



# LEGAL EMPOWERMENT OF THE POOR: LESSONS LEARNED FROM INDONESIA



JULY 2007

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# ABBREVIATIONS

ADR	: Alternative Dispute Resolution	TAP	: Decree
ASEAN	: Association of South East Asian Nation	TNC	: Trans-Nasional Corporation
BHB	: Mobil Legal Assistance Programme	UMKM	: Micro, Small and Middle Enterprises (Usaha Mikro, Kecil dan Menengah)
BHS	: Structural Legal Aid	UUPA	: Principal Agrarian Law
BPN	: National Land Agency	YLBHI	: Indonesian Legal Aid Foundation
BPS	: Central Bureau of Statistics		
BRI	: Bank Rakyat Indonesia (Bank of Indonesian People)		
BUMN	: State-Owned Companies		
CLEP	: Commission on Legal Empowerment of the Poor		
Depnaker	: Departemen Tenaga Kerja		
DPR	: House of Representatives		
DPRD	: House of Representatives at Provincial Level		
HGB	: Building Concession		
HGU	: Business Concession		
HM	: Property Right		
HP	: Utilization Right		
ILO	: International Labor Organization		
Jamsostek	: Social Insurance for Labor		
KPK	: Commission against Corruption		
KSM	: People's Self-Support Community		
KTP	: Identity Card		
KUB	: Joint Enterprise Communities		
KUHAP	: Law of Criminal Procedure		
KUM-LTA	: Proper Micro Enterprise Credit Scheme without Additional Collateral		
LBH	: Legal Aid Institute		
MA	: Supreme Court		
MDG's	: Millennium Development Goals		
MOU	: Memorandum of Understanding		
MPR	: National People Assembly		
NGO	: Non-Governmental Organization		
PBH	: Legal Aid Workers		
PEKKA	: Women Headed Households (Perempuan Kepala Keluarga)		
Perda	: Regional Regulation		
PERMA	: Supreme Court Regulation		
Permen	: Ministry Regulation		
PKBL	: Environment and Partnership Program		
PKL	: Sidewalk Traders		
SJSN	: National Social Insurance System		
SPI	: Institutional Education Contribution		

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# PROLOGUE



Legal empowerment of the poor is not new in Indonesia. For decades civil society organizations have been advocating on legal rights and improved access for the poor. Legal aid groups have been giving free legal access to evicted small traders and dispossessed slum dwellers, and women's right activists are fighting violence against the mostly female migrant workers. Environment advocates have been defending forest dwellers' land rights while campaigning for natural resources protection, and urban poor defenders are supporting the informal sector's rights to secure tenure.

However, these efforts often fail to meet the expected results due to various obstacles: having to fight much stronger economic or political interests, facing lack of higher level commitments and short term bureaucrat's attention only in between elections, etc. Also most of these efforts are small and local, with limited capacities for replications and up scaling; while Indonesia is such a huge country. With decentralization of power and resources to more than 440 local authorities in cities and districts since the year 2000, they are also overwhelmed in their outreach efforts throughout the country.

This is the motivation for making stronger efforts to advocate for mainstreaming legal empowerment agenda in national and local governments' policies, and to develop better synergies between governments, civil society and the private sector on this endeavor. In addition, international support is also needed to stimulate this legal empowerment mainstreaming effort, hence we in Indonesia welcome the formation of

the Commission on Legal Empowerment of the Poor.

The Commission on Legal Empowerment of the Poor (subsequently referred to as "the Commission") has given us an opportunity to compile views and facts on actual situation through the national consultation and its preparatory works in Indonesia last year. We welcome the Commission's aims to provide justice and economic opportunity, not only as a prerogative for a few people, but rather as the right for all. For Indonesia, the establishment of the Commission highlights the assurance that our continuing efforts to empower the poor are not occurring as an isolated phenomenon in Indonesia only, but are part of a broader collective effort throughout the global community.

Many initiatives have been undertaken by several parties in order to end global poverty, spearheaded by the holistic efforts of aiming to achieve the Millennium Development Goals (MDGs) by 2015. This commitment of the international community to reach their vision to attain sustainable social and economic development is approached by creating and improving global collaborations and partnerships to fulfill basic human rights.

The formation of this Commission is an approach to addressing poverty challenges using a particular entry point, which is legal empowerment. The Commission's belief that legal empowerment is a key prerequisite of ending poverty, highlights a simple basic idea: how can legal access and economic opportunity be acquired not only by a few people, but also by the poor. In the process of

creating new paths for the legal empowerment of the poor, the Commission realized that the next focus is to compare lessons from experiences in the past. Programs that have accomplished empowerment are very valuable and should be studied in order to acquire a concept that fits well and is successful for ending poverty.

At the beginning I doubted the idea of the Commission and was wondering why there was a need for such a Commission, as challenges to legal empowerment of the poor lies at the country level. Also, privatization, individual rights that destroy communal rights, neo-liberalism, etc. are usually terms that provoke allergy to those who are battling poverty, especially among Civil Society Organizations. My doubt of the Commission's existence was resolved when it did start to work, and more so during the processes in Indonesia, when it facilitates opportunities for all stakeholders to sit together and face this common challenge together. Also, from my experience in promoting the MDGs, I really feel that legal access issues are big obstacles often faced by the poor, and am hopeful that a global advocacy on it will catalyze the drive to tackle the challenges.

The Commission divides legal empowerment of the poor efforts into four interrelated clusters: (1) Access to Justice and Rule of Law; (2) Property Rights; (3) Labor Rights; and (4) Entrepreneurship of Micro, Small, and Medium Enterprises; which are also implemented in Indonesia. In order to grasp the accomplished empowerment initiatives, the Commission designed a space for consultation at the national level in Indonesia, where it collaborated with the Indonesian Legal Aid Foundation (YLBHI – *Yayasan Lembaga Bantuan Hukum Indonesia*) as the secretariat and United Nation Development Programme (UNDP) Jakarta as the financial and program support. They had organized a series of supporting activities in Indonesia during the last months of 2006.

Focus on the four issues mentioned above was also affirmed by establishing four working groups, which each consists of baseline researches and multi-stakeholder exchanges. These events involved various stakeholders, including policy makers from local to national level in focus group discussions as well as several multi-stakeholders consultations. The working groups have generated

final reports in the form of information and policy guidelines.

The initiative in Indonesia did not seek to totally reconstruct the present legal and economic system in order to accommodate the legal empowerment of the poor. Conversely, the organizers wanted to listen to the opinion from every element of the community, non-governmental organizations, the government in local and central level, as well as the private sector, on accomplished experiences related to legal empowerment of the poor.

The National Consultation, as mentioned above, has provided real benefit for Indonesia. Many practitioners that are involved in legal empowerment of the poor efforts and many more valuable practices have risen to the surface, but to date they have yet to bring any significant contribution to actual improvements of the welfare of the poor. The national consultation in Indonesia was organized in order to strengthen the roles that have been performed by related stakeholders

Furthermore, through the National Consultation process, Indonesia had the chance to present itself to the international world. Ideal experiences from Indonesia will be more discussed in the international forum. Successful practitioners of legal empowerment of the poor will be able to share their stories to others from different country. Indonesia could even widen its network to support the legal empowerment program and continue partnering with grass-root level organizations, non-governmental organizations, and governments.

The success of the National Consultation left a big homework to do for all of us in Indonesia. We should implement the homework optimally, so that the discussions from the Consultation are given a greater value. This book, entitled "Legal Empowerment of the Poor: Lessons Learned from Indonesia" is a documentation of results from the National Consultation and the processes in preparing it. This book will hopefully be one innovative pillar of the legal empowerment movement, particularly in Indonesia, and also as a valuable lessons for other countries in the world.

**Erna Witoelar**  
Commissioner, Legal Empowerment

# CHAPTER I

## WORKING GROUP 1

### ACCESS TO JUSTICE AND RULE OF LAW



The Indonesian community has recently acknowledged the correlation between legal empowerment, justice, and poverty alleviation. Since Indonesia's 1997-1998 economic crisis, local awareness of the importance of justice and legal empowerment is getting stronger and there is a growing appreciation for the significant relationship between the legal sector and social stability. A strong legal sector is especially important for economic growth and poverty alleviation.

This increase in awareness is in accord with the work of the Commission on Legal Empowerment of the Poor and its goal of alleviating poverty through legal empowerment of the poor. This is reflected in the Commission's slogan: "make legal protection and economic opportunity not the privilege of the few but the right of all". The Commission's work falls within the overall Millennium Development Goals (MDGs), targeting global poverty reduction by the middle of 2015.

Political marginalization during the New Order generated a gradation in Indonesian legal institutions which weakened these institutions and eroded the public's trust in them. Formal legal

institutions still do not function properly. Access to justice for the poor remains illusive; poor people rarely perceive the benefits of justice under the prevailing judicial system or under informal systems (such as discussion, mediation, negotiation) which are available through various social institutions.

The question of to what degree poor people could potentially have access to justice and the legal system is the main issue that this section will address.

This section introduces existing problems and highlights various successful initiatives and best practices that have helped increase access to justice and the legal system for the poor. Hopefully, this paper will inspire further efforts which will help increase justice for the poor.

#### ACCESS TO JUSTICE AND RULE OF LAW IN INDONESIA

In his book "Law of the Constitution (1895)", Albert Venn Dicey said that a constitutional state requires three principles: supremacy of law, equality before the law and a constitution based on human rights.<sup>1</sup>

<sup>1</sup> "The Rule of Law is a political principle the classic exposition of which is in Dicey Law of the Constitution (10<sup>th</sup> Edn, 1959) p 187 et seq. Dicey identified three principles which together establish the rule of law: (1) the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power; (2) equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts; and (3) the law of the constitution is a consequence of the rights of individuals as defined and enforced by the courts." , [http://en.wikipedia.org/wiki/Rule\\_of\\_Law](http://en.wikipedia.org/wiki/Rule_of_Law), accessed on 3 October 2006.

Legal supremacy means the law is paramount in addressing problems that occur in daily life. An indicator of success in this area is the effectiveness of the law as a rule or regulation.

Legal effectiveness is comprised of four factors: the legal substance, the legal establishment, the law enforcement apparatus, and the social culture. The major challenge for any state wishing to apply a modern model is creating a social culture that includes roles for the public and provides for public participation in government administration. Recently, the lack of public participation in the law enforcement process and the unavailability of media coverage, providing the public with access to information on justice mechanisms, have become a real barrier for the realization of the rule of law.

It is impossible to become a state based on law when the law is ineffective. These four effectiveness factors must be nurtured together and simultaneously. Once one factor fails, the law's effectiveness will become stagnant or may even regress.

In the concept of a state based on the rule of law (*rechstaat*), the state acknowledges and protects individual rights including: the right to life, the right to liberty, and the right to property. These three rights are basic human rights and are considered to be so because they are inalienable and absolute.<sup>2</sup>

In terms of implementation of the law, a major problem is that the extent to which people have access to justice continues to be heavily influenced by their economic and social status. In every conflict resolution process, either intra- or extra-judicial, marginal people are always either forgotten about or discriminated against.

By expressed in the Constitution, Indonesia is a state based on the rule of law. Unfortunately, in practice, conditions on the ground show that the law is ineffective. The weakness of Indonesian's

legal system has been widely acknowledged and is reflected in the partiality of legal institutions, corruption in formal legal institutions, poor human resources within the law enforcement apparatus, and a restrictive government budget for law enforcement expenditures. Because of this, in most cases, access to the legal process is beyond reach. The public, the poor and marginalized people in particular, are frequently unable to access their right to justice within the formal legal structure.

Access to justice is a human right. Every citizen, without exception, has equal right to justice. One's economic condition, physical and biological condition, social status, educational background, ethnicity, or race should not impede equal treatment before the law and equal access to justice.

#### ACCESS TO JUSTICE UNDER THE FORMAL LEGAL SYSTEM

Efforts to address law reform and provide justice have frequently met stumbling blocks. Justice has become something unattainable for the poor. The formal system: police, prosecutors, and courts are perceived as inaccessible by the poor. Consequently, poor people continually have to give up their right to justice.

Technically, legal access within the formal legal system has been specifically assured since the enactment of the Law of Criminal Procedure (Law No. 8/1981, hereinafter KUHAP). Access to justice can be defined as the provision of legal assistance to people who are unable to afford it economically either through lawyers who have the obligation to defend the poor on a *pro bono* basis, or through decisions made by a Court Justice to provide lawyer's assistance pursuant to the prevailing constitutional laws.

Indonesia's criminal procedure is based on rules laid out in the KUHAP. These include an obligation

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<sup>2</sup> Frans Hendra Winarta, *Hak Dibela Advokat*, <http://www.suarakarya-online.com/news.html?id=154536>, 7 September 2006, accessed on 3 October 2006.

by the state to fulfill the legal access principle, particularly for poor and marginalized people. However, there is a limitation to such access under the KUHAP: Only those who could be sentenced to more than five years are guaranteed access to a legal representative.<sup>3</sup> The state does not have responsibility to provide an advocate in other cases.

Under Law No. 18/2003 (hereinafter the Advocate Law), the state confirms a lawyer's obligation to assist minorities, the poor, or any other marginalized people in their search for justice.

The provisions under Law No. 18/2003 on advocates for the poor:

- Legal assistance is legal service that an advocate provides pro bono to an incapable client (Article 1 No. 9);
- In performing his duty an advocate should not discriminate against potential clients based on gender, political interest, ethnicity, race, and cultural or social background (Article 18 paragraph 1);
- An advocate has an obligation to provide pro bono legal assistance to incapable justice seekers (Article 22 paragraph 1);
- Through the legal assistance he/she provides, an advocate is performing his/her professional duty to provide justice based on the law in the interests of justice seekers, including empowerment efforts (Clarification of Paragraph 2).

Hence, an advocate appears to have a responsibility to ensure that equality before the law is well maintained as *A Guardian of Constitution*. This is guaranteed through access to legal counsel. Everybody may seek assistance of legal counsel either from a professional lawyer or a public defender. Thus, there is a sense of equality where those who have the means can go to a professional lawyer for legal assistance and the poor can go to a public defender.

Unfortunately, this remains an ideal. In practice, poor people are still deprived of legal access that they urgently need.

Moreover, legal aid institutions such as YLBHI and the provisional branches of LBH, legal aid institutions established by universities, Legal Aid Post (*Posbakum*), and legal institutions established by community organizations have not been accommodated within the Advocate Law. The state should immediately provide clear regulations on the operation of legal aid institutions that help poor and marginalized people deal with legal matters.

Until today, the only provision on legal aid institutions has been the Circular of the Supreme Court No. 34/2003, which has no regulatory status (*regeling*) and could not be referred to as a legal source. In the Advocate Law it is specified that an individual who is not an advocate but performing the function of an advocate shall be criminally convicted. This article was declared unbinding by the Constitutional Court.<sup>4</sup>

Basically, this provision of the Advocate Law aims to protect professional advocates and the public. However, it affects Legal Aid Defenders (PBH) who have been rendering *prodeo* (for God) and *pro bono publico* (for public interest) legal aid services. In practice, poor and marginalized justice seekers depend on legal aid institutions for help when dealing with legal matters.

In addition to access to legal counsel, poor people often experience injustice because of an institutional reliance on formal dispute resolution procedures which are plagued by the use of an inaccessible language, discrimination, corruption, impunity of officials, and lengthy processes. Such factors affect the public's trust in the formal justice system and their trust in the law enforcement apparatus including advocates.

<sup>3</sup> UU No. 8/1981 regarding the Law of Criminal Procedure, Article 56 paragraph 1.

<sup>4</sup> UU No. 18/2003 on Advocate, Article 31.

## SUCCESS STORIES: THE ROLES OF NGO

In addition to institutional and legal reform other problems facing grassroots organizations include how to strengthen public participation and transparency in the reform process. Today, there are a lot of non-governmental organizations (NGOs) that are succeeding in increasing participation and awareness in the community, these organizations include:

### 1. YLBHI and Structural Legal Aid

YLBHI is an organization working in legal advocacy, human rights and democracy. Since its establishment in 1970, YLBHI has aimed to play a significant role the enforcement of the law and human rights. YLBHI at the national level represents 15 provincial branches (LBH) and 7 LBH posts working across the country. Its work includes Structural Legal Aid (*Bantuan Hukum Stuktural* or BHS).

To realize the BHS concept, YLBHI implemented criteria for identifying cases. These criteria included supporting those who had limited capacity and/or could not understand the law. These criteria were grounded in case experience to identify cases affecting many people or addressing public interest issues. It deemed these structural cases.

In 1988 YLBHI identified ten types of structural cases they would be involved in. They include those that involve violations against:

1. the Right to free association;
2. the Right to be free from arbitrary and cruel treatment;
3. the Right to truthful information from public institutions;
4. the Right to equality for women;
5. the Right to a proper wage;
6. the Right to preserve resources;
7. the Right to a healthy environment;
8. the Right to truthful information regarding the quality of goods and services;

9. the Right to shelter;
10. the Right to be free from fear.

### On Legal Aid

LBH was generated from the awareness that advocacy for the poor is an important element of the justice process. In the course of its development, LBH became aware of an urgent need for a systematic effort to improve the Indonesian legal system. They brought activists, legal aid workers, LBH lawyers/advocates together with the public to promote reform and democratization, without which the law would be ineffective, and the fulfillment and protection of human rights would be muddled. This understanding drove LBH to not only concentrate on defending the poor but also victims of structural violence (violence by the state), which became known as “Structural Legal Aid” – with the vision of “promoting a democratic state based on law and justice, and the fulfillment of human rights for all”

For over 30 years, LBH has been defending victims of human rights violations. Its traditional clients are laborers, farmers, fishing communities, urban communities, students and other social groups, particularly those considered as opposing the ruling government. Megawati Soekarnoputri, the occasional leader of the Indonesian Democratic Party of Struggle (PDI-P) and the former President of the Republic of Indonesia, was once an LBH client when she was a target of the New Order government’s oppression during the rule of former President Soeharto.

The reform movement of 1998 brought important changes to the state administration system. However, it failed to bring fundamental changes in democracy or the legal system. The state’s criminal violations of the economic, social, cultural, civil and political rights of its citizens remain high both in quantity and quality. For the majority of Indonesians justice remains an ideal that is hard to access.

This is reflected in the LBH's statistics regarding the complaints that their clients and victims make to any one of their 15 branches every day. LBH Jakarta office, for instance, receives at least 10 complainants per day, resulting in thousands of complaints to be addressed by PBH and activists.

Because of limited resource, case selection is made very carefully by referring to parameters including: the complainant's financial situation, the perpetrator of the crime, and the potential contribution to democratic and legal reform efforts. During this assessment, LBH categorizes cases into three main issues: crimes against an economic, social, or cultural right; crimes against a civil or political right; and crimes against the rights of a woman or child.

The BHS criteria that YLBHI has been applying is based on the principle that legal aid should not merely provide assistance to attain legal remedies for the poor, it should also work to make inequitable social structures more impartial.

Law from the perspective of structural poverty is not neutral but generated from social and political processes transpiring within the society. An unequal society will never generate justice for all. Therefore, the activities of YLBHI and its 15 branches and 7 posts throughout Indonesia also aim to free those people who have been marginalized by the seemingly impartial structure by providing legal and human rights education. The objective is to build their awareness of their rights as citizens, help them organize in order to increase their legal bargaining position, and attempt to lobbying and pressure decision-makers to listen to and care about the interests of the poor.

LBH Surabaya helped salt farmers in villages in Sumenep Regency reclaim their right to lands they worked during Dutch colonialism. Following Indonesia's independence, the land was nationalized and today it is owned by PT Gudang Garam. LBH Surabaya filed a

complaint in court and attempted to lobby members of the Commission II of the Parliament (DPR RI), the Regional Government of East Java, the regents of Sampang, Sumenep, and Pamekasan, and the Ministry of State-Owned Companies (BUMN). Similar advocacy work regarding reclamations were attempted at most LBH branches and were aimed at changing economic structures that deprive marginalized people of their right to manage their own natural resources.

Legal empowerment for the poor has been initiated by YLBHI and 15 LBH branches through direct involvement and live-in programs where facilitators interact intensively with communities. Hence, legal empowerment is achieved not only using subject-object mechanisms but also through legal aid defenders who mingle with their constituents.

Legal enlightenment is part of YLBHI main agenda on legal empowerment. In 2006, YLBHI introduced its mobile legal aid project (BHB) where Legal Aid Defenders (PBH) and their BHB deploy into the communities in Jakarta, Bogor, Depok, Tangerang, and Bekasi.

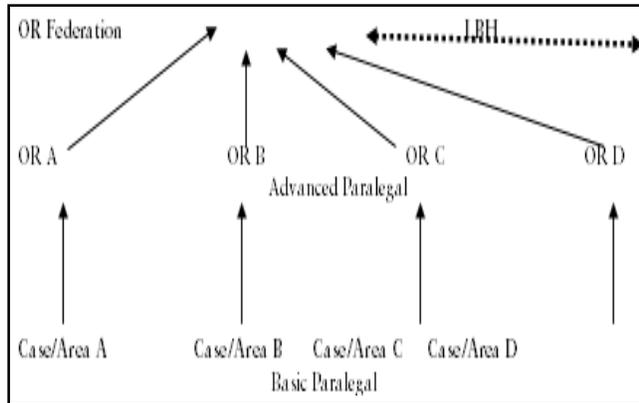
## 2. YLBHI Paralegal Education in Marginal Communities

YLBHI's paralegal education in marginalized communities including: laborers, farmers, the urban poor, and the environmental movement, usually begins with an organization process and teaching about case administration. LBH legal aid defenders usually use a structural case approach with an on-site training method to take advantage of the existing community resources (e.g.: women's gatherings, village meetings).

Case administration is participatory where decisions should be made by consensus amongst community members. In this context, PBH LBH only helps facilitate problem solving and acts as an equal partner to assist the community. Thus, PBH LBH is subject to correction. There are situations when PBH

should not be involved in a conflict, or interfere with community decision making. Once a local organization is established, LBH facilitates the establishment of a People Organization (OR) for the same case at the local level, as reflected in the scheme below:

**Scheme 1**  
YLBHI and Paralegal Training for Marginalized People



Further on, when an OR Federation at the provincial level becomes independent, LBH steps back and assumes the role of legal counsel (advocate). In terms of organization, the administration of basic paralegal training and education is handed to the Federation. At this stage, LBH acts purely as a resource and assumes the role of administrator of advanced education on public advocacy. This process was chosen to prevent patronage in specific areas, and allows PBH to reach other areas and educate the community so that they can act independently to protect their rights.

## Paralegal Stories

### The Story of Waluyo, The Legal “Saman”

We were both touched and proud to watch our peer Waluyo appear in the Oasis Program on Metro TV. In the episode, highlighting “the rob in Semarang,” he appeared as a bird retailer and manager of PSIS (Semarang Soccer Association) supporters club. Although he suffered from a speech defect, it did not stop him from speaking out about the seawater incursion into the mainland (locally known as ‘rob’) where he lives.

Nobody could have imaged that this man, who did not graduate from elementary school, would undertake such a metamorphosis and become a paralegal for his community. It was the lay-off policy that affected him and his colleague, which compelled him to collaborate with the FBSI (Independent Labor Union) and LBH Semarang. He was just one among a few who had the strong drive to learn. He tried to understand the books he was given but it took a good deal of time for him to understand what they said. He always had the courage to ask about, and write down, the difficult and unfamiliar terminology that he encountered in the seminars or training sessions.

His knowledge grew tremendously not only from labors cases, but also environmental and citizens’ rights cases. Today, if we watch Waluyo present his arguments in a forum, we can see how he has made this transformation. These days, Waluyo earns his living as a bird trader, but his awareness and experience with bipartite advocacy in labor cases have also made him an advisor in the area where he lives. “*Now I have become a saman*” he said describing his activities in the community. His advice ranges from labor rights to divorce matters. He often receives packs of sugar or chicken for his advice, just like a saman.

### The Story of Mbak Rini: An Urban Poor Paralegal

Mbak Rini is the only woman leader of the sidewalk traders association (PKL) in Semarang city. She first interacted with LBH Semarang when the city government executed an order expelling the sidewalk traders in the area where she ran her small business in front of *Mesjid Baiturahman-Simpang Lima*. This unfair practice, which was legalized by Regional Regulation No. 11/2000, compelled her and peers to establish a sidewalk trader association called *Paguyuban PKL Depan Mesjid Baiturahman*.

Through collective advocacy and adept negotiation with the mosque, the area where she worked was excluded from the Regulation. Mbak Rini decided that justice must also be pursued when she discovered that payment of the Institutional Education Contribution (SPI) was not compulsory for all students to be admitted to school, and that students of poor families could be exempted. But in practice the reality is always different. As a parent, Mbak Rini organized other parents and reported the case to the Semarang City Government. The result was that the school was sanctioned and the SPI requirement was dropped.

### 3. Success Story of LBH Apik and *Komnas Perempuan* in Pro-Women Policy

LBH Apik, a legal reform organization has been actively initiating pro-women legal reform. Their advocacy has been focused on the establishment of legal regulations which create gender parity and get rid of laws which can be used as a tool to discriminate against or subordinate women. LBH Apik has successfully increased the participation of Indonesian women in pressuring the government to enact pro-women or gender-based policies such as the Law on the Eradication of Domestic Violence, and the Law on Citizenry. Meanwhile, structurally LBH Apik has been consistently urging the Ministry of Women Empowerment to establish and set up a women's desk or integrated crisis center.

In terms of culture, LBH Apik has been actively encouraging victims of domestic violence to attend legal education. This also extends to legal training programs for law enforcement officials, paralegals, and advocates who provide *pro bono* legal aid. In addition to LBH Apik, *Komnas Perempuan* has also been coordinating national, gender-based legislation and introducing gender-based violence as a political issue, such as the issue of the trafficking of women and children.

### 4. Best Practice of PEKKA

The PEKKA (Empowerment for Female Family Heads) Program was initiated by the National Commission Anti Violence against Women (known as *Komnas Perempuan*) and the National Secretariat for Female Family Heads Empowerment Program of the Center for Women Resources Development (PEKKA-PPSW). The program was initiated as a response to various issues that affect the most marginalized communities that have no access to development programs.

PEKKA membership is made up of women who are divorced, widowed, have a husband who left the family, whose spouse's status is

unclear, who head the family because of an unproductive husband (due to sickness or disability), women who have not or will not get married, an eldest child who serves as the main bread winner for the family because of having to take care of sick parent, or an orphan. Their ages range between 20-60 year old. Most are illiterate or have never had an education, even in elementary school. They generally have 1-6 dependents work as farmhands or within the informal sector with average wage of Rp. 7000 per day, and many have trauma from acts of domestic violence.

PEKKA's empowerment strategy includes increasing participation, promoting awareness to strengthen bargaining power, and improving women's ability to control their lives. With the support of *Komnas Perempuan* and *Derap Werap Sari*, PEKKA has also developed a network with the police, the religious court, the district court, the Religious Affairs Office (KUA), the Prosecutorial Body, the District Deliberation (*Muspika*) and the MUI *Cianjur*. PEKKA has created an active Multi-Stakeholder Forum (MSF) with representatives from the aforementioned organizations, to support women's groups through informal visits. Through these visits MSF members can hear about cases, and women's groups can become involved in activities that also include the government. In this way PEKKA can increase women's access to justice and also support government departments by disseminating information on their activities.

The PEKKA program not only fulfills practical gender needs, but also responds to the urgent need to increase incomes and have access to available resources to fulfill a family's basic needs and improve their welfare. The PEKKA program also attempts to fulfill strategic gender needs, many of which require a longer time to accomplish. The initiative was sufficiently assertive because women have begun to understand their human rights as the result of increasing this critical awareness.

## BEST PRACTICE: ROLES OF LOCAL GOVERNMENT

The government has made efforts to increase access to justice but there is still a long way to go. Below are some efforts made by local governments presented as best practices:

### 1. Best Practice: Regional Government of Jembrana

The Jembrana regency of Bali province provides an example of the fulfillment of economic, social, and cultural rights as well as a model of a government that is willing and committed to practicing the principles of effective, good government.

In formulating their regional development strategy, the Regional Government of Jembrana analyzed the factors impeding poverty eradication and identified the weak bargaining position of the poor to be one of them. Based on this, the Jembrana government designed a program to more effectively address poverty.

The factors impeding poverty eradication<sup>5</sup>:

1. Poverty eradication policies that tend to be limited to marginal activities;
2. The sustained application of the policy was ineffective, or the policies disappear along with the completion of project activities;
3. Biased bureaucracy and the weak position of the poor;
4. Centralized fund utilization;
5. The determination of the program's target groups is significantly affected by government's vested interests;
6. Decision about business initiatives to be attempted by the target groups are limited to familiar sectors regardless of the market or business prospects;
7. Ineffective advocacy to the constituent community.

One of the Jembrana government's best practices in attempting to increase access to justice and legal regulations was the simplification of the bureaucratic process for ID cards and one-roof permits. This policy was translated into a formal legal regulation as Regent's Decree SK No. 391/2003 regarding Public Service.

Furthermore, the government of Jembrana does not charge a fee for ID (KTP) and birth certificate processes. This helps poor people access the formal legal system since a KTP and a birth certificate are important documents for every citizen to have in order to get particular permits or deal with formal institutions e.g. to get education, access to healthcare, and other public services.

Jembrana's three keys to success:

- Pro-poor policies: prioritizing issues that relate significantly to basic needs such as education, health care and local economic development;
- Serious efforts to ban corruption and run government administration to its maximum efficiency: in order to fight corruption, they conduct public tenders for the procurement of office and project facilities, followed by a price cross-checking using an independent team. In order to improve efficiency, Jembrana re-organized its offices and trimmed its staff;
- Public participation: Jembrana works together with traditional institutions to run revolving funds, and cooperates with the Parents-Teachers Association (POMG) regarding the school renovation program.

In addition to pro-poor administrative service, the Jembrana government has also initiated

<sup>5</sup> I Gede Winasa (Bupati Jembrana), "Peran dan Kebijakan Pemerintah Daerah dalam Pemenuhan Hak Masyarakat Miskin" (*Regional Government Roles and Policies in the Fulfillment of the rights of the poor*), A paper presented on the National Consultation on Legal Empowerment for the Poor, Jakarta, 24-25 November 2006, page 3.

programs to help prevent corrupt practices, collusion and nepotism (KKN) because such practices are disadvantageous and weaken the poor. Another success of the Jembrana government has been preventing cost-inflation for government projects. The regent of Jembrana, I Gde Winarsa himself established an independent team of *Universitas Udayana*. None of its members work within the local government. The team, named Owner's Estimate (OE), was established on the basis of a Regent decree (SK) with its main task being the preparation of detailed estimations of government projects by re-calculating the project cost based on charts, and locally standardized unit prices. The results of this estimation are reported to the Regent. Because of the need for consistency, mark-up opportunities for government officials and business actors can be reduced.

One challenge facing Jembrana is the fact that these successes were all achieved using a Regent's decree. While this mechanism benefits from being practical and decentralized, many argue that the sustainability of the policies will significantly depend on the next elected Regent unless it is translated into a regional regulation (*Perda*), a process which requires approval of the provincial parliament.

## 2. Best Practice: DKI Jakarta

As the state capital, Jakarta is the center of economic, social and cultural activities. This makes most people think of it as a promising place to improve their welfare. This perception makes Jakarta the city with the highest population density in Indonesia – a condition that generates problems, particularly poverty.

In the effort to reduce poverty the city government of DKI Jakarta has taken certain steps to realize its vision of making Jakarta,

the Capital of the Republic of Indonesia, a humane, efficient, and competitive city that encourages participation, good morale, social welfare, and culture for all citizens in a safe and sustainable environment.<sup>6</sup>

Providing the poor with access to justice is an important issue that the city government is addressing. One of the concrete steps that the government is taking is financially supporting legal aid institutions and NGOs that provide free legal assistance to the public. This financial support is a routine contribution of the regional government that has been allocated in the Regional Budget (APBD). In addition, the regional government of DKI Jakarta has also allocated funds for the renovation of YLBHI building in Jakarta.

## RECOVERING PUBLIC TRUST TO LEGAL SUPREMACY

**W**hy do other modern states have trust in the supremacy of the law while public trust in the supremacy of the law in Indonesia remains low?

The question above adopts the same concern that Hernando de Soto, writer of the best-seller "*the Mystery of Capital*", had in mind. De Soto aimed at answering why capitalism was triumphant in the West but failed in the other rest of the world. This paper has no intention of promoting a Western system of capitalism but rather is using de Soto's concept to address the issue of legal supremacy in Indonesia.

When carefully examined, modern states entrust their cases to the court. Why does this not happen in Indonesia?

The uniform of the police, and the robes of prosecutors, judges and advocates are not only professional symbols. They function as visible identities or marks of a process that links all law

<sup>6</sup> Fauzi Bowo (Vice Governor of DKI Jakarta), Roles and Policies of the Regional Government of DKI in fulfilling poor people's access to Justice, a paper presented in the *National Consultation of the Commission on Legal Empowerment for the Poor*, Jakarta, 24-25 November 2006, page 2.

enforcement sectors to one another. This process enables the achievement of justice both in practice (physical appearance of the law enforcement apparatus) and as a perception (as a profession to achieve justice for all). Therefore, the police, prosecutors, judiciary, and professional advocate institutions as well as legal aid institutions, not only have to implement the law but also be seen to implement it by protecting and defending justice for the poor including through receiving complaints, and requests for protection and justice.

These institutions become places for people to examine and test the assurances of justice that are specified in the constitution and legal regulations. From this, democratic principles and principles regarding legal supremacy are conveyed to individuals to help increase their trust that their system is controlled by legal supremacy.

In developing countries like Indonesia, the police, prosecutors, judges and advocates have not yet achieved the professionalism that their peers in other modern countries have. This contributes to low public trust. This is inflated for poor people who are particularly vulnerable before the law enforcement apparatus.

Borrowing from and adjusting Hernando de Soto's thought, there are at least four mysteries that explain this situation and condition.

### **First, answering the mystery of missing information.**

The Constitutional Court and the Anti Corruption Commission (KPK) are two institutions that have been working to increase the general public's access to justice. The websites of these two institutions have become effective sources of information for the public. However, poor people's access to this information needs to be addressed because they are unfamiliar with using the internet.

Publications by non-governmental organizations and state institutions aim to help people understand the law and how to use legal

mechanisms to defend their interests. There are also publications that help promote public participation in the drafting of legal regulation, such as:

- Indonesian Legal Aid Guideline. Your Guidebook to Understanding and Resolving Legal Problems (2006), Jakarta: YLBHI, PSHK, and AusAID;
- Anti Corruption Pocket Book “*Memahami untuk Membasmi*” (Understanding to Banishing). Jakarta: KPK;
- *Tak Ada Hak Asasi yang Diberi* (There is No Given Right) (2005). Jakarta: YLBHI – CIDA;
- *Buku Pintar 60 Menit Memahami (Mengawasi) Penyusunan Peraturan Perundang-undangan* (2005). (Smart Book 60 Minutes Understanding (Supervising) the Drafting of Legal Regulation) Jakarta: KKP and Yappika.

In addition, YLBHI BHB programs also aim to provide direct legal information to the public, and poor people in particular.

### **Second, answering the mystery of justice.**

The Supreme Court is aware that addressing civil disputes at the district court level consumes time, money and resources. Therefore, Supreme Court Regulation (PERMA) No. 2/2003 requires mediation before the examination of a civil subject matter in the Court. A case administration mechanism in the Court which uses mediation as an alternative means of dispute resolution could encourage the reduction of case files at the Supreme Court level.

Indonesia has a National Arbitration Agency (BANI) based on Law No 30/1999 and a Consumer Dispute Resolution Body based on Law No 8/1999 that serve as permanent institutions to help resolve disputes extra-judicially.

In addition to these resolution mechanisms, traditional or *adat* law is also used to address legal problems. A good example is the resolution of the inter-village war in West Sumatra that satisfied both parties because the results fulfilled local conceptions of justice.

To resolve the mystery of justice which closely links the many efforts to support access to justice for the poor, there is a need to develop a dispute resolution mechanism that is both accessible to the poor and operationally feasible. Everyone has an equal right to resolve individual problems extra judicially, to identify the most suitable dispute resolution mechanism based on individual capacity, and to have the benefit of a fair hearing by an independent judicial institution.<sup>7</sup>

Legal assistance is a form of public service that every individual is entitled to in addition to their economic, social and cultural rights.<sup>8</sup> In Indonesia, the rights of citizens are specified in the amended 1945 Constitution, which provides a clear basis for the state's responsibility to administer law enforcement equally and without discrimination for all people, as articulated in Article 28.<sup>9</sup>

The state, should facilitate the benefits provided by Legal Aid Defenders (PBH), known as public defenders. But the lack of legal regulation related to PBH makes it difficult for public defenders to assist their clients, who are generally poor people. This deprives the poor of equal access to a proper dispute resolution system because they are unable to afford other legal counsel. They must rely on public defenders alone.

Until recently, public defenders in Indonesia have operated outside the system, have had no clear authority, and have had no financial support from the government. If the state is obliged to provide advocates for those incapable of providing them for themselves, as stipulated in the KUHAP, the state should be financially supporting PBH

operations to help maximize their ability to advocate for the poor.

The lack of government support impedes the development of Indonesian public defenders program and weakens their bargaining position vis-à-vis other groups within the law enforcement apparatus including advocates, prosecutors, police and judges. The absence of legal regulation regarding PBH makes judges resistant to their presence as legal counsel in court, adversely affecting the position of poor people seeking justice.

Therefore, to promote legal access for the poor the government should immediately provide jurisdiction for PBH. This would allow PBH or other public advocates to advocate more effectively as intended under the prevailing legal regulations in Indonesia. This would help complete the Law on Legal Assistance.

A Law on Legal Aid will help poor people access justice and reach dispute resolution mechanism based on their specific condition. This will move the system closer to equal justice for all, pursuant to the prevailing laws and regulations.

A comparison should also be made between the legal aid model in Indonesia and legal aid models in the Philippines, Bangladesh, Nepal, Ecuador, South Africa, Thailand, Taiwan, and Australia with the goal of improving the application of free legal aid to the poor and achieving equal access to justice in Indonesia.

In addition to legal aid for the poor, YLBHI has also developed Structural Legal Aid (BHS) with

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<sup>7</sup> ICCPR paragraph 1: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in suits at law, everyone shall be entitled to fair and public hearing by a competent, independent and impartial tribunal established by law..."

<sup>8</sup> For a comparison, see Article 39A of the India Constitution, which specifies: "It is duty of state to see that the legal system promotes justice on the basis of equal opportunity for all its citizens. It must therefore arrange to provide free legal aid to those who cannot access to justice due to economic and other disabilities." See also, Criminal Code of Procedure paragraph 304: "If the accused does not have sufficient means to engage a lawyer, the court must provide one for the defense of the accused at the expense of the state."

<sup>9</sup> For a comparison see *The Universal Declaration of Human Rights* Article 25: "the rights of every one to standard of living adequate for well-being of himself and his family, including food, clothing, housing, medical care and necessary social service."

its 15 branches nationwide. BHS is a different form of legal aid that concentrates on structural cases which affect larger social segments. If YLBHI and LBH branches provide advocacy on these structural cases the impact would not only affect their clients but also the broader general public.

YLBHI also runs a program called BHB or Mobile Legal Aid, in which proactive measures are taken through visits to poor, marginalized, and crowded communities. In this program, local people are introduced briefly to their basic rights. Target areas were decided based on internet research, direct surveys and discussions with local leaders on the type of legal issues that local people often encounter.

By undertaking this program, YLBHI has shown concern for the poor. It is ensuring that access to justice is not merely an empty slogan. Through this program people learn about their rights and become more responsive to government policies and their ability to impact them. Poor people who may have been initially receptive of legal regulations and government policies become more concerned about these policies, particularly with non-popular policies.

The plan is for the 15 LBH branches to gradually conduct this innovative BHB program to all regions nation wide in order to widely disseminate positive values of support for poor and marginalized peoples. Knowledge about the basic rights of citizens should not be a monopoly of urban dwellers in Jakarta. Marginalized and poor people in every corner of the archipelago should understand their rights as well.

### ***Third, answering the mystery of political awareness and public participation.***

The importance of political awareness is reflected in the regional government (*Pemda*) and Regional

Parliament (DPRD) of Yogyakarta's promotion of public participation and their passage of Regional Regulation No. 26/2002 on the Re-organization of Sidewalk Traders, which accommodates certain people's right to earning a living.

Another issue of concern for the members of poor and marginalized communities is ID cards (KTP) and birth certificates which certify their rights. An example of best practice was the Regional Government of Bogor's passage in 2006 of a policy providing free KTP processing for first time applicants and renewals for poor families that apply within 14 days of expiry.<sup>10</sup> The Jembrana government has a similar policy, and even launched a promotional program with a Suzuki Smash motorbike as a monthly prize.

In the case of birth certificates, the city government of Solo has provided four thousand birth certificate forms for free to members of the public between 1–18 years old, who do not already have birth certificates. This program has been held in cooperation with hospitals, maternity clinics, and the PKK in each *Kelurahan* (village administration).

In addition, a number of initiatives have been pursued to promote public participation in the production of legal regulations. These include the establishment of civil coalitions like those established for the drafting process of the Law on the Eradication of Domestic Violence, and the Law on Citizenry. *Komnas Perempuan*, LBH Apik, and YLBHI were all involved in these processes as well. Moreover, the Coalition on Participatory Policy (KKP) has been actively involved in the drafting of Law No 10/2004, a law that secures public participation in the drafting of legal regulations.

### ***Fourth, learning from the history of developed country histories and answering the mystery of legal reform failure.***

We continue to long for an accelerated process providing justice for all, including the poor.

<sup>10</sup> See the provision on the Amendment of Regional Regulation of Bogor City No. 12/2006 regarding Retribution of KTP Printing Cost. <http://www.kotabogor.go.id/berita.php?isi=626&page=31>. accessed on 1 February 2007.

However, in order to arrive at that stage, we need strong, determined and committed leaders!

## RECOMMENDATIONS: AREAS THAT NEED SUPPORT TO INCREASE ACCESS TO JUSTICE

The following table describes the areas that require support to increase access to justice.

AREA	DESCRIPTION	KEY ACTORS
LEGAL PROTECTION	<p>Legal protection could be attempted through:</p> <ul style="list-style-type: none"> <li>▪ Ratification and implementation of related conventions</li> <li>▪ Constitutional reform</li> <li>▪ Development of responsive legislation (from legislation up to the Operational Regulation level)</li> <li>▪ Traditional law</li> </ul>	<ul style="list-style-type: none"> <li>▪ Parliament</li> <li>▪ Ministry of Foreign Affairs</li> <li>▪ Ministry of Law and Human Rights</li> <li>▪ Komnas HAM</li> <li>▪ National Legal Commission</li> <li>▪ Ministerial legal bureaus</li> <li>▪ Legal bureau/section of the regional government and regional legislation body of the DPRD</li> <li>▪ Court Justice</li> <li>▪ Traditional court</li> <li>▪ Public leaders (Traditional leader, religious figures)</li> <li>▪ Civil Organizations</li> </ul>
LEGAL AWARENESS	<p>Public knowledge of discourses and procedures to address violated rights using both formal and traditional means.</p>	<ul style="list-style-type: none"> <li>▪ Ministry of Law and Human Rights</li> <li>▪ Ministry of Education</li> <li>▪ National Commission on Human Rights</li> <li>▪ Legal aid institutions</li> <li>▪ State Auxiliary Organ as a character of transitional state (Anti Corruption Commission and Election Commission)</li> <li>▪ Regional government and local parliament (DPRD)</li> <li>▪ Non-governmental organizations</li> </ul>
LEGAL AID AND CONSULTATION	<p>Legal aid is not the sole responsibility of private legal aid institutions. It is also the professional responsibility of advocates as an embodiment of the <i>pro bono publico</i> principle, and the responsibility of public figures and activists that are considered paralegals. Significant support from the state is needed to increase the effectiveness of these actors.</p>	<ul style="list-style-type: none"> <li>▪ Ministry of Law and Human Rights</li> <li>▪ Professional Association of Advocates</li> <li>▪ Courts</li> <li>▪ Prosecutorial Office</li> <li>▪ Police</li> <li>▪ Social system</li> <li>▪ Regional Government and DPRD</li> <li>▪ Non-government organizations</li> <li>▪ Universities</li> <li>▪ Local communities</li> </ul>

ADJUDICATION	The adjudication process includes investigations, convictions, and decision-making all with the intent to build a process that helps a community address rights that have been violated.	<ul style="list-style-type: none"> <li>▪ Courts</li> <li>▪ Prosecutorial Office</li> <li>▪ National Commission on Human Rights</li> <li>▪ ADR mechanism (<i>Court Based Mediation and Administrative type ADR, and Traditional type ADR</i>)</li> </ul>
LAW ENFORCEMENT ( <i>Criminal Justice System</i> )	The criminal justice system is the key to encourage public accountability of key state actors, prevent impunity, and prevent the materialization of injustice.	<ul style="list-style-type: none"> <li>▪ Police</li> <li>▪ Prosecutorial Office</li> <li>▪ Social system</li> <li>▪ Administrative law enforcement apparatus</li> <li>▪ Traditional values structure system</li> </ul>
CIVIL SOCIETY SUPERVISION	Supervision by civil society aims to develop effective pressure on state administrators to make sure they are accountable.	<ul style="list-style-type: none"> <li>▪ NGOs</li> <li>▪ Media</li> <li>▪ Donor institutions (non traditional)</li> </ul>
PARLIAMENTARY SUPERVISION	Parliament's role is to establish legislation that is capable of responding to the interests of poor and marginalized people.	<ul style="list-style-type: none"> <li>▪ DPR/DPD</li> <li>▪ Provincial DPRD</li> <li>▪ City and regency DPRD</li> </ul>

In the above table we can see that in order to promote legal access there is a need for a concrete legal reform program in Indonesia which is described in the following table:

IDEAL CONDITION	TODAY'S
<ul style="list-style-type: none"> <li>▪ Constitutional reform</li> <li>▪ Reform of the legal education system</li> <li>▪ Legislation reform (priority scale, concord, responsiveness, compliance to human rights principles, sustainable development, good governance, gender)</li> <li>▪ Institutional re-organization of the Legal Apparatus (police, prosecutorial office, court)</li> <li>▪ Comprehensive resolution of serious human rights violations and cases of corruption as a commitment to the recovery of public trust</li> <li>▪ Building legal awareness and a legal culture within the society</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legislation reform</li> <li>▪ Law enforcement</li> <li>▪ Prosecuting perceived to be</li> </ul>

In relation to the issue of legal reform presented in the above table, and with the intent of improving trust and access to justice among marginalized and poor people, some reform measures have improved the quality of judicial institutions in Indonesia. Democratic systems that provide justice for the public with regulations and laws can only remain effective if the rule of law principle is well maintained.

The principle must be esteemed in both theory and practice. Without due respect to this principle legal access for the poor will remain only an ideal. Without laws, there will be no democratic institutions, justice or democracy. Therefore, both democracy and the rule of law must be upheld simultaneously.

One of the initiatives which has attempted to increase the integrity and quality of legal institutions has been improving the supervision mechanism. When internal supervision mechanism no longer have a significant impact, external mechanisms should be in place. Established external supervision mechanisms are therefore necessary to address weaknesses in internal mechanism.

However, external supervisory mechanism can only be effective if highly qualified candidates are recruited and accepted by the public. A closed and exclusive recruitment system is therefore not ideal. Furthermore, the government should be consistent in its support for the institution and its operational functions, including financial support. Good examples of external supervisory mechanisms are: the Judicial Commission, which acts as an external supervisory mechanism for judicial officers; the Prosecutorial Commission, which supervises the prosecutorial office; and the Police Commission. Of these three examples, only one has been continuously resisted by the institution it supervises—the Judicial Commission.

Until recently, the Judicial Commission has been upset by the Constitutional Court's efforts to

relieve it of its duties and functions. The Commission's weakness adversely affects public trust in judicial institutions. Prolonged conflict between the Supreme Court and the Judicial Commission is only hurting the image of these two institutions.

The establishment of external supervisory mechanisms is a positive thing as long as they can function well. However, overlap between institutions is unavoidable. These institutions are frequently incapable in functioning, uncertain about the scope of their duties, and easily discouraged when dealing with more powerful authority. The implication is their achievements do not satisfy the public's expectation for reform.<sup>11</sup> We need to initiate institutional restructuring in order to redefine their authority and respective duties.

With such changes each existing institution could function to its full potential. There are a lot of institutions that already posed a burden on the state budget. As of 30 May 2005, Indonesia had 40 institutions, commissions and bodies with supervisory functions. They are either part of the judiciary system, or presidential administrative authority. Unavoidably, each commission must work hard to win public trust!

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<sup>11</sup> National Legal Commission of The Republic of Indonesia, "Membangun Paradigma Hukum Dari Akar Rumpun" (Building Legal Paradigm from the Grass Root), *Newsletter Vol. 4 No. 5*, January - February 2005, page. 10.

## CHAPTER II

### WORKING GROUP 2

### PROPERTY RIGHTS AND

### NATURAL RESOURCES



As one of the most populous countries in the world, poverty is a significant social issue for Indonesia. The national economic crisis in 1997 caused the poverty level within Indonesia to increase significantly. This crisis also triggered various social-political problems which complicated and prolonged these initial consequences. As a result, in Indonesia today, democracy, poverty and injustice have become the central themes within the development discourse.

Although government reform has already taken place in Indonesia, it has had no significant impact on the poor population, which has been growing consistently. This is primarily because many in the population have had insufficient access to the resources they need to live. This implies that in Indonesia, poverty is a structural problem with roots in policies regarding development. These policies are based on a development paradigm that prioritizes economic growth rather than even distribution of resources.

This economic growth paradigm has been implemented in Indonesia through policies that have given precedence to foreign investment or have increased the provision of loans as a prime source of financing, as opposed to policies which have cultivated national investment capability. This has systematically deprived the general public of access to local resources. The transfer of the management of natural resources from society's hands to investors has been recently legalized by the State and has been included in regulations and legal instruments under the guise of protectionist

strategies. People's right to own land, forestry resources, water resources, air or marine territory is only allowed so long as it is not against the interest of the State. The acknowledgment of the public's right to own property has been reduced in the last five years, as the government has accelerated the move toward privatization by selling several state-owned companies and legalizing the sale of administration rights to natural resources to various national and multinational corporations.

State regulation with the goal of even distribution of economic advantages and access to natural resources does not correspond with the current development paradigm. The taxes and levies paid by private sector companies for the ability to exploit natural resources have little positive impact on economic equality and public welfare, which are the goals specified in Article 33 of the 1945 Constitution. In fact, they increase the poverty of most Indonesians.

It is becoming more difficult to improve quality of life and reduce the poverty level in Indonesia because of an underlying economic structure that is closely connected to the prevailing political system and legal bureaucracy, both of which are focused on the interests of the free market. Laws, including those on property rights, generally contribute to the establishment of legal protections that prioritizes the interests of investors. Laws regarding property rights for natural resource are issued based on the government's interests, interests that have been manipulated by the demands and

requests of capital owners, investing countries and the International Monetary Fund. Laws that prioritize the interests of private sector and foreign capital occurs because of the impact of the free market and economic liberalization demands. Undeniably, the presence of those laws are inseparable from international donor intervention and interest.

However, the biggest loss to the local population is not that they are deprived of legal ownership and legal protection, but that they are being uprooted from their social connection to the land. In theories regarding economic liberalization and free market economies, property has an economic value in the form of a commodity only. For people, however, property has both an economic and social value. For farmers, land contains a social meaning as an identity and a personal value that is perceived by rural communities. For traditional communities the forest is a base that binds together their whole social structure and livelihood; the sea is the same for fishing communities.. Each community has a binding social-economic value shaped by an individual and communal bond with property. This value-bond sustains their life, and becomes a social security network that secures them from the poverty trap.

This paper is written within the context of a liberalist legal tendency which uproots people from their social-economic connection with their property, causing structural poverty. This paper will review the implementation of and dilemmas regarding property rights and the legal framework of property rights in Indonesia today. It will explain the conditions and problems surrounding property rights in Indonesia today and in the past. This paper will conclude with a summary of these finding and recommendations for future action.

## POVERTY RATE IN INDONESIA

The number and percentage of the population living in poverty from 1996-2005 fluctuated from year to year, despite an overall decline from 2000-2005 (Table 1). From 1996-1999, the overall number of poor people increased by 13.96 million, from 34.01 million in 1996 to 47.97 million in 1999, largely due to the economic crisis. The rate of poverty increased from 17.47% to 23.43% in the same period. From 1999 to 2002, the number of poor people decreased by 9.57 million, from 47.97 million in 1999 to 38.4 million in 2002. Relatively, the percentage of poverty also decreased from 23.43% in 1999 to 18.2% in 2002. Between 2002 and 2005, the number of poor also decreased by 3.3 million, from 38.4 million in 2002 to 35.1 million in 2005. The rate of poverty also decreased from 18.2% in 2002 to 15.97% in 2005.

**Table 1. Number and Percentage of Poor in Indonesia from 1996-2005<sup>12</sup>**

YEAR	Number of Poor Population (million)			Percentage of Poor Population		
	Urban	Rural	Urban + Rural	Urban	Rural	Urban + Rural
1996	9.42	24.59	34.01	13.39	19.78	17.47
1998	17.60	31.90	49.50	21.92	25.72	24.23
1999	15.64	32.33	47.97	19.41	26.03	23.43
2000	12.30	26.40	38.70	14.60	22.38	19.14
2001	8.60	29.30	37.90	9.76	24.84	18.41
2002	13.30	25.10	38.40	14.46	21.10	18.20
2003	12.20	25.10	37.30	13.57	20.23	17.42
2004	11.40	24.80	36.10	12.13	20.11	16.66
2005	12.40	22.70	35.10	11.37	19.51	15.97

Resource: Processed based on the National Economic-Social Survey (*Susenas*)

<sup>12</sup>National Legal Commission of The Republic of Indonesia, "Membangun Paradigma Hukum Dari Akar Rumput" (Building Legal Paradigm from the Grass Root), *Newsletter Vol. 4 No. 5*, January - February 2005.

**Table 2. Poverty Line, Number and Percentage  
Based on Area,  
February 2005 – March 2006<sup>13</sup>**

Area/Year	Poverty Line (Rp./Capita/Month)			Number of poor population (million)	Percentage of poor population
	Food	Non Food	Total		
<b>Urban</b>					
February 2005	103,992	46,807	150,799	12.40	11.37
March 2006	126,527	48,797	175,324	14.29	13.36
<b>Rural</b>					
February 2005	84,014	33,245	117,259	22.70	19.51
March 2006	103,180	28,076	131,256	24.76	21.90
<b>Urban+Rural</b>					
February 2005	91,072	38,036	129,108	35.10	15.97
March 2006	114,619	38,228	152,847	39.05	17.75

Resource: Processed based on Susenas Panel data February 2005 and March 2006

Indonesia's poverty rate increased to 17.75% (39.05 million) in March 2006. That was an increase of 3.95 million from February 2005, when there were 35.10 million poor recorded at a rate of 15.97%. The poverty rate increase in rural areas was slightly higher than that in urban areas. During the period of February 2005 – March 2006, the number of poor increased by 2.06 million in rural areas, and 1.89 million in urban area (Table 2). The poverty rate in urban and rural areas changed only slightly. In February 2005, most poor people lived in rural areas (64.67%). In March 2006, this percentage decreased slightly to 63.41%.

The various changes of regime in Indonesia have been unable to deal with the foundational causes of poverty. One of these foundational causes is the deprivation of property rights. Despite changes in governmental control in Indonesia,

from President Soekarno's Old Order, to President Soeharto's militarily controlled New Order (1967-1997) to the Reform Era (1998-now) under President B.J. Habibie, Abdurrahman Wahid, Megawati Soekarno Putri, and currently President Soesilo Bambang Yudhoyono poverty remains a central problem consistently suppressed by the political elite. The result is that poverty reduction continues to be addressed with the same old conventional strategies including: subsidization, supplying small grants, and a variety of charity models.

The real challenge is addressing structural poverty: where the State's economic-political system contributes to increases in poverty levels by taking people's property rights and handing them over to international investors. To protect

investment interests, laws and regulations are generated to secure investments and investors. Thus, the anatomy of many poverty-related problems is really between the people and the State, and the latter is to blame. Within this context the issue of poverty plays a central role in understanding the logic of the property rights system in Indonesia.

## THE PROPERTY RIGHTS SYSTEM IN INDONESIA

Initially the concept of property was understood only in terms of natural resources such as land, forests, water, minerals and air. The use of the term "property" has developed to include not only physical objects, but also health, education, employment, gender equality, etc. Property rights have become on form of legitimizing the State over

<sup>13</sup> *Ibid.*

individual rights as well as communal rights to property.

The history of property rights in Indonesia is closely tied to agrarian concerns. For most Indonesian people land is not only vital to economic growth, but also to political, social, cultural and religious matters. From this perspective it is easier to understand why people are willing to put their lives at risk over agrarian conflicts. This context makes land disputes a major issue that the State and the private sector have to address when dealing with the Indonesian people.

Historically, in Indonesia, property rights on land are classified into three legal systems:

1. **Property rights based on a customary legal system.** According to *Van Vollenhoven* the right to land based on kinship, ethnicity and village throughout the archipelago includes both individual and communal (group) rights, which is legally referred to as *Hak Ulayat (beschikkingrecht)*. Individual and communal rights are classified as (1) primary individual utilization rights; (2) village communal rights; and (3) sovereignty rights.
2. **Property rights based on Western/European laws.** In Western/Europe legal systems, property rights are the most important material rights. As an absolute right, property rights have the widest scope, covering the rights of the individual, but they are restricted by legal provisions. This is exemplified in the Agrarian Law of 1870. The Agrarian Law set up a legal system that was used during Dutch colonialism in Indonesia. The law stipulated that the State had an ownership interest in all lands (*staat domein*) that were obtained from the imposition of *domein verklaring*. During that period, people were classified into three

classes: (1) Europeans; (2) Foreigners from the East; and (3) Indigenous. Europeans and Foreigners from the East were entitled to *eigendom* (property rights) on land, while indigenous peoples were only given *agrarisch eigendom* (primary customary usage rights).

3. **Property rights stipulated in the Principal Agrarian Law (UUPA) 1960.** These are property rights that integrate property rights under the customary system and property rights under Western law.<sup>14</sup>

### A Pro-People Legal System on Property: The Old Order

During Soekarno's reign, after Indonesia's independence in 1945, an anti-imperialism and anti-colonialism ethos controlled the State and nation life. A primary focus of this new ethos was to protect Indonesian natural resources and local property from capitalist exploitation so that Indonesian economic development could be fully cultivated and controlled from within. The establishment of anti-imperialism politics resisted capital investment offers from imperialist countries such as England and the US. In the context of the Cold War, this anti-imperialism political stance seemed to indicate that Indonesia was favoring the Soviet Union over the US.

With the goal of protecting Indonesian natural resources for the sole benefit of the Indonesian people (as stipulated under Article 33 of the 1945 Constitution), a political consensus had been achieved among the three main political powers: the Nationalist, Communist and Islamic groups. The ideologies of each key group required pro-poor legislation. This was a result of their awareness that the poverty of the majority of Indonesian people had its roots in an access to natural resources. On the other hand, the vast diversity of customary laws required a national law that would

<sup>14</sup>For further explanation, see Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan UU Pokok Agraria, Isi dan Pelaksanaannya, First Edition*, Jambatan, Jakarta, 2005 (revised edition). See also Iman Soetiknjo, *Politik Agraria Nasional: Hubungan Manusia dengan Tanah yang Berdasarkan Pancasila*, Gadjah Mada University Press, Yogyakarta, 1983; and A.P. Parlindungan, 'Keterpaduan dan Sinkronisasi Hukum Agraria dalam Menunjang Pembangunan Indonesia', in A. P. Parlindungan, *Bunga Rampai Hukum Agraria serta Land reform*, Mandar Maju, Bandung, 1989.

serve as a unifying umbrella. This vision generated Law No 5/1960 on the Principal Agrarian Law (UUPA). Thus the UUPA was created with the intent of promoting the well being of all Indonesians.

Production of pro-poor or *neo-populist* laws ended the dualism of agrarian law in Indonesia, which was reliant on Western agrarian laws based on the Civil Code of Procedure and Law on Tribal Land that was itself based on native (customary) legal principles.

The aims of the enactment of the UUPA were: (1) to lay the foundation for a national agrarian law that would increase welfare, happiness, and justice for the State and the general public, particularly the farming community, by helping to achieve an economically self-sufficient society; (2) to provide a unified and simplified agrarian law; and (3) to provide legal certainty regarding the right to land for all people.

The concept of “land” contains two interrelated elements: natural wealth and social livelihood. Natural wealth includes the earth, water and natural resources underneath the earth, also referred to as land objects. Social livelihood means social structures on the earth, also referred to as land subject. The earth has a central position in the concept of land because it accommodates all natural wealth underneath it and all social livelihood on it.<sup>15</sup>

The goal of the UUPA was to make fundamental changes to land ownership in order to provide a more just system and better satisfy the interests of the people. This objective was supported by three key concepts in the UUPA:

1. The law that applies to earth, water and air space is customary law (*hukum adat*);

2. The State’s authority as the supreme ruler of the nation is demonstrated by its Right to Control (HMN) earth, water and air space for the benefit of the people, as declared in Article 33 paragraph 3 of the 1945 Constitution;
3. The execution of a land reform program.

Returning the underpinning of laws concerning land to native Indonesian legal customs has been specified in Article 5 of the UUPA:

The agrarian law that applies to earth, water and air space is customary law, as long as it does not conflict with the interest of the State and Nation. These interests are based on conceptions of national unity, Indonesian socialism, and the provisions under this Law as well as other constitutional regulations, all of which comply with religious law.

The UUPA put several restrictions on the execution of customary law. *First*, under the State Right to Control (*Hak Menguasai Negara*, HMN) there is a simplification of pluralism and the diversity of primary laws nationwide. There has been no attempt to explore the customary laws that the UUPA asserts as the foundation of the national agrarian law. *Second*, the UUPA declares that the execution of the local customary law may not contradict higher laws and regulations. Customary law in any given area is no longer independent and dominant. ~~When provisions of higher laws and regulations contradict customary laws, the higher laws and regulations shall prevail.~~

According to agrarian expert Boedi Harsono, the authority of the HMN “is for the public, completely different from the property law between state and land based on *domein-verklaring*.”<sup>16</sup> State control transpires because the Republic of Indonesia, as a political entity that unites the nation, receives a mandate in the agrarian sector to execute “nation rights”.<sup>17</sup>

<sup>15</sup> MT. Felix Sitorus, “*Kerangka dan Metode Kajian Agraria*”, in *Jurnal Analisis Sosial*, Vol. 9, No. 1, April 2004, p. 113.

<sup>16</sup> *Op.Cit.*, Boedi Harsono, *Hukum Agraria Indonesia*, 1995, p. 211.

<sup>17</sup> A “nation right” is stipulated under Article 1 of the UUPA 1960. The ‘Elucidation of UUPA 1960’ (General Explanation II) specifies that the legal relation that results from the “nation right” shall be permanent as long as the united Indonesian people exist as a nation, and the natural resources, claimed under the right, exist.

The result is that the State does not possess all land and natural resources in Indonesia; the State only controls these resources to ensure that they are utilized for the benefit and welfare of the entire nation. This also means that there is no land or natural resource that is unowned or unattended in Indonesia. Based on the Constitution, the owner is clear: the people of Indonesia.

his personal interests or for gaining advantage from others by means of an agreement under which one party renders secondary right to the other. Article 16 of the UUPA specifies these types of rights to land: the primary right and the secondary right.

**Table 3. Types of rights according to UUPA 1960<sup>18</sup>**

According to the HMN conception, authority over land and other natural resources is classified into two types. *First*, there are the parties to whom particular property rights have been given, i.e. proprietary rights, concession rights, utilization rights, etc. *Second*, there is the State, which has authority over land and other natural resources that have not been rendered to the people or other legitimate, feasible legal entities. Based on the perspective of this law of authorization by the State, the concept of “State’s land” has arisen.

Rights to land under this system are, according to the UUPA, classified into two categories. *First*, all rights that are obtained directly from the State, are called primary rights. *Second*, all rights that originate from an owner of proprietary rights on the land, based on mutual agreement, are called secondary rights. The two categories of rights to agrarian resources share something in common: both specify that the right’s owner is entitled to use the agrarian resources under his authority for

Type	Forms
1. Primary rights to land ( <i>primary titles</i> )	<ul style="list-style-type: none"> <li>▪ Proprietary rights</li> <li>▪ Building concessions</li> <li>▪ Utilization rights</li> <li>▪ Administrative rights<sup>19</sup></li> <li>▪ Other concessions</li> <li>▪ Rights to clear land and to collect forest resources</li> </ul>
2. Secondary rights to land ( <i>secondary titles</i> )	<ul style="list-style-type: none"> <li>• Lease rights</li> <li>• Rights to profit dividends</li> <li>• Rights to rent</li> <li>• Mortgage rights</li> </ul>
3. Rights to water and aerospace	<ul style="list-style-type: none"> <li>• Water concessions</li> <li>• Fishing and maintenance rights</li> <li>• Aerospace concessions</li> </ul>
4. Rights to Land Assurance	<ul style="list-style-type: none"> <li>• Insurance rights</li> </ul>

Source: UU No. 5/1960

<sup>18</sup> Onghokham Institute, “*Property Rights dan Perubahan Pola Penguasaan Tanah di Indonesia dalam Tinjauan Sejarah*” (unpublished paper).

<sup>19</sup> Under the UUPA, there is no mention of the Right to Process, which is basically a means of conversion which existed before the stipulation of the UUPA. It resulted from a State mandate to provide land to government institutions, or state-owned corporations. In practice, this stipulation was not only utilized by the related government institution. The conversion result for lands with the right to control that existed before the stipulation of the UUPA became the Right to Use. Thus, the Right to Process was a conversion-based Right to Use. For further explanation on this, see the Regulation of the Agrarian Minister No. 9/1965 re. The Execution of Conversion of Authority Right upon State’s Land and the Regulations on Further Policies. The existence of this administrative right under Indonesian agrarian law has been confirmed by the enactment of Law No. 16/1985 regarding apartment blocks. Hence, in this context the Administrative Right is also included as part of “the main” right to land.

Among the rights specified in the UUPA, only proprietary rights are absolute. The other rights are not absolute; they are rights that are subject to provisions of entitlement over a given period of time, and are observed merely upon authorization. Proprietary rights are the rights that refer to the ownership of land and are passed from one generation to another (without the need for authorization). Other than proprietary rights, formally there is a confirmation on allotment when a land right is issued. Restrictions on utilization of land under proprietary rights are limited to space arrangements.

Proprietary rights can be given to anyone, man or woman, as long as the individual is an Indonesian national. Proprietary rights can also be given to particular legal entities provided that they satisfy predetermined conditions.<sup>20</sup> Business concessions and building concessions can be rendered to Indonesian citizens and legal entities that have an Indonesian domicile, and are established in compliance with Indonesian law. Utilization rights may be rendered to departments, non-department government institutions, regional governments, religious or social institutions, foreigners who have Indonesian domicile, and foreign legal entities that have: (i) a representative office in Indonesia, (ii) a foreign country representative, and (iii) envoys to international bodies.<sup>21</sup>

Administrative rights can only be issued for government bodies and legal entities. According to A.P Parlindungan, “the essence of the Administrative Right is the transfer of the (limited) authority over land from the central government, that is known as the HMN, to the autonomous regions, government institutions, departments and central and regional government corporations”.<sup>22</sup>

Business concessions are issued for authorizing the utilization of land for activities related to commercial enterprises in the areas of agriculture, fishery/fish farming, and animal husbandry. Meanwhile, building concessions (HGU), utilization rights, and administration rights are given for various purposes including: necessary housing construction, military facilities, tourism infrastructure, public facilities, etc.

**Table 4. Types of “Primary” Rights to Land and their Nature** <sup>23</sup>

NO.	TYPE OF RIGHT	NATURE
1.	Proprietary Right (HM)	<ul style="list-style-type: none"> <li>- Absolute</li> <li>- Hereditary/can be inherited</li> <li>- Can be used as collateral</li> <li>- Transferable</li> <li>- Can be subject to an insurance right</li> </ul>
2.	Building Concession (HGB)	<ul style="list-style-type: none"> <li>- Based on a term (30 years, extendable to the next 20 years)</li> <li>- Transferable</li> <li>- Can be used as collateral</li> <li>- May be subject to an insurance right</li> </ul>

<sup>20</sup> E.g., State banks, cooperatives, religious institutions, and social agencies. See Government Regulation No.38/1963 re. the Appointment of legal institutions that possess Right to Property on Land.

<sup>21</sup> Regarding the procedure for endowment of HGU, HGB and Utilization Rights, see Government Regulation No. 40/1996 regarding Business Concessions, Building Concessions, and Concessions of Land Utilization.

<sup>22</sup> A.P. Parlindungan, ‘*Hak Pengelolaan Tanah Pelabuhan menurut Sistem UUPA*’, in *Bunga Rampai Hukum Agraria serta Land reform*, Section III, A. P. Parlindungan, Mandar Maju, Bandung, 1994, p. 344. Also see footnote No. 99 upfront.

<sup>23</sup> *Op.cit.*

ample opportunities for foreign investors to exploit Indonesian natural resources. The entry of capital was a turning point away from a “pro-poor law” toward a “pro-investment and foreign capital law”.

The legal change was made not by nullifying UUPA, but rather by developing an interpretation of the HMN which recognized the ‘State as the sole owner of land’. Hence, individual ownership became relative, and when the government needed land or wished to hand it over to particular party, the legal principle that applied was an individual’s involuntary submission and a payment of compensation by the government, after which the legal process would be perceived as completed. The compensation, however, was usually much smaller than the land’s commercial value. Any protest would be met by the argument that sacrifice was required for Indonesian development. If protests continued, the government would charge the individuals involved with being ‘anti-development’ or ‘anti-government’, and it would often result in intimidation or possible imprisonment.

Source: provisions on the rights to land under Law No 5/1960

Lands with all the primary rights mentioned above (HM, HGU, HGB, and HP) can be transferred to another party, used as bank collateral, and in principle may be subject to insurance rights.<sup>25</sup>

### The End of Pro-People: The Rise of the New Order Regime

Before the ideal conditions that the UUPA intended were achieved, particularly national restructuring through agrarian reform, there was a *coup d’etat* by Soeharto in 1965 that put an end to Soekarno’s leadership. The first strategy of the New Order government was banishing the Indonesian Communist Party (PKI), and restricting and controlling the freedoms of assembly and association, which together resulted in the merging of all political entities into three political parties and the establishment of farmers and workers associations that were fully controlled by the government. In contrast to the spirit of his anti-imperialism predecessor, Soeharto opened up

Under the New Order regime, in some cases the central government could transfer HMN to the regional government administrators. However, the main authority to execute the agrarian law based on HMN concept was the central government.<sup>26</sup> As time passed, in practice the HMN became similar to the *domein verklaring* principle under colonial agrarian law. Ironically the HMN had intended to eradicate the *domein verklaring* principle that declared that all lands belonged to the state (*landsdomein*), and that no other party could assert his/her proprietary right (*eigendom*)

<sup>24</sup> See Article 4 Paragraphs 2 and 3 of Law No. 4/1996.

<sup>25</sup> For further explanation on the objects of Insurance Rights see Article 4 of Law No. 4/1996 regarding Insurance Right on Land and Objects related to Land.

<sup>26</sup> UUPA 1960 strictly specifies that the government is the central government. The Elucidation of UUPA 1960 specifies that: ‘agrarian matter, pursuant to its nature, principally falls under central government responsibility (elucidation of Article 2).

rights).<sup>27</sup> The practice of this principle enforced the State's ownership of land and was thus contradictory to the original intent of the HMN concept.<sup>28</sup>

### Pro-Investors Proprietary Right System: New Order Era

By manipulating the HMN principle, proprietary system under the New Order were fundamentally altered. Although the New Order did not nullify UUPA, through its *law as a tool of social engineering* paradigm, the New Order, in effect, produced a new law while it appeared to be executing the UUPA. By manipulating the HMN specified under the UUPA, the New Order government enacted Law No 5/1967 regarding Principal Provisions on Forestry (further amended into Law No 41/1999 regarding Forestry), Law No 11/1967 regarding Principal Provisions on Mining, and Law No 1/1974 regarding Principal Provisions on Water (further amended into Law UU No. 7/2004 regarding Water Resources).

Furthermore, agrarian policy was arranged structurally according to the jurisdiction of various state institutions: forestry policy was controlled by the Ministry of Forestry, mining sector policy was controlled by the Ministry of Mining, land policy by the National Land Agency (BPN), etc. These institutions also had the authority to issue proprietary rights for managing natural resources to individuals or business institutions. The way these departments administered these powers resulted in conflicts over natural resources and lands throughout Indonesia.

This strategy cut off access to the UUPA, as a legal umbrella to all proprietary rights, particularly in reference to emerging conflicts. At first glance, it seemed that the conflicts were sectoral. But both urban and rural agrarian conflicts (forced evictions, taking-over of farmers' lands, etc.) were rooted in the same legal issues, namely, removing opportunities to return to using the UUPA as an authority through a judicial system that fully adjudicated claims over agrarian resources based on an understanding of Indonesia as a state of law, instead of authoritarian state. In practice, the New Order government was the latter.

The authoritarian nature of the New Order government was corroborated by a conflict resolution system that prioritized repression. The use of violence was justified as a means of securing the development process. However, the New Order government faced a new challenge: Social movements based on human rights, were becoming an important tool for disclosing people-versus-State conflicts when laws failed to protect the people. Advocacy that combined human rights and legal litigation issues in union- or organization-based social movements was an effective strategy that riddled the New Order government, particularly because of international attention to human rights violations in cases involving authorization rights of agrarian resources.

Human rights advocacy proved effective in confronting the New Order government's stigmatization efforts and mental terror tactics used against the people's struggle. The New Order government's phobia of Communism and Marxism-Leninism was obvious at the beginning of its rule, when it ban the Indonesian Communist Party (PKI). Resistance against or criticisms of development

<sup>27</sup> The *Domein Verklaring* principle is under Article 1 of *Agrarisch Besluit*

<sup>28</sup> As stipulated in UUPA 1960, HMN was not meant to preserve the *domein-verklaring* principle. The practice, however, was almost like the *domein-verklaring* principle. When the people have no adequate controls over state administrators, who have been authorized to control land and other natural resources, the State's lands will be utilized not for the people's welfare, but for the benefit of a selected minority. In many cases, the concept of the State's land and/or forest negated the physical authorization or authority of an individual or group that were historically verified as the eligible rights holder rather than other groups that recently held the right of bestowal given to them by the government based on its HMN authority. For more on the HMN concept, see, OHak Menguasai dari Negara, *KPA Position Paper*, KPA, Bandung, 1989.

policies or practices were easily associated with “Communism” or the “PKI”. Once such an association was attached to someone, subversive techniques and imprisonment would be imposed. Stigmatization as a member of the PKI scared everybody. Every effort to resist forced evictions or land acquisitions would be labeled by the government as “anti-development” acts and associated with the PKI.

For a while, such stigmatization was effective in preventing conflicts from emerging. However, these conflicts became latent hazards that could surface at any time. People still resisted the release of their proprietary right to the land or other natural resources since such practice was against the law. The results of research done by the Agrarian Reform Consortium (KPA) describe many of the conflicts. According to KPA between 1970 and 2000, there were 1,753 agrarian conflicts and disputes over a total of 10,892,203 hectares of land, and involving 833 private companies, 219 state-owned companies, 719 government agencies, 59 military personnel, and affecting 1,189,482 families. Among these conflicts, the resolution of 508 involved military action.<sup>29</sup>

The significant increase in agrarian disputes reflected the government’s partiality toward private sector interests. It gave the private sector access to millions of hectares of land, forsaking millions of common people who were soon to be or were already living in poverty. The following describes millions of hectares of lands under the private sector’s authority:

1. In 1995, there were around 585 forest concessions over a total area of 63 million hectares across the archipelago, equal to one-third of the total amount of land in Indonesia. The Indonesian Ministry of Forestry declared that in July 2000 there were 652 forest

concessions that were acknowledged covering a total of 69 million hectares of land (FWI & GFW, 2001:31).

2. As of 1999 there were 561 mining companies that were in control of 5.25 million hectares of mining concessions. In agriculture and plantations as of 2000 there were 2,178 large-scale plantation companies that managed a total of 3.52 million hectares of land.<sup>30</sup> Mine related conflicts between TNC and traditional communities were addressed repressively (using a military approach) in order to prevent the disruption of the mining processes.
3. Major companies were also given authority over land for the development of new cities, real estate projects, industrial estates and tourist attractions. As of 1998, the National Land Agency (BPN) had issued location permits for a total of 74,735 hectares of land for real estate and new city projects in the JABOTABEK (Jakarta, Bogor, Tangerang, Bekasi) area. They had also issued permits for 17,470 hectares for the construction of 46 major industrial estates. In 1995, in JABOTABEK area there were 32 golf courses using a total of 11,200 hectares of land.<sup>31</sup>
4. There was a large scale conversion of agricultural land into non-agricultural uses. Land conversion increased from 88,500 hectares per year during 1981-1999 to 141,286 hectare during 1999-2002 (*Kompas*, 25 November 2006).

The above facts support the assertion that during the New Order regime, there was a significant imbalance between the amount of land used for commercial purposes and the amount used for agricultural purposes. Based on the Agriculture Census (SP) of 1993, more than 11 million agricultural households or 40% of the total population of the agriculture community had no land ownership. Some 27% owned less than 0.5

<sup>29</sup> Dianto Bachriadi, “*Land Disputes in New Order’s Indonesia: The Need for Comprehensive Restitution and Redistribution Actions*”, in *Land Tenure Law and Livelihood in Indonesia*. KPA, Bandung, 2001.

<sup>30</sup> Dianto Bachriadi and Gunawan Wiradi, “The Land Problem in Indonesia: the Need for Reform in *Land Tenure Law and Livelihood in Indonesia*”, KPA, 2001.

<sup>31</sup> *Ibid.*

hectares of land, 14% owned less than 1 hectare of land, and only 16% owned more than 1 hectare of land. The result was that 40% of farmers had no land ownership or limited ability to access land while, a mere 16% of the agricultural population owned around 70% of the available land. See the table below:

**Table 5. Land Ownership Structure in Indonesia**

Width (HA)	Rural Household (RT)	Proportion of Owned Land (access)	
	Total	Household (%)	Land (%)
Farmers without land (farmer < 0.1 ha)	11.084.605	43	0
• 0.1 – 0.49	7.645.428	27	13
• 0.5 – 0.99	4.130.221	14	18
• > 1 ha	4.421.764	16	69

Source: Agriculture Census 1993

If the rural and agricultural community's land ownership was dwindling in 1993, in the same period major plantation estates were expanding. Up until 1993, major plantation estates owned 3.80 million hectares of land, which were managed by 1206 joint ventures (388 State-owned companies or BUMN, 709 private companies, 48 foreign companies, 21 joint ventures, and 40 regional government-owned companies). Unfortunately, not all these lands were cultivated. Most of them were abandoned. In the period of 1997-1998, plantation estates made up most of the agricultural estates, including 252 abandoned estates.<sup>32</sup>

The move from State- to investor-owned lands resulted in conflicts over lands which affected many cultivated lands. According to the data issued by the Directorate General Plantation

Products, as of August 2003 there were 573 plantation-based conflicts. Most of them occurred during the New Order's reign, and were spread through 20 provinces – with the majority in North Sumatra (298 cases or 52% of the total). Around 544 cases or 95% were disputes regarding land. This shows that the conflicts between communities and plantations had their basis in the right to land rather than basic criminal conduct (the rationale frequently

proclaimed by the government.<sup>33</sup> Below is a map of agrarian conflict:

**Table 6. Map of Agrarian Conflict in Different Sectors from 1985-2001<sup>34</sup>**

NO.	SECTOR	Total
1.	Public facility	259
2.	Plantation	254
3.	New city / housing estate	200
4.	Industry	90
5.	Dam/water work	75
6.	Tourism	70
7.	Forestry	70
8.	Military facilities	37
9.	Mining	36
10.	Government facility	36
11.	Fish breeding	25

<sup>32</sup> Syaiful Bahari, "Konflik Agraria di Wilayah Perkebunan: Rantai Sejarah yang Tak Berujung", *Jurnal Analisis Sosial*, Vol. 9, No. 1, April 2004, pp. 43-44

<sup>33</sup> *Ibid.* p. 38.

<sup>34</sup> *Ibid.*.

### ➤ Women's Vulnerability to Capital Expansion

During the 30 years of the New Order regime, when violence was used as the main conflict resolution tool, the term “forced eviction” became a common term to describe government actions to acquire lands occupied by the poor. Such actions were evictions aimed at clearing the land for industrial construction, middle-class housing estates, or modern malls and plazas. In the name of development, the government expelled the people from their land providing only minimum compensation in an amount decided solely by the government. Each claim or attempt at resistance by the people was met with either repression, through the deployment of coercive state tools, or with indirect means of intimidation.

The immediate impact of a forced eviction was the suffering and misery of women and children who lost their homes or shacks. The loss of a home represents a specific tragedy for women, because in a patriarchal social structure the home is their territory. The psychological pressure is manifested in the actual loss of a place for cooking, washing, bathing, sleeping, etc. These are pressures that men find difficult to understand.

Women are also more vulnerable as objects of intimidation, harassment, and sexual violence, tactics that are often used as the symbolic language to psychologically damage resistance movements by men. On one hand, these conflicts could be understood as a tension between the State and the people; on the other hand, these conflicts could also be understood as struggle between men from the State and men from the community, using women's bodies as the tools of conflict. In such a situation, the women suffer first and foremost.

Women's souls and bodies are the most vulnerable objects in every capital expansion that collides with communal interests. In struggles where men in the dominated community come forward; women could, at any time, become targets of intimidation, abuses, or sexual violence. These are manifestation of governmental efforts to frustrate opposition movements.

In prolonged conflict situations, where state apparatuses were involved in violence, or in eviction practices where military personnel or other security units were deployed together with heavy-duty equipment, the state demonstrated its violent character in front of the people. In some cases, women took off their clothes in protest. By allowing parts of their bodies to be seen publicly, these women responded by humiliating the State and its officers who bluntly displayed violent tendencies.

In some of these forced eviction cases, women courageously took off their clothes in an attempt to prevent State forces, with their heavy-duty equipment, from destroying their property. In a conflict with Toba Pulp company in North Sumatra, local women used this strategy to humiliate the deployed security units. Such tactics had a psychological effect on State forces, and also had the additional benefit of generating a lot of press which, in turn, generated public discussion.

### **Pro-privatization Laws Regarding Proprietary Rights: The Reform Era**

The 1997 economic crisis and democratic tidal wave forced former President Soeharto to step down. It was the end of the New Order regime and Soeharto's 30 years in power. The transition from Soeharto to B.J Habibie marked the beginning of the Reform Era. The next general election nominated Abdurrahman Wahid (Gus Dur) President and Megawati Soekarnoputri Vice President. However, the MPR required Gus Dur to step down and picked Megawati for his replacement. Megawati's government issued TAP MPR No. IX/MPR/2001 regarding Agrarian Reform and Natural Resource Management.

This decree (TAP) was a result of hard work by a number of NGOs and grassroots organizations that urged the MPR to issue this decree regarding the execution of agrarian reform. This marked the political return of the UUPA discourse and spirit.

Based on TAP MPR No. IX/MPR/2001, the President of the Republic of Indonesia is mandated to:

1. Execute agrarian reform;
2. Solve agrarian conflicts and conflicts over natural resources across the archipelago;
3. Take the necessary steps required to revitalize the ecosystem which was damaged as a result of excessive exploitation;
4. Review all government regulation and policies, and revoke, amend and/or replace all government regulation that contradicts the principles of TAP MPR No. IX/MPR/2001; and
5. Take the necessary steps to fund an agrarian reform program.

The Parliament (DPR) is also given a mandate to review the prevailing laws, revoke, amend and/or replace the laws and operational provisions that contradict TAP MPR No. IX/MPR/2001.

#### UNDERSTANDING AGRARIAN REFORM

“Agrarian reform” refers to a far-reaching and comprehensive rearrangement of the ownership structure, authorization, and utilization of agrarian resources (mainly land), in the interests of poor people (farmers, farm workers, farm hands, etc.).

The “Restructuring” process itself was later known as “*land reform*”. “Far-reaching and comprehensive” refers to two things. *First*, that the target is not only agricultural land, but also forestry land, plantations, mining areas, water, marine areas, etc. In short, all agrarian resources. *Second*, the *land reform* program has to be followed by other supporting programs such as education regarding production technologies, credit initiative programs, marketing, etc. In brief, agrarian reform is *land reform* plus other supporting programs. Yet, the core is *land reform*.

Source: Gunawan Wiradi, *Reforma Agraria untuk Pemula*, Jakarta: Bina Desa Secretariat, 2005, p. 5

From its enactment in 2001 until now, the President and the Parliament (DPR RI) have still not carried out the mandates specified in TAP MPR No. IX/MPR/2001. In the presidential progress report presented in the MPR Annual Sessions of 2002 and 2003, implementation of the decree was not reported at all. Further in TAP MPR No. VI/MPR/2002, regarding Recommendations on the Report on the Execution of MPR decision of 2002 by the President, DPA, DPR, BPK and MA in the Annual Session of 2002, MPR recommended that the President prepare a draft of the constitutional regulations that provide for the redistribution and utilization of natural resources, including earth, water, aerospace, and the natural resources contained underneath. The MPR also asked the President to solve existing conflicts over natural resource utilization and agrarian matters as well as anticipate future conflicts in order to achieve justice and the legal certainty specified in TAP IX/MPR/2001 (point 4 regarding environmental recommendations).

Similar recommendations were also issued in the MPR 2003 Annual Session that aimed to strengthen the existence of TAP IX through TAP MPR No. I/MPR/2003 regarding the Results of Material Review and Legal Status of the MPR/MPRS Decree. Under TAP MPR No. V/MPR/2003 regarding Suggestion to State Institutions, the President and the DPR, there was another request to resolve agrarian conflicts and disputes. It also includes a request for the DPR to discuss the Law on Agrarian Reform and Natural Resources Management which would serve as the principal law, and simplify the land certification process for poor people, particularly farmers.

In response to the above mentioned MPR decrees, on 31 May 2003 President Megawati Soekarnoputri issued Presidential Decree (Keppres) No. 34/2003 regarding A National Policy on Land, which ordered the head of the National Land Agency (BPN) to refine the UUPA 1960, prepare the relevant data and information to execute agrarian reform, and hand over of part of central government administrator’s authority over land to the local (provincial/district/city) governments.

In view of the land policy decentralization specified in Keppres No. 34/2003, President Megawati issued Government Regulation (PP) No. 16/2004 regarding Land Use. The Government Regulation provided that District/City Landscape Plans be observed in preservation areas and breeding areas. Land uses that do not comply with the Area Landscaping Plan cannot be expanded or developed (Article 7 paragraph 4). This land use policy enables the transformation of land marked for housing or conservation into trade/industrial areas under the interests of local elites.

By the end of President Megawati's rule, the natural resource and agrarian reform policies mandated under TAP MPR No. IX/MPR/2003 had not even approached their requisite social justice goals. Many sectoral laws remained despite the fact that they conflicted with the principles of TAP MPR No. IX/MPR/2001. These include Law No. 41/1999 regarding Forestry, Law No. 11/1967 regarding Mining, and Law No. 24/1992 regarding Area Landscaping. Some revised policies even strengthened the domination of free-market influence, such as the legalization of water privatization under Law No. 7/2004 regarding Water Resource (replacing Law No. 11/1974 on Water).

There has been no change in natural resource and agrarian policies under President Susilo Bambang Yudhoyono. Presidential Regulation (Perpres) No. 65/2006 prioritizes the proprietary rights on land for businesses and investors. The regulation strengthens the domination of capital interests over proprietary rights through the passage of policies and constitutional regulations by the central government.

#### THE LAND RECLAIMING MOVEMENT

Under the New Order government, land acquisition cases were impeded by repression. The Reform Era reintroduced freedom of association and assembly, stimulating many people's courage to reclaim their lands. Initially, the government claimed that these land reclaiming actions were criminal. The media

referred to them the same way in their reports. However, with the help of information advocacy, the term "land reclaiming" has become more acceptable.

According to Secretariat Bina Desa's record, from 2000-2003, the total amount of land reclaimed by people in Sumatra, Java and Sulawesi, as plantation estates numbered 57,000 hectares. The total amount of land reclaimed nationwide was estimated as 300,000 hectares (Krishnayanti, 2005:11). The Central Java Agricultural Organization (ORTAJA) and Legal Aid Institution (LBH) Semarang have documented 35 reclamation cases since 1998. As of 2006, only one of these cases had been settled through the state legal system, and another case was in the process of finalizing utilization rights. The other 33 cases on forestry and plantations have not yet been resolved (Purbaya, 2006:3).

Pro-poor laws and the UUPA spirit only lasted through the beginning of the Reform Era. Reclamation cases, by farmers and other poor communities, were impeded and unable to achieve legal resolution. This delay in agrarian reform reflects strong resistance by investment interests. During the New Order government foreign control or privatization of natural resources was a guiding principle, yet there were still considerable anti-privatization efforts. However, during the Reform Era the government *itself* fully authorized the privatization of natural resources. Law No. 7/2004 regarding Water Resource legalized the privatization of water resources by a number of TNCs operating in Indonesia. Likewise, Presidential Regulation No. 59/2006 also gave investors and the business community access to strategic lands to expand their business.

The Reform Era has been referred to as the privatization era of Indonesian natural resources. The impact has been that the people have been deprived of their proprietary rights over and access to natural resources. Laws have created a strict boundary that hurt the poor through each privatization of a natural resource. For example, water privatization has eliminated the Poor's right

to access water, and now part of their income must be spent to buy water. There is no legal protection of their right to access water, nor is there any guarantee that they will be able to purchase it at a reasonable price. Privatization has made water available in the market, meaning: when there is money, there is water!

## BEST PRACTICES

It is still too early to highlight best practices or success stories for legal empowerment regarding proprietary right for the poor. It is more proper to note that the State has the obligation to demonstrate that its own laws have been enforced to protect the rights of the poor. The best practices below are stories of people who struggled for their rights. The emphasis is not on success but on the efforts taken to give people access to justice:

Not all best practices stories are included below. The stories below were summarized from the CLEP National Consultation in Jakarta:

1. **Best Practice “Advocacy Brings forth Agrarian Reform”:** TAP MPR No. IX/2001 regarding Agrarian Reform and Natural Resources Management was a result of advocacy and lobbying members of the MPR by a coalition of NGOs and people’s unions (farmers, fishing communities, and the urban poor). This collective effort was finally fruitful and the decree was enacted. Thus the agrarian reform discourse was brought back into the national discourse without fear of subversive sanctions. This decree brought considerable attention back to the UUPA, as the national umbrella of agrarian matters in Indonesia.
2. **The “Team 13” Story:** With LBH Lampung’s support, a coalition was established by legal aid activists, lawyer’s associations, campus communities, and government staff. This “Team 13” became the mediator in land conflicts between the government and the farming community.
3. **The Story of “Home for the Poor”:** The Ministry of Housing and Transmigration constructed 6,000 free houses in remote villages in Papua. Urban Poor provided technical assistance, financial support, and access to credit for poor communities in Jakarta, Bandung, Semarang, Solo, Surabaya, Malang, Lombok, Makasar, Kendari, and Ambon.
4. **The Story of “Women’s Access and Ownership”:** A number of customary chiefs in West Sumatra traditional communities agreed to recommend pro-women policies, particularly to address discrimination in hereditary matters (tribal and family) and shared wealth in marriage. This was supported by the implementation of Law No. 7/1984 which is the translation of CEDAW’s recommendations regarding laws on marriage.
5. **The Story of “Tribal Community Perekat Ombara”:** The Tribal Community Alliance Perekat Ombara in Lombok established a traditional court comprised of government representatives, customary leaders, and religious leaders in 32 villages. The court applies customary law norms and procedures. The alliance also established a special board to hear inter-village conflicts and supervise the performance of the customary court. The aim of the project was to ensure the maintenance of customary laws on ownership.
6. **The Story of “Kulawi Tribal Community”:** This community lives in an area that was transformed into the National Park Lore Lindu (TNLL), Central Sulawesi. Their access to land became limited, while at the same time a private company was given authority over an area of 200,000 hectares outside the TNLL. People’s coffee plantations in the TNLL area could not be expanded. Discoveries of their customary knowledge on the right to forest provided some wisdom as their traditional system had historically divided the forest into 5 zones:
  - a. *Wana ngkiki*: beyond human-touch zone;
  - b. *Wana*: primary forest that can only be utilized for hunting – not for agriculture;
  - c. *Pangale*: an area that had been changed into plantation in the past but has transformed back into forest due to abandonment for tens of years;

- d. *Pahawa pongko*; a forest area that had been changed into plantation but abandoned for 25 years;
- e. *Oma*: forest that was formed from the abandoned plantation and may be reopened for a new plantation.

This local wisdom became a basis to negotiate with the Center of National Parks. Finally they received recognition of their legal rights through the issuance of a decree (SK) by the Head of the TNLL Center No. 651/VI.BTNLL 1/2000 dated 18 June 2000. The letter explicitly: “Acknowledge[s] the customary territory of Ngata Toro of ± 18,360 hectares to reside inside the TNLL which will be managed based on the category of Toro tribal territory, due to equality with the zone system of the National Park in the said area”.<sup>35</sup>

7. **The Story of “60 Years in a Struggle for Land”**: The Kembang Tani organization in Kebumen Village, Kecamatan Tulis, Batang District of Central Java, finally got their land back following a State legal order rendered in October 2002. The land had previously been acquired by PT. Ambarawamaju. After a series of negotiation between Kembang Tani, the local government and BPN, the BPN issued a decree, (SK) No. 55/32/33/2002. This decree distributed the land among the following parties: the local government of Batang (15 hectares), public facility (5.5 hectares), the old rights holder (5 hectares), and farmers (26.5 hectares). The 26.5 hectares of land was distributed to 800 members of Kembang Tani, with each getting 300 square meters, on the condition that the land would not be sold to a third party for the next 10 years. The certification cost was subsidized so that each

member only had to pay Rp. 100,000. By the end of October 2002, when the certificates were handed over to the eligible individuals, the land was transformed into a parish.<sup>36</sup>

8. **The Story of “The Baiturahman Sidewalk Traders (PKL)”**: The Baiturahman Sidewalk Traders (PKL) are small-time traders that run their businesses at Simpang Lima – the central point of Semarang City, Central Java. Efforts to eradicate traffic and the slums in the area made these small-time traders one of several undesired communities. The caretaker of Mosque Baiturrahman Semarang objected to the presence of these petty traders around the front yard of the mosque because he thought it made it seem like a slum and blocked the mosque’s front view. The mosque caretaker complained to the Semarang city government. In response, the city government deployed Satpol PP (Civil Security Unit) to enforce Regional Regulation No. 11/2000 and Decree (SK) of Semarang Mayor No. 511.3/16. The sidewalk traders’ community resisted their orders. After a series of negotiations the sidewalk traders’ community won a legal decree witnessed by the City Market Agency. PKL practices have been legally formalized through a decree that legalizes their trade activities starting at 4pm. The government administrator of Kelurahan Pekunden has even let them start their business at 1pm.<sup>37</sup>

<sup>35</sup> Laksmi A. Savitri and Endriatmo Soetarto, “*Pengelolaan Sumber-Sumber Agraria sebagai Cara Penghidupan Lahir-Batin Masyarakat Adat (A Case Study on the Kulawi Tribal Community in Lore Lindu National Park, Central Sulawesi)*”, A paper presented during the National Consultation of the Commission on Legal Empowerment for the Poor, Jakarta, 24-25 November 2006.

<sup>36</sup> Tandiono Bawor Purbaya, S.H., “*Bukan Keberhasilan!!! Catatan-Catatan Atas Kemenangan Rakyat Mendapatkan Hak Atas Kepemilikan di Jawa Tengah*”, A paper presented on the National Consultation of the Commission on Legal Empowerment for the Poor, Jakarta, 24-25 November 2006.

<sup>37</sup> *Ibid.*

## CONCLUSIONS

### 1. Legal System of Proprietary Law:

Historically, there have been three important phases of Indonesian proprietary law:

- Pro-people Proprietary Legal System: Old Order Era (1945-1966);
- Pro-investor Proprietary Legal System: New Order Era (1967-1997);
- Pro-privatization Proprietary Legal System: Reform Era (1998-present).

### 2. Ideological differentiation on Proprietary Rights

- **The Pro-people Legal System** (Old Order) was strictly aimed at executing the UUPA 1960, particularly through agrarian and land reform. The Old Order strongly rejected foreign capital investment and foreign debts to help development in order to protect poor people's proprietary rights and access to natural resources. Land reform was also an effort to recapitalize and legalize the public's control over natural resources so that agrarian conflicts would be systematically solved and at the same time a new national agrarian structure would be generated.
- **The Pro-investor Legal System** (New Order) was the opposite of the Old Order ideology. The New Order, ruled by Soeharto, opened Indonesia to foreign capital investment and made foreign debts the prime source of development funding. Development practices bluntly claimed poor people's proprietary rights and access to natural resources. The most crucial manipulation was interpreting the HMN to support absolute State control and ownership over land and natural resources. Violence was used as the primary tool to impede those who demanded their proprietary rights. Although they acknowledged the UUPA, the New Order never planned to execute it and rejected the execution of land and

agrarian reforms. Based on their new interpretation of the HMN, the New Order issued sectoral laws<sup>38</sup> which contained a spirit that directly contradicted that of the UUPA.

- **The Pro-privatization Legal System** (Reform Era) was a clash between the ideologies of the two previous regimes. On one hand, the reform regime accommodated the UUPA by issuing TAP MPR No. IX regarding Agrarian Reform (although dismissing it in practice). On the other hand, the regimes in this era continued the New Order's practice of accommodating foreign investors and debts, particularly by allowing the privatization of natural resources (e.g. the privatization of water resource through Law No. 7/2004). Privatization that was legalized by the State, in fact, did thrust Indonesia, and especially its natural resources, into trade liberalization and the free market system.

3. **Foreign Capital Interest:** The main cause of the change from a pro-people to a pro-privatization principle was the legalization of foreign capital investment through the enactment of various regulations and laws. Concessions given to investors without consultation with the affected community made such foreign investments prone to result in conflict.

4. **The Main Implication of the Struggle against Agrarian Reform:** In order to open and expand capital investment, the HMN concept under the UUPA was manipulated. Essentially, the UUPA required the execution of agrarian reform. However, by issuing sectoral laws, comprehensive agrarian restructuring no longer seemed to be important. Government prioritization of the use of foreign investment for development either led to resistance or unlimited postponement of agrarian reform as a consequence. If agrarian reform is put into

<sup>38</sup> Law. No. 5/1967 regarding Principal Provisions on Forestry (further revised into law No. 41/1999 re. forestry), Law no. 11/1967 regarding Principal Provisions on Mining, Law No. 1/1974 regarding Principal Provisions on Water (further revised during the Reform Era into Law No. 7/2004 regarding Water Resource).

practice it might harm the private sector in terms of the business community's ability to exploit natural resources. Refusal to institute agrarian reform is generally based on short-term economic interests alone and neglects longer-term economic interests and concerns about social justice.

5. **Proprietary Right Authorization Model; Legal Engineering and Violent Intervention:** Securing investment as the prime source of funding for development was attempted in two ways. The government created laws supporting such funding and the judicial system made decisions in favor of investors' interests rather than the public's interests. The process creating these laws was not transparent. Conflicts of interests between the investment community and the general public were not settled using win-win solution deliberation, but rather violence and security intervention. This only temporarily suppressed conflicts from surfacing, conflicts which proved to be unavoidable as they escalated and accumulated under the surface.
6. **Capacity of Ownership-Based Mass Organization:** The public's struggle against the acquisition of their authorization rights required them to deal with coercive government apparatuses. Their struggle became less effective when organizations, based on proprietary interests (farmers, fishermen, and laborers), other than those admitted by the government, were banned. Prohibiting such proprietary-based organization was common practice under the New Order government. Freedom of organization was re-introduced during the Reform Era. However, such organizations still have to deal with poor capacity which has resulted from 30-years of congestion. Their main weakness is their leadership tradition which lacks of legal knowledge, written communication skills and any permanent manifestation of female involvement.
7. **Poverty and Conflict Escalation:** The acquisition of people's proprietary rights mainly occurred according to their social stratification: farmers, fishermen, traditional communities, the urban poor, and women. These groups all depend on environmental resources for their livelihood. Thus, when these resources were taken away, they fell into poverty, and became the poorest of the poor. The struggle to retain their land and resources represents their resistance to the poverty trap. Conflict resolution is the permanent way to increase their dignity and pride by alleviating their poverty. Unfortunately, this perspective was not sufficiently practiced by either the government or private sector in these situations.
8. **Human Rights Violation:** Both the government and private sector might be charged with violating people's proprietary rights, violating human rights, violating local customary laws, and abusing women. One of the contributing factors to the fall of the New Order regime was the international community's growing awareness of their human rights violations. It is undeniable that the government committed a high rate of human rights violations in order to defend the interests of national private companies and TNCs.
9. **Conflict Resolution:** In addition to not prioritizing win-win deliberations, conflict resolution has not widely been employed as social justice strategy to deal with people's proprietary rights. The results of negotiations that have occurred could be codified by formal legal power. Conflict resolution involves three main stakeholders (civil society, government and private sector) and has already begun to be widely employed at local level. Among regional governments, for example, the results of such negotiations have, at times, been formalized and legalized as a state-approved policy. The production of decrees at a local level is a good example of the progress made in this regard.

## RECOMMENDATIONS

- 1. Development of a Pro-Poor Legal System:** This is an ideology that needs to be promoted through reviews of non-populist legal products that contradict the UUPA 1960. There is also a need for an addendum to the HMN that negates the idea that the State is the owner of agrarian resources. The State's role is that of an administrator and facilitator to help determine how the nation's resources can be controlled and utilized by the people for the welfare of the nation.
- 2. Execution of Agrarian Reform:** In order to achieve a pro-people legal system the government has an obligation to execute the agrarian reform stipulated in the TAP No IX/2001 and Presidential Decree No. 34/2003. Pressure to accelerate this process is crucial. There is also a need to mobilize international support and strategic alliance partners to help deal with, lobby, and formulate feasible compensation for the affected TNCs. An operational strategy for this agrarian reform has to be designed with a detailed work plan to ensure strong implementation. Research and comparative studies are required to investigate land reform and agrarian reform models to identify a fair and just model that will best fit Indonesia's diversity, so that both horizontal and vertical conflicts can be minimized..
- 3. Ban Concessions and Privatization:** Private concessions should not be extended and privatization of natural resources should be stopped in order to allow wider opportunity for agrarian reform. Until such reform is executed, existing concession should be usable both by the people and the operating company pursuant to negotiations. The privatization of water should be stopped and no new authorization should be issued. Any ongoing authorizations should be brought into an open-forum dialogue at both a national and international level, in order to identify ways of dealing with the investments made by private sector actors, so that agrarian reform can be accelerated.
- 4. Review of Sectoral Laws:** Sectoral laws such as those on forestry, mining, waterworks, etc., need to be immediately reviewed and adjusted to fit within a national strategy for agrarian reform. Old laws could be revoked and new ones produced to better accommodate people's proprietary rights. Pressure needs to be put on the Parliament to prioritize the production of laws that will accommodate the recognition of people's proprietary rights.
- 5. Developing A National Strategy on Conflict Resolution:** A national strategy to solve massive conflicts needs to be created, and adopted locally. It should give due respect to prevailing customary laws, marginalized communities, and female empowerment. This resolution system should attempt to achieve a win-win solution through consultation and negotiation among three stakeholders: civil society, government, and private sector. The results must be translated into government policy that will apply until the commencement date of the agrarian reform.
- 6. Putting an End to Violent Interventions and Setting Human Rights as a Priority:** To achieve national conflict resolution, violent interventions in conflicts need to stop, and all stakeholders must embrace non-violent conflict resolution mechanisms and respect the human rights of the other party. The government must remain impartial in conflicts between public and private elements. If the conflict is between the people and the State, expert advisors, agreed on by both parties should be used to help reach a resolution or agreement.
- 7. State Institution Capacity Building:** In view of agrarian reform and conflict resolution, State institution capacity building is crucial to achieve this goal, especially in terms of confirming transfers of authority and responsibility. The government's main partner will be civil society; and mass organizations in particular (the peasant community, the fishing community, the urban poor, as well as other marginal groups). Other supporting partners include experts, academics, social activists, religious figures and other relevant organizations.

8. **Mass Organization Capacity Building:** For mass organizations to be able to provide strategic inputs to State institutions that will execute agrarian reform, the capacity of these mass organizations need to be developed to improve their ability to initiate conflict resolution techniques at a local level. Capacity building is vital given that mass organizations are going to secure safe, speedy, orderly, fair and just reform.

# CHAPTER III

## WORKING GROUP 3

### LABOR RIGHTS



This paper intends to present an observation on the relationship between the protection of laborers and the informal economy. Indonesian informal economy has been growing rapidly. In the urban context, we can see street vendors ranging from sidewalk traders (PKL) to newspaper retailers leading the sale of products usually targeting middle and lower class society. Also the drivers of most forms of transportation, including *metromini*, *kopaja*, *mikrolet*, city transportation, port transportation, etc., except drivers of State Corporation bus, can be classified as the workers in the informal economy sector.

The discussion will begin with an explanation on the definition and history of the informal economy. The discussion will concentrate on explaining and defining what the informal economy is, so that it is not confused with activities related to criminal economy. Further, there will be an explanation on how the government perceives and defines the informal economy or informal sector. The explanation will describe the character of Indonesian informal economy.

The next section will discuss the mapping of informal economy workers including trying to address issues relating to employment categorization in an informal economy. The instrument used for the mapping was ILO statistical definition, which had been prepared and recommended to the government for use to accurately estimate growth of both the informal workers population and the informal economy.

Data presented in this paper are secondary materials, results of National Consultation, FGD and other prior discussions. The discussion is limited because there are still a lot of programs by both government and international institutions whose successes and weaknesses have not been acknowledged. This fact indicates the lack of socialization by the government and international institutions concerning their ongoing programs.

### EXPLORING THE CONCEPT OF INFORMAL ECONOMY

In daily life, activities in the informal economy can be found everywhere, ranging from the *ojek* (motorbike taxi) drivers up to workers in Micro, Small and Medium Businesses or usually mentioned as UMKM. In many countries, such as in Africa, this informal economy can contribute more than 40 percent of state income and this condition apparently happens in some other countries. But, this informal economy is not formally defined, does not pay tax, is not regulated and not reached by the law or the existing regulation system, so that it is difficult to detect the amount of its contribution to the state economy.

The above is how ILO defines the informal economy. In the past, ILO used the term of informal sector in referring to this phenomenon. In a resolution on “*Statistics of Employment in the Informal Sector*” adopted in “*Fifteenth International Conference of Labor Statisticians in*

1993”, informal sector is defined as home industry groups or independent industry units, owned by households including informal own-account enterprises that employ workers and their family members irregularly and informal employer enterprises that fulfill one or both of the following criteria: the size of enterprise is under certain level of employment and the enterprise or its workers are not registered.<sup>39</sup> Subsequently, there was a change in terminology from the informal sector to the informal economy. The objective being to change the focus of attention from specific economic sectors to workers and enterprises irrespective of economic sectors and also including those interacting with the formal economy.<sup>40</sup> Besides, the word of sector is frequently used to refer to industrial units.<sup>41</sup>

For some observers of workers rights and labors union, the term informal economy sounds like defining an employment relationship arising from particular activities that can not otherwise be included as formal working relationships. In other words, the use of informal economy term would mean legitimating the existence of economic activity with such features and not assuming these activities as illegal employment.

As unregistered and undetected entities, informal economic enterprises do not protect workers’ rights and working status or provide social insurance. Workers in informal are vulnerable to unjust treatment and find it more difficult to defend themselves because it is difficult for them to organize themselves into labor unions. Workers

are not only vulnerable to acts by their employers but also because employers themselves, working in informal enterprises, are susceptible to economic competition. Therefore, the term used of informal economy is not only limited to workers who obtain wages from enterprises but also covers the employers in the informal economy who have the same susceptibility as hired workers.

ILO is aiming to create decent work conditions in informal economic enterprises. It is not an easy idea because parties involved in the negotiations have different opinions or interpretations and some are even opposed to the informal economy.<sup>42</sup>

Some economists consider the informal economy as a kind of deviating enterprise because it is not subject to legal control. They believe therefore that the informal economy distorts the formal economy, and should be abolished to create a fair competition. It is argued that the larger the size of the informal economy the stronger the indication of a bad economic management system in a country.<sup>43</sup> Those economists usually also refer to the informal economy as shadow economy, illegal economy, crime economy, etc.

Other economists say that informal economy manifests as a strategy to survive where formal economic structures fail to absorb employees. Especially in transitional countries in East Europe or Asian countries recovering from the 1997 crisis, the informal sector played a dominant role because at that time a stable economic structure had not been fully established while the old one was already out of date.<sup>44</sup>

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<sup>39</sup> International Labor Organization, “Report of the Fifteenth International Conference of Labor Statisticians,” ILO, Geneva 1993

<sup>40</sup> Resolution Concerning Decent Work and the Informal Economy. The General Conference of the International Labor Organization, meeting in its 90<sup>th</sup> Session, 2002, page 25

<sup>41</sup> Stephen Graham Saunders, “Estimates of the Informal Economy in South Africa: some Macro Economic Policy Implications”. (Dissertation, Faculty of Economic and Financial Sciences at the University of Johannesburg, 2005), page 14

<sup>42</sup> “Decent Work and the Informal Economy”, *Report VI*, International Labor Conference 90th Session 2002.

<sup>43</sup> Didik J Rahbini, “Ekonomi Informal di Tengah Kegagalan Negara” (“Informal Economy Among State Failure”), *Kompas*, 15 April 2006

<sup>44</sup> Sabine Bernabè, “*Informal Employment in Countries in Transition: A Conceptual Framework*“, *CASE Paper 56*, Centre for Analysis of Social Exclusion, LSE, April 2002

On one hand, the phenomenon of the informal economy is continually changing so the conceptual framework of the informal economy should also be redefined. In general, the economic pattern in developing countries before 1960s was still dominated by agricultural economy, but capitalistic modern economy was also starting to grow. There was an optimism that post World War II development incentives would advance the economics of the world countries. But the optimism was not fully materialized because in some developing countries economic activities still existed under the old production system and this impeded the growth of a modern economy.

Based on the above concern, ILO conducted research programs to investigate and comprehend these impeding factors especially in developing countries. These ILO activities were called the employment missions. The first country visited was Kenya in 1972.<sup>45</sup> This research discovered that these economic activities developed not only to meet the costs of survival but was also to develop profitable and efficient enterprises. Therefore, the term used to describe the phenomenon was informal economy, relating to small and unregistered enterprises, rather than traditional sector, which is more feudalistic.

Efforts have been made to integrate the term informal economy with some other concepts, such as defining informal economy terminology as marginal so that it is not related to the dominant capitalist economic system. The idea has something to do with a belief that development of capitalistic economy in developing countries would finally eliminate those marginal and outskirt economies. Others argue that such assumption will never happen for each developing country has its own economic pattern and direction based on their respective social characteristics.<sup>46</sup>

Meanwhile, the world economic system is gradually changing. Activities in the informal economic sector, which were previously defined by old production methods that managed to survive and turn profits in a modern capitalist economic system, have today been enhanced as a result of the distribution of labor and production across boarders. The distribution is the impact of economy growth in developed countries such as the US and Europe. In those countries, production processes are more decentralized to a number of sub-divisions. Today, production systems consist of a number of production units or supply chains that can be located anywhere including abroad.<sup>47</sup>

Workers of those units generally lack protection under the law. In the US, the growing number of sweatshops whose workers are immigrants from countries located along the US borders is indicative of this situation. This phenomenon is interesting since the strategy inflates profits, creates employment opportunities, and expands the market. However, the practice also highlights that not all available employments is desirable, and not all producers are lucky to have their markets expand. Global competition for capital makes it understandable that owners create situations where production units have to be transferred to informal economic companies in which workers' rights are not protected and they are exposed to the workplace hazards.

Considering this changing situation, ILO attempted to expand the concept of the informal economy. Observers, experts, labor activists and governments made efforts to broaden the image of the informal economy compared with the image of the 1970s and also to improve the definition of "informal sector" that ILO had been using since 1993 in its statistical data. Through this concept of the informal economy, ILO attempted to

<sup>45</sup> Martha Chen, "Rethinking the Informal Economy: Linkages with the Formal Economy and the Formal Regulatory Environment", (EGDI and UNU-WIDER Conference Unlocking Human Potential: Linking the Informal and Formal Sectors, 17-18 September 2004, Helsinki, Finland), page 5

<sup>46</sup> International Labor Organization, "Women and Men In the Informal Economy: Statistical Picture", International Labor Office, Geneva, 2002

<sup>47</sup> Nina Ascoly, "The Global Garment Industry and the Informal Economy: Critical Issues for Labor Rights Advocates", IRENE/CCC Discussion Paper, September 2004

introduce informality into both relationships between companies and also the working relationship that emerged between these companies and the informal economy.

In the broadened conceptual framework, informal economy is seen to consist of informal employment – where employees have insecure employment, receive no allowances and no social insurance.

1. **Informal working relationships inside informal enterprises** (clear entities that are not legally registered) can cover employers, employees, independent operators and unpaid family-based laborers, all of whom are working in informal enterprises.
2. **Informal working relationships outside informal enterprises** (enterprise with unclear employers, household work) includes home servants, daily laborers, laborers with Restricted Working Contract and also unreported laborers.<sup>48</sup>

Employees and laborers included in the above categorization of working relationships are characterized as being without protection or clear employment status. At this point, the question arises; does this categorization include three-in-one jockeys and street singers? Can they be categorized as informal workers?

ILO underlines that the definition of informal working relationship applies to all kinds of employment that provides remuneration or wages. This covers both self-employment and wage-employment workers are not acknowledged, covered or protected by the prevailing legal structure. Also, these types of employment are not eligible for remuneration or compensation applied in income-producing enterprises.<sup>49</sup>

It is already well documented that laborers working without legal protection are exposed to unfair treatment. This also occurs for independent

business owners who have to compete with larger companies. In many cases, these informal businesses are suppliers of certain parts of production, e.g. shoelaces or shoe makers who have to deal with price competition. These supply-chain relationships often make suppliers at the lower level of the chain unable to protect themselves and their employees.

These kinds of organizations are differentiated based on their characteristics. The informal economy consists of informal enterprises as that include medium-sized business enterprises (one employer and some employees), family enterprises and also enterprises with only one owner/operator. The informal economy can also cover informal employment. Some formal companies employ workers based on informal employment such as contract laborers, daily laborers, etc. Home servants can also be included in informal employment.

## DESCRIPTION OF INDONESIAN INFORMAL ECONOMY

The most complete picture on informal employee situation is portrayed in a survey conducted by BPSN or *Badan Pusat Statistik Nasional* (Central Bureau of Statistics). Based on BPSN data of 2006, the Indonesian population stood at 224 millions, comprising of 106.28 million in the productive work forces (95.18 millions are employed and the remaining 11.1 millions are unemployed). Around 60.77 million work as laborers, which mean that around 63.85% of the work force works in informal economic enterprises.<sup>50</sup>

<sup>48</sup> *op.cit.*, ILO, p. 12

<sup>49</sup> *Ibid.*, page 5

<sup>50</sup> Tiangur Sinaga, “Peran dan Kebijakan Pemerintah Dalam Peningkatan Kesejahteraan Pekerja/Buruh sektor Informal,” A paper presented in the National Consultation of the Commission on Legal Empowerment for the Poor, Jakarta, 24-25 November 2006

**Table 1. Formal and Informal Employees**

Year	Number of Formal Employees	Number of Informal Employees	Productive Work Force
2004	34.5 millions	59.2 millions	93.7 millions
2005	34.5 millions	60.6 millions	94.9 millions
2006	34.4 millions	60.7 millions	95.1 millions

Resource: BPS, 2006

The above data reflects that the number of people working in the informal economy is increasing yearly. In contrast, the formal economy is in a down turn so that it can be said that job creation in the formal economy is unable to absorb the growth in the labor market. The informal economy is more likely to operate in enterprises that do not rely on advanced educational backgrounds and require no special skills. As reflected in Sakernas data of 2006, 46% of work force engaged in informal activities, were elementary school graduates, followed by employees who had not graduated from elementary school.

**Table 2. Number of Workers in Informal Activity Based on Educational Achievement in 2006**

Educational background	Total	Percentage
<Elementary School (not finished)	14,337	23,66
Elementary School (graduated)	28,026	46,12
Lower Secondary School	12,031	19,80
Upper Secondary School	5,939	9,78
Diploma/Academy	0,166	0,27
University	0,23	0,37
<b>Total</b>	<b>60,769</b>	<b>100</b>

Source: BPS, in the Sakernas 2006 (February).<sup>51</sup>

Nevertheless, it has yet to be clarified whether or not the informal economy referred to herein is mainly comprised of workers who are employed outside the agriculture sector. Given the work force structure based on the area of business we

might find that most of the work force is employed in informal economy of trade.

**Table 3. Informal Work Force Distribution Based on Business Area**

No	Sector	Number of Work Force (in million)
1.	Agriculture	39,22
2.	Processing Industry	2,84
3.	Service provider	10,09
4.	Consultancy	1,93
5.	Others	6,68

It has to be noted that, in this paper, the statistics provided by BPS include all informal sectors including workers in agriculture sector. This paper, however, is focusing on workers in sectors other than the agriculture sector. This will involve work force mapping that will be discussed in other sections of this paper.

In addition to informal economic activities related to the agriculture sector and economic patterns based on culture and local tradition, recently there has been a rapidly developing informal economy that is linked to the modern economy. Although the word informal might indicate small-scale business, the economic contribution of these informal activities is significant. In 2004, the

Central Bureau of Statistics estimated the number of Business Entities categorized as non-legal entities (*Usaha Mikro, Kecil dan Menengah* or Small, Micro and Medium Enterprises) at 17 million business units, employing a total of 30 million informally, with total production valued at Rp. 537 billion.<sup>52</sup>

<sup>51</sup> *Ibid.*

<sup>52</sup> Central Bureau of Statistics, "Beberapa Indikator Penting Sosial-Ekonomi Indonesia," Directorate of Statistical Dissemination, Jakarta, July 2006, p. 16.

The provinces that benefit most from these economic activities are East Java and Central Java. A large number of businesses rely on and substantial profit is made from these informal economic units that draw on workers in the informal economy. The local government of Manado, for instance, makes an income totaling Rp. 175 million per month from the retribution collected by around 5000 sidewalk traders (PKL) in the city, with an assumption that each trader pays Rp. 5,000 per day to the apparatus. This calculation does not include payments for sanitation, market fees, and other retributions totaling Rp. 77, 078, - payable per trader.<sup>53</sup> This provides an indication of the scale of the above economic activities although contributions being paid are beyond a doubt far larger as these figures do not include other unofficial fees traders have to pay.

This phenomenon was triggered by various factors that can be categorized into groups. In the period of 1996-1998, the developing world, in Asia in particular, was facing a tremendous monetary crisis that contributed to a large number of businesses closing down due to extreme difference of currency rate, stagnant production caused by low buying power, and congested credit return in a number of major banks. These difficulties generated massive lay-offs as a result corporate bankruptcies or closure of businesses. Since then, the affected workers have initiated businesses ranging from food stall, repair station, etc., largely through a process of trial and error. Some have tried to survive by being self-employed, or merging their capital with others, for example to initiate family businesses. Others have returned to informal economic businesses. In Semanggi area, Jakarta, Tenda Semanggi is quite well-known. It is a complex of food stalls that provides various delicacies. These stalls are operated professionally as reflected in the choice of interior design and competitive price offers.

A string of national disasters also have had their impact, shutting down businesses in the formal economy and driving workers into Indonesia's informal economic sector. Natural disasters that hit Aceh, Nias, North Sumatra, Yogyakarta and other areas in Indonesia force affected communities to change their manner of living. However, this generally only creates a temporary informal economy because as economic recovery begins, the affected community are able to resume their past livelihoods and informal economic activities, therefore, decreases.

## INFORMALIZATION

One area of interest related to the informal economy is the informalisation of working relations that were previously formal. This informalization relates to economic development in developed countries such as the US and Europe which has promoted new work divisions where production becomes global. The production system, by developing *supply-chain*, no longer focuses on centralized production activities but spreads production to a number of regions or countries based on comparative competency. Hence, economic units become more flexible in dealing with competition.<sup>54</sup> Meanwhile, production parts are outsourced to the third parties.

Such transfer of production is often carried out by a number of illegal business units employing, for instance, immigrant workers. This type of production unit is what we call *sweatshop*. This phenomenon explains employment informalization process. In this context, usually workers do not receive protection of employment status or health care.

The new world's work practices have an impact on Indonesia. Beginning in 1970s, a number of factories were established in different industrial

<sup>53</sup> Fransiska R. Korompis, "Gambaran Pedagang Kaki Lima di Manado", A Post Graduate Thesis, Universitas Sam Ratulangi, Manado, 2005.

<sup>54</sup> James J. Spillane, *Industri Ringan Kaki: Neoliberalisme dan Investasi Global, Neoliberalisme I.*, Cindelas Pustaka Rakyat Cerdas, Yogyakarta, 2003, p. 172.

estates, prepared by the government. The investors, mostly foreigners, tried to win bids offered by major European and American companies such as Adidas, NIKE, and Reebok by taking advantage of the comparative advantage of low-cost manpower in Indonesia. Some argued that those companies shifted their operations due to strict provisions in the constitution and regulations of both Europe and the US.<sup>55</sup>

To top it off, the world's worsening economic situation that caused poverty in developed countries, compelled the global community to become more selective in exercising their spending power, and focus more on economic issues rather than prestige items. The Wal-Mart retail business which has been rebuked for its anti-union policy was able to make major expansion because the consumers in the country of origin no longer care about the anti-sweatshop campaign.<sup>56</sup>

In those days, factories employed workers in a manner that frequently contravened laws and regulations. This included employment of young children, or discriminated against female workers by e.g., giving less compensation compared to their male counterparts. Only after international human rights organizations were focusing on this issue did these factories improve themselves and reduced illegal practices. However, they also transformed their production units into smaller units often undertaken by smaller home industries. The workers of such industries usually work based on contract and receive remuneration based on the size of the order they complete.

Since the enactment of the Law No. 13/2003 on Manpower (further referred to as Manpower Law), factory owners no longer face barriers to transfer their production units. Some parts of the Law encourage informalization of the previous formal employment. Asfinawati, Director of LBH Jakarta, made a note on articles under the Manpower Law that promote informalization.<sup>57</sup>

**Contract.** Contract-based employment was initially provided under the Regulation of the Ministry of Manpower (Permenaker 2/1993). This regulation was then replicated in the Manpower Law, which also means eliminating the opportunity to remove contract-based employment because according to TAP MPR III/MPR/2000 regarding Legal Resource and Constitutional Hierarchy, Ministerial Decrees do not represent constitutional regulations and therefore have no legal authority. There are different provisions on Time-Limited Agreement under the Manpower Law and that under the Decree of the Minister of Manpower (Permenaker) No. 3/1992. Article 56 paragraph 2 of the Manpower Law specifies that "Restricted-term employment as specified in paragraph 1 is based on:

1. given period of time; or
2. completion of a given assignment.

The article creates regulatory dualism relating to contractual restrictions. In other words it creates an opportunity for contracts based on time periods to be negated if quotas for production have not been met. In addition to this legal anomaly, despite the fact that the law provides for *de jure* time

<sup>55</sup> Suziani, *Kasus Nike di Indonesia, Meneropong Kondisi Kerja Buruh Perusahaan Sepatu Olahraga*, Yakoma-PGI, Jakarta 1999, p. 20.

<sup>56</sup> Wal-Mart is a major retailer company that expands at the highest speed in the world. In 1998 its sales hit \$100 million, and in 2004 it grew almost three times as much, i.e. \$276 million. Wal-Mart is also one of the private company that has the largest employees. In 2004 it employed 1.5 million people at 3,361 outlets in the US, 1,363 retail shops, and 1,672 Super Centers. Behind these achievements, Wal-Mart has destroyed employment opportunity and economy in US because most of its items are manufactured abroad. See: Bill Quin. *How Wal Mart is Destroying America (and the world). And What You Can Do about It*, California, United States: Ten Speed Press, 2005.

<sup>57</sup> Asfinawati, "Gejala Formal ke Informal: Mungkinkah di tahan", A paper presented in the *National Consultation on the Commission of Legal Empowerment for the Poor*, Jakarta, 24-25 November 2006.

limitations on contracts, these contracts are unrestricted in practice (*de facto*). Sub-ordinate relations therefore exist between employees and employers limiting the available options for employees.

This contract system makes employment non-permanent, or informal, because there are no provisions for payment of a number of benefits such as social insurance. The most serious consequence is that employees can be terminated at any time and replaced by others without receiving any severance payment. Another key issue is the unstable nature of this kind of employment affects the labor union movements. Contract-based employees tend to be discouraged from associating themselves with labor unions given their vulnerable work relation. Also, if the labor union is company-based, organizing contract-based employees will be hazardous considering the temporary nature of the employment. Losing contract status would mean losing union membership.

**Outsourcing.** The Manpower Law is the first to legalize outsourcing practices. Article 64 of the manpower Law stipulates that:

”Company may hand over part of its function to another company through ... provision of labor service/workers that is made in writing.”

*Outsourcing* creates unclear work relations because workers are employed by one company but perform their duties on behalf of another company. Under the Manpower Law the employing company is referred to as ‘workers service provider’. Such unclear relations affect the observable entitlements of employees. This blurred work relation weakens workers’ bargaining position before the employer. Once problems occur, the employer refuses to take responsibility considering the nature of the employment. Meanwhile, where the outsource provider is required to take responsibility in terms of financial matters, as this is not the producing party it means it generally has limited financial resources

(remember: workers work not for the outsource agent/service provider). As management of the service provider is generally not located in the production area they also have a limited role as authorized parties.

As with the time-based contracts, *outsourcing* weakens labor union movements. There is a tendency these days to organize workers at a company level. When outsourcing occurs this creates indecisiveness. Where both *outsourced* and *non-outsourced* employees are located with a single given company workers are unable to associate in a labor union because their movements will be automatically disrupted.

Outsourced employees also frequently receive different welfare benefits and facilities. This also causes different interest among labor unions in one company, which finally leads to conflicts. The most crucial concern is the uncertain relation among outsourced employees frequently brings in fear to associate in unions, given the weak supervision on manpower practices.

Outsourcing also causes classification of work types into the core and periphery work. See Article 65 paragraph 2 (c) of the Law on Manpower.

“Works that is transferable to the third party as stipulated in paragraph (1) must satisfy the following conditions: are supporting activities of the company’s function as a whole”

Or article 66 paragraph 1

“Workers/labors of the service provider company shall not be employed by the user to perform main activity of function that immediately relates with production process, except for supporting service activities that do not immediately relate to production process.”

The above provisions were made worse by the elucidation of the manpower law as follows:

“Supporting service activity or activity that does not directly relate to production process refers to an activity that has a function other than the company’s core business.”

“Such activities are, among others: cleaning service, catering service for workers, security service, supporting service in mine and oil industries and workers’ transportation service.”

**Sub-contract.** Article 64 of the Manpower Law specifies that companies can transfer part of their work performance to third parties based on contractual agreements. People are usually unaware that this sub-contracting opens an opportunity to cover contract or outsourced labors. Where companies transfer these functions contractually the contracted party shall only perform the contracted work, which is generally non-permanent, changing the status of workers’ to contractors specified time arrangements or outsourced from the third party.

## EMPLOYMENT MAPPING IN INFORMAL ECONOMY

The previous section has described the expanded concept of informal economy to cover new phenomenon that have resulted from the world’s economic development. In such context, informal economy appears to be more complicated compared to when the term was first introduced back in 1970s. In Indonesian context almost all daily activities are inseparable from informal business works yet; we cannot include all types of not formal work as informal.

There are a number specific limitations that prevent inclusion in informal economic activity. *First*, work that is under a formal business unit that is subject to management, legal protection and acknowledgement is in the formal economy and therefore outside of informal economic work.

*Second*, although work may be outside formal economic activity, it cannot be categorized as being in the informal economy if it produces illegal goods or services. This includes street singers, three-in-one jockeys, railway transport middlemen, etc. Their activities cannot be weighed against the work performed by workers in the formal economy because these activities are unregulated. *Third*, domestic activities such as home-care cannot be categorized as informal economic activities. The reason for not including these activities is that the market generally pays a compensation for individual work, whereas in these cases it does not. However, domestic workers like Indonesian Migrant Workers (TKI) deployed for foreign employment under PJTKI management is categorized as informal economy because there is compensation for the work.

We can screen activities that are not categorized as informal using a mapping tool that ILO produced as mentioned above.

Table 4. Employment Status

No	Sector	Number of Manpower (in million)
1.	Agriculture	39.22
2.	Processing industry	2.84
3.	Service provider	10.09
4.	Consultancy	1.93
5.	Others	6.68

Source: ILO as quoted from John Angelini Kenichi Hirose

**Table 5. Informal Economy Employment based on Type of Business and employment Status**

Jobs by Status in Employment									
Production units by types	Self-employed		Employers		Contributing Family Workers	Employee		Members of producers' Cooperative	
	Informal	Formal	Informal	Formal		Informal	Formal	Informal	Formal
Formal Sector Enterprises					1	2			
Informal Sector Enterprises	3		4		5	6	7	8	
Households	9					10			

The black cells represent types of employment that are not compatible with the above definitions. The grey cells refer to types of employment that are not relevant to this discussion. The clear cells are representing informal economic sectors under discussion.

1. Family relations are a social asset that can be empowered into both the formal and informal economy. Workers employing family relations generally have an informal status. Although they can work in formal units such as workers of family-managed restaurants, they generally do not have employment agreements or legal protection. This type of employment can be found in cells 1 and 5.

In some cases such as home industry, young children are the most frequently employed manpower. Using supporting parents as an excuse, these children help their parents work at factories. Take for instance a home industry in Purwakarta where these young children perform hand work for attaching logos and labels of famous brands on produced items. This type of informal

economy is usually located near formal factories. Humanika Group, for instance, reported that a lot of female workers have no security insurance from their employers. In most cases this is due to their contract status. They are employed under a verbal agreement without written documents to verify their employment status at the said industry so their position becomes informal.<sup>58</sup>

Informal workers that are employed in the domestic sector are included in the informal economy because this kind of employment does not result in compensation. Usually, this employment is a manifestation of solidarity or kinship such as in the case where a niece or nephew lives with her/his uncle family and expresses gratitude by helping in domestic work.

<sup>58</sup> Ayuni and Dana Rudiono, *Home Based Workers in Indonesia – A Survey Report*, Committee for Asian Women, Bangkok, 2002.

*Allegation Seven: Home-based Work*

A lot of employees stated that they were required to bring work home and were paid based on the number of goods they completed. Some workers stated that the company pays them between Rp.1,- to Rp.3,- per-completed good. Obviously, this amount is far below the minimum wage for overtime and far below the rate for a normal working hour. Some employees said that there is no record of their home-based work so they were unable to count the overtime. Therefore it is remunerated at far below the overtime rate. Other workers complained that the wage paid on home-based work is usually paid separately from the monthly wage and is not stated in the official salary receipt.

The managers of PT Dada declared that they did not ask the workers to take work home and therefore did not notice any orders given to take work home – if there actually were any. The Standard of Engagement (SOE) team of Adidas and the Head of Local Ministry of Manpower of Purwakarta declared that were not aware of this practice that involved PT Dada. It was unclear whether Adidas or Local Manpower Agency of Purwakarta had initiated any investigation into the case.

Adidas representative said that ordering home-based work tasks is against the company Code of Conduct. The local Manpower Agency stated that the Indonesian manpower law does not provide for home-based work tasks.

Nevertheless, the assigning company should not make it an excuse for not paying the proper normal wage, overtime rate, and maintain records on work hours. If order on these issues is not maintained, companies will continuously avoid compliance with the conditions. These practices are violating the provisions in the WRC Code of Conduct, and other Universality Codes prohibiting arbitrary employment that exploits workers.

2. Cells 2 and 6 represent workers with informal work both in formal and informal business units. Workers under set contract who do not obtain the same remuneration or social security as permanent employees are informal workers. Prior to the implementation of the Manpower Law, these workers worked on ad hoc base such as at the accessories section of garment, textile, footwear or other industries that require temporary workers. However, since the informalization of formal work through the manpower law, jobs that used to be filled by formal employees are now shifting to to a contract basis. The number of non permanent workers filling jobs that used to be reserved for permanent work, such as sewing and cutting is constantly increasing. These workers are employed based on short-term contract (three-, six-, or 12- months) which is generally terminated on completion for a month prior to the employee receiving a new contract.

Construction workers or excavation laborers can also be categorized as informal workers employed in the formal sector. The regulations stipulate that the employers must comply with standard working procedures including registering employees to the social security (Jamsostek) program at the start of contracts. In practice, this does not happen because usually the relationship between formal business units and their employees only extends to the coordinator of the construction workers.

The working condition of those working in the informal economy or employed by informal work units may be of greater concern. Indonesia has no available data that reflects workers' characters under this category. In daily life, however, the category represented by cell 6 can be found in Medium and Small Enterprises that are emerging in Indonesia (e.g. workers of repair station, stores, shopping malls, lower-level supply factories, public transportation drivers, restaurants and other informal employment units).

Source: Investigation report on PT.Dada  
Purwakarta Workers Rights Consortium, 2002

### *Warung Angkring (Itinerant Food Stalls)*

...when critically observed, the population of itinerant food stalls found around Yogyakarta is growing. Today, we can find not only one stall in a single road section, there could be up to 3-5 of them. It indicates that the “density level” in this informal business is getting higher. The number of stalls grows along with the increasing population of DIY, Yogyakarta and Sleman in particular.

The population growth is actually reflected in the increased number of housing estates followed by support facilities such as grocery stores. Increasing motorist population also indicates the growing population density of Yogyakarta and Sleman. Based on BPS data of 2002, there were 705,559 motor vehicles in DIY (11.02 per cent increase compared to that in 2001), comprising mostly motorbikes (84.63 per cent).

In reality, this number may be even higher because there are a lot of vehicles that have not been registered to the Regional Police of DIY, but have been used in DIY territory particularly by students from outside Yogyakarta. More than half of motor vehicles in Yogyakarta were registered in Yogyakarta and Sleman cities.

Considering the development of market opportunity, the population of itinerant food stalls is growing rapidly. The working assumption was that most of the itinerant food stall owners were coming from outside Yogyakarta (Klaten). More recently, it is possible to find food stall owners who are local residents. It shows that this business is promising, or at least generating additional income to the operators particularly when the economic crisis is not over yet.

Source: “*Nilai Ekonomis Modal Sosial Pada Sektor Informal Perkotaan*” Aloysius Gunadi Brata, Atmajaya University Research Institute, (aloy.gb@mail.uajy.ac.id).

Column 10 represents formal workers employed in domestic sector. Usually this type of employment comprises domestic servants, baby sitters, personal chauffeurs, gardeners and some security guards. We can find them in middle-class housing estates that employ a lot of workers to take care of the large houses.

3. Cells 3 and 4 represent workers who, due to their employment character, do not have formal status. In developed countries such as the OECD (Organization for Economic Cooperation and Development) countries, this type of informal employment comprises 12 per cent of the non-agricultural work force and is a main source to the Gross Domestic Product (GDP). Their employment can also be categorized as self-employment under the non-standard work category in the modern states.

Self-employment is regarded as non-standard employment because the work does not result in the payment of a wage so there is no access to salary slips or any allowance. Self-employers depend solely on themselves in term of received salary as well as maintaining the business unit to survive and grow. Nevertheless, self-employment is not uniform when we look at the manpower involved. Self-employment can be classified into two categories. *First* is self employment that acts as employer with a number of employees. *Second* is self employment without employee, relying solely on oneself.

In case of Indonesia, *becak*, motorbike taxi (*ojek*), *bajaj*, and *mikrolet* drivers can be categorized as *own-account workers* given that they own their tools of production. The income generated in these sectors depends significantly on individual efforts as there are no other employees to provide assistance. Workers in this group have to deal as individuals with city regulations such as traffic orders.

Own-account workers profession is subject to partial government policies as well as economic competition with other sectors. A research on *becak* 10 years ago reflected that

becak drivers' income decreased despite increases in average daily income.<sup>59</sup> Meanwhile, own-account workers that are employed in domestic areas, often also generate goods to meet their own needs through farming or stock breeding. They are categorized in cell 9. Consultants are examples of middle-class own-account workers that, despite their informal employment status, could be categorized as both formal and informal economic actors depending on the user of service.

Daily net income of becak drivers drastically increased but the actual income decreased. The survey conducted during 1988-1989 period, for instance, reflects that almost half of the respondents gained Rp. 3000,-/day (equal to 6.2 kg of rice in those days). The 1998 survey revealed that 7.6 % becak driver made a daily income of Rp. 15.000,- (equal to 5.6 kg of rice). Before, only 7.6 % becak drivers' population fell in to this lowest category, but today it increased to 16.7%. The income of *becak* drivers has continuously decreased in the last decade, but it is too early to conclude that becak drivers' profession is no longer profitable. There is a confusing aspect in the research results – the proportion of drivers whose income was in the middle level (equivalent to 4.1-6.4 kg of rice in 1988-89 period, or equal to 3.7 kg of rice in 1998), increased from 20.2 % to 49.8 %.

In 1998, about half of the respondents made a daily income over Rp.10,000,-. The respondents' income remains an issue considering the consistently increasing prices of basic commodities, and the decreasing population of becak drivers. A lot of respondents claimed that having a profession as becak driver generates income. Most becak drivers were persistent that the operation of becak in Jakarta areas should be legalized at least until the economic crisis is over. If not, then a safety program such as provision of Social Security Network (JPS) must be made available. These

becak drivers were concerned with the possible decrease of income along with the growing population of *mikrolet*. The expanding competition between becak and mikrolet caused frustration among becak drivers.

Source: Translated from the: *Socio-economic Changes Among Beca Drivers in Jakarta 1998-1999*, by Yosh Azuma

Another informal economic category comprises employers that informally have a number of informal workers. This type of employment falls in to cell 6.

## GOVERNMENT POLICIES IN INFORMAL SECTOR

The informal sector has become an issue under central government policy, specifically for the Ministry of Manpower and Transmigration. Government policy refers to Article 39 paragraph 3 of the Manpower Law that requires the both Central and Regional Governments accelerate employment opportunities both formally and informally. The government supports the 'decent work' campaign initiated by ILO, particularly in the four priority targets below:

1. Expanded employment opportunity;
2. Fundamental rights at workplace
3. Workers' social security;
4. Social dialogue with social partners (workers, businessmen, and NGOs).

The four priority targets shall be translated into the following policies:

1. **Expanded Employment Opportunity.** The government has confirmed that expansion of employment opportunities shall be encouraged not only in formal but also informal sectors. The strategy to achieve this is by developing a model of productive employment expansion with the provision of sustainable compensation for the unemployed.

<sup>59</sup> Yosh Azuma, "Socio-economic Changes Among Beca Drivers in Jakarta 1998-1999, *Journal Labour and Management in Development*", Vol 1 Number 6, Australian National University, Australia, 2000.

2. **Proper Technology Application.** This program is aimed at expanding and developing local, small or medium scale industries and helping them to become more productive, through the application of appropriate technology. Models that have been currently developed include:
    - Use of appropriate technology using packet system;
    - Group based Use of appropriate technology;
    - Use of Appropriate Technology using cadres system;
    - Use of Appropriate Technology through advocacy.
  
  3. **Labor-Intensive Program.** This program aims at empowering the unemployed and partially-employed workforce to construct or rehabilitate business economic facilities and infrastructure in developing rural economies. Currently developed models include:
    - Employment Module through an Urban Productive Labor Intensive program, such as floating net fish breeding;
    - Employment Expansion Module using a Rural Labor-Intensive program such as road construction or rehabilitation of economic facilities and infrastructure.
  
  4. **Development of a Volunteer Work Force** is a program that aims at increasing voluntary spirit and social concern in support of national development through safety, reform, empowerment and social development initiatives. Currently developed programs include:
    - A module to encourage domestic, professional, and independent voluntary, labor;
    - A module to develop cooperation between volunteer institutions;
    - Development of cooperative network through volunteer development centers;
    - Young work force advancement module.
  
  5. **Development of Self-Employment and Informal Sector.** This program aims at preparing the community to become autonomous, new entrepreneurs based on knowledge and skills in small scale business management. Currently developed modules include:
    - Self-employment module through use of facilitators from local institutions;
    - Employment expansion model through for-profit initiatives;
    - Employment expansion model through *grameen bank* pattern;
    - Advancement model for informal work force.
  
  6. **Government Policy in Providing Social Security for Informal Workforce.** The objective of the Government Sub-sector on the protection of informal workforce is to secure social security and welfare for the informal work force. In order to achieve this ideal a 2006-2009 Strategic Plan has been formulated to include the following:
    - Refinement and drafting of law on social security for the informal workforce;
    - Pilot Project on inclusion of informal employment in Jamsostek;
    - Development of networks on the advancement and administration of social welfare for the informal workforce;
    - Establishment and advancement of workforce groups in informal sector;
    - Development and implementation of human resources development in the informal sector;
    - Developing information system on workers' social security programs in informal sector;
    - Development and implementation of program and monitoring -evaluation methodology for the implementation of social security programs based on the spirit of regional autonomy;
    - Development of network on administration and advancement workers' safety in informal sector.
- Informal workers are beyond reach of insurance regulation and laws that formal workers are regulated by. Therefore, workers in informal sector are more prone to workplace hazards such as accident and illness. Most workers in the informal sector belong to marginalized communities that are

prioritized under protection and social security programs.

Government's commitment to provide social security to informal workers has been translated into Law No. 40/2004 on National Social Security System (UU SJSN) that specifies each citizen has a right to receive social welfare. In order to implement the law, the government is currently preparing the operational procedures that details matters related with program including fees, membership, and benefits for workers in and outside informal sector.

Outside of the above regulations there are, however, some other examples of implementation of social security program for workers in the informal sector, e.g. the Regulation of the Minister of Manpower and Transmigration No. Per-24/MEN/VI/2006 regarding the Operational Principles of Social Security Program for Workers of Informal Sector (TK-LHK) that was stipulated on 1 June 2006.

A workers social security program in the informal sector was to be tested in Semarang on 1 June 2006. Three pilot projects have also been initiated in 2006 in Jambi, Central Java, and West Kalimantan involving 400 workers in the informal sector. Government Regulation (PP) No. 14/1983 stipulates that PT. Jamsostek is the implementing body of social security programs. Jamsostek was targeting inclusion of 20,000 informal workers in the program by the end of 2006. To date, it has achieved 115.44% of the target.<sup>60</sup> However, socialization of the program was not smooth. For example, Jamsostek Bandung was only able to offer two of the four available insurance programs, i.e. Workplace Safety Insurance and Death Insurance. Participation comprises 90 persons of the targeted 100. In fact, according to the Head of Special Program Division of PT Jamsostek Bandung branch, the number of informal workers in Bandung is approximately

39,202. However, the program has been able to reach all of these people due to lack of technical guidelines for the implementation.<sup>61</sup>

## BEST PRACTICES

**D**uring the National Consultation of the Commission on Legal Empowerment for The Poor (CLEP) on 24-25 November 2006, a consensus was achieved among the participants that the success stories concerning informal workers in both national and local level are very limited in number. Below are the success stories that have been summarized from the National Consultation CLEP and discussions held prior to the National Consultation.

### 1. The Story of Domestic Workers Union in Yogyakarta

Domestic workers union in Yogyakarta prepared a draft agreement for domestic workers that aims at building employers' awareness of their rights and obligations. The union is at this stage lobbying local government to make this draft contract a requirement under Regional Regulation (Perda).

### 2. The Story of LBH Jakarta in facilitating Informal workers dispute.

LBH Jakarta facilitated a mediation in a case that involved public transportation owners, KSD (Koperasi Sopir Doyok) cooperative, Transportation Agency of South Jakarta, Bank YB and CV. Sm. Although the deliberation attempted did not generate an agreement, LBH Jakarta roles in the mediation was a success for it managed to improve public transportation drivers' bargaining position before a formal, legal institution.

<sup>60</sup> Sinaga, *op.cit.*

<sup>61</sup> Quoted from "Jamsostek Pekerja Informal Terkendala", an article published in *Pikiran Rakyat*, 7 November 2006.

3. **Trade Union Rights Centre (TURC) for Labors Information Center.**

TURC is a workers organization that focuses on economic, political and legal empowerment for laborers and Indonesian Labor Unions. TURC provides improved access to information for organizations and the laborers themselves. In its work program, TURC also conducts training for labor unions, research, and publication on labor issues.

4. **LBH Bandung struggle for laborers.**

LBH Bandung is one of the more powerful LBH branches in addressing labor-related cases. Some best practices that can be presented here is advocacy on the case affecting PT. Kahatex Sweater (2004-2005) in Majalaya following the partial lay off of its workers. LBH Bandung provided legal assistance by means of 2 strategies i.e.: (1) case campaign – in cooperation with International NGO *Clean Cloth Campaign* (CCC) and *Workers Rights Consortium* (WRC); and (2) organizing workers in order to resolve their problems with the company. It resulted in the re-employment of 450 workers.

5. **LBH Bandung for participation in the struggle for workers policy in Bandung.** In 2006 the regional government drafted a Regional Regulation on Manpower. Upon this, LBH Bandung together with its network conducted a study on the Perda and found out that it overlapped the Manpower Law with some provisions adversely affecting workers. Based on the study results, LBH Bandung took a participatory initiative to oppose the Draft Regulation. It ended up with the postponement of the Perda.

## CONCLUSION AND RECOMMENDATIONS

1. For developing countries such as Indonesia, the informal sector provides an alternative in absorbing high unemployment so its existence should be acknowledged.
2. It is necessary to strengthen the rights of informal laborers. Regardless of where they work or their status, workers have the right to protection and social insurance without discrimination. Therefore, protection of informal workers is required by strengthening workers' basic rights e.g. the right to assemble in association, right to join discussions, right to protection against any kind of discrimination in work relations aspect and the right to employment itself.
3. It is necessary to strengthen social protection in the informal sector. In Indonesia, social insurance is a privilege offered to workers in the formal sector. These companies are still limited in number or are export-oriented companies. It should be an obligation to fulfill all labor requirements. However, as explained above, female workers in textile and garment factories are often discriminated, especially if they are married. In this case, female workers receive no social insurance for family health service (known as JPK or Health Service Insurance). It is assumed that female workers are not main breadwinners; it is also assumed that their spouses are at work and therefore they receive insurance protection from their spouses' workplace. Worse still is when both female worker and her husband are working in industrial homes in which the house that is also their workplace will be fulfilled with hazardous working instruments that may easily harm other family members.
4. The government should be aware that the failure to provide protection for informal workers also threatens the protection to formal workers. When an informal economic enterprise does not protect their workers, it is most likely that become less competitive. Formal businesses reliant on their services will

- also suffer and may gradually transform into informal economic enterprises. Government's effort to provide social insurance to informal workers through UU SJSN has not been effectively implemented to date. Efforts to encourage qualifying participants have not reached the targets hoped for. There are still many enterprises that have not understood the benefits or usage of the program. There has been no education or socialization on the importance of social insurance. Therefore, the government possibly needs to cooperate with other parties such as laborer unions or small entrepreneurs associations to socialize the national social insurance program.
5. Urge the government to modify policies that violate human rights, and to draft new policy based on the prevailing international principles. For example, in migrant worker section, we should urge the government to introduce the principles of International Convention on the Protection of Migrant Workers and Their Family Members (1990) into government policy.
  6. It is necessary to strengthen representation of the informal economy because informal workers generally remain unrepresented as the result of marginalization from the dialogue process. The problems they are facing in the workplace remain unsolved. Therefore, it is important to consider tools and instrument for encouraging representation of informal workers' aspirations. The importance of laborers representation is actually not only for workers' interest alone but also for the interest of those in the formal sector. Workers in formal economic sector will also be threatened if their competitors are able to operate without complying with the conditions set under the Manpower Law.
  7. Indonesian government, in this case the Department of Manpower and Transmigration, needs to clarify and monitor how far small and middle economic enterprises or other informal economic sectors should begin to satisfy the requirements of formal employment. If the government has no indicators, informal economic actors will continue to keep their workers informal and this condition will never improve workers' welfare.
  8. Satisfying mutual need for descent employment. The unemployment problem and an abundant, unabsorbed work force is a major problem in countries such as Indonesia. Making or creating employment would be the solution but it does not justify unfamiliar and unprotected employment. An employment opportunity might be descent if the employment created is productive and satisfies the basic principles on workers protection. On one hand, worker and business actors should have the capacity and flexibility to improve performance. One strategy to achieve this condition is by promoting employability<sup>62</sup>, which is a solution generated from high quality training and education. The training and education will guide skill, knowledge and competence in order to increase employees' capability to secure and maintain their employment and workplace progress, and to adapt with predicted work changes or to enter new work places when they quit the former one.
  9. The Ministry of National Education has a range of vocational schools that were designed to produce graduates capable of working in particular industrial fields. However, until today there has been no research that measures how far the graduates can satisfy industrial standards. Since the beginning, the government has established employment training centers to train potential work force. However, the effectiveness of those training centers is not known.

<sup>62</sup> International Labour Organization, "Conclusions concerning Human Resources Training and Development", *International Labour Conference*, 88th Session, Geneva, 2000

Specific and comprehensive education as well as training is appreciated but it should not trigger workers' persistence to remain in informal economy. Instead, it should encourage them to enter formal economy or to support their work place to become formal. The type of required training is different from one economic sector to another. For instance, it is important to prioritize education and training in agricultural sector because most Indonesian informal work forces are in agriculture sector. The training can guide workers in informal economy to increase their capability in organizing agriculture using modern method; the training can help them to prepare for professional change outside agricultural sector.

# CHAPTER IV

## WORKING GROUP 4

### ENTREPRENEURSHIP: MICRO, SMALL AND MEDIUM BUSINESS SECTORS



When the economic crisis hit Indonesia in 1997, all economic sectors were paralyzed. The condition did not improve until 2002. Daily, the media reported the difficult state that Indonesia was in. When examined closely, grassroots community economic activities proceeded as usual and were hardly affected. The 1997 – 2002 data provided by the BRI Regional Office of Yogyakarta reflects this contradiction. Data on savings at all BRI branches across Yogyakarta during this 6 year-period (1997-2002) showed that the amount of savings and number of people saving were consistently increasing, with averages of 26.3 % and 16.2 % respectively, as reflected in Table 1 below:<sup>63</sup>

Table 1. Account Holder and Saving Value in BRI DIY Province, 1997-2002

Year	Savers (persons)	Change (%)	Saving Value (Rp. Billion)	Change (%)
Dec. 1997	457,496		263.02	
Dec. 1998	554,354	21.2	435.72	65.7
Dec. 1999	630,708	13.8	531.36	22.0
Dec. 2000	668,324	6.0	568.87	7.1
Dec. 2001	887,631	32.8	740.19	30.1
Dec. 2002		7.14	787.76	6.4
<b>Average</b>		<b>16.2</b>		<b>26.3</b>

Source: Kanwil BRI Yogyakarta

According to Mubyarto, the popular economy<sup>64</sup> in Indonesian never seriously suffered from the crisis. After a temporary shock, these small or medium scale business enterprises (UMKM) recovered immediately.<sup>65</sup> UMKM were able to bounce back through self-financing or support from micro finance institutions such as cooperatives, pawnshop services, or other informal micro finance institutions in rural areas. The amount of credit provided by the *Perum Pegadaian*, for instance, increased by 560%, and the number of its clients increased by 368%. Likewise, *Baitul Maal Wat Tamwil* (BMT) *Beringharjo* in Yogyakarta, during a relatively short period (1995-2002), increased their loan turnover from Rp.50.9 million to Rp.5.2

billion while their borrowers increased from 393 to 1,333 persons. Also, *Koperasi Bina Masyarakat Mandiri*, which was established in Jakarta in October 1998, has assisted over 24,873 poor people throughout Indonesia with loans totaling more than Rp.39 billion, a significant increase

<sup>63</sup> See Mubyarto, “Mengembangkan Ekonomi Rakyat sebagai Landasan Ekonomi Pancasila,” *Popular Economic Journal*, Edition Th. II No. 8. November 2003. [http://www.ekonomirakyat.org/edisi\\_20/artikel\\_3.htm](http://www.ekonomirakyat.org/edisi_20/artikel_3.htm), accessed on 16 October 2006.

<sup>64</sup> The popular economy refers to the daily informal economic activities of communities. See discussion below Section on “Characteristics of the Popular Economy.”

<sup>65</sup> The term UMKM is a translation of SMEs (Small and Medium Enterprises). According to Mubyarto, it is incorrect to use the term UMKM to refer to popular economic activities because the term does not represent popular economic activities such as those undertaken by shoe polishers, newspaper delivery men, barbers, mechanics, garbage collectors, sidewalk and petty traders, etc. For the interest of this study, however, the small enterprise concept will be more applicable (and has more or less the same meaning) and will include such popular economic activities.

from the Rp.440 million for 917 people they provided in 1999.<sup>66</sup>

It appears that in a crisis situation, the small enterprises managed to survive better than most large scale enterprises. This is one of the reasons it is important to study this sector. Moreover, equitable economic distribution – a priority within development policy – is easier to achieve through the growth of small enterprises given their labor-intensive nature.<sup>67</sup> According to the ISBRC (Indonesian Small Business Research Center) and PUPUK (Association on Small Enterprise Development), from 1997-2001 small enterprises were able to absorb 87-88% of the population workforce, much higher than the 10-11% absorption rate of medium enterprises, or the 0.5%-0.6% of large scale enterprises.<sup>68</sup>

Small and medium enterprises contribute significantly to economic growth in Indonesia. In 2003, the Indonesia economy grew about 4.1%. Amazingly, 2.4 % was provided by small and medium enterprises. Therefore, it seems UMKM are the very back bone of the Indonesian economy, and developing UMKM may be integral to the development of Indonesia as a whole.<sup>69</sup>

**Table 2. Number of Small, Medium and Large Scale Enterprises**

Business Scale	Year 2004 (Unit)	Year 2005 (Unit)
Small	43,641,094	44,621,823
Medium	66,318	67,765
Large	4,068	4,171
Total	43,711,480	44,693,759

Source: State Ministry of Small and Medium Enterprise and Cooperative, 2006.

<sup>66</sup> Mubyarto, *Ibid*.

<sup>67</sup> See Widyaningrum, *et.al.*, *Pola-pola Eksploitasi terhadap Usaha Kecil*, Yayasan Akatiga, Bandung, 2003, p. 1.

<sup>68</sup> Indonesian Small Business Research Center and PUPUK, *Usaha Kecil Indonesia: Tinjauan Tahun 2002 dan Prospek Tahun 2003*, ISBRC and Pupuk, Jakarta, 2003, p. 29.

<sup>69</sup> See Aburizal Bakri, “Membangun UKM, Membangun Ekonomi Indonesia,” in *Winning People’s Hearts Through Nationalism, Democracy and Economic Development: Aburizal Bakri’s Conceptual Contribution*, PT Primamedia Pustaka, Jakarta, 2004, p. 161.

<sup>70</sup> For further explanation see TAP MPR No. 16/MPR/1998 regarding Political Economic in View of Economic Democracy.

**Table 3. Amount of Manpower Absorbed by Small, Medium and Large Scale Enterprises**

Business Scale	Year 2004 (people)	Year 2005 (people)
Small	69,166,801	71,187,153
Medium	6,323,722	6,491,345
Large	2,646,775	2,590,275
Total	78,137,298	80,268,773

Source: State Ministry of Small and Medium Enterprise and Cooperative, 2006.

In theory, the Indonesian Constitution addresses how small and medium enterprises should be treated. Article 33 of the 1945 Constitution refers to the articles that expound on such economic matters. The article on ‘Social Welfare’ in the Constitution declares that development means that social welfare is an inseparable element of the aspirations of independence. There is also a political commitment in the Constitution that is expressed in TAP MPR No. 16/MPR/1998 regarding Political Economy in View of Economic Democracy, which is commonly referred to as “popular economy”. A number of key ideas confirmed in the TAP MPR are:<sup>70</sup>

- Avoidance of an accumulation of assets and economic power in any particular group or company that does not comply with the principles of justice and even distribution. (Article 3);
- Fair treatment of small economic entrepreneurs, including encouragement and assistance developing their business and

- economic interests, particularly in relation to the utilization of natural resources. (Article 4);
- Cooperatives, as well as small and medium business enterprises are the main pillars of the national economy and must be given opportunity and support—without disregarding the roles of larger enterprises such as BUMN—because they are the forms of business which provide the greatest benefit to the people. (Article 5);
  - Banks and financial institution shall be fair and generous to cooperatives, as well as small and medium enterprises. (Article 7).

These normative provisions of the Constitution, as well as the political commitments they represent, must be embraced in order to increase entrepreneurship within the society and overcome many of the problems faced by UMKM. Small and medium enterprises have helped the government create employment opportunities, Their ability to create self-employment is a precious asset which has helped decrease the unemployment rate. Moreover, the number of UMKM is expected to increase providing even greater employment and absorbing more manpower. Hence, empowering small and medium enterprises falls squarely under a poverty reduction program. However, such empowerment is not an easy task and there are a lot of obstacles.

### BARRIERS TO STRENGTHENING MICRO, SMALL AND MEDIUM SCALE ENTERPRISES (UMKM)

In an effort to empower UMKM, in order to reduce poverty, the Commission on Legal Empowerment of the Poor (CLEP) has consulted with a number of parties to identify the barriers that UMKM are facing in Indonesia and discuss and how to address them. During the National Consultation of CLEP held on 24-25 November 2006, and the discussions held on 21 December 2006, various obstacles impeding the development

of UMKM in Indonesia were identified. These obstacles can be separated into two categories: internal and external.

#### 1. Internal Obstacles :

- a. **Access to Bank Capital.** Credit issue for small businesses can be put into four categories:<sup>71</sup> *First*, from the perspective of a bank making an offer to provide credit facilities, there is a likelihood that a bank will not have funding schemes designed to fit the needs of small businesses. Funding schemes that banks develop are mostly oriented to large scale business.

The BPS (Central Bureau of Statistics) data from 2000 noted that only 246,700 (0.6%) businesses were legal entities, the other 39.3 million (99.4%) businesses were not legal entities. If being a legal entity is a prerequisite to obtaining a bank loan, than less than 1% of existing business have the potential to borrow from a bank. Looked at another way, 99% of Indonesian enterprises (mostly micro, small and medium scale businesses) are unable to access bank credit. This is unfortunate and unnecessary especially considering that an overwhelming number of large scale businesses fail to pay back their bank loans.<sup>72</sup>

A study on the effectiveness of KURK (Small Enterprise Credit Program) in East Java (1991) confirms the above phenomenon. Although the credit scheme was targeted to the poor, some of the officers in charge of making loans were reluctant to provide their services to poor people. They thought that helping the poor get credit would be administratively complicated, inefficient, and not worth the potential profit. They also believed that poor people would be unable to repay their

<sup>71</sup> See Erna Ermawati Chotim and Juni Thamrin, *ibid.*

<sup>72</sup> Setyo Budiantoro, *Robohnya Ilmu Ekonomi Ortodoks. op.cit.*

debts. As a result, they prioritized more economically established clients over poor clients whose entrepreneurial capabilities were unknown.<sup>73</sup>

*Second*, from the perspective of demand, the small business community is in need of credit. There has been a tendency to create generalized loan policies which treat small businesses as if they are homogenous. However, there is a need for policies based on an in-depth understanding of the variations between small businesses and how their demand for credit arises.

To produce credit policies suited to the small business community, the government needs to understand the anatomy of small businesses better. There are a wide variety of small businesses providing an array of good and services in disparate environments. Such heterogeneity makes a comprehensive national policy for the empowerment of small business an enormous challenge.<sup>74</sup>

*Third*, from the perspective of fundraising, small businesses have tended to ignore alternatives to formal fundraising that could enable wider access to bank capital. Small businesses have a tendency to rely on formal credit loans. Yet, there are a lot of alternative credit options for small businesses. *Arisan*<sup>75</sup> for instance, provides a model for small business funding, or group credit loans which are quite flexible and informal. Unfortunately, many small business entrepreneurs have failed to take advantage of this alternative. Small businesses could also develop a variety of informal funding models to fit their respective business situations. A

combination between lottery systems, like the one practiced in *Arisan*, with bank support to strengthen the money cycle, would be an alternative option banks could consider.

*Fourth*, from a macro policy perspective, there is a need to encourage deregulation that both directly and indirectly promotes small business growth. High level decision-makers have a tendency to make small business a target or object of a program rather than the subject of the program, thereby not including them as partners in the program. Hence, small businesses' varied aspirations and conditions are not accommodated for under credit schemes. On the other hand, credit policy packages tend to have an intensive political agenda, and a credit scheme may include additional incentives and disincentives that are irrelevant to the stated objectives of the scheme.

In addition to these four issues, women who run micro and small businesses often face problems accessing capital. While there are a wide range of general conditions that mold UMKM and bank relations, there is one condition in particular that prevents women who run macro and small businesses from getting a capital loan from the bank: the requirement of spousal consent or guarantee. This prerequisite is unnecessary and irrelevant as it has no bearing on the ability to pay back the loan. The available data reflects that there are at least 64 networks of women running micro and small businesses, spread across 64 districts throughout the Indonesian archipelago, with a total of 75,000 members.<sup>76</sup>

<sup>73</sup> See Daru Priyambodo and Bagong Suyanto, "Pemanfaatan dan Pelayanan Kredit Usaha Rakyat Kecil: Penelitian di Tiga Kecamatan Propinsi Jawa Timur," in *Prisma*, Ed. No. 11 Year XX, November, 1991, pp. 42-43.

<sup>74</sup> Faisal Basri, "Restrukturisasi UKM: Antara Mitos dan Rasa Keadilan" in *Analisis Ekonomi Faisal Basri: Kita Harus Berubah!*, Kompas Book Publishing, Jakarta, 2005, p. 8.

<sup>75</sup> A traditional form of savings pool, where members contribute regularly and take turns using larger sums.

- b. **Standardization of the Quality of UMKM Goods and Services.** UMKM also face problems related to business development regarding their ability to improve the quality of the goods and services they provide. For businesses producing goods, quality relates to the attributes of their products while for service businesses, quality relates to the value attached to the service rendered.

Consumers' desires for goods and services are usually driven by the need for comfort, or a particular taste. A consumer is not just paying for the chair he is paying for the comfort of sitting in the chair, he is not just paying for the food in a restaurant, but for the comfort the restaurant is offering. Hence, quality has a specific value which attaches to a product or service. An inability to create this quality-value can impede a small businesses ability to compete.

One of the factors that contribute to this inability to provide quality-value is the management's confusion over whether to focus on quantity or quality. This is usually caused by lack of strategic thinking and confidence. In general focus on operational matters should be followed by strategic thinking on how to develop products or services based on core competencies and consumer desires. Psychological barriers, like fears of venturing into new ideas or trying to attract new customers, have to be addressed; otherwise they will affect UMKM competitiveness.

Another area of concern is the ability of UMKM to sustain their existing level of quality. Consistent quality is the key to winning contracts with large scale

businesses. This consistency requires three "probers": proper quality (not damaged); proper quantity (not lacking) and proper timing (not delayed). When a large scale company contracts with a UMKM, these three conditions are generally the most vulnerable to complaints. In brief, the ability to maintain a consistent, standardized product remains a challenge for UMKM.

- c. **Marketing.** In the end, the capability to open a new market while sustaining the existing one is essential. One of UMKM's main difficulties is their lack of promotion due to an inability to access modern promotional media, such as radio or television. Promotion efforts frequently generate problems for UMKM because they are too concerned with exhibition needs, such as promotion space and promotion tools. In many cases the significant costs outweigh perspective benefits.

UMKM's inability to open new markets while sustaining old ones are the result of a particular uniqueness of UMKM: Consumers frequently are not able to distinguish one company's goods or services from another. An issue that results from the quality-value of the goods and services.

## 2. External Obstacles

- a. **Approach based on "Giving" rather than "Empowering".** Up to now, policies for dealing with UMKM have been focused more on "giving" rather than "empowering". This is a result of the belief that UMKM are generally powerless. This perception has been used as the basis for why institutions need to provide outside help to UMKM. Yet, this results in programs

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<sup>76</sup> Yuni Pristiwati, "Strategi dan Kekuatan Rakyat untuk bertahan Hidup (pengalaman sukses para perempuan usaha kecil-mikro)", A paper presented in the National Consultation of the Commission on Legal Empowerment for the Poor, Jakarta, 24-25 November 2006.

that are implemented without consideration for the characteristics or capacities of the UMKM,, resulting in conflict and agitation, as UMKM are not included as partners in these programs.

- b. **Poor Coordination between Government Agencies.** There are currently several departments and government institutions that have UMKM advancement programs, including: the Ministry of Industrial Affairs, the Ministry of Trade, and the State Ministry of Cooperative and Small and Medium Enterprise. Moreover, other financial institutions, like banks and state-owned companies (BUMN), also have UMKM advancement programs. In many cases a UMKM has to send its staff to training programs in three places at once. They must also keep track of and fulfill a wide range of conditions in order to get assistance from these various institutions. It might seem trivial, but when we consider that UMKM already lack the time and resources of larger companies the problem becomes clear. Having two or three staff members attending a training, convention, or similar activity all at the same time strongly affects the ability of the UMKM to do business. The knowledge these trainings convey may be important, but the training methodology should put a greater emphasis on advocacy by using trainers that have the necessary knowledge and expertise specifically related to the needs of UMKM.
- c. **Unfair Competition.** Although theoretically, small enterprises are assured equal treatment, in practice small enterprise activities are frequently

impaired by industrial policies which provide benefits to large scale companies in the form of investment protections, loans, and taxes. A study by Bruch and Hiemenz shows that ASEAN countries provide very little protection to small scale businesses.<sup>77</sup> Likewise, a study by Saleh reveals that in ASEAN countries, sales tax promotes vertical integration in production processes, providing an unseen benefit to larger scale enterprises.<sup>78</sup> Moreover, small businesses are frequently disadvantaged by economic policies that aggressively invite the in-flow of foreign capital.<sup>79</sup>

Other seemingly innocent policies put UMKM at a comparative disadvantage, by providing preferential treatment to larger companies that can contribute significant income to the government. The clearest example is the arbitrary treatment of traditional traders who are prone to forced eviction from their place of business. By contrast companies that can rent modern stores can gain consistent access to a strategic location.

The sheer volume of UMKM also creates a negative impact on each UMKM's bargaining leverage. This provides larger enterprises with an advantage because they can easily terminate their contract and find an alternate supplier or purchaser when they are unhappy with their UMKM partner.

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<sup>77</sup> Mathias Bruch and Ulrich Hiemenz, *Small and Medium-Scale Industries in the ASEAN Countries: Agents or Victims of Economic Development?*, Westview Press, Boulder and London, 1984, pp. 58-59.

<sup>78</sup> Irsan Azhary Saleh, *Industri Kecil: Sebuah Tinjauan Perbandingan*, LP3ES, Jakarta, 1991, p. 6.

<sup>79</sup> Hendrawan Supratikno, et.al. "Pengembangan Industri Kecil di Indonesia: Pelajaran Analisa Dampak dari Jawa Tengah," Article Published on *Prisma Magazine Ed 9/ XXIII*, September 1994, p. 28.

## CHARACTERISTICS OF THE POPULAR ECONOMY

Data provided by BPS places Indonesian economic entrepreneurs into two groups: 1) large enterprise and conglomerates; 2) small and medium enterprises and cooperatives.

Small enterprises make up the majority of the second classification. According to data provided by the Ministry of Cooperative and Small and Medium Enterprise, in 2004, there were 43.7 million UMKM and most of them, 43.6 million, were small enterprises. In the same year, this sector employed 69 million persons.<sup>80</sup>

Popular economic activities have been classified into the following groups:<sup>81</sup>

- Primary and secondary activities: agriculture, plantation farming, animal husbandry, fish farming (all on a subsistence or limited scale), making small handicrafts, tailoring, producing home-made snacks, and the like;
- Tertiary activities: transportation (of different kinds), renting and leasing of housing, land, or production tools;
- Distribution activities: market traders, groceries traders, sidewalk traders, supplier and agents, and the like;
- Other service activities: street singers, shoe polishers, barbers, mechanics, garbage men, street photographers, etc.

The popular economy refers to a wide variety of economic activities and thus its characteristics vary depending on the type of activity. Nevertheless, as noted by Bambang Irawan, all activities within the popular economy have the following basic characteristics:<sup>82</sup>

**Informality.** The majority of popular economy entrepreneurs work outside the legal and regulatory framework. The lack of regulations, the weakness of existing regulation, or the government's inability to maximize the effectiveness of what regulations it has, frequently harms small business entrepreneurs. According to Hernando de Soto, the informality of the popular economy means that assets in the popular economy cannot be used for capitalization or economic transactions. Informality also impedes popular economy entrepreneurs from accessing formal financial institution, forcing them to seek informal loans with high interest.

**Mobility.** Informality also results in the adaptability of the ongoing activity. Government policies can dramatically affect the sustainability of a given activity in the popular economy. The popular economy is a relatively easy-come-easy-go sector. If a given activity brings in ample gains, many other entrepreneurs will attempt to capture a share of the gains. Conversely, once the sustainability of a given activity is challenged many entrepreneurs will immediately leave it and move to another business. This adaptation is not as prevalent with primary economic activities like agriculture where the doer seldom leaves his routine. Instead, such small businessmen usually diversify with off-the-farm economic activities.

**A range of activities carried out by one family.** In general, family members are involved in more than one popular economy activity. This diversification is a way of dealing with insecurity and unpredictability within the popular economy, so that entrepreneurs have alternatives to replace any activity that must be ceased. When nothing happens, however, the accumulation of profits from a variety of these economic activities are still needed to fulfill their basic needs.

<sup>80</sup> Ministry of Cooperative and Small and Medium Enterprises, 2006. <http://www.depkop.go.id>; accessed on 30 October 2006.

<sup>81</sup> Quoted from Bambang Ismawan, "Ekonomi Rakyat: Sebuah Pengantar," Article published in Popular Economy Journal Th. I No. 1, Mach 2002. [http://www.ekonomirakyat.org/edisi\\_1/artikel\\_6.htm](http://www.ekonomirakyat.org/edisi_1/artikel_6.htm), accessed on 16 October 2006.

<sup>82</sup> Quoted from Bambang Ismawan, *Ibid.*

**Independence.** There is a misperception that because of the nature of the popular economy, institutions, either intentionally or not, limit their interaction with this sector. The government only works with the popular economy on projects that fall under poverty reduction programs, or UMKM empowerment. Meanwhile, financial institutions using a range of internal regulations also limit their connection with the popular economy sector. In general, the popular economy sector is still perceived as being “financially unfeasible” (*unbankable*) and high risk. This assumption and its resultant outcomes certainly need to be critically evaluated, especially considering experiences with large companies and conglomerates during the 1997 economic crisis.

**Relationship with the formal sector.** Although the popular economy is informal, it has a close relationship with the formal sector. This relationship is sometimes referred to as “the dark side of the formal sector.” It is denied most of the time because it means that formal sector is working with illegal entities. However, the informal popular economy often supports the formal sector. Examples of this relationship include: a publishing company that works with newspaper delivery man, a food stall that provides meals for business workers, a small retailer who is hired to distribute products in rural areas, etc.

In addition to the characteristics mentioned above, popular economy and small businesses generally have a flat organizational structure. The organization is usually slim with loose work distribution, and a compressed hierarchy. Only a small number are formalized, very few undertake planning processes, and hardly any provide staff training. Another characteristic of popular

economy businesses is that they are often unable to keep the necessary financial distinctions between personal assets and corporate assets, and, as a result, are unable to maintain a good accounting system, if any.<sup>83</sup> One important result of these accounting problems is that small enterprises are generally unable to obtain financial resources from the capital markets because in order to get support in the capital markets, a company has to use a standard accounting system and comply with conditions of financial transparency.

## GOVERNMENT'S ROLES

The Indonesian government has made efforts to address the issues that small and medium enterprises are facing. Laws have been passed to aid the development of small and medium enterprises. There are eight major legal regulations on small and medium enterprises, namely: (1) Law No. 25/1992 regarding Cooperatives; (2) Law No 9/1995 regarding Small Enterprises; (3) Law No. 32/2004 regarding Regional Government; (4) Regional Regulation No. 44/1997 regarding Partnerships; (5) Government Regulation No. 32 regarding Small Enterprise Advancement and Development; (6) Presidential Decree No. 187M/2004, dated 20 October 2004 regarding the Establishment of New Cabinet *Indonesia Bersatu*; (7) Presidential Regulation No. 7/2005 regarding a Medium Term Development Plan (RPJM) Period 2005-2009; (8) Presidential Regulation No. 62/2005 regarding an Amendment to Presidential Regulation No. 9/2005, dated 31 January 2005 regarding Position, Task, Function, Structure of Ministerial Organization and Management of the Republic of Indonesia.<sup>84</sup>

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<sup>83</sup> Henry Mintzberg, *Strategic Management*, Prentice Hall, New York, 1992. See also the similar characteristics of small enterprises put forward by Musselman and Hughes. *Introduction to Modern Business*. New York, McGraw Hill Inc., 1992.

<sup>84</sup> State Ministry of Cooperative, Small and Medium Enterprise. “*Bahan Forum Konsultasi Nasional Komisi Pemberdayaan Hukum Masyarakat Miskin* (Commission on Legal Empowerment of the Poor)”, A paper presented in the National of the Commission on Legal Empowerment for the Poor, Jakarta, 24-25 November 2006.

Law No. 9/1995 in particular, provides the government with the authority to develop a climate more suitable to small enterprise through the enactment of regulations or policies on: funding, competition, provision of infrastructure, information, partnerships, business permits and protection. Meanwhile, in view of these efforts to help small enterprise, the government, together with the business community and the public, has provided funding options for small businesses. These options are generated from bank credit loans, non-bank financial institution loans, venture capital, loans from saving of partial interests made by state-owned companies (BUMN), grants, and other types of funding. Some of the available models of funding or financial service provided by the private sector, government or other institutions will be presented in the following section.

There have been several agreements made between government institutions concerning small and medium enterprises development. Two of the most important are: (1) The Memorandum of Understanding between the Coordinating Minister of Social Welfare as the Head of Poverty Reduction Committee (KPK) and Governor of Bank Indonesia (BI) No. 11/KEP/MENKO/KESRA/IV/2002 and No. 4/2/KEP.GBI/2002 regarding Poverty Reduction through the Empowerment of Micro, Small and Medium Enterprises (UMKM). UMKM empowerment, particularly to micro enterprises, shall be in the form of expanding employment opportunities, building business capacity, and empowering entrepreneurship in poor communities. (2) The Memorandum of Understanding between the Secretary of the Poverty Reduction Committee and the Deputy Governor of Bank Indonesia No. 001/MOU-KPK/II/03 and No. 5/1/DpG/DPBPR regarding the establishment of a Task Unit on the Empowerment Financial Consultants/Facilitators in Bank Partners for Micro, Small and Medium Enterprises (KKMB). KKMB acts as the facilitator between UMKM and any bank that is expected to accelerate credit disbursement to UMKM compliant with the bank credit business plan.

With regard to access to capital, the Indonesian President launched a new scheme called KUM-LTA (Proper Micro Enterprise Credit Scheme without Additional Collateral) on 7 June 2004 in Jakarta. This is a program partially supported by PKBL (Environment and Partnership Program) of the state-owned company, BUMN, as an assurance to micro enterprise credit loans.

The goals of KUM-LTA are: (i) to accelerate poverty reduction programs through micro enterprise empowerment; (ii) to accelerate micro enterprise empowerment efforts through post-program credit provisions for micro enterprise or community groups (*Pokmas*); (iii) to increase maximum utilization of the Environmental Development and Partnership Program (PKBL) by BUMN through a credit assurance funding scheme for micro enterprise; (iv) to accelerate the realization of credit launching from bank business plans to micro, small and medium enterprises, particularly to micro enterprises; (v) to promote the growth and development of popular productive economic initiatives with the goal of expanding employment opportunities and reducing the unemployment rate; (vi) to promote professional and sustainable partnerships among business actors in the productive sectors and the financial service industries.

The beneficiaries of the KUM-LTA scheme are productive poor communities that either have micro enterprises linked to village groups in poverty reduction programs or other micro enterprises that are feasible or bankable. The scheme is implemented throughout Indonesia, both in urban and rural areas, based on a network of the implementing financial institutions connected with the program. The scheme is implemented using a community empowerment approach for developing the capacity of productive poor communities (*community development*). Under this community development approach the goals of the scheme are achieved using a combination of facilitation, technical assistance, and business credit provided without collateral (a *financial intervention*).

With the aim of improving the quality of goods and services produced by micro, small and medium enterprise businesses, the Ministry of Industrial Affairs holds annual Quality Control Conventions both at regional and national levels. These conventions aim to encourage micro, small and medium enterprise businesses to continuously undertake quality improvement. Participants at the conventions are members of the UMKM community, including: automotive components manufacturers, photo frame producers, and coffee millers. The Minister of Industrial Affairs has also issued Decree No.34/MPP/SK/2/1996 regarding Guidelines for Quality Management System Audits for Small Industry, which discusses the implementation of quality management systems in small industries and refers to ISO 9000.

## EFFORTS TO IMPROVE ACCESS FOR SMALL ENTERPRISES

There are three approaches that the government is using to help develop small businesses:<sup>85</sup> *First*, the government is using a non-policy approach. This approach is optimal for small industries conducting marginal activities because government intervention usually generates high bureaucratic costs for such industries. An important proponent of this non-policy approach is Hernando de Soto. In his book *The Other Path*<sup>86</sup>. De Soto argued that government intervention frequently creates distortions that restrict growth and can potentially even destroy the informal sector and small businesses. *Second*, the government has issued protections for small industries. These protections are usually in the form of barring larger companies from producing particular products, barring the importation of substitution goods, and placing controls on the dissemination of technology innovation which may cause disturbances in small industries. This approach has been criticized because it is considered disadvantageous to consumers. *Third*,

the government has embraced a stimulation approach. This approach usually focuses on supply side issues, in the form of the provision of credit, raw materials, tools, and courses. However, this approach is dangerous because it can effectively hurt those businesses that do not benefit from these programs.

Until recently, conventional growth-oriented development practices have been unable to remove dualism, and have, in fact, often strengthen it. The uneven distribution of income and welfare is becoming more obvious in economic development. Therefore, only by designing development programs that are able to improve the Poor's welfare can we improve social welfare. Economic justice is the foundation of economic relations based on ethical principles, while social justice is the result of compliance with the principles of economic justice.

## INSTITUTIONAL AND LEGAL REFORM

Efforts to improve small enterprises' access to services should include institutional and legal reform, which support a pro-poor business climate.

*In the legal sector*, the government needs to take the necessary steps to improve the regulatory framework in order to secure entrepreneurs' access to resources, technology, market and funding resources. According to the results of the focus group discussion on the drafting of the CLEP paperwork that was held by YLBHI – UNDP on 4 November 2006, there are a number of legal avenues that need to be followed up on in order to strengthen the position of micro and small enterprise entrepreneurs, namely:

- There needs to be a recognition that the informal character of small business is a key strength of the popular economy. The State should both acknowledge and protect this

<sup>85</sup> Quoted from Hendrawan Supratikno, et.al., “*Pengembangan Industri Kecil di Indonesia: Pelajaran Analisa Dampak dari Jawa Tengah*,” article Publisher in *Prisma*, Ed. No. 9/ XXIII September 1994, p. 28.

<sup>86</sup> New York, Perennial Library, 1989.

informality. It should also protect small businesses to enable them to develop based on their particular characteristics.

- The government needs to implement a range of regulations to help protect and fulfill the rights of micro and small enterprises. These rights include: access to credit, a stable place of business, and legal certainty and security. The government must also recognize women as independent business entrepreneurs, regardless of their marital status. Within this context, the government needs to review policies that are not in line with this commitment to support the growth of micro and small enterprises such as the Marriage Law, the Law on Small and Medium Enterprises and the Investment Law, as well as regional regulations that exploit micro and small enterprises.
- The government should support tax reforms which incentive economic investment in micro, small and medium enterprises by large scale enterprises. The data suggests that, in addition to a number of government and civil society initiatives, several large scale enterprises have expressed interest in making social investments by supporting the small business community, especially in related industries. Providing tax incentives will both encourage such investments and make them more sustainable.
- The State must implement and enforce the policies to support popular economy development, which are already in place. Regulations such as Law No. 9/1995 (Small Enterprise Law), include policies to strengthen the small business climate (Article 7), facilitate and secure the small business sector (Article 21), and protect places of business (Article 13). These regulations have to be consistently promoted, implemented, and enforced. Micro and small scale enterprises should not only be

accommodated in the text of the Law, these laws must also be implemented and enforced.

In terms of institutions, a mediating organization is needed to help empower members of the poor community and prevent economic marginalization. Models of such a mediating institutions exist, and include the *arisan* model (RT, marker traders, *dasa wisma*, etc.), credit unions, the Plasma system (People's Core Plantation), the People's Self-Support Community (KSM). Once such an institution is established it would need to be refined in order to fulfill the specific needs of the small business community.

Small business opportunities need to be based on regional demands and competencies and as a result there will need to be a certain amount of Regional Autonomy (Law No. 32/2004) to deal with the diversity of local small business units. In this context, regional governments will have to generate many of their own regulations to create a climate supportive of the small businesses in their area.

The banking industry, as an intermediary financial institution that has been developing rapidly by taking advantage of deregulation policies, needs to start developing micro finance programs to help empower the popular economy. Such banking practices, when possible, should be based on indigenous, communal financial traditions long applied in poor communities.

In relation to *distribution policy*, organized crime within the chain of distribution causes exploitation of and inefficiencies in small business and needs to be seriously addressed. This not only requires an improved ability to seek legal recourse but also greater assurances that government institutions will be proactive in preventing such crime by enforcing the law. In addition, there should be an

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<sup>87</sup> Fredrik Benu, "Ekonomi Kerakyatan dan Pemberdayaan Ekonomi Rakyat: Suatu Kajian Konseptual," Article publisher in *Jurnal Ekonomi Rakyat* Ed. Th. I No. 10, December 2002. ([http://www.ekonomirakyat.org/edisi\\_10/rtikel\\_3.htm](http://www.ekonomirakyat.org/edisi_10/rtikel_3.htm), 16 October 2006).

effort to create an alternative marketing chain that would prove more profitable for small businesses.

It is necessary to emphasize that the popular economy cannot be developed by mere political commitments to change the pro-capital-owner and pro-conglomerate tendencies of the New Order economic system. Development can only be achieved by focusing on poor people as the core of an operational program that promotes productive economic activities at the grassroots level, and builds an entrepreneurial spirit.<sup>87</sup> The government must also ensure fair market mechanisms to encourage the development of the popular economy.

Regarding *financial services*, the government has to create a policy concerning collateral requirements, which is one of the greatest obstacles for small enterprises to obtain a loan. The government should produce regulations that enable and create incentives for banks to provide credit loans to economically challenged communities. To help overcome bank perceptions that credit loans for the poor are insecure, the government should establish a joint venture, with capital supplied by both the government and large scale enterprises, which could serve as assurances for the credit provided by the bank. In addition, to help improve the financial performance of credit beneficiaries and minimize potential repayment problems, banks should increase their supervision, and guidance to KUK (Small Business Credit Loan) beneficiaries.<sup>88</sup>

Small business observers as well as regional and international institutions such as the ADB, have recommended that small enterprise promotion programs be demand-driven and generated from

the real needs of small business. These promotion programs must also be market-driven, meaning both demand and supply should be determined by the market, not *government* regulation.<sup>89</sup> The government should merely set the regulations that enable business transactions to proceed as desired.

Today, the sharia banking system, a system which could help promote popular economy empowerment, is expanding. This system is not only based on financial interests, i.e. selling products and services, it also has an ethical element which promotes working with clients to improve their welfare or their financial situation.<sup>90</sup> This makes the sharia banking system particularly suited to help popular economy entrepreneurs. It would, therefore, be beneficial to formulate effective partnerships with sharia banks.

#### BEST PRACTICES – NON GOVERNMENTAL ORGANIZATIONS FOR COMMUNITY DEVELOPMENT

Community-based economic development requires the participation of the people. NGOs have been aware of this so many of their members have made a commitment to working in economic development for small enterprises.

Most NGOs focus their economic programs on credit services of savings and loans. A number of NGOs have also introduced other types of businesses such as trading (communal trade), communal animal husbandry, agriculture, and event transportation (transportation cooperatives).

Below are a number of NGO program initiatives attempting to in develop popular economies:

<sup>88</sup> See Subiakto Tjakrawerdaja, "Profil Sektor Usaha Kecil di Indonesia dan Upaya Optimalisasi Penyaluran Kredit Usaha Kecil," in Mohamad Ikhsan, 1994. *op.cit.* p. 39.

<sup>89</sup> See The Kian Wee, in Widyaningrum, 2003. *op.cit.* p. v.

<sup>90</sup> Mubyarto, *Ekonomi Rakyat, Perbankan Etik, dan Krisis Moneter 1997/1998*, Article published in *Jurnal Ekonomi Rakyat* Ed. Th. I No. 1, March 2002. [http://www.ekonomirakyat.org/edisi\\_1/artikel\\_3.htm](http://www.ekonomirakyat.org/edisi_1/artikel_3.htm), accessed on 16 October 2006.

## 1. Yayasan Mitra Usaha

Yayasan Mitra Usaha (YMU) was established in September 1993 with the aim of improving people's economic condition and welfare, and increasing NGO independence. Investment programs initiated by YMU include:

- Establishing *Bank Perkreditan Rakyat* (Village Credit and Loan Bank) in cooperation with local NGOs, Community Organizations (KSM), or individuals. Examples can be found in Bandung, Pontianak, Bogor, Banjarmasin, Padang, and Maumere.
- Cooperating with LP3M and Cooperative "Kospi" to develop a taxi cooperative in Kendari.
- Working with local cooperatives in Jakarta and Yogyakarta to develop a handicraft export business to Greece.
- Cooperating with YDP Bali to develop a popular hotel in the Tabanan district.

A breakthrough that YMU achieved was placing fund guarantees at a number of its BPRs in order to provide micro credit (less than Rp.1 million) without collateral. Even in cases where collateral was needed, the BPRs would be flexible – for example, allowing the use of a wedding certificate as collateral.

## 2. Suara Ibu Peduli (SIP)

Suara Ibu Peduli (SIP) was founded on 23 February 1998 by a group of housewives who were concerned about poor families that were unable to provide their young children with milk because of prolonged financial difficulties. Unexpectedly, this movement garnered wide support from various social elements in Jakarta. They began creating long-term programs to empower their beneficiaries' through greater financial independence.

SIP empowerment programs include:

- *The Joint Economic Enterprise Program:* This program enables members to borrow a certain amount of money for business capital with provisions that help ensure an easy repayment of the loan without burdening the client. The initial fund of

Rp.70 million was obtained from Mercy Corp. This fund was lent to members who conducted joint economic activities using a cooperative format. This program attracted many housewives, who applied to join in and get a loan. By 2004, SIP had grown to include around 600 members spread across 15 working areas in Jakarta;

- *Tanggung Renteng Community:* This group was developed to secure existing cooperatives as well facilitate building cooperation and kinship relations. This group serves several important functions, including: deliberating and deciding on members' expansion requests and loan proposals, addressing members' repayment difficulties, and providing group administration and facilitation in the field.

## 3. HAPSARI FSPM (Federation of Independent Women's Unions)

This institution was established in March 1990. Initially it was a small group named the Village Women's Working Group and it focused on pre-school children and developed a play group named HAPSARI (*Harapan Desa Sukasari / The Hope of Sukasari Village*). The group empowered housewives, who took their kids to school and picked them up, to initiate joint economic enterprises, such as producing bars of soap, cookies and cakes, *arisan*, and breeding bees. Gradually, this group developed into a powerful tool, helping to empower village women.

In addition to its activities related to the struggle for justice and gender equality on behalf of women, as it progressed, HAPSARI developed business units for village women. It has also created a number of constituent groups to manage various business units such as snack production, livestock breeding, and agriculture. Today, the business units that HAPSARI has developed include: poultry breeding, rice agriculture using the pawn brokering system, egg production and distribution, snack

production and distribution, car rentals, a multi-function cooperative to meet village women's needs, and a radio station owned jointly with a local radio station.

Table 4. Models of NGO Initiatives in Micro/Small Business

No	Institution	Program Initiative Model
1	Association of Facilitation for Women in Small Enterprise (ASPPUK)	<p><i>Micro Credit Program for Strengthening Women in Small Enterprises (PUK)-Mikro.</i> This program was designed not only as a means to strengthen women who rely on business for their livelihood, but also to integrate advocacy-oriented activities and micro credit management.</p> <p>Activities include: training, credit provision, advocacy, and networking.</p> <p>The program targets women in small enterprise (PUK) who are members of the Savings and Loan of Small Enterprise Women (KPUK) a constituent of ASPPUK.</p> <p>The program operates in 43 districts in 14 provinces (NAD, North Sumatra, South Sumatra, West Sumatra, Bengkulu, West Java, Central Java, DI Yogyakarta, East Jawa, NTB, NTT, West Kalimantan, North Sulawesi and Central Sulawesi).</p> <p>Program Objective: the target is micro and small enterprises run by women's groups formed from women's micro-finance programs of NGOs that are members of ASPPUK. These women's groups have administrators, regular meetings, standardized bookkeeping systems, written group regulations, have invested some of their own funds and have agreed to a system of joint liability.</p> <p>The program's funding is approximately Rp.623.7 million with funding originating from Terre des Hommes, the New Zealand Embassy and Canada Fund. This funding is a grant from the donors for ASPPUK to use for revolving micro credit funds. The funding ASPPUK provides to NGO members is in the form of a loan with interest at 11% per year for business loans but is interest free for loans for women's needs. However, the funds provided from the NGO members to the women's micro finance groups is in the form of a loan with 2-3% interest per month; these groups then loan to the actual women's micro business with interest of between 2-2.5% per month with loan periods from 6-12 months. There are two forms of loans that women can obtain from this program, credit for business activities and credit to meet women's needs including education (children and women), health (pregnancy), shelter and purchase of productive assets. From 1998-2002 over Rp.1,337.95 million was provided to 38 NGO members, 330 women's groups totaling 3,545 beneficiaries.</p>

2	<i>Bina Desa</i>	<p><b>Popular Economy Advocacy and Development.</b> The core of the program is the development of the popular economy and advocacy concerning popular economy development. Its objective is to organize the community and develop joint enterprises at a group level and promote advocacy for group businesses. <i>Bina Desa</i> works with <i>Karya Insani</i> Cooperative and Community Independent Groups (KSM) to conduct its implementation.</p> <p>Activities include: education, feasibility studies, exploration of business potency, market studies, business feasibility studies (SKU), bookkeeping training, business organization and management, and credit facilitation.</p> <p>It has conducted activities in South Sumatra, Lampung, Central Java, Yogyakarta, East Java and West Java.</p> <p>The majority of its program beneficiaries are farmers (80%) who do not have their own-business; they work in 55 groups (KSM) of 10-30 people. Funding for the program was initially provided by Germany in 1994 in the form of a Rp.600 million interest-free loan.</p> <p>This program is designed to develop agriculture-based businesses and increase group capacity through training based on market studies, profit-loss analysis, and managing agricultural harvests.</p>
3	<i>Bina Masyarakat Sejahtera</i>	<p><b>BMT Community of Street Children Parents (BMT Al Inayah Unit III).</b> This program is based on the idea that the number of street children will never decrease if their families' financial situations do not improve. The children are on the streets because the families need the money. Therefore, this program was designed to improve the financial condition of the families of street children in order to decrease the number of children on the street.</p> <p>The main activity of this program is credit provision. The amount of the loans varies depending on the business group. Each business group has to undergo a training program where it learns about the basics of business, how to select a business, financial management systems, and the socialization of BMT and its benefits.</p> <p>Programs have been conducted in the Bekasi district, West Java. The targets are the parents of street children, both those whom already have a business and those who do not. The strategies applied include introducing parents groups to the BMS program, and screening them based on the same basic criteria, i.e. being native to BMT target areas, and having a commitment to improving their family's welfare and financial situation.</p> <p>The funding, totaling Rp.7.5 million, is a gift from Department of Social Welfare, West Jawa that was increased with a grant of Rp.25 million from Terre des Hommes, Netherlands in 2000. The program initially only targeted 25 people but now assists 105 people with repayment rates at 90%.</p>

4	<i>Bina Sumberdaya Mitra (BISMI)</i>	<p><b>BMT BISMI</b> is a model of micro credit using the Islamic cooperative system, which was developed in response to the weaknesses of the <i>Grameen Bank</i> system. Hence, BMT is basically a combination of the <i>Grameen Bank</i> system and the Sharia bank system. This program aims to improve people's economic condition so that they can pursue business initiatives.</p> <p>Activities include: credit provision, advocacy, savings and loans, and training. The program targets small businesses, individuals and groups in Bekasi City, West Java.</p>
5	<i>Bina Swadaya</i>	<p><b>Civil Society Community and Bank Relation Program (PHBK)</b>. The main objective of this program is to help poor people, unable to provide the necessary collateral, to access a bank's financial services.</p> <p>Activities include: establishment of KSM, basic training programs, bookkeeping training, advocacy (including organizational, administrative, capital, productive business, and networking), and credit provisions for KSM.</p> <p>The program was conducted in 15 provinces, targeting male and female members of constituent KSMs that generally run micro businesses.</p> <p>The program can either function by the Bank providing credit directly to the community groups (KSM) involving an NGO as a mentor, or by the Bank providing credit to the NGO for them to loan money to the KSM. In the first model, the Bank charges interest of approximately 30% per year and the NGO obtains a fee of 0.5% per year. In the second model, the Bank charges interest of 15-18% per year to the NGO and the NGO charges interest of 30-33% to the KSM.</p> <p>In order to access this credit the KSM needs to contribute some of its own savings, between 20-25% of the total loan. The loans provided to members are micro loans without collateral, with the maximum loan being for Rp.1,000,000 per member.</p>
6	Forum of Indonesian Cooperative Development Movement ( <i>Formasi Indonesia</i> )	<p><b>Formasi Development Fund (FDF)</b>. FDF is partnership between <i>Formasi</i> and CCA (<i>Canadian Co-operative Association</i>) to initiate cooperative pilot projects or KUBs (Joint Enterprise Communities) by funding businesses (with credit and capital investment) using hunting approach for participating members of <i>the Forum</i>. The program's objective is to provide business capital to cooperatives and KUBs so that they can develop into models for cooperative/pre-cooperative projects and KUBs elsewhere.</p> <p>Activities include: credit provision, investment, training and consultation.</p> <p>Coverage areas include: DKI Jakarta, West Java, Central Java, East Java, and NTB. Target beneficiaries are: cooperative/pre-cooperatives and KUB members of <i>the Forum</i></p>

7	LP3ES (Institute of Research, Education and Social and Economic Enlightenment)	<p><i>Marketing and Management Training for the Informal Sector and the Micro Entrepreneur.</i> This is marketing and management training for the informal sector and micro entrepreneurs teaching them to operate their business activities more effectively. This program was conducted by LP3ES and BKPAI starting in 1997, and was designed to increase the managerial capability of the informal sector and micro entrepreneurs in Jakarta.</p> <p>As much as Rp.125 million of in-kind funding was received from the DKI Local Government. LP3ES conducted three-days of training that was divided into groups of 40 trainees.</p> <p>Training included materials on: bookkeeping, building relationship with material sellers, strategic business planning, and information on Local DKI Regulations related to micro business, the informal sector and cooperatives.</p> <p>200 informal sector and micro business entrepreneurs (20% women) participated in the training.</p>
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Resource: SMERU, December 2003.<sup>91</sup>

## SOCIAL RESPONSIBILITY AS AN OPPORTUNITY

Corporate social responsibility (CSR) has become a major part of many large companies' businesses, and is being integrated into accepted modern business practices. The world of business is not only about running a business, but many believe it should also serve a social purpose, i.e. curing disease or reducing poverty. This mission has become a priority for many contemporary business leaders.<sup>92</sup>

Why should the business community pay as much attention to social responsibility as it does its

primary business practice? According to Steiner,<sup>93</sup> there are at least three important reasons:

**First**, a company is a social "creature" and therefore should respond to societal requests. When society changes its ideas of how a company should function, the company should adapt accordingly.

**Second**, long-term business interests benefit from socially responsible behavior. In the long term, a company's survival depends on its effort to be socially responsible in conducting its business activities. In contrast, the public's welfare depends

<sup>91</sup> See [www.smeru.or.id/report/research/usahamikronarasi/Buku](http://www.smeru.or.id/report/research/usahamikronarasi/Buku), accessed on November 18, 2006

<sup>92</sup> Lawrence M. Miller, "Vision of a New Corporate Culture," in William Du Bois and R. Dean Wright, *Applying Sociology: Making a Better World*, Pearson Education Company, Needham Heights, MA, 2001, p. 76.

<sup>93</sup> See George A. Steiner and John F. Steiner, *Business, Government, and Society: A Managerial Perspective, Text and Cases*, McGraw-Hill, Singapore, 1994, pages 116-117.

<sup>94</sup> Steiner describes that in 1984 Robert Ford and Frank McLaughlin conducted a survey with 116 CEOs in America. The result showed that 71% respondents agree that if a company has acts more socially responsible on its own, it will result in less government regulation. (Robert Ford and Frank McLaughlin, in *Academy of Management Journal*, September 1984; as quoted by Steiner, 1994, *ibid.*)

<sup>95</sup> See Hamid Abidin, *Profil dan Potensi Kedermawanan Perusahaan di Indonesia: Sebuah Studi Pendahuluan (A Company's Profile and Generosity Potency in Indonesia: An Introductory Study)*, Piramedia, Jakarta, 2001, pages 20-21.

on the benefits produced by a given company and its business practices.

*Third*, socially responsible activities are one strategy to reduce or avoid criticism from the public, and help influence or prevent government policy.<sup>94</sup> If a company can avoid the imposition of a government regulation by merely responding to social demands, doing so should also help reduce the company's cost. This may prove better than forcing such activities through government's regulations which often increase a company's costs and affect its operational flexibility.

The issue of social responsibility seems to be expanding in line with initiatives of the international community, which are currently discussing social responsibility in an ISO document (ISO 26000 – Guidance on Social Responsibility). The discussion in ISO 26000 commenced in 2004 and its policies should be launched in 2008.

### 1. National Private Business Responses to Community Development

Nowadays, big companies in Indonesia are willing to fund community development. Generally they facilitate programs in the community health sector, education, clean water infrastructure, environmental sanitation, and the productive economy (developing agriculture, animal husbandry, entrepreneur training), etc. A survey conducted by PIRAC in 2001 recorded that there are 20 big companies working with civil society organizations (CSO) to conduct the company's social activities; these companies have spent around \$10 million US funding these activities.<sup>95</sup>

In another study, PIRAC recorded that the average annual donation from multinational companies stood at Rp.236 million, far greater than the average donation from national and local companies, which gave Rp.45 million and Rp.16 million respectively.<sup>96</sup> The study also found that 37% respondents stated clearly that they would increase their donation if the government provided tax incentives for their donations to the community.<sup>97</sup>

The above data demonstrates that big companies have a powerful ability to help develop the popular economy. As an illustration, Table 6 depicts programs conducted by some large companies in Indonesia to help small industry and economic development.<sup>98</sup>

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<sup>96</sup> Zaim Saidi, et.al., *Sumbangan Sosial Perusahaan, Profil dan Pola Distribusinya di Indonesia: Survei 226 Perusahaan di 10 Kota* (A Company's Social Donation, Its Profile and Distribution Patterns in Indonesia: Survey of 226 Companies in 10 Cities), Piramedia, Jakarta, 2003, p. 5.

<sup>97</sup> *Ibid.*, p. 49.

<sup>98</sup> Adapted from Rustam Ibrahim, *Bukan Sekadar Berbisnis: Keterlibatan Perusahaan dalam Pemberdayaan Masyarakat* (Not Just Business: A Company's Involvement in Community Empowerment), Piramedia, Jakarta, 2005, p. 1.

**Table 5. Popular Economy Development Programs  
From Five Large Companies in Indonesia**

Company	Main Program	
1. Bogasari Flour Mills	Small and medium enterprise development	Business marketing product of businesses
	Community economic empowerment	Micro cre
2. Citibank Peka	Community Development	Credit ser industry c
3. Coca-Cola Foundation	strong despite its declared vision of "making BUMN a strong, globally competitive corporation that is able to fulfill stakeholder expectations". The Government's desire to make BUMN a strong professional corporation does not decrease its social role and functions. One of its missions clearly remains: "improving	Micro cre for small
4. PT Riau Pulp	Development of an integrated Agricultural System	Animal h horticultu integrated informati
5. Yayasan Rio Tinto	Agricultural program	Food end
	UKM development	Micro cre

Resource: Rustam Ibrahim, 2005.

**2. Normative Framework of the Small Business and BUMN Partnership<sup>99</sup>**

Today, BUMN permanently supports small and medium enterprises, cooperatives, and other social programs. In BUMN's Master Plan 2002-2006, BUMN's social role remains

<sup>99</sup> Some quotations regarding the small business and BUMN partnership are from Chapter III of Writer's book entitled, *Tanggungjawab Sosial BUMN: Analisis terhadap Model Kederma Small and Medium Industries PT Pertamina, dan PT Telekomunikasi Indonesia* (BUMN Social Responsibility Analysis of the Social Generosity Model of PT Krakatau Steel, PT Pertamina and PT Telekomunikasi Indonesia), Piramedia, Jakarta, 2006.

BUMN's role to address environmental concerns, community development, and guiding small and medium businesses, as well as cooperatives in its partnership program."

This is compatible with Law Number 19/2003 that was passed a year later. The newest Law on BUMN, it states that in addition to contributing to national economic development, state revenues, and company profits, one aim of BUMN is to "actively participate in providing guidance and support to entrepreneurs, cooperatives and the community."<sup>100</sup> To achieve this goal, BUMN can use some of its net profits to help assist small businesses, cooperatives, and the surrounding society.<sup>101</sup> BUMN can also make charitable donations pursuant to prevailing rules and regulations.<sup>102</sup>

In the same year, the government, through the BUMN Minister, issued Minister Decree Number: KEP-236/MBU/2003 concerning Small Business and the BUMN Partnership Program and Environment Development Program. This decree was issued on 17 June 2003, and it regulates the implementation of the Partnership Program and Environment Development Program by BUMN, referred to as PKBL. The Partnership Program aims to strengthen the capabilities of small businesses and promote their independence using donations from BUMN's profits. The Environment Development Program is a program focused on the empowerment of social communities in BUMN-related business areas, using donations from the same resource. Both programs must be conducted by BUMN, either as a shareholder or as the leader.

Even though both programs are funded from BUMN profits, the utilization and allocation of donations for each are different. Partnership Program donations (1%-3% of BUMN profits,

after tax deductions) are generally allocated for small business loans, which can be used as business capital or for buying production materials. A small part of these donations (a maximum of 20%) can also be in the form of a grant which could be used for education costs, trainings, apprenticeships, marketing, promotions, etc. The Environment Development Program donations (a maximum of 1% of profits, after tax deductions) are used to benefit the community in the requisite business area by providing aid for natural disaster victims, education, training, health improvement, public infrastructure development, and the development of religious service infrastructure.

The monetary support for small business entrepreneurs provided by large companies and BUMN can help accommodate many small business needs, e.g. education and management training in areas related to large scale businesses and BUMN. Another available strategy is to establish consortiums, especially aimed to develop managerial competence (for business management) and mastering technological know-how (to activate innovation) both of which may be essential to enter the modern business arena (formal system).<sup>103</sup>

## CONCLUSION AND RECOMMENDATIONS

The government, NGOs, and private sector organizations have all attempted to empower UMKM as part of various poverty reduction programs. Unfortunately, most of these programs are still a long way from reaching their goals. The number of poor people continues to increase. Moreover, there appears to be no significant improvement in condition of UMKM. These groups have come to the realization that strengthening entrepreneurship and UMKM is not an easy task because it requires changes in various areas, i.e. psychology, sociology, anthropology,

<sup>100</sup> Law Number 19/2003 on State-Owned Corporation (BUMN), Article 2 paragraph 1(e).

<sup>101</sup> *Ibid.*, Article 88 paragraph 1.

<sup>102</sup> *Ibid.*, Article 90.

<sup>103</sup> Aburizal Bakri, *op.cit.*, pp. 171-172.

economy and political will. However, consultations have identified a variety of problems and generated several ideas regarding how they can be addressed. Some recommendations that should be considered are:

*First*, provide support to help strengthen the business climate among the poor by means of improved mediation structures. Existing mediating structures need to be supported and revitalized so that they can adequately support small scale businesses. In addition, it is necessary to establish a forum for the various institutions and large scale businesses that share a desire to reduce poverty by helping to develop UMKM. The forum could function as means of communication, consultation and coordination, providing a place for sharing, seeking solutions to problems encountered in the field, and coordinating programs to avoid overlap.

*Second*, support concerned parties, especially the government, other entrepreneurs, and civil society, so that they can focus on helping the poor through their operational programs designed to stimulate productive economic activity, and cultivate a spirit of entrepreneurship. The programs they develop should really be effective in addressing the interest of the people and UMKM.

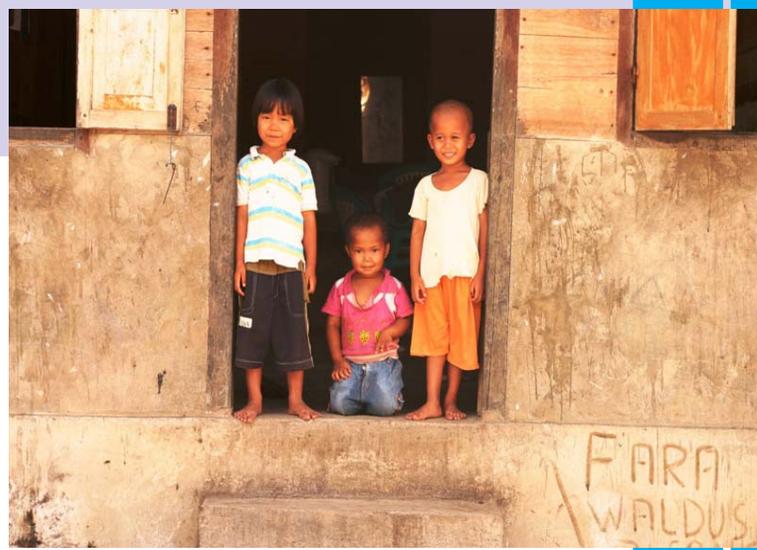
*Third*, it is necessary to make modifications to training methods. UMKM training could be more effective if it is targeted directly at UMKM or UMKM centers, and utilizes the skills that already exist in these organizations. This could more directly address the interests of the relevant UMKM or UMKM centers. Good facilitators are also essential to help UMKM solve their problems. Therefore, the trainers who are employed must understand and be specially trained on the problems and characteristics that are unique to UMKM. The trainers' aim is to improve UMKM performance through better service and product quality, and strengthen the UMKM's competitiveness.

*Fourth*, facilitate efforts made by government and NGOs to support capacity building for small scale entrepreneurs with a view toward business equality, and competitive capacity. This can be achieved through greater knowledge about modern management and business strategies. Such knowledge will provide them with the analytical ability to make strategic decision concerning their businesses. The aim is to improve the ability to innovate and open new market for products and services.

*Fifth*, support efforts for tax reform directed at providing incentives to large scale businesses that contribute part of their profits to programs that promote societal development and encourage the popular economy.

# CHAPTER IV

## TOOLKIT LEGAL EMPOWERMENT OF THE POOR



Legal empowerment of the poor is expected to be the means to provide poor communities with opportunities to enable them to have a right for better life. Active participation from all stakeholders is the main key to suppressing poverty.

So many different approaches to empowering the poor in Indonesia have been undertaken by various parties, including central and local government, non-governmental organization, entrepreneurs, and the poor themselves. However, the results are far from the expectation.

### MO ACCESS TO JUSTICE

From the facts above, this toolkit attempts to analyze the current legal empowerment situation, challenges, solutions and initiatives. It contains four main themes of legal empowerment of the poor, i.e.: 1. Access to Justice and Rule of Law; 2. Property Rights; 3. Labor Rights; and 4. Entrepreneurship: Micro, Small and Medium Enterprises.

The toolkit will hopefully become a reference for empowerment approaches in the future. It is dedicated to all stakeholders involved in the effort of legal empowerment of the poor.

<p><b>Situation</b></p>	<p>Efforts in solving legal issues and obtaining justice face stumbling block. Justice, it can be said, is a right for all people, especially for the poor.</p> <p><b>LAW</b></p> <p>The formal legal system related to legal enforcement, including police, prosecutors and courts, are believed to be inaccessible and make access harder for the poor. As a result, their rights are taken away, and they do not obtain justice.</p>
<p><b>Challenges</b></p>	<p>Community's lack of trust in the formal legal system.</p> <p>Court case process, from registration to verdict, is expensive. Case management is also terrible.</p> <p>Professionalism of security forces, including police, and poorly administered education.</p> <p>The lack of independency of formal legal institutions.</p> <p>Lack of transparency in law enforcement bodies. For example, it is hard to access the processes and</p>

Solution and Recommendation	<p>The poor are regarded as the object of every attempt in the establishment of law and regulation. Full and meaningful community participation in the formation of law and regulation has yet to be maximized.</p> <p>Limited access to legal support. The amount of legal support services (lawyer and advocates) is very low for the poor. The poor is also lacking knowledge on their legal rights guaranteed by the nation.</p> <p>Legal resolution model that is not understood by the poor.</p> <p>Lack of synergy in legal empowerment approaches, by the government as well as the non-governmental organization. Thus, the expected results are not obtained and the goals are missed.</p> <p>Civillians suffer from discrimination based on their origins and political views, in attempt to obtain justice through the formal legal system.</p>
	<p>Sincerity in implementing the principle of justice: simple, fast, and economical.</p> <p>Capacity building of security forces, by improving recruitment system and education.</p> <p>Improving the efficiency of monitoring mechanism, both internal and external, of the institution and security forces.</p> <p>Legal socialization for the poor using simple and comprehensible language.</p> <p>Ongoing legal assistance for the poor accessing the justice system</p> <p>Legal support services in favor of the poor. This could be accomplished through:</p> <ul style="list-style-type: none"> <li>• The ratification of a draft Law on Legal Assistance, which provides legal basic for paralegals (Pengabdian Bantuan Hukum - PBH), in providing legal services for the poor.</li> <li>• Actual implementation of Law on Advocates, which obliges advocates to provide legal services for poor justice-seekers (UU No.18/2003)</li> </ul> <p>Availability of clearer mechanism on regulation of Law on Advocates for better implementation in giving legal services to the poor: the government should promptly ratify Government Regulation on Requirement and Procedures in Providing Free Legal Assistance. Until today, the ratification of this regulation remains unclear.</p>

The needs to synergize the efforts of developing access to justice for the poor. This synergy absolutely has to be done by various stakeholders, including central and local governments, non-governmental organization and the international community.

Integrated legal empowerment that is aware of the needs of the poor, such as through addressing concrete cases that arise in the communities.

Real support from the government to non-governmental organizations, i.e. through incorporating legal assistance programs for the poor to a concrete government program, and funded directly from state and local budgets.

Removal of stereotypes and discriminative practices. For example, the Chinese descents are assumed to be all rich, entrepreneurs and capital owners, which leads to discrimination faced by the large population of poor of Chinese origin.

**MODULE 2**  
**PROPERTY AND NATURAL RESOURCES RIGHTS**

<p><b>Situation</b></p>	<p>The history of property rights in Indonesia is closely related to land issues. For most Indonesians, land is the vital factor of their life. Not only is a production factor in economic term, land also has social, political, cultural, and even religious values. From this understanding, we can comprehend why people are persistent in holding on to their lands, even if they have to die for it, on land conflicts. This context clearly describes how land issues become one of the main problems faced by the state and private corporations in Indonesia.</p>
<p><b>Challenges</b></p>	<p>The disappearing of property rights of the people, particularly property rights on land based on local law or traditional norm.</p> <p>Legal regulations in regard to property rights on natural resources have become a nation problem. They are affected by demands and pressures from capital owners, investor countries, or international monetary agencies.</p> <p>Definition of property, should not only have economic value, but also social values.</p> <p>Inbalance use of land, between commercial needs and farming needs, causing an increased amount of farmers without land.</p> <p>Women vulnerability on property rights. Women’s rights to property are often marginalized. This usually occurs in collective wealth management and inheritance.</p>
<p><b>Solution and Recommendation</b></p>	<p>Policies that exaggerate privatization (such as through selling state corporations and legalizing privatization of natural resources management rights to national and multinational companies) should be evaluated in order to respect civilians’ property rights.</p> <p>Legal documents on property rights should be derived from nation culture, based on the needs of communities and focused on those needs.</p> <p>The need to understand that property does not only carry economic value in the form of commodity, but also social values. As an example, a land for farmers contains social meaning as an identity within their rural life; a forrest for the surrounded community is the basis for binding every meaning and life of its society; similarly, the sea for the fishermen and such domains for other communities carry deeper social values. Every community has an attachment to socio-economic values in the form of communal and individual bond to the property in order to protect the sustainability of their life, practically also become their social security network that protects them from falling to poverty.</p> <p>The need to rearrange the use of land in order to minimize agrarian conflicts.</p> <p>Property policies should focus on women rights and interest, by opening gender equality opportunities in front of property law.</p>

**Greatest  
Stories**

**Department of Housing and Transmigration: Free Housing.** Department of Housing and Transmigrasi developed 6000 free houses for remote villages in Papua. Urban Poor provided technical assistance, financial support and access to credit for the poor in Jakarta, Bandung, Solo, Surabaya, Malang, Lombok, Makassar, and Ambon.

**NGO Coalition (Koalisi LSM): Agrarian Reformation.** The National Assembly Decree No. IX/2001 on “Agrarian Reformation and Management of Natural Resources” is the result of advocacy and lobbying by NGO Coalition and poor people’s union (farmers, fishermen and the poor in urban areas) to the Assembly. The birth of this decree marked that agrarian reformation issue was back to be the main national concern. The decree also encourages various parties to perceive the law as the national agrarian umbrella in Indonesia.

**Consultative *Adat* Council of West Sumatra (Kerapatan *Adat* Nagari Sumatra Barat): Pro-Women Property Policy.** Some heads of the Council made pro-women decisions and recommendations to solve issues on inheritance (family and *adat*) discrimination and collective wealth in marriage. The access was opened through the impementation of Law No.7/1984 and regulation under The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and amendments of Law on Marriage.

**Alliance of Northern Lombok *Adat* Community (Komunitas *Adat* Perekat Ombara): *Adat* Court.** The alliance of Northern Lombok *Adat* Community established *adat* court, consisting of government representatives, community leaders and religious leaders in 32 villages. It validated *adat* norms and legal procedure. The establishment of the court aimed to ensure property rights based on *adat* regulation is sustained and protected.

**Kulawi *Adat* Community: For the Protection of *Adat* Land.** The community lived on the land that subsequently turned into Lore Lindu National Park, Central Sulawesi. Their access was limited, while the 200 hectares of land outside the park were controlled by a private corporation. They could not expand their coffee plantation. By learning about history and *adat* knowledge of their property rights on forest, they divided the use of it into several zones. This genuine information became the basis to negotiate with the park’s council. At last, they earned formal acknowledgment: Head of Council’s Decree No.651/VI.BTNLL.1/2000 dated June 18, 2000. This letter explicitly stated: “Acknowledged Ngata Toro area of +18.360 hectare within the area of Lore Lindu National Park, which would be managed according the category of Toro area, due to equality of access to the zoning system of the Park.”

**Kembang Tani Organization: People’s Struggle for Land Rights.** After 60 years of struggle, Kembang Tani Organization in Kebumen village, Tulis subdistrict, Batang district, Central Java, finally earned back their land. Their land was originally controlled by Ambarawamaju Pty. Ltd. After undertaking reclaim process and negotiation among Kembang Tani, local government, and National Land Agency (BPN – Badan Pertanahan Negara), a decree was finally issued. The Central Java BPN Decree No.55/32/33/2002 distribute lands into the following: Batang local

government (15 hectare), public facility (5.5 hectare), former rights owner (5 hectare) and farmers (26.5 hectare). The farmers' land was distributed to 800 farmers, who were members of Kembang Tani, 300 meter each and an agreement that it will not be sold for ten years. Certification fee was subsidized so each member only paid Rp.100.000 in late October 2002, when they received the certificate. At the time, the land had turned into a settlement.

**Sidewalk Traders of Baiturahman: Struggle for Approval.** Sidewalk traders of Baiturahman were small traders who sell their products in Simpang Lima, in downtown Semarang of Central Java. Their existence was blamed for the creation of slum area in the front part of the Mosque. The mosque officers complained to the city government to clean the area from the traders. Semarang city government then appointed security forces to move the traders because they were assumed to violate Local Law Np.11/2000 and Mayor Decree No.511.3/16. After going through several negotiations, the traders earned the legality to work in the area, witnessed by City Market Office. The existence was legalized through a decree that authorize them for using the area for trading at the agreed time.

### MODULE 3 LABOR RIGHTS

<b>Situation</b>	As undetected and undocumented entities, informal business units fail their workers in providing protection over their labor rights, social welfare and their working status. The workers of informal businesses are at risk of unfair treatment and they cannot defend themselves since they face difficulties in organizing into labor union.
<b>Challenges</b>	<p>Workers in the informal businesses are in vulnerable position, as they cannot obtain any protection.</p> <p>There is no clear definition of informal workers. Thus, no comprehensive description of the nature and types of informal workers.</p> <p>To date, there is no law and regulation that provides warranty and protection for the informal workers and their types of work.</p> <p>Formalization of informal workers have yet to improve their welfare.</p> <p>Outsourcing phenomenon generates categorization and discrimination on the division of labor. It also inflames relationship at work and manipulates the laborers.</p> <p>Current law and regulation should be consistent to the international legal standard on labor.</p> <p>Discrimination against women laborers is still high. Poor women laborers as a vulnerable community often are neglected, both in the law and regulation as well as the reality in the field.</p>
<b>Solution and Recommendation</b>	<p>Reinforce labor rights, provide social security for informal workers and increase voices and representatives from the informal sector</p> <p>Government should fulfill, respect and protect, as well as provide assurance to informal and formal workers, based on universal principles.</p> <p>Eliminate every policy in local and national levels that do not meet human rights principles or violate constitutional rights, including rights of women and minorities?.</p> <p>Good implementation of Law no.04/2004 on National Social Security System. The law affirms that every citizen has the right to obtain social security. For its implementation, the government has to prepare regulations detailing matters such as program, fees, membership and benefit for workers, both within or beyond the informal activity.</p> <p>There needs to be a greater availability of government policies in the informal sector, i.e.: applied technology for right use, solid work system, development of volunteers, development of independent laborers, and informal sector.</p>

	<p>There is a need to modify policies that violate human rights, and to generate new policy based on international principles. In the area of migrant laborers, particularly, International Convention of Protection of Migrant Workers and Their Family (Konvensi Internasional Perlindungan Buruh Migran dan Anggota Keluarganya) should be introduced in every policy.</p> <p>The need of training, protection, and social security for the workers in the informal sector. Until today, there is no specific regulation discussing the informal sector workers.</p> <p>Re-assessment of regulation in regards to outsourcing, which clearly harm labor rights.</p> <p>Concentration on fulfilling the rights of poor women laborers. Law and regulation should be more sensitive on the vulnerability of women, and be focused on its implementation stage.</p>
<p><b>Success Stories</b></p>	<p><b>Department of Manpower and Transmigration: Pilot project on manpower sector.</b> The Department of Manpower and Transmigration established a pilot project in the informal sector that protects social security and health of ojek (motorbike transport) drivers in Jakarta area.</p> <p><b>Domestic Workers Union (Serikat Pekerja Rumah Tangga – SPRT) in Yogyakarta: Work Agreement Initiative.</b> SPRT in Yogyakarta developed a working agreement concept for the domestic workers, with the aim to alert their employers on their rights and duties. At this time SPRT is in the process of lobbying the local government for inserting the agreement into a local regulation. This is a success story, since to date there is no “formalization” of government policies on informal workers in domestic area. It is expected to be the model of informal workers’ struggle in other sectors.</p> <p><b>Jakarta Legal Aid Institution (LBH Jakarta): Facilitation on informal labor dispute.</b> LBH Jakarta facilitated mediation over dispute between owners of angkot (local transport providers), Drivers Cooperation (Koperasi Sopir Doyok -KSD), South Jakarta Transportation Office, YB Bank and CV.Sm. Even though community could not come up with any agreement, LBH Jakarta was successful in improving bargaining position of the drivers as informal workers in front of the formal legal institution.</p> <p><b>Bandung Legal Aid Institution (LBH Bandung): Labors’ struggle.</b> LBH Bandung is a strong organization for handling labor cases. Some of the success stories are:</p> <ul style="list-style-type: none"> <li>➤ Advocation for the case of Kahatex Sweater Pty.Ltd. (2004-2005) in Majalaya area, in which the corporation unfairly fired its labors. LBH Bandung undertook legal assistance through two strategies: (1) case campaigns, in collaboration with international NGOs, which were Clean Cloth Campaign (CCC) and Workers Rights Consortium (WRC); and (2) organization of labors for addressing their problems to the corporation. The result was rehiring of 450 labors.</li> </ul>

- Participation on labor policies in Bandung area. In 2006, the local government arranged draft local regulation on manpower. LBH Bandung, along with the labor network, undertook a study of the regulation and found out that it overlapped with Law on Manpower and some articles even more harmed the labors. As a result of the study, LBH Bandung implemented participative initiative to reject the draft local regulation. The result was suspension of regulation.

**Trade Union Rights Centre (TURC): Information Center of Labor.** TURC is an organization serving labor assistance, with the focus on legal empowerment, politics and economy of labors and Indonesian Labor Union. TURC provides a breath of fresh air to the improvement of access to information, both for the organization and for the laborers themselves. In its work program, YURC also undertook training activity for labor union, research and publication in the area of labor.

**MODULE 4**  
**ENTREPRENEURSHIP: MICRO, SMALL, AND MEDIUM ENTERPRISES (USAHA**  
**MIKRO, KECIL dan MENENGAH - UMKM)**

<b>Challenges</b>	<p>In difficult situations, small enterprises evidently have a strong survival power, compare to most of the big enterprises. It is one of the factors why this sector is important. In addition, an approach of equitable distribution in the economy – a main objective of development policy – would be more effective if implemented through small enterprise development since the amount is small and the nature is solid work.</p>
<b>Situation</b>	<p>Weak access to banking capital since there is a tendency that the banks are not oriented to financial small enterprises. Financial schemes are mostly for big enterprises.</p> <p>Tendency that UMKM always rely on formal credit system, whereas credit opportunities beyond formal credit could be used for small enterprises.</p> <p>Incorrect understanding of small enterprises, i.e.:</p> <ul style="list-style-type: none"> <li>➤ characteristics of UMKM vary, often unrealized, so the development approach faces many challenges;</li> <li>➤ The government place UMKM as the program target, not the program actors, so implemented approach is only top-down, resulting in the delivery of irrelevant policy;</li> <li>➤ Approach involves “giving” rather than “empowering” because UMKM is seen to be weak and powerless.</li> </ul> <p>Weak position of women in small enterprises in obtaining credit from the bank, because there is a condition that they have to get permission by the husband. In contrast the data indicates that there are at the very least 64 women in micro business networks in at least 64 districts of Indonesia, with at least 75,000 participating members.</p> <p>Weak standardization of UMKM product and service quality, because:</p> <ul style="list-style-type: none"> <li>➤ lack of management orientation from weak strategic thinking in implementing the business;</li> <li>➤ weak competition ability;</li> <li>➤ lack of consistency in maintaining product quality standard;</li> <li>➤ lack of marketing/promotion;</li> <li>➤ lack of ability in maintaining and opening new market because the products are not unique.</li> </ul> <p>Weak coordination among government institution in training UMKM.</p> <p>Unfair competition between UMKM and big industries.</p>

Situation  
and  
Recommendation

The need to generate mediating structure to empower the poor so they don't feel isolated in facing economic reality. One example is finding opportunities beyond formal financing scheme in enable bigger opportunity of access to credit.

UMKM training program should be implemented with solid coordination. To date, more than one government department and institutions have UMKM training programs (e.g. Department of Industrial Affairs, Department of Trade, Ministry of Cooperation and Small Enterprise, and National Development Planning Agency), but coordination among the programs is not well implemented.

Legal guarantee of peoples' economic activities are available, but the fact shows that the development of small industries are often harmed by industrial policy that benefit the big industries, such as in protection, investment, credit and tax. In addition, small industries often become the first victim to economic policies, which aggressively invite foreign capital in-flow. The government should focus on this in order to improve UMKM.

The needs to improve access to service for UMKM should meet legal affairs reformation. Management and organization should support a more condusive and pro-poor enterprise climate.

Informal characteristic of small enterprise actors is people's economic power. This should be realized and protected by law. UMKM should get protection from the government in order for them to grow according to their unique characteristic.

More specifically, some regulations related to security of guarantees and fulfillment of UMKM's rights should be implemented by the government, including access to credit, business location, security and legal warranty, and acknowledgement of women as independent business actors. The government should evaluate some regulations that do not support the development of small business, and exploitative local regulation to UMKM.

Corporate Social Responsibility (CSR) ideas should be developed in supporting the growth of UMKM.

Implementation of validated policies supporting the development of people's economy and the availability of security in the implementation of those policies.

Adjustment of small industries development opportunities to meet the potential of the regions, related to Regional Autonomy implementation in order to generate various markets of small businesses. Local regulations that support a conducive environment for small business are expected to be issued.

The need of distribution policy. Mafia, creditors and illegal extortion in the chain of business lead to the occurrence of exploitative relating to small industries. They should be removed.

The need of healthy market mechanism in supporting people's economy in order to sustain the development.

**Yogyakarta City Government: Structuring Sidewalk Traders.** From Local Regulation No.26/2005, the City Government provided protection and acknowledgment of sidewalk traders in Yogyakarta. The regulation is also a strong legal foundation to implement training, ruling and control over sidewalk traders. It contains articles on permission, locations, rights and duties, facilitation, and development of sidewalk traders.

**Yayasan Mitra Usaha (YMU): Improvement of people's economy.** YMU aimed at improving people's economy for their welfare, and enhancing independency of NGOs in Indonesia. Types of successful coordinated programs include the establishment of People Credit Bank (Bank Perkreditan Rakyat – BPR) in Kendari, and founding of Inti Rakyat Hotel in Tabanan district. One breakthrough of YMU is placing fund-guarantee to several BPR in order to provide micro credit service (less than 1 million rupiah) without any collateral. If collateral were needed, it would be very flexible, such as marriage licence.

**Suara Ibu Peduli (SIP): Concern leading to empowerment.** Started off from a housewives movement that was concerned about the struggle of families that could not provide milk for their babies because of the monetary crisis, this movement gave birth to long-term empowerment programs to improve independency of its members. The programs include:

- Collective Business Program; members could take credit as their business capital, with simple regulation for easy return;
- Tanggung Renteng Group: developed with objectives to protect available cooperation business, and to raise mutual cooperation aspect.

**Padang Legal Aid Institution (LBH Padang): Advocacy for the Rights of Sidewalk Traders.** The case began with removal of sidewalk traders at Pasar Pagi, Padang, along with violence by the security forces. Traders went to LBH Padang for support to file complaints and asked their help to fight for their rights, since most of them were poor. LBH Padang were directly involved in this case, resulting in relocation of sidewalk traders in exclusive area and refund by Padang City Government.

**HAPSARI FSPM: Independent Women Union.** It began with a small group called Village Women Working Group who provided assistance to pre-school aged children. They established a playground, named HAPSARI (acronym of Harapan Desa Sukasari). Mothers who took the children their were invited to participate in collective business activities, such as baking cake, making soap, organizing arisan, and farming bee. The group grew and firmed its commitment for village women empowerment. Aside from the activity as the space for women to obtain justice and gender equality, HAPSARI also developed productive business units for village women and has several trained groups who managed various forms of businesses, such as snacks, animal husbandry and farming.

**Association for Women in Small Business Assistance: Micro Credit Program for Empowering Women in Small-Micro Business.** The program was designed not only as a means to empower women, but also a combination of advocacy and management activities of micro credit. Some activities are training, provision of credit, advocacy,

and establishment of women in small business network. Location is in 43 districts around 14 provinces (Aceh, North Sumatra, South Sumatra, West Sumatra, Bengkulu, West Java, Central Java, Yogyakarta, East Java, West Nusa Tenggara, East Nusa Tenggara, West Kalimantan, Southeast Sulawesi, and Central Sulawesi).

**Bina Desa: People's Economic Development and Advocacy.** The basis of this program is people's economic development and advocacy in relations to people's economic development; aimed at organization in people level and development of collective business in group level, as well as advocacy related to the collective business. In its implementation, Bina Desa collaborated with Karya Insani Cooperation and community groups. Types of activities: feasibility study of potential business, market study, business feasibility study, training, accounting, management and organization, and credit facility.

**National Private Business: Community Development.** Some of the best examples are:

- Bogasari Flour Mills with its small to medium enterprise development and people's economic empowerment by providing micro credit.
- Citibank Peka, provided credit, training and awards for micro business. Coca Cola Foundation, provided micro credit and capacity building for small industries.
- Riau Pulp Pty.Ltd., developed solid farming system and developed small to medium industries.
- Rio Tinto Foundation, provided training, assistance, micro credit service, and Saving and Credit Cooperative (simpan pinjam).
- Astra International Pty.Ltd. through Dhana Bhakti Astra Foundation, organized training for small to medium industries, both related or unrelated to Astra production.

**Edam Burger: Successful Initiative of Small Business.** Edam Burger is a brand of quickly developed franchise. The name Edam is a reverse of the owner's name Made Ngurah Bagiana, who started his business in 1996 with capital of Rp.1.5 million. His hardwork and courage had shown a great result. Today, Edam Burger has 300 burger carts and 100 workers within Jakarta, Bogor, Bandung, Surabaya, and Semarang. This method of franchise had encouraged other businessmen in the same industry. One of them is Mr. Burger, under the flag of Gempita Indonesia Muda Pty.Ltd. Now Mr. Burger owns 300 counters and stands in 13 cities of Indonesia including Jakarta, Batam, Cirebon, Bandung, Purwakarta, Semarang and Bali. Furthermore, Edam Burger also inspired another franchise, Edola Burger, with a main office in Jakarta.

**Sinjai District Government: Socialization of local products and market promotion approach.** Potential analysis, undertaken by the local government of Sinjai, includes organizing farming group and empowering UMKM by providing technical assistance and business tools. One of the satisfied local enterprises is Susin (Sinjai Milk and ice cream), which now conducts successful marketing beyond Sinjai. The local government favor was then empowered by Head of District Letter No.524.22/260/set on Instruction of the Use of Prepared Milk and Passion Fruit Juice. The local government has proved successful in providing initiative for empowering the community.

# EPILOGUE



The poor have had the ability to survive without any support by the government. They differ from those businessmen who, for example, benefited from the Central Bank Liquidity Support (*BLBI - Bantuan Likuiditas Bank Indonesia*), harming the nation up to trillions of rupiah. Again they completely differ from those local legislative leaders and members, coming from various part of Indonesia asking for more benefits by rallying to the House of Parliament buildings in Jakarta. The poor survive through their own determination and assets!

Alongside Kuningan, a major road in the nation's capital, we can see people selling shrimp crackers right in the middle of the road, while a bunch of elite cars are stuck in the late afternoon traffic. Even on the side of the busy road, we can see a *bakpao* trader parking his cart to sell the warm white bread filled with meat or green beans.

Approaching 10:00 a.m. or 4:00 p.m., those without capital stand in a row to provide their services as a *joki* – paid passengers for elite cars heading towards “3 in 1” traffic zone – on Sudirman road.

In the real estate complex, it is common to see vendors wandering around to sell food, ice or drinks. In the middle to lower communities' housing complex, we can even find numerous vendors selling various goods, from houseware utensils to jewels: buy in cash or credit.

On the sides of the roads, alleys, and open spaces; by the train tracks and riverside; even in markets, the small traders struggle to make ends meet. The poor often use their house or hut as their business site. In some cases, business sites such cigarette stands double as the family's daily shelters.

In the rural areas and in the satellite areas of big cities, many residents have changed their profession, former farmers tried to find livelihoods in big cities or turn to be farming laborers. Personal lands, which have been owned and managed by families over generations, have been converted into building rights on land or cultivation rights on land, owned by businessmen and capitalists – those whose businesses were owned by credit and received support by the government and private banks.

They, the urban and rural residents, have rarely been pampered by government or received bank support, nor have they ever enjoyed the right to justice.

Some best stories and narrations from this book hopefully will provide inspiration on how legal empowerment, public access to economic resources (credit, financial facilities) and right to justice for the laborers are real challenges. They represent the ideal form of the social justice and liberty in the life of civilians. The presence of Commission on Legal Empowerment of The Poor (CLEP) can

possibly encourage policy change around the world, including Indonesia.

### **CLEP: The Queen of Justice at the Global Level?**

The Commission on Legal Empowerment of The Poor was formed by a noble goal, to end poverty through legal empowerment. Promoting execution is closely related to the aim of developing policy and regulations, which provide formal legality over property rights as the foundation for legal empowerment in ending poverty.

As an illustration, the Commission's ideas and programs may be formed as an acknowledgment and provision of guaranteed property rights on land, such as provision of property rights on land certificate; provision of legal guarantees for the workers, laborers and entrepreneurs in the informal sector.

Why are those action needed, and why should they be facilitated by policy makers at the global, national as well as local level? To open what is can be referred to as "the bell jar" – theoretically developed as a concept by Fernand Braudel, and then quoted by Hernando de Soto, a Peruvian economist and the co-chair of CLEP, and Madeleine Albright, a former US Secretary of State – to analyze the development of global capitalism. In short, "capitalism" is assumed to be an exclusive area for a few of those who live in "the bell jar", while most people, particularly the poor, live outside this jar: this group keeps on living in poverty. The solution is to integrate or consolidate dead capital – owned by the poor – to the formal capitalism system, thus turning into living capital, by opening the jar. Dead capital on its own has a meaning, it generally refers to the type of capital that cannot be accumulated, cannot be marketed and cannot be used as security to acquire credit from the creditors.

Living capital may emerge from the availability of formal ownership system, which enables the process, formation, regulation and management

of assets in a certain condition. According to de Soto's research, in the West, capitalism could develop because those countries regulate property under clear and exact legal system, like having a "black on white" contract. Such contracts then can be used for generating their assets to be utilized productively.

This book shows clearly, one of the obstacles for micro, small and medium enterprise is: the difficulty of acquiring banking capital or loans. Why? Simple, because they do not have the collateral to obtain credit. The same case occurred in the informal enterprise sectors – included in the category of the poor. However, the business cycle in this informal sector is great. According to de Soto's research, in some farming sector in Asia, Africa, The Middle-East, and Latin America, most of the poor generally have assets to succeed in the capitalism system.

Moreover, de Soto stated that savings value among the poor is no less than 40 times of all the foreign support ever received in the whole world since 1945. According to the data, the wealth of the poor in Egypt reach 55 times of the whole foreign investment through direct foreign investment ever invested, including investment for Suez canal and the giant Aswam dam. Another example, Haiti, the poorest country in Latin America, places the total assets of the poor up to 150 times higher than all foreign investment ever received in the country since its independence from France in 1804.

One more time: why are the poor from those countries, including Indonesia, still poor and why do they keep on being poor? The answer, according to de Soto, is there are facts that show inefficiencies in the form and resources or assets owned by the poor. For instance: the poor live in the house on their own land that has not been properly documented, their enterprises are not managed as legal enterprises (they are unincorporated business) with undefined liability, or businesses are located at places that are unknown by investors – unclear address or identity and are not listed formally.

At a glance, the vision and mission of the Commission is marvelous: is this "the global Queen of Justice" long awaited by billions of poor

individuals around the world? If the Commission is following the capitalism politic economic logic, it is hard to place overwhelming optimism in it. However, after hearing direct explanation from Hernando de Soto; Ashraf Ghani, Commission member from Afghanistan; and Naresh Singh, Secretariat Executive Director of the Commission in New York, I personally was amazed: “wow, increasing prosperity for the poor is that easy; just open the jar”.

### **Internal Nation: Decide; External: Only Influence!**

My surprise was not limited to the matter of opening the bell jar, but continued to the issue of who is the actual party that decides the development programs and end-of-poverty program in Indonesia?

This is the story. When Ashraf Ghani came to Jakarta, the Indonesian Legal Aid Institute (YLBHI – Yayasan Lembaga Bantuan Hukum Indonesia) organized a limited discussion regarding Ashraf’s thoughts on the Commission. At the time I stated that many regulations in Indonesia was “dictated” by the International Monetary Fund (IMF). This conclusion was based on the research on contents of laws and regulations, developed from 1997 to 2002, compared to the content of IMF letter of intent signed by the Government of Indonesia. The result: they both were very similar. And then I asked Ashraf: how significant was the influence of international monetary organizations in directing the economic policy and politics of a nation, including Indonesia?

Ashraf answered in ease: “Your government is the decision-maker, not the international monetary organizations. How can IMF or the World Bank decide on the policy direction in your country? From the total budget acquired, less than 20 percent is paid for loans, and the 80 percent can still be used for your country’s matters!” I think Ashraf is right. The Government of Indonesia – central and local – should be the one deciding on genuine programs for the welfare of its civilians. This book contains some good initiatives that were done by several local governments. The great examples in the book will hopefully give

inspiration, which then lead to the establishment of massive and mass national programs.

But it is risky if “legal empowerment of the poor” is only a jargon. Policy is only a lip service – full of promises, lacking in proof. These kinds of worries are slightly dissolved when hearing and seeing directly the dedication of Erna Witoelar, a member of the Commission, who is also the UN Special Ambassador for Millennium Development Goals (MDG) for the Asia Pacific region. Her commitment as well as her sharp statements criticizing policies and implementations of regulations that is not “pro-poor”. Her expectation becomes a commitment for all policy-makers of the country.

Jakarta Vice Governor, Fauzi Bowo, and the District Head of Sinjai, Andi Rudyanto Asapa uttered similar commitments. If executed, it will benefit the poor. Jakarta Vice Governor once said that he is committed to facilitate free advocacy to the poor, while District Head of Sinjai outlined several ideas on providing facilitation for small and medium enterprises in his area: including, when needed, shifting the front yard of the district office as the collateral in the bank – a prank to illustrate how hard it is for the poor in order to get business capital from the banks.

### **Point on Own Forehead**

For you who have never experienced being poor – just imagine, better yet don’t. It is the responsibility of all of those with the “sufficiency” to find solutions.

The book does not only contain government initiatives, but also non-governmental organizations (NGOs) and other civil society organizations initiatives, as well as business sector ideas for empowering the poor.

Some NGOs initiatives were done earlier, before government, in executing legal empowerment of the poor. YLBHI is an example. The 36 years of journey (since October 28, 1970) was a good case of institutional development of legal aid in this

country. This is a good reference for the Commission to be developed in other emerging nations.

In the future, YLBHI is planning to keep on documenting success stories for inspiration. The organization will also identify advocates who are genuine in executing legal and economic empowerment for the poor.

Today, empowerment programs, either legal or economic, are leaving a question: why are there “supposedly” many initiatives and programs from the government, business sector and NGOs, but in fact the majority of Indonesians are still poor? Don’t point on others’ forehead: point on your own!

**A. Patra M. Zen**  
Chairperson YLBHI

## REFERENCES

- Abidin, Hamid. *Profil dan Potensi Kedermawanan Perusahaan di -Indonesia: Sebuah Studi Pendahuluan*. Jakarta: Pustaka, 2001.
- . *HAPSARI FSPM (Federasi Serikat Perempuan Merdeka) Membangun Keswadayaan Perempuan*. Pustaka, Jakarta, 2004.
- Ahmad, Imam, *et.al.* (ed), *Direktori Lembaga Swadaya Masyarakat di -Indonesia*. LP3ES, Jakarta, 2001.
- Bachriadi, Dianto. “Land Disputes in New Order’s Indonesia: The Need to Comprehensive Restitution and Redistribution Actions”, dalam *Land Tenure Law and Livelihood in Indonesia*, Konsorsium Pembaruan Agraria, Bandung, 2001.
- Bachriadi, Dianto dan Gunawan Wiradi. “Land Problem in Indonesia: the Need for Reform”, dalam *Land Tenure Law and Livelihood in -Indonesia*, Konsorsium Pembaruan Agraria, Bandung, 2001.
- Bakri, Aburizal. “Membangun UKM, Membangun Ekonomi Indonesia,” dalam *Merebut Hati Rakyat melalui Nasionalisme, Demokrasi, dan Pembangunan Ekonomi: Sumbangan Pemikiran Aburizal Bakri*. PT Primamedia Pustaka, Jakarta, 2004.
- Basri, Faisal. “Restrukturisasi UKM: Antara Mitos dan Rasa Keadilan” dalam *Analisis Ekonomi Faisal Basri: Kita Harus Berubah!*, Penerbit Buku Kompas, Jakarta, 2005.
- Brown, D.W. *Addicted to Rent: Corporate and Spatial Distribution of -Forest Resources in Indonesia; Implications for Forest Sustainability and Government Policy*, Indonesia-UK Tropical Forest Management Programme, Jakarta, 1999.
- Ibrahim, Rustam. *Bukan Sekadar Berbisnis: Keterlibatan Perusahaan dalam Pemberdayaan Masyarakat*, Pustaka, Jakarta, 2005.
- Ikhsan, Mohamad. *Profil Usaha Kecil dan Kebijakan Kredit Perbankan di Indonesi*, Lembaga Manajemen FE-UI, Jakarta, 1994.
- Indonesian Small Business Research Center dan PUPUK. *Usaha Kecil -Indonesia: Tinjauan Tahun 2002 dan Prospek Tahun 2003*, ISBRC dan Pupuk, Jakarta, 2003.
- Juliantara, Dadang. *Jalan Kemanusiaan: Panduan untuk Memperkuat Hak Asasi Manusia*, Laper Pustaka Utama, Yogyakarta, 1999.
- Kian Gie, Kwik. “MPR dan Ekonomi Kerakyatan” dalam *Ekonomi -Indonesia dalam Krisis dan Transisi Politik*, Gramedia Pustaka Utama, Jakarta, 1999.
- Krishnayana, Ika N. *Tanah Untuk Penggarap*, Sekretariat Bina Desa, Jakarta, 2005.
- Mitserg, Henry. *Strategic Management*, Prentice Hall, New York, 1992.
- Nursahid, Fajar. *Tanggungjawab Sosial BUMN: Analisis terhadap Model Kedermawanan Sosial PT Krakatau Steel, PT. Pertamina, dan PT. Telekomunikasi Indonesia*, Pustaka, Jakarta, 2006.
- Parlindungan, A.P. “Keterpaduan dan Sinkronisasi Hukum Agraria dalam Menunjang Pembangunan Indonesia”, dalam A. P. Parlindungan, *Bunga Rampai Hukum Agraria serta Land Reform*, Penerbit Mandar Maju, Bandung, 1989.
- . A. P. Parlindungan. *Bunga Rampai Hukum Agraria serta Land reform* Mandar Maju, Bandung, 1994.
- Petras, James. “Sebuah Gambaran Tentang Globalisasi: Peranan Negara dan Perusahaan Raksasa Internasional”, dikutip dari Coen Husain Pontoh, *Akhir Globalisasi: Dari Perdebatan Teori Menuju Gerakan Massa.*, C-Books, Jakarta, 2003.
- Quin, Bill. *How Wal Mart is Destroying America (and the world). And What You Can Do About it*, United States Ten Speed Press, - California, 2005.
- Simarmata, Djamester A. Simarmata. *Membangun Kembali Di atas Puing: Tinjauan dari Sudut Ekonom Politik dalam Krisis yang Berkepanjangan*, Lembaga Penerbit FE-UI, Jakarta, 2002.

- Saidi, Zaim, *et.al (ed).*, *Pola dan Strategi Penggalangan Dana Sosial di Indonesia: Pengalaman Delapan Belas Lembaga Sosial*. Piramedia, Jakarta, 2003.
- Saidi, Zaim. *et.al.*, *Sumbangan Sosial Perusahaan, Profil dan Pola Distribusinya di Indonesia: Survei 226 Perusahaan di 10 Kota*, Piramedia, Jakarta, 2003.
- Saleh, Irsan Azhary. *Industri Kecil: Sebuah Tinjauan Perbandingan*, LP3ES, Jakarta, 1991.
- Soedjatmoko. *Dimensi Manusia dalam Pembangunan, Pilihan Karangan*, LP3ES, Jakarta, 1983.
- Soetiknjo, Iman. *Politik Agraria Nasional: Hubungan Manusia dengan Tanah yang Berdasarkan Pancasila*, Gadjah Mada University Press, Yogyakarta, 1983.
- Steiner, George A. dan Steiner, John F. *Business, Government, and -Society: a Managerial Perspective, Text and Cases*. McGraw-Hill, Singapore, 1994.
- Spinallane, James J. *Industri Ringan Kaki: Neoliberalisme dan Investasi Global, Neoliberalisme I*, Cindelas Pustaka Rakyat Cerdas, Yogyakarta, 2003.
- Suziani. *Kasus Nike di Indonesia, Meneropong Kondisi Kerja Buruh Perusahaan Sepatu Olabraga*, Yakoma-PGI, Jakarta, 1999.
- Widjajanti, Darwina S. *Suara Ibu Peduli: Merajut Persaudaraan Ibu, Membangun Kemandirian Berkarya*. Piramedia, Jakarta, 2004.
- Widyaningrum, *et.al.* *Pola-pola Eksploitasi terhadap Usaha Kecil*, Yayasan Akatiga, Bandung, 2003.
- Wignjosoebroto, Soetandyo. *Hukum: Paradigma, Model dan Dinamika Masalahnya*, Elsam dan Huma, Jakarta, 2002.
- Wiradi, Gunawan. *Reforma Agraria untuk Pemula*, Sekretariat Bina Desa, Jakarta 2005.
- Bruch, Mathias dan Hiemenz, Ulrich Hiemenz. *Small and Medium-Scale Industries in the ASEAN Countries: Agents or Victims of -Economic Development?* Boulder and London: Westview Press, London, 1984.
- Chen, Martha. *Rethinking the Informal Economy: Linkages with the -Formal Economy and the Formal*.
- Chotim, Erna Ermawati dan Thamrin, Juni (ed). *Diskusi Ahli: Pemberdayaan dan Replikasi Aspek Finansial Usaha Kecil di -Indonesia*, Yayasan Akatiga, Jakarta, 1997.
- Clapham, Ronald. *Pengusaha Kecil dan Menengah di Asia Tenggara*, (Terjemahan), LP3ES, Jakarta, 1991.
- de Soto, Hernando. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Black Swan, London, 2001.
- Du Bois, Wiliam, and Wright, R. Dean. *Applying Sociology: Making a Better World*, Pearson Education Company, Needham Heights, MA 2001.
- Fakih, Mansour. *Sesat Pikir Teori Pembangunan dan Globalisasi*. Insist dan Pustaka Fajar, Yogyakarta, 2001.
- Forest Watch Indonesia (FWI) dan Global Forest Watch (GFW). *Potret Keadaan Hutan Indonesia*. Bogor, Indonesia dan Washington D.C., Global Forest Watch, 2001.
- Harsono, Boedi. *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya, Jilid I*, Penerbit Jambatan, Jakarta, 2005.
- Articles on Journal/News Paper:**
- Azuma, Yosh. "Socio-Economic Changes Among Beca Drivers in Jakarta 1998-1999, *Journal Labour and Management in Development, -Australian National University, Vol 1 Number 6*, 2000.
- Benu, Fredrik. "Ekonomi Kerakyatan dan Pemberdayaan Ekonomi Rakyat: Suatu Kajian Konseptual," Artikel pada *Jurnal Ekonomi Rakyat* Edisi Th. I Nomor. 10, Desember 2002. ([http://www.ekonomirakyat.org/edisi\\_10/artikel\\_3.htm](http://www.ekonomirakyat.org/edisi_10/artikel_3.htm)), diakses tanggal 16 Oktober 2006.
- Bernabè, Sabine. "Informal Employment in Countries in Transition: A -Conceptual Framework", *Case Paper 56*, Centre for

- Analysis of Social Exclusion, LSE, April 2002.
- Budiantoro, Setyo. "Manusia, Kebebasan dan Pembangunan," Artikel dimuat pada *Harian Sinar Harapan*, 29 April 2003.
- . "Robohnya Ilmu Ekonomi Ortodoks." Artikel pada *Jurnal Ekonomi Rakyat* Edisi Th. II Nomor 3, Mei 2003. ([http://www.ekonomirakyat.org/edisi\\_15/artikel\\_6.htm](http://www.ekonomirakyat.org/edisi_15/artikel_6.htm)), diakses tanggal 16 Oktober 2006.
- Ismawan, Bambang. "Ekonomi Rakyat: Sebuah Pengantar," Artikel pada *Jurnal Ekonomi Rakyat* Edisi Th. I Nomor 1, Maret 2002. ([http://www.ekonomirakyat.org/edisi\\_1/artikel\\_6.htm](http://www.ekonomirakyat.org/edisi_1/artikel_6.htm)). diakses tanggal 16 Oktober 2006.
- . "Partisipasi dan Dimensi Keswadayaan: Pengalaman LSM Membangun Keswadayaan Masyarakat," Artikel pada *Jurnal Ekonomi Rakyat* Edisi Tahun II Nomor 3 Mei 2003. ([http://www.ekonomirakyat.org/edisi\\_15/artikel\\_5.htm](http://www.ekonomirakyat.org/edisi_15/artikel_5.htm)), diakses tanggal 18 Oktober 2006.
- Krisnamurthi, Bayu. "Krisis Moneter Indonesia dan Ekonomi Rakyat," Artikel pada *Jurnal Ekonomi Rakyat* Edisi Th I Nomor 3, Mei 2002. ([http://www.ekonomirakyat.org/edisi\\_3/artikel\\_7.htm](http://www.ekonomirakyat.org/edisi_3/artikel_7.htm)), diakses tanggal 16 Oktober 2006.
- Mubyarto. *Ekonomi Rakyat Sepanjang Tahun 2002*, Artikel pada *Jurnal Ekonomi Rakyat* Edisi Th. I Nomor 12 Februari 2003. ([http://www.ekonomirakyat.org/edisi\\_12/artikel\\_1.htm](http://www.ekonomirakyat.org/edisi_12/artikel_1.htm)) diakses tanggal 16 Oktober 2006.
- Mubyarto. "Mengembangkan Ekonomi Rakyat sebagai Landasan Ekonomi Pancasila," *Jurnal Ekonomi Rakyat*, Edisi Th. II Nomor 8. Nopember 2003. ([http://www.ekonomirakyat.org/edisi\\_20/artikel\\_3.htm](http://www.ekonomirakyat.org/edisi_20/artikel_3.htm)). diakses tanggal 16 Okt 2006.
- . "Ekonomi Rakyat Indonesia," Artikel pada *Jurnal Ekonomi Rakyat*, Edisi Th. I Nomor 1, Maret 2002 ([http://www.ekonomirakyat.org/edisi\\_1/artikel\\_2.htm](http://www.ekonomirakyat.org/edisi_1/artikel_2.htm)). diakses tanggal 16 Oktober 2006.
- . *Capres/Cawapres dan Ekonomi Rakyat*, artikel pada *Jurnal Ekonomi Rakyat*, Edisi Juli 2004. ([http://www.ekonomirakyat.org/edisi\\_22/artikel\\_4.htm](http://www.ekonomirakyat.org/edisi_22/artikel_4.htm)) diakses tanggal 16 Oktober 2006.
- . *Ekonomi Rakyat, Perbankan Etik, dan Krisis Moneter 1997/1998*, Artikel pada *Jurnal Ekonomi Rakyat* Edisi Th. I Nomor 1, Maret 2002. ([http://www.ekonomirakyat.org/edisi\\_1/artikel\\_3.htm](http://www.ekonomirakyat.org/edisi_1/artikel_3.htm)), diakses tanggal 16 Oktober 2006.
- Priyambodo, Daru dan Suyanto, Bagong. "Pemanfaatan dan Pelayanan Kredit Usaha Rakyat Kecil: Penelitian di Tiga Kecamatan Provinsi Jawa Timur," dalam *Prisma*, Edisi Nomor 11 Tahun XX, November, 1991
- Rahbini, Didik J. "Ekonomi Informal di Tengah Kegagalan Negara". Dimuat di *Kompas*, tanggal 15 April 2006.
- Supratikno, Hendrawan, *et.al.* "Pengembangan Industri Kecil di Indonesia: Pelajaran Analisa Dampak dari Jawa Tengah". Artikel pada *Majalah Prisma*, Edisi Nomor 9 Tahun XXIII, September 1994.
- Swasono, Sri-Edi. "Pasal 33 UUD 1945 Harus Dipertahankan," dimuat di *Kompas*, tanggal 11 dan 12 Februari 2002.
- . "Kemandirian, Dasar Martabat Bangsa." Artikel pada *Jurnal Ekonomi Rakyat* Edisi Th. II Nomor 6, September 2003. ([http://www.ekonomirakyat.org/edisi\\_18/artikel\\_2.htm](http://www.ekonomirakyat.org/edisi_18/artikel_2.htm)) diakses tanggal 18 Oktober 2006.
- Tan, Mely G. "Beberapa Catatan tentang Aspek Sosial Politik dan Kebudayaan Keswadayaan," Artikel pada *Jurnal Ekonomi Rakyat*, Edisi Th. I Nomor 5, Juli 2002. ([http://www.ekonomirakyat.org/edisi\\_5/artikel\\_3.htm](http://www.ekonomirakyat.org/edisi_5/artikel_3.htm)), diakses tanggal 16 Oktober 2006.
- Winarta, Frans Hendra. Hak Dibela Advokat, Artikel pada *Suara karya* (<http://www.suarakarya-online.com/news.html?id=154536>, 7 September 2006), diakses tanggal 3 Oktober 2006.
- Jamsostek Pekerja Informal Terkendala", dimuat dalam *Pikiran Rakyat*, tanggal 7 November 2006.

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