his community to get electricity and roads; Labit, a hot-headed aspiring politician, and Harno, a young NGO activist. These three figures felt a civic obligation to their community, viewing the opportunity cost of standing up to the perpetrators of corruption as a long-term investment for its economic and social welfare. The other members of the team wanted the money repaid simply so they and other community members could receive more loans. It was, however, Kurnen and Labit who took the case forward. Labit disseminated information about the case to the community through an easy-to-read pamphlet highlighting the crimes. Kurnen contacted journalists to cover the case and pushed the Regional Planning Board to act as a third-party moderator for a series of discussions with the perpetrators. Their strategy of engaging community pressure, social sanction, transparency through the press and the authority of the government was mostly successful. The perpetrators repaid most of the money and were removed from the board responsible for managing the funds. And most importantly, the community felt empowered by their success. As project facilitator Yanto declared, “In the future, any time we do something for the community, that has benefits for the community, I’m sure that we will win.”

In most of the cases, the parties active in ‘seeking justice’ were not ordinary villagers but community leaders and project facilitators—indeed, from the same social groups, for the most part, that perpetrators came from. None of the cases were examples of collective action by ordinary villagers alone. Instead, grassroots community leaders—such as a neighborhood head in Demak—acted on behalf of the communities to which they were responsible. In some cases, ordinary villagers took what appeared to be a *laissez-faire* attitude towards the perpetrators of corruption. As one villager in Demak said, “If you did it once or twice, we could overlook it, but a third time, we wouldn’t forgive you. We would try to find a way to work it out.” In many other cases, though, villagers’ inaction signaled not apathy but a feeling that they were unable to take direct action. “People are unhappy about their money being taken,” said one villager in Ayawan, “but they protest only in the background because they are scared.”

The tendency of ordinary villagers not to become directly involved reflected several of their concerns:

- First, villagers preferred to act through figures whom they had elected to be their leaders and who, because of their better access to information and external networks of support, were likely to have more authority and better bargaining power. Ordinary people sometimes did get involved, such as in Seruyan Tengah, but asked community leaders to pursue the problems on their behalf.
- Second, the corruption cases were community-level cases, not household ones. Villagers with no position of community responsibility thus had few incentives to expend individual effort on resolving cases whose resolution would benefit not themselves but the community as a whole. “You generally have to find community leaders, people with an interest,” said one villager. “To get people involved is very difficult.”
- Finally, the history of impunity for the perpetrators of corruption made villagers feel that their efforts at combating it would be likely to fail. In Mamodu, for instance, ordinary people felt too powerless to take action against their village head’s corruption, though they later supported the efforts of outsiders to sanction him.

The community leaders who took the initiative to resolve cases were usually grassroots community leaders, such as neighborhood heads (Demak) or village parliament members (Bandung, Grobogan). These community leaders had active track records assisting their communities to resolve problems. They contacted journalists and project facilitators, wrote complaints letters, organized community meetings, and used the “personal approach” of directly pressing the perpetrators to redress their wrong.

Table 3: Role & motivations of villagers & village leaders

Main actors	Reasons for supporting resolution	Reasons for remaining passive/obstructing resolution
Villagers	<ul style="list-style-type: none"> • Desire to see money rightfully returned for good of community • Desire for funds to revolve for micro-credit • Anger/desire for justice 	<ul style="list-style-type: none"> • Apathy/fear • History of impunity: expectation that efforts will fail • Problems of collective action: individual effort is not worth the return
Village leaders	<ul style="list-style-type: none"> • Civic or moral responsibility • Enhancing social or community standing • Enhancing political capital/political rivalry with the accused 	<ul style="list-style-type: none"> • Ties to perpetrators • History of impunity

The motives of these community leaders differed. Some had political motives. In Grobogan, for instance, the head of the village parliament combined his desire to defend community interests with a desire to diminish the power of his rival, the authoritarian village head. In Wanareja, an inter-political party forum saw the case as a chance to secure legitimacy and demonstrate their reform credentials. The most active justice-seekers, though, were motivated by a sense of civic duty or moral obligation. When the case leader in Demak spoke of first hearing about the corruption, he said, “We as a community felt this loss was ours.” The *lurah* (urban village head) in Bandung said, “I wanted to save the community’s money, because that money... will improve the welfare of the community, if it’s used well, if it’s channeled properly.”

Box 5: What are ‘villagers’ & ‘village leaders’?

We use the term ‘villagers’ in this report to refer to ordinary men and women in Indonesian rural communities and use ‘village leaders’ or ‘community leaders’ to denote respected community figures (whether or not in formal office) such as *adat* leaders, religious leaders and neighborhood, hamlet and village heads. We use these categories as shorthands for the purposes of the report because community leaders have more access to external institutions than ordinary villagers and, unlike ordinary individuals, have community-level responsibilities of one kind or another. But our use of these categories should not be interpreted to mean that ‘villagers’ and ‘village leaders’ are homogenous groups whose members have the same perceptions and interests. Indonesian villages are heterogeneous communities, with farmers, small business owners, laborers, midwives, teachers, religious leaders, *adat* leaders and youth representatives. Households may be differentiated from one another along occupational, social, economic, religious or ethnic lines and have a diverse array of interests and preferences. Nevertheless, we use the distinction in this report because village leaders have community-level responsibilities and because village elites—which village leaders are—have traditionally been able to represent their interests better than ordinary people.

3. External parties

The external parties who most actively supported the communities in question to represent themselves were project facilitators, NGO activists, journalists and legal aid lawyers. Other outside parties—such as the World Bank and some local government officials—also played a role, though this tended to be in the background. The main external parties involved in the cases are outlined below.

Box 6: Types of external parties involved in disputes

- **Project management & project facilitators.** Each of the World Bank projects has a management structure that handles complaints and helps run the project on the ground. Pressing for the resolution of corruption cases is part of the job description of the facilitators hired by the project. Some facilitators were implicated in corruption or remained passive in the face of it. But ties to external support helped the ones who did take action. This gave them a power base independent of local power structures.
- **Local governments.** Local government officials sometimes supported the resolution of problems even though government officials were implicated. Usually, this was because they were afraid that project funds for their areas would be suspended or more generally because they wanted to be seen to do a good job with managing finances in the face of public scrutiny (Wanareja).
- **Media and civil society.** In some cases, civil society organizations and media became involved in pushing for the resolution of corruption cases. In Lampung, for instance, the *Lampung Post* cooperated with an activist legal aid lawyer and with anti-corruption NGOs to publicize the corruption case. In Dikira in Sumba, the Catholic Church teamed up with a newspaper and legal aid foundation, Sabana, to engage a lawyer for villagers who had been wrongfully arrested for murder.
- **The World Bank.** The World Bank participated both directly and indirectly. In some areas, such as Lampung, the World Bank threatened to ask the central government to suspend project funds unless the local authorities took action against corruption. In other cases, the World Bank created an enabling environment for local political leaders to press for sanctions. For instance, the bupati in West Sumba was able to use the World Bank's suspension of funds in another district to convince the local government and governor to take action against the parliament member who had stolen project funds.
- **Legal aid lawyers.** Village communities used legal aid lawyers in seven cases, using them to represent themselves and to bridge the gap between themselves and legal institutions. But the roles these legal aid lawyers played differed. In some areas, such as Lampung, they played a broad advocacy role, helping communities to understand, participate and monitor the court process. In others, such as Lebakwangi, they played a narrow, more minimal role as lawyers.

The table overleaf outlines the motivations of the different actors in supporting or obstructing the communities' attempts to resolve their disputes:

Table 4: Role & motivations of external parties

Main actors	Reasons for supporting resolution	Reasons for passivity/obstructing resolution
World Bank	<ul style="list-style-type: none"> Desire to cut corruption in projects – part of institutional focus on anti-corruption 	<ul style="list-style-type: none"> [Cases too small/numerous for World Bank to engage actively in every one
Project management (KDP, UPP, KUT)	<ul style="list-style-type: none"> Minimizing corruption is part of mandate 	<ul style="list-style-type: none"> Cases too small for national complaints unit of project management to be active in each Need for local project management to maintain good relationships with local government
Local government	<ul style="list-style-type: none"> Fear of losing project funds for next year/next round Desire to appear 'clean' to attract foreign aid funds 	<ul style="list-style-type: none"> Ties to perpetrators Likelihood of widespread corrupt practices in government reduces motivation to pursue corruption
Media/civil society	<ul style="list-style-type: none"> Community advocacy World Bank link can provide extra publicity 	<ul style="list-style-type: none"> Pay offs from government. Threats or intimidation
Legal aid lawyers	<ul style="list-style-type: none"> Community advocacy – cases seized as opportunities 	<ul style="list-style-type: none"> Desire to retain positive relations with legal officials.

(a) Project staff & NGO activists: facilitating dispute-resolution

Project facilitators and local staff from NGOs played a particularly important role in assisting local community figures to seek justice. Indeed, in most cases, such efforts would not have been possible without the efforts of project facilitators and community advocates to disseminate information, outline possible strategies for action and link village communities with sources of outside assistance. In some cases, project facilitators were primary justice-seekers on behalf of village communities. For the Kecamatan Development Program, handling corruption complaints and engaging in community empowerment are part of the mandate of local project facilitators. Civil society facilitators used the cases as opportunities for community advocacy. Their efforts enhanced community legal awareness and access to information and outside assistance. In contrast to community leaders, such facilitators benefited from their independence from local power structures and freedom from the prospect of revenge.

Box 7: Strategies of facilitators & civil society actors to overcome skepticism

- **Newspaper editor and NGO head.** The head of a newspaper NGO in Sumba helped villagers wrongfully accused of harboring the murderer of a police officer to link with a Catholic Church legal aid commission. He also actively monitored the progress of their case with the local community. In his words: "I said to the community, 'you have to struggle for your rights whether it's expensive or not, because if you don't struggle from now on it will be... bad...' One of the accused confirmed this, saying, "[He] really helped us. He helped us not only with financial things... but also thinking [*pikiran*]."
- **Barefoot lawyer.** In Lampung, a lawyer from the legal aid foundation LBH drove regularly into villages on his motorbike to disseminate legal information, inform them about their rights, and press them to monitor the corruption trial of their sub-district head. His strategy was to focus on success stories elsewhere. In discussions with villagers pessimistic about the legal process, he discussed strategies undertaken by other villages and encouraged villagers to think about defending their rights as a long-term community investment

(b) Legal aid lawyers: mediating & providing access to the formal system

“Old people used to say that someday this village would find its own father, mother, and children. This prediction turns out to be true. So it is this LBH that is the father, mother, and children of this village. History tells us that this country will shortly fall to the hands of these youngsters like them [volunteer students and the LBH]...” - Villager in one of the Lampung land cases

In the three Lampung land cases, the prominent legal aid foundation YLBHI (*Yayasan Lembaga Bantuan Hukum Indonesia*) played an especially active role in community mediation and education. It set up *posko* (village outposts), in which law graduates volunteered to provide legal representation and education to villagers.

Village communities used legal aid lawyers in four other cases. In most cases, outside parties helped to put communities in touch with the legal aid lawyers, who had different institutional backgrounds. In Lampung, the KDP project structure put the village community in touch with Alpian, an activist lawyer from the legal aid organization Lembaga Bantuan Hukum (LBH). In Wanareja, the community used a lawyer provided by the ‘barefoot lawyers’ scheme, a pilot project within KDP designed to provide legal assistance to communities pursuing legal problems related to KDP. In Dikira, activists from the legal advocacy NGO Sabana teamed up with a Catholic church commission called Justice and Peace to help hire and pay for a lawyer from the provincial capital, Kupang. And in Lebakwangi, the village community directly hired a lawyer resident in their community.

Box 8: The history of legal aid in Indonesia

Legal Aid in Indonesia has been in existence since the 1970s, arising out of a wave of political activism among the legal advocate community to reinstate the rule of law. In the Indonesian context the rule of law, or “negara hukum”, enjoyed prominence in the early parliamentary years from 1950 to 1957, shortly after independence. However, in 1959, Soekarno replaced the elaborate liberal constitution of 1950 with his integralist “Guided Democracy”, which saw no effective separation of powers between the executive and the judiciary.

The first Legal Aid organization, LBH, was formed not only to provide legal services to the poor, but also to reinstate the central tenets of the rule of law. Since their inception, the routine work of legal aid organizations has been to provide legal services and representation to thousands of clients who could not otherwise afford it. Young law graduates were hired to counsel and represent victims of abuses of power, violence, and other crimes. There was a huge untapped demand for such services and the idea caught on quickly, with nearly a hundred organizations involved in legal aid of some sort by the early 1980s. The YLBHI, by far the largest and most prominent, has since opened 13 regional offices.

Yet besides every-day litigation, “advocacy” has always been the broader ideological goal of Legal Aid, as each case was used as an opportunity to educate and empower community members. Most of the cases supported by legal aid organizations are disputes involving community vs. state (military, local government, state-owned enterprises) or major private sector interests. Cases were also used to create a network among civil society groups – especially media - to press for political change.

In the past two or three years, YLBHI and other legal aid organizations have engaged in dialogue with government, particularly through such initiatives as the Partnership for Governance. The original YLBHI is currently facing financial difficulties, internal problems linked to decentralization, rebellion from its regional branches and disagreements over its policy directions within its leadership. Nevertheless, the legacy it has created will endure through the hundreds of different legal aid NGOs now in existence across the country

(This box draws broadly on Lev 1986).

The legal aid lawyers played divergent roles in the cases, partly as a result of their different backgrounds. The lawyers from legal aid and advocacy NGOs tended to see their role as part of a broad effort at community advocacy and legal empowerment. The more active lawyers, such the lawyer in the Lampung case, did not simply advise communities on technical legal matters but, on an unpaid basis, assisted them in decision-making, educated them about the law, helped them organize themselves and participate in the court process, and helped them to monitor and place public pressure on the police, prosecutors and courts.

Lawyers without such NGO backgrounds tended to see their roles in more minimal terms, acting as a standard private practitioner. For instance, the lawyer in the Lebakwangi case worked for his standard fee and limited his role to accompanying community members during police investigations. Indeed, he saw project staff and local government officials as his client, not the community. Unlike the Lampung lawyer, he did not encourage the local community to actively monitor and participate in the investigation process and had little experience in dealing with village communities.

The lawyer in Lebakwangi may well have known the law, but in the cases studied, villagers did not necessarily require legal expertise or litigation skills, but rather community advocacy skills, practical assistance in accessing the legal system, regular access to information, and links with external institutions such as NGOs and the media to advocate on their behalf and apply public scrutiny to legal institutions. Lawyers are not always equipped with the necessary skills to fulfil such a role.

4. Formal legal institutions: the police, prosecutors & courts

The three main arms of the formal legal system in Indonesia are the police, prosecutors and courts.

The police are the main point of contact between village communities and the legal system. Their structure stretches down from the national through to the sub-district level and, in theory, to the village level, though in practice in rural areas this is rare. Police were involved in corruption investigations in two-thirds of the cases studied.

Prosecutors (*jaksa*) represent the state and prosecute all criminal cases. Usually, *jaksa* can only press charges with a formal police report containing evidence, testimony and confessions. But prosecutors do have the authority to investigate and process special crimes (*tindak pidana khusus*) such as corruption directly. Thus in four cases, prosecutors handled the corruption investigations directly, without involving the police. Prosecutors tend to have a higher education than police officers, including degrees in law.

Once prosecutors have prepared their indictment, the case goes to trial. There are five types of court in the Indonesian system (general courts, religious courts, administrative courts, commercial courts and military courts), though villagers tend to be aware only of general courts (for civil and criminal cases) and religious courts (the jurisdiction of which is limited almost exclusively to divorce and inheritance among Muslims) (See Evers 2002). Corruption cases are heard in general courts.

After the sentence has been delivered, prosecutors are responsible for ensuring that the sentence handed down by the court is executed. In the Indonesian system, suspects have the automatic right of appeal to both the High Court at provincial level and to seek cassation from the Supreme Court in Jakarta.

III. INFORMAL DISPUTE RESOLUTION

Main findings

- **Preferences & expectations.** Villagers and village leaders preferred to resolve disputes informally, perceiving informal resolutions to be quicker, easier, cheaper and less socially disruptive than the formal system.
- **Patterns.** The attempts of community leaders and project facilitators to negotiate on behalf of village communities followed a two-stage process: (i) personal approaches to perpetrators; and (ii) 'community-wide' approaches harnessing social sanction and the institutional weight of the projects or local government.
- **Success/failure.** The justice-seekers had varied success in resolving corruption problems informally. They were able to succeed in a few cases where power imbalances were not exaggerated. But they failed to do so in other cases, because (a) the power imbalances between the parties were too serious; or (b) the history of impunity for corruption meant that the perpetrators did not take the threat of the law seriously.

A. Preferences and expectations

Box 9: Perspectives of villagers: dispute-resolution preferences

Interview transcripts from a focus group discussion in Demak

Q: What happens if someone commits a crime?

A: (Respondent 1): *We would try to find a way through it... it never happens here anyway. We would try to sit down with you, look for a way to resolve it.*

Q: What if I was one of the members of the BKM [board managing the funds for the project] and kept the money [for myself]?

A: (Respondent 2): *If we were repaying the money and you took it once or twice, we could overlook it. But the third time, we wouldn't trust you. We would have to find a way of working it out.*

A: (Respondent 3): *There would be a limit to our patience.*

Q: ...Why wouldn't you report it to the police?

A: (Respondent 1): *It would damage the name of the whole community to bring it to the police... We just want to keep a lid on it, keep it in our community. Luckily, we haven't had a situation like that here anyway.*

A: (Respondent 2): *If someone is taken through the courts they come out from that process much worse off. We try to avoid a situation like that. We're one neighborhood. It's also better for the security of our village not to let problems get out of the neighborhood...*

Q: So you prefer not to take the problem to the legal system?

A: (Respondent 3): *Yes, this is to protect us because we would all feel ashamed. It would be a pity to report them to the police because that person would feel more isolated.*

Villagers and village leaders tended to prefer to resolve disputes informally and within the confines of their communities. Several factors affected villagers' preference for the informal. Some of these were practical. For the most part, villagers distrusted the formal system and perceived informal dispute-resolution to be easier, quicker, less socially disruptive and, for the corruption cases, more likely to result in the recovery of stolen funds. A preference for resolving disputes informally is often said to be a function of the value placed on social harmony in Indonesian culture, but similar patterns are reflected in western nations, where, despite suggestions of a more litigious and adversarial culture, the courts are likewise seen as the forum of last resort.⁷

Villagers had several reasons for preferring informal dispute-resolution:

- **Easier, quicker, cheaper.** The lowest level of court in the Indonesian system is at the district level, but district capitals are often far from the communities they serve. For instance, villagers from Seruyan Tengah who traveled to the district capital of Sampit for police interviews were required to take three days off work and expend close to half the minimum monthly wage in the process. The cost of being summoned by the police or prosecutors is also borne by the witness, not the police or prosecutor. Using the legal system is thus expensive and time-consuming. "[If I had known it would take this long], I wouldn't have gone!" said one village parliament member. "I am busy with my business."
- **Is said to preserve harmony and save face.** Villagers, village leaders and project staff tended to stress community harmony, saying that resolving disputes informally enabled the community as a whole to remain peaceful and avoid embarrassment in the face of outsiders. They described their communities as one big family, characterized by family ties (*hubungan keluarga*) that should not be disrupted. "Our goal," said one village head, "is to act as a *hakim perdamaian* (mediator and conciliator), to find a harmonious solution, not where one side wins and the other loses".
- **Enables communities to retain control & more likely to ensure repayment.** The overwhelming aim of the negotiations was to ensure that communities got back the money that the perpetrators of corruption had stolen from them. In most cases, people felt that once problems were handed to the formal justice system, they were out of the hands of communities. "If a dispute goes to the police, we don't know what happens...we can't control the process," stated one villager in Lebakwangi. A village head in Wanareja said, "There is business here and business there. What's important is that the money is returned. The legal system is not our business." In almost all cases, people felt that if perpetrators were punished for corruption, they would have no incentive left to repay the money they had stolen, and so preferred to seek informal resolutions instead.
- **Formal legal system is corrupt and untrustworthy.** One of the main reasons that people chose to attempt informal resolutions of problems was their perception that the formal legal system was corrupt, untrustworthy and an instrument of rich people's power. People understand little about the legal process – the statement "we are blind to the law" was repeated across the case study locations – but they very well understand that the odds are stacked against ordinary people. "If you report a case in Indonesia," said one villager, "it's like you're reporting a master to his friends." In Ayawan, a villager who helped report his village head's corruption to the police was accused of being a provocateur and detained, albeit briefly.

- **Fear of the law.** The law is largely seen as an extension of the state and a tool of popular oppression, rather than a tool for advancing the rights of the weak. Most ordinary villagers feared and distrusted the law. A witness in Wanareja, for instance, reported almost wetting her pants in fear before giving evidence to the local police. Even the village head expressed concern that the police would in fact declare him a suspect because he had no money. “I have no money,” he said, “but [the perpetrator] has Rp 257 million (\$30,235). [She] also has a lawyer. The supremacy of the law is not very strong.” Even in cases where the legal system worked effectively, some villagers saw the outcome less as a victory for them, but more of a warning to others. As the head of local political party branch said in Wanareja after the successful prosecution of the perpetrator of corruption “people [now] know they have to be careful.”

The role of harmony

The emphasis that village leaders and some villagers placed on harmony is reflected in the state ideology, *Pancasila*, one of principles of which is decision-making by deliberation (*musyawarah*) leading to consensus (*mufakat*).⁸ But though both villagers and village leaders cited harmony, how important was it in explaining people’s reluctance to push cases through the legal system? Upon further examination, people’s preference for a non-adversarial dispute resolution process masked a host of other, more prosaic concerns:

Box 10: Disaggregating harmony

- **Relationships of dependence.** Many of the corruption cases studied were in small rural communities whose inhabitants were all well known to one another and depended on one another in day-to-day life. If a problem arose in these sorts of environments, people thought it better to reach a settlement with which all parties were happy rather than attempt an adversarial resolution with clear winners—and dissatisfied losers with whom it would be more difficult to cooperate in future.
- **Fear of revenge.** In other cases, a desire to resolve matters ‘harmoniously’ masked a fear of revenge. For instance, a local government official involved in mediating the case of corruption in Demak said, when asked why she preferred to resolve problems informally, “If we (I and the perpetrator) meet on the street, we can still smile at each other. If we take it to the legal system, there is more risk of revenge.”⁹ Indeed, in the Seruyan Tengah case, the son of the perpetrator issued a threat to the research team. After suggesting he had many youths at his disposal, he said, “Don’t make trouble in Seruyan Tengah, because more trouble could emerge.”
- **Embarrassment.** There was also a sense among some that problems like this should be kept quiet to protect the reputation of the community. A Semarang urban village head said, “*We would feel embarrassed if the problems were not solved at the community level.*” This would reflect poorly on him and his ability to maintain “harmony” in his village, a key performance indicator in the eyes of his boss, the mayor.

B. Patterns of informal dispute-resolution

The overwhelming aim of the informal attempts at resolving disputes was to recover stolen funds from the perpetrators, rather than to punish or shame them. Negotiations thus focused on approaches that would be most likely to encourage the perpetrators of corruption to repay the money they had stolen. As a rule, these attempts went through at least two stages: (i) *personal* attempts to pressure the perpetrators of corruption to repay funds; and (ii) *community-wide* attempts that harnessed social sanction and the institutional weight of the project structure or local government.

In almost all attempts at informal resolution, justice-seekers first approached the alleged perpetrators personally in order to negotiate the repayment of funds. Such approaches were informal and tended to rely on the goodwill and personal cooperation of the perpetrator in repaying funds. In Lebakwangi, for instance, the KDP district coordination team approached the alleged perpetrator personally to discuss the theft and negotiate repayment of funds, raising the problem at a community meeting only when these attempts had failed.

Box 11: The importance of local level facilitators & forums: KDP & UPP vs. KUT

A cornerstone of the community-based projects funded by the World Bank (KDP and UPP) is the use of government-sanctioned community forums such as the hamlet meeting (*musbangdus*), village meeting (*musbangdes*) and inter-village meeting (*UDKP*). Because the projects stressed community participation in these meetings and institutionalized them as a means of resolving problems, village communities used them to discuss which paths to take to resolve corruption problems. The projects also have a network of local project facilitators who help to organize these meetings and link communities with outside assistance if necessary. Such facilitators have the institutional backing of the projects and thus tend to be relatively independent of local power structures. In some of these cases, village communities were able to actively mobilize themselves with the support of the facilitator.

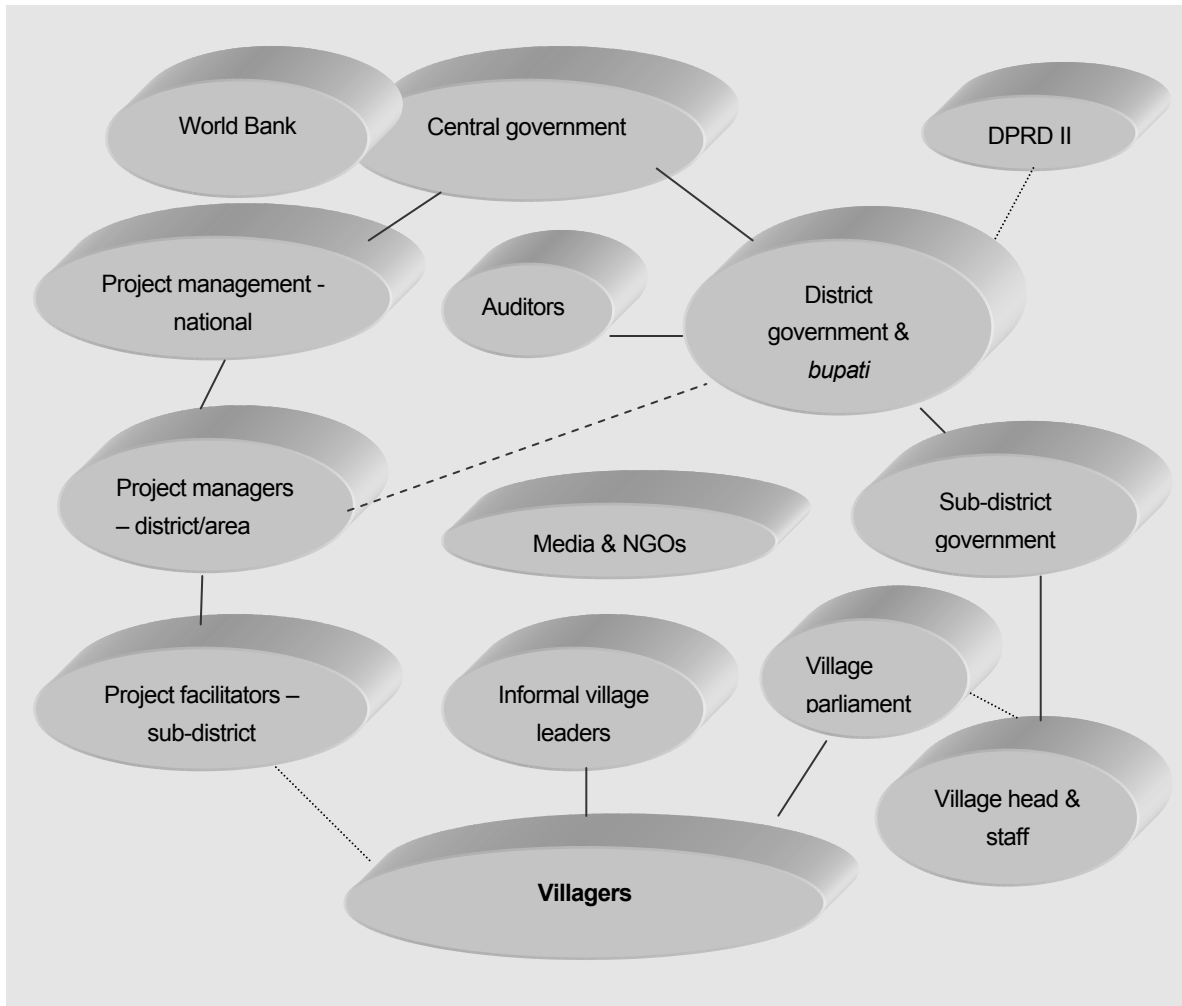
In contrast, the government's micro-credit scheme for farmers (KUT)—the project from which a union chief embezzled money in Tangerang—had no such stress on community forums and no network of facilitators. The Tangerang case involved Rp 1 billion (\$117,645), the largest sum stolen in all cases. But the local communities had no forums through which to discuss strategies to resolve the problem and in which to mobilize themselves. There, although a community member anonymously reported the corruption, the village community had virtually no involvement in resolving the case.

While the facilitators and forums were project-based in these cases, in the Lampung land cases, the outside facilitation derived from civil society, in the form of volunteers from LBH Lampung. Two different environments, two different sources, but a similar outcome. The long-term objective of such programs is to develop sustainable facilitation skills from within village communities.

If such personal approaches failed, justice-seekers tended to harness the power of the wider community and the institutional weight of the project structure or local government in order to increase pressure on the perpetrator to repay. In all cases, they did this through project or local government forums, rather than adat channels, which were considered more appropriate for inter-family civil disputes rather than for disputes over development funds.

These forums were usually “inter-village meetings” (*UDKP*), a government-sanctioned formal mechanism for inter-village discussion that KDP institutionalized further through making it a part of its own project cycle. Village communities called special sessions of these meetings in order to debate and take action over disputes. In UPP, corruption problems were sometimes first raised at routine general meetings, also a part of the project cycle. In this way, the rules and structures laid down by the projects themselves affected how people chose to resolve their problems.

Figure 1: Channels of informal justice: a map of actors outside the legal system



In some cases, the suspected perpetrators attended these meetings, admitted their guilt and signed statements promising to repay funds within a certain time limit. In other cases, they did not attend. In Bandung, for instance, the perpetrator felt ashamed and hurt by the accusations and boycotted the meetings, leading community leaders to pursue the case through the legal system.

At most of these meetings, community members formed teams to pressure the perpetrators to repay funds. As a rule, the members of the teams were community leaders. For instance, in both Demak and Bandung, community members formed teams to recover UPP funds called the “Team to Save UPP Money” (Tim

Penyelamat Dana UPP). In Grobogan, community leaders formed a group called the “Reform Team” (Tim Reformasi). In Wanareja, community leaders made use of a political party consortium called the Inter-Party Forum (*Forum Lintas Partai*) to lobby to take the case forward. After these meetings, the teams made sustained efforts to hold the perpetrators to their promises or otherwise pressure them to repay funds.

Box 12: Profiles of community teams set up to recover funds

The community teams set up to recover stolen funds generally comprised respected community figures, some of which had political aspirations or were members of new village parliaments. Grobogan, Demak and Bandung are good examples.

In Grobogan, a ‘*Tim Reformasi*’ was set up to recover village funds. The leader of the team was the head of the village parliament and son of the former village head. The village parliament head had a long-standing history of rivalry with the village head, whose cronies had assaulted him for accusing the village head of pocketing money from the sale of public village land.

In Demak, the team, “Team 11”, was formed with the help of the project facilitator and a community member with political aspirations. The two men mobilized nine other people from a cross-section of society, including members of a youth NGO and a women’s economic group. One of the members was an outspoken neighborhood head.

In Bandung, the team formed to pursue the corruption case was formed in a *musyawarah*. An active member of the local (urban) village parliament led the effort. The *lurah* (urban village head) officially sanctioned the formation of the team.

C. How successful were informal negotiations?

Box 13: What is a 'successful' resolution of a corruption case?

- With a few exceptions, villagers and local governments thought that informal resolutions were successful if the perpetrators repaid the money they had stolen. But when they did so, the will to prosecute the perpetrators disappeared, along with the possibility of formally sanctioning corrupt behavior and breaking the cycle of impunity.
- When this report refers to a successful resolution through the court, it means that the formal system has worked fairly and without undue obstruction. But when corruption cases were resolved through the courts, execution was problematic. Prosecutors, who were responsible for execution, made minimal attempts to recover stolen funds, thus creating dissatisfaction in the communities whose money was stolen and a perception that justice was not fully done. Thus, even where some perpetrators were formally punished and imprisoned, some communities still felt disadvantaged or even cheated. As one villager noted, “Maybe it’s better to embezzle money, put it aside for safekeeping, do some time in jail and then come out later and enjoy the money.”

Informal negotiations had mixed success, mainly because of the particular type of case being studied (corruption). Unlike the range of household cases that villagers felt could best be solved informally, corruption is a community-level problem and one for which there are usually power imbalances between

the disputants. In a few of the cases studied, informal negotiations succeeded through employing a mixture of community mobilization and the threat of legal sanction. But in most of the cases studied, village institutions failed. They usually failed for one of two reasons. First, the failures of the formal legal system and its history of impunity for corruption meant that the perpetrators of corruption did not take the threat of legal sanction seriously—and social sanction was not strong enough to encourage them to repay the funds they had stolen. In the cases involving government officials, informal resolutions either failed because of power imbalances or were not attempted because village communities thought that they would be certain to fail.

1. Success in some cases without power imbalances

Although most attempts to overcome village corruption using informal institutions failed, a handful succeeded. Such cases worked when villagers mobilized sustained social and political pressure against the perpetrators of corruption and/or when they threatened them with legal sanction. Indeed, community leaders in all the cases that were resolved informally employed some threat of legal sanction, whether direct or indirect: the threat of legal sanction was used as a means to improve informal bargaining power.

Box 14: A successful attempt at informal dispute-resolution: the strategy of the team in Demak

The team in Demak formed to recover UPP funds used several innovative strategies to reach a successful informal resolution:

- **Create awareness.** A former activist who suspected foul play publicized the results of an annual audit in an easy-to-read pamphlet, which garnered community interest to attend a town hall meeting to discuss the problem.
- **Appreciate the impact of social sanction.** A team of eleven community members was formed to resolve the problem. Even though there were only two or three fully active members of the team, those team leaders knew more people – including neighborhood heads and women – were necessary to ensure a broad cross-section of the community knew about the problem and engaged with the resolution process.
- **Apply the threat of legal sanction.** During the resolution process, letters to the perpetrators from the community team were copied to the police. The police were also consulted for legal advice on the matter should the legal route be taken. This made the threat of legal sanction seem real.
- **Use the authority of government.** BAPPEDA, the local development planning board, was asked to act as a neutral, third-party moderator for a series of discussions between the perpetrators and the team.
- **Contact media.** The community team leader thought that BAPPEDA only seriously engaged in the dispute resolution process once he contacted a journalist to accompany him and write a story on the problem. The presence of the journalist at the meetings also made one of the perpetrators uncomfortable, acting as part of the wider social sanction to push him to redress his wrong and clear his name.

Village communities were able to mobilize social and political pressure against the perpetrators of corruption from both direct and indirect sources. Direct, proximate pressure came from the teams especially set up to resolve problems of corruption or from project facilitators. But indirect pressure came from the project structures and local government, who served as background forces in pressuring the

perpetrators to repay. In Demak, for instance, grassroots community leaders used social sanction, media transparency and community mobilization to pressure the perpetrators of corruption to repay the money they had stolen. They also involved government officials from the Regional Planning Board, who moderated a series of discussions between the perpetrators and the community team set up to resolve the problem. A journalist was present at all meetings. And, although they did not directly threaten legal sanction, the legal system was as a background force. The community team copied all its correspondence with the perpetrator to legal institutions.

The role of legal sanction in informal negotiation

“If we report the case to the police, we don’t expect the police to do anything, but we do hope it will work as a threat against the perpetrator”. Community leader, Semarang

The background presence of the law—and, by extension, its pressure to settle and power of sanction—encourages informal negotiations to take place successfully, partly because the opportunity cost of using the formal system is so high that for most kinds of disputes it makes sense for both parties to settle. Informal negotiations thus take place in the ‘shadow of the law’. In cases where the courts are strong, informal negotiation should be strong. Where the courts are weak, informal negotiation will often be weak.

The role of legal sanction in the informal negotiations studied was mixed. Community leaders were able to employ the threat of legal sanction effectively in three cases to encourage the perpetrators of corruption to repay funds. In Tambusai the young perpetrator cried when told his case had been referred to the public prosecutors and shortly thereafter repaid the bulk of his debt. But in several other cases, the perpetrators did not take this threat seriously enough to repay the funds they had stolen. In the Rowosari case, one of the alleged perpetrators travels freely in his village, despite the fact his case has been reported to the police. A villager in Seruyan Tengah said of the perpetrator, “He just carries on like normal here. It’s as though there was never a problem.” So, although the ‘shadow of the law’ encouraged some negotiations to succeed, it was not sufficient in doing so, especially where there were large power imbalances between villagers and the perpetrators of corruption. In other words, the weaknesses of the legal system—and the concomitant weaknesses in the shadow it cast—obstructed the capacity of village communities to negotiate informally with powerful figures.

2. Failure to overcome power imbalances

Despite the one or two successes outlined, most attempts to overcome corruption informally failed. They failed either because there were power imbalances between villagers and the perpetrators of corruption that permitted the perpetrators not to take the threat of legal or social sanction seriously.

Weaknesses of legal system and inefficacy of social sanction

In several cases, the perpetrators of corruption failed to repay stolen funds even though they had agreed to do so. For instance, in Seruyan Tengah, Central Kalimantan, a former district parliament member and *adat* leader repaid only a tiny proportion of the money he had embezzled from KDP even after signing several statements promising to repay the whole amount. In Lebakwangi, the perpetrator also failed to repay funds

despite repeated promises to do so. In such cases, the perpetrators tended to claim in their defense that they had no money left to repay the funds they had stolen. In some cases, such as Wanareja, this was indeed true, mainly because the official suspect was only one of the perpetrators and so was unable to repay the entire amount. For the most part, though, the perpetrators also made no attempts to regain money through selling any of their assets or seeking support from family or friends. Their promises thus did appear hollow, a means of buying time rather than a genuine agreement.

Box 15: Social sanction vs. a culture of impunity

Informal dispute resolution depends primarily on social sanction—a sense of shame, a sense that community-held notions of morality and socially acceptable behavior have been breached. In many locations, for instance, the main punishments for breaching customary law include “social punishments” like admonition, reprimand, public apology, alienation or expulsion from the community.

While the threat of legal sanction can cast a powerful shadow, people know that justice in Indonesia can often be bought. Public opinion, on the other hand, is less malleable. When asked whether the threat of legal or social sanction was the most “frightening” for perpetrators of crime, Kurnen, a community leader in Demak, stated ‘The community is the most frightening. The police can be frightening, but they can be influenced or bribed. It’s the community that would be the most frightening. It would be [because of] shame. He wouldn’t be able to live here anymore.’

The team in Demak that publicized the case was itself comprised of different elements of society – women, neighborhood heads and people with links to civil society groups. This broad-based approach proved effective – one of the perpetrators noted that the biggest impact of the case on him was shame. “Even my friends at work and government asked me about it and I felt embarrassed. It damaged my reputation.” He has now repaid most of the missing money and is rehabilitating his name in the process. For people without significant power who must co-exist with their fellow villagers, shame and community rejection are powerful levers.

But those with power can feel less vulnerable not only to the threat of the legal sanction but also to the effect of community shame. The perpetrator in Seruyan Tengah suffered a significant loss of face. His corruption was covered in the local media and reported widely among the community itself and to the district head and district parliament head. As a result, he has fallen from a figure of respect to notoriety. “My father’s reputation,” said his son, “is ruined.” Despite this, the perpetrator took no action to repay money and restore his name.

Why wasn’t social sanction enough? The perpetrator is likely to have felt a sense of impunity borne of years of petty corruption in development programs and large-scale corruption at national level. Several villagers compared him to Akbar Tanjung, the speaker of the national parliament found guilty in a multi-million dollar corruption case but allowed to retain his position pending final appeal to the Supreme Court, becoming in the process the high watermark of impunity. Social sanction did not operate against him also because he figured the final resort—the legal system—would not hold him accountable. This is a reasonable assumption to make in Indonesia where the legal system is notoriously unresponsive. And in remote Seruyan Tengah, the prospects of effective legal enforcement seemed slim. People there do not have strong legal awareness, but they know enough. “The law only works if you pay,” said a villager from Rantau Pulut. So, despite the community views, the perpetrator continues to hang on and avoid a negotiated resolution of the problem.

It is not clear why the perpetrators of corruption so easily disregarded the promises they made. But the weaknesses of the courts and the inefficacy of social sanction played a role. Informal dispute-resolution usually works best when there is external pressure to settle and, by extension, where there are some sanctions for renegeing on agreements. But in these cases, the perpetrators thought there was little likelihood of formal sanction. Nor did the threat of social sanction deter them. In Lebakwangi, for

instance, the perpetrator did not fear legal sanction and had no strong social ties to the village. It is notable that in Demak, the only case that was resolved informally without any direct threat of legal sanction, villagers said that social sanction was much more important than a legal threat (see box). There, social sanction was effective in encouraging the perpetrators to stick to their agreements.

Power imbalances

None of the cases that involved government officials could be solved informally. Indeed, in most of these cases, the justice-seekers did not even try to do so, thinking informal attempts certain to fail. In Lampung, the perpetrator of corruption was a *camat* with a strong adat position and government authority. In Mamodu, the perpetrator was a village head who had become a district parliament member and who claimed to villagers that he was above the law. In Ayawan, the perpetrator was a village head who was said to have manipulated the elections for village parliament in his favor. In all these cases, informal attempts were either unsuccessful or were not attempted.

In some cases, the historical failure of informal institutions to overcome power imbalances had led to resignation and passivity on the part of villagers.

Box 16: The effect of a culture of impunity: the case of Mamodu

In Mamodu, West Sumba, villagers made no active attempts to report their village head's embezzlement of funds from the *Kecamatan* Development Project. They said that they were angry about his theft of funds but were too intimidated by him to do anything about it. The village head had an authoritarian reputation and a history of misappropriating funds. Indeed, during his term as village head, he was said to have taken animals belonging to villagers to sell them on the open market for his own profit.

"If you had a horse, he'd take a horse," said one villager. "If you had a pig, he'd take a pig. But he didn't pay for it. Horse, buffalo, pigs... the point is, it didn't matter what it was, he'd just take them as the village head, without paying." Others said that the village head was from a noble family. "He was noble (*bangsawan*)," they said. "He seems like an authoritarian person... he is clever. We couldn't stop him in what he wanted to do. He just does what he wants". But villagers' inaction did not signify consent. People in the community did know what they were entitled to; they just thought that their efforts at resisting it would fail. "They feel as if they are simple," said a new village head. "The community knows about their rights, but they don't know how to protect or struggle for their rights. They don't know yet how to fight/oppose (*melawan*)".

Eventually, a group of community leaders—some of whom were said to be connected to political rivals of the village head, who had gone on to take a seat in parliament—decided to report the village head's theft of development funds to the district head. And when government auditors doing a routine audit came to the village, villagers told them that the village head had misused the project money. After two World Bank visits to the area, project staff and local government pushed for the case to be followed up by the prosecutors and courts. Eventually, the village head was charged with corruption, found guilty and imprisoned.

Villagers say they were pleased that their village head went to jail. "We are not scared of him anymore," said one villager. "He is like our enemy."

Willingness to use the legal system

On the whole, poor people in village communities preferred to resolve their disputes informally. But in several kinds of cases, particularly those in which there were power imbalances between the parties, they could not do so successfully. Powerful parties had less incentive to negotiate, feared social sanction less and, because of the bias towards the powerful in the formal system, feared legal sanction less. Reducing the biases in the formal system would thus have a positive effect upon informal dispute resolution and improve the capacity of village communities to resolve their problems informally.

Despite the weaknesses of the formal system, though, village communities expressed a willingness to use it as a forum of last resort for solving their problems. In most of the cases, though, the push to use the courts came from project facilitators or outside parties. Village communities' access to the formal system thus depended on the presence of such facilitators with access to outside knowledge and information and the confidence to engage with the legal system.

IV. THE FORMAL JUSTICE SYSTEM

Main findings

- **Preferences & expectations.** Villagers and village leaders tended to fear, distrust and know little about the law, but expressed a willingness to use it as a forum of last resort.
- **Patterns.** The police and prosecutors worked badly. Their performance was characterized by intransigence and allegations of corruption. But, once cases passed through the police and prosecutors, the courts worked better than expected. On the whole, the legal system was able to overcome local power imbalances to sanction the perpetrators of corruption, but the wider community impact of such successes was limited by the failure of prosecutors to recover stolen funds and by poor communication back to the communities.
- **Success/failure.** The elements of success were mainly sociopolitical. Cases that were successfully resolved through the legal system were those for which community leaders mobilized at the grassroots, had links to civil society and had facilitators with the backing of strong outside institutions. 'Bigger' cases involving government officials were more likely to succeed than small cases involving villagers alone, which were too small to mobilize the interests of a range of players in quite the same way.

A. Preferences and expectations

1. Perspectives of villagers

"We don't care about the legal system, because it's a waste of time and money. It's better to work in the fields to get money." - Villager, Lampung

Village communities tended to prefer resolving problems out of court. This was true of almost all cases studied by this paper. The existing quantitative research corroborates this finding. For instance, a survey conducted by the Asia Foundation in 2001 found that 86% of people believed that *musyawarah* (deliberation and consensus-building) was preferable to using the courts or other formal procedures to resolve disputes. The primary reasons given were time, cost, a fear of losing face and failure to understand the court system (Asia Foundation 2001).

Villagers in the cases studied cited similar considerations, saying that they feared the legal system and perceiving there to be a mismatch between its adversarial style and the day-to-day realities of village life. Over half of Indonesia's population lives in rural villages, whose members live close to one another, know one another, share resources and depend on one another for a range of daily activities. Villagers whose lives are so strongly bound by relationships of trust and reciprocity are thus reluctant to solve many kinds of disputes through litigation or criminal prosecution, which are by nature adversarial and deliver win/lose outcomes that are seen to be at odds with the demands of village life.

Villagers in the cases studied also tended to have low levels of legal awareness and little if any access to legal information.

Box 17: Perspectives of villagers: familiarity & knowledge of the legal system

Interview transcripts from focus group discussions

Villagers in a Bandung *kelurahan*:

Q: When you report [a case] to the police, what will happen?

A: *The prosecutor will finalize it. He will decide if the subject is guilty or not guilty. [Group agrees. But there is a long pause.]*

A: (Respondent one) *That's all. The police will finalize the case and give a decision... [Pause]... but maybe it should go to the prosecutor?*

Q: So then what is the role of the judge?

A: (Members of focus group): *Yes, to the prosecutor*

A: (Respondent one): [Pause] *Maybe it's the judge first, then the prosecutor.*

Q: And at the prosecutors, what will happen?

A: (Respondent two): *No, maybe it's first the prosecutor, then the judge*

Woman (head of family welfare program PKK) in a village in Lampung:

Q: What do you think of the police?

Q: What about the prosecutor?

A: *At first we were afraid of the police because when they come into the village we wonder what's going on – we are scared, because it means there is a problem. But then again, when the police are there we feel safe, it provides us with a sense of security*

A: *He is the man that says whether someone is guilty or not*

Q: What about the judge?

A: [laughs but doesn't answer]

But despite knowing little about the legal system and have little faith in it, most villagers expressed a willingness to use it as a forum of last resort. This was especially true of cases in which the perpetrators of the crimes were so powerful in relation to ordinary people that village communities perceived any attempts at informal resolution to be futile. But it was also true of more standard cases. In these cases, villagers often expressed a willingness to use the formal system if they had the means—in the form of legal aid, access to information and links to external institutions—to do so.

B. Patterns of formal dispute-resolution

On the whole, villagers had mixed experiences with the formal legal system. With some notable exceptions, the police and prosecutors tended to treat villagers badly, to mishandle and obstruct investigations and to display a bias towards powerful interests. The courts, on the other hand, worked relatively well. But their performance was marred by the failures of prosecutors to execute court decisions fully. These failures, combined with poor communications from the courts back to village communities, diluted the public impact of successful cases.

But despite these problems, there were some successes. In three of the cases where government officials had stolen village poverty funds, justice-seekers succeeded in their strategies of community mobilization and public scrutiny to pressure legal institutions to work well. The legal system, for its part, succeeded in overcoming power imbalances to sanction the perpetrators. Some individuals also stood out, such as a few dedicated police officers and prosecutors, a reform-minded judge, and advocates and community members who persisted in their efforts despite threats and intimidation. Although communities faced several obstacles in dealing with the legal system, patterns of successful dispute resolution thus did emerge. When appropriately facilitated by community leaders and fortified with legal knowledge and access to external support, village communities were able to represent their interests successfully through the legal system.

1. Reporting (villagers)

Justice-seekers sought to use the formal legal system when attempts at resolving their disputes informally had failed. But village leaders, project staff or other external actors led the drive to use the formal system, rarely ordinary villagers themselves.

Box 18: Physical proximity to legal institutions

In Demak, an urban community, it was easier for community members to involve police in their efforts to resolve their corruption problem informally. By consulting with police about using the legal system, community leaders in Demak were much better placed to make the threat of legal sanction seem real, pressuring the perpetrator to resolve the dispute while retaining control over the process. Similarly, in Bandung, a police officer was involved in the community meetings and facilitated the community's decision to use the legal process when the money still wasn't repaid. In urban areas, physical proximity may—other things being equal and where the police interact well with the communities—enable police officers to be a useful resource as a contact point between communities and the legal system. Legal empowerment activities such as The Asia Foundation's community policing initiative, which is based on building up *existing* relationships between community and police, are one such attempt to build on these links.

Reporting cases to the police was often a means for justice-seekers to improve their bargaining power. For instance, in Seruyan Tengah, community representatives decided to report the case to the police to increase pressure on the perpetrator to repay his debt. The same was true in Maniang Pajo, where community members reported to police after the perpetrator had repeatedly failed—over the course of 17 months—to

keep his promises to repay the money. Reporting the case there was a means for the community representatives to use the threat of legal sanction to bolster their informal bargaining position.

In all cases, reports were made by village leaders, project staff or members of teams set up to recover stolen funds, not by ordinary villagers. This reflected villagers' perception that village leaders were responsible for reporting problems, the weak incentive for individual villagers to become personally involved in community-wide cases and villagers' fear and unfamiliarity with the legal process. In Rowosari, where the local project manager reported the theft directly to the police, villagers said they would have been too fearful to do so themselves.

Under the 1999 corruption law, both public prosecutors and the police have the authority to investigate corruption, which counts as a 'special crime' (*tindak pidana khusus*).¹⁰ But public awareness of this was low. Most cases were reported not to the prosecutor but to the police, with whom people tended to be more familiar.

Table 5: Reporting corruption to the police/prosecutor

Reporting of cases	Who reports case	To whom
Bukit Kemuning	Village head	Police
Sakkoli	Village head	Police
Maniang Pajo	Community Representatives	Prosecutor
Grobogan	Community Representatives ("Tim Reformasi")	Police
Bandung	Community Representatives ("Team to save UPP funds")	Police
Lebakwangi	Community Representatives	Police
Mamodu	Community Representatives	Prosecutor
Wanareja	Political party forum, village head and project staff	Police
Rowosari	Project staff (UPP area manager)	Police
Tambusai ¹	Project staff (KDP area manager)	Prosecutor
Seruyan Tengah	Community representative and project staff	Police
Ayawan	Community representatives	Police
Tanggerang	Anonymous	Prosecutor

Police and prosecutors tended to treat villagers who reported cases poorly. In most cases, they refused to give information about their investigations to the public, even when the information was not confidential. According to Law 31 of 1999, members of the public have a specific right to information in corruption investigations [see Law 31/1999, Part 5, Article 41].¹¹ In Dikira, the police are said to have tortured suspects, who alleged also that they were forced to sign confessions under the threat of more physical abuse. The prosecutor, seeking to win her case, allegedly tried to bribe trial participants.

Box 19: Perspectives of villagers: experiences with police & prosecutors

Villagers had mixed experiences the few times they themselves chose to report a case or check on its status. In many cases, these experiences were bad. In Lebakwangi, a witness traveled to the police office and was left waiting for several hours. A villager in Sakkoli, explaining why community members never reported the case to the police, said, “If we report to the police we have to go to the police office many times – our village is so far, [and] we don’t have transport. If we report to the police and we don’t give them cigarettes they inflict violence on us. After we report [cases] we usually have to go to the police many times [to follow them up].” In Ayawan a group of villagers reported their corrupt village head to the police, yet were treated as provocateurs. One of the people was detained for a few hours and no action was taken against the village head. “The role of the police is to frighten people,” said one villager in Ayawan.

In a few cases, reports were good. Most villagers in Seruyan Tengah—who had allocated Rp 25 million (\$2940) of project funds to resolve the case, most of which went to police transportation costs to finish the investigation—were satisfied with police performance. A village council head from Bandung said the police worked hard and communicated with him on the case. This may have been because one of the police officers had been stationed in the community before. Overall, though, villagers reported bad experiences.

Villagers also had mixed experiences when dealing with prosecutors. In Lampung, villagers mobilized to inquire about the slow process of the case at the public prosecutors’ office but were dismissed as an ‘illegal mob’. In Wanareja, though, community members were satisfied with the prosecutor’s good work.

2. Investigations (police/prosecutors) & indictment (prosecutors)**a) Conducting investigations – patterns and characteristics**

Police and prosecutors tended to perform poorly in investigations, delaying and obstructing investigations and treating villagers poorly. The problems of both institutions were similar:

- Impunity for the powerful
- Stagnation and neglect of cases
- Institutional rivalry between the police and prosecutors
- Poor knowledge of relevant laws
- Inaccessibility and a lack of transparency
- Alleged bribery

In cases where the perpetrators of corruption were government officials or were backed by powerful figures, prosecutors were unwilling to take action unless they came under extraordinary public scrutiny or outside pressure. In Mamodu, for instance, prosecutors did almost nothing for two years to press charges against the defendant, a member of parliament. They made no attempts to seek the permission required from the governor to investigate district parliament members, acting only after the bupati asked for the permission himself. The delays led the defendant to claim to villagers that as a parliament member he was “above the law”. In Tangerang, prosecutors dropped the one suspect who had ties to powerful political figures in Jakarta. And in Grobogan and Wanareja, where villagers and government officials were suspected of collaborating in stealing money, prosecutors only investigated the villagers, not the government officials.

Box 20: Prosecutors' strategies of obstruction: the case of Bukit Kemuning, Lampung

In Bukit Kemuning, where the perpetrator of corruption was a *camat* with family ties in the prosecutors' office, the district prosecutor pursued several strategies to obstruct the trial process. The prosecutors delayed their investigation and refused to give information to the public about their actions. They attempted to lighten the charge against the *camat* by reversing the indictment so that the lighter charge was the prime charge. They weakened their supervision during the detainment period for the *camat*, who was seen in public by several members of the general public. They also delayed sending the draft charge to the provincial prosecutor to seek permission to pursue the case, and lied to the public about having done this. As a result of these attempted obstructions, several court sessions were cancelled or postponed. Finally, even after the courts found the *camat* guilty of corruption and sentenced him to prison, prosecutors failed to detain him, letting him walk free for several months until enough public pressure was placed upon them to imprison him.

In virtually all the cases, except the police in Bandung and the prosecutor in Wanareja, the police and prosecutors took an extraordinarily long time to complete their investigations. At the time of writing the report, several cases had not gone beyond investigation stage at all; of the others, routine investigations took up to two years to complete. The length of investigations led to frustration among the communities affected and enabled suspects in some cases to disappear, depriving the communities in question of an opportunity to recover their funds.

This stagnation was compounded by institutional rivalry between the police and prosecutor and the absence of a formal time limit on investigations. In Bandung and Seruyan Tengah, investigations were delayed because the police and prosecutor passed cases back and forth to one another on several occasions, but would not meet face to face to resolve simple differences of opinion. These delays sometimes caused community anger. For instance, in Bandung, the investigations took so long that the police by law were required to release the suspect from custody, which led to anger by villagers and the suspicion of foul play.¹²

In some cases, there were allegations of bribery. Where police failed to act and failed to inform the community of the reasons why, suspicions immediately arose of bribery or other malfeasance. For instance, in Rowosari, the research team was unable to verify any of the allegations of bribery leveled at them by community members, but inconsistencies in the police account of the case left them vulnerable to such allegations. In Rowosari, the police met the alleged perpetrator on one occasion, but conducted no further questioning, claiming that the two alleged perpetrators had left the area and were impossible to find. Yet with three hours work, the research team was able to locate the said perpetrators, establishing that one of them traveled regularly to his home village and securing the mobile phone number of the other. Whether or not the police were bribed, such unexplained inconsistencies left them open to the kind of public accusations that villagers in Rowosari made against them.

Table 6: Characteristics of police & prosecutor investigations

Case [Reported to]	Police performance	Prosecutor performance	Comments
Bukit Kemuning [Police]	Good. Case processed quickly.	Delays & sustained obstruction.	Suspect related to head prosecutor. Prosecutors ignore case until media report is released.
Sakkoli [Police]	Poor. Police wrongly categorize case as civil and so dismiss it.	Neglect. Prosecutors 'lose' report.	Prosecutors unable to differentiate 'corruption' (a crime to which more priority is given) from 'embezzlement'. Lack of public scrutiny of case.
Maniang Pajo [Prosecutor]	N/A	Neglect. Prosecutor has done little.	No distinction made between corruption & embezzlement.
Grobogan [Police]	Rapid. Influence from outside factors such as local government/ and political parties (PDIP)	Rapid. Influence from outside parties.	Alleged mastermind is not charged or investigated. Allegations of bribery.
Lebakwangi [Police]	Delays. Police still interviewing suspects a year later. Secondary perpetrator is declared a suspect and is facing trial. Primary perpetrator leaves without trace.	Moved quickly	Slow work of police prompts community to revert to informal resolution.
Mamodu [Prosecutor]	N/A	Delays. Prosecutors do little for two years.	Prosecutors have to wait for permission from governor to investigate suspect. Some suspicion of bribery.
Wanareja [Police]	Slow & unprofessional. Police seize perpetrator's assets (chickens) and take them by truck to the police office. Two suspects allegedly offered money to be released from accusation	Good. Prosecutor active.	Local government (PEMDA) is afraid of district being blacklisted from receiving further development funds. They put pressure on legal institutions to process the case well.
Rowosari [Police]	Neglect. Have done little despite several leads to resolve the case. Lack of action leads to public suspicion of bribery.	N/A	Villagers think that the case will not be resolved without big power interests, such as the sub-district head, intervening. They say that police don't care about the interests of the 'little people' (<i>orang kecil</i>).
Tambusai ¹ [Prosecutor]	N/A	Delays & obstruction. Prosecutors ask for payment to process case & misread case as civil rather than criminal.	N/A
Seruyan Tengah [Police]	Mixed. Swift initial investigation from both sub-district and district police & handover to prosecutor, but major delays later.	Delays. Prosecutors have sent investigation back to the police three times. Some people accused them of accepting bribes.	"Institutional ping-pong" between police & prosecutors indicative of general dysfunction in the relationship. Inertia broken only after World Bank missions, local political pressure & media coverage.
Ayawan [Police]	Poor. Police take no action against village head who admits corruption. A community member who reports the case is detained & treated as a provocateur.	N/A	N/A
Tangerang [Prosecutor]	Poor. Police do not work properly to bring suspect to court.	Mixed. Active, but slow due to high staff turnover & disappearance of main suspect.	Local political dynamics influence law enforcement. Suspect has ties to important political figures & used to be a high-ranking military figure.
Bandung [Police]	Good. Police respond rapidly and draft investigation report quickly. But police distrust prosecutors.	Mixed. Prosecutors work well but return case to police several times & fail to explain to police why.	Delays. Poor communication between police and prosecutor. Delays lead to release of perpetrator, prompting community anger.
Demak [N/A]	N/A. Police suggest that the community solve case informally.	N/A	N/A

(b) Drafting indictments – patterns and characteristics

Prosecutors tended to be slow in drafting indictments and to know little about the 1999 corruption law. One of the biggest confusions was the meaning in the law of the phrase “*merugikan keuangan negara*” (cause loss to the state). According to the anti-corruption law passed in 1999, corruption includes both the bribery of government officials (*suap*) and any embezzlement of state funds that “causes loss to the state”, which includes development funds. Because they are government loans, World Bank funds fall into the category of state funds, and so misusing them meets the “loss to the state” criteria.

But this was not widely understood in the cases studied. In many cases, prosecutors said they were unsure whether to categorize corruption of development funds as simple ‘criminal embezzlement’, or ‘corruption’, a more serious crime. But it was hard to tell if this reflected a genuine confusion or if prosecutors used it as a deliberate strategy to buy time and seek bribes or as an excuse for inaction, as the following case from Tambusai illustrates.

Box 21: Confusion or deliberate misunderstanding? The case of prosecutors in Tambusai, Riau

In Tambusai, a sub-district in the northern Sumatran province of Riau, a project facilitator from KDP was accused of pocketing project funds. But although the complaint was referred directly to the public prosecutor, six months later they had done nothing but question several witnesses. In fact, prosecutors told the alleged suspect that he had a grace period of six months to repay the funds he had stolen before they would launch an investigation.

Six months after the deadline, though, they had done nothing. They explained their inaction by claiming that they were confused about whether to categorize the case as a civil case or as criminal embezzlement. But such an explanation looked weak. If the case were civil, the public prosecutor had no role to play. But if it was simple criminal embezzlement, they should have referred the case to the police. Prosecutors did neither, which might have reflected confusion but which left them open to suggestions of collusion and attempted extortion.

In the cases where they did complete their indictments, prosecutors charged suspects with ‘corruption’:

Table 7: Indictments against suspects

Indictments	Defendant	Charged with	Articles & laws used
Bukit Kemuning	Darmajaya, <i>Camat</i>	Corruption	[Information unavailable]
Mamodu	Jusuf L. Habamananga, DPRD II Member	Corruption	Law 3, 1971*, Articles 1 (1) sub b, 28, 34 sub c Law 1, 1946 (Penal Code), Article 64 (1)
Tangerang	M. Sururi Head of Village Credit Union	Corruption	Law 3, 1971: Articles 1(1) sub 6, 28 Law 20, 2001: Article 43 A (1); Penal Code: Article 55(1)
Wanareja	Warnengsih, Villager	Corruption	Law 20, 2001, Article 2 (1), 3
Grobogan	Moh. Hadi, Villager	Corruption	Law 31, 1999, Article 3 (1)
	Setu, Villager	Corruption	Law 31, 1999, Article 3 (1)
	Siti Wati, Villager	Corruption	Law 31, 1999, Article 3 (1)

c) Factors influencing performance - a view from inside the system

Several systemic factors affected the work of police and prosecutors. They included budgetary structures that encourage them to neglect small cases and to take bribes; a lack of formal accountability structures to the public; seniority-based promotion systems that provide few rewards for initiative or merit; and hierarchical management structures that suppress initiative. Indeed, police officers and prosecutors themselves cited many of these considerations, identifying several factors that made it difficult for them to do their jobs well:

- Lack of budgets & accountability ⇒ encourages corruption & lack of independence from local government
- High levels of hierarchy & bureaucracy ⇒ creates delays & internal culture of passivity
- Seniority-based & 'unclear' systems of rewards and punishments ⇒ provides few incentives to do well
- Regulatory confusion over police & prosecutor responsibilities ⇒ leads to institutional rivalry
- Weaknesses in the KUHP (criminal procedures code) ⇒ encourages foul play in drafting indictments

Some of the opinions expressed by police and prosecutors in this section are taken from interviews conducted in the Justice for the Poor case study locations for the Mapping Reformers research, which seeks to gain insider perspectives on the legal system from police, prosecutors and judges. The issues previewed here will thus be explored in more depth in the Mapping Reformers paper.

(i) Lack of budgets & accountability structures

"If you ask where the money comes from... it's hard to say." Senior police officer, Sumatera.

Police and prosecutors cited lack of money as the biggest obstacle to investigations, saying that their budgets were far too small for the costs associated with investigations, especially for transportation to remote areas. For instance, the police in Sampit, Central Kalimantan said that their official budget for each case was between Rp 75,000 (\$9) for light crimes and Rp 150,000 (\$18) for serious crimes.¹³ But the cost of the investigation—borne by community members themselves—reached approximately Rp 6 million (\$705) for police investigation costs and Rp 6 million (\$705) for witness transportation costs.¹⁴ This does not include money expended by the police themselves in pursuing the investigation. Bandung police gave similar figures, saying that their investigation cost over Rp 8 million (\$940).¹⁵ Prosecutors complained too about lack of funding. One reformist senior prosecutor in Lampung said that his officers had to pay themselves for basic writing utensils and that his office has started a small business selling soft drinks to try to finance the shortfalls.

Meager budgets, though, were not the main difficulty by themselves. The more serious problem was that they went hand-in-hand with an absence of public accountability and internal sanctions for corruption. Indeed, prosecutors complained that there was an internal culture of siphoning off funds at every level. "Even the small money that we get," said one prosecutor, "is siphoned off from the center. From the top... [all the way] to the bottom."

The combination of paltry budgets and accountability deficits encourages delays and corruption. First, it makes it necessary for police and prosecutors to treat small (or unprofitable) cases as low priorities. In all but one case, suspects were alleged to have stolen less than Rp 100 million (\$11,765). Police in Sampit allegedly said, when informed that the amount of money stolen in the Ayawan case was Rp 16.5 million,

(\$1940), that the case was not worth investigating. Given the seven-hour distance between Sampit and Ayawan and the high transportation costs of investigation, such a view is not surprising.

Second, it creates a structural incentive for corruption. Police and prosecutors acknowledged that they were forced to finance their investigations in a variety of extra-legal ways, including taking petty bribes and opening small side businesses. In some cases their need for self-financing, though, created a wider culture of rent-seeking in which officers treated their jobs as avenues for profit rather than public service. The district police in Sumba, for instance—who complained about money but had a shiny karaoke machine and show motorbike in their reception—were building a hotel within police grounds to finance their operations. When the police chief was asked if he owned the hotel personally or if the district police owned it in an institutional capacity, he could not differentiate the two, saying, “The police own it. Me.” In another location, a police officer said, “Being posted in the regions is a very precious opportunity for us to build a home for our families. Here in the region we have many friends from local entrepreneurs to local government officials so when we say we want to build a home they usually help. The local government never fuss with us on regulations and permits while local entrepreneurs help by providing the material to build the house at a discounted price.”

Box 22: Distorted incentives: weak budgets, poor management & corruption

The sub-district police office in Seruyan Tengah reeks of neglect and inaction. A ramshackle weatherboard structure surrounded by a muddy and pot-holed road, it has three small offices, some basic wooden furniture, an out of date roster on a whiteboard and an attached dormitory where the five officers and their families live in cramped and uncomfortable conditions.

The office’s operational budget does not go far. They have one motorbike between them and rely on community assistance for additional transportation. In Sampit, the district police say that they have a set operational budget per investigation, the amount depending on the complexity of the case. But in Seruyan Tengah, there is no such system. Instead, the head of office has total discretion over the budget. “As long as I’ve been here, I’ve never heard anything about an operational budget,” said one 15-year veteran of the office.

Management is also poor. Although most of Polsek’s work involves sorting out petty fights between villagers and among families, sometimes more complex cases arise that require them to send comprehensive investigation reports to their superiors in Sampit. But the district police often fail to send feedback to the Polsek officers, who don’t even find out if their efforts have resulted in a conviction. Their motivation levels are accordingly low.

This lack of budget, combined with weak management, encourages corruption and partiality. As a result, the reputation of the police is poor. Indeed, Dayak perceptions that the police were ‘for sale’ to the local Madurese are thought by many to have exacerbated the ethnic tensions that hit Central Kalimantan in 2001 (see ICG 2001). One 16-year-old boy summed up public perceptions of the police, saying, “The community here despises the police.”

Third, it can lead police and prosecutors to depend on local government for supplements. In some cases, police and prosecutors chose to ask the local executive branch of government for money to fund their operations or for other contributions, such as to borrow cars so they could travel to investigate cases. In one district, the head prosecutor said that he regularly requested budget support from the regional government to prevent his staff from seeking illegal payments from the public. But such practices can limit the independence of the police and prosecutors and make it structurally difficult for them to pursue cases that threaten local government interests. “It’s human nature,” said one judge. “If you know

someone and they've given you something, there's a feeling that you owe each other." Indeed, although prosecutors in the same location have investigated several corruption cases this year, few have yet been sent to trial. Local journalists speculate that this is because the local government (which has been providing funding to the prosecutors) wishes to avoid high profile corruption cases until after the elections in 2004.

(ii) Hierarchy, bureaucracy & distorted systems of rewards & punishment

"In order to make our work more effective and efficient, the level of bureaucracy has to be simplified... you have to report to and consult with your boss about every stage of the legal process. [This] in the end affects the quality of indictments, because the work involved in drafting them is doubled. You have to draft the indictment and draft the report for your boss." Prosecutor, Central Java

A second constraint cited by police and prosecutors was the high level of hierarchy and bureaucracy within the system. This had a particular impact on the time needed to prepare indictments. According to an Attorney General's decree, prosecutors have to send their draft indictments for approval to the head of the district prosecutors' office, the head of the provincial prosecutors' office or the head of the attorney general's office. Approval then has to be sent back down. Draft indictments for corruption in particular have to be approved by the provincial prosecutor; district prosecutors say they cannot process them themselves.¹⁶ This encourages delays, as requests for approvals can go back and forth several times. Prosecutors also say they require approval from the Attorney General to freeze and sell assets for execution, which can delay corruption cases further.¹⁷

This system of approvals can limit the independence of district prosecutors, reduce efficiency and quash initiative. The system of rewards and punishments also contributes to this. Promotions and rotations are made on the basis of seniority and, allegedly, bribery, not merit. This creates an environment in which there are few incentives for hard work or initiative. One judge commented that the internal system of rewards and punishments in legal institutions as a whole was distorted. Most legal enforcers, he said, did not want to process cases seriously or rigorously because they got no rewards for doing so, whereas those known to take bribes and otherwise misuse the system were promoted.

(iii) Regulatory ambiguity & weakness

"The police are the people who have to do all the work. Prosecutors just sit there." Police officer, Bandung
"The police are never involved in corruption cases." Prosecutor, Sumba

A third factor that encourages police and prosecutors to perform poorly is regulatory weakness. Three main kinds of regulatory weakness were relevant for the disputes handled in the case studies.

First, there is no formal time limit on investigations, which creates an opening for delays. Second, the regulations about the role of police and prosecutors in 'special crimes' investigations are ambiguous. Law 5/1991 on the Public Prosecutor's Office says that prosecutors have the authority to investigate special crimes [see Article 32 (b)].¹⁸ But because the Criminal Procedure Code says that only the police have the authority to investigate crimes, police and prosecutors are often confused about their respective responsibilities. This can lead to delays.

Box 23: Perspectives of police & prosecutors: institutional rivalry

Institutional rivalry stems from several factors, not simply regulatory ambiguity. According to one reformist prosecutor, differences in opinion between police and prosecutors are exacerbated by the mismatch between their levels of education. Many police officers come to their jobs straight from high school, but prosecutors have law degrees, which can make them look down upon police officers and their ability to handle complex cases. “Each institution has a strong ego,” he says. “[The investigations] become an arena for conflict between the police and prosecutors, especially in corruption cases.” To avoid such problems in his district and to improve the way police handle cases, this prosecutor holds a police-prosecutor forum to train police in drafting investigation reports and to increase their awareness of the Criminal Procedure Code.

Differences of opinion can exist not simply between institutions but inside them. This was particularly notable with the police, where police officers at the district level tended to look down upon their colleagues at the sub-district level.

Third, the Criminal Procedure Code (KUHAP) specifies only the maximum charge that prosecutors can apply for each type of crime, not the minimum charge. The power to ask for light sentences even for serious crimes gives prosecutors a powerful bargaining tool. According to some prosecutors, their colleagues use this as a tool to negotiate with suspects to buy and sell charges.

(d) What explains good performance?

In two cases, the police or prosecutor investigations went smoothly. In Bandung, the police investigation was rapid and thorough, and police were open in sharing information with the communities they served. The same was true of the public prosecutor in Wanareja, who was said by local project staff to be honest and reform-minded.

To some extent, these cases were isolated examples. Yet although individual law enforcement officers can play a central role in determining successful cases, they cannot do so without a conducive environment. Police and prosecutors were able to neglect or obstruct cases more easily in places where public scrutiny from NGOs, project facilitators or local media was low. In contrast, the cases where communities engaged successfully with the legal system were those in which there was a combination of rare, committed reformists within the system and an environment that enabled them to push cases ahead. In Bandung, for instance, the police officer was able to do his job well because of his extensive links with the local community. In Wanareja, the reform-minded prosecutor could do his job well because of the enabling environment created by the strong KDP network of facilitators, strong public scrutiny and political party monitoring of the case. Public involvement and oversight contributed to creating this enabling environment.

3. Trials (courts)

“The most difficult stage in the resolution of this case was trying to take the case from the Prosecutors’ Office to the Court. After it reached the court the process was relatively smooth, and most importantly, quite transparent”

-The Community Lawyer in the Lampung Case

a) Patterns & characteristics

Judicial corruption is regarded as the most serious form of corruption in Indonesia (Transparency International 2003: 2). Yet although Indonesian courts suffer from a dire overall reputation, the courts worked well in the cases studied. Compared with police and prosecutor investigations, court sessions ran smoothly. Trial sessions were held regularly, judges reached decisions without undue delay, and there were no major allegations of bribery. Bukit Kemuning was the only location in which trial sessions were delayed, but the delays were caused not by the courts themselves but by the failure of prosecutors to present the defendant to court and the failure of the defendant’s lawyer to appear in court.

b) Inside the courtroom: villagers’ experiences

The trial sessions were well attended. Four of the six trials were covered extensively in the local media and were attended by friends and family of the defendants, local media, monitors from NGOs and, in the case of the World Bank cases, local government, project staff and the World Bank itself. The Lampung trial was one of the first times a government official had been charged for corruption and was covered widely by local media and anti-corruption NGOs. The Tangerang case involved a large sum of money and so was covered extensively in the local media. And the Dikira and Wanareja cases became local sensations: the first because it involved the unprecedented killing of a police officer; the second because the defendant was said to have had an affair with a local government official and to have used black magic in her embezzlement.

But in most cases, ordinary villagers did not attend trials unless called as witnesses or connected with the defendants. This was partly due to the distance and cost of getting to court, but also due to a lack of information and involvement in resolving cases. In Wanareja, despite the high level of media attention at the *kecamatan* level, residents in the village of Palugon knew little about the case and were not informed about the dates of trial sessions.

For the most part, trial participants were satisfied with their experiences in court despite initial nervousness. Although ordinary villagers and project facilitators said they felt nervous about going to court as defendants or witnesses, they felt in most of the cases that their courtroom experiences were satisfactory and that judges presiding over the trials conducted them well. In Wanareja, witnesses said that they did not feel intimidated in the courtroom, and in Dikira—where some of the defendants spoke only the local language—villagers said that the judge presiding over the trial tried actively to make them feel comfortable. In West Sumba, where some of the population is Marapu (a local form of animism), the district court tailors oaths to the local culture:

Box 24: Enabling villagers to attend court

In West Sumba, where some of the population is Marapu, a local form of animism, the district court tailors oaths to the local culture to enable villagers to feel more comfortable in court. “When Marapu people take oaths in court,” said one judge, “they don’t use Bibles, they don’t use the Al-Quran, but they use betel nut. They have a special oath: *‘If I lie, then if I go to a forest, I’ll be bitten by a snake. If I go to a river, I’ll be bitten by a crocodile. If I go to the fields, I’ll be hit by lightning. And for my whole life, I’ll be cursed by Marapu.’* Then they throw little bits of betel nut over their shoulders.”

But these experiences contrasted sharply with experiences in Grobogan and experiences outside the courtroom. The Indonesian legal system is adopted from the European Civil Law system, where the authority of the judge is absolute in his courtroom. In Grobogan, villagers said that the judge misused this authority by vigorously forcing them to answer questions, pushing them around and acting in an aggressive and intimidating way.

c) Outside the courtroom: threats & intimidation

Here, sometimes the witnesses are threatened by the opposing side. So people are scared of becoming a witness. So sometimes the witnesses ask to be surrounded by the police. This sometimes happens, in certain cases. This normally happens if it involves... if [members of the opposing side are] people who have a lot of power. Judge, Sumba.

Witnesses also experienced threats outside the courtroom. The prime witness in the Grobogan case said that his truck was stolen from directly in front of the courtroom the day he went to give evidence at the trial and that he heard people saying that the accused—the village head—had ordered four men to steal it. The village head had links with local criminal gangs and knew that the witness depended on his truck to run his business. Local police took no action to investigate the theft. In Bukit Kemuning, thugs employed by the accused posed as journalists outside the court and threatened local project facilitators and the legal aid lawyer aiding the case. Such threats are said to be common. When asked if threats dissuaded him from doing his job, Alpien, the legal aid lawyer for the Bukit Kemuning case, replied that they did not because they were standard (*sudah biasa*). Although he claimed that such threats did not dissuade him from doing his job, he—unlike ordinary villagers—lived in the provincial capital and had the backing of his institution, LBH. Ordinary people had no such protections.

These problems are a corollary of the lack of formal witness protection in the Indonesian legal system and the difficulty of remaining independent in close communities. There are no witness protection provisions in the Indonesian legal system for general cases, only for human rights cases (see Law 26/2000; Government Regulation 2/2002). And anonymity is almost impossible to achieve in rural communities whose members are well known to one another.

5. Final decisions (courts) and execution (prosecutor)

In all of the cases, judges agreed with the prosecutor’s indictment. In all of the cases that went to courts, the judge found defendants guilty. The punishments handed down were proportional to the crimes committed. (For a list indicating the outcomes of the courts sessions, see Annex)

According to Article 1 (6) and Article 270 of KUHAP, the Criminal Procedure Code, the public prosecutor is responsible for executing the decisions made in criminal cases. But public prosecutors failed to execute court decisions fully or properly in all cases studied but Bukit Kemuning. Although they tended to execute prison sentences smoothly, in the two cases where the defendants had links to powerful political figures, prosecutors delayed executing the prison sentence or failed to find the missing defendant. And prosecutors failed in all but one case to try to ensure that the defendants repaid the money they had embezzled, even though this was required by the sentences handed down by the courts. In some cases, this failure to do so led to cynicism and distrust among parties seeking justice and an aversion to using the legal system again for solving similar problems in future. For instance, project facilitators active in resolving the case of corruption in Grobogan argued that the prosecutors' failure to execute the court decision fully had a heavy social cost. "If we had known that the social cost would be so high," they said, "from the beginning we would not have used the formal legal system. If we have a new case, it will be better not to go through the courts but to settle it by ourselves."

The three cases in which defendants were government officials or had links to powerful figures were Bukit Kemuning, Mamodu and Tangerang. In Bukit Kemuning and Tangerang, though, the defendants had closer links to powerful political figures than the defendant in Mamodu, who was new to district government and had not yet fully consolidated his power base. By contrast, in Bukit Kemuning, the defendant was related to the head of the district prosecutors' office, the head of the local parliament, the deputy district head and the head of the government body for district planning. In Tangerang, the suspects (one of whom was not tried) had ties to powerful political figures in Jakarta.

In Bukit Kemuning, it took five months for the district prosecutor to imprison the defendant. He did so only after sustained pressure from local media and local NGOs and—after the World Bank met the governor and provincial prosecutor to discuss the delay—the threat of sanction from the provincial prosecutor. It was not until a new prosecutor replaced the old one that prosecutors attempted to recover funds from the perpetrator. In Tangerang, the suspect was tried in absentia. Prosecutors have not succeeded in finding the defendant, and none of the Rp 1,000,000,000 (\$117,645) has been repaid.

Table 8: Execution of court decisions in corruption cases

Case	Defendant & position	Sentence	Execution of prison sentence	Repayment of stolen funds	Attempt to recover funds
Bukit Kemuning	Government official	1 year	Delayed; serving sentence	Yes, but not the fine	Yes
Mamodu	Government official	1 year	Immediate; sentence served	None.	None.
Tangerang	Head of Kaliasin Village's Credit Union (KUD)	8 years	None; suspect absent	None	None
Wanareja	Villager (TPKD Treasurer)	4 years	Direct.; serving sentence	None.	Ongoing
Grobogan	Villager (TPKD Secretary)	2 years, but 1 after appeal	Immediate; sentenced served.	None	None
	Villager (TPKD Head)	1 year	Immediate; sentence served at home	None	None
	Villager (TPKD Treasurer)	1 year	Immediate; sentence served at home	None	None
	Village head	Released	N/A	N/A	N/A

Prosecutors failed in all but one case to ensure that the guilty parties repaid the money, even though repayment of the stolen funds formed part of every court sentence. The exception was Bukit Kemuning, Lampung, where the new prosecutor (installed after a staff changeover) ensured that the guilty party finally

repaid the stolen money through insisting that delays in repayment be replaced by jail time. In all other cases, though, prosecutors made no attempt to seize the assets of guilty parties, even when they clearly owned assets that could have been liquidated.

Failure to do this caused anger and distrust among the parties who were not already apathetic and weary. It reinforced the common perception that resolving problems informally was the only way to ensure that stolen funds were repaid. For instance, in Wanareja, a sub-district level official said that if he could embezzle Rp 257 million (\$30,235) and not have to pay it back, he would take four years in jail. He thought that at earning that amount for four years of sacrifice, the defendant had made a good rate of return.

C. How successful was the legal system?

Although the formal system had some serious problems, and although some of its institutions worked more poorly than others, as a whole it was able to overcome power imbalances and sanction the perpetrators of corruption. Usually, this tended to happen when justice-seekers managed to gather enough momentum and public scrutiny around cases to push them through the investigation stage and to the courts where, because of the high degree of public scrutiny and the absence of opportunities for large bribes, the trials ran smoothly.

Characteristics of success

The factors that contributed most towards resolving cases successfully through the legal system were socio-political. They included local grassroots mobilization; strong community-level facilitation; links with legal advocacy and civil society organizations; public oversight and institutional backing by institutions such as the World Bank, the media, government or the project structures of the village development programs. External scrutiny and civil society oversight also enabled reform-minded law enforcement officials—in particular, district court judges—to resist pressure from their colleagues to obstruct cases or deliver unfair judgments.

Case leaders

All cases that succeeded had a few dedicated ‘case-leaders’ to push the case through the legal system, monitor its progress and encourage local communities to become involved. In some cases, these were community leaders who advocated locally, such as the village parliament head in Grobogan who formed a ‘reformists’ team to pursue the case of corruption from his village’s poverty funds. In other cases, these were legal aid activists, such as the activist lawyer in Lampung who helped educate village community members about their rights and helped build coalitions between them, the local media and NGOs. In yet others, they were project facilitators from the village poverty projects themselves, who had a professional responsibility to follow up on corruption allegations.

Some community leaders were motivated simply by a sense of community responsibility—and possibly social standing or prestige. In some cases, this correlated with their need for political capital. In Mamodu, for instance, political rivals of a district parliament member were said to have encouraged villagers to expose his theft of village poverty funds during his term as village head, an outcome that benefited the

village community despite its political background. Local project facilitators, in contrast, tended to be motivated by the emphasis that their project management structures placed upon following up on complaints and combating corruption. Even project facilitators who did not feel a personal commitment towards following up cases thus still had a professional incentive to do so.

Links to external institutions

Box 25: Religious organizations as facilitators & mediators

Although a departure from World Bank corruption cases, the Dikira case also showed the strength of a strong, outside institution that intervened on behalf of a community. In this case, a local police officer had been murdered. Seeking scapegoats, the police detained a number of villagers and subjected them to torture and physical abuse. A local journalist brought villagers' wives to seek assistance from a respected and vocal priest. The priest was the head of the Church's Justice and Peace commission in West Sumba, a sub-committee with a mandate from Rome to promote legal awareness and peace-building efforts. This priest hired the men a lawyer, who after a three-month trial, was able to prove their innocence and win their release from detention.

But besides providing the financial support to hire the villagers a lawyer, the church provided a source of authority to serve as a counterweight to that of the police. Soon after the case came into the spotlight, the head of the district police (in charge when the initial abuses occurred) was transferred to East Timor where he was said to have gone mad. Although the journalist complained about the police torture to military police, he did not think his letter was what prompted the transfer. Instead, he said, "I think it was because the church was involved in this case. Here, the dioceses have a lot of authority. As an institution that commands respect, it is the same as the Islamic leaders in Java. They are the informal leaders of the community. When I contacted [the priest], I saw that he was the only person with the legal capacity to support [the community]. I myself could be beaten up if I was alone." Without the support of the priest, the journalist would have been unable to provide the support villagers needed.

When asked what his motivations were in supporting this case, the priest said, "The mission of the church is to defend the people. People are not animals; they are people. We have to look at them in this form. People are trodden on, tricked, and raped – this can't be done, we have to face up and we have to do something. And that's not easy. We have to face up to the leaders. A lot of people are victims."

The case highlighted the potential for a range of informal institutions to support the efforts of village communities to represent themselves, particularly those that already command the trust and respect of local people.

All of these case leaders were either socially or politically powerful or had links to institutions that were independent from local power structures. For instance, local project facilitators in the World Bank projects were backed up by their national management structure, which had the power to move them in case of intimidation. The legal aid lawyer who helped lead the case in Lampung had the backing of his legal aid organization at provincial level. And in Dikira, the Catholic priest active in defending villagers wrongly accused of harboring the murderer of a police officer had the backing of his commission, Justice and Peace, and, by extension, the worldwide network of the Catholic church.

These kinds of links made such figures less vulnerable to threats, intimidation and the other risks inherent in community mobilization. The links to external institutions both bolstered the bargaining power of the case leaders and afforded them protections that they would not otherwise have had. It also meant that the communities in question had an independent source of information and access to outside assistance.

Mobilizing a range of institutions

The most successful case leaders were those who were able to build coalitions with civil society organizations to place scrutiny on the legal system while mobilizing a range of institutions—each with its own stake in seeing the cases resolved, such as the World Bank or local government—around the cases at hand. In Lampung, for instance, activist lawyers built coalitions with the local media, NGOs and a reform-minded judge to monitor the case through the legal system and ensure that the case remained in the public eye. Such monitoring did have an effect: when a story about the Lampung case appeared in the local paper, for instance, prosecutors took action the very next day after several months of inertia. In the Seruyan Tengah case, police and prosecutors re-launched their investigations following media coverage. In Tangerang, the NGO Tangerang Government Watch and local media acted as the ‘eyes and ears’ of the community, working together to put pressure on the public prosecutors’ office to process a big corruption case.

Nevertheless, it is important to be realistic about the value of transparency and scrutiny applied by media and civil society coalitions. It is an aide, not a panacea. As the Lampung case—in which sustained public attention helped but where public prosecutors still attempted to obstruct the case—shows, it encourages but does not ensure success. Resolving the case took almost two years.

Coalition building efforts can be more successful when the coalitions link with reformers inside the legal system or government. Irfanuddin, the reform-minded judge from Lampung, emphasized the importance of the coalition of NGOs, Legal Aid Foundation and media in the case. The support of NGOs and coverage from media protected him from external threats and freed him from the internal pressures to deliver a verdict in favor of the accused regardless of the evidence against him.

Most of the coalitions in the case studies were ad-hoc coalitions formed around the case at hand. But others were more long-term. “Team 13” in Lampung provides the best example of a long-term coalition geared towards a single issue: resolving land conflicts in the district. Lampung is an area with an active NGO and activist community, and has a high level of land disputes. In the year preceding the formation of the team, community members and the Lampung People’s Forum (NGOs, Legal Aid, student activists, and community leaders) held a large demonstration to push for a sustainable resolution to land disputes which were manifesting in violence and diminishing levels of investment in the province. The government was pressed to form an independent team to mediate disputes between communities and government or companies. The team of thirteen members includes journalists, legal aid lawyers, bar association members, and university lecturers, but also government officials working on land issues. Thus far, the team’s strategy of mediation and conciliation has successfully managed to reduce the number of land conflicts in Lampung that have erupted in violence.

The cases that succeeded most were those in which the interests of a wide range of players—not simply the case leaders or civil society organizations, but also local government, the national government or the World Bank, coalesced around the case at hand. The incentives facing these different players varied. Local governments that pushed for cases to be resolved were motivated in large part by the fear that the projects would suspend future funds to their districts if they did not take action against corruption. External institutions such as the World Bank and the national government played a crucial role in shaping these incentives. In one case, they did so directly. In Lampung, the World Bank and the KDP national management structure (run by the central government) threatened to suspend funds to Lampung unless

prosecutors ceased to obstruct their investigation of the corruption case there. This prompted the governor of the province to approach the local government to put pressure on the local prosecutors. But in most cases, their role was indirect. In Wanareja, for instance, the public prosecutor went out of his way to complete the corruption investigation swiftly and thoroughly, putting in time on the case even on days off. When asked what their motivations were, he and representatives from other institutions said repeatedly that it was to avoid their district being shamed in the eyes of donors.

V. THE IMPACT OF CASES

The outcomes of cases were mixed. Although the cases set a precedent against future corruption, weaknesses in the way that cases were handled formally limited their wider community impact. Indeed, the few informal resolutions tended to be perceived more favorably at community level. Although the formal system was better at overcoming power imbalances than village institutions, its distance from villagers and a lack of communication about its successes limited its impact upon villagers' perceptions of how worthwhile it was to use it to resolve disputes.

Local Impact

Village communities had a mixed reaction to the cases. In corruption cases where the perpetrators were sanctioned, villagers recognized that a precedent was set against future corruption, no matter how powerful the perpetrator. As one villager in Lampung said "Whoever becomes a *camat* [district head] here will think a thousand times before they engage in corruption again." In Wanareja, where the name of the jailed perpetrator of corruption was Warnengsih, daily communication in the office of the district head includes the following warning: "Want to play around with money? Watch out! You'll be Warnengsih-ed". Another villager in Wanareja spoke highly of the prosecutor who appealed the leniency of the original sentence handed down at the district court to the provincial court in Semarang. "A prosecutor even appealed to defend the little people," he noted. "This is something positive."

Yet none of the cases that went through the legal system resulted in money being returned, and villagers tended to perceive 'justice' as consisting of the repayment of funds. The failures of prosecutors to execute decisions and recover funds thus led to a degree of public cynicism and an aversion to using the legal system in future. In Grobogan, for instance, project facilitators said that taking the case to court had caused severe community tension and had created a serious 'social cost'. Although the courts found the defendants guilty, prosecutors failed to ensure that they repaid the money they had stolen. Because community members did not get their money back but still had to suffer the social consequences of taking the case to court, project facilitators claimed that they would not use the courts again to solve similar problems in future.

Delays in resolving cases formally also led to community frustration. In Bandung, for instance, a drawn-out back-and-forth process between the police and prosecutors' office made the process of implicating the perpetrator of corruption go on far too long. When villagers saw the perpetrator released after his maximum lawful period of detention, particularly after such a stringent initial effort at resolving the case informally, they grew frustrated. Justice delayed resulted in justice denied. This was also the pattern in other areas. With no control over the legal process and an inability to see the progress of its resolution,

villagers grew bored and forgot about the case once it reached the legal process. As one Lebakwangi villager put it “If a dispute goes to the police, we don’t know what happens...we can’t control the process.”

Failure to communicate the result of successful cases also limited the wider community impact of cases. In the cases that did not have proper facilitation from barefoot lawyers and community advocates, villagers were divorced from the workings of the formal legal process. It took months for villagers in an isolated mountain village (Palugon, Wanareja) to realize the result of a corruption case that was initially reported by their village head. There is thus little point in trying to make an example of corruption to deter others if people in the village do not hear of the example.

The Demak case, which was resolved informally within the village forum, garnered a more positive impact than the legal cases. Even if only a few leaders of the community actively resolved the case, villagers could see the result right away. Money was slowly repaid and the members of the board who had stolen the money were immediately replaced. Because of the case’s publicity, community members were more inclined to attend community meetings, elect new board members with “clean” records, and involve themselves in agreeing to new rules for the project to ensure transparency and accountability. Community members thus felt the case was a genuine success in terms of people’s empowerment. Team members involved in the resolution were proud, saying “In the future, any time we do something for the community, that has benefits for the community, I’m sure that we will win.”

In the most successful legal cases, villagers recognized that it was powerful outside players and facilitators who advocated for their rights and served as an access point for information. In Lampung, for instance, villagers were conscious of the fact that their case would never have been solved without outside presence. “Luckily we had LBH and the World Bank,” said one villager. “If not, we are sure it wouldn’t have been solved. Without their presence, the case would not have moved forward.” Yet they were also grateful for the presence of a barefoot lawyer who helped them understand the process. In Dikira, the village head wrongly accused of murder knew that the efforts of a priest and community advocate helped hire him a lawyer and prove his innocence. When he was asked whether or not he knew more about the law, he said “I see that I did need a lawyer in order to be released, but I’m a simple person, I don’t feel I understand how the law really works. I’m a poor person, I wouldn’t be able to pay for it myself.”

Informal conversations with villagers suggested that villagers wanted to learn more about the law. As one Kalimantan villager put it, “We are thirsty for the law.” Most villagers lacked faith in their ability to engage effectively with the legal system without assistance from a facilitator or paralegal. In-depth conversations with villagers in various locations revealed a preference for paralegals to come from outside the village, on grounds that they would be more objective, educated and less likely to be influenced by family or social links. “Nobody here has the knowledge or respect of others to do legal education,” said one Kalimantan villager. Yet further discussions in both Lampung and Kalimantan revealed that people felt that, although they would choose the expertise and authority of an outsider over a trained local presence, an ideal combination would consist of a mix of the two to complement one another.

Part 3

Conclusions

I. Case study conclusions

Introduction

Poor and marginalized village communities in Indonesia have been consistently excluded from both the formal and informal avenues of justice. Yet despite this, such village communities have in a number of cases been able to defend their rights and interests successfully. The aim of this paper was to examine such cases of success. In doing so, it had several objectives: first, to understand the preferences and expectations of villagers in resolving disputes; second, to identify patterns in the interaction between poor communities, village institutions and the legal system; and third, to identify what factors enabled poor village communities to defend their interests successfully. The paper sought also to examine what kinds of interventions, if any, would strengthen village representation and access to justice.

The case studies yielded rich and heterogeneous findings. The crux of the findings was that although power and institutional history still largely shaped how village communities handled disputes, how justice institutions responded and how cases were resolved, community mobilization and external interventions were able in some circumstances to break the institutional impasse and enable poor communities to defend their interests successfully. But although these efforts benefited these communities as a whole, the poorest and most marginalized people within those communities rarely participated in them. The resolution of these kinds of problems was thus largely an elite game, albeit a beneficial one.

The cases studied were more complex than they first appeared. The paper sought originally to examine cases of success against a background of failure. It chose cases in which people occupying a position of authority had embezzled village poverty funds. The premise was that such cases represented the types of cases where the Indonesian justice system was almost certain to fail poor people and that a successful outcome would thus be atypical enough to warrant further study.

Such atypical cases were hard to find. Only some of the cases studied succeeded, and out of the ones that did succeed, the process by which communities achieved this outcome was usually more erratic than it first seemed. Despite this, the interests of village communities were, on the whole, better represented in the cases studied than in standard cases. In at least a few of the cases, grassroots mobilization, public scrutiny and external facilitation did succeed in enabling village communities to resolve their problems informally or to push the police and prosecutors to work well despite the odds.

The paper has thus been able to suggest at least in part why such cases succeeded in breaking the institutional impasse where others of the same type have failed. In doing so, it has identified clear patterns in the interactions between villagers and the formal legal system; in how the police, prosecutors and courts operate at the local level; and in how the elements of transition are playing out at the local level in Indonesia and affecting village justice.

Informal dispute resolution

The institutional history of village justice affected both the preferences of village communities and the ways in which informal justice institutions worked. Villagers and village leaders preferred to resolve corruption disputes informally, perceiving informal mechanisms to be easier, quicker, cheaper and less socially disruptive than the formal legal system. They also feared and distrusted the formal legal system, viewing it as corrupt, unfair and inaccessible. Yet despite this preference, informal institutions failed to resolve corruption disputes where there were gross power imbalances between the perpetrators of corruption and the poor and marginalized communities from whom they had embezzled money. Village communities were able to resolve corruption disputes informally when power imbalances were not exaggerated and when communities mobilized politically and used the power of legal sanction as a bargaining tool in informal negotiations. But legal sanction was only one of several potential bargaining cards, not the trump: it enabled informal negotiations to succeed only where power imbalances between the parties were not exaggerated.

Informal versus formal

In almost all of the cases, villagers and village leaders preferred to attempt to resolve disputes informally, referring them to the formal legal system only when their attempts at informal negotiation had failed. The exception was in cases where the alleged perpetrators of corruption were so powerful that communities imagined that any attempts at informal negotiation would be certain to fail. In these cases, communities either resorted directly to using the formal legal system or felt too disadvantaged to make any attempts to defend their interests. These were all cases in which the perpetrators of corruption were government officials or had close ties to them.

Village communities preferred to resolve disputes informally for several reasons. Some of these were practical and are common the world over. Resolving disputes informally is usually thought to be quicker, cheaper and easier than resolving them through the courts. Time, distance and cost were indeed among villagers' primary considerations in the cases studied. The police, prosecutors and courts tended to be far from villages, expensive to reach and costly to access. Villagers were thus reluctant to use them as anything but a last resort. In Seruyan Tengah in Central Kalimantan, for instance, villagers engaged in pressing charges against a corrupt official said they would have given up long ago if money had not been made available to them from their KDP funds to travel to the district police and prosecutors. The return journey to the district capital Sampit took two days by bus and riverboat and cost Rp 160,000 (\$19), in a province where the minimum wage is Rp 425,000 (\$50).¹⁹ Combined with accommodation and consumption expenses, as well as opportunity costs, a villager will need to believe that their time is being well spent to justify the trip. Due to a lack of operational budget, police at district level relied on villagers to come to them.

Other considerations were exacerbated by the particular circumstances of Indonesian justice. For the most part, village communities feared and distrusted the law, perceiving it to be corrupt, untrustworthy and inaccessible. A common refrain from villagers was that reporting a stolen chicken to the police would require a goat's worth of bribes; reporting a goat would require a cow's worth of bribes. "The role of the police," said one villager, "is to frighten people." The broader perceptions of institutional failures of the Indonesian legal system, particularly endemic corruption and mismanagement, thus had a direct impact on the day-to-day choices of ordinary villagers. Considering the high costs and small likelihood of success in

the formal legal system, the poor and marginalized preferred to rely more on local informal institutions in spite of their flaws.

Social relationships also fed into villagers' preference for the informal. Both ordinary villagers and village leaders tended to cite harmony and social relations as reasons for attempting informal negotiations before resorting to the formal legal system. Their rationale was that, whereas the courts delivered only win/lose outcomes, informal institutions could deliver a settlement with which all parties were satisfied. For villagers, this largely reflected the realities of village life. Social relationships can be especially important in small village communities whose members depend on one another and are bound by relationships of trust and reciprocity. Their preference for non-adversarial dispute-resolution reflected these kinds of considerations and also, sometimes, fear of revenge. Village leaders had similar concerns, but also were motivated by a desire to save face and avoid embarrassment for the village in the face of outsiders. In some cases, people emphasized the importance of harmony simply as an attempt to suppress legitimate complaints against themselves and their peers, a strategy made easier by the official state emphasis upon harmony and consensus in village decision-making. In Mamodu, colleagues and friends of the village head avoided efforts to bring him to account and said that doing so was a grave mistake because it had caused social disruption and trauma. But ordinary villagers, who had suffered the village head's malfeasance for years, said that they were pleased with the result and were happy that such disruption had arisen.

Resolving disputes using village institutions

Despite their preference for the informal, village communities were generally unable to overcome corruption using existing village institutions. In all but one case where village communities were able to reach informal agreements, the perpetrators of corruption repaid funds only when they were threatened by legal sanction. Village institutions were especially inadequate in cases where the perpetrators of corruption were government officials or had close ties to them. In all cases where such power imbalances existed, informal negotiations failed.

This failure of informal institutions, especially when combined with fear of the powerful, contributed to passivity and a reluctance to take action. In Rowosari, the perpetrators did not hold formal positions of authority but were known to have the backing of criminal gangs. Consequently, no villager dared to stand up to them. The pattern was the same in a village in Grobogan, all of whose members were aware that their village head, an authoritarian with links to criminal gangs, had siphoned off funds from their village poverty project. Yet through a combination of fear and a perception that attempts at combating his actions would be futile, villagers were reluctant to take action. Indeed, only the head of the village parliament—who also had political incentives for taking action—dared to protest. Through a combination of bribery and intimidation, though, the village head escaped sanction, allowing three others to take the blame. Although villagers objected to his behavior and thought it detrimental to their interests, they said that would vote for him again in a village head election because they were afraid of him, and—in preferences that reflected the apparent contradictions created by governance failures—because he paid more to buy their votes than did other candidates.

The impotence of existing village institutions in overcoming power imbalances has a direct link to institutional history and the village governance arrangements of the New Order. Under these village government structures, village heads were accountable only to their superiors, not to the public. There

were no avenues through which ordinary villagers could hold the village head accountable for his actions. Unless social or political pressure was extremely strong, it was thus virtually impossible using existing village institutions for ordinary villagers to defend their interests against the village head or other government officials.

Little firm evidence emerged from the case studies about the effect that village governance reforms have had upon local justice. In some places, the introduction of the village parliament does seem to have improved the capacity for ordinary villagers to defend their interests against powerful figures. In Grobogan, for instance, the head of the new village parliament was able to exploit his political rivalry with the village head to mobilize on behalf of the poor and marginalized, who felt unable to do so themselves. But other places illustrated how the day-to-day implementation of the reforms affects its impact. In Ayawan, by contrast, the village head manipulated the electoral process for the village parliament, which meant that it consisted simply of his allies and thus did not serve as a check on his actions.

Characteristics of success

Village communities were able to resolve cases informally through employing the threat of legal sanction and through community mobilization. But although the threat of the law encouraged informal negotiations to succeed, it was not, because of the inadequacies of the law, sufficient in doing so. Most of the cases that reached the formal system were those in which informal negotiations had failed despite the threat of legal sanction. Indeed, the government officials against whom charges were pressed thought themselves above the law entirely. The sub-district head charged with corruption in Lampung, for instance, tried repeatedly through his family links to the prosecutors' office to manipulate the legal process to escape sanction. Similarly, the district parliament member charged with corruption in Sumba told villagers that, as a government official, he was above the law and could not be sanctioned. Rather than enabling informal negotiations, the endemic failures of the formal system thus obstructed the ability of village communities to negotiate informally with powerful figures. Although the law cast its shadow, it was one that, because of its weak spots, encouraged the negotiations only of the powerless.

Formal justice system

Although village communities tended to fear and distrust the formal legal system, which was inaccessible and distant from the realities of village life, they did express a willingness to use the courts as a forum of last resort, especially in cases where village institutions were inadequate in overcoming power imbalances. In the cases studied, the formal system for the most part worked poorly. The police and prosecutors mismanaged or obstructed both their investigations and the execution of court decisions. The courts, in contrast, worked relatively well. Despite these failures, though, the formal system was able to overcome village power imbalances to sanction the perpetrators of corruption successfully, and among this background of failure were a few reformist judges, prosecutors, police officers and advocates. A number of factors encouraged the formal system to work successfully. Primary among these were community facilitation, grassroots mobilization, external scrutiny, transparency and links to powerful institutions.

Resolving disputes using the formal justice system

The formal legal system gave a mixed performance in the cases studied. Police and prosecutors showed the usual mixture of neglect, intransigence and a bias towards the powerful in their investigations. For the most part they neglected—or indeed actively obstructed—investigations until they came under external pressure to conduct them well. In most of the corruption cases, police and prosecutors simply neglected or mismanaged investigations. In some cases, though, the police or prosecutors actively obstructed investigations and protected entrenched interests. This was true mainly of the cases in which the perpetrators of corruption were government officials, such as in Lampung or Mamodu, or where the interests of the police themselves were threatened, such as in Dikira.

Several factors contributed towards the poor performance of police and prosecutors. The social and political ties of powerful figures thus directly affected the way that police and prosecutors handled cases. For instance, in Lampung, where the government official on trial had family links with the prosecutors' office, prosecutors tried repeatedly to delay and obstruct their investigation by delaying drafts of the charges, lightening charges and allowing the government official to avoid custody. Their obstructions led to the repeated cancellation and postponement of court sessions.

Institutional rivalry contributed in some degree towards the poor performance of police and prosecutors. So too did confusion over roles and ignorance of laws. In most of the cases, the police and prosecutors had little experience of dealing with corruption cases. The police and prosecutors tended to be confused about or deliberately ignorant of the respective roles and responsibilities of the police and prosecutors in such cases. This contributed towards delays as police and prosecutors batted investigations back and forth among one another. Coordination and cooperation between the two legal institutions was poor.

Police and prosecutors tended to have poor knowledge of the relevant laws related to corruption. Several of the police and prosecutors were confused about the substance of Law 31 of 1999 on corruption, particularly about whether cases counted as 'corruption' or simply 'criminal embezzlement', a lesser charge. These kinds of confusions left open the possibility of manipulating charges to lighten them deliberately on behalf of the perpetrators of corruption. These problems were exacerbated by the limited access that police and prosecutors have to the latest legal analysis and jurisprudence—access that might otherwise help them in corruption investigations.

In contrast to the police and prosecutors, the courts worked relatively well. Villagers tended to be satisfied with their experiences in court, and judges conducted trial sessions smoothly and without significant delays or allegations of misconduct. Though this appears to contravene the conventional wisdom that corruption in the Indonesian courts is high, it concurs with survey results from the Asia Foundation study that found that 85% of respondents who had taken a case to court rated the outcome as satisfactory, despite the perceived high levels of corruption in the courts (Asia Foundation 2001: 79).

The institutional basis of the apparent difference in performance between the police, prosecutors and courts highlighted in the case studies is examined in greater detail by the partner paper to this one, *Mapping Reformers*. The evidence that emerged from this study was inconclusive, but some features of the cases highlighted some of the institutional factors that potentially contributed. Most of the corruption cases involved small amounts of money, thus providing few opportunities for bribery and incentives for swift action. Yet, because of the nature of the crime, gathering evidence for investigations was a costly and

difficult task, made harder by the paltry operating budgets of both the police and prosecutors. There were thus few incentives for the police or prosecutors to investigate cases rigorously or promptly. Indeed, a district police officer in Sampit apparently told a villager from Ayawan that their case was too small to be concerned about. This was not true of the courts, which did not have to expend large sums of money on investigations. Furthermore, cases that made it past the police and prosecutors to the courts were those for which there was a high degree of public scrutiny and external pressure. The Mapping Reformers research will examine in greater depth the institutional incentives that govern the work of the police, prosecutors and courts.

Despite these failures of the formal justice system, there were cases in which reform-minded police officers, prosecutors, judges or advocates pushed for cases to be resolved fairly and without undue influence. And in at least three of the cases, the formal legal system succeeded where informal institutions could not, by overcoming power imbalances to sanction government officials or other powerful figures for embezzling village poverty funds. So, although the legal system performed poorly on the whole, there were some signs of success. More importantly, there were similarities among the cases of success.

Characteristics of success

The cases that were resolved successfully through the formal system were in many respects different from one another. The government or legal institutions in question had varying standards of administration, management and technical skills; and the communities had different levels of development, urbanization and access to legal information and assistance. Although some of these factors contributed to success, none determined it. Instead, the elements that characterized success were sociopolitical. They included strong local advocacy, public scrutiny and the external support of powerful institutions such as the World Bank, political parties or the government. The Mapping Reformers paper will examine in greater detail the internal systemic factors that contribute to the successful performance of the police, prosecutors and courts.

All cases that succeeded had a dedicated case leader—a project facilitator or community leader with some interest in the case—to follow up the case and rally other constituents around it. Their efforts were successful when they managed to mobilize enough social, political and institutional pressure around legal institutions to monitor their performance and pressure them to work well.

The successful cases had three main characteristics in common. First, the case leaders of such cases were socially or politically powerful or were backed by outside institutions that were independent from local power structures. This backing of outside institutions—such as the World Bank, religious organizations or the national management structures of the development projects—helped to protect the case leaders from threats and intimidation and strengthened their bargaining power. In Mamodu, for instance, the village head's corruption from development projects went unchallenged for years, and villagers said they were too fearful to challenge him. But when he stole money from a World Bank project, the local project facilitator, an outsider backed up by his national management structure, was able to follow up the case without any such fears; and later the *bupati*, a powerful political leader, was able also to intervene successfully.

Second, the case leaders built links with legal aid lawyers, local media and NGOs to help place public pressure on the cases and monitor legal institutions. This public scrutiny made it harder for police and

prosecutors to engage in foul play. It also strengthened the hand of the reformists who could be found within the system, such as the reform-minded judge in Bukit Kemuning who said that such civil society involvement was key to his efforts to resist pressure to deliver an unfair judgment. Case leaders were thus able to use the strategies of coalition building and transparency successfully.

Third, the cases that succeeded were those where the interests of a range of constituents coalesced around the corruption case at hand. Legal aid lawyers and NGOs were able to use the cases as opportunities for broader advocacy; the World Bank was able to use the cases as opportunities to show its seriousness about combating corruption; and local governments were able to use them to show their seriousness about combating corruption from donor projects. This goes some degree towards explaining one of the more surprising findings of the study, which is that the cases involving powerful government officials were more likely to make it past the police and prosecutors than cases involving ordinary villagers. The monitoring of civil society groups and external institutions such as the church, the World Bank or government was crucial to ensuring that cases made it past this stage. But cases of poor people stealing from other poor people were less likely to attract this kind of involvement than cases of the government stealing from the poor. Though the power of the government officials who stole gave them several kinds of advantages, it was precisely this power that made them attractive as focal points for advocacy.

The evidence suggesting whether the cases would have succeeded without the World Bank was mixed. Although the World Bank had the power to suspend funds if local governments did not follow up corruption cases, in reality it threatened to do so in only one of the cases studied—Bukit Kemuning. In this case, the threat did not prevent prosecutors from engaging in foul play, though it did prompt the governor to place pressure on local government and strengthen the hand of legal aid activists and legal system reformers. Its influence was thus indirect. The World Bank played an indirect role in at least two other cases (Mamodu & Wanareja). In Wanareja, local prosecutors said that they worked hard on the case to avoid their district being shamed in the eyes of donors. In Mamodu, a World Bank visit enabled local government officials to ratchet up their corruption control efforts. The World Bank thus may have created an enabling environment for the efforts of local advocates and facilitators. But its presence was no guarantee of success. Half of cases failed to make it past police and prosecutors despite the World Bank's presence.

II. Implications

Village justice and legal reform

One of the main aims of this paper was to examine what kinds of legal reform interventions, if any, would be most likely to strengthen poor people's access to justice. The cases studied were of communities with varied levels of access to legal information, legal assistance, civil society organizations and external institutions. The communities also had different types of village leadership, adat institutions, levels of development and degrees of urbanization. They thus provided rich material for thinking about the appropriateness of such interventions in a range of different contexts.

The crux of the case study findings was that, although power relationships largely shaped the way in which village communities and justice institutions acted, under the right conditions the legal system was able to overcome power imbalances where village institutions could not. Although village communities preferred to resolve disputes informally, they were unable to overcome serious power imbalances using village institutions. In cases where no alternative for a negotiated settlement existed, village communities expressed a willingness to use the legal system as a last resort. The legal system also worked poorly overall, and it too reflected a bias towards the powerful. However, unlike village institutions, it was able to overcome these differentials where case leaders built coalitions with civil society, had some protection from threats and intimidation and mobilized social and political pressure on the legal institutions to work well.

At first, this appears counter-intuitive. How is it that enough social and political pressure could be mobilized to pressure powerful formal government institutions to work well but not for less powerful village institutions to work well? The explanation, though, may lie in the capacity of the formal system to mobilize a broader range of constituents than village institutions alone. The efforts of village communities to seek legal redress in the cases studied became a focal point for the interests of a range of different actors. Civil society groups and legal aid activists were able to seize the cases as opportunities for broader advocacy. The World Bank was able to use them as opportunities to show its seriousness about combating corruption in its projects. Local governments used them to display their commitment to donor institutions to controlling corruption—thus making them more attractive recipients of foreign aid. And in some cases, political rivals were able to use the cases as opportunities to write off opponents. Taking the cases to the formal system thus lifted them into the public domain.

We thus believe that, despite the flaws of the legal system, there is a clear rationale for efforts to improve access to justice in village communities. But the experience of the cases studied suggests that such efforts should be broad. Village communities should have access to the courts should they choose to use them. But the aim of access-to-justice interventions should not be simply to widen villagers' procedural access to the legal system. Villagers preferred to resolve disputes informally and perceived the legal system to be distant and hard to use. Rushing to use the formal legal system arguably takes problems from one unfair and imbalanced environment (the village) to another unfair and imbalanced environment (the courts), one that is more distant from people's day-to-day lives.

The aim of access to justice interventions should thus be to improve villagers' access to justice broadly defined: to support both informal and formal mechanisms of redress and dispute-resolution and help them serve poor people better. Formal legal reform interventions should focus not just on systemic improvements, to the legal system but on providing the information and facilitation that villagers need to access it, linking them with civil society groups and media, and helping them to monitor it. They should also be conceived as part of a broader effort at community empowerment. The limited community impact of the cases shows the importance of communicating the results of the cases in question back to the villages in question.

Recommendations for the Government of Indonesia

a) Systemic & regulatory reforms to enhance village justice

The top-down systemic reforms that are needed to reform the Indonesian justice system are well known. These reforms will not by themselves address the heart of the issue, which is political and not technical. But they are a necessary part of any longer-term effort to improve the way the formal legal system serves the poor and marginalized.

The police, prosecutors and judges interviewed highlighted a number of areas where they themselves felt that improvements could be made, such as the quality of personnel, internal systems of accountability and working conditions. One of the most commonly cited problems was that operational funds were inadequate and tended to be siphoned off on their journey from the center to the regions.

Box 26: Recommendations for systemic reforms to the legal system

- **Institute measures to improve quality of personnel.** The recruitment, selection, promotion and transfer policies within the police force, the prosecutors and courts should be overhauled and made more transparent.
- **Institute measures to improve working conditions...** Salaries, operational funds, equipment, office maintenance and opportunities for continuing education should be reviewed and overhauled. The government should ensure that local police and prosecutors receive clear guidelines outlining how much they should receive for official operational funds and should provide a central complaints center to report shortfalls.
- **...but link these with accountability measures, such as the publication of court decisions.** The cases suggested that although poor working conditions contribute to poor performance, improvements to them (such as higher salaries and budgets) are unlikely to succeed unless internal accountability measures are also put in place. The literature on anti-corruption suggests the same (see Klitgaard 2000; Woodhouse 2004). Emphasis should thus be placed on measures to improve both internal and external accountability. Internal measures include ensuring that poor performance and corruption is sanctioned, that good performance and integrity is rewarded and that internal processes are made more transparent. External measures include requiring that law enforcement agencies provide public information and clarification to the public when asked and ensuring that court decisions are routinely and systematically published and easily available to the public for no fee. The reach of court watch groups should be expanded to increase scrutiny also of the police and prosecutors.

In addition, to these systemic reforms, a number of regulatory changes would improve poor people's capacity to defend their rights, particularly in corruption cases. Such regulatory reforms would not by themselves change the reality on the ground for poor people—and the existence of regulations is no guarantee that they will be acted on. Nevertheless, they should be put in place to remove the present regulatory impediments to reform.

The suggested areas stem from the regulatory weaknesses noted in the case studies. Although there are provisions available to hold prosecutors accountable for the progress and quality of investigations and for executing court decisions properly (see Annex 1, Technical Legal Analysis, for details), they are not enforced. This leads to cynicism and distrust on the part of the communities whose money had been stolen. Second, police and prosecutors are confused about the regulations concerning the authority to investigate *pidana khusus* (special crimes) and *pidana biasa* (ordinary crimes), and can use this as an excuse for neglecting cases. Finally, in some cases prosecutors refused to provide information about corruption investigations to the general public, even though they are required to do so by Law 31/1999 on corruption.

Box 27: Recommendations for enforcing & strengthening regulations

Box: Regulatory changes and enforcements

- **Use regulations to hold police and prosecutors accountable for obstructing investigations and failing to execute court decisions.** Regulations should be enforced to (i) sanction police and prosecutors for neglecting investigations (see Article 13 (1b) of Law 5/1991); (ii) sanction prosecutors and lawyers for obstructing the proper course of the court procedure and ignoring the orders of the judge (see Article 21 of Law 31/1999); and (iii) sanction prosecutors for failing to immediately and fully carry out the court sentence once it has become final (see Article 27 (1b) of Law 5/1991).
- **Clarify regulations concerning 'special crimes' and 'ordinary crimes'.** The government should clarify the distinction between special crimes (*pidana khusus*) and ordinary crimes (*pidana biasa*) and should elucidate the respective roles and responsibilities of the police and prosecutors in investigating them.
- **Enforce regulations concerning public right to information.** The government should enforce regulations that require prosecutors to provide information about the progress of corruption investigations to the public as outlined in Article 41 (2d) of Law 31 of 1999.

(b) Strengthen and democratize village institutions

At the national level, the government could put in place a number of reforms that would enhance both informal dispute resolution and access to the formal legal system. Law 22/1999 on Regional Autonomy instituted a number of important policy changes to establish legislative and executive autonomy at village level. These include the establishment of an elected village parliament (*BPD - Badan Perwakilan Desa*), which has the power to recommend to the district head that the village head be removed from office. However, the precise election regulations were left ambiguous in the law and are issued by district parliaments. As a result, many BPD are either not yet in place or are not elected fully democratically. As in Ayawan, village heads in such situations can retain a monopoly on power, thus reducing potential avenues of redress for villagers in cases of abuse of power. District governments also regulate the technicalities of village head elections. District regulations mandating a democratic election process for village parliaments and ensuring that village head elections are fair, democratic and well monitored should be a priority.

The case studies demonstrated that the legal system could be made to work for poor communities with a number of supporting factors. Yet the gap between the courts and village communities remains wide and it is unlikely, given how large and poor Indonesia is, that it will narrow significantly. At the national level, the government should assess what kinds of policy reforms would help to bridge the court-community gap and strengthen dispute resolution in village communities. Options include establishing village tribunals or conciliation councils that would provide state recognition to representative village dispute resolution process. Models include the *barangay* justice system in the Philippines, in which disputing parties in villages are required to try to resolve problems informally before resorting to the legal system (see Gerry Roxas 2000a, 2000b; Sosmena 1996). If parties are able to reach a conciliated resolution, their informal agreements are then given formal legal status as if decisions of a court. High usage and satisfaction rates in the Philippines (and the popularity of similar approaches in Sri Lanka and Bangladesh) suggest that such a model could usefully be examined for its appropriateness to Indonesia. This examination would need to identify the factors required for the system to work effectively, such as the availability of arbiters and of provisions for legislation and supervision, and would need to assess which areas of Indonesia to which such a system should apply.

Recommendations for donors & NGOs

a) Principles for legal empowerment

The case studies suggest that legal empowerment interventions are most likely to succeed if designed along a set of broad principles. If they are not borne in mind, such reforms are likely to be ineffective.²⁰

Box 28: Recommended principles for access to justice interventions at the local level

- **Strategy and focus.** Structural reforms to address the endemic institutional weaknesses of the police, prosecutors and courts system should be put in place by the national government. But the way the legal system works at the local level depends not simply on the system itself but on the relationships among local political actors, the strength of civil society and villagers' expectations of the formal legal system. The broad aim of access to justice interventions should be to enable informal and formal justice institutions to serve poor people better. The underlying strategy should be to improve people's expectations of what the justice system can do for them and to build demand among village communities for their justice institutions to work better, while continuing to work on top-down systemic reform. One of the most effective ways to build demand is to change people's perceptions of what justice institutions should do through creating small, visible successes.
- **Integrated, case-driven approach.** Access to justice interventions should be thought of as part of a broader community advocacy effort, not as stand-alone activities. The existing literature suggests that interventions focusing on education and training are likely to fail unless linked to cases that appeal to villagers' self-interest (see ADB 2001a). But even on a case-by-case basis, providing access to the formal system is unlikely to succeed without integrated efforts to ensure that the system works well. Legal empowerment efforts should therefore target concrete cases and use them as opportunities for integrated activities: providing legal assistance, mobilizing socially and fostering links to civil society institutions to monitor the legal system. One of the most effective ways for donors to ensure that their interventions are made relevant to villagers' interests is to use pre-existing projects at the local level as avenues for legal empowerment interventions.
- **Informal dispute resolution vs. the formal system.** Villagers prefer resolving disputes informally for a range of practical reasons, and the formal system also displays a bias towards the powerful. So, although villagers require targeted legal assistance for when they choose to use the courts, access to justice projects should not

give preference to the courts as a means of formal dispute-resolution. The aim should not be to raise litigation rates and increase use of the formal legal system but to open up people's choices, improve the way that both informal and formal justice institutions serve them, and enable them to use the formal legal system should they choose to do so.

- **Set precedents, support reformers.** The strategy inherent in this view is that reform takes place not simply through top-down systemic change but through setting precedents and creating visible examples of success. The assumption is that these efforts have wider knock-on effect and help change the enabling environment for future cases. This approach involves being strategic about power and, potentially, focusing assistance on high profile cases or ones that are likely to succeed best. One of the strategies of such interventions should also be to support the efforts of reformist individuals within the justice system and help them build networks and coalitions with other reformists and with civil society organizations. The Lampung case was a good example of how such efforts can be successful.

b) Recommendations for community development programs

The case studies highlighted not simply the role of power in village dispute-resolution but also the gap between the courts and the day-to-day realities of village life. Legal aid limited to representation in court is not what village communities needed for most of their disputes. Even for the cases that they resolved through the legal system, the communities did not need only lawyers but local facilitators, organizing skills, links to civil society, and access to information and external institutions to provide support. Cases such as Lebakwangi indeed demonstrated that legal practitioners might understand the law, but are not necessarily adept at building the necessary coalitions or supporting community legal literacy.

Village communities were most successful when all these elements were in place. This suggests that an integrated strategy—rather than one focusing on any one of these elements in isolation—is most likely to deliver results at the local level. Such a strategy would (a) help build up local organizing skills and provide the facilitation and brokerage skills necessary for villagers to access the legal system should they choose to do so, on a case-by-case basis; (b) help the legal system to work better for village communities once they reach court, particularly through linking village communities with civil society organizations and strengthening institutions that monitor the performance of the police, prosecutors and courts; and (c) help to ensure that the progress and results of cases are communicated actively back to the communities at hand.

One way to address these concerns would be to integrate legal empowerment activities into projects operating at the village level and to gear them towards responding to people's complaints. The advantage of this is that such a structure is made relevant to people's lives and can respond to demand. The dispute resolution mechanism of community development programs is the way to do this. When a dispute such as corruption in these projects occurs, the project must take an active role in facilitating the communities to take action to resolve the problem. The national management structures of the projects also have to give strong backing to their local facilitators to do this.

Box 29: Recommended approaches to legal empowerment activities

- **Paralegals & legal aid.** Access-to-justice interventions must be thought of as part of a broader program of empowerment and advocacy. In most cases, village communities did not need only lawyers but organizing

skills and links to external assistance.

- **Civil society.** Solving a problem through the legal system is dependent on having good case leaders that are part of civil society or have strong links to it. Access to justice interventions should build up civil society outreach capacity and aid in coalition building.
- **Demand-driven.** A blanket approach to legal aid and education is unlikely to succeed. With limited resources, legal assistance is most likely to succeed when it is targeted to cases in which people need legal assistance for concrete cases. The challenge is to come up with the appropriate structure within which to do this. We argue that integrating legal empowerment and complaints-resolution mechanisms into village projects is one way for donor agencies and NGOs to do this.
- **Integrate legal empowerment activities with community development projects.** For legal empowerment activities within community development programs to succeed, the projects (a) should have a clear dispute-resolution and complaints mechanism; (b) should have strong local facilitation; and (c) should have national management structures that back up their facilitators.

In most of the cases, village communities said that they would prefer community paralegals to be from outside their villages. And indeed, the cases that succeeded did so in large degree because of intensive facilitation from individuals who had the backing of external institutions and so were less subject to threats and intimidation than local people would have been. But there is a tension between this and the long-term aim of building up organizing skills within villages. This paper argues that, on balance, community paralegals should be from outside villages, but should work actively with community members to build organizational and advocacy skills within them.

The case studies highlighted the importance of these kinds of interventions to complement the systemic reforms made to the formal institutions of law. For villagers, the heart of the problem was social and political. Their proposed solutions focused on community organization, power and access to information, not training, expertise and other technical issues. These views were reflected in proposals for community paralegals and case-driven legal assistance, understood as part of a broader effort at empowerment and community advocacy. Reformists from within the legal system also emphasized the importance of civil society linkages, public scrutiny and access to information in enabling the system to work well.

These kinds of broad-based local justice interventions can complement a national reform program in a way that avoids ineffective legalisms and focuses assistance on where it is most wanted. In doing so, they can go some way towards strengthening poor people's representation, enabling them to resolve their disputes successfully, and supporting Indonesia's efforts at reform.

Part 4

Annexes

I. Technical legal analysis

Using the law to hold law enforcement officials accountable

The case studies indicate that the formal dispute resolution system can help rural communities to fight embezzlement of development funds (corruption) and other forms of crime. The paper also shows, however, that communities have to overcome several potential barriers to acquire the justice they seek: lack of response on the part of police or public prosecutors when villagers report a criminal act, drawn out and slow investigations that (often intentionally) lead nowhere, intimidation and attempts by law enforcers to obstruct court procedures, and a failure to execute court decisions. The message that emerges from the case studies is that when cases did reach the court, the judges did their job relatively well; however, the police and/or *Kejaksaan* (public prosecutor's office) often obstructed efficient and fair administration of justice.

The findings of this paper suggest that these barriers can be overcome by forcing a higher level of transparency and publicly exposing blatant acts of obstruction of justice. Even then, however, villagers need courage, persistence, and the help of the press, civil society organizations and powerful institutions to ensure that law enforcement agencies actually do their jobs well.

Apart from informally mobilizing public pressure, how can communities use the law itself to challenge poor work and non-responsiveness by police, prosecutors and judges? Law enforcers are not above the law; there are many instances where the law sets conditions and norms for the way they should do their work. The following paragraphs provide a brief overview the most common forms of obstruction of justice by law enforcers and the most important legal instruments available to tackle these.

Obstruction of justice by law enforcers

Obstruction of justice by law enforcement officials manifests itself in four main ways:

- Exaggerated delays during pre-trial investigation
- Misinterpretation or confusion about the law
- Obstruction of court procedures
- Refusal to execute a court decision

1. Exaggerated delays during pre-trial investigation.

The most frequent form of obstruction shown by the case studies (Seruyan Tengah, Lebakwangi, Bukit Kemuning and Wajo) was the lack of response and efficiency shown by police and public prosecutors during the investigation phase. Police and prosecutors often continued to shuttle case dossiers back and forth for months, files and documents went missing (requiring procedures to start again from scratch), and 'on location' enquiries were delayed because of a lack of operational funds. This lack of efficiency is clearly not in line with the requirements stipulated in the Code of Criminal Procedure. The following list briefly explains these requirements.

Box 30: Investigation requirements in KUHAP (Criminal Procedure Code)

- A police investigator who receives a report about a probable crime is obliged to 'immediately' take investigative action [KUHAP Article 106]. Once it is clear that the investigation concerns a crime, the local public prosecutor must be notified [KUHAP Article 109 (1)].
- The police investigator may stop investigations if there is insufficient evidence. The prosecution must also be informed of this [KUHAP Article 109 (2)].
- After police investigation has been completed, the investigator is obliged to 'immediately' submit the case dossier to the public prosecutor [KUHAP Article 110 (1)].
- If the public prosecutor finds the results of the investigation incomplete, the dossier must be returned 'immediately' to the responsible investigator together with instructions for further investigation [KUHAP Article 110 (2)]. A later article covering the indictment phase of the pre-trial procedure is more specific: within 'seven days after receipt of the investigation results' the prosecutor must let the investigator know whether the results are sufficiently complete or not [KUHAP Article 138 (1)].
- The latter provision is slightly in conflict with another provision which says that police investigation is 'deemed completed' if the public prosecutor does not return the investigation results within fourteen days [KUHAP Article 110 (4)].
- If a dossier is returned to the police investigator, the latter is obliged to 'immediately' carry out additional investigations in accordance with the prosecutor's instructions [KUHAP Article 110 (3)]. A later article again stipulates a more explicit time span: within fourteen days after the investigator has received instructions for additional investigation, the dossier must be returned to the prosecutor [KUHAP Article 138 (2)].
- Finally, after the prosecutor receives the investigation dossier (for the first time or after additional investigation), he must decide whether (i) there is sufficient evidence for a formal indictment, or (ii) whether there is insufficient evidence and the case must therefore be dismissed [KUHAP Article 139].
- Implicitly, however, the prosecutor also still has the option above of once again returning the dossier to the investigator for additional investigation. Nothing in the law says that a prosecutor may only ask once for 'additional investigation'; instead, presumably this can go on until the prosecutor is satisfied. This back-and-forth procedure is also an easy way out for prosecutors who are hesitant to dismiss a case outright (for example, if they have 'negotiated' a deal with the defendant, but are also under much public pressure to be strict).

The procedure outlined above has a number of weaknesses. On the one hand the procedure does not specify what it means by the term 'immediately' and in principle allows investigators and prosecutors to ferry a case dossier back and forth between one another repeatedly (every fourteen days). Also the formulations in the fourth and fifth points above of 'seven days after receipt' and 'fourteen days after receipt' allow law enforcers to sidestep their obligations: simply saying "I haven't yet received the dossier; it's still under way" is enough to postpone the start of the seven or fourteen day time limit. On the other hand, the procedure does not allow for special circumstances concerning the complexity of a case or the difficulty of obtaining evidence in far off, remote places. In theory, time pressure could compromise the quality of the investigation. Also, what can a police investigator do if he has no operational funds to carry

out the instructions of the prosecutor, or if the prosecutor intentionally continues to return a complete dossier as a delaying tactic?

In practice, however, the formal legal time limits are disregarded, because no interpretation of the procedure would allow for the foot dragging that takes place in reality. For example in Seruyan Tengah, prosecutors took over 40 days to respond to the police's first investigation report. The police submitted the dossier for the third time in July 2003, but by November 2003 there had still been no response from the prosecutor (neither an indictment, which prosecutors are required to draw up 'as soon as possible' if they consider the evidence complete, nor a decision to dismiss the case). This practice provides suspects with ample time to disappear or cover their tracks and seriously discourages villagers seeking information about the progress of the case.

2. Misinterpretation or confusion about the law

Corruption or embezzlement? Criminal or civil dispute?

Some court decisions, such as Grobogan and Bukit Kemuning, have designated the embezzlement of development funds derived from World Bank loans as 'corruption' in accordance with Law 31/1999 on the Eradication of Corruption. (Investigation into 'corruption' should be managed by the prosecutor's office.) However, not all police investigators and public prosecutors are aware of these interpretations. They may see the embezzlement of community-held funds as just criminal 'embezzlement' under the Penal Code, in which case investigation remains in police hands. Uncertainty about this can hold up investigation procedures. Another source of confusion arises when police investigators see the unauthorized taking of community funds as a private problem between the community and the perpetrator. It is then designated as a civil law case and the police take no action.

Needless searches for more evidence

In some cases, police or prosecutors appeared to prolong their search for evidence needlessly. For example in Lebakwangi, investigators prolonged their search even though there was written evidence, supported by confessions, that members of the UPK (financial management unit in KDP sub-districts) members "borrowed" money without authorization from the KDP funds entrusted to them. Even the total amount of the chairman's "loan" was precisely known. These facts were already undisputed by the end of 2001 and should have been sufficient to establish that the said persons were guilty of embezzlement as described in the Criminal Code [KUHP, Articles 372 & 374].²¹ If the said embezzlement disadvantages the state financially or economically, criminal embezzlement becomes 'corruption', and carries a higher penalty [Law 31/1999, Articles 2 & 3]. Yet in cases such as these, police or prosecutors say they need unspecified "further evidence", and uninformed villagers have no basis to question such statements.

Police and prosecutors tend to accept perpetrators' attempts to mitigate their guilt by saying that they merely 'borrowed' the money, even though this has no legal basis. According to the Civil Code, in order to borrow legally, there must be an agreement between two parties (the owner of the money and the borrower) on the amount and conditions of the loan [KUH Perdata, Article 1754]. In the Lebakwangi case and other similar cases, the money was taken through a unilateral, unauthorized act, bearing no similarity to the legal transaction of 'borrowing'. Furthermore, the corruption law explicitly states that returning the money does not annul the crime of corruption [Law 31/1999, Article 4].

Interviews and investigations continue even though police and prosecutors have enough evidence to take cases to court immediately. Much of this time may be aimed at negotiating a deal with the perpetrator to repay the stolen money, a solution that saves work for everybody. These drawn out interviews may lead investigations to be shelved indefinitely, because villagers no longer want to pay the expenses of traveling to the police or prosecutors' offices. This in turn provides justification for the police or prosecutors to dismiss cases because of insufficient evidence in accordance with the Criminal Procedure Code [KUHAP, Article 140 (2)].

3. Obstruction of court procedures

Prosecutors colluding with a defendant have many ways of hampering due process:

Box 31: Strategies for hampering due process

- **Claiming that defendants are in poor health.** It is not difficult for prosecutors to engineer a defendant's poor health. Prosecutors back up their requests for defendants to be released from detention or for court sessions to be delayed with letters and reports from doctors, which may be obtained through bribes. Such delays can even be maintained even if defendants are sitting at home in good health. In the Bukit Kemuning case, the defendant was not held in custody for 'medical reasons' although the court repeatedly ordered the prosecutor to arrest the defendant and take him into custody.²²
- **Technical "tricks" that advantage the defendant.** The Bukit Kemuning case showed two examples of technical tricks that prosecutors falsely employ to advantage defendants: reversing the order of the indictment (putting the accusation of a crime with the lower penalty before a crime with a higher penalty) and claiming that the indictment had not yet been approved by the provincial prosecutor's office, a procedure required in corruption cases.²³ Prosecutors may also collude with the accused to demand the lightest possible punishment from the courts. This is a technique that may backfire, though, if judges decide to increase sentences independently.²⁴
- **Failing to produce witnesses.** Key witnesses summoned to appear in court often do not show up. There can be many reasons for this, but one reason is the high cost of travel and the loss of income that villagers may incur when they have to make a trip to court. Witnesses are seldom aware that they have a right to have their expenses reimbursed in accordance with the Criminal Procedure Code, which states that witnesses have the right to "receive reimbursement of costs in accordance with current legislation". It also states that the "official calling the witness is obliged to inform the witness... of his right..." [KUHAP, Article 229 (1)], though in practice this is rare.
- **Ignoring court orders.** Prosecutors may ignore court orders, such as to take the accused into custody (see above), seize assets, and produce key witnesses with the help of the police. In Bukit Kemuning, prosecutors even ignored an Appeals Court order to extend the defendant's detention for 60 days.

4. Refusal to execute a formal court decision

One of the most serious forms of negligence is when prosecutors fail to execute a court's final decision and penalty. Both the Code of Criminal Procedure [KUHAP Article 270] and the Law on the Public

Prosecutor's Office [Law 5/1991, Article 27] instruct the public prosecutor to execute final court decisions. As the Bukit Kemuning case showed, though, prosecutors may nevertheless refuse to do so.²⁵

Prosecutors may cover up their failure to execute court decisions in a variety of ways. For instance, they may claim that the defendant has fled to an unknown place and cannot be located, even if his or her whereabouts are publicly known. In Bukit Kemuning, for instance, the press reported that the convicted official had been seen in town at the same time that the prosecutor's office said that he had fled to an unknown destination. Later, the prosecutors said that they were 'negotiating' the terms of imprisonment with the official. A second strategy, used by prosecutors in corruption cases to explain their failure to seize the defendant's assets for loan repayments, is to claim that there are no available assets in the defendant's name.²⁶ In corruption cases, judges usually order defendants to return the embezzled money (or assets acquired with the money) in addition to serving a prison sentence.²⁷ If the defendant's assets are insufficient, the judge may impose an additional sentence—a strategy that worked effectively in Bukit Kemuning. Although defendants are obliged by law to provide information about the assets of wives, husbands, children and others suspected of being linked to corruption [see Law 31/1999, Article 28], few prosecutors push for this kind of information.

Box 32: Formal court decisions are not always in writing

Courts themselves also contribute to the problem of non-execution of court decisions. Courts rarely issue full, formal, typed court decisions immediately. Indeed, the formal definition of a 'court decision' (*putusan pengadilan*) in the Criminal Procedure Code does not mention written decisions, emphasizing instead the oral statements made by judges in public sessions [see KUHP Article 1(11)]. The Criminal Procedure Code does state, though, that the written decision (*surat putusan*) must be signed by the judge and court clerk immediately after the decision has been read [see KUHP Article 200]. Despite this obligation, it is common practice for decisions to be read on the basis of notes (sometimes only handwritten) made by the presiding judge, and for the notes to be later given to the court clerk to type up in the standard format. This can take months and, because the notes may not be checked by judges, they may contain serious errors. For example, the court decision in the Grobogan case contains several different calculations of the amounts embezzled that do not add up to the same total amount.

Officially, prosecutors must base their execution of court decisions on a formal copy of the written decision (*salinan surat keputusan*) sent by the clerk responsible for the case [KUHP Article 270]. It is thus unclear what formal basis they have to execute decisions that have not been typed up. In Bukit Kemuning, there was no formal written version of the decisions more than 18 months after the trial, and prosecutors finally executed the decision without a formal written document. Although prosecutors are obliged to carry out court decisions immediately, they may be more inclined to ignore decisions that have not been officially drawn up.

Delays in issuing written decisions can also hamper the ability of defendants to appeal decisions to higher courts. Such appeals must be lodged within seven days of a decision [KUHP Article 233 (2)]. If defendants do not have access to formal, written copies of decisions, their ability to draw up arguments against the decision and find flaws in the judge's interpretation of the law is seriously jeopardized.

Legal Instruments Available to the Public

What can justice-seekers do when they come up against these practices? There are a number of options. Some of these are legally more complicated than others and would require professional legal assistance (for instance if a community wanted to initiate a civil law suit against a law enforcement agency). All of them

would in practice require that rural village communities receive some kind of outside assistance before being expected to attempt them. The best option for such communities remains (as the paper suggests) the strategy of mobilizing the widest possible public attention and scrutiny through the press, local civil society organizations, national court watch/legal aid groups, donor organizations and central government agencies (including the Attorney General's Office and Supreme Court), in the hope that the local police and/or prosecutor feel too exposed to attempt anything that could be seen as obstruction of justice. Nevertheless, there are specific technical legal instruments available for justice-seekers to combat the obstruction of justice if they have the assistance to do so.

The following list of options is ranked, according to underlying legislation, from specific (e.g. based on the Anti-Corruption Law) to general measures (e.g. based on the Civil Code).

1. Formal actions against public prosecutors.

Indonesian law does not give judges the possibility to hold prosecutors or the defense council "in contempt" for failing to carry out or otherwise obstructing court procedures.²⁹ Even if it did, it wouldn't help the public much, because only a judge can initiate this accusation. However, both the Anti Corruption Law (Law No.31/1999) and the Law on the Public Prosecutor's Office (Law No.5/1991) provide potential instruments that might be used by the public.

Box 33: Potential instruments for the public to hold law enforcers accountable

- **Law 31/1999 on the Eradication of Corruption.** The Anti Corruption Law stipulates that anyone who "intentionally (*dengan sengaja*) prevents, hinders, or sabotages (...) the investigation, indictment and trial (...) of a corruption case can be convicted to three to twelve years imprisonment" [Law 31/1999, Article 21]. In the Bukit Kemuning case, the prosecutor lied intentionally about the processing of the indictment and about having the judge's permission to release the defendant from custody, giving the defendant the opportunity to disappear. It would be difficult for the prosecutor in question to defend himself against accusations based on the above article.
- **Law 31/1999 on the Eradication of Corruption.** Article 41 of Law 31/1999 contains provisions for regulating 'community participation' that a village community reporting a case of corruption to the prosecutor's office could find useful. The article lists various rights the public has with regard to the reporting and investigation of corruption. Particularly useful in confronting unresponsive prosecutors would be the article that gives the public the specific right to submit suggestions and opinions to the prosecutor's office and to demand answers to questions about a reported case within 30 days [Law 31/1999, Article 41 (2c & 2d)].
- **Law 5/1991 on the Public Prosecutor's Office.** The law on public prosecutors states that for criminal cases, "(...) *the public prosecutor's office has the task and authority to execute a judge's decrees and court decisions*" [Law 5/1991, Article 27 (1b)]. The law also states that "*a public prosecutor will be dishonorably dismissed from his task on the grounds of (...) continually neglecting his duties during the execution of his task/job*" [Law 5/1991, Article 13 (1b)].³⁰ According to the official elucidation of this article, a prosecutor can be regarded as 'continually neglecting his duties' if "during a specific period of time in accordance with current legislation, the prosecutor doesn't complete the work assigned to him without a valid reason." This indicates that the intention of the article is to act as an internal measure within the prosecutor's office, to back up instructions from direct superiors. Nevertheless, it provides a basis for attempting action against prosecutors who fail to implement successive court orders, such as in Bukit Kemuning, because executing court orders is part of the 'work assigned to' public prosecutors.

2. Civil law suit to claim damages from the state

The Civil Code contains a general tort article (Article 1365), which states:

“Any act that is unlawful and causes material damage to another party, obliges the party responsible for causing those damages to pay compensation.”³¹ (“Unlawful” in this context is interpreted widely to mean any act that is not in accordance with what is normally accepted as proper conduct).³²

For generations the interpretation of the above formulation has invited discussion, particularly about the precise meaning of the terms “unlawful”, “causing” or “responsible”. Nevertheless, jurisprudence has established more or less clearly defined lines. Although the article originally only applied to acts by private individuals, jurisprudence and case law have accepted that the state itself can commit such unlawful acts (*perbuatan melawan hukum oleh Negara*).

In theory, a village community that had become the victim of poor work by police and prosecutors case could file a civil lawsuit against the local police or public prosecutor’s office based on the criteria above. Community members in Bukit Kemuning or Lebakwangi, for instance, could have argued that the conduct of police and prosecutors satisfied the criteria on three grounds: (i) that police investigators and/or prosecutors failed to do their jobs despite having sufficient evidence of corruption, which would fulfill the requirement of ‘unlawful’; (ii) that the suspect had an opportunity to disappear because prosecutors failed to hold him in custody; and (iii) that, because prosecutors failed to do their jobs properly, the embezzled money could not be recuperated, leading to a significant material loss for the village community at hand—though demonstrating causality between the prosecutor’s performance and the community’s material loss would be difficult.³³

Filing such a lawsuit would require careful preparation and much legal guidance. Nevertheless, it would be interesting to discover what a court of law would do in such circumstances; as a test case it would be worth the trouble. If the court reached a decision favorable to the village community, other communities could use the precedent (although the Indonesian system does not apply the principle of *stare decisis*).

Supervision of judges’ professional conduct

It is extremely difficult to regulate the accountability of judges towards the public without at the same time endangering the independence of courts. The most objective way to introduce such accountability would be to make court decisions immediately available to the public to allow legal practitioners and scholars to discuss and analyze the merits of the case. Unfortunately, in Indonesia the regular publication even of Supreme Court decisions is incidental. District and Appeal Court decisions are almost never made available to the public. This prevents direct scrutiny of specific judges’ quality and knowledge.

However, there is a channel that could be used in case of suspected negligence, collusion or any other form of poor professional conduct by a judge (including delaying producing a formal *written* court decision). According to Law 14/1985 on the Supreme Court, the Supreme Court’s tasks include technical supervision of lower courts. The Court has the authority to ask questions about the way trials are conducted and to

issue instructions and warnings, without however undermining a judge's independence. Besides their judicial task, senior Supreme Court justices are also allocated responsibility for performing these tasks in certain provinces or regions and for monitoring the proper administration of justice in their appointed areas. Province-level appeal courts have a similar task with regard to the technical supervision of district courts within their jurisdiction) [see Law 2/1986 on the General Administration of Justice, Article 53]. A village community with a complaint about the conduct of a trial could thus submit a report to the relevant appeal court or to the Supreme Court in the hope that the court would conduct due supervision, monitoring and, if necessary, take corrective action.

The negative consequences of poor performance by law enforcement agencies

Lax performance and incompetence of police and prosecutors undermines faith in formal judicial procedures and encourages villagers to devise their own informal sanctions, usually without due attention to their legality. Although there was no reported vigilantism in the cases studied, "*main hakim sendiri*" (taking the law into one's own hands) can degenerate into uncontrolled revenge and violence, such as the lynching or burning alive of petty criminals. Most informal sanctions—such as the ones applied in the cases studied—are less violent and create the impression of being reasonable and fair. Nevertheless, they may still be illegal and, arguably, unjust.

In the cases studied—such as Wanareja, Lebakwangi and Wajo, one favored way of reacting to embezzlement was for justice-seekers to demand that the perpetrators put up their own personal property (or assets of relatives) as collateral for the missing money—though in practice, actual public sale of these assets was rare.³⁴ In Lebakwangi for instance, the accused head of the project's *kecamatan* financial management unit was ordered to provide such collateral in a formal letter from the sub-district head and in another from a DPRD member.

Although such practices seem reasonable, they are of dubious legality. First, they assign criminal liability to those with functional responsibility, without establishing criminal liability. In KDP corruption cases, for instance, although it is indeed often local KDP staff or consultants who are culprits, there may be other, more powerful figures in the background who have masterminded the embezzlement operation. If investigations remain too superficial—without looking for firm evidence and possible mitigating circumstances, such as pressure from higher officials—the most visible culprits could be made to bear the entire burden while more powerful figures remain out of sight. Second, the transfer of assets in such cases is of dubious legality. For instance, even if the head of a financial management unit is criminally liable for stolen money, his personal household goods can only be confiscated through a court order as far as they can be linked directly to the stolen money—but informal sanctions do not provide for such distinctions. Household goods owned jointly by husband and wife would also be protected: the law would provide protection for the wife's position. It is also dubious whether people purchasing goods auctioned or sold informally would actually acquire ownership. In case of land they would definitely not do so. Finally, paying back stolen money does not lift criminal liability. The "no questions asked if you pay back" approach typical of informal sanction actually encourages embezzlement.

Informal sanctions usually focus solely on retrieval of the stolen money (or, in the case of infrastructure projects, completion of the project). Therefore immediate appeals are sometimes made to the sense of 'community service' of the richer villagers, without actually putting too much effort into bringing the real culprit to justice.

In practice, the formal instruments described in the first part of this annex are almost never used, probably because the public is unaware that they exist. Even if they were known, however, it remains to be seen how effective they would be in practice. Local governments would presumably have incentives to discourage formal actions against police and prosecutors. Given the history of impunity, it is likely that the public itself perceive any attempt to invoke the law against the police or prosecutors as likely to fail. Nevertheless, attempting to apply these formal legal instruments through test cases on a broad, national scale could increase transparency and accountability and potentially enhance the quality of the performance of Indonesian law enforcement agencies. Such test cases would provide focal points for discussion and illustrate the kind of issues that are now often suppressed by formal law enforcement officers at an early stage.

Rather than discouraging and intimidating rural communities, local law enforcement officers should stimulate anti-corruption initiatives by villagers and give substance to Article 42 of the anti-corruption law, which states that “the Government will show appreciation to the members of society that have assisted in the prevention, eradication or detection of corruption”.³⁵ The experiences of villagers with law enforcement officials in the cases studied make the article ring rather hollow.

II. Case descriptions in detail

This annex includes one-page summaries of the case studies. The full case studies are available upon request from the Justice for the Poor team and will be published separately.

Bukit Kemuning, Lampung

Bukit Kemuning is a kecamatan (sub-district) in northern Lampung in south Sumatra. As it is located along the busy Trans-Sumatran Highway, its markets have made it an important trading hub for the area. Bukit Kemuning is about 50 km away from the district capital, Kotabumi, and can be easily reached from the provincial capital, Bandar Lampung, which has a strong NGO and legal aid community. Most of the villagers in the kecamatan are farmers or have small businesses. The area has a high proportion of Javanese migrants and so is ethnically diverse.

In January 2001, the camat (sub-district head) of Bukit Kemuning—a socially powerful figure with family ties within the district prosecutors office, the local parliament and local government—deducted Rp 125 million (\$14,700) from KDP funds intended for six villages in the kecamatan. He did so by taking a cut and dividing the remainder among the heads of each of the six villages. But the head of one village (Sekipi) refused to take his share, and the leaders of the other villages were disgruntled and confused. Because the camat refused later to meet them to explain, the village head of Sidokayo soon reported his theft to the local parliament, prosecutors and press. Two weeks later, the leaders of the other villages followed suit.

At first, the case dawdled. Although local project facilitators, local auditors and the police acted quickly, district prosecutors, who were responsible for the investigation but had family links to the camat, ignored the case. But KDP project facilitators put the village leaders in touch with an activist legal aid lawyer, who educated villagers about their rights and helped them build coalitions with province-level NGOs and local media. The activists helped villagers to organize demonstrations in front of the district prosecutors' office, and a local journalist published stories about the prosecutors' intransigence. Meanwhile, the World Bank alerted the provincial government and asked them to follow up the case, though the impact of the province-level directives were diluted by the camat's family links to the district government and parliament.

Eventually, this strategy of community mobilization, coalition-building and public pressure paid off. The day after the first prominent media report, the district prosecutors took a critical step in continuing the investigation. But overall, the investigation was characterized by intransigence and a lack of transparency. At one point, villagers who went to ask about the case were dismissed by the prosecutors as an 'illegal mob'. The investigation also took over eight months to complete.

In November 2001, the case was brought to trial. The civil society 'watchdogs' who monitored the case were fortunate that the case was presided over by a reformist judge, who retained his integrity despite threats and offers of bribes from the camat's family. Throughout the trial, district prosecutors continued to cause problems, delaying court proceedings by making false excuses for the camat's absence from court. The judge nonetheless persevered and, after seven months, delivered the sentence. The judge found the camat guilty of corruption and sentenced him to a year in prison, repayment and a fine of Rp 50 million (\$5880). Eventually, after some foot-dragging by the prosecutors responsible for executing the decision,

the camat was imprisoned. The case thus succeeded in setting a precedent in the community – as one villager said, “whoever becomes Camat here will think a thousand times before they engage in corruption again”.

Mamodu, West Sumba, East Nusa Tenggara

West Sumba is one of two districts on Sumba, a poor, remote island in Eastern Indonesia. Most of its population of 350,000 live in rural villages and are Christian, but almost a third are Marapu, a local form of animism. Mamodu is a typical village in the district. Most people there are poor farmers, who live in thatched bamboo houses and raise pigs and buffalo. Buffalo are central to Sumbanese culture, where they are a form of wealth and exchange and are used for adat rituals.

Between the mid 1990s and 1999, the village head of Mamodu, Jusuf Habamananga, took a cut of funds from two village poverty projects, the government's Inpres Desa Tertinggal and the World Bank's Kecamatan Development Program. Under both programs, poor people were to use the program's seed money to raise and sell buffalo. But Habamananga intervened, fiddling Rp 60 million (\$7050) from IDT (which he was said to use later to fund his election campaign for the district parliament) and Rp 22.5 million (\$2650) from KDP, which he used to buy a motorized fishing boat.

Ordinary villagers said that they resented Habamananga's corruption but that they did not protest because they felt it would be futile. In 1999, Habamananga won a seat in the district parliament as a Golkar member. Shortly after the election, a group of community leaders in Mamodu sent a letter protesting his corruption to the bupati (regent) and the district auditors, Bawasda. Although the district government itself has a reputation for corruption (which triggered inter-clan riots in 1998), it has been led since 1999 by a bupati who is regarded as clever and reform-minded, Timoteus Langgar (PDI-P). In their letter, the community leaders cited frustration at the village head's corruption. However, political rivals within Golkar for Habamananga's seat were widely thought to have orchestrated the letter, which led ultimately to his political downfall and their takeover of the seat.

Two subsequent government audits found that Habamananga had indeed stolen funds. These findings were reported to the local government, which, together with project facilitators, tried repeatedly to get Habamananga to repay the money. But despite agreeing to do so, by June 2000, almost a year later, Habamananga still had not repaid any money. At this point, KDP facilitators asked the bupati to intervene. The bupati acted promptly, turning the case over to the district prosecutors.

District prosecutors, however, took no action on the case for about a year. It is unclear what caused their delay. Prosecutors made no attempt to seek the permission they needed from the governor to investigate a sitting parliament member, an omission that some observers alleged was due to bribery. Meanwhile, though, Mamodu community leaders sent a second letter to the provincial and district government asking for action and, during the same time period, the World Bank made two supervision visits to West Sumba, citing corruption in their supervision reports. Although they did not threaten to suspend funds to West Sumba, they did do so for other districts, which gave the bupati a rationale for strong action. Ultimately, Langgar himself sought the governor's permission for investigation.

The governor responded promptly and, in July 2001, prosecutors finally arrested Habamananga, presenting their documents to the court three months later in October. Once the case went to trial, the court worked smoothly. After four months, the West Sumba district court found Habamananga guilty of corruption, sentencing him to a year in prison, repayment and a Rp 5 million (\$590) penalty. Villagers say they were happy with the result and, having served his term, Habamananga now lives back in Mamodu.

Seruyan Tengah, Central Kalimantan

Seruyan Tengah is a poor kecamatan (sub-district) nestled in the forest by the Seruyan River in Central Kalimantan. The area is renowned for being a source of Dayak 'warriors' who participated in the ethnic conflict that erupted in Central Kalimantan in February 2001 between indigenous Dayaks and ethnic Madurese. Although Seruyan Tengah was not itself a site of violence, most Madurese there have left. The area is remote, laying a spine-jarring seven hours drive north of the district capital, Sampit, where the police, prosecutors and courts are located.

Six months into implementation of the World Bank-funded Kecamatan Development Program (KDP), the Head of the Kecamatan Financial Management Unit (UPK), Ijuh Biring, began siphoning funds from the project. Ijuh was a respected figure in the area – a former adat leader and member of the district parliament. When confronted by project facilitators who found out about his corruption, he admitted to stealing Rp 40 million (\$4705) of project funds. A year and a half later, the case remains unresolved.

Negotiation was initially pursued to resolve the case. Ijuh signed a number of declarations promising to repay his debt, but community frustration grew as each deadline slipped. The case was consequently referred to the police. Supported by operational funds supplied by the community, the police moved rapidly at first. But a combination of distance and a dysfunctional relationship between the police and the public prosecutors office allowed the case to remain under investigation over a year later. Nonetheless, transparency is making a difference – ongoing scrutiny of the legal apparatus from the community, media, KDP consultants and the World Bank make a successful prosecution likely down the track.

Ayawan, Seruyan Tengah, Central Kalimantan

Ayawan is one of the villages in Seruyan Tengah. While corruption was occurring in the kecamatan, a village head was taking his cut at the village level. In 2001, Ayawan was the recipient of two village poverty programs, KDP and PPM-Pras, a government spin-off of KDP funded by fuel price-rise revenues. There, the village head, Laun, strong-armed the village implementation teams who managed the money to give him a cut, taking Rp 3.5 million (\$410) from KDP and Rp 13 million (\$1530) from PPM-Pras. The head of the village council responsible for development activities (LKMD), said that he felt powerless to protest. The village parliament (BPD) also did not do so. But this was not surprising. Elections to the BPD were made not by secret ballot but by a public show of hands and, after the election, Laun replaced half its members with his own supporters. As a result, the village parliament contained mainly his family and friends.

Villagers in Ayawan say that they were angry about the theft but unsure what to do about it. "People here are unhappy," said one villager, "but they only protest in the background, because they are scared of the village head." Despite their fear, though, villagers held a number of meetings throughout 2001 with Laun,

facilitated by the KDP project facilitator and his kecamatan government counterpart. But, although Laun eventually agreed to repay the money, months passed with no repayment. Villagers' attempts to harness the Camat's authority failed because of his lack of interest.

When the failure of their informal negotiations became clear, a core group of twenty villagers held a meeting where they decided to report the case to the police. Those gathered represented the respectable village elite, including the head of the LKMD, the articulate village midwife, a primary school teacher and two neighborhood heads (Ketua RT). "We don't normally take cases to the police," said one villager, "and we don't really want to, because we don't understand the law." But in the absence of an alternative, they did so, saying in their letter to the police that "an informal resolution was no longer possible." Not long after, they appointed a smaller group of people to report in person to the police.

This group met with threats and intimidation from the Seruyan Tengah police, though, who treated them as provocateurs and detained one of them for a few hours. Later, the midwife and teacher were threatened with transfer from the village. Some observers suspected collusion between the police and village head; others that the case was too small for police action. In Ayawan, unlike the other Seruyan Tengah case where the same police did act, there was no media scrutiny of the case.

Although Laun eventually repaid the KDP portion of the money (after sustained pressure from the new sub-district head), he did not repay the PPM-Pras funds, and since then the case has lost steam. Villagers say they are tired of the struggle and feel helpless in fighting against a system that protects powerful interests. Their already low faith in the police has been further damaged by their experiences. And in their village, Laun continues to hold a monopoly on power, denying residents a credible and legitimate alternative for resolving major disputes or holding their leadership accountable for abuse of power.

Tangerang, Banten

The city and district of Tangerang are part of a sprawling urban metropolis adjacent to Jakarta. Until 2000, Tangerang was a sub-district of Banten, but it became its own district in 2000 after an administrative upgrade where Banten became a province. Although some people work as farmers, most work in factories or businesses. Local communities look highly upon village strongmen (jawara), who are personified by their power, ruthlessness and ability to solve problems without established authorities. Villagers fear and respect them, believing that their presence deters criminal offences.

Kaliasin is a village in Tangerang that in the late 1990s received funds for Koperasi Unit Desa (KUD), a government-run village credit union scheme. Between 1998 and 1999, the chief of the Kaliasin village credit union, Suratman, pocketed Rp 979 million (\$115,175) of an available total of Rp 2.19 billion (\$257,645) earmarked for farmers. Suratman was not seen as a jawara, but was a respected Koranic teacher who pocketed the funds through a scheme involving loan-tampering, fictitious cooperatives and false credit proposals. His supervisor, Koes Noegroho—a jawara with ties to important political figures in Jakarta and Tangerang—also allegedly tampered with the loans.

In 1999, the Banten district prosecutors received an anonymous letter with allegations that several village credit unions had misused KUD funds. In the same year, a routine Department of Cooperatives

investigation uncovered similar findings. As a result, in late 1999 the district prosecutors began their own credit unions investigation, focusing their efforts on Kaliasin because of the plentiful evidence.

But although district prosecutors started their investigation promptly, it took over a year to complete, and faltered in 2001. Part of the delay was due simply to staff changeovers. Although the case detective, Mursidi, prepared a file with evidence to charge both Suratman and Koes Noegroho, he was transferred to Jakarta in 2001 before pressing charges. Meanwhile, Suratman disappeared. His absence prompted further delays as district prosecutors sought advice from their superiors on what to do.

At the same time, though, journalists and NGOs started to follow the case. According to media sources, local journalists applied pressure on prosecutors to keep the case alive, sharing information with Tangerang Government Watch, a volunteer NGO founded to monitor government aid programs. In applying such scrutiny, the NGO aims to act as the ‘eyes and ears’ of the local community.

Eventually, the district prosecutors who replaced Mursidi completed the investigation, deciding to charge Suratman in absentia. In early 2002, they handed the case files to the district courts, which started its trial in March 2002. The trial continued until July 2002, when they found Suratman guilty of corruption in absentia and sentenced him to eight years in prison. But Suratman remains at large.

Furthermore, the case against Koes Noegroho has fallen by the wayside, and appears to have been shelved indefinitely. The reasons for this are unclear. But one officer from the district prosecutors’ office, speaking on condition of anonymity, pointed out Koes Noegroho’s status as a jawara, his connections to Jakarta political figures and his alleged protection by the district head of Tangerang. Whatever the real reason for the lack of attention, Koes remains unhindered despite serious allegations against him. Meanwhile, Suratman remains at large, and the farmers who were supposed to benefit from the Kaliasin Credit Union have seen little of their money.

Tambusai, Rokan Hulu, Riau

Tambusai is a sleepy, remote kecamatan (sub-district) in Rokan Hulu, a newly formed district in Riau. In the dry season, the area is hot and scrubby. Haze from Kalimantan’s burning forests exacerbates this heat.

Petty corruption was common during the implementation of the Kecamatan Development Project (KDP) in the area. There, the *kecamatan* project facilitator and members of the *kecamatan* financial management unit regularly dipped into KDP project funds to meet personal needs, flouting project regulations without sanction. By November 2001 Rp 14 million (\$1645) in project funds was missing, but the KDP management had taken no conclusive action. A culture of impunity existed in Tambusai, so few should have been surprised when the project facilitator stole Rp 94 million (\$11,060) in December 2001. Although the magnitude of the theft finally mobilized KDP consultants and the government to take action, their efforts were patchy at best.

Efforts to resolve the case initially centered on informal approaches by the government and senior KDP consultants to have the money returned. This approach, coupled with additional pressure from the World Bank, has been partially successful. Much of the money has now been returned, but Rp 27 million (\$3175) remains outstanding. Engagement with the legal system has been disappointing. A familiar tale of rent-seeking and intransigence saw little action from the public prosecutors office. Yet the threat of legal

sanction proved effective. When confronted with the prospect of criminal investigation and potential imprisonment, the *kecamatan* facilitator immediately repaid as much as he could. In the absence of public scrutiny, though, the legal process has stalled. Thus far, no additional money has been repaid, and the criminal investigation remains dead in the water.

The Tambusai case was a good example of the implications of a local culture of impunity. With the absence of proper legal awareness, communities were helpless to take action. As one district leader said, “The community is blind to the law; they don’t understand how it works.” Until communities are empowered to demand better service from the justice sector and internal institutional incentives are changed within the police and the public prosecutors’ office, petty corruption on this scale will continue to take place without effective sanction. The consequences of such a culture of impunity spread well beyond the boundaries of a remote sub-district like Tambusai. Breaking this culture down, though, requires firm action against both large and petty cases.

Maniang Pajo, Wajo, South Sulawesi

Maniang Pajo is a *kecamatan* (sub-district) in Wajo, a district in South Sulawesi with a population of about 350,000. Arrajang and Sogi are two small villages in the *kecamatan* populated mainly by farmers. Arrajang is about 16 km from the main road up a steep muddy hill. Sogi is on the main road but has no regular public transportation to the district capital and so is similarly inaccessible.

In 2001, Arrajang and Sogi participated in two village poverty projects, the World Bank’s *Kecamatan* Development Program and PPM-Pras, a government KDP spin-off funded by fuel price-rise revenues. In January of that year, they were each to receive an installment of over Rp 50 million (\$5880) from both projects. But the KDP project facilitator for the area, Elwin, allegedly pocketed some of the money, taking up to Rp 41 million (\$1175) from Arrajang and Rp 10 million (\$1175) from Sogi. It is unclear whether he acted alone, but at least two other people were suspected of involvement, including Elwin’s local government counterpart and Hasdin, the head of the *kecamatan*-level financial management unit (UPK).

Villagers in Arrajang were angry about the missing money and formed a team to settle the problem. The team, composed of village leaders connected with the project, confronted Hasdin and Elwin. Elwin acknowledged that he had taken the funds but, although he promised to repay the funds within a week, did not do so, and shortly afterwards, disappeared. In the months that followed, Hasdin, Team Arrajang and project staff tried to locate Elwin using the help of a district NGO. But their efforts did not succeed. When it became clear that Elwin would not be found, Team Arrajang started to place pressure on Hasdin to repay the stolen funds, claiming that he was responsible as head of the financial management unit. After repeated pressure, Hasdin acquiesced, cobbling together the money through pawning off his possessions and borrowing money. But Hasdin resents what happened and believes that he was treated as a scapegoat. Later, he himself reported the case to the police, but they took no action and later said they had lost Hasdin’s report.

Meanwhile, similar events took place in Sogi. There, dissatisfied villagers focused their anger over the missing money on Muh Jide, the leader of the village council (LKMD). In July 2001, Muh Jide gave a public report on the funds to villagers in accordance with project rules in his role as village council head. But villagers rejected his account, accused Muh Jide of allowing Elwin to pocket the funds and later

demonstrated in front of his house. Eventually, Muh Jide was dismissed. Muh Jide later admitted some involvement in nepotism, but denied that he had allowed Elwin to take the funds. Months later, in January 2002, an anonymous letter was sent to the district prosecutor in Sengkang about Muh Jide's alleged corruption. But prosecutors took no further action, and KDP project staff later reported that there had been 'no progress' on the case. Muh Jide, meanwhile, feels that he was unjustly accused by villagers.

In both Arrajang and Sogi, the people who suffered the most sanction were not the primary perpetrators of corruption, although they may have had some involvement. Instead, they were held to be criminally liable and responsible for the funds because of their functional responsibility over them (Hasdin as the head of the financial management unit and Muh Jide as head of the village council). In both cases, because it was easier for the communities to persuade, cajole and/or threaten the secondary perpetrators to repay the stolen money, they put less effort into finding the primary perpetrator and into pressuring the police and prosecutors to do so. This led to a poor outcome for all.

Rowosari, Semarang, Central Java

While it falls under the jurisdiction of the Urban Poverty Project, Kelurahan (urban village unit) Rowosari can easily be considered more rural than urban. Nestled in the foothills just outside the city of Semarang and surrounded by rice and tobacco fields, this suburb has developed a bad reputation as the home of a number of gangsters conducting criminal activities in the city and surrounding areas. The atmosphere in Rowosari is thus quite tense, with the gangsters instilling a culture of fear in the community.

Some of these local thugs managed to secure positions on the board elected to manage funds for the KDP project. These board members are believed to have co-operated with the project facilitator, who ran off after withdrawing Rp 100 million (\$11,765) of project funds. When word about shady activity spread, the area manager and the board's secretary tried to solve the problem informally by checking the bank withdrawals and searching for the missing facilitator, to no avail.

The chairman of the board, Basori, soon came under suspicion. When the district facilitator confronted him, he refused to admit his involvement, but strangely professed his intention to repay half the missing funds nonetheless. The district facilitator decided to treat this as a private debt rather than a formal case of corruption, and went to a public notary to draw up a contractual agreement to that effect. Unfortunately, however, this agreement was never signed as nobody would sign on behalf of the village. As the project was not socialized well, the community lacked ownership over it, and also feared the perpetrator and his powerful connections. The lurah (village head), who lives outside the community, did not want to get legally involved; no one else was asked to sign.

The project area manager reported the case to the police after a World Bank supervision mission recommendation. Two years later, the police told the Justice for the Poor research team that they had interviewed a wide range of witnesses and had made every effort to find both suspects but that the suspects could not be found. But all people interviewed by the research team denied that the police had interviewed them or other community members, and the research team was able easily to locate the whereabouts of one suspect (Basori) and the contact details of the other. Villagers widely assumed that the suspects had bribed the police. The mismatch between the police's claims to action and their neglect of the case left them vulnerable to such allegations.

It was evident that an informal solution had been difficult to manage. The community lacked ownership of the project and the threatening environment of the village made it difficult for any community members to stand up to the perpetrator - the opportunity costs were simply too high.

The legal system would probably have been the most promising route, but the community lacked the support of a facilitator or someone with legal literacy to take the case to the police themselves and monitor the legal process. Failing this, both the project and local government should have co-operated to ensure the case got the attention it deserved when it reached the legal system. The lack of initiative by any higher authority contributed to the feeling of helplessness on the part of the villagers. As the board's secretary said, "Unless there's political will from above in reality nothing will happen."

Bintoro, Demak, Central Java

The case in Demak, in the lively urban neighborhood of Bintoro (an hour outside Semarang) provided an excellent example of a community-led resolution of a corruption case. When Labit, a young, aspiring politician suspected corruption in his community, he turned to the local project facilitator for help. The facilitator had told him that they could not solve the problem on their own and needed the support of more community members.

To garner such support, Labit distributed a one-page pamphlet marked with three simple questions in large bold letters, implying that funds for a micro-credit project—meant to provide economic credit to poor people—had been misused. The pamphlet succeeded in drawing in a number of villagers to attend an annual meeting at which members of the board elected to manage the funds were to give an accountability speech. At the meeting, the young politician noticed Kurnen, a more senior, outspoken member of the community and approached him afterwards to come to a more informal meeting to resolve the case.

A team of about nine community members gathered at Labit's house soon after the accountability meeting. The project facilitator, knowing that the most effective resolution would come from the community itself, took time to explain the project goals of transparency, accountability, and social development. The community members decided to form a team to return the money back to the poor so it could revolve back into the community. They also decided to solve the problem without the involvement of legal institutions because it enabled them to maintain more control over the process; as Kurnen said, "In the past, if we directly handed this to the police, maybe we would wash our hands of the case. But, we can't be sure we would get the money back. But, because we are one big family, as far as we can, we try to solve it through the personal approach."

By engaging with the perpetrator on a personal level rather than involving formal institutions, the team believed that the money would be returned and social harmony would be maintained. But just to be sure the legal recourse was there, Kurnen visited a friend in the police station and the district court, seeking advice about the legal process should they choose to use it. The police were copied on all communication with the perpetrators, implying that there was a real threat of legal action should the case not be resolved. In the meantime, the corruptors slyly tried to get local government planning board on their side. The team decided they, too, would lobby the board, and called a journalist to accompany them. Finally, the planning board agreed to moderate a series of meetings between the corruptors and villagers. After five of these

meetings, having faced the wrath of angry community members armed with facts and figures, the suspects were fired from the project and agreed to return the money.

Now, the community has taken a much greater interest in the project. Immediately after the scandal, the team organized an election involving a broad cross-section of the community to manage the project funds. And whereas previously, meetings were sparsely attended, it is now typical that 100 people show up to decide unique, local regulations to prevent further corruption from happening. For this small, urban neighborhood, the Urban Poverty Project – a nation-wide community-based development project – has very much become their own. When the team was asked what they had learned from the case should something like it happen again, one member said this: “Any time we do something for the community, that has benefits for the community, I am sure that we will win.”

Cipadung, Bandung, West Java

Cipadung is an urban village (*kelurahan*) in southeast Bandung, a large city three hours away from Jakarta. The houses are close together and mostly made of cement and red roof tile. The neighborhood is busy and diverse. Many people in Cipadung work as motorcycle taxi (*ojek*) drivers, while several others are connected to IAIN, the State Islamic University nearby.

In May 2000, Cipadung became the recipient of funds from the World Bank’s Urban Poverty Project (UPP). Shortly afterwards, community members set up a board to manage the funds, electing P’im—a relative newcomer but respected Islamic scholar—as treasurer. But the following year, P’im allegedly embezzled over Rp 100 million (\$11,765) of the project funds through creating fictitious borrowing groups and hoarding repayments from other groups. P’im supposedly used the money to repay debts for building the private Islamic school that sits behind his house.

Financial irregularities were first reported at a project annual meeting in December 2001, when other members of the community board reported to project managers and community leaders that in preparing for the meeting they had discovered financial irregularities in their books. Community leaders took swift action, forming a team composed of youth leaders, well-known community figures and heads of borrowing groups to resolve the dispute. The team elected Budi, the head of the urban village parliament (LPM) to spearhead the effort. Budi was widely known throughout the community not simply through his political work but also as head a consortium of motorcycle taxi (*ojek*)-drivers.

Over the three months, the team conducted an investigation, concluded that P’im was the sole perpetrator and held several meetings to try to reach a negotiated outcome. But P’im refused to attend most of the meetings, saying that he was shocked and ashamed by the accusations. But in March 2002, he signed a statement of guilt, promising to repay the funds within a month. Later, though, he claimed that he was forced to sign the confession and failed to repay the money. When the deadline passed, the team reported the case to the police, handing over their investigation books. As they said, “Actually we prefer to use the informal way but the problem is that the perpetrator never showed his intention to solve the case. So we had to report it.”

The police responded swiftly. They ordered an official state audit, detained P'im in September 2002, and completed their case file for prosecutors promptly. But after this, the investigation faltered. The prosecutors' office returned the case for further evidence to the police three times between then and April, stating each time that the case file was incomplete. These volleys back and forth frustrated the police, who at one point suspected foul play. But police did not meet directly with prosecutors to ask about the delays; and prosecutors say they were concerned simply with strengthening their case against P'im. The institutional ping-pong lengthened the investigation and, because it stretched to more than 120 days, the police were required by law to release P'im from detention.

As a result, community members in Cipadung became angry and suspected that police officers had colluded with P'im. Police say that villagers could not understand how P'im could walk free without having been punished or returned any money. At the time of writing the report, though, there had been some progress. Police officers have sat down with prosecutors to air their frustrations and have also returned the case file to them after its third revision. At present, the investigation continues.

Lebakwangi, Kabupaten Kuningan, West Java

The District of Kuningan is located in the northeastern part of West Java. The impressive Mount Cermai towers over the region, and the small tourist industry which has sprung up at its foothills sustains a number of hotels, restaurants and entertainment venues that would not otherwise be seen in a district capital city of its size. Kecamatan Lebakwangi is a large sub-district, located only 17 kilometers by smooth paved road from Kuningan. Villages near the kecamatan capital feature impressive mosques, paved roads and a number of luxurious houses. Moving further away from the center, the roads begin to deteriorate and the quality of housing changes to a combination of brick and bamboo structures. While the local economy is primarily agrarian, the sub-district is clearly quite advanced.

Cecep Gandamana was an elected community member placed in charge of finances for the World Bank *Kecamatan* Development Program in Lebakwangi. With the support of the treasurer, between January 2000 and October 2001 he used funds from the project as a personal bank to fund an expensive lifestyle – cars, hand phones and clothing. When villages in the sub-district failed to receive their development funding allocations, suspicions emerged about Cecep. After initially denying any wrongdoing, an audit in October 2001 revealed that Rp107 million (\$12,590) was missing from project funds. Cecep's bluster gave way in the face of the audit and he signed a written statement accepting responsibility for the missing funds. He promised to return the money in full.

Efforts to resolve the case initially were informal. Yet, negotiation was not effective. The absence of a strong threat from the formal legal system and minimal social sanction – due to low public interest in the case – predictably saw the informal approaches fail. Consequently a group of five village representatives reported the case to the police in November.

The shift to the formal system delivered mixed results. The police moved rapidly at first, interviewing witnesses, including the perpetrator. But over the following months, the investigation stagnated. Despite requests from the District Head and District Parliament to prioritize the case, two visits from the World

Bank and coverage in the local media, no substantive progress was made. The police adopted a passive stance, waiting for community members to come forward with information. Yet, when villagers came to the police office to provide evidence, some were made to wait for hours and were treated with disrespect. A lack of information meant that few residents of Lebakwangi had any idea regarding progress of the investigation, including the five who made the initial report. As one villager noted, “If a dispute goes to the police, we don’t know what happens...we can’t control the process.” When Cecep left Lebakwangi without a trace in May 2002, the case appeared to be at an end. However, in a surprise development, in November 2002 the Treasurer was arrested by the local police in connection with the missing project funds and is currently facing trial.

All the various parties with a role to play in resolution of the case faced their own obstacles, either real or perceived. Sub-district officials had little motivation to support resolution mechanisms, as they themselves had regularly “borrowed” small amounts of money from KDP funds for personal use. The district government felt its role was limited for fear of overstepping the boundaries of “legal independence”. The sum result was that community oversight of the process was very limited.

After seventeen months of investigations, the police have managed to declare one person as a suspect. It is possible that the Treasurer is guilty, but the failure to arrest Cecep is clearly a derogation of duty. The fact is that Cecep – well educated and from a comfortable background – has disappeared from Kuningan and from the eyes of the police. All that was left was the Treasurer Ida – a divorced woman with limited education and of modest means.

The case did little to advance community understanding of the legal system other than leaving the sense that the law applies only against the weak.

Sakkoli, Sajoaning, Wajo, South Sulawesi

A few years ago, Pak Hasanuddin had come to the village of Sakkoli in Wajo, South Sulawesi, with nothing – he was allegedly fired as a civil servant in another district. It was the village head who gave him a chance, employing him as a debt collector in the village co-op, and later pushing villagers to elect him as head of the implementation team for the Kecamatan Development Project. Hasanuddin married into a family from Sakkoli and became a prominent member of the community. During the project proposal period in late 1998, Hasanuddin collected “participants” for a micro-credit group, simply by going around the village asking people to sign up if they wanted money.

Later, at the annual meeting for the project, the facilitator asked villagers why they were not repaying their loans, and they replied that they had not received them in the first place. Given that Hasanuddin had been responsible for disbursing the loans, and had somehow managed to afford a new truck as well as pay his private debt during the disbursement period, he was the one suspected of pocketing the money. A new project facilitator and the village head allegedly pressured him to pay it back, but their efforts seemed half-hearted. It took a year and a half until he was finally forced to sign an acknowledgement of debt, declaring he would repay the money over the next six months. One month later, he disappeared.

At a village meeting in August 2000, project facilitators told the community that because of the scandal, they would not be eligible to receive the third disbursement of funds from the project. Only then did the community members agree to take the case to the formal legal process. The village head reported the case

that day, but the police wrongly dismissed it as a civil case, not a criminal case. More months went by, and the facilitator attempted to get repayments by those who had received loans to avoid the economic sanctions against the village. The village head decided to take the case to the prosecutor, accompanied by the village secretary. The prosecutor's office 'misplaced' the case, and 6 months later, when project facilitators asked about it, the handling prosecutor said it was the first time he'd heard of it.

In this case, the push for action seemed to come from outside actors, such as the local project facilitators. But though they were somewhat active in the community, they failed to assist or follow up on the reports to the police and public prosecutor. From the start, however, the case had not been socialized well – most villagers had no idea what the project was, and those that did assumed the money belonged to the World Bank and not to them. The main reason for lack of community involvement thus seemed to be apathy. Besides the lack of ownership, villagers seemed to regard what happened as “biasa” (normal) and were distrustful of credit schemes, having seen corruption in the government's farmer's credit scheme before.

Villagers also expressed fear and distrust of formal legal institutions. This was not unwarranted, as seen from the lack of willingness on the part of the police and prosecutor to take the case seriously. It was clearly much easier to try to solve the problem within the village rather than deal with a difficult legal process. Many people trusted Hasanuddin and no one wanted to go the legal process while he was still in the village, relying on his word that he would repay the money. Also, because Hasanuddin had family in the village and was trusted by the village head, it may have been more appropriate to keep things within the community, so as not to upset the social equilibrium of the village. Any one who spoke out would have run the risk of being ostracized by the rest of the village. Thus, in the year and a half after Hasanuddin was suspected of stealing the money, there was little incentive for the borrowers or any one individual to take the case outside the village to be dragged through a difficult and untrustworthy legal process.

Wanareja, Cilacap, Central Java

The Indonesian saying “A rotten smell seeps out beneath gold clothes” was used to describe the life of Warnengsih, a popular and well-known woman known as a ‘glamour queen’ in the kecamatan (sub-district) of Wanareja until her corruption of roughly Rp250 million (\$29,410) of village development funds was finally exposed.

Corruption in Wanareja was first discovered when villagers from Palugon village, located high in the mountains above the kecamatan office, could not obtain their village's revolving credit. As Warnengsih's wardrobe grew more ornate, suspicions grew, and eventually the Regional Supervisory Board conducted an audit. Auditors found that Warnengsih had not transferred any of the credit repayments she had received from villagers back into the village bank account. Another audit conducted by a team of community members (Team 8) supported the findings. Consequently, the treasurer admitted to her crime, and promised to return the money by giving up her properties.

During the negotiating process between Team 8 and Warnengsih, pressure increased as two parties brought the case to the police. The first testimony came from a forum composed of political party members in Wanareja. The second testimony came from Palugon village. Warnengsih had a sudden change of heart. Only a few days before the release of the notary act giving up her personal assets to Team 8, she changed her mind and ignored all previous attempts to come to an agreement. She stepped forward by hiring a lawyer and bringing the case to court.

The legal process began as the district police office of Cilacap conducted an investigation over the course of 4 months. After completing the investigation report, the officers brought the case to the district prosecutors office in July 2002. Only a month later, it was submitted to the Cilacap district court. Hearings began in early August 2002 and proceeded quickly. The policy made by judges' panel to schedule the case hearing twice a week sped the process up. The trial, involving more than 35 witnesses, was completed three-and-a-half months later.

Unsatisfied with the verdict (finding it too light), the Public Prosecutor immediately appealed the decision to the province. Once more, the process moved quickly, and two months later, the Appeals Court upheld the prosecutor's demand by increasing the sentence from two to four years in prison, as well as imposing a fine and a requirement to return the stolen funds.

Even though the legal process went fairly quickly, it was difficult to say whether justice had been appropriately delivered. As with many of our case studies, the problem came with the execution of the verdict, as the money was never properly returned to the people of Wanareja. The process of returning the money depended on sorting out Warnengsih's personal assets, followed by an auction managed by the Office of the Council for Prosecutors of Cilacap. As stated on the verdict, the money was to be returned to the State Budget. The process of then transferring the funds should have been transferred back to the victims of corruption to show that justice had been achieved, but this never happened. Nonetheless, the case did prove an excellent and surprising example of an efficient process of investigation and trial by the police, judges, and especially, the prosecutor's office.

Mlilir, Gubug, Grobogan, Central Java

Gubug is a kecamatan (sub-district) in Grobogan, about an hour away from the city of Semarang in Central Java. The area is semi-rural and has good transportation and telecommunication facilities. Most villagers in the area are farmers, laborers, traders or government officials. Mlilir is one of the poorest villages in Gubug and, until recently, was known as a 'red area' because of the high number of criminals and ex-criminals thought to live in the area. Indeed, villagers in Mlilir say that their village head, Jasmu, is connected to local *preman* (members of criminal gangs), and say that they are afraid of him. Despite these links, though, they elected Jasmu to be their village head, saying that they did so because he paid them the most bribe money.

Mlilir was a participant in the Kecamatan Development Program. Between November 2000 and January 2001, the secretary of Mlilir's village implementation team, Moh Hadi (a quiet, young and well-respected man) embezzled Rp24 million (\$2825) from the project, taking micro-credit funds that were supposed to be disbursed to villagers. The head of the team (an old man called Setu) and the treasurer, a kindergarten teacher called Siti Wati, were also later accused of participating. They and other villagers, though, claim that Jasmu was the mastermind of the corruption and forced them to take the money so that he himself could use it.

The embezzlement of the funds was noticed by a group of young people in the village, who organized themselves into a "reformists team" (Tim Reformasi) to resolve the problem. One of the leaders of the group, Gondo, had recently beforehand been elected to be head of the village parliament. Gondo, whose father was the previous village head, said that as leader of the village parliament he felt a public responsibility towards villagers. He also had a long-standing personal rivalry with Jasmu. Indeed, at village meeting long beforehand, Jasmu and his supporters physically assaulted Gondo for accusing Jasmu of

fiddling funds from village land sales, but all of the witnesses to the assault were too afraid to give evidence against him.

The Tim Reformasi reported the case to the local financial management unit and to KDP project facilitators, who organized themselves into a fact-finding team to follow up the case. Within three days, the police arrested Moh Hadi and started a formal investigation. While he was in detention, though, Tim Reformasi and KDP facilitators conducted informal negotiations with Moh Hadi and his family to arrange for the funds to be repaid. The police investigation was rapid. They took three months to complete their investigation, during which time the two other suspects, Setu and Siti Wati, were also placed under arrest. After three months, the police transferred the case to the district prosecutors, who took 20 days to complete their investigation.

Although the sessions for the subsequent trial were held regularly, witnesses say that they suffered threats and intimidation from Jasmo and his *preman*. Indeed, during the trial, the vehicle of the village parliament head was stolen from in front of the courtroom by people widely thought to be Jasmo's thugs. The police took no steps to follow up.

During the trial, evidence of Jasmo's involvement in the Mlilir corruption emerged. Moh. Hadi and Siti testified that Jasmo had threatened to take action against them with his *preman* if they did not comply with his orders to embezzle money for him. As a result, the judges ordered a separate investigation into Jasmo. But Jasmo's trial was held separately, and no witnesses were prepared to give statements against him. As a result, Jasmo was put only on probation.

The Moh Hadi, Setu and Siti Wati trial came to an end in September 2001, four months after it started. Setu and Siti Wati were sentenced to one year in prison but did not go to jail. Moh Hadi was sentenced to two years and ordered to repay the Rp 16.7 million (\$1965) and pay a fine of Rp 5 million (\$590). Later, he appealed the sentence and was given a reduced sentence by the Semarang High court. Since then, he has completed his sentence and paid the fine but has not repaid the missing funds.

Lampung Land Cases

Lampung has been a center for Javanese and Balinese migrants since the Dutch first designated it a transmigration zone in 1905. Now, only about 10% of its population is indigenous, and migrants, who have tended to do better than indigenous communities, own much of the land. Land disputes among communities are thus common. But so too are disputes between small shareholders and plantation or factory owners. The New Order government failed to recognize small shareholder and indigenous land rights when allocating land to plantations, factories and state enterprises and as a result, conflict over land is common. The government and private companies often used the military and police to put down such disputes, adopting violent approaches such as illegal arrests, looting, arson, and eviction.

LBH Bandar Lampung (a branch of the legal aid foundation YLBHI) has conducted intense education and community advocacy campaigns through *posko* (village outposts) to empower communities to stand up for their rights. A coalition of legal aid activists, journalists, bar association members, university members, and also, crucially, government officials working on land issues, has banded together to act as a mediator between government and communities. Thus far, the coalition, called Team 13, has managed to reduce the

number of land disputes in Lampung by employing strategies of mediation and conciliation. The following cases showcase the efforts of both LBH and Team 13.

Hanau Berak

In 1997, just as a community fruit plantation in Hanau Berak was about to harvest its first crop, the company PT MMF cleared the plantation's land. Since the 1980s, the land had been left untouched by a previous company whose warrant had expired, allowing the community to cultivate the land with crops like coffee, cloves, bananas and durian. The land clearance aroused anger among community members, who suspected that the company had acted manipulatively in claiming the land. Many villagers said they suffered from mental illness due to the loss.

PT MMF abandoned the land due to the economic crisis in 1999. Thereafter, villagers returned to the land to cultivate the plants they had sown. This led to small-scale sporadic disputes. In early 2000, one of Hanau Berak's citizens, who had left for Java, returned to visit his home. After hearing the story about the company and the mental trauma it inflicted on one of his relatives, he began to reinvestigate the clearance. In doing so, he learned that the company had forged signatures of the plantation laborers agreeing to be compensated for the land at a very low cost. He also heard about a *posko* (village outpost) in a neighboring village run by LBH Bandar Lampung, which conducted legal education and advocacy campaigns.

After hearing about the campaign and joining a meeting at the village, citizens of Hanau Berak decided to build a *posko* on their land. The *posko*, which received close assistance from LBH Bandar Lampung, became a place for the 80 citizens of Hanau Berak to learn about advocacy and community mobilization. As a result, in 2002, the community formally reclaimed their land. Through negotiation with PT MMF, they reached a mutual understanding whereby the villagers were allowed to cultivate the land not used by the company. Disputes continued, however, as PT MMF hired people not linked to the *posko* to police their share of the land. Although LBH Bandar Lampung and villagers linked to the *posko* had a commitment not to resort to violence, they experienced intimidation when police raided the village outpost and arrested some men.

Team 13 became involved in the mediation efforts when the intimidation failed to stop and when further attempts at negotiation failed. Over the next few months, the team succeeded in negotiating a joint venture scheme between the company and the villagers under Team 13's supervision. Since then, there has been no more violence.

Kubang Badak

Land disputes between the state and the people of Kubang Badak village are long-standing. Although migrants have lived there since the 1960s, the status of their land ownership rights has never been clear. Although the local government has *de facto* recognized their right to live there, through providing services and taxing residents, since 1982 it has made repeated attempts to clear land surrounding the village.

Fearing eviction, Kubang Badak villagers twice applied for their village to be relocated (often termed 'voluntary transmigration'), but their request was denied on the basis that their village was safe. But later events disproved this. In 1998, the Forestry Agency conducted a violent raid—termed "Operation Smile"—to turn the village and surrounding land into a conservation zone, evicting the inhabitants of

Kubang Badak and ordering them to clear the area. Following the eviction, villagers' houses were burnt, livestock was looted, and three locals, including the village head, were kidnapped.

The head of Forestry Agency denied that that the operation had been violent, but when the men who were taken away had not returned, their families began a search and asked for help from LBH Bandar Lampung. Soon after community members signed a letter of authority to LBH Bandar Lampung, the police issued a warrant for the arrest of the three villagers, accusing them of violating the law on forest conservation.

When the men's trial began in the district court, the judges rejected LBH Bandar Lampung's proposal that the arrest was unlawful. One suspect says the trial was half-hearted, with trial sessions sometimes only taking place for ten minutes. After three months, the suspects were pronounced guilty and given a three-month sentence in jail, less the detention period.

After the trial, the relationship between LBH Bandar Lampung and the people of Kubang Badak started to develop, and LBH Bandar Lampung and student activist volunteers carried out an intense campaign of advocacy and legal education for the villagers. The purpose of this assistance was to allow the community to protect their interests should they encounter future legal problems. Volunteers set up a *posko* (village outpost) and stayed in the village up to five days a week to build up local trust. Meanwhile, LBH and other NGOs carried out separate advocacy activities through *posko* in other villages. Eventually, the *posko* reform movement developed so much that NGOs, villagers and activists set up a network of *posko* consisting of farmers, fishermen, students and activists, called *Devan Rakyat Lampung* (Lampung People's Representatives). Team 13 was itself set up in August 1998.

Sustained protest by the *posko* finally led the Lampung Province Forestry Agency to issue a circular allowing the people from Kubang Badak to re-inhabit their village. Having learned from experience, however, the villagers were skeptical whether the statement was powerful enough. They requested Team 13's help again to mediate the dispute and to urge the Governor to issue a more powerful statement on the land status of Kubang Badak.

After several discussions Team 13 and the State Forestry Agency decided to include Kubang Badak as a 'community forest' area like other villages in the area. In the meantime, the acts of violence ceased and there was unanimous agreement that community development aid would be given to the area to compensate for previous violence. Unfortunately, by the end of 2002, not all the villagers had received the information and none of the social and educational facilities promised had been built.

Sidodadi Asri

Land disputes in Sidodadi Asri stretch back to 1979, when the state-owned plantation company PTP claimed that the land villagers had occupied since the 1930s was in fact a Dutch concession belonging to their palm oil plantation. In 1981, the dispute turned violent, when, in a massive eviction, one villager's farm was burned down and another 13 men detained.

In 1997, violence broke out again. The second generation of villagers from the area took the initiative to reclaim the land, proposing to negotiate with PTP. When PTP threatened legal action, the community sought aid. Another group of villagers tried to reclaim the land by force, chopping and burning down palm oil plants owned by the company. PTP responded with force, and eruptions of violence followed.

Soon after, community members heard about a *posko* at a nearby village, and began to attend meetings there. In 1999, when their proposals to the company continued to be rejected, they finally approached LBH for legal aid. Soon a *posko* was established in Sidodadi. As the conflict worsened, LBH volunteers often stayed awake at night in order to anticipate attacks by security guards allegedly hired by the company to evict the villagers. The volunteers emphasized that resistance should not be violent, and threatened to leave should any villagers react violently to the provocations.

A District Head's decree in 1999 stated that a land dispute mediation team should try to resolve the problem. Their methods were criticized, though, because the team consisted only of government officials and never came to investigate in the village, only speaking to PTP. With the help of LBH and student activists, the villagers began putting direct pressure on the Regional Parliament (DPRD) to demand that their voice be heard. In January 2000 about 300 people from the *posko* held a protest in front of the DPRD.

Regional DPRD legislators responded by making a field trip to clarify the land dispute. As a result of their investigation, they issued a recommendation stating that the Sidodadi Asri villagers owned the land. Not surprising, the recommendation was rejected by PTP. The DPRD consequently sent a letter to the Ministry of Finance—a stakeholder in the company—to consider the villagers' rights to the land. Even though there has yet to be a response, community members used the letter as justification for building settlements and dividing the area for farmland.

Although the company filed a lawsuit against villagers, it remained silent when the villagers built settlements and began to cultivate the farmland, responding only by putting up banners saying "A good citizen is able to preserve their country's assets." This incited cynical responses from the villagers. When the suit was filed, villagers had no choice but to go to trial, which dragged on for 19 months. The court decision upheld the company's right to the land, but ordered it to pay compensation to villagers. Villagers rejected the decision, though, and lodged an appeal against the decision with the help of LBH lawyers. As one villager said, "It's impossible for the people to win in court because we don't have money. But when talking about right or wrong, there is still a bit of strength in us." To date, the legal status of the land is unclear, and the dispute continues. Villagers have lodged their appeal and continue to build houses on the land. But in any case, the assistance of the *posko* volunteers has moderated any tensions that could have potentially resulted in violence.

Dikira, West Sumba, NTT

In small, isolated village of Dikira in West Sumba, a homicide occurred which was to change the lives of its inhabitants forever. A thief had run into the village to escape a policeman who was chasing him. A struggle ensued and villagers heard screams, running out to find the policeman, who turned out to be a police chief, dead. Over the next few days, the police and village scoured the area searching for the thief, to no avail. When the police could not find the murderer of their superior, they came back to the village in a rage, physically abusing and detaining 8 of the villagers, and then, according to their testimony, torturing them in prison. A week later, the thief was caught, shot twice, and later died in the hospital.

While many of the villagers had escaped to the forest during the traumatic events, the wives of two of the villagers still in jail sought help from one of their cousins, a seasoned journalist and former student activist. The journalist immediately contacted Father Moses, a priest who heads "Justice and Peace", a commission set up by the Catholic church to provide legal assistance to communities. The priest - after having heard

their story and visiting his local police, who confirmed it - hired the villagers a lawyer using church funds. As there are no practicing lawyers in the entire island of Sumba, the lawyer had to be hired from Kupang in West Timor.

After conducting an investigation, the lawyer defended all 8 men in court, where the accused were divided into two groups of 4, in separate trial processes for each group. Many members of the community attended the trial, with hundreds arriving for the final decision. After 43 trial sessions, the judges' panel found all 8 villagers innocent. However, soon after the verdict for the first group was delivered, the prosecutor appealed. He was late in lodging an appeal for the second group. The first case thus went to the Supreme Court, which found the group of 4 men guilty. They were arrested again, a year after they had been set free, and are now in prison for 15 years.

While the Justice for the Poor team's investigations suggest that all eight were clearly innocent of the charges, the decision of the district court did at least ensure the freedom of the 4 men whose appeal was too late to be considered. The process of resolution also makes for interesting study as to how coalitions of civil society organizations can come together to at least ensure some semblance of due process, particularly when led by a powerful institution like the Church. As the journalist who helped the villagers stated: "I think it was because the church was involved in this case. Here, the dioceses have a lot of authority. As an institution that commands respect, it is the same as the Islamic leaders in Java. They are the informal leaders of the community. When I contacted Father Moses, I saw that he was the only person with the legal capacity to support them. I myself could be beaten up if I was alone."

This case showcases the strength of a strong, outside institution such as the church in ensuring a fair trial for villagers who may otherwise have been helpless. Besides providing the financial support to hire the men a lawyer, the church provided a counterweight to the authority of the police. The journalist's role as a facilitator was also important, as he went into the village, which had been traumatized by the event, to explain the legal process to them and accompanied the witnesses to attend the trials.

III. Final decisions and sentence

Table 9: Final decisions & sentence

Final decisions and sentence	Defendant & amount stolen	Prosecutor's charge	Court verdict and sentence	
CASE	Bukit Kemuning	Darmajaya Rp 125,000,000 (\$14,705)	Charge: Corruption Sentence: Fine: Repayment:	Verdict: Guilty Sentence: 1 year in prison Fine: Rp. 50,000,000 (\$5880) Repayment: Rp. 125,000,000 (\$14705)
	Mamodu	Jusuf Habamananga Rp 73, 750, 000 (\$8675)	Charge: Corruption Sentence: 1 year, 6 months Fine: 10 million (\$1180) or 6 months prison Repayment: 73, 750,000 (\$8675)	Verdict: Guilty Sentence: 1 year Fine: 5 million (\$590) or 3 months prison Repayment: 73,750,000 (\$8675)
	Tanggerang	M. Sururi Head of Kaliasin Village's Credit Union (KUD) Rp. 1,000,000,000 (\$117,650)	Charged with: Corruption Sentence: 6 years in prison Fine: Repayment:	Verdict: Guilty Sentence: 8 years in prison Fine: Rp. 25,000,000 (\$2940) Repayment: Rp. 979,600,170 (\$115,250)
	Wanareja	Wamengsih, Treasurer of Financial Management Unit (UPK) Rp. 257,000,000 (\$30,235)	Charge: Corruption Sentence: 6 years in prison Fine: Rp. 200,000,000 (\$23,530) subsidiary 3 months in jail Repayment: Rp. 154,000,000 (\$18,120) subsidiary 2 years in jail	Verdict: Guilty Sentence: 4 years in prison, Fine: Rp. 75,000,000 (\$8825) Repayment : Rp. 154,000,000 (\$18,120)
	Grobogan	Moh. Hadi, Setu, Sitiwati, Jasmo Rp. 24,720,000 (\$2910)	Charge: Corruption Sentence: Setu and Siti-4 months in prison, Hadi-1 year in prison. Fine: - Repayment: Return all missing funds	Verdict: Guilty Sentence: 1 year in prison for Hadi, Setu; Siti- 1 year without responsibility to serve; and Jasmo-released Fine: Rp. 5,000,000 (\$590) Repayment: Rp 16,302,000 (\$1920)

	Dikira	Daniel, Bulu Ngongo, Bulu Malo, Timothius Malo, Ruwa Kaka, David, Agus Malo, Ngongo Malo	Charged: Homicide Sentence:	Verdict: District court: not guilty Supreme court: 4 suspects guilty, 4 others not guilty Sentence: 15 years
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¹ The Donor Statement on Justice Sector Reform, prepared by donors for the January 2003 meeting of the Consultative Group on Indonesia meeting, states, “Legal and judicial sector reforms remain essential for the strengthening of democracy in Indonesia, for long term political and social stability, for the protection and enforcement of human rights, and for economic recovery and associated policy reform... Indonesian justice sector reforms are essential for attracting investment, both domestic and foreign, which is a key factor in medium term economic recovery.” ([http://wbln0018.worldbank.org/eap/eap.nsf/Attachments/012103-12CGI-S4-Justice/\\$File/12CGI-S4-Justice.pdf](http://wbln0018.worldbank.org/eap/eap.nsf/Attachments/012103-12CGI-S4-Justice/$File/12CGI-S4-Justice.pdf))

² The 1945 Constitution and the Indonesian legal system recognize the existence of *adat* law, which is broadly defined as traditional customary law. Yet some scholars have contested this definition. Roelof H. Haveman (2001), for instance, argues that adat law is not simply customary but includes elements that are not based on custom, such as village (*desa*) regulations. In this paper, we exclude *desa* regulations from our definition of *adat*.

³ Our approach is influenced by legal anthropology, in particular legal pluralism (see Benda-Beckmann F. 1981; Griffith 1986; Merry 1988; Moore 1973; Roberts 1998; Tamanaha 1993). Its analytical starting point is people’s experiences, not the state and its formal legal organs. According to this view, the law is seen as only one of many spheres through which people order their lives and resolve disputes. Others, such as religion, customary law and local social norms, are avenues of societal ordering that may be as or more important, depending on context. The set of rules set down by a project—such as a development project—is one such sphere. Such sets of norms and rules are all laws of their own kind, whether codified or not. There is thus not simply one law but many.

Some legal pluralists have argued that, when faced with a problem, people will choose whichever of these spheres—or forums—that is most likely to deliver the result they want, in a process known as ‘forum shopping’. When faced with a variety of choices, they do what benefits them most. In a situation where the courts are weak and inaccessible, people are unlikely to use them to resolve any but the most serious or unsolvable disputes. In an environment where none of the institutions available to defend their interests work well, they may remain passive.

Such approaches make some broad assumptions about the way people act. They assume that, given a set of choices, people tend to do what they think will benefit them most. We share this assumption but make the claim broadly. We believe that people perceive their interests not simply in material terms but also in terms of power, social status and other non-material rewards. We believe that people may be motivated not simply by self-interest but by allegiances towards family, community, and other social groups. Finally, we believe that social norms—and the institutions through which they are expressed—have a significant impact on how people perceive their choices and interests.

⁴ Practical considerations also informed the choice of case. The projects studied have a nationwide network of local facilitators that provided access to do village justice research that would otherwise be unmatched. Almost all the corruption cases are from two village poverty projects funded by the World Bank, the *Kecamatan* Development Program (KDP) and the Urban Poverty Project (UPP). Both programs aim to raise incomes but also to promote governance reforms and to enable ordinary villagers to participate democratically in making decisions about how their village’s funds are spent. The two projects, which have a combined worth of over \$1 billion, cover over 30,000 rural and urban villages across the country. The projects have a network of facilitators in these villages and sub-districts to help organize the public meetings where villagers make decisions over funds. This nationwide network of facilitators—with their links not simply to villagers but to members of local government, legal institutions and NGOs—provided access to do village justice research that would otherwise be unmatched.

⁵ There is a system of witness protection for human rights cases. See Law 26/2000 on Human Rights Trials and Government Regulation 2/2002 on Protection for the Victims and Witnesses of Serious Human Rights Crimes

⁶ After decentralization, the province does not have direct authority over the district. Instead, it plays a supervisory role on behalf of the central government, and sets minimum standards. For the 2004 elections, laws are likely to be passed that will see Governors and District and Municipality Head directly elected by the community rather than by regional parliaments. (See World Bank 2002).

⁷ According to the Australian Law Reform Commission, for instance, less than 6% of commercial disputes in Australia end up within the courts, of which a small proportion again go to final decision: See Australian Law Reform Commission Issues Paper 25, “Review of the Adversarial System of Litigation”

⁸ It is worth noting that, despite the emphasis placed on harmony and consensus in Indonesia, violence and conflict is—and has historically been—common.

⁹ Note also a four-country study on traditional dispute resolution conducted by Merry, who concluded that village level mediation is generally backed by coercion in the shape of either social sanction or threats of violence. In summary, she argued that mediated settlements inevitably reflect ‘what the stronger is willing to concede and the weaker can successfully demand.’ (See Merry 1982).

¹⁰ See Law 31 of 1999, Part II, Articles 2 & 3.

¹¹ The article states clearly that all members of the public have the right to request information in corruption cases. It also states that members of the public have the right to receive an answer about the progress of a corruption cases within 30 days. The wording of this is not clear, but it suggests only those members of the public who have reported the case have a right to reply within this particular time frame.

¹² Regulations concerning capture and detention can be found in Articles 24-28 of the Criminal Procedure Code (KUHAP).

¹³ The actual official budgets may be higher than this. A police officer interviewed in Sumatera showed the research team a national directive stating that ‘violations’ receive Rp. 52,000 (\$6), ‘light’ investigations Rp. 500,000 (\$60), ‘medium’ investigations Rp 1.5 million (\$175) and ‘serious’ ones Rp 2.5 million (\$295). The categories are set according to the complexity of the investigation, not the nature of the crime. But local police and prosecutors say that they receive less money once their superiors have skimmed off a portion.

¹⁴ In Seruyan Tengah, community members themselves decided to set aside Rp 25 million (\$2940) of its own funds to support the KDP legal process. At an inter-village meetings, community members decided to set aside the funds in a ‘community chest’ so that they could make an example of the perpetrator, even though he had allegedly stolen only Rp 40 million (\$4705). By March 2003, about Rp 12 million (\$1410) of the Rp 25 million (\$2940) allocation had been spent. About half of it had been provided to the police. A breakdown of the highlights is as follows: (1) Transportation for four people to collect the perpetrator from Sampit: Rp 1.4 million (\$165). (2) Sub-district police officer’s trip to the district capital to discuss the case with the district police: Rp 2 million (\$235). (3) Transportation of the perpetrator’s truck to the district capital to be used as evidence: Rp 3 million (\$352). (4) Transportation for the head of the sub-district police to the district capital: Rp 500,000 (\$500). (5) Lunch and dinner for district police officers: Rp 150,000 (\$18). The rest of the funds were spent mainly on transportation and food costs for villagers to provide testimony. Without this support, it is unlikely that they would have been able to do so, particularly for travel to the district capital.

¹⁵ The Bandung police said that their investigation had cost Rp. 8 million (\$940), a large chunk of which went to fund the food, transportation and accommodation costs of the government audit agency BPKP, whom they called in to do an audit of the books for the case.

¹⁶ The Justice for the Poor team was unable to find the relevant decrees to establish whether or not this was true.

¹⁷ The Justice for the Poor team was unable to verify this. The law requires public prosecutors to execute court decisions, though, including the power to seize and confiscate assets. See Article 27 (1b) of Law 5/1999 on the Public Prosecutor’s Office and Article 18 of Law 31/1999 on the Eradication of Corruption.

¹⁸ See Law 31/1999 (Article 27) on the Eradication of Corruption and the Criminal Procedure Code (Article 284 (2) for further backing of the right of prosecutors to investigate.

¹⁹ Figures from the Ministry of Manpower and Transmigration <http://www.nakertrans.go.id/PINAKER/Indeks%20Upah.html>

²⁰ The rule of law efforts of the 1960s relied on a formalist, diagnostic approach to reform. Such efforts tended to assume that if the legal system could be streamlined, cleansed of corruption and made more neutral, then political systems and society too would work better. The main founders of the rule of law movement later disavowed its efforts, (see Trubek & Galanter 1974) but in recent years the ‘rule of law’ approach has become popular once again as a development strategy (see Kennedy 2003). The approach remains a source of debate in legal and development theory (for more on the debate see Burg 1977; Merryman 1977; Messick 1999; Seidman 1978; Tamanaha 1995)

Underlying the efforts of the rule of law movement was a set of assumptions about legal institutions. Its proponents tended to see legal institutions as neutral arbiters, and courtrooms as places where, if the system worked as it should, people could receive decisions that were inherently fairer than the settlements they could reach informally. They also treated the law as an autonomous entity, assuming that technical reforms to the legal system itself encouraged social change and political stability.

This paper has a different set of assumptions that it believes are more useful in understanding the complexities of countries in transition such as Indonesia. It believes that the best way to understand the behavior of legal institutions is to see them not as neutral arbiters but as institutions that reflect power differentials much as others do. It believes also that legal institutions are best understood not as autonomous entities but as ones that are embedded in social and political realities. As such, reforms to them are effective only insofar as they are legitimated by the societies and political systems of which they are a part.

This kind of approach focuses on a broader range of reform options than the standard range. It recognizes that the way legal institutions work and are used is a function of the social and political as much as the legal and that legal reform interventions (which themselves are profoundly political) should focus on a broader range of factors—such as power and social relationships—than the legal system alone. The paper uses these kinds of factors to feed into its recommendations.

²¹ Article 372 describes general embezzlement (illegally enriching oneself from funds entrusted to one’s care), whereas Article 374 makes it a more serious crime if the embezzler holds the funds as part of a job and/or is paid a fee to care for the funds.

²² There is perhaps also some ambiguity in the law on this. Law 5/1991 on the Public Prosecutors' Office (*Kejaksaan*) states that "The head of the district-level public prosecutor's office (*kepala kejaksaan negeri*) may, under certain conditions, give written permission to a suspect or accused to receive medical care in a hospital" [Law 5/1991, Article 33 (2)]. It is not clear whether this authority also applies to situations where it is the court that has ordered custody. Normally, the judge would claim that prerogative, but the said law provides support for a different interpretation (e.g. reference to an "accused", in addition to a "suspect", could mean that permission may also be granted during court procedures).

²³ These efforts were blocked by the court: the judge paid no attention to the sequence of the indictment and the false claim that provincial approval of the indictment was still pending was uncovered after press and legal aid lawyers went to check this at the provincial prosecutor's office. It turned out that they had not yet received the indictment from the district prosecutor.

²⁴ There are numerous cases from outside the case studies where enraged defendants, after receiving heavier sentences than they expected, have thrown shoes at or attacked prosecutors, shouting 'that's not what we agreed' or 'that's not why I paid you so much money'.

²⁵ The Bukit Kemuning decision was eventually executed.

²⁶ It is worth noting that defendants faced with this may also transfer their assets to family members.

²⁷ Although Law 31/1999 on the Eradication of Corruption does not indicate that these assets must still be in the possession of the perpetrator, it is often impossible for a prosecutor to establish a direct causal link between the act of corruption and the acquisition of specific assets.

²⁹ The Bukit Kemuning judge confirmed in several interviews that he could do nothing; that a judge has no authority to force a prosecutor to carry out a judge's instruction.

³⁰ The Indonesian text explicitly says "*diberhentikan*" (will be dismissed) not "*dapat diberhentikan*" (may be dismissed). However, a subsequent provision [Article 13(2)] gives the accused prosecutor the right to first be heard by the *Majelis Kebormatan Jaksa* (Prosecutor's Honor Council), established by the Attorney General.

³¹ This is an unofficial translation of Article 1365 of the Civil Code, which states "*Tiap perbuatan yang melanggar hukum dan membawa kerugian kepada orang lain, mewajibkan orang yang menimbulkan kerugian itu karena kesalahannya untuk mengganti kerugian tersebut*".

³² In 1919, the Dutch Supreme Court (Lindenbaum vs. Cohen), made a landmark decision in which they said that "unlawful" could also mean "contrary to socially acceptable practice". The High Court of the Dutch East Indies was not subordinate to the Supreme Court in the Netherlands, but followed a similar reasoning that has been maintained ever since by the Indonesian Supreme Court (*Mahkamah Agung*).

³³ Villagers could have a problem with the argument that they suffered material loss as a result of a prosecutor's negligence. Recuperated corruption money must be paid into the State Treasury (*Kas Negara*). So even if the prosecutor had done his job properly, the embezzled money would not have been repaid to the community. This could jeopardize any tort action initiated by a community, because the State would argue that the community would have suffered a loss anyway, whether the prosecutor worked effectively or not. There would be no causality between the prosecutor's performance and the material loss.

³⁴ The exception was in Wajo, where the former head of the project financial management unit sold household goods belonging to the *kecamatan* project facilitator, who was suspected of embezzlement but who had already fled the village. The head of the financial management unit, though, had obtained written permission from the *kecamatan* facilitator to do this. He was also involved in the case and declared that he had borrowed money from relatives to repay some of the shortfall (despite never admitting to taking the money himself).

³⁵ The same article orders the government to further regulate the form of this 'appreciation' in a formal government regulation (*peraturan pemerintah*).