Paralegalism and Legal Aid in Indonesia

Enlarging the Shadow of the Law

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Executive Summary

This report discusses the functioning of community-based paralegals in Indonesia, focusing on the paralegals trained under UNDP and World Bank projects. Community-based paralegals are non-lawyers who use their knowledge of the law (often but not always begotten through training by (legal aid) NGOs) to provide legal advice and assistance to the community in which they live. Indonesian legal aid organisations as well as international aid agencies employ paralegals as an instrument to strengthen the capacity of disadvantaged citizens to gain access to formal and informal justice systems. In this way, it is argued, paralegals can reduce poverty as they increase the control that poorer citizens exert over their lives.

This report uses material and observations from two paralegal programs to discuss and analyze how and under what circumstances paralegals impact the way local disputes and grievances are addressed. Combining a quantitative analysis of 338 reports of cases handled by paralegals and a qualitative study of case-handling by paralegals as well as non-paralegals, this report discusses the way paralegals operate in their communities, and it analyses under what circumstances paralegals can be most effective. With its focus on documenting the functioning of paralegals, this report is not an evaluation of the studied paralegal-programs.

While discussing the different activities of paralegals – focusing on legal education, legal accompaniment, mediation and advocacy – this report describes the pragmatic approaches that paralegals adopt to respond to the social and political contexts in which they work. Paralegals compete with other local actors for the status (and money) involved in solving disputes and addressing grievances, they are often participants in local politicking while they lack an official status. They have to deal with a widespread distrust of the formal legal system, while indeed in many instances taking recourse to the courts is not an option. This report discusses how the work of paralegals is shaped by such challenges. We discuss different reasons for the wide disparity of levels of activity of different paralegals, we highlight the growing importance of political lobbying, and we discuss to what extent paralegals straddle different legal systems. We conclude that the contribution of paralegals in many cases lies in an enlargement of the shadow of the law: while paralegals cannot be said to boost the use of the formal legal system, they do insert legal considerations more

forcefully in informal mediation processes. This reports recommends, among other things, to strengthen the focus of paralegal programs on advocacy and political lobbying, to adopt more symbolic means to boost the status of paralegals within their community, to select paralegals more carefully and to find cautious ways to extent official recognition to paralegals.

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1. Introduction: Paralegals and Legal Empowerment

Buli is a village of red and green. This coastal village in East Halmahera (North Maluku) is surrounded by dense forests, interspersed with red 'cuts': these are the places where mining villages have removed the top soil to mine the nickel and gold in the soil. Since about fifteen years big multinational mining companies[1] have been extracting these metals around Buli's wooden houses. The arrival of these rich and powerful companies led to a long-standing struggle with the largely uneducated and poor villagers, who demanded compensation for resulting pollution and the use of the 'adat' (customary) land. Pak Delfius Batawi is one of the most prominent villagers in this struggle. Since 2007 he has been trained by a legal aid NGO on Indonesia's laws and legal procedures. Since then he calls himself a paralegal: "I decided to join the program because it is a method to help poor people. After the training I realized how people are being cheated and exploited. I want to use my knowledge of the law to help people deal with that. Now with the network [from the legal aid NGO] we have the braveness to solve cases. We convinced the people that we could solve their problems."

Pak Delfius now deals with marriage disputes, local fights, land disputes, but most of his time goes into dealing with the mining companies. His village has so far staged several demonstrations against mining companies. This has convinced the companies to provide some funding for 'community development', but the unclear legal status of customary land and the lack of cooperation from the local government has made it difficult for Buli's villagers to get a good price for the use of their land.

Another obstacle for getting compensation lies in the internal politics that the presence of the mining company generates. Pak Delfius is not alone in his endeavour to get compensation from the mining companies: in Buli one meets customary leaders, the village head, local politicians and a local youth organization who all claim to represent the village vis-à-vis the mining companies. There is much money involved in this struggle over representation: "[many people] think they will get something from the company, so

[1] At present, there are four mining companies active around Buli: SDS mining, Antam mining, Yudistira and MPR (Mulia Pacific Resources)

they fear competition from paralegals". Pak Delfius bemoans the way the village heads have been bought by the mining companies, but he is most dismissive of the local politicians and the civil servants: "There is no real democracy here. The government here is suppressing the people, because it is in their interest to help the mining industry".

Local dispute resolution, particularly in Indonesia, is not just about the law. The outcome of disputes is the product of a complex interaction between power differentials and considerations about applicable laws. In the context of an official legal system that is seen as remote, difficult to comprehend, expensive and corrupt, it is not easy to get to law applied to settle a specific dispute. This inaccessibility of legal institutions can limit the capacity of weaker sections of society to protect their rights. Lacking the capacity to invoke the law to settle a dispute, weaker sections of society are at a disadvantage because social inequalities – such as differences in status, contacts and income – have a big impact on the outcome of disputes. In the above example, their lack of contacts, money and education made Buli's villagers a poor match for the well-endowed, well connected mining companies who find it easy to impose their terms on any settlement about compensation their extractive activities. That is, if they even wish to reach an agreement: in Buli Pak Delfius and his collaborators needed to stage numerous demonstrations before getting a mining company to even consider collective compensation – which was made worse by the fact that the district head decided to instruct the police to disperse a number of demonstrations.

This impact of social inequalities on the outcome of disputes has been an important reason why, since the 1970's, Indonesian NGOs have started to provide legal aid by training and supporting community-based paralegals like Pak Delfius. Community-based paralegals are non-lawyers who use their knowledge of the law (often but not always begotten through training by NGOs) to provide legal advice and assistance to the community in which they live[2]. The term 'Paralegal' is still relatively alien in Indonesia,

[2] There is some discussion about how to define (community-based) Paralegals – which can be attributed to the fact that paralegals operate differently in different contexts. For example, an early definition about paralegalism in Alaska: "the assumption by lay persons of roles normally ascribed to professionally trained persons within the

as *pendamping hukum rakyat* (PHR, 'the people's legal assistant') has been the preferred term by a number of legal aid NGOs. Pioneered by LBH in the 1980's, paralegals are presently being used by numerous organizations in Indonesia (see chapter two) as a means to strengthen the capacity of communities to defend their rights. Foreign funding agencies have also stepped in, seeing paralegals as a tool for 'legal empowerment'[3]: as big donors like the World Bank, UNDP and Open Society Institute increasingly felt that a focus on a 'top-down' reform of legal institutions – like making the courts or the police work better - was not enough to enable common Indonesians to make use of these institutions, they have started to fund projects that trained and supported paralegals[4]. Recently, the Indonesian government has also adopted a 'National Strategy Access to Justice' which aims to expand the number of paralegals in Indonesia[5].

Paralegals are, it is argued, a relatively cheap tool to overcome the obstacles that prevent poorer sections of society from invoking legal provisions to defend their rights[6]. And as paralegals help overcoming these obstacles, they help to fight poverty: the expectation behind most paralegal programs is that, as common Indonesians become more skilled in navigating Indonesia's legal systems, they increase their bargaining power and thus their capacity to benefit from their labour and their land[7]. Furthermore,

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justice system" (Conn and Hippler 1973: 83). Maru (2006: 469), describing a paralegal program in Sierra Leone, gives this definition: "Paralegals are laypeople working directly with the poor or otherwise disadvantaged to address issues of justice and human rights". See also Simarmata 2003 for an Indonesian definition. These definitions have two recurring elements: (a) paralegals provide knowledge about the law and the functioning of a legal system and (b) paralegals are not lawyers.

[3] 'Legal Empowerment' has become an umbrella term for initiatives, like paralegalism, that aim to strengthen the Access to legal systems for disadvantaged groups. See Bruce 2006. UNDP defines legal empowerment thus: "the ability of people, particularly from poor and disadvantaged groups, to seek and obtain a remedy through formal and informal justice systems, in accordance with human rights principles and standards". See UNDP 2007.

[4] For the need for such 'legal empowerment from below', see Golup 2003, van Rooij 2009, UNDP 2007

[5] See paragraph 3.2 of the 'Strategi Nasional'(Stranas) at http://www.snap-undp.org/lepknowledgebank/Public%20Document%20Library/National%20Strategy%20on%20Access%20to%20Justice%20-%20LEAD%20Fact%20Sheet.pdf

[6] For more on the capacity of paralegals to make legal systems more accessible outside Indonesia, see the following publications on paralegal programs: Maru 2006, Stapleton 2010, Maru 2009, CLEP Report 2008.

[7] As we discuss in chapter two of this report, legal aid organizations and programs differ in the way they envisage this link between legal empowerment and the reduction of poverty: while international NGOs like the Worldbank and UNDP put the emphasis on the importance of increasing the individual's control over their life, some Indonesian NGOs have promoted the term 'structural legal aid' (BHS) that this increased control is only a step in

paralegals are seen as an instrument to hold governments to account: the legal knowledge and organizational skills provided by paralegals can serve to protest against malpractices of politicians and civil servants.

This report discusses the impact that paralegals are having on the way local grievances and disputes are being addressed. Through a combination of an ethnographic study of the functioning of paralegals and a quantitative analysis of 338 cases handled by paralegals, this report discusses the way paralegals are dealing with the cases that their neighbours bring to them. In this way this report aims to test some of the above-mentioned assumptions of the contribution of the presence paralegals: does the presence of community-based paralegals affect the way disputants make use of Indonesia's legal systems? And to what extent do paralegals really serve to limit the impact of social inequalities on the outcome of disputes?

Furthermore, this report aims to provide further insight in the functioning of a broader sphere of actors involved in local dispute settlement. As the example above illustrates, a paralegal is one among many different actors involved in the settlement of local disputes: village heads, customary leaders, local NGOs as well as politicians and civil servants are all regularly involved in settling local disputes. These actors are offering multiple fora to deal with disputes: it is a common practice to involve a village head to mediate a conflict, there are old and diverse customary institutions that can hear a dispute, and in many places there religious and societal leaders involved as well. Dispute settlement is done through local institutions (adat councils, religious courts, village councils, etc.) who often apply their own laws and regulations (though not always written down) that can differ from state law[8]. Compared to these various actors and associated institutions, paralegals are a rare - and relatively alien – form of support for disputants. That begs the question whether the presence of paralegals indeed affect the use disputants make of these other village-level actors and institutions: what is the

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the direction of changing the societal structures that underlie social inequalities. In this vision, the increased legal skills of the poor should serve to achieve more collective and 'structural' goals, such as a more equitable distribution of power in society.

[8] See Bowen 2003, F. Benda-Beckman 2002, K. Benda Beckman 1984

specific contribution of paralegals vis-à-vis these other brokers and mediators? And does the presence of paralegals lead to competition with these different actors? We emphasize that, given these questions, this report is *not* an evaluation of the effectiveness of the studied paralegal-programs.

Research Methodology

This report is based on three sources of material: (a) a qualitative study on local dispute resolution on both paralegal and non-paralegal villages (b) a quantitative analysis of a database of 338 cases that were handled and reported by the 120 paralegals supported under the World Bank's 'Revitalisation of Legal Aid' program and (c) interviews with representatives from (legal aid) organisations that have been running paralegal programs in Indonesia. Our research has focused on the functioning of paralegals that were part of UNDP and World Bank paralegal programs, and in a later stage, on paralegals supported under the aegis of legal aid projects supported by Open Society Institute. The choice for these organizations was a result of the institutional context out of which this research project grew: this research started as part of a collaborative project on Access to Justice in Indonesia between UNDP, the World Bank and Van Vollenhoven Institute, funded by the Dutch embassy in Jakarta[9]. Later Open Society lend further support to expand our fieldwork.

For the qualitative study of local dispute resolution we pursued two strategies. Firstly, we documented 21 cases that were reported to, and handled by, paralegals, while also documenting 10 similar cases in the same districts (but different villages), where paralegals were not involved. Secondly, through interviews and our (limited) immersion in village life during fieldwork we aimed to relate this case-handling to the nature of inter-village relations (and competition) in the studied areas. We focused on the functioning of paralegals in three provinces: Lampung (the location of a J4P program), West Java (where both J4P and OSI-funded programs have been set-up) and

[9] This project was a collaborative project between the World Bank, UNDP, VVI and Bappenas to engage in both legal reform and legal empowerment measures, running from 2007 till 2010. The project was funded by the Dutch Embassy in Jakarta.

Halmahera Timur (where the UNDP financed a paralegal program). The choice for the research locations was shaped by our desire to study the functioning of paralegals in diverse settings: while West Java provided a more urban and relatively more affluent setting, in Lampung paralegals operated in a rural context with a less diversified economy. Halmahera Timur was selected for the relative remoteness and inaccessibility of judicial institutions and its prominence of local, customary institutions. For an overview of the 31 cases documented for this report, see the annexure.

The quantitative study focused on 338 cases handled by paralegals in West Java, Lampung and West Nusa Tenggara between October 2007 and April 2009. All these paralegals were trained under the World Bank's 'Justice for the Poor' program. As part of this project paralegals were asked to fill out basic forms about the way they handled each case reported to them – see the annexure for the forms used. We have used this material to link our in-depth case documentation with a more general overview of the types of cases received by paralegals and the manner they were dealt with. There are certain drawbacks to this use of quantitative material[10]: keeping these limitations in mind, this database of 338 cases has been used to provide a more general overview of the functioning of paralegals.

Structure of This Report

This report starts with a brief introduction to the (legal) context in which paralegals operate and an overview of the main characteristics of paralegal programs in Indonesia. We will highlight how the character of the paralegal projects studied for the purpose of this report differs from other paralegal programs. In chapter three we briefly introduce some of the paralegals that were studied for the purpose of this report, and provide

[10] There are three main limitations to the reliability of this data. Firstly, we had to work with the project-forms that were already made for the purpose of J4P's project management which posed limitations on the type of analysis we could do. Secondly, some of the forms were filled in while a case was still being handled – which led to incomplete data about some of these cases. Thirdly, some of the wording of the questionnaire was open to multiple interpretations and misunderstandings, it is quite possible that some of the paralegal-informants interpreted questions differently. Because of these limitations we discarded the data on some of the questions in the questionnaire, while we used the filled-out forms itself to engage in an extensive checking of the given answers on, for example, the types of cases handled and the manner of case-handling.

explanations for the observation that some paralegal-posts are much more active than others. In the subsequent four chapters we focus on the four main activities of paralegals: legal accompaniment (assisting a client in bringing a case to the police or the court), mediation (assisting in informal dispute resolution), legal education (promoting knowledge of laws and legal procedures), and advocacy (organizing public campaigns to pressure authorities). In each of these chapters we highlight the factors shaping the effectiveness of paralegals in these fields, while using a number of cases handled by paralegals to illustrate our main findings.

2. Paralegalism in Indonesia: from Pokrol Bambu to Critical Legal Education

In this section we will briefly discuss how the historical development and present-day functioning of Indonesia's legal system has created a demand for legal intermediaries like paralegals. The second part of this chapter discusses some of the characteristics of the main paralegal-programs currently running in Indonesia, including the UNDP and the World Bank programs discussed in this report.

The need for the kind of legal aid that paralegals provide could be traced back to the way the Dutch imposed on Indonesia a pluralist legal system that was designed mainly to serve their commercial interests (Lev 1985). Wishing to intervene as little as possible in existing pre-colonial laws and local customary ways of settling disputes, the Dutch opted to for a legal system that distinguished people based on ethnic categories. Instead of adopting a universal legal code (like the English did in India) the Dutch decided, partly under the aegis of *adat* scholar Cornelis van Vollenhoven, to treat Indonesians (or those classified as 'natives') in civil matters[11] according to customary law, while the Dutch (and those classified as 'Europeans') fell under Dutch law. The Europeans were tried in European courts while Indonesians were largely tried in pre-colonial institutions like adat courts or Islamic courts or by the local aristocratic functionaries (called *pangreh raja*). They could also take their cases to the local courts or, in major cases, to the Landraad – the courts that the Dutch had set up for Indonesians. It was clear that Indonesians did not really control the legal system that the colonials had designed for them: the higher judges were all Europeans, and appeals by Indonesians were taken up by the European Courts. Under this pluralist system the Europeans were relatively well protected from governmental abuse of power, while the procedural code for Indonesians – the 'Indisch Reglement' (later Herziene Indisch Reglement or H.I.R.) – contained far fewer protections against government authority (Lev 1985). This served the Dutch interests well: as the colonial commercial elites

[11] Both Indonesians and Europeans were subject to the same criminal code, although they were not tried in a similar manner as the procedural code for dealing with criminal cases for these groups differed.

appropriated land and exploited the local workforce for their plantations or industries, the Indonesians who were abused, kicked off their land, exploited etc. found that the colonial legal system hardly provided any protection against these violations[12]. Those who did attempt to deal with this alien and incomprehensible legal system could hardly do so on their own; the remoteness of the state's legal system spawned a group of paralegal-like intermediaries, called '*pokrol bambu*' (from 'procureur' means prosecutor in Dutch and 'bamboo' or 'bush' as pejorative the term from advocate which implies to low of legal qualification). In the absence of an established profession of Indonesian Lawyers these early paralegals could make a living by selling their limited knowledge of the colonial (and later post-colonial) legal system (Lev 2000: 143-161).

Maybe it was because of such grievous experiences with a partial colonial system that, after independence, the strengthening of the rule of law in Indonesia was hardly a political priority. Sukarno was dismissive of the capacity of the law to bring about positive social change – in his words: 'you cannot make a revolution with lawyers' (Lev 2001: 172) - and under his rule the professional standards of the new Indonesian judges and lawyers deteriorated. As politicians asserted their control over the functioning of the judiciary, promotion and status within the judiciary became more a product of one's personal contacts and bureaucratic skills, rather than on the knowledge and mastery of the law. Sukarno's 'hukum revolusi' during his Guided Democracy became an even more random and unpredictable force than the colonial law, as personal influence, politics and money shaped the outcome of legal proceedings just as much as the written law did. Those who studied law generally preferred a bureaucratic position rather than a job within the judiciary (Lev 2000: 305-321, Lindsey and Santosa 2008).

The rhetoric of Soeharto's new order substituted the 'hukum revolusi' with an emphasis on 'negara hukum', but that did not halt that the degradation of the legal system. The businesses of Soeharto and his children flourished by pressurizing or coaxing bureaucrats in order to evade regulations, creating a corrupt 'shadow bureaucratic system' (Lindsey and Santosa 2008: 11). In such an atmosphere judges

[12] Stories of grievious encounters of Indonesians with the colonial legal system can be found in Pramoedya Ananta Toer's novels, such as Bumi Manusia or Rumah Kaca.

became even more subservient to political interests; the control of the ministry of justice over the Supreme Court ensured that judicial autonomy was limited. As individual ability and merit were thus largely irrelevant for a successful career, the technical capability of Indonesian legal institutions declined. Corruption was rife as judges regularly 'sold' their verdicts to the highest bidder (Lev 2007). Describing its history in this period, a book on the history of Indonesia's Supreme Court carried the title 'a history of institutional collapse' (Pompe 2005). In the analyses of Indonesian fledgling legal system at the time, an Indonesian emphasis on compromise and harmony was offered as a cultural explanation for the random application of laws. According to Lev (2000: 188), "those who talk about rules as if they were absolute are likely to be considered obstructers, stubborn trouble-makers antisocial fools, or worse." This assessment sounds particularly worrisome in the light of the rampant human rights abuses during this period, as both the police and the army seemed – particularly in conflict areas – to be operating above the law. The distrust of many Indonesians of the formal justice system – which resurfaces throughout this report – should be read in relation to these weaknesses of Indonesia's justice system.

Angry and frustrated with these developments, Indonesian lawyers set up an organization called PERADIN (Persatuan Advokat Indonesia) in 1964 that aimed to bring the ideal of the rule of law back on the political agenda. Some of key person in PERADI then supported the establishment of the first Indonesian Legal Aid Institution (Lembaga Bantuan Hukum, LBH) in 1970. This organization aimed to provide free legal advice or representation in court for those who could not afford them. LBH was an instant success, as a large number of clients flocked to its offices – LBH later expanded to other cities – to present their legal problems. Following LBH's example legal clinics were opened by law students and lecturers in several universities, while NGOs were being established to pressurize to improve the legal framework in different areas. Thus the fundaments for an Indonesian 'Access to Justice movement' were laid.

LBH saw its mission as going beyond providing legal assistance to poor Indonesians; Nasution envisioned that when disadvantaged Indonesians could take their cases to

court, the societal structures behind deprivation and inequality could be changed. This idea was termed 'structural legal aid' (BHS, *bantuan hukum structural*): "The injustices and oppressions which we so often perceive in our society actually do not come solely from the behaviour of an individual who consciously abuses human rights, but mainly have their sources in the unbalanced patterns of social relationships. (…) This means that structural legal aid shall consist of a series of programs, aimed at bringing about changes, both through legal means and in other lawful ways, in the relationships which form the basis of social life, towards more parallel and balanced patterns" (Nasution 1985: 36). LBH acquired such a high profile through the cases it took up that, despite the revolutionary undertone of its thinking, the New Order decided to tolerate LBH[13]. The ideas about structural legal aid created a new role for paralegals, as they were employed as community organizers to help various marginalized groups to address injustices - they started to work with women groups to fight for gender equality, with peasants for land reform, with labour unions for better working conditions, and with indigenous people to reclaim land and natural resources (Fuller Collins 2007, Simarmata 2003, Nasution 2007, Triwibowo 2007).

Frustration with the New Order-repression of these efforts led in the 1990's to the development of a new legal aid strategy called Critical Legal Education (*Pendidikan Hukum Kritis*, PHK) (Simarmata 2003). They argued that BHS had failed to overcome the distribution of political power to the marginalized groups. For the PHK advocates, the local wisdom embodied in local customary law (*adat*) should be equally important as the state law. PHK advocates started to train a new type of paralegal called *pendamping hukum rakyat* (PHR, 'the legal assistant of the people'). The role of a PHR goes beyond providing legal aid and community organizing, as PHK-paralegals are also expected to engage in critical legal analysis to challenge the domination and oppression inherent in Indonesia's laws and policies – in particular in Indonesia's laws pertaining to land and natural resources. This approach aimed to identify legal reforms and alternative

[13] For more on the history of LBH, see Lev 2000: 283-305.

(customary) legal systems that could be more mindful of the social and legal rights of the poor.

Paralegal Programs in Indonesia

These different strands of thinking feed into the different paralegal-programs currently operating in Indonesia. For this report we studied the programs of the UNDP's LEAD program[14] and the paralegal program 'Revitalising Legal Aid' (RLA) under the World Bank's Justice for the Poor program[15]. The aims of these programs were similar – the RLA project documents formulate them as follows: "a) Increase the capacity of *posko* [i.e. village level legal aid post] to provide community based legal aid services; b) To increase legal awareness and knowledge of community members; c) To support policy change relating to legal aid for villagers".

The RLA program worked with '*poskos*' as 'community legal aid centers'. There are 2 different types of legal aid post established in RLA project locations: (a) village level advocacy groups supported by NGO (labor union, land conflict, environmental conflict); (b) existing community organization at village level (adat, religious groups, farmer association). Most paralegals were inhabitants of the project-villages who had volunteered (or were asked) during a village meeting. These paralegals were supported by 'posko facilitators' and 'gender specialists' who provided assistance and who functioned as a liaison with the 'community lawyers'- lawyers (often based at a legal aid organization) who were involved in the project to provide paralegals with legal advise for the more complex cases. The RLA program was operative in three provinces (Lampung, Nusa Tenggara Barat and West Java) where for each province an (legal aid) NGO was involved as 'implementing agency'. In these three provinces the project worked with in total 120 paralegals, 95 village mediators, 12 posko facilitators, 6 community lawyers and 6 gender specialists. The RLA-program was explicitly 'community-based' which meant that the program worked with inhabitants of project-

[14] See http://www.undp.org/legalempowerment/projects_indonesia.shtml
[15] See http://go.worldbank.org/DH16VCUFS0

villagers as paralegals, most of whom were expected to serve only people from (or around) their village.

The project 'Legal Empowerment and Assistance for the Disadvantaged' (LEAD) of the UNDP also worked with community-based paralegals. Paralegals were trained and supported that focused on specific issues (such as gender, land and natural resources), while other paralegals were also trained as general community-based paralegals. They were selected from project-villages in North Maluku, Central Sulawesi and Southeast Sulawesi. UNDP also worked with local NGOs who were made responsible for the training and support of paralegals. This support was organized through 'field officers' who travelled to the project-villages. In total, the LEAD project claims to have trained to have trained 400 paralegals[16]. For this report the research focused on North Maluku, where fieldwork was conducted in Ternate and four project villages in Halmahera Timur[17].

To highlight the main features of these programs and its differences with other paralegal-programs in Indonesia, we summarize these programs – the outcome of our interviews with these organizations - in the table below. While this is not the place for a comprehensive discussion of these different programs, we will highlight four main differences in the aims and focus of these programs. A first important difference lies in the focus of the work of paralegals. While RLA and PBHI paralegals are (mostly) trained as generalists – as they work on various issues – HUMA, LBH APIK and Walhi employ paralegals who receive more specialized training to work on specific issues – land rights, environmental disputes, gender. Walhi in particular selects villages that are confronted with an environmental dispute, and subsequently trains villagers to organize the community to address this issue – and no other issues. A second and related difference is that this latter group puts more emphasis on advocacy, litigation and community organizing, while RLA and UNDP programs also aim to strengthen dispute resolution

[16] See the projects fact sheet, http://www.undp.or.id/factsheets/2008/GOV%20Legal%20Empowerment%20and%20Assistance%20for%20the%20Disadvantaged.pdf

[17] For a description of the LEAD project (of which paralegals where an integral part), see http://www.undp.or.id/archives/prodoc/ProDoc-LEAD.pdf

through mediation. A third important distinction lies in the manner of selecting paralegals – while UNDP's program in the early stages asked communities to select new paralegals themselves, other programs have local 'field officers' select paralegals, or the selection is done by both project-staff and the local community.

A fourth and more gradual distinction lies in the attitude towards state law; particularly HUMA aims – in the line of the critical legal education discussed above – to stimulate a critical attitude towards existing laws and to envision legal alternatives, while most other NGOs promote access to the formal legal system with less emphasis on engendering such a critical attitude. This difference is related to different views about what the aim of paralegal-projects (and legal aid in general) should be. The studied RLA and UNDP program emphasized particularly the need to strengthen the capacities of individuals to defend their own interests (e.g. project documents describe legal assistance as a means to "increase the control [of the poor] over their lives") – an approach that generally sees the formal legal system, if accessible, as a positive force. Organizations like HUMA put more emphasis on conveying to clients the inadequacies of the existing legal framework; for these organizations paralegals should not just empower communities to use the law, but should also empower communities to change the law. For example Simarmata (from Huma) writes: "PHR go to areas when there is not yet a [reported] case or where a conflict is still latent. The PHR do not work on the consequences but on the cases. So, PHR are not just devoted to discussing the outcome [of a conflict], but also the reasons [behind the conflict][18].

Revitalization of Legal Aid	LBH APIK Jakarta	PBHI Jakarta	WALHI	HUMA
Approaches				
BHS; legal reform at the local level	BHS; gender related issue	BHS; human right issue	PHK; environmental issue	PHK; revitalize customary laws
Type of Training (s)				
Training for Paralegal and Village Mediator Certified	Training for Paralegal Certified	Training for Paralegal	Training for Community Organizer	Training for PHR
Target Groups				
Villagers, Farmer,	Domestic	Student, Women	Environment-	Academic,

[18] Simarmata 2003: 18

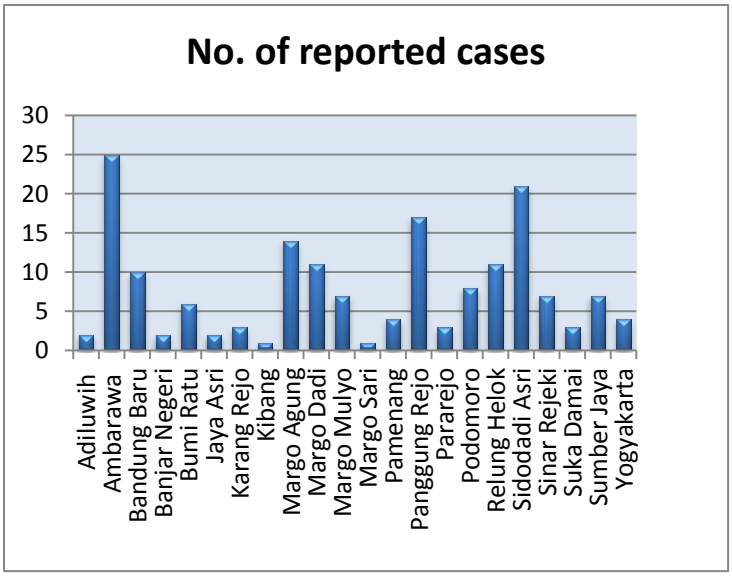
Labor associations	violence survivor, informal workers, urban poor	Groups, victim of human right abuse Depend on the funding sources	related community organizations	student, community organization, NGO activist
Selection Process				
Selected by local facilitators with input from community Criteria applied	Selected by partner NGOs No criteria applied	Selected by local facilitator with input from community No criteria applied	Selected by community organization, input from NGO's facilitator No criteria applied	Selected by community and local NGOs No criteria applied
Roles of Paralegal				
Legal education, Mediation, Case handling, strengthen community-based legal aid post, Networking	Legal education, case handling, strengthen community organization, counseling	Non-litigation services, strengthen community organization	Strengthen community organization, advocacy, lobby, create village regulation	Different roles for different type of PHR
Training Period				
1 a year, each consist of 3 different step of training	1 a year, 1 training	2 a year; 1 training –depend on funding availability	Depend on Local NGO Partners Agenda, at least 1 a year for each partner	1 a year, depend on local NGO partner
Support for Paralegal works				
Backed up by legal aid lawyers; gender specialist, Local Facilitator, community based legal aid post, ID card Limited operational cost, monthly	Backed up by APIK's legal aid lawyer network ID Card Limited operational cost (per case)	Indirect link to PBHI lawyers No operational cost	Facilitated by local facilitator (student and NGO) Member of WALHI society No operational cost	Facilitated by local NGO partner No operational cost
Funding Sources				
International Aid agencies	International aid agencies, NGO partner's contribution	International Agencies, Institutional saving	International aid agencies	International Aid agencies
Challenges				
Project-based term support for well trained paralegal, improving training method, legal education material	Lack of funding resources, dilemma of 'to produce' vs. 'to strengthen'	Short term, driven by funding sources, no operational cost for paralegal	Paralegal's social mobilization, limited numbers of legal aid lawyers	

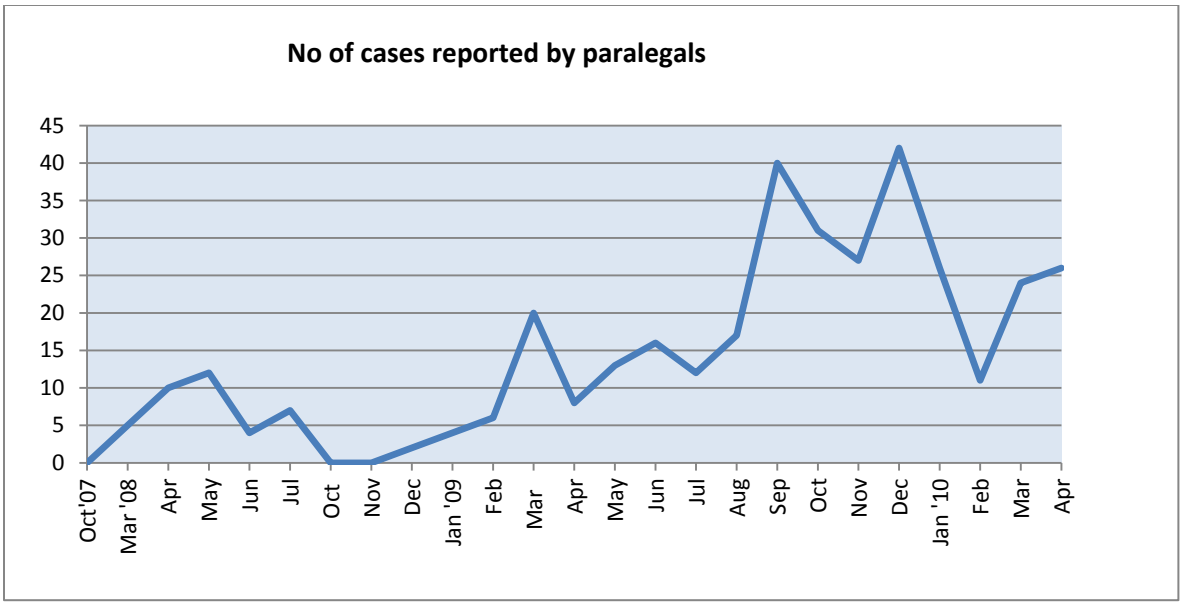
Notes: BHS (Bantuan Hukum Struktural, Structural Legal Aid); PHK (Pendidikan Hukum Kritis, Critical Legal Education); PHR (Pendamping Hukum Rakyat, Community Legal Assistant)

3. Who is a Paralegal?

Both UNDP and World Bank projects work with community-based paralegals. These paralegals are inhabitants of target areas who are selected through an interaction between project-staff and local communities. The World Bank's RLA project used the following criteria to select paralegals: a) trusted by the community; (b) actively involved in community organization or activities; (c) having organizational, advocacy or legal aid experience. Furthermore the project aimed to have one female and one male paralegal in each posko. The to-be-paralegals were expected to join on a voluntary basis, since they would receive no salary. This selection-process has, as we shall see, a large impact on the effectiveness of the program. As community-based paralegals have long-standing relationships with the people they are supposed to serve, their social background and their embeddedness in the local community has a large impact on the way they operate. In this paragraph we will tease out some general observations about the relation between the way paralegals are embedded in their community and their general effectiveness.

The paralegals that we interviewed were often motivated to become a paralegal out of, ironically, a distrust of the formal legal system. Several paralegals stated that they had felt mistreated by the way the police and other authorities had invoked legal provisions in the past; they felt that by acquiring legal knowledge they could inform people 'so that they could no longer be oppressed by the law'.





Such experiences help explain why paralegals – as we will discuss below – are generally reluctant to advise clients to solve issues through the formal legal system. As another paralegal put it: "I once tried to bring the case to the police, but then we needed a lot of money, so with this program I can try to be a good mediator and solve cases without the police".

While paralegals often expressed strong motivation and enthusiasm for their work as a paralegal, the above graph shows that, among the paralegals of the Justice for the Poor-program, a great disparity can be observed in terms of in the number of cases they received. While some of the paralegal-poskos reported almost no cases in more than two years, other poskos received more than 20 cases. While it has to be taken into account that many paralegals failed to report particularly the smaller cases, 338 cases is not a high amount for 120 paralegals and 95 mediators working for two years. Furthermore, as the next graph shows, their activity was also not evenly spread in time: most of the case-handling of the paralegals was concentrated in the last 9 months of the project. It took time before villagers trusted paralegals sufficiently to report their problems to them, and some paralegals never really managed to establish this trust.

These observations suggest that the mere fact of being a trained as a paralegal is not enough to convince villagers that he or she will indeed be of any use. In all the project areas it took considerable time before people started to trust their paralegal

enough to bring their problems to the paralegal. In some areas the local community never really developed this trust. Through our fieldwork we identified a number of factors that influenced whether or not a paralegal was capable of gaining the trust of his or her community.

A first important factor is the availability or absence of other 'legal intermediaries'. Paralegals are not the only ones offering help to local disputants or victim of a crime. In fact, the inaccessibility of the formal legal system has engendered a whole range of 'legal intermediaries'- i.e. actors involved in dispute resolution and the facilitation of the interaction with the police and the courts. There are village heads, customary authorities, religious and other local leaders offering informal justice mechanisms for dispute resolution. Furthermore one can find various kinds of 'fixers' – journalists, NGO-staff or political actors who offer to use their contacts and knowledge of procedures to report a case to the police or to bring a case to court (for a fee). Both village heads and paralegals called these fixers and their organisations '*bodrex-NGOs'* or '*bodrex*-journalists', referring to a medicine called Bodrex, used in Indonesia for all sorts of illnesses: these fixers jump on any kind of issue, hoping to make some money by offering their services. In our case-studies in areas without paralegals, we encountered a number of individuals who could be considered as self-taught paralegals: they had studied the basics of the law and used this knowledge to help their neighbors and friends. And then there are the local *preman* ('criminal') who offers, for a fee, to settle a dispute by pressurizing the adverse party. The special qualities of paralegals – their legal training and their connections to supra-local (legal aid) associations and the fact that they do not ask for a fee – do not necessarily make their services superior, particularly if there are locally influential leaders with the skill of brokering ánd enforcing a compromise between disputants.

Paralegals are thus competing with these other legal intermediaries, since they are offering similar services. That means that, in order to attract clients, the services of paralegals need to be considered superior to that of the alternatives. The following three factors seem to influence this evaluation: firstly, it makes a difference if a

paralegal already has some local status and authority. The most active and successful paralegals often already had some success in taking up community-problems before becoming a paralegal, often through the involvement in organizing events or protests. Paralegals like Agus (see box-text) was often approached by villagers, which was not so much the result of his status as paralegal but rather the fact that had already acquired an image as local problem-solver. His previous activities as a local activist had given him an image of a trustworthy and effective organizer, which boosted his effectiveness as paralegal. This is also the reason why the few paralegals in the J4P-program who were also village heads, received the largest number of cases: it was their position as village head that convinced villagers that he (or she) would succeed in settling their dispute

Mas Agus, 45, RLA paralegal from Margosari village.

"It comes from here (pointing to his chest), my motivation to be a paralegal. I don't have a heart to see poor people become a victim". Agus had been active in various organizations –ranging from the Indonesian Red Cross, Human Right Watch NGOs and a sub-district elections monitoring groups – before becoming a paralegal Because of his friendly and polite attitude towards his neighbors and local authorities, Agus has a wide-ranging network of contacts. Agus felt that as a paralegal he has improved his writing skills; he keeps a big black book where he documents every case reported to him, ranging from infidelity, traffic accidents, juvenile delinquency to allegations of corruption. "I want to help people here in my village as long as they also want to learn about the law with me. If they want me to handle on my own, then I will refuse. His house now doubles as a legal education center for the neighbors.

A second, related, factor is the strength of the network in which a paralegal is embedded. As contacts (with lawyers, the police, politicians, etc.) are crucial to solve issues, the development of a large network can greatly contribute to a paralegal's effectiveness. J4P's paralegal project worked with local labour unions and agrarian organisations to select and train paralegals, and this seemed to have helped paralegals

to build trust and to acquire new useful contacts. Particularly the association with a local legal aid association is important for a paralegal as this constitutes his particular advantage over the other 'legal intermediaries' mentioned above: this support from city-based lawyers signals to possible clients that a paralegal might actually succeed in bringing a case to court.

Subur, 36, a paralegal from Ambarawa, Lampung.

Subur used to be a local *preman* – a small-time criminal. Through his frequent interactions with police officers he learned about the tricks of the '86 code' – the way in which the police settled criminal cases through bribery. He had ample experience with police investigations and the way the law could be used to threaten people. He had never finished school, but the skills and knowledge he acquired through his previous life turned out to be useful when he became the village paralegal. "Now I no longer want to be involved in bribery or corruption in dealing with the police. Instead, I use my networks with police friends to support the poor people in my village". By now the school drop-out has become a well-known and well respected paralegal as well as a member of the 'community policing program'.

A third factor influencing the number of cases paralegals received, is their personal skills and *savior faire*. Most of the selected paralegals live their lives in relatively remote villages and have limited education. This presents a great challenge for a paralegal program that aims to turn villagers into effective problem-solvers: while some showed extensive knowledge of the law and legal procedures and felt no hesitation about contacting power holders, there were many others who, even after being a paralegal for more than two years, lacked even basic legal knowledge and felt very shy about contacting a local police official or a village head. This, of course, discourages people from approaching such a paralegal for help. A self-reinforcing mechanism was at work here: because of a lack of skills and self-confidence, villagers did not ask a paralegal for help, which deprived this paralegal of the opportunity to develop the necessary self-

confidence and skills[19]. This can be more difficult for women because of prevailing conservative ideas about the proper role of women in the public sphere – but paralegals like Sri (see boxtext) and other impressive female paralegals suggest that this need not be an insurmountable obstacle. Such success-stories aside, the observed lack of skills and self-confidence of many paralegals points mainly to inadequacies in the training program, as the provided training seemed insufficient to turn many selected individuals into effective paralegals.

Sri, 37, Woman paralegal from Bogor.

Sri felt that being a paralegal was her destiny. After she migrated from a small village in Central Java to Jakarta in search for a better life, she worked at several factories. The management of the factories had always been full of praise of her performance until, in 1999, she was sacked because she joined a demonstration to demand better protection of working rights. "It was the first time I understand the poor condition of my co-workers". She did not feel sorry, as it strengthened her resolve to fight for labour rights. From a worker behind a sewing machine she became a respected labor activist. She acquired just a public profile, that she contested the elections for a seat in the local parliament twice Sri developed strong political and advocacy networks. Her capacity for sharp legal analysis has made her a leader of her labor union.

Conclusion

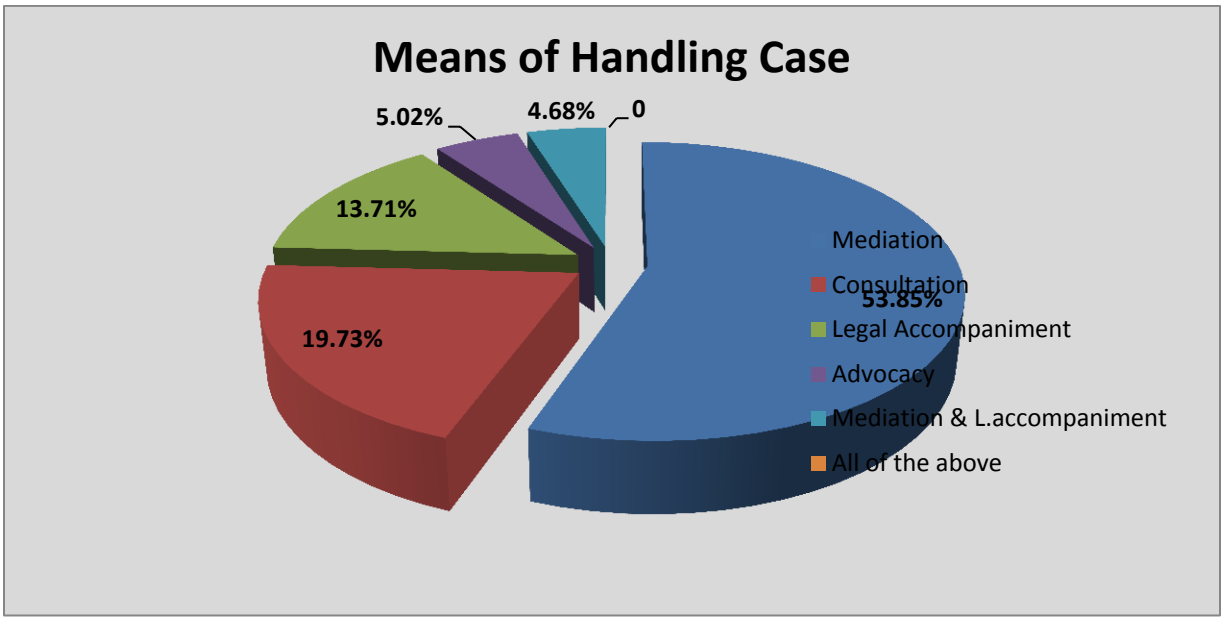
Taken together, these four factors can help illustrate how the selection of paralegals can involve a dilemma between, on the one hand, the aim of paralegal programs to address local power-imbalances and, on the other hand, the wish to select skillful and effective individuals. In the earlier phase of its project, UNDP's LEAD program deliberately choose its paralegals from underprivileged groups. This policy was changed in the second phase – when village leaders were asked to recommend individuals – because many of the

[19] The fact that both the Justice for the Poor project and UNDP's LEAD project worked in teams ('posko's) did serve to address this problem, since in this way the more savvy paralegals within these teams could be an example for others to follow.

paralegals of the first batch had, apparently, lacked the necessary skills. That makes sense in the light of a desire to have paralegals that can help solve many cases. But the risk of selecting the most capable individuals – those with local authority, contacts and skills – is that such programs can end up reaffirming local hierarchies: if village heads and other local leaders are involved in a paralegal-program, this might lead to a high output (in terms of number of cases handled) but it might also further cement local inequalities. There is no clear way out of this dilemma – both local inequalities and available skills need to be taken into account – but these considerations do illustrate the need for a well-informed selection of paralegals, and for adequate training that can really succeed in boosting the (networking) skills of paralegals.

4. Legal Accompaniment: Accessing and Avoiding Legal Institutions

The 'traditional' activity of paralegals concerns the facilitation of the interaction between clients and legal institutions (like the state courts, customary courts or the police). By offering advice and by helping clients to manage official procedures paralegals promote the accessibility of legal institutions. This is the activity most commonly associated with the term 'paralegals'. But, as the graph below shows, this facilitation of the interaction with legal institutions – which we will term 'legal accompaniment' - is a relatively small aspect of the activities of paralegals operating in Indonesia.

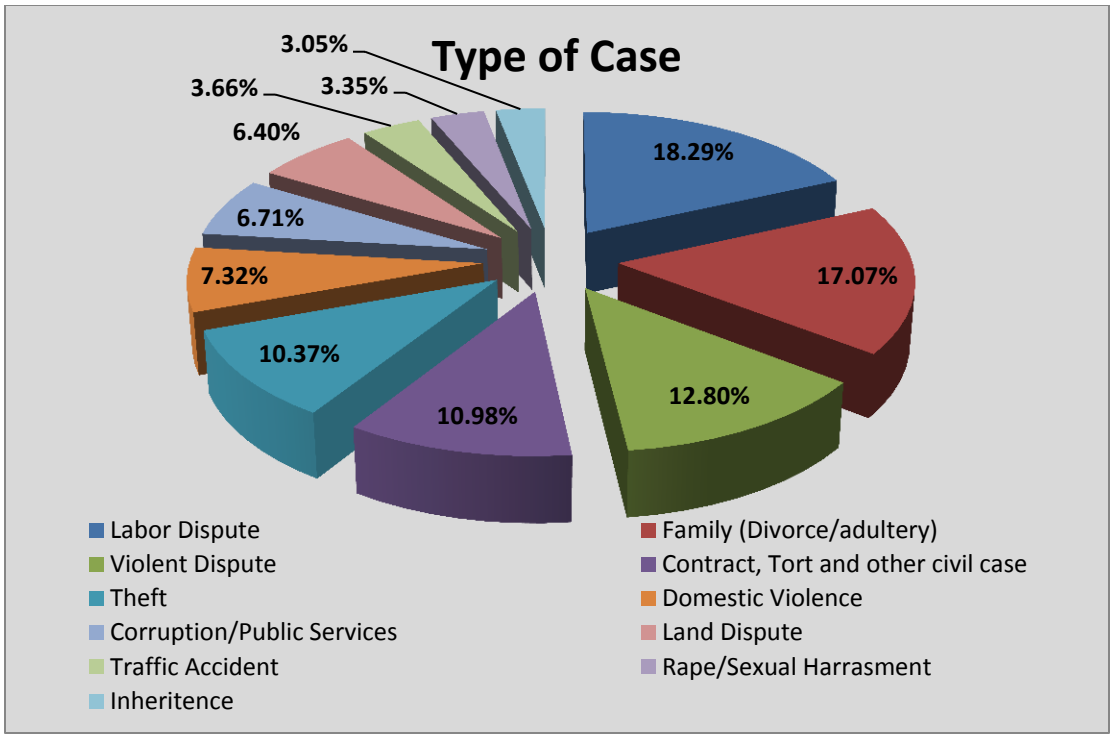


Only in 14 percent of the cases did paralegals help their clients report the problem to the police or a local court, with a further 5 percent of cases involving both mediation and legal accompaniment . In 20 percent of the cases clients approach the paralegal for advise which leads to no further action on the part of the paralegal. Advocacy, discussed in chapter 7, is a relative rare activity for paralegals, employed in only 15 cases (5

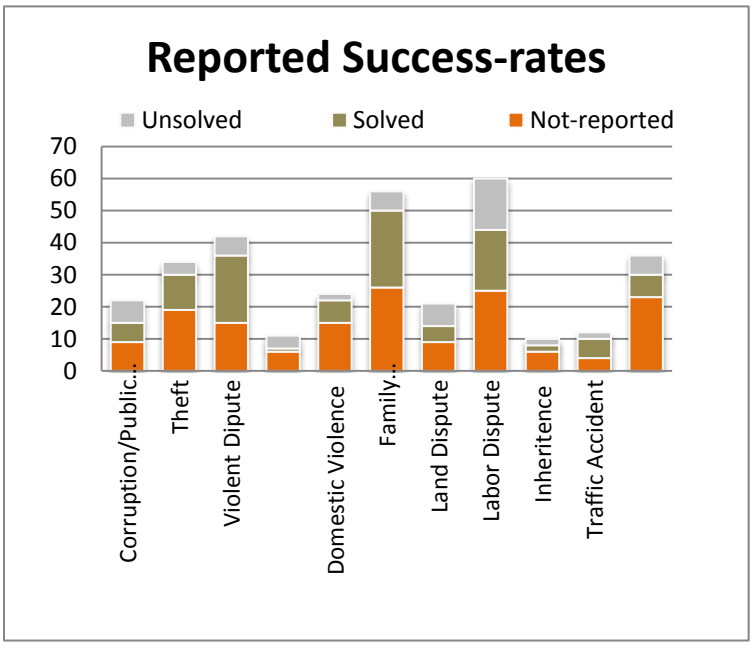
percent) out of the reported 338 cases. In most cases (54 percent) paralegals deal with the issue brought to them by conducting or facilitating a mediation-process between conflicting parties.

The table below shows a break-up of the types of cases paralegals are commonly involved in. The highest number of cases reported to paralegals involved family disputes and labour disputes (17 resp. 18 percent) – types of disputes that lend itself well to more informal dispute resolution. But also in criminal cases like theft or violent disputes paralegals relatively rarely advice to bring a case to the police or the court, only in 24 percent resp. 18 percent of the cases – as these types of cases were also mostly dealt with through informal mediation[20]. It turns out that in cases concerning rape and labour disputes paralegals feel most confident in taking recourse to the formal justice system (30 and 21 percent of reported cases respectively). The second graphs gives an overview of how often paralegals reported a case to be 'solved'. While this data needs to be treated with caution – e.g. when there were further development in a case after filling in a form, paralegals usually did not report these developments, and there is some ambiguity about what constitutes a 'solved case' – the graph suggests that paralegals found is easier to solve private, intra-village matters (such as family disputes, theft, violent disputes and domestic violence) than disputes that (often) involved actors from outside the village (such as labour disputes, corruption and land disputes). Cases involving rape or sexual harassment also turned out to be relatively difficult to solve.

[20] The 'Governance and Decentralization Survey' that the World Bank conducted in 2006 reached similar conclusions; it found that villagers reported disputes most often to the Village Government (42% of informants had ever done so) and community/adat leaders (35%), and less frequently to the police (27%). See World Bank 2008.



These statistics - see the annexure for more – suggest that the work of Indonesian paralegals – who have been trained to facilitate the use of formal legal institutions – only infrequently involves facilitating access to the formal justice system. Using a case of theft and a land dispute as examples, we will discuss in this section the ways in which paralegals facilitate the access to the formal legal system, and the reasons for this relatively low incidence of such activities. We will argue that, while paralegals are not observed to have much impact on the actual use that people make of the formal legal system, their impact lies more in conveying a *threat* that legal procedures



might be invoked. This threat not only affects the outcome of village-level mediation (to be discussed in the next chapter), but also smoothens (to a certain extent) the interaction with particularly the local police. In the context of a police force that is often perceived as threatening and corrupt, paralegals can sometimes strengthen the bargaining position of villagers vis-à-vis the police. This often serves to keep the police *out* – in convincing the police to have a case settled through informal dispute resolution. We will also show that there are various other individuals – political actors, local activists, case-brokers – involved in the facilitation of the interaction with the formal legal system; paralegals are competing with these actors over the status and money involved in brokering to the access to (particularly), the police.

Theft: the Dukun Fiends a Thief

Sulis had been working for two months at a small stationary shop, when the owner of the shop, Ruhaini, accused her of stealing 2,3 million rupiah from the shop's register. There were no eye witnesses and Sulis denied having stolen money. But as Sulis had been alone in the shop, Ruhaini felt certain that Sulis had taken the money. She consulted a local dukun, whose divination also pointed to Sulis. At that point she went to the police. Ruhaini comes from a prominent family in the region and her father is the ex-head of the district-police. So both the village head and the local police officers decided to take Ruhaini's word for it, and the police duly arrested Sulis. With Sulis in jail, Ruhaini went to Sulis' family together with the village head, a close friend of her father's. They told the stricken family that Sulis would be transferred to another jail if they would not sign a letter (a surat perdamaian*), promising to repay the 2,3 million. Sulis' family saw no other option but to sign the letter that the village head drafted, which admitted Sulis'guild. With that letter, Sulis' brother went to the police – with the hope that this agreement would convince the police to release Sulis. But the letter was not enough: they asked Sulis brother for 5 million rupiah. He went around his village to collect as much money as he could: in the end he paid the police 2 million rupiah before they agreed to stop the case and release Sulis. A few days after Sulis was released from jail,*

Ruhaini send two men to her house, who threatened to 'play judge' if her family would not pay the promised 2.3 million.

Sulis parents got sick with worries about having to pay this – for them – insurmountable amount of money. Sulis and her father decided then to visit Pak Agus. Agus is a local paralegal who has received basic legal training from KBH Lampung. The signboard in front of his house - identifying his place as a 'legal aid post' – and his record as a local problem solver generates a steady stream of visitors like Sulis to Agus' house. He advised them not to pay the 2.3 million. With a surat kuasa – a 'letter of attorney' signifying that he was her legal representative, Pak Agus went to the village head to organize a mediation session. The meeting at the balai desa was tense, as Ruhaini kept insisting for the 2.3 million. Sulis family and Pak Agus told them that the letter was not valid, they argued with the village head and they stood their ground. Ruhaini has threathened to get Sulis arrested again, but three months after the incident nothing more had happened. When asked about what he had learned from these experiences, Sulis brother replied "our neighbours were surprised that we could win against powerful people. We are an example for poor people. If we are enlightened, we do not always have to be the victim, we can fight".

Sulis experiences illustrate two key and interrelated weaknesses associated with Indonesia's formal legal system: both the courts and the police are considered to me more responsive to the wishes of more powerful sections of society, and they are prone to rent-seeking. The police officials did not really investigate whether Sulis was guilty, their standard operational procedures for such a case seemed to matter less then Ruhaini's superior status and contacts, and they demanded a very high fee for Sulis' release. Given such experiences, it is no surprise that surveys regularly indicate high levels of distrust that Indonesians feel towards the formal legal system. Because of the costs and the perceived corruptibility of the police and the costs, an informal settlement of a dispute or a violation is often preferred, even when it concerns criminal acts[21].

[21] See note 25

Furthermore, as one survey indicated, 50% percent of respondents felt that the formal justice system was biased in towards the rich and the powerful, against only 15% for the informal justice system[22]. Even if no bribe is paid, taking a case to court can be expensive and time-consuming[23], while there is a general perception that, due to corruption, there can be no certainty about the way a law is applied in court. Police officials generally have paid a considerable amount of money to their superiors to get their job, which means that often they cannot avoid demanding people like Sulis for a bribe – to make good on their earlier 'investment'.

In this context it is not surprising that paralegals are reluctant to advise a client to bring a case to court. In the context of a corruptible and inaccessible formal legal system, the work of paralegals more often consists of finding alternative solutions in order to avoid or minimize and scrutinize the involvement of the police – even to victims of criminal offences. As mentioned above, only 14 percent of the 338 reported cases involve legal accompaniment, while this was higher for the sample of cases that we studied in detail: in seven out of the studied 21 cases involving paralegals did the client decide to bring the case to the police of the court. For the non-paralegal cases that we studied, this was only in two out of ten cases (see annexure two for an overview of the studied cases).

The capacity of paralegals to help their clients deal with the police – whether to stop a case, to report a case or to accompany an accused – is largely due to the threat that they represent: their presence, and their links to lawyers of legal aid associations, suggests to police officials that any misbehavior on their part might actually lead to an official complaint. While police officials can often assume that uneducated villagers will not have the skills or stamina to protest against bribe-taking or foot-dragging – the police officials above seemed to have few qualms about asking Sulis for 2 million rupiah -, the involvement of paralegals can serve to discipline individual police officials. Furthermore, this involvement seems to impart some confidence to their clients; Sulis and her family, for example, said repeatedly that they felt 'less panic' and 'more secure'

[22] UNDP 2007: 72
[23] Give detail here

when Pak Agus got involved. The connections that a paralegal has with outside organizations – like a legal aid association – are crucial for this interaction with the police, because these links contribute considerably to the impression that a paralegal might create problems for a misbehaving police officer.

This impression might be strengthened if paralegals would possess some signs of official recognition – like an identity card, an uniform of an official letter. Interviewed paralegals complained that the police were often hesitant to allow them to be present when meeting with their clients as they were generally unfamiliar with paralegals: "*Anytime when we came to the police, they do not know who we are. Who the hell is this [paralegal] guy? So, we have to explain over and over again*". Often paralegals are introduced as a relative, friend or community leader - which implies a limited role. Over the last years legal aid organizations have argued the position of paralegals vis-à-vis police officials could be strengthened by having some form of official recognition from the courts and/or state authorities: this would ensure that a paralegal could properly support a client while also reassuring hesitant police officials that. One obstacle that prevents this official recognition is the lack of an agreed definition of what a paralegal is, as well as a fear from lawyers that any official recognition would allow paralegals to encroach upon their field of work: there is discussion over what are the limits of the kind of legal representation that a paralegal can and cannot do. Our observations on the interaction with the police support the argument that official recognition could strengthen the capacity of paralegals to help their clients deal with the police. At the same time such recognition could lead to an official 'cooptation' of paralegals into the formal legal system which – given the widespread distrust of this legal system – might also discourage some from seeking the help from paralegals – particularly when it involves a case that does not need to involve the formal legal system.

Out of the seven paralegal cases that were reported to the police, in four instances the clients of the paralegal wanted to stop the police involvement after an agreement had been reached through mediation. In the presence of various alternative mechanisms to deal with disputes or criminal acts, promoting access to justice often

means *limiting* the interaction with official legal institutions. Stopping a case ('mencabut kasus') is a lucrative activity, as police officials regularly ask for a fee to do so – as officially they are obliged to process all cases reported to them. In cases about, for instance, sexual harassment, fighting, traffic accidents, and even theft it happens regularly that after the case has been reported to the police, some agreement about compensation is reached between perpetrator and victim - which often suits all parties involved better than going through the legal process. After an agreement letter (a 'surat perdamaian') has been signed between the parties, the police has to be persuaded to drop the case.

In four of the 21 paralegal-cases we documented a paralegal, after having helped to mediate a conflict between disputing parties, was asked to help the client to withdraw the case at the police station. The difficulty to do so lies not primarily in the unwillingness of police-officials (who would often welcome a lessening of their case-load) but in official procedures, as officially criminal acts, once reported, cannot be withdrawn: they can only be stopped when no evidence of a crime has been found or when the accused has expired, then a SP3 (a 'Surat Perintah Penghentian Penyidikan', a termination of investigation warrant) could be issued. The KUHP, Indonesia's civil code, does contain a clause that allows a *delik aduan* to be dropped.

But in practice the police often receives requests from the complainant to drop a case that they reported previously. This is how a police official in Halmahera (Maluku Utara) described in what way he would be willing to drop a reported case**:**

"If a person wants to withdraw a case that he reported, we call all the parties involved. The victim should come, and we need some witness like the *kepala desa* or *kepala dusun* to see if the case is really solved. We apply sociology and psychology to see if all parties really agree to the solution. I believe that it is good when people use ADR ['alternative dispute resolution']. But we only agree to drop a case if it does not have a big social effect ('*dampak social*')."

The difficulty, for both paralegals and local police officials, lies in ascertaining whether a case can actually legally be stopped. As interviewed police officials feel that the official provisions regarding the ending of an investigation into a case do not provide them with certainty and clarity, local level police officials often feel uncomfortable doing so. Interviewed police officials felt that they could be exposed to criticism from their superiors if they agree to stop processing a case: "there is no legal way [to stop a case]. But if it happens, it is the chief of police who should decide. But if the local police is daring, it is possible. But he runs a risk if it is known." If a superior finds out that a reported case has been dropped, the police officials runs the risk of being accused of corruption or negligence. It is notable that this police officials felt hesitant to stop a case even when it involved a *delik aduan* - while article 75 of KUHP states that this is permitted.

This hesitance is often just played, in an attempt to extract a large bribe for stopping the case. But the risk of being caught out by a superior has led local police officials to develop a system of writing down cases in such a way that these risks are minimized: as a police officials from Lampung described, when someone reported a case, he wrote down the details of the case while omitting to give the case an official number. That meant that, if there would be a reason to drop the case, the police official could just erase the record from the books without it being noticed. This risk is a reason why police officials regularly ask for a bribe to stop investigating a reported case, as in Sulis' case: these bribes – about 2 million rupiah for a minor offense – are perceived (by the police) to be compensation for the risk that they are taking. Furthermore, dropping a reported case is seen as an important source of income for police officials who often need to make good on the money they had to pay to get their police-job. Interviewed paralegals attested that they are regularly asked arrange the bribe so that a case can be stopped. This puts paralegals in a difficult position as they are sometimes asked by their clients to facilitate this bribing.

This short expose on the procedural difficulties of stopping a police case once reported shows the relation between efforts to strengthen access to justice and the

need to clarify police procedures. It seems that the current official procedures can create confusion about under what circumstances and in what way a police-case can be dropped. By making these provisions clearer and by make these provisions better known (e.g. through paralegals), the paying of bribes can be prevented, and the police can be made more accessible. Furthermore, this can facilitate the interaction between the formal justice system and the informal system: in the studied localities we encountered much discussion and confusion about whether and under what circumstances the police should allow local leaders– like the village head or customary authorities – to handle a conflict or a transgression.

The Scope for Informal Dispute Settlement: 'Pure' vs. 'Non-pure Criminal Acts'

As the end of the New Order has led to a revival of traditional *adat* institutions, and as police officials have been instructed to take these institutions more seriously (see Davidson and Henley 2008), local police officials are forced to find new ways to define where their competency begins and where the competency of the informal mechanisms end. Furthermore, Indonesia's democratization process have given villagers some more power (and more courage) to criticize police harassment and to limit police involvement in dispute settlement. Due to these developments formal and informal legal systems have been forced to work out new compromises about their respective spheres of competency. Paralegals, due to their knowledge of the formal legal system, often play a role in working out such compromises. These discussions are particularly salient when it concerns a rape-cases, adultery and violent disputes, as often both local informal justice systems and the formal state justice systems claim jurisdiction in such matters.

During interviews we encountered confusion and lively debate about how to demarcate each sphere of competence. When asked about the scope for informal dispute settlement, interviewed police officials as well as paralegals regularly used a distinction between *tindak pidana murni* and *tindak pidana tidak murni*: 'pure' and 'not-pure' criminal acts. This distinction is used to circumscribe both the scope for informal mediation and the possibilities for withdrawing a police complaint (see box 1): police

officials used the term *tindak pidana murni* to indicate the type of crimes that, according to them, cannot be settled through informal mediation and that can also not be withdrawn once reported. On the other hand, all those criminal acts considered as 'non-pure' could be settled informally once victim and perpetrator reach an agreement. During interviews police officials used articles in the KUHP to substantiate this distinction; like this police official when he spoke about physical abuse: "We have two articles [in the KUHP], 351 for severe maltreatment and 352 for ordinary maltreatment. When no one got hurt then we book the case under 352. And in that case, when there is an informal agreement (*kesepakatan kekeluargaan*, an agreement reached in a 'family'-way) between the two parties, then we would consider whether we will follow this solution proposed by others. Then we do not investigate. But when it [the violence] has been done with a weapon and the victim cannot work as usual as result of the assault, then we cannot stop the case. Then any agreement between perpetrator and victim cannot erase the criminal act. "

According to some – implicit in the quotation above –the severity of the punishment stipulated in the KUHP was at the basis of this distinction, as all crimes that were punishable with a jail term of 6 months or more were considered to be 'pure crimes'. This is reflected in the distinction, found in the KUHP, between *pidana ringan* (petty criminal) and (ii) *pidana berat* (serious criminal act): in cases of petty crime the provisions in the KUHP gives police officials more leeway to resort to informal mediation. According to others it was not the severity of the punishment but the character of the offense, as to the term 'pure crime' was also related to the distinction between *delik aduan* and *delik biasa* in the Indonesian penal code: *delik aduan* refers to criminal acts like adultery, theft or fraud that can only be prosecuted by the police of the victim has reported them[24].

Take these two arguments from police officials:

[24] Several articles in the KUHP implicitly or explicitly use such a distinction, for example in article 367 a distinction is made between theft occurring within the family (being *delik aduan*) and among non-related people.

"A theft we do not judge in relation to the value [of the stolen goods] but in the light of the way it was conducted: whether it was ordinary theft, theft with violence or a big theft and whether [the victim] was a family member"

"Take this example, when I steal something that belongs to someone with whom I have no relationship, then this is *tindak pidana murni*. While if I steal from someone with whom I have a relationship, then we call it *delik aduan* and then it can be processed through alternative dispute resolution:

The fact that both the character of the offense and the severity of the punishment are being invoked, suggests that this distinction between 'pure' and 'non-pure crime' is being used in a very flexible way, leaving plenty of scope for informal negotiations. And that is indeed what is being done: police officials, village heads, religious leaders (etc.) as well as paralegals are invoking this distinction to discuss whether a case can be handled through the available informal mediation mechanisms. These compromises reflect local power relations as well as legal considerations. This is also an area where paralegals, with their legal training, can play a crucial role as they can scrutinize the way police officials are invoking legal provisions to justify their involvement

In its 2007 report on the interaction between formal and informal justice systems the World Bank report *Forging the middle ground* recommended Indonesia's supreme court to define the extent of the jurisdiction of non-state justice mechanisms. The quotations above suggest that, in the absence of such guidelines from the supreme court , they are being worked out from below: at present the available provisions in the KUHP are being employed in village-level negotiations to work out a working relation (a form of legal 'hybridity') between Indonesia's different legal systems. Paralegals can make productive use of the provisions within the KUHP (e.g. its use of distinctions between delik aduan and delik biasa and between *pidana* ringan and *pidana berat*) to scrutinize whether a case can be settled through available informal justice. By spreading knowledge about circumstances under which police-involvement is warranted much hassle and bribe-paying could be averted.

Paralegals vs. Case-Brokers

Two brothers in Sumberjaya had been living together for a long time, but their relationship deteriorated and exploded over a game of domino. The elder brother, Bakrun, wanted the younger brother, Bakat, out of the house. They had come to this area in the 1980's and had bought the land and house together, but the ownership papers were made up in Bakrun's name. Bakrun wanted to use this to get his brother out. He went to the police. The police involved the village head, pak Sungkono, who was also the local paralegal. Pak Sungkono managed to broker an agreement over the sharing of the land between the brothers, and a surat perjanjian ('agreement letter') *was written. At that point Bakrun was approached by a someone from a nearby village, Junaidi, who convinced him to report the case to the police. Junaidi said he could help him win a court case and get his brother out – if he was paid six million rupiah for his efforts. Bakrun decided to do so, and jointly they went to the police station to report that Baket had stolen all the land. Baket was summoned five times to the police station, but much to Bakrun's chagrin the case was not taken up.*

At this point Pak Sutrimo, a candidate for a seat in the district parliament, got involved in the case. He headed a small NGO called Libas, who came and placed a placard on the land saying 'this land is under dispute'. He organized several public mediation sessions, which did not lead to any tangible results other than raising Sutrimo's local profile. A few months later Sutrimo won the local elections, and residents became skeptical about his involvement in the dispute: "He tried to cool down the case, but he just wants to win the elections. He wanted to pretend to be the hero, to look like a hero by solving the case. He won [the elections] *because the people feel that he has solved the case. People feel that Trimo can solve any problem."*

The land-dispute between Bakrun and Bakat illustrates that paralegals are not the only actors offering legal aid; in our different research locations we regularly encountered various 'legal intermediaries' who used their legal and procedural knowledge to help

clients deal with the police or the courts. A person like Junaidi is a 'makelar kasus' who uses his contacts at the police to help people to process a case. This can be a profitable profession as considerable fees can be asked for bringing a case to court, even if – as in the case above – this does not always lead to success.

Some of these individuals can be called self-taught paralegals: out of a desire to take up various local injustices, they have learned the basics of playing the levers of Indonesia's justice system and, as a result, they regularly get involved in voicing complaints to authorities and settling disputes. Having seen many such individuals, some respondents used the term 'bodrex-NGOs' for organisations like Libas (or 'bodrex-journalists', etc), referring to the all-purpose medicine: these are small organisations manned by entrepreneurial individuals who gain money and status by offering (or threatening) to take up a local complaint or dispute. We regularly encountered such 'legal intermediaries' during our fieldwork; in six out of the ten non-paralegal cases that we studied legal aid was provided by a 'bodrex-journalist', a local labour activist or a political activist. In the context of a democratizing public sphere and a general population who lacks experience in dealing with these new democratic institutions, there are now enticing opportunities for individuals who do know how to raise media attention or how to report a case to the police. Two interviewed village heads expressed a certain fear of these 'bodrex-NGOs': they felt these small NGOs were waiting for village heads to make small mistakes, which would enable them to extort money. Often such legal intermediaries get involved because of the status and money that could be gained by 'solving' an issue like the land case above: many such individuals – like Sutrimo in the example above – realize that a local conflict is also an opportunity to raise one's profile. The capacity to take up complaints and solve local disputes can boost a political career, as Sutrimo used the land-dispute to show voters that he 'can solve any problem'.

The presence of these various 'legal intermediaries' entails that paralegals are competing with others to receive cases. The presence of paralegals can be perceived as a threat for those whose local status and income depends on their facilitation of the

contact with the police. In this competition, skilled 'makelar kasus' or 'bodrex-NGOs' can receive more cases than paralegals as they actively go around looking for them. The attractiveness of paralegals vis-à-vis these alternatives lies in their connection with legal aid organisations and the fact that they are not demanding a fee for their services – but in the end it depends on individual capacities whether a paralegal wins the completion with these alternative 'legal intermediaries'.

Conclusions

This paragraph has discussed the ways in which paralegals help their clients to facilitate their dealings with formal legal institutions. Four observations about these kinds of activities stand out. Firstly, paralegals play a role in local everyday negotiations between formal and informal justice systems about their respective spheres of competence. The way that such 'hybrid' legal systems are being shaped in everyday life is a topic deserving further study. Secondly, paralegals are not the only ones facilitating the access to legal institutions, as there are various 'legal intermediaries' competing for the status and money involved in such work. The success of paralegals depends on whether local communities give preference to paralegals over these other legal intermediaries. Thirdly, while clients do regularly state that the support from a paralegal gives them confidence to deal with the legal system, there are no clear indications that the involvement of paralegals do indeed convince people to take more cases to court. The distrust of the state legal system is such that the percentage of reported cases taken to court is relatively low as even criminal cases are regularly settled through informal mediation. In cases where the police is involved the contribution of paralegals often lies in getting the police to drop a reported case – which are moments when paralegals risk getting involvement in bribe-paying – and in limiting police harassment. That is our fourth observation: it seems that the presence of paralegals does serve to discipline the behavior of police officials vis-à-vis clients, as this presence signals that a complaint might be lodged successfully. This is a theme that we will also explore in the next

section where we discuss the way the presence of paralegals impacts local dispute resolution.

5. Mediation: Bargaining in the Shadow of the Law

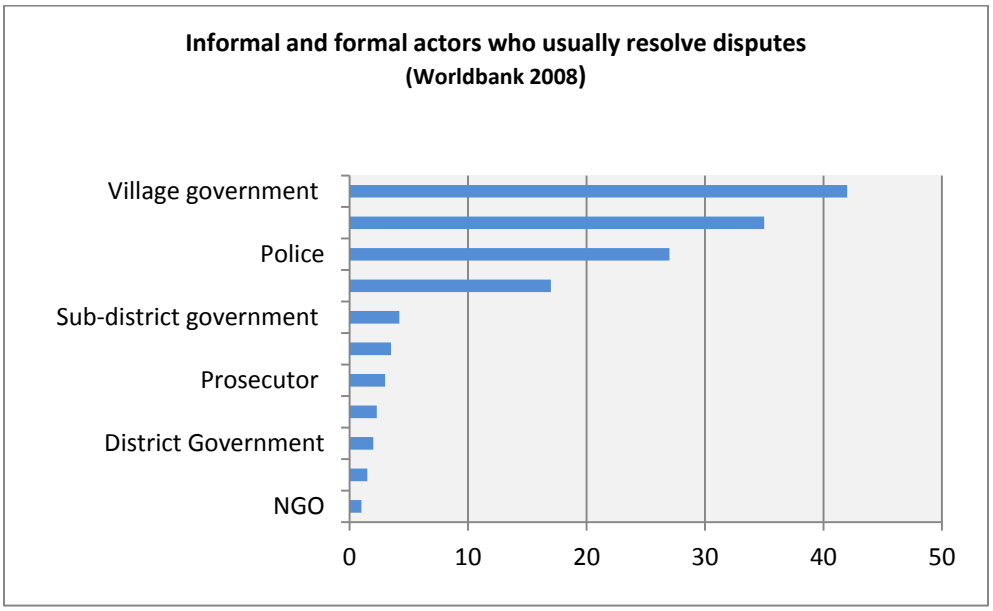
Indonesia has a strong tradition of local dispute resolution. Throughout Indonesia one can observe a preference to settle conflicts through informal mediation[25] instead of going to the courts. Various local institutions – such as the village head, an *adat* council or a local religious leader – perform a well-established role as mediators between disputing parties. The strength of these local mechanisms can be attributed to history - particularly the way the Dutch colonial rulers devised a formal justice system with limited jurisdiction over local affairs – as well as culture - such as a tendency to consider the settlement of conflicts through the police and the courts as *aib* ('humiliating, disgraceful) and an unwarranted disruption of social harmony). Furthermore, the current functioning of the Indonesian justice system also strengthens the importance of this local institutions, since the courts are perceived to be costly, corruption-prone, and time-consuming.

It is therefore not surprising that, as we discussed in chapter 4, more than half of the cases reported to paralegals are dealt with through mediation. In these cases, the paralegal sometimes functions as a mediator, but more commonly he (or she) functions as an advisor while the mediating role is taken up by the village head or another local authority. While generally perceived as more just than the formal justice system[26], this mediation process is thoroughly shaped by local power relations, as power differentials between disputants have a considerable impact on the final outcome of the mediation process. It has been one of the aims of the World Bank's and UNDP's paralegal programs to address this impact of power differentials; both program's speak of the need of 'strengthening existing mechanisms' to make local dispute resolution mechanisms more equitable, particularly for women and minorities. Sometimes, if the paralegal is also a

[25] See the surveys done by Asia Foundation (2005) and the UNDP (2007: 64), who found that 12 percent of respondents had used the informal justice system, against 10 percent for the formal justice system. Informants reported to be more satisfied (58 percent) with the informal justice system then with the formal system (28 percent).

[26] Informants of UNDP's survey (2007: 69) were more satisfied (58 percent) with the informal justice system then with the formal system (28 percent).

village head (or otherwise is considered to be a local leader) the paralegal operates as the mediator brokering a solution between the opposing sides. As the graph below illustrates, that mediating role is most often taken up by a village head or another local leader; in these instances the paralegal operates either as a general advisor or as an advocate for one of the disputing parties.



In this chapter we analyze what impact the presence of a paralegal has on the functioning local dispute resolution mechanisms. Using two local conflicts as examples – a labour dispute and a conflict over a stolen car – we will focus particularly on making some general comments about the role of power differentials in local dispute settlement..

An Accident in a Kroepoek Factory

Siswanto had been working for 20 years in the kroepoek factory owned by Sugiono when, on 12 October 2009, he lost 2 fingers in an accident with the factory's machine. After the incident Siswanto could not work for 4 months, and he had to spend 7 million rupiah for the treatment of his hand. During this time, Siswanto tried to use the health-insurance (jamsostek) that Sugiono had arranged for him in 2005. This health- insurance

scheme requires the employer of more then 10 employees to arrange health insurance, for which some amount can be deducted from the works salary. When Siswanto contacted Jamsostek, he learned that Sugiono had paid the fee only once, in may 2005, while he had cut Siswanto's daily salary with 3.000: since 2005 Siswanto received 25.000 per day (USD 3) instead of 28.000 . Consequently Siswanto could not reclaim the costs of the treatment from Jamsostek.

Siswanto as well as his brother then approached Sugionto to ask him to pay for the incurred costs. Sugionto agreed to pay only a small amount, he said that the accident was due to negligence on Siswanto's part, so the costs would fall to him. No agreement was reached at this point and Siswanto's brother was shooed out of the Sugiono's house.

This labour dispute is an example of a conflict with a marked power differential between disputing parties. This power differential could be described, following the French sociologist Pierre Bourdieu, in terms of different forms of 'capital'[27]. Bourdieu can be called a 'reproduction theorist', as a lot of his work is devoted to the question how inequalities within a society are maintained and reproduced over time. Social inequalities, Bourdieu highlighted, take on forms that go beyond a difference in income. He distinguished four main 'species of capital' to highlight existing power differentials between people: economic capital (monetary or material possessions), social capital (contacts with useful individuals), cultural capital (primarily, the possession of various forms of knowledge, including legal knowledge) and symbolic capital (prestige and social status). Power, as the capacity to influence the behavior of others according to one's wish, is build up by acquiring these forms of capital.

In his various books Bourdieu uses these four main species of capital to show how social inequalities reproduce themselves: how an individual from a privileged family can go to elite schooling (thus acquiring cultural capital), avail of useful contacts

[27] For a good introduction to Bourdieu's work, see Bourdieu, P., & Wacquant, L. J. D. (1992). *An invitation to Reflexive Sociology*. Chicago: Polity Press. On the conceptualization of different forms of capital, see Bourdieu, P. (1986). The Forms of Capital. In J. G. Richardson (Ed.), *Handbook of Theory and Research for the Sociology of Education*. New York: Greenwood Press.

with other elites (social capital) and bank on his or her family's status (symbolic capital) in a way that enables him or her to obtain an elite-level position with much more ease than someone from a less privileged family. It is important to emphasize that these forms of capital are not the same everywhere: the exact form that these species of capital may take, and the value that people attach to them, are a product of the society in which an individual lives[28].

The distinction between these different forms of capital is useful to analyze the impact of social inequalities on local dispute resolution. Sugiono's father is a prominent member of the PDI-P, which assures him of support among the police and the village leader (i.e. social capital). He is the owner of the factory where Siswanto is employed, and is thus important for Siswanto's livelihood (and thus possesses considerable economic capital. Furthermore, thanks to his fancy clothes and worldly manner, he can come across as reliable and convincing when he says that Siswanto was to blame for the incident (i.e. symbolic capital), while the uneducated Siswanto lacks any knowledge of the legal system that might enable him to invoke the law to strengthen his claim while his shyness and soft-spokenness also undermine his credibility (i.e. lack of cultural capital. As a result of these multiple deprivations, Siswanto could safely calculate that, whatever laws might exist, Sugiono would not be able to invoke these laws – and if he would then Sugiono's contacts and symbolic capital would ensure that his interpretation would prevail. Furthermore, Sugiono's economic dependency discourages playing up this conflict. It is thus not surprising that Sugiono at first ignored Siswanto's request for compensation. There had been two other accidents in his factory; in these cases the workers decided to meekly accept the small compensation that Sugiono offered. The stark power differential thus enabled Sugiono to dictate the outcome of these disputes.

[28] This very rough and brief discussion of Bourdieu's use of the concept of capital hardly does justice to the subtlety of his work. In particular it needs to be emphasized that the content and value of these species of capital are, in Bourdieu's conception, not fixed qualities, but itself a product of the ever changing structure of relations between individuals. Bourdieu's work aims to overcome the dichotomy between structure and individual agency, as he invites us to constantly think back and forth between individual behaviour and social structures: the goals that individuals set themselves are produced by ánd produce the structure of relations in which this individual leads his life, the strategies that he employs are shaped by ánd shape the power imbalances embedded in his social environment. For more on Bourdieu's work and his concept of 'capital', see particularly Bourdieu and Wacquant 1992, Bourdieu 1986, Jenkins 2002.

In this case the involvement of a paralegal, Agus, had a demonstrable effect in addressing the power differentials. After Sugiono's unwillingness to pay compensation, Siswanto approached Agus, one of the paralegals of the BHK posko in Margodadi. They went over the case; Agus analysed that available labour laws do stipulate that employers have to pay the salary of a worker when he cannot come to work due to sickness, but that as Siswanto did not have a salary slip or contract, this would be difficult to claim. Agus decided that it would not be helpful to bring the case to Disnaker (*Dinas Tenaga Kerja*, the governmental institution set-up to deal with labour disputes).

Agus then went with Siswanto to negotiate with Sugiono. Now the factory owner did show some willingness to meet and discuss the claims. Agus claimed 13,5 million rupiah compensation, an amount that did not include the money deducted from Siswanto's salary on the pretext of providing for health insurance. During the first meeting Sugiono refused to pay any money, stating that he had already paid 1,3 million rupiah for the medical costs. A second meeting in de house of the *kepala desa* was also inconclusive, but during the third meeting, again in the house of the kepala desa, with also the family members of both parties present, it was agreed that Siswanto pay 4 million rupiah as compensation to Sugiono. Afterwards, when asked why Sugiono did pay this amount to Siswanto while he had refused to pay the workers who previously got injured, he said:

"Before they [the workers] understand us and we understand them, so there is not too much complaining. Now there is too much complaining and involvement of outsiders. If we bring in the law it eats time and costs. They know about the law, I don't. So I prefer to use our own way. They kept reminding me of the law and the labour rights when they proposed 13 million. I felt we should solve it secara kekeluargaan *(i.e. informal mediation), instead of using the law. If we use the law it will increase all the cases, and all the money I have to pay to employees will increase. You cannot negotiate with the law. So we decided to accept a solution that was made through negotiation".*

Similarly we asked the paralegal, Agus, why Sugiono did listen to him and not to Siswanto's brother:

If his brother came, he is just a villager and he has no power. When I came as a paralegal, the boss thought, 'ok, now its serious, now there is a legal aspect to the case'.

(…) We were not a threat, but we referred to our legal analysis of the case. We said to them, we can bring this case to Disnaker. Then the company agreed to mediate, they were afraid of that.

Both Agus' and Sugiono's remark illustrate how the impact of paralegals on local dispute resolution lies in the enlargement of the shadow of the law. It is not the facilitation of the access to the formal justice *itself* that makes a difference, it is the *threat* of starting legal proceedings that improved Siswanto's bargaining position vis-à-vis his employer. By bringing legal considerations to the table, and by conveying a credible threat that these laws might actually be invoked by going to Disnaker – the labour relations department – paralegal Agus could address the unequal bargaining position between Siswanto and Sugiono. In a well-functioning justice system Siswanto's interests might be better served by seeking full compensation at the labour relations court. But because of the informality of Siswanto's livelihood (as he lacks official papers) as well as an experience with a laxidasical implementation of labour laws by Disnaker, Sugiono and Agus preferred to settle the case through negotiations: "*Our experience is that Disnaker is not neutral, that they will not mediate well. And then, if they do not we would have to go all the way to the Industrial Relations court. That is too expensive and takes too long"*. In short, in the context of an imperfect legal system, the contribution of paralegals in such conflicts often does not lie in facilitating the actual application of the law; it is by representing the *threat* that the case might indeed reach the police or the courts. The stronger party in a conflict often avails of various extra-legal means to manipulate the outcome of a conflict; the involvement of a paralegal raises the costs of doing so – and thus improves the bargaining position of the weaker party.

The table illustrates this conclusion; it illustrates the impact of power differentials on local dispute settlement and the different ways in which the presence of paralegals *can* impact the bargaining position of a weaker party in a dispute.

Table 1. Power differentials and mediation

Forms of capital (Examples)	Impact of these inequalities on dispute resolution	*Possible contributions of paralegals to address these inequalities*
Social (Networks of useful contacts, membership of organizations)	a. Contacts can be used to generate support and to pressurize other party b. use of contacts ('becking') to influence (implementation of) judgement	1. A paralegal can link justice seekers to wider networks (eg journalists, politicians etc.), thus increasing support and pressure 2. Paralegal can facilitate cooperation between different justice seekers facing a similar issue 3. backing of paralegal (and supporting NGOs) can discipline police/local mediators (out of fear of consequences)
Economic (Money, control over means of production)	c. limited capacity to bear costs prevents a case from being taken to court d. incentive to suppress grievances in order to protect sources of income	4. Paralegals can help to bear/limit the costs of legal proceedings 5. capacity of paralegals to generate exposure can prevent economic retaliation against complainants
Cultural (knowledge of laws and procedures, capacity to formulate and defend claims)	e. limited exposure can prevent the awareness of injustice f. knowledge of laws and procedures ('legal capital') is needed to successfully voice a grievance	6. Paralegals increase legal awareness 7. The presence of paralegals leads to an increased number of grievances being voiced 8. Paralegals boost capacity to deal with legal procedures and to produce supporting evidence.
Symbolic (Gender, family background, education, race (etc.) shapes a person's social status and authority within a community).	g. higher status of one party in a dispute can make his/her testimony have more impact h. ideas about the proper role of women (a minority, etc.) in public life can limit their ability to voice grievances	9. social norms upholding status hierarchies could be challenged by a rights-based discourse propagated by paralegals (and this discourse might serve to evaluate the rulings of (traditional) village councils).

It is important to emphasize that the presence of paralegals does not necessarily have the impact in the different ways mentioned in this table, nor the impact that Agus' involvement had. As discussed in chapter 3, there are several individual factors – such as training, local status, skills – that limit the capacity of a paralegal to perform the possible roles mentioned in the table: many of the paralegals we encountered lacked the capacities, time and status to perform these roles. Furthermore, in many of the studied

local conflicts paralegals play a relative small role next to other local actors, particularly the village head. Since disputing parties are looking for reassurances that any agreement will be adhered to, it makes sense to involve the village head: because of his official status and his links with police and other government officials his signature on an agreement letter (*surat perjanjian)* can convince the police officers to take action. That means that often paralegals operate as advisor and supports existing local disputing mechanisms. In these instances the impact of paralegals is more difficult to pinpoint: because of the availability of various alternative local mechanism for dispute resolution, the contribution of paralegals to the settlement of these small disputes often does not go beyond boosting the self-confidence of the client.

A third reason why this impact is sometimes limited is related to the fact that the needs of clients to maintain good relations within their community can discourage them from taking recourse to the law to settle a conflict. There is an extra-legal dimension to each local conflict, as one's respect within the community and the quality of one's relations plays a role alongside the wish to 'win' a conflict. That means that paralegals often operate at the crossroad between legal norms, social norms and local power relations. As the next case-study illustrates, if clients attach great importance to maintaining good relations and adhering to social norms, the legal considerations that paralegals insert into local dispute resolution, can have limited impact.

Taking Responsibility for a Car Theft

Harjo, a tailor, had recently met Joni and he had invited Joni to stay at his Harjo's place. For a short vacation Joni proposed to hire a car and go to the beach. Harjo agreed and he hired a car and a driver from the local car rental run by pak Karyo. After driving together to the beach, Joni stole the car: under the pretext of buying a durian, he managed to get the keys to the car from the driver, and he drove off leaving Harjo, his family and the driver stranded at the beach. Joni nor the car ever resurfaced. When they got back, Karyo, the owner of the rental company, demanded to be compensated for the

loss of the car. During a first discussion he demanded 65 million rupiah from both the driver and from Harjo.

Harjo's income as a tailor was not sufficient to pay such an amount, and Harjo started to fear that he would have to leave his house. This was the moment he approached Subur, the local paralegal. Subur's legal analysis of the case was that Harjo was not liable for the theft; he argued that, if the police would not find Joni, only the driver and pak Karyo should foot the bill. Harjo listened to this advice, but he did not heed it: he did not invite Subur for the next mediation session (which was led by the village head) and during this session he during ignored Subur's advice - he agreed to pay Karyo the requested 65 million rupiah, and a letter was written to this effect. Afterwards Karyo was distraught, and started thinking about selling his house. As he said of this mediation session afterwards: "I saw Karyo showing good will so I put aside the legal logic, it was more like we had family relations, with another sort of logic. So I did not want to insist on the legal position." A week later he approached Karyo again. During this last session, again conducted in the presence of the village head, Karyo changed his mind, and agreed to settle the issue for just 10 million rupiah. Afterwards he said that he changed his mind because he felt that Harjo had been reasonable, and that in any case it would be unlikely that Harjo would be able to pay more. It seemed that Karyo had pinned most of his hopes on his insurance.

Not only had Harjo ignored the advice from paralegal Subur, he also did not want him to be present. It is worth quoting his reasons to do so: "The paralegals told me about the rule of law. We had a meeting at the posko. It was to prepare. Like if people go to war, you prepare your weapons. But I know that Karyo has power, I know that if I bring a paralegal, it will indicate that I prepare for conflict. I wanted to prevent him from using that power against me, I did not want him to become angry". Harjo took into account the need to maintain a good relationship with Karyo: Karyo was from a relatively wealthy and well-respected family, and Harjo was apprehensive about starting a conflict with such a family. This family had to financial means to hire a good lawyer and win any

court-case, and the family had such a standing that Harjo felt many of his clients had actually stopped bringing work to him after the incident. In this case, Harjo's best option was to hope for an amicable solution, which in this case worked out.

This case of the stolen car illustrates how paralegals operate at the crossroads between normative systems. Disputes between actors living in close proximity are not only shaped by legal provisions but also by the need to maintain good relationships within the community. That means that social norms and local (power-) relations can sometimes make it impractical to take recourse to the law, as this is seen as unacceptable, unpractical or an impolite form of addressing conflict. Some of this attitude could be traced back in the New-Order period, when state propaganda regularly emphasized the need to solve conflicts in a harmonious ways[29]. This stress on social harmony often favours the wealthy and the powerful, since it undermined the attempts of the less privileged to address these inequalities: when a more powerful party would be unwilling to settle an conflict *secara kekeluargaan* (i.e. through mediation), the importance attached to social harmony discourages a weaker party from open conflict behavior, like using the law to defend one's interests. Paralegals, through their socialization of the law, can serve to address this cultural heritage and to make legal action a more acceptable form of addressing injustices. Particularly in cases when local mediation favours the more powerful party, generating acceptance of the relevance of legal provisions can serve to support weaker parties. At the same time Harjo's case illustrates how the strategies that disputants employ involves the weighing of legal considerations, local norms on 'proper behaviour', as well as assessments of the nature of social relations.

[29] See particularly the essays in Antlöv and Cederroth (1994) how (village) authority in Java was exercised through 'gentle hints'. In one of these essays Mulder (1994: 68) argues for example: "conflict or rebellious behavior that can be noted by others, that is in the open, is particularly painful. Not only because it jeopardizes a family's status, but also because it shows that people are in discord, not united and in harmony (*rukun)* as they should be".

Conclusion

This chapter has discussed two instances of local conflicts to illustrate the ways in which the presence of paralegals impacts local dispute resolution. We concluded that the contributions of paralegals can be twofold: firstly, as paralegals offer legal knowledge as well as connections to lawyers and other useful organizations, they represent a *threat* that a dispute could be brought to the police or the courts. As most clients would not be able to do so independently, paralegals can improve the bargaining position of their clients. Through this 'enlargement of the shadow of the law' paralegals can counter the way social inequalities are shaping the outcome of informal dispute settlement as stronger parties are forced to consider what the outcome of any legal action would be. Secondly, paralegals address the New Order-heritage of emphasizing social harmony. The work of paralegals can serve to overcome a reluctance to invoke legal provisions to address injustice. As an aversion to open conflict usually favors the stronger party, countering this aversion can help to support weaker disputants.

We also identified three factors that, in practice, limit the contribution or paralegals during local mediation processes. Firstly, not all paralegals have the skills and local status to be taken seriously as a local mediator or advisor. Secondly, paralegals generally operate alongside existing local mechanisms. As generally a local authority like the village head conducts the actual mediation, the role of paralegal often amounts to being an advisor. Thirdly, as the clients of paralegals need to weigh legal considerations with the need to maintain social relations, the legal advice from paralegals is sometimes deemed impractical. The 'shadow of the law' is often limited by other normative systems, particularly when the invocation of the law and legal processes is considered to be offensive and impolite, or when maintaining good relations with a powerful adversary is deemed more important.

6. Legal Education: The Pragmatism of Promoting Legal Awareness

In a small village in Pringsewu (Lampung) the male villagers have just finished their weekly *pengajian* ('religious instruction') when three paralegals enters the small meeting room. They have been invited to inform the group about the rights any individual has under Indonesian law when being accused of a crime ('*hak tersangka*'). After the paralegals have given their presentation, one of the villagers raises his hand to ask a practical question: "when we there is a theft in this village, we generally solve it among ourselves and the thief has to pay a fine. We make an agreement-letter (*surat perjanjian)* about this. So when there is this letter, why does the police often continue with this case?". One of the paralegals, Pak Subur, looks around at the room full of sarong clad men and then emphasizes the need follow the law: "This is because a theft is a crime. And there is a law that says that this crime needs to be prosecuted through the police and the public prosecutor. But the agreement letter can be a consideration for the judge when making a decision. In any case it is better to report any theft to the police." His audience is not fully satisfied with his answer, and another villager says "But the problem is we have to pay to police officer when we report a case to him (…). So if there is a thief in a village, so villagers [can decide to] come out and hit him." Pak Subur persists: "It is better to report a thief to the police because the thief might take revenge [for being beaten up]. Don't be afraid to report to the police, because it is free. And if they do not receive our complaint, then we can send a written complaint to a higher police station."

Both the terms of reference of LEAD project and the World Bank's paralegal project mentioned 'increasing legal awareness' as one of their main aims. As any employment of the law to defend one's interests begins with knowledge of applicable laws and procedures, an important element of paralegal-projects is the dissemination of legal

knowledge. Often the term 'rights awareness' is used next to legal awareness[30] - which emphasizes that this implies building not only knowledge of laws, but also an awareness of how one's rights are being violated – a first and necessary step in the process of seeking justice. While promoting legal awareness could also involve disseminating knowledge of customary laws, both studied paralegal-projects focused on disseminating knowledge of state law and its procedures. Paralegals are expected to do so through the advice they give to their clients and through 'legal clinics' – discussions on specific aspects of Indonesian law, like the one described above. Apart from handling various cases, paralegals are trained to organize village-level discussions on legal topics – such as domestic violence, human rights, land rights, agreement or contract, and anti corruption. In this section we will briefly discuss some of the challenges that paralegals face when attempting to disseminate legal knowledge. As the meeting above illustrates, paralegals work among communities who have good reasons harbour ambivalent feelings towards the formal legal system. The villagers in this legal clinic felt a preference for keeping the formal legal system out when dealing with minor crimes and disputes, while at the same time they are aware of limitations of local mechanisms ('the thief might take revenge'). This implies that one of the main challenges involving legal education is not just imparting knowledge, but also overcoming distrust in the formal legal system and an aversion to using legal means to settle conflicts. A comparison of two conflicts between villagers and local authorities can illustrate this challenge.

Do paralegals Work Differently?

Two cases from Lampung:

1. The electricity company PLN had decided to build an electricity pylons and power line's over Ujang's village. Ujang and other villagers feared that radiation from the powerlines would do damage to his fields and his general well-being, and he feared the

[30] As in this USAID report: "The poor must know their rights and understand contexts in which those rights exist and function" (Bruce e.a. 2006: 17). The term implies a slightly broader range of legal education, as it includes not only knowledge about applicable legal provisions, but also knowledge of human and socio-economic rights.

risks of living underneath such a line. Together they approached Supardi, a villager known for his capacity to deal with conflicts and legal matters. They drafted letters together to PLN, and started a long and complex negotiation-process. In the end, PLN paid compensation to all the affected the villagers. Ujang was content about their patient and polite way of approaching PLN: "I said to others protesters to be patient unless they (PLN) build the tower in our land then we can be more frontal… We sent a (agreement) proposal to PLN as suggested by Sub-district head ---though I am not sure if it was received by the authorities or not. During the negotiation, we did not threatening PLN but follow whatever the law says. People who demonstrate are really goblok *(stupid), we have a legal system here, we should function accordingly. (..) Demonstrations lead to anarchy; not the demonstration itself, but it opens the wish to get into problems with the police because you break the law".*

2. Under the village development scheme PNPM, each village in Lampung had been allotted a budget for local infrastructure works. For this purpose villagers in Bandung Baru had drawn up a comprehensive plan, which included work in different parts of the village. At the same time the local government started to discuss a proposal to divide the village into two administrative units. Because of this discussion, the PNPM officials decided to allocate the budget only to half the village. When the planned division was cancelled, the other half of the village felt left out. The local paralegal Ulhaidi lead the protest to reclaim the budget for their part of the village. He staged several small rallies outside the house of the village head, and he pressurized them to call the local PNPM officials who then agreed to provide a budget for the other half of the village. Having threatened by Sub-district head, some of community leader gathered at Ulhadi's house, "The plan was to come to village head's house to protest the distribution of project funds. Some of them then deliberately spread the rumors that there will be hundreds of villagers will join to the demonstration to reinforce the pressure to the government," said Ulhadi. During the meeting with the community leaders, Ulhaidi suggested that this was not the issue of the distribution of project funding, "This was about the issue of

transparency by the state to the community." These actions were deemed offensive by the village head, who said: "It was such a shame. Why don't they talk to me personally but instead conducted a demonstration? It is shameful as this [demonstration] shows that there is no communication among people in this village."

For this research project we compared cases handled by paralegals and those in the same (or neighboring) districts in which no paralegals were involved. While the number of documented cases is too low to go beyond mere tentative observations, we did feel that two recurring differences between these two types of cases stood out. the two cases summarized above illustrate these contrasts.

Firstly, although the sample of studied cases is small, it seemed that the training that paralegals had received did serve, to some extent, to overcome a New Order heritage of aversion to open conflict. As discussed in the previous chapters, clients often expressed a preference to settling conflicts through informal discussions as open conflict behavior is often considered 'not-done' and perceived to be less effective – as *Supardi* mentioned above. In case of conflicts with authorities (for example land conflicts), informal meetings and polite requests to power holders were preferred over claiming their (land-) rights in court. Ulhaidi's behavior presents a sharp contrast; he publicly played up the conflict over the PNPM-money in a way that surprised (and embarrassed) the village head. It seems that an discourse on rights and legal provisions did embolden actors like Ulhaidi to press authorities in a more straightforward manner. In terms of the literature on 'civic action', alternative legal intermediaries more often opted for 'informal brokerage' to address a claim, while paralegals seemed more inclined to engage in 'institutionalized petitioning' and even 'contentious collective action' (i.e. organizing rallies, demonstrations, road blocks, etc.)[31]. But we emphasize again that a broader study involving more cases would be needed to really substantiate this observation. In the next section on advocacy we will return to the involvement of paralegals in organizing such public campaigning.

[31] For a discussion of the analytic distinction of these different forms of 'civic engagement', see Houtzager and Acharya 2010.

Secondly, in the cases we documented paralegals seemed more inclined to invoked laws and official regulations while discussing a case than other legal intermediaries. The studied paralegals were trained to conduct a legal analysis of a given case; they are expected to help 'translate' a grievance or complaint from their client into a transgression of a specific law. While informal dispute settlement generally amounts to agreeing on what amount of money as compensation (*ganti rugi*) is 'fair', the invocation of state law brings in legal punishment as an alternative means of settling the case. This discussion between clients and paralegals on what article of law is applicable on a specific case provides an important occasion for paralegals to socialize knowledge of formal state law and to promote 'legal awareness'. When we studied cases which did not involve paralegals, the 'legal intermediaries' involved were, generally speaking, less capable and/or less inclined to engage in such legal analysis. At the same time it has to be emphasized that the capacity of paralegals to engage in legal analysis differed greatly, as only a minority of the paralegals really felt comfortable in doing so.

As we discuss in the next section, the emphasis of paralegals on legal analysis is not without its challenges. In the case of disputes where legal provisions differed from local norms – such as in the case of rape and domestic violence – this emphasis on legal analysis proved challenging for paralegals.

Domestic Violence: the Challenge of Setting an Example

*The paralegal Ibu Sumi had been organizing meetings with women to discuss the new law on domestic violence (*kekerasan dalam rumah tetangga, KDRT*). Because of these meetings Marni, a schoolteacher in a village in Lampung, asked for her help. She had found out that her husband had been having an affair with a married woman from a neighboring village. This discovery had led to numerous fights, during which she was repeatedly beaten by her husband. When an attempt to mediate between the couple failed to stop the violence and the affair, Ibu Sumi advised Marni to report her husband to the police. They had to travel by bus to the district-level police office because the local police said it did not know how to deal with such cases. There, after much foot-dragging,*

the police registered Ibu Marni's complaint, and two days later her husband was arrested. This did not ease the tension: the wider family blamed Ibu Marni's for reporting her husband to the police, and her children said they felt embarrassed about having a father in jail. At the same time it seemed to Ibu Marni that her efforts to get a divorce was, without the consent of her husband, going to be a lengthy and costly affair. That made her change her mind: she asked the police to drop the police and release her husband. This led to a reconciliation between Ibu Marni and her husband. Afterwards Ibu Sumi was skeptical that the problems (and the affair) were really ended. She said "I was disappointed. It could have been a good opportunity for us to learn how to process a domestic violence-case at the police. It was difficult to get a divorce and she felt sorry for her children".

When in 2004 the domestic violence bill was passed into law, repeated physical violence within the private sphere became a punishable offence, carrying sentences with up to 12 years. This law was regularly discussed during paralegal-trainings, as well as a major focus of the 'gender-specialists' that the World Bank employed locally. In interviews paralegals indicated they did regularly advise their client to use this law to report their husbands to the police. But in the end this proved to be relatively rare, as only four out of the reported 23 cases of domestic violence in our database were actually reported to the police. Marni's case above illustrates some of the complex considerations that prevent women from reporting incidences of domestic violence: even if they do want a divorce, women often depend on the income of the husband, they do not want to deprive their children of their father and there is – as in the case above – sometimes still hope that the relationship can be patched up. As such, the domestic violence bill can have its drawbacks, as it can discourage women from reporting incidents of domestic violence for fear of having their husband incarcerated. On the other hand, in several reported cases it seems that the knowledge of this law (and thus the *threat* of invoking it) did have a salutary effect, as it strengthened the demand of women that their husbands change their behavior.

The paralegals that were interviewed about domestic-violence cases regularly expressed frustration with the refusal of their clients to bring a case to court; most of these paralegals felt that such a court case would set a good example that would help other women. Their clients, on the other hand, seemed to have involved paralegals and their legal discourse mainly as a means to pressurize their husbands to stop the violence. To the frustration of the paralegals most women wanted to continue living with their husband. It seemed that in the process paralegals – with all their training on legal procedures – had to adapt a role more like marriage counselors than legal councils.

The challenge in such gender-related cases like rape and domestic violence also lies in striking a pragmatic balance between, on the one hand, challenging the patriarchic norms and the gender inequality that informs the violence itself (and the refusal to take it to court) and maintaining good relations within the community. The ideas about gender equality and women's rights that paralegals hear about during their training, might not always correspond with their own views – let alone those of their community. In that case a too zealous embrace of gender equality can alienate a paralegal from their community; during our fieldwork we came across one paralegal who had lost the confidence of her community – and thus received few cases – because her ideas about gender relations were deemed too 'radical'. As one female paralegal working on domestic violence said "I am often told that I teach women to disobey their husbands". Sometimes paralegals have to walk a thin line between promoting knowledge of (legal) rights and maintaining the confidence of the community.

Conclusions

In this brief discussion of efforts of paralegals to promote knowledge of Indonesia's legal system, we refrained from drawing conclusions on the effectiveness of these efforts. Without an extensive survey it is not possible to reach conclusions about whether the case-handling and the organized legal clinics have any lasting impact on the way local communities perceive and approach Indonesia's formal legal system. We did note some of the challenges involved when promoting legal awareness. Firstly, because of the

widespread distrust of Indonesia's legal system, an important component of legal education-efforts consists of convincing people that legal provisions do matter, and that they can be invoked to defend one's interest. Secondly, as we compared paralegal and non-paralegal cases, we noted that paralegals do indeed bring in a legal perspective more often than other legal intermediaries, and this knowledge of laws and rights does seem to impart confidence in one's ability to claim one's right – which we will discuss more fully in the next chapter. Thirdly, we highlighted that when legal provisions clash with local norms – particularly in the case of rape and domestic violence – the promotion of legal awareness can undermine the standing of the paralegal in the community.

7. Advocacy: the Politics of Campaigning

The fourth type of activity that paralegals undertake to support their clients, is advocacy – i.e. the organization of public campaigns (rallies, protests, etc.) and the petitioning of public authorities to pressurize companies or state institutions. As we have seen in chapter four, the paralegals supported by the World Bank's Justice for the Poor project have been rarely involved in this kind of activity - in 15 of the 338 reported cases, less than 5 percent. Advocacy is often adopted after mediation was considered to have failed and legal avenues seemed blocked. While strictly speaking this kind of activity might not be called 'legal aid'- since it does not necessarily involve promoting access to legal systems - advocacy and community organizing is increasingly seen as an important part of the work of paralegals because these activities are often perceived (also by paralegals themselves) to be a more effective tool to address (mis)deeds by state institutions or companies than taking recourse to the formal justice system. This realization has led to calls to see legal empowerment and 'social accountability' as two complementary strategies to achieve social justice[32].

In this section we will use two cases – a protest against sand-mining, and an attempt to get electricity connections – to describe the ways in which Indonesian paralegals are engaged in advocacy to help their clients. Using these examples we will highlight, firstly, how as a result of Indonesia's democratization process and the inaccessibility of Indonesia's justice system, paralegals are actively using contacts with politicians to address injustices; the nurturing of political contacts is becoming an important aspect of the work of paralegals and a central element of advocacy-strategies. Secondly, we will highlight that advocacy is a sphere of activities where the largest contribution of paralegals lie: while for the other activities discussed above - particularly legal accompaniment and mediation – alternative local mechanisms are often available, local communities often lack the necessary skills and means to engage in public campaigning. The observations made during the course of this study suggests

[32] See Maru, V. (2010). Allies unknown: social accountability and legal empowerment. In S. Golub (Ed.), *Legal Empowerment: Practitioners' Perspectives*. Rome: Idlo.

that there are often no alternative NGOs to take up the kinds of cases discussed below. This observation, combined with the fact that the cases involving state and corporate accountability often have a larger impact on a larger group of people (compared to the cases discussed in previous chapters), calls for a stronger focus on the advocacy-component of paralegal-programs.

A Fight for Electricity

Since march 2009 the 98 families living in 'Megaresidence', a housing block in Bogor for low-income groups, had not been receiving electricity. The state electricity company, PLN, had found out that the electricity for the housing block had been illegally tapped, and they demand a fine of 89 million rupiah (about 9 thousand USD) before they would reconnect the houses. According to the inhabitants, the developer had made this illegal connection to the electricity grid, while reassuring the buyers of the houses that electricity was included.

As the developer is unwilling the pay the fine imposed by PLN, the inhabitants of Mega-residence approached a group of paralegals led by Mbak Sri. The paralegals threatened the developer with a lawsuit, who subsequently send of group of preman (thugs) to intimidate inhabitants. While the paralegals did manage to document the wrongdoings of the developer, they calculated that any court-case would be lengthy and possibly inconclusive, they opt for a different strategy. They staged several rallies, wrote letters to several governmental agencies, arranged newspaper coverage and, using the contacts of the labour union for which they work, Mbak Sri and the other paralegals convinced the members of 'commission C' of the local parliament (DPRD) to conduct two hearings on the case. During this formal meeting DPRD-members invited the different sides to tell their story; the whole community of Megaresidence came to the DPRD building for the occasion. Sri was afterwards very proud of this moment: "this an important moment because before the people could not meet officials and did not dare to speak publicly." After the second hearing DPRD members issued a (non-legally binding) advice, in which they instructed the developer to pay the fine while telling the

PLN to start providing electricity. At first the PLN continued to press the inhabitants for the payment of the fine, but after more media-attention and the threat of a lawsuit the developer paid half the fine and PLN agreed to re-start the provision of electricity. As Sri described her strategy: "We want to create synergy between the legal justice system and politics. We use politics to bring up the human side. We use it to touch the heart of government high official. This is more effective (…) If we support a winning candidate, he can support us when we are working on a case".

In this campaign, paralegals performed different roles: they offer legal advice, they engage in community organizing as well as lobbying. An important contribution was the way in which the paralegals formulated the case: the paralegals opted to present the issue as in instance of inadequate service provision by a governmental institution (instead of a breach of contract between buyer and seller of houses). This formulation helped to attract the attention of the media as well as local politicians. In the context of a slow and unpredictable justice system, political channels seem to offer effective alternative means to pressurize companies and state agencies. Since the fall of Suharto in 1998, local politicians have become more prominent as they are now elected and, after a decentralization process, also in control of more funds. Some of the studied paralegals – in our perception particularly the ablest ones – are seeing these increasingly prominent politicians as an effective channel to address injustices.

The involvement of politicians can serve various purposes. Firstly, the involvement of politicians, and particularly the organization of a public hearing, can be used to put pressure on the adverse party. The coverage of such a hearing can create negative publicity which shames the other party into agreeing to a settlement – that at least seemed to have been the reasoning of the PLN. Another reason to involve politicians is that they can put pressure on the bureaucracy and the judicial apparatus. While there is a long history of political meddling in the bureaucracy and the judiciary, this meddling usually favored the privileged sections of society. But, as local politicians now need to maintain electoral support, it seems that in some cases local politicians

show willingness and capacity to pressurize the police and other bureaucrats to defend the interests of the less well-connected and less moneyed party.

In this case, Mbak Sri cleverly employed this electoral concerns of politicians: “we have political contacts that we can use. We had to go almost every week to the DPRD building […] During elections there is a ‘kontrak politik’ with groups: we make the candidate promise that, if I am elected, he will do this and that. So in return KBB [the labour union of which Mbak Sri is a part] organizes an [election-]meeting with the candidate, where they give support”. In this case she could use this ‘kontrak politik’ to get politicians to put pressure on the electricity company.

In all our research locations we encountered paralegals who had, like Mbak Shri, forged political links. Some had become members of the local campaign teams (‘Tim Sukses desa’) of politicians, others made speeches during elections and a third group just boasted of their friendships with politicians. Some of paralegals said they maintained these political links because it would make them more effective paralegals – they reasoned that after elections they could ask the winning candidate for favors, calling it an ‘investasi politik’ (political investment). For others it was also the other way around: they believe that by working as a paralegal they could raise their public profile and thus, in a later stage, become a politician themselves.

One can evaluate this use of political contacts both positively and negatively. On the one hand Indonesia’s democratization and decentralization processes have created new channels that can be used to pressurize disputing parties to reach a solution. The support from high-profile politicians is proving useful to help people to hold state institutions or companies accountable. On the other hand an increased role of political actors in dispute settlement is also creating situations where disputes are not settled on the basis of legal considerations, but on the basis of who is most capable of reciprocating (with votes or money) the support from politicians. The involvement of politicians in particular cases is not just motivated by considerations of justice, it is also motivated by a calculation about how this involvement can lead to votes and money. To

illustrate this point, we will discuss another dispute with a company that Mbak Shri took up.

The Politics of Sand-mining

At first the inhabitants of what is name of village where merely surprised when they saw big bulldozers driving to a field on the edge of their village. This surprise turned to anger when they realized the effects the work of the bulldozers became apparent. Not only had the field been turned into a sand-mine, but their village-wells got polluted, the water levels dropped and a villager died in the newly created shifting sands. The villagers got organized and asked Mbak Shri to help them stop the mining activity. It turned out that company responsible for the sand mining, had its paperwork in order: the company had the permission from the district head, the subdistrict head and the village head. It turned out that the owner, pak Hendy, was a political big-wig: he was high in the ruling Democratic Party, and he had supported both the current head of the local parliament and the sub-district head with funds for their election campaigns. What further angered the villagers is that pak Hendy seemed to have bought the support of the village head to get the necessary signature. Mbak Sri and the other paralegals documented the environmental damage done by the mining, and she collected signatures from the villagers. Mbak Shri then decided to employ her political contacts again, as she again approached members of Commission C with the request of organizing a hearing on how this permit could have been issued. But, apart from a few supporting statements in the press, this time the politicians declined to support her cause. It seemed that the political connections of the company-owner were strong enough to prevent political intervention. At the time of writing the paralegals had opted for a new strategy: they had asked Walhi (an environmental organisation) for an assessment of the damage, which Sri planned to use to get a court to revoke the mining-permits.

The contrast with the mega residence-case is instructive: in this case Pak Hendy could capitalize on his political contacts to get a lucrative sand-mining permit; just as Sri had

provided electoral support for candidates in exchange for future support, pak Hendy had made a similar 'political investment' that was paying off. The comparison illustrates that the employment of political contacts to address injustices does not necessary strengthen the rule of law, since the involvement of politicians reinforces the idea (and practice) that the law can be bend in the favor of those who can pull the most strings. Particularly the need of politicians to amass large campaigning budgets makes them vulnerable to heed the wishes of rich and powerful parties. The reliance on politicians to settle disputes can propel Indonesia further in the direction of becoming a patronage-democracy, where politicians manipulate the distribution of state resources and the application of laws in the favour of those who assure their (re-)election. In comparison to some other Asian countries[33] the capacity of DPRD members and other local politicians to pressurize civil servants is still limited but there are indications that this capacity is growing[34] – where politicians can gain supporters and money by pressurizing the bureaucracy and the judiciary, they have an active interest in subverting bureaucratic procedures and, ultimately, the rule of law. These developments suggest that the prospects of improving access to justice are tied up with the way local political economies develop – particularly with the strategies that political elites are employing to hold on to power. This poses challenges for paralegal-programs: while the employment of political contacts to settle issues is often very effective, it does stimulate politicians to develop their control over the bureaucracy and the judiciary – to the detriment of the rule-of-law. Paralegal-trainings need to address both the opportunities and the risks involved when associating oneself with politicians.

These cases also illustrate the importance of organizational skills and networking skills to undertake this kind of public advocacy. Particularly Mbak Sri was impressively effective in the way she collected evidence, organized rallies, arranged media-attention

[33] Particularly India has been called a 'patronage democracy' because of the discretionary power that politicians have over the everyday functioning of the bureaucracy, which enables them to manipulate the execution of public policies as well as the functioning of the police and the courts. See Berenschot 2010.

[34] See for example Hidaya (2007) and McCarthy (2007) discuss how connections between politicians and state officials enables these two groups to benefit from 'racketeering' and a control over trade in natural resources, creating a lucrative 'shadow economy'.

and lobbied politicians. She offered her clients skills that they could hardly have found elsewhere, skills that had been gradually build up during her work as a paralegal and, previously, as an activist for the labour union KBB. Like the mining case in Buli, discussed in the introduction, these cases illustrate how paralegal-programs can actually address the limited capacity of underprivileged sections of society to campaign against governments or private companies. As discussed in the section on mediation, there are often local dispute resolution mechanisms available to deal with local disputes, but for these kinds of supra-local issues villagers often lack the necessary skills, knowledge and networks. It has to be acknowledged that not all paralegals have the skills of Mbak Sri and her team. But, as these particular skills for public campaigning are rarely offered by the other legal intermediaries or organizations, and given the importance of such skills in a country with numerous land- and environmental disputes, advocacy is one area where paralegals can make a clear contribution[35].

Conclusions

Given the effectiveness of paralegals in the cases discussed here – and given the lack of alternative actors and organizations to play such role - advocacy played a surprisingly peripheral role in the studied paralegal-programs. The number of cases involving state or corporate accountability is quite low – for example, less than 7 percent of the reported cases involved corruption and the provision of public services - and it seems that advocacy-skills were not sufficiently trained - interviewed paralegals state that they were hardly received training on political lobbying, organizing rallies, getting media-attention, etc. Furthermore, the design of the project shapes the number of advocacy-cases paralegals receive: by choosing to train villagers to work as paralegals *within* their community, it remains accidental whether or not they run into cases involving state or corporate accountability. It depends on whether such a case happens to present itself. In most villages there are only small village-level disputes to work on –

[35] See Fuller Collins 2007 for numerous disputes over land and environmental degradation in, mainly, Sumatra where community organisers and support from LBH played a crucial role in the (very few) victories that were achieved in disputes with the mining, palm oil and paper industry.

which are also dealt with by local mechanisms. This is a drawback of working with community-based paralegals in this way: by selecting project-areas that are known to be involved in supra-local disputes with companies or state agencies, or by training paralegals to move around and work in different villages, paralegals could become more regularly involved in such supra-local disputes and advocacy-campaigns against corporate or governmental malpractices. This could improve the overall contribution of paralegal-projects.

8. Conclusions

In this report we discussed the functioning of community-based paralegals in Indonesia, focusing on the paralegals trained under UNDP and World Bank projects. We combined a quantitative analysis of 338 cases handled and reported by paralegals, with a qualitative study of case-handling by paralegals in Lampung, West Java and North Maluku. We documented 21 cases handled by paralegals, and – for the purpose of comparison – 10 similar cases that were not handled by paralegals. We analyzed the impact that the presence of paralegals had on the way local disputes and grievances are being addressed by discussing the four main activities that paralegals are engaged in – legal education, legal accompaniment, mediation and advocacy. Here we will summarize the main conclusions. Firstly we will revisit our main observations about the role of paralegals in local dispute resolution. Subsequently we will offer a number of recommendations for future paralegal-programs in Indonesia

The report draws four general conclusions about the functioning of paralegals. Firstly, the contribution of paralegals to local dispute resolution lies largely in their capacity to *enlarge the shadow of the law*. We observed that the presence of paralegals does not necessarily lead to a large number of cases being referred to the formal legal system – the widespread distrust of the formal legal system combined with the availability of local mechanisms also often discourages paralegals themselves to advise such legal action. Of the 336 reported cases handled by (World Bank-supported) paralegals, only 18 percent were dealt with by reporting the case to the police or the courts, while by far the preferred manner of dealing with a dispute or grievance (in 54 percent of the cases), even in cases of criminal offenses. During the two years that the UNDP-program ran in North Maluku, only one case was reported to the courts. But the presence of paralegals does insert legal considerations more forcefully into mediation (and advocacy) processes, and in this manner paralegals can strengthen the bargaining position of their clients. Paralegals can insert considerations into the mediation-process about how a court might rule in the dispute at hand. In this way the information about

the legal provisions that paralegals provide, and suggestion that they would succeed in taking a case to court of mediation fails, has an impact on the relative strength of disputants - we discussed cases where the bargaining position of a weaker party was thus improved.

Secondly, paralegalism is in various ways *tied up with local politics*. One connection lies in the status and local fame could be gained by developing a capacity to solve disputes and address grievances: becoming a paralegal boosts one's political career. In each research location we encountered paralegals who were actively campaigning for politicians, as well as paralegals who had (or hoped to) run for elections themselves. A second connection with local politics lies in the way the ablest paralegals are using political channels to help their clients. As decentralization and the institution of local elections are making local politicians more prominent, many paralegals now feel that a strong political lobby can be more effective then legal action. For this reason some paralegals are carefully nurturing their political contacts, which often stimulates them to campaign for candidates during elections. While this capacity to engage with politics boosts the effectiveness of paralegals, this engagement also carries risks – particularly that this engagement can go against the stated aim of paralegal-projects to strengthen the rule of law.

Thirdly, paralegals *compete with other local actors* for the status (and money) involved in solving disputes and addressing grievances, as various actors and local institutions can be found who perform similar tasks. We observed that the role of paralegals during mediation-processes is often modest, as these sessions are usually led by village heads or customary leaders with paralegals in an advisory role. Furthermore, we discussed how a whole gamut of 'legal intermediaries' – ranging from village heads to case-brokers, 'bodrex-NGOs' and local *preman* could be identified who are also engaged in dispute settlement and in the facilitation of the interaction with the police and the courts – we encountered them particularly in the non-paralegal cases that we analyzed. While they do often charge a small fee for their services, these intermediaries were often no less knowledgeable about the functioning of (particularly) the police than

paralegals. The competition with these various other legal intermediaries can limit the effectiveness of paralegals and forms an obstacle for gaining trust among the local population. It is unfortunate that one area of work where paralegals offer do unique skills – advocacy – plays a relatively marginal role in the studied programs.

Fourthly, paralegals often described their motivation to join a paralegal-program in terms of a *distrust of the formal legal system*. The irony is that, while paralegal-programs aim to empower people to use the formal legal system to defend their interests, paralegals themselves articulated the importance of legal knowledge more in terms of the need to prevent being mistreated by this legal system. After a long experience of having seen power-holders invoke legal provisions to chase villagers off their land, of seeing the police invoke the law to defend their abuses and of hearing about corruption in the courts, it is not surprising that paralegals – like their clients – generally perceive the law more as an instrument of oppression than an instrument of empowerment. There are some indications that paralegal-programs can succeed in addressing this distrust: comparing the way cases were discussed when paralegals where involved with discussions about cases without paralegals, we observed that paralegals were more inclined to invoke legal provisions during these discussions, and the option of taking recourse to the legal system was more readily discussed. But, as noted above, we did not, however, observe a larger number of cases actually being referred to the formal legal system; since their clients were often more distrustful of the formal legal system than paralegals, mediation was often the preferred manner of handling a case, even for criminal offenses. When they police was involved, much of the interaction with police officials revolved around how to stop a case that had been officially reported. This reluctance of both paralegals and their clients to take recourse to the formal system suggests that the aim of paralegal-programs of building demand for legal reform from below is not easily achieved, as for both clients and paralegals avoiding the legal system is more practical than trying to fix it.

After these more general conclusions, we highlight a number of practical observations on factors influencing the effectiveness of paralegal programs:

Firstly, is has been a considerable challenge for the studied paralegal programs to *find effective and capable paralegals*. As we observed during our fieldwork, a relatively large number of the individuals trained as paralegals is hardly active – which seems to be corroborated by the relatively low number of reported cases during the course of the J4P-program (only 338 reported cases for a program with 120 paralegals than ran for a little over two years, while underreporting is well possible). This is partly the result of the fact that the paralegals, being unpaid volunteers, often also have work to do. But this inactivity is also the result of the lack of confidence and skills among a considerable group of paralegals. The training provided is often insufficient to equip individuals with limited education with the necessary skills to perform legal analyses, advise clients, deal with authorities (etc.). We encountered a number of very capable and impressively effective paralegals, but their capacities also seemed to have been build up during previous activities. This underlines the need for paralegal-programs to (a) devise new strategies to identify prospective paralegals (through, for example, a more extensive use of local informants) (b) expand training programs to give paralegals more legal knowledge, lobbying skills (see below) and, particularly, self-confidence and (c) strike a balance when selecting paralegals between the need to select capable, trusted and experienced villagers (who are more likely to possess the necessary status to receive many cases) and the need to prevent supporting local power hierarchies.

Secondly, paralegal-projects need to *incorporate strategies to boost the trustworthiness and status of paralegals among their community*. Since, as we noted above, paralegals often compete with various other 'legal intermediaries', paralegals need to be perceived as trustworthy and effective in order to receive clients. This implies that (a) the support of paralegals by a community lawyer or an umbrella organization is important: such organizations give much-needed advice and support and, equally important, they boost the status of paralegals in the eyes of the local community; (b) projects with paralegals need to run for a considerable period to enable

paralegals to gain the necessary trust to become effective. A short duration span or, in the case of the studied projects, a considerable time-lapse between two phases of the project, undermines the effectiveness of a paralegal-project (c) all sorts of symbolic paraphernalia (paralegal-uniforms, flags, an office, name-cards, official functions, etc.) are useful to boost the status of paralegals in their community.

Thirdly and relatedly, the *official recognition by (local) authorities of paralegals* could boost their local status as well as their effectiveness (particularly in dealing with the police). When combined with a 'code of conduct' such recognition could strengthen paralegalism in Indonesia. But on the other hand there is also a risk that the granting of official recognition could give (local) government institutions control over the functioning of paralegals. A dependence on government officials for receiving some form of official status, could undermine the independence of paralegals. Furthermore, given the general distrust of the formal legal system, paralegals will come to be perceived as (and indeed operate as) an extension of the police and the courts, which could discourage people from approaching paralegals for issues that they do not want to report to the police or the courts. The institutionalization of paralegalism through official recognition should avoid these two pitfalls.

Fourthly, the development of paralegalism in Indonesia needs a *more explicit emphasis on strengthening state and corporate accountability*. Advocacy and campaigning played a relatively minor role in the activities of the studied paralegals. Only in 5 percent of the cases did paralegals engage in advocacy on behalf of their clients. Paralegals felt that they had hardly been trained to engage in such public campaigning. This is regrettable since advocacy constitutes one area of work where paralegals often have unique skills and knowledge to offer: while the local mechanisms are generally available to deal with local disputes (e.g. through mediation), for supra-local disputes with companies or state institutions villagers often lack the skills and contacts. Through advocacy paralegal-programs can, compared to village-level dispute resolution, make a clearer and much-needed contribution in terms of addressing social inequality in Indonesia. Thus in terms of promoting state and corporate accountability

there is much scope for improvement of the studied paralegal programs, for example by (a) selecting project-areas known to be involved in such disputes (over land, pollution, etc.) with companies or state institutions or (b) allowing community-based paralegals to take up issues outside their village if the need arises and (c) improving the training-program to build the necessary skills of paralegals to engage in advocacy and community organizing.

Fifthly and relatedly, paralegal projects need *training on the lobbying and use of political channels*. As noted above, the lobbying of politicians is becoming an important aspect of the work of paralegals. For this reason paralegals need support in identifying influential actors and devising the best ways to enlist their support.

Sixthly, *the importance of politics in the work of paralegals involves ethical and strategic dilemma's* that need to be addressed both during training as well as in the design of legal aid projects. It is important for paralegals to be aware of the trade-offs involved when developing political ties: political contacts want something in return for support, and the association of paralegals with one party/candidate can damage their image. On a more strategic level, while the use of political contacts offers an important and useful avenue to address local grievances, this involvement of politicians can undermine the stated aim of paralegals to strengthen the rule of law, since political 'wheeling and dealing' does not necessarily lead to a uniform and impersonal implementations of laws and policies. This poses a challenge for future legal aid programs: the involvement of politicians in addressing local grievances can lead to a perverse kind of accountability when political concerns dictate how and if state laws and policies are being implemented.

Paralegalism in Indonesia is still weakly institutionalized. The paralegal programs currently operative in Indonesia are set up by a limited group of universities, Indonesian legal aid organizations and international donors. These programs do not begin to cover the whole of Indonesia. Furthermore, the cooperation between these organizations is limited and there is almost no government funding for such programs. At the same time

paralegals often lack official recognition which could strengthen their capacity to help clients deal with the police and the courts. The weakness of a paralegal-movement in Indonesia is regrettable - this report has discussed how skilled and capable paralegals could succeed in helping people deal with an inaccessible and distrusted justice system and how, in the process, they could contribute to address social inequality in Indonesia. The recommendations above were written with the aim of identifying ways in which paralegalism in Indonesia could be strengthened.

Annex 1: Overview of Cases Studied for This Report

CASE STUDY	LEGAL ISSUE	RESOLUTION FORUM	ROLE OF ACTORS			
			Right Awareness	Case Formulation	Facilitation/ mediating	Legal Accompaniment
PARALEGAL CASE						
PL/1/PS, Sulis	Criminal, Theft	F to M to F	✓	-	✓	✓
PL/2/PS, Car Rental	Criminal, robbery	F to M	✓	✓		
PL/3/PS, Krupuk	Labor, health insurance	M	✓	✓	✓	-
PL/4/PS, Register 44	Public Policy, Status of Land	Adv		✓	✓	
PL/5/PS, PNPM	Public Policy, Corruption	Adv	✓	✓	✓	-
PL/6/TB, Kliman	Private, Land right	M			✓	
PL/7/TB, KDRT	Criminal, domestic violence	F to M	✓	✓	✓	✓
PL/8/TB, Bakrun	Private, Land right	M			✓	
PL/9/BGR, Mega Residence	Public policy	Adv and F	✓	✓	✓	✓
PL/10/BGR, Sand Mining	Public policy	Adv	✓	✓	✓	
PL/11/BDG, Vhileo	Labor, termination	M to F	✓	✓	✓	✓
PL/12/BDG, Nusatex	Labor, termination	M to F	✓	✓	✓	✓
PL/13/BDG, Banyumas	Labor, termination	M to F	✓	✓	✓	✓
PL/14/MLK, Mining	Public policy	Adv	✓	-	✓	-
PL/15/MLK, Divorce	Private, divorce	M		-	✓	-
PL/16/PS, Cattle theft	Criminal, theft	M	-	✓	✓	-
PL/17/PS, Radio	Criminal, threat and violence	F	✓	✓	-	✓
PL/18/PS, Traffic Accident	Criminal, traffic accident	F and M	✓	-	✓	✓
PL/19/TB, Police selection	Criminal- Fraud, public policy	M	-	-	✓	-
PL/20/TB, Pupuk distribution	Criminal- fraud, public policy	M	-	✓	✓	-
PL/21/HT MPR-Mining	Compensation for Land Use	Adv		✓	✓	-
NON PARALEGAL CASE						

NPL/1/TB, Register 40	Public policy, land status	Adv	-	political party	Political party	-
NPL/2/TB, Sutet	Public policy, compensation	Adv	Labor activist	Labor activist		
NPL/3/TB, Rusmino	Private-land right, criminal-fraud	M and F	Labor activist	-	-	Labor activist
NPL/4/TB, Illegal logging	Criminal-illegal logging	M	-	-	-	-
NPL/5/TB, Health Insurance	Public Policy	M	-	-	Political party	-
NPL/6/PS, Breach of marriage agreement	Private-breach of agreement	M to F	-	-	Police officer	Police officer
NPL/7/PS, Child rape	Criminal-rape	M to F	-	-	Village head	Private lawyer
NPL/8/PS, Sand Mining	Public Policy	Adv	-	-	Community leader	-
NPL/9/PS, Pemenang	Criminal, adultery	M	-	-	Village head	-
NPL/10/TB, Nestle	Labor-termination	M	Labor union	Labor union	Labor union	-

Statistics:

- Total cases 30; (i) 20 paralegal cases and 10 non-paralegal cases; (ii) Criminal – 11, Private – 5, Public Service/Policy – 9, Labor – 5
- Resolution mechanism: (a) All cases = Formal #1, Mediation #11, Formal to Mediation #4, Mediation to Formal #6, Advocacy #8

  (b) Paralegal cases = Formal #1, Mediation #7, Formal to Mediation #4, Mediation to Formal #3, Advocacy #5
- Promoting legal awareness = (a) 13 of 20 cases paralegal conducted on legal awareness; (b) 3 of 10 non paralegal cases 'fixer' conducted legal awareness

Annex 2: Means of Case-Handling and Type of Case

			Means of Handling Case						
			Consultation	Mediation	Legal Accompaniment	Advocacy	All of the above	Mediation and L. Accomp.	Total
Type of Case	Corruption / Public Services	Count	5	7	1	4	2	0	19
		% within Type of Case	26.3%	36.8%	5.3%	21.1%	10.5%	.0%	100.0%
	Theft	Count	6	16	8	2	1	1	34
		% within Type of Case	17.6%	47.1%	23.5%	5.9%	2.9%	2.9%	100.0%
	Violent Dispute	Count	3	23	7	1	1	3	38
		% within Type of Case	7.9%	60.5%	18.4%	2.6%	2.6%	7.9%	100.0%
	Rape / Sexual Harassment	Count	3	2	3	1	1	0	10
		% within Type of Case	30.0%	20.0%	30.0%	10.0%	10.0%	.0%	100.0%
	Domestic Violence	Count	4	15	2	0	0	2	23
		% within Type of Case	17.4%	65.2%	8.7%	.0%	.0%	8.7%	100.0%
	Family (Divorce/Adultery)	Count	9	35	5	0	1	0	50
		% within Type of Case	18.0%	70.0%	10.0%	.0%	2.0%	.0%	100.0%
	Land dispute	Count	7	9	0	2	0	0	18
		% within Type of Case	38.9%	50.0%	.0%	11.1%	.0%	.0%	100.0%
	Labour dispute	Count	10	26	11	3	0	2	52
		% within Type of Case	19.2%	50.0%	21.2%	5.8%	.0%	3.8%	100.0%
	Inheritance	Count	5	3	0	0	0	0	8
		% within Type of Case	62.5%	37.5%	.0%	.0%	.0%	.0%	100.0%
	Traffic accident	Count	0	7	0	1	1	3	12
		% within Type of Case	.0%	58.3%	.0%	8.3%	8.3%	25.0%	100.0%
	Contract, tort and other civil cases	Count	5	18	2	1	2	2	30
		% within Type of Case	16.7%	60.0%	6.7%	3.3%	6.7%	6.7%	100.0%
Total		Count	57	161	39	15	9	13	294
		% within Type of Case	19.4%	54.8%	13.3%	5.1%	3.1%	4.4%	100.0%

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