The statements and analysis contained herein are solely those of authors, and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and do not represent the position or policy of the American Bar Association. Furthermore, nothing in this report is to be considered rendering legal advice for specific cases. This report is made possible by the generous support of the United States Agency for International Development (USAID). The contents are the responsibility of the authors and do not necessarily reflect the views of USAID or the United States Government.
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Preface

Access to justice is the ability of citizens to seek and obtain remedies through formal or informal justice institutions, and in conformity with international human rights standards. The ABA Rule of Law Initiative (ABA ROLI) recognizes how essential accessing justice is to communities and individuals, especially the poor and the marginalized. The Access to Justice Assessment Tool (AJAT) is a research methodology developed by ABA ROLI to assess to what extent communities and individuals are able to use justice institutions to solve common justice problems. Because the AJAT was designed to be implemented by local civil society organizations, the AJAT has a dual purpose: to produce credible, objective evidence about a community’s justice problems and to build local capacity to conduct quality research that a community can use to strengthen itself.

The AJAT breaks access to justice down into a number of components, the Elements of Access to Justice, each of which impacts a citizen's ability to use justice institutions to solve their justice problems. An assessment considers whether each element is present, evaluating both the formal justice system— institutions established by the state to apply and enforce laws—and the informal justice system— institutions that, although not sanctioned by the state, play a role in addressing justice issues.

Methodology

This report is the product of a partnership between Yayasan Lembaga Bantuan Hukum Makassar (YLBHM) and ABA ROLI. YLBHM undertook the majority of the research in this report, using a research plan based upon the AJAT and developed during working groups with ABA ROLI. YLBHM then analyzed the data collected and drafted this report, with ABA ROLI providing multiple rounds of commentary and edits. The final report was reviewed by experts and key stakeholders in Indonesia, and, after a final edit, was published in English and Bahasa Indonesia.

The findings in this report are based on qualitative research methodologies, and are intended to present an informative analysis of access to justice in South Sulawesi province, Indonesia. Data for this report was collected through semi-structured interviews and focus groups. Most interviews and focus groups were conducted between August 2010 and October 2011, although further research was conducted throughout 2011 and in January 2012. Research was conducted primarily in three sites in South Sulawesi province: Makassar City, Bulukumba District, and Gowa District. Close to 150 people were interviewed, including citizens, judges, private and legal aid lawyers, paralegals, law enforcement officials, civil society representatives, academics, and community leaders and activists. Records of individuals interviewed, whose names are kept confidential and whose time and assistance are highly appreciated, are on file with YLBHM and ABA ROLI. Prior to, and during, the assessment process, a review of key legislation and secondary sources was also conducted.

The use of a qualitative methodology has some limitations. The requisite small sample size is more likely to yield information on individual experiences and perceptions than generalizable findings on institutional impacts. The research team strongly believes that use of a mixed-methods research would help to gain a more accurate picture of access to justice.

Acknowledgements

YLBHM’s Executive Director Adnan Buyun Azis led YLBHM’s work on this report. YLBHM assembled a team of lawyers and academics to conduct this report’s research. Team members included Mursalim Djalil, Secretary of YLBHM; Ahmad Riantoro, Urban Poor Division, YLBHM; Sirul Haq, Research and Community Development, YLBHM; Rosminat Sain, Chairperson, Solidaritas Perempuan Angin Mamiri; Muh. Ramli, Kopel Sulawesi; M. Fadli A. Natsir, academic; Siti Aisyah and Arman, YLBHM.

ABA ROLI’s Access to Justice Advisor Jennifer Tsai led the development of the AJAT, with assistance from Legal Analyst Jim Wormington. An expert working group provided input and critical comments on the draft methodology. Members of the expert working group included Chief Persida Rueda Acosta,
Philippines Chief Public Attorney; Juan Carlos Botero, Interim Executive Director and Director of the Rule of Law Index at the World Justice Project; Stephen Golub, legal empowerment expert and law professor; Martin Gramatikov, a lecturer at Tilburg University and a member of the Measuring Access to Justice Project; Simeon Koroma, Executive Director of a Sierra Leonean paralegal services program, Timap for Justice; Zaza Namoradze, Director of the Budapest office of the Open Society Justice Initiative; and Annette Pearson, an international development consultant and expert on Colombia’s National Community Justice Houses. ABA ROLI extends sincere thanks to these individuals for their invaluable contributions to the development of the AJAT.

Access to Justice Advisor Jennifer Tsai worked with YLBHM on the implementation of the AJAT, with support from Legal Analyst Jim Wormington, Program Manager Betty Yolanda, and Senior Program Officer Catherine Scott.
Executive Summary

Access to justice requires that all citizens are able to use justice institutions to solve common justice problems. Unless citizens have access to justice, the rights and duties enshrined in constitutions and laws are meaningless, and fail to provide protection to vulnerable groups. For access to justice to exist, justice systems and legal services must function effectively to reach the vulnerable groups they are intended to serve.

In the last ten years, Indonesia has made significant strides toward greater democracy and protection for human rights. The Freedom House Index (FHI) ranks Indonesia as the only member of the Association of Southeast Asia Nations (ASEAN) that is a free country. The largest economy in Southeast Asia, Indonesia is also one of the fastest-growing countries in the Group of Twenty Finance Ministers and Central Bank Governors (G20), and could join Brazil, Russia, India and China – the BRIC economies – as the next emerging markets powerhouse. An estimated 35 million of its population of 240 million are now considered middle class. A long-awaited land acquisition law was passed on December 16, 2011, allowing Indonesia to accelerate road, port and airport projects, and could be a major turning point in the country’s efforts to ignite an economic boom.

Despite the current force of economic, political, and human rights development, a large portion of Indonesia’s population risks increasing marginalization. Approximately 100 million Indonesians remain poor, living on $2 or less per day. Many of the poor will lose out in the economic and political power struggle that underlie many reforms, including the new land acquisition law. Further, there remain many justice-related problems for poor and marginalized groups, particularly their ability to access better justice systems.

The purpose of this report is to present a comprehensive picture of the access to justice situation in South Sulawesi province, Indonesia, with a focus on the primary justice needs of citizens living in poverty and involved in land disputes. The report discusses the key obstacles to access to justice that citizens encounter in solving their justice problems. To do so, it breaks down access to justice into a number of components, the Elements of Access to Justice, discussed below, and considers the extent to which each element is present.

Elements of Access to Justice

1. Legal Framework: Laws and regulations establish citizens’ rights and duties, and provide citizens with mechanisms to solve their justice problems.

The Indonesian government has promulgated hundreds of thousands of laws and regulations. There is a tremendous amount of law on the books. With respect to land rights and land ownership, Indonesia has a comprehensive legal framework that establishes citizens’ rights and duties. Although this legislation, in particular the 1960 Basic Agrarian Law (BAL), was intended to solve legal uncertainty and create positive reform, it has caused many problems. As with other laws in Indonesia, the Basic Agrarian Law provides only substantive principles, leaving many specific issues related to implementation to be fleshed out in implementing administrative regulations. As such, this has resulted in poor implementation of the law, which itself is overly complicated and difficult to apply. Implementing regulations of the BAL that currently exist fail to elaborate, and are even contradictory to, adat principles.

With respect to acquiring land for public use, the lack of a land acquisition law has halted the progression of Indonesia’s infrastructure development. Unclear rules have caused land disputes to take years to resolve. On December 16, 2011, Indonesia’s House of Representative passed a new Land Acquisition Law that aims to facilitate more infrastructure development, as part of a government plan to expand and improve the country’s infrastructure to meet the connectivity requirements of the ASEAN economic community in 2015. The law sets out a clear timeframe, an independent price valuation mechanism, and appeal procedures for land acquisitions for government-commissioned infrastructure projects. The
provisions are intended to reduce land acquisition conflicts. Although the law has been passed, it will take some time to become fully operational.

The legal framework is sufficient for citizens to seek to assert their rights in the formal justice system. The criminal and civil procedure codes set forth the procedures and the rights of citizens at different stages of the trial process in land-related disputes. The informal justice system involves alternative methods of dispute resolution outside of the formal justice system that combine negotiation and mediation, usually at the sub-district or the village level.

2. **Legal Knowledge: Citizens are aware of their rights and duties, and the mechanisms available to solve their justice problems.**

The assessment found that citizens’ legal knowledge of specific rights protected or established by Indonesian land law is low. However, the assessment showed that citizens take action that demonstrates a general awareness that they have been wronged in some way. Even though citizens often take the initiative to complain to a relevant state agency or customary authority, they often do not know what additional steps to take if they do not receive a response as a result of their complaint. With respect to knowing about the various options available to them to resolve their justice problems, citizens are not sufficiently aware. They are unaware of the services of lawyers or legal aid, unless they learn about them through a family member or their community.

Once promulgated, legislation is published in the State Gazette of the Republic of Indonesia and the State Report. Most citizens, however, do not have access to either of these two publications. The main obstacle that prevents citizens from having legal knowledge is the lack of legal socialization by the state, notwithstanding an obligation under the law to promote legal knowledge. Over the last few years, the state has made some effort to disseminate legal information by developing the websites of various governmental departments that enable citizens to access downloadable laws and regulations. Unfortunately, the low telephone density across Indonesia and the small number of citizens with access to a telephone reduces the effectiveness of the state’s internet law dissemination program. In most cases, it is still necessary to visit relevant government departments to request assistance in obtaining legal materials. However, access to governmental departments is still geographically limited to the capital, making it nearly impossible for more than 200 million citizens living outside of the capital to access legal information. Where government efforts are lacking, a vibrant civil society has stepped in to enhance knowledge of citizen rights.

3. **Legal Advice and Representation: Citizens can access the legal advice and representation necessary to solve their justice problems.**

Legal advice and representation should reach even the most marginalized populations in rural areas. Few citizens consider private lawyers a feasible option because of the perceived and actual costs of hiring one. There is also a general distrust of lawyers shared by many citizens. Lawyers are regulated under the Indonesian Advocates Law, which confirms a lawyer's obligation to provide *pro bono* legal assistance to the indigent. Last year, the national bar association, the Indonesian Advocates Association (PERADI), issued new guidelines to provide free legal aid. Although the catalog of provisions for legal aid is impressive, the reality has been less so. Lawyers rarely provide *pro bono* services, despite their obligation under the law, which is not enforced. Further, there are far too few lawyers to meet the demand of those in need of legal aid. In Sulawesi, with a population of over 17 million citizens, there are only approximately 2,000 lawyers, the majority of whom are located in three densely populated capital cities. There is an estimated 1,000 lawyers at the provincial level in South Sulawesi for approximately 8 million people. Most of them work in Makassar.

No state-sponsored legal aid currently exists. Civil society organizations supply legal aid, through lawyers and paralegals, but their services are limited in scope, under-funded and not well-known among those in need of legal aid services. Paralegals fill the gap in the delivery of legal services to some extent, but they are unregulated and lack a legal definition and status. As a result, most citizens continue to appear in court without counsel. On October 4, 2011, the House of Representatives passed a new law on legal aid,
Law No. 16 of 2011 Concerning Legal Aid. The law mandates that legal counsel be available to indigent citizens involved in civil, criminal, administrative procedural, and non-litigation matters, and establishes standards that legal aid providers must meet to receive state funding. The law also provides greater opportunities for paralegals to provide legal aid services. However, the effect of the new law remains to be seen, as it will take some time for the government to pass implementing regulations.

4. **Access to a Justice Institution: Justice institutions exist, whether formal or informal, which are affordable and accessible, and process cases in a timely manner.**

Because the majority of land disputes are not effectively resolved by informal means, citizens are forced to use the formal justice system to claim a right or settle a land dispute. They generally are not satisfied with their experience in going to court, and cite cost and the length of time it takes for their case to be resolved as the major obstacles to achieving justice through the courts. In addition to informal costs, including traveling expenditures, the formal costs a citizen faces in bringing a lawsuit is a barrier to access the justice institution. Citizens typically lack the funds to pay for the expenses required for handling a case. The overwhelming limitation is that citizens never know exactly how much they need to spend in real terms for the costs required during the court trial process. Further, in accordance with Supreme Court rules, a District Court must resolve and rule upon a civil case within a period of six months. If a case cannot be completed within six months, the Chief Justice of the District court must report the reasons to the Chief Justice of the relevant High Court. Despite this rule, the time period from the commencement of legal proceedings at the District Court level until judgment is rendered is rarely less than six months and can be a year or more.

The informal justice system in South Sulawesi involves alternative methods of dispute resolution outside the formal justice system that combine negotiation and mediation. *Adat* practices are not particularly strong, and dispute resolution usually means the exercise of quasi-judicial functions by the mayor or local authorities such as the sub-district head or village head. Although citizens use informal justice mechanisms to resolve some small-scale disputes with other citizens, most land disputes concern issues outside the village structure. Citizens who choose to seek police assistance to resolve their land dispute decide to because they are familiar with the location of the police station and expect fair treatment and a fair outcome.

Although most citizens are aware they are required to register their land, in reality the vast majority of land held by citizens is not registered at the Land Agency. Often citizens are required to pay prohibitive fees to obtain the necessary documents from their village head and additional fees to register their land with the Land Agency. As a result, land disputes are rife because parcels of land have not been legally certified, and land users do not possess certificates to prove ownership and other entitlements.

5. **Fair Procedure: Justice institutions, whether formal or informal, ensure that citizens have an opportunity to present their case and that disputes are adjudicated impartially and without improper influence. Where cases are resolved by mediation, citizens make voluntary and informed decisions to settle.**

Article 27, Sec. 1 of the Constitution provides for the fair treatment of all citizens. Further, several laws regulate fair procedure, including the KUHAP and Law No. 48 Year 2009 on Judiciary. Law No. 48 Year 2009 stipulates that, in order to uphold the human rights of every citizen, citizens have a right to a fair public trial. It states that a court of justice shall conduct trial without discrimination against citizens, and mandates that the court of justice shall assist citizens in seeking justice and in overcoming obstacles that prevent a quick, simple, and inexpensive trial. With respect to the rights of accused persons in criminal cases, Law No. 48 Year 2009 instructs on several points concerning due process, a presumption of innocence, the right to legal representation, and other rights. With respect to the rights of parties in civil cases, the Civil Procedure Code sets forth provisions for a fair trial.

The "judicial mafia," the term given for corruption in Indonesia, is an obstacle to access to justice. The judicial mafia takes many forms, including bribery, blackmail, the fixing of lawsuits, the intimidation of witnesses, and all of the exceptions to regulations that money can buy. Bribery is far too common.
According to a civil society representative, in criminal cases, accused persons can bribe prosecutors to drop a case against them or those who report a crime can bribe the police to take the investigation more seriously or bribe judges or court officials to lean a certain way. Several years ago, following a national outcry against corruption, President Susilo Bambang Yudhoyono declared the eradication of corruption as one of his top priorities. He has since formed an Anti-Judicial Mafia Task Force and the Corruption Eradication Commission.

6. **Enforceable Decision: Justice institutions are able to enforce their decisions, including through the use of sanctions.**

In criminal and civil cases, the procedures of reaching a decision that is final and binding are similar. The enforcement of any judgment given at the District Court is generally stayed until a final decision is made with regard to the appeal. A case will also not necessarily end once the Supreme Court renders its verdict. Parties to the dispute can always reopen the case if they can furnish new evidence that has a bearing on the decision.

In civil cases, if the plaintiff prevails at the District Court, High Court or Supreme Court, the judgment can be enforced in two ways by the competent District Court. First, the losing party, the defendant, enforces the judgment voluntarily. Second, if the defendant fails to enforce the judgment, the plaintiff applies to the Chief of the relevant District Court to obtain an enforcement order. The Chief Justice will summon and give a warning letter (*aanmaning*) to the defendant to implement the verdict. If within 8 days after the summons the defendant has yet to implement the verdict, the Chief Justice will issue a determination letter that is delivered to the court’s registrar, ordering the execution of the enforcement order. The court’s bailiff then carries out the execution after sending notification three days before the execution takes place.

A common criticism is that law enforcement is weak, even when the law is clear, and when courts issue clear rulings. In recent years, this criticism has often been made of the operations of the Supreme Court in Indonesia as well of the operations of other parts of the formal justice system. The central problem is that the institutions and mechanisms for enforcement of the justice system, including the decisions of the Supreme Court, are under-funded and are operationally ineffective. There are thus numerous instances of long delays in the enforcement of the decisions of the Supreme Court.
Introduction

Access to justice requires that all citizens are able to use justice institutions to solve common justice problems. Unless citizens have access to justice, the rights and duties enshrined in constitutions and laws are meaningless, and fail to provide protection to vulnerable groups. For access to justice to exist, justice systems and legal services must function effectively to reach the vulnerable groups they are intended to serve.

In the last ten years, Indonesia has made significant strides toward greater democracy and protection for human rights. The Freedom House Index (FHI) ranks Indonesia as the only member of the Association of Southeast Asia Nations (ASEAN) that is a free country. The largest economy in Southeast Asia, Indonesia is also one of the fastest-growing countries in the Group of Twenty Finance Ministers and Central Bank Governors (G20), and could join Brazil, Russia, India and China – the BRIC economies – as the next emerging markets powerhouse. An estimated 35 million of its population of 240 million are now considered middle class. A long-awaited land acquisition law was passed on December 16, 2011, allowing Indonesia to accelerate road, port and airport projects, and could be a major turning point in the country’s efforts to ignite an economic boom.

Despite the current force of economic, political, and human rights development, a large portion of Indonesia’s population risks increasing marginalization. Approximately 100 million Indonesians remain poor, living on $2 or less per day. Many of the poor will lose out in the economic and political power struggle that underlie many reforms, including the new land acquisition law. Further, there remain many justice-related problems for poor and marginalized groups, particularly their ability to access better justice systems.

The purpose of this report is to present a comprehensive picture of the access to justice situation in Indonesia, with a focus on the primary justice needs of citizens living in poverty and involved in land disputes. The report discusses the key obstacles to access to justice that citizens encounter in solving their justice problems. To do so, it breaks down access to justice into a number of components, the Elements of Access to Justice, and considers the extent to which each element is present. Because each element is essential if citizens are to be able and willing to use justice institutions, the focus of the report is on what citizens need to have access to justice.

The Elements of Access to Justice are described in the table below.

<table>
<thead>
<tr>
<th>Elements of Access to Justice</th>
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Indonesia Country Background

Historical Context

National

Indonesia is by far the largest country in Southeast Asia, both in area and population. It consists of 13,677 islands that cover 741,101 mi\(^2\) of land along the equator between the Indian and Pacific oceans. The islands of Indonesia, of which 6,044 are inhabited, spread out over about 3,293 miles from east to west, and 3,104 miles from north to south. The country's total land and sea area is more than 3 million mi\(^2\). Despite the vast number of islands, 5 of them account for nearly 92% of the land area.

Indonesia is both the world’s largest Muslim-majority country and one of its most ethnically diverse. Home to an estimated national population of 240 million people, of whom more than 85 percent follow Islam. There are almost as many Muslims living in Indonesia as in the entire Arabic-speaking world. The Sunni branch of Islam dominates, while approximately one million Indonesians adhere to the Shia variant. A significant number of Sufi communities also exist in the archipelago state. Indonesia is also the world’s third largest democracy, after India and the United States.

The Republic of Indonesia came into existence on August 17, 1945, after a long period of Dutch colonial rule and Japanese wartime occupation. Indonesia's founding fathers established a centralized form of government, or unitary state, in order to unite a people of many different ethnic, religious, and cultural backgrounds spread across thousands of islands.

Indonesia’s first president, Sukarno, moved Indonesia toward authoritarianism, and maintained his power base by balancing the opposing forces of the military and the communist party. The army destroyed an attempted coup against Sukarno in September 1965, and thereafter led a violent anti-communist purge, during which the communist party was blamed for the coup and effectively destroyed. The head of the military, General Suharto, outmaneuvered the politically weakened Sukarno, and was formally appointed president in March 1968. The U.S. government supported Suharto’s New Order regime, which encouraged foreign direct investment in Indonesia. However, the New Order regime was widely accused of corruption and suppression of political opposition, and is considered one of the most repressive dictatorships in Southeast Asia.

Suharto's New Order regime collapsed in May 1998 after controlling Indonesian politics for more than 30 years. The period of Reformasi, or Reformation, began after the New Order period. Reformasi has been characterized by a liberal political and social environment, including greater freedom of speech in contrast to the censorship under the previous regime. Since Suharto’s downfall, the most dramatic reform initiative has been the introduction of an extensive regulatory framework governing the conduct of executive and legislative elections. Based on the new system, three national legislative and presidential elections, as well as balloting in many localities, have occurred throughout the last decade. Overall, elections in Indonesia are considered free and fair.

South Sulawesi Province

South Sulawesi is 1 of 30 provinces of Indonesia, located on the western southern peninsula of Sulawesi island, and bordered by Central Sulawesi, South East Sulawesi, and West Sulawesi provinces. Its population comprises four major linguistic and ethnic groups. The largest of these linguistic and ethnic groups are the Bugis people, who identify strongly with their former kingdoms and ruling families with their distinctive histories and traditions and their own set of laws for settling social affairs. Historically, Makassar, and Bulukumba and Gowa Districts, discussed below, were part of the Bugis kingdom.

South Sulawesi is the most densely populated province on Sulawesi Island, with approximately 8 million people. Its capital, Makassar, is a major regional center and the largest city on the island. Makassar has a population of approximately 1.25 million people who live among its 14 sub-districts. The majority of
citizens are Muslim. Makassar started to become an important trading port beginning in the early sixteenth century as part of the kingdom of Gowa. As a capital city, it currently serves as the dominant cultural, administrative, and economic center in East Indonesia. In his development plan for the city through the year 2014, the elected mayor, Ilham Arif Sirajuddin, promoted Makassar as a “globalized city,” with the aim of improving investment in the tourism sector. This is notably marked by the construction and revitalization of Losari beach and Karebosi Square, despite controversies stirred by these plans in the community.

South Sulawesi province is divided into 20 districts. One of them, Bulukumba District, consists of 10 sub-districts, 24 urban villages, and 123 villages. The capital of Bulukumba District is Bulukumba. Bulukumba District has an estimated population of 394,000 people, who are predominantly Muslim. The majority of Bulukumba citizens work in the fishing and farming industries. Agriculture makes a significant contribution to the economy, with rice as the main staple crop. Coffee plantations are abundant in almost all ten subdistricts, while plantations producing hybrid coconuts, ordinary coconuts, cloves, pineapples, and mangoes can also be found. The main industrial crops are cotton, rubber, and timber. The local government in Bulukumba District is promoting free education because the drop-out rate is at an average of 46.6 %, while the rate of graduates of secondary and high schools is at an average of 11 %.

Among the population in Bulukumba District exists an adat community of indigenous people, the Konjo-speaking inhabitants of Kajang Dalam. Sub-district Kajang is broadly divided into 2 sections, the “outer circle,” Kajang Luar, with 15 villages, and the “inner circle,” Kajang Dalam, where there are 4 villages recognized as customary adat lands. The authority of the Amma Toa, who is responsible for moral and spiritual leadership, and elected through a series of eclectic rituals, is considered absolute. Citizens of Kajang Dalam, who number approximately 3,000, actively live in the customary manner in terms of land usage, agricultural practices, and a sense of communal obligation. The fundamental principle of the adat community in Kajang Dalam is that land is considered sacred. From this principle, many other customs are derived, such as the insistence on bare feet and an open, natural architectural style. Black is the customary color that residents of Kajang Dalam consider sacred. To them, black represents equality in all things, including equality in modesty. The color also depicts strength and equality before the Creator. Selected members of the community specialize in adat law, and others judge and execute the law.

Gowa is another district of South Sulawesi province, approximately four miles from Makassar City. The capital of Gowa District is Sungguminasa. There are 12 districts, 36 urban villages, and 115 villages. The population of Gowa is approximately 575,000 people. Like Bulukumba District, agriculture is the mainstay of Gowa’s economy. Historically, the kingdom of Gowa was the wealthiest and the most powerful kingdom of 17th century Sulawesi. The kings who ruled Gowa were strong believers in trade and resisted the Dutch East India Company’s attempts to monopolize the spice trade. The kingdom of Gowa was a large East Indonesian kingdom that refused to cooperate with the Dutch. The Dutch ultimately sponsored a revolt by some of the other kingdoms under Gowa’s rule, and forced a treaty, Treaty of Bungaya, that allowed the Dutch to effectively occupy the kingdom of Gowa-Tallo in 1667.

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1 No other data about the adat community of Kajang Dalam was available for the purpose of this assessment.
Legal and Political Context

The Indonesian legal and political context is complex, with a layered structure that reflects the inheritances of successive regimes and the reality of legal pluralism. Prior to the first appearance of Dutch traders and colonists in the late 16th century and early 17th century, indigenous kingdoms applied a system of customary, or adat, law. The Dutch presence and subsequent colonization during the next 350 years, until the end of World War II, left a legacy of Dutch colonial law. A number of such colonial legislation continues to apply. Subsequently, after Indonesia declared independence, Indonesian lawmakers began creating a national legal system based on Indonesian precepts of law and justice.

National Political Institutions

Indonesia is a unitary republic, with separate legislative, executive, and judicial branches of government, each with distinct powers and responsibilities, established pursuant to the Constitution.

When Suharto was in power, the 1945 Constitution of Indonesia was never amended. After his resignation in May 1998, the Constitution was amended four times—in October 1999, August 2000, November 2001, and August 2002. Among other things, these amendments dealt with far-reaching issues, such as limitations on the powers and term of office of the President and decentralization of authority from the central government to provincial and regional governments.

The legislative process is conducted by the parliament. Pursuant to the Constitution, sovereignty is vested in the people, who exercise their will through the People’s Consultative Assembly [hereinafter MPR], which consists of two houses – the House of Representatives [hereinafter DPR] and the House of Regional Representatives [hereinafter DPD], both fully elected. The MPR currently has almost 700 members comprising all the DPR members, appointed individuals representing the provinces, and other nominees. Constitutionally, the MPR is the supreme state body. Only the MPR has the power to amend the Constitution. It meets typically on an annual basis; constitutionally, it must meet at least once every five years. The MPR issues policy statements in the form of decrees, as well as the broad outline of state policy.

The DPR has 500 members and consists of elected and appointed representatives. Its main function is to make legislation and hold the President and his ministers accountable. The DPR meets during sessions scheduled throughout the year. The DPD are senators who represent regions and provinces.

Modern Indonesian legislation comes in a number of forms. Article I Paragraph 2 of TAP MPR No. III/MPR/2000 on Sources of Law and Hierarchy of Laws and Regulations stipulates that sources of law consist of written laws and unwritten laws (laws not promulgated by state authority). In an effort to clarify the status of various types of legislation, Law No. 10 Year 2004 on the Establishment of Legislation issues the following official hierarchy of legislation:

- Constitution (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945)
- Law (Undang-undang)/ Government Regulation Substituting a Law (Peraturan Pemerintah Pengganti Undang-undang)
- Government Regulation (Peraturan Pemerintah)
- Presidential Decree (Peraturan Presiden)
- Regional Regulation (Peraturan Daerah)

In practice, there are other legislative instruments in current use. They include Presidential Instructions (Instruksi Presiden), Ministerial Decrees (Keputusan Menteri), and Circular Letters (Surat Edaran).
Indonesia is administered chiefly through government ministries. The typical ministerial structure is, as follows:

<table>
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<th>Unit</th>
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<tr>
<td>Ministry (Kementerian)</td>
<td>Minister (Menteri)</td>
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<tr>
<td>Secretariat (Sekretariat)</td>
<td>Secretary General (Sekretaris Jenderal)</td>
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<td>Inspectorate (Inspektorat)</td>
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<td>Division (Badan)</td>
<td>Head of Division (Kepala Badan)</td>
</tr>
<tr>
<td>Centre (Pusat)</td>
<td>Head of Centre (Kepala Pusat)</td>
</tr>
<tr>
<td>Bureau (Biro)</td>
<td>Head of Bureau (Kepala Biro)</td>
</tr>
</tbody>
</table>

Apart from ministers who oversee individual departments, there are a number of senior ministers, called Coordinating Ministers (Menteri Koordinator), who each oversee a number of related portfolios. In addition, there are other officials holding ministerial rank, including the Attorney-General (Jaksa Agung), the Secretary of State (Sekretaris Negara) and the Commander of the Indonesian Armed Forces (Panglima Tentara Nasional Indonesia).

The President of the Republic of Indonesia (Presiden Republik Indonesia) is the head of state. The President has constitutional authority over the government and directly chooses his ministers to assist in running the government. He has the right to propose bills to DPR, to discuss bills with the DPR to reach an agreement, and to make Government regulations in accordance with the laws. In the case of emergencies, he has the power to make Government regulations as a substitute to laws. Militarily, the President holds supreme authority over the Army, Navy, and Air Force. Diplomatically, the President can only sign treaties, appoint ambassadors, accept ambassadors from other countries, rehabilitate prisoners, and appoint Judicial Commission members with the DPR's agreement. The President has the power to grant pardons but must consider the advice of the Supreme Court. The President also has the final say over Chief Justice candidates.

While the MPR previously elected the President and Vice-President, recent constitutional amendments stipulate that the people are to directly elect the President and Vice-President. The first direct elections for the presidency and vice-presidency took place in 2004. Also, pursuant to these amendments, a person can only be elected as President or Vice-President for a maximum of two consecutive terms of five years each.

**Local Government Institutions**

Indonesia consists of 30 provinces, 2 special regions (Aceh and Yogyakarta), and 1 special capital city district (Jakarta Raya). A provincial government with its own representative assembly (Dewan Perwakilan Rakyat Daerah) administers each of the provinces. A governor, who is appointed by the President, heads each provincial government. As a result of the regional autonomy legislation enacted in 1999, greater autonomy and powers are being devolved to regional authorities. Overall, the local government administrative structure is, as follows:

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2 LAW REGARDING LOCAL GOVERNMENT (Law No. 22 Year 1999, revised by Law No. 32 Year 2004).
<table>
<thead>
<tr>
<th>Territory</th>
<th>Territory head</th>
</tr>
</thead>
<tbody>
<tr>
<td>Province (<em>Propinsi</em>). Each province has its own legislative body.</td>
<td>Governor (<em>Gubernur</em>). A governor is elected by popular vote for a 5-year term.</td>
</tr>
<tr>
<td>District / City (<em>Kabupaten/ Kota</em>). A district or city is a local level of government below a province. Both a district and a city have their own decentralized government and legislative body.</td>
<td>Regent / Mayor (<em>Bupati / Walikota</em>). A regent and mayor are both elected by popular vote for a 5-year term.</td>
</tr>
<tr>
<td>Sub-district (<em>Kecamatan</em>). A sub-district is an area within a district or city. Each sub-district is divided into a village (either <em>Kelurahan</em> or <em>Desa</em>).</td>
<td>Sub-district Head (<em>Camat</em>). A sub-district head is a civil servant, responsible to the regent or mayor.</td>
</tr>
<tr>
<td>Urban village (<em>Kelurahan</em>). An urban village is part of district/ city bureaucracy.</td>
<td>Village Chief (<em>Lurah</em>). A village head is a civil servant, directly responsible to the sub-district head.</td>
</tr>
<tr>
<td>Village (<em>Desa</em>). A village is a body that has authority over local citizens in accordance with local tradition.</td>
<td>Village Chief (<em>Kepala Desa</em>). A village chief is elected by popular vote.</td>
</tr>
</tbody>
</table>

**Judicial Institutions**

Pursuant to Article 24 of the Constitution, the Indonesian judicial system comprises several types of courts. Indonesia has a civil law system, based on the codes inherited from the Dutch.

The **Constitutional Court** has the jurisdiction to hear cases involving the constitutionality of particular legislation, authority of state institutions, dissolution of political parties, results of a general election, as well as actions to dismiss a President from office. Its powers are set forth under Article 24C of the Constitutions. Established in 2003, the Court is made up of nine members; the President, the Supreme Court, and the DPR each appoint three members.

The **Supreme Court** oversees the District Courts and High Courts, and can hear a cassation appeal. It can also reexamine cases if sufficient new evidence is found. On request it can give advisory opinions to the government and guidance to the lower courts. However, it does not have the power of judicial review of the constitutionality of laws passed by the DPR. Its jurisdiction is limited to whether implementing administrative regulations conform to the laws as passed. The Supreme Court is made up of 51 members. An independent Judicial Commission proposes Supreme Court candidates to the DPR. If the DPR approves them, the President confirms the appointments.

The **High Court** is a district court of appeal. The High Court hears appeals from the District Court, of which there are approximately 20 throughout Indonesia.

The **General Court** hears most civil (commercial and labor) and criminal (general and specific) disputes, with the court of first instance being the District Court. There are about 250 District Courts throughout Indonesia, each with its own territorial jurisdiction. The jurisdiction of District Courts is divided geographically. Special courts for handling certain types of cases may be established as subdivisions of the General Court. For example, Commercial Courts have been established to handle bankruptcy and suspension of payment cases.

Indonesia also has Religious Courts, Military Courts, and Administrative Courts. The **Religious Court** is for Muslim citizens to resolve matters, such as marriage, inheritance, and property donated for religious purposes. The **Military Court** handles cases involving members of the TNI. The **Administrative Court** oversees disputes involving state officials or bodies, both at the national and regional levels.
Key Populations and Justice Problems

The assessment takes as its point of departure the primary justice needs of citizens living in poverty and involved in land disputes and the obstacles they encounter in solving their justice problems. The regions in South Sulawesi province selected for the research focus were: Makassar City, Bulukumba District and Gowa District, which experience high rates of land-related conflict.

All state dispute resolution institutions, including state court, use customary, or adat,\(^3\) law to settle or adjudicate land disputes. A land conflict typically involves multiple owners’ claiming the same land. Based on the data obtained, the majority of land disputes in which citizens are involved can be divided into three types of cases: between citizens and corporations; between citizens; and between citizens and the government. Below, we discuss three land dispute cases, highlighting key justice problems.\(^4\)

A Picture of Conflict in South Sulawesi: Three Stories

The following stories are typical of land disputes citizens have against corporations and other citizens. In land disputes between citizens and corporations, a corporation typically purchases land from a party that does not have a right of transfer of land rights or ownership. The party may be an intermediary, a tenant, or even an heir who, without the knowledge of another heir, conducts a sale transaction with the corporation. In many cases, the intermediary, the tenant or the heir violates the laws, such as by producing false land ownership documents. In disputes between citizens, disputes commonly arise from the land sale transactions entered into by the parties’ heirs; one of the parties is subject to allegations of illegal land occupation. All names have been changed to protect the identity of those interviewed.

Story 1:
Katong’s family had occupied its land, about one hectare (140.60 ft\(^2\)), in Tamalate sub-district since Katong’s grandmother’s time. Katong’s father and 44-year old Katong were born there. Katong’s dispute with the investment company, PT Gowa Makassar Tourism Development Tbk (GMTDC),\(^5\) started when GMTDC forcefully took his land. Years before, his parents had borrowed money from an individual, Hamdan, with their land certificate as collateral. When they tried to return the money, they could not find Hamdan and discovered Hamdan had fraudulently sold their land to GMTDC. (Hamdan was later convicted of fraud and sentenced to one year in prison.)

Katong complained to the local village head, showing copies of the rincik and land certificate filed with the National Land Agency. After hearing both sides, the village head told Katong to “deal with his own problem.” Katong then went to the police, again showing his official land ownership documents. The police told him to “just wait” for a decision, but after a year of waiting Katong still had no answer from the police. Determined not to give up, Katong went to the prosecutor’s office, where a meeting between the parties was called, but nothing in the end came of the meeting.

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3 Adat is the set of customary norms, values, customs and practices and dispute resolution systems of specific ethnic communities in particular localities throughout Indonesia.
4 Land disputes between citizens and the government usually involve government appropriation of land on public good grounds for infrastructure projects, including the construction of public facilities and highways. The dispute is usually over the amount of compensation offered to the citizens. Because a new Land Acquisition Law passed in December 2011 will change how these cases are handled, they are discussed in Element 1, below.
5 GMTDC is a property developer that generates revenue mainly from the sale of landed houses and housing plots, the sale of land plots for commercial use, as well as revenue from commercial and recreational facilities. The firm developed and marketed a number of new housing clusters, with names like Orchid, Alora, Vista, and the Elysium. GMTDC has generated revenue of 160 billion Rupiah, (approximately USD 183 million), and a net income of 39 billion Rupiah (approximately USD 45 million).
Finally Katong filed a civil case with the district court in Makassar to fight his case. As the owner of a small convenience store, he made approximately 500,000 Rupiah (approximately USD 57.00) per day to support his wife and two children. Because of his modest income, he was able to hire a private lawyer, but the high costs of litigation started to pile up. Katong calculated he spent 100 million Rupiah (approximately USD 11,407.00) in district court alone. Those costs included paying a bribe to the court of 2.5 million Rupiah (approximately USD 285.00). The court had originally asked for twice the amount. Katong lost the case at the district court level and appealed to both the High Court and the Supreme Court, where he also lost. His case took almost five years to litigate.

Both the High Court and Supreme Court had asked Katong to pay a bribe of 6 million Rupiah (approximately USD 685.00) and 250 million Rupiah (approximately USD 28,517.00), respectively, but Katong could not afford the payments. Katong states, “Our experience in court made us feel that we did not undergo a real trial. What I gained from my experience in court was that no one could provide clarity or certainty to the absolute and the court only serves people with money.”

Story 2:
Approximately 60 families collectively bought and lived on a parcel of land, Property No. 48, in Kassi Kassi, Rapponcini village, Makassar, for more than ten years. The families became involved in a land dispute with a business owner, Rizal, who claimed to have purchased the land at a government-sponsored auction in Jakarta. The families were mostly unskilled and uneducated laborers, living in poverty. One citizen, Emi, a housewife, lived with her husband and four children on 30,000 Rupiah (approximately USD 3.40) per day. The families bought the land through a land title deed, drafted by a notary, and possessed a land title deed, land tax payment receipts, and other proof of ownership of the land.

Rizal filed a criminal complaint against the families on charges of land-grabbing and annexation. The families received letters summoning them to appear at the police station. According to Emi, when the families appeared at the police station, the police threatened them with arrest and told them they were not the rightful owners of the land.

Twenty-seven families accepted compensation in exchange for their land, leaving 35 families to continue to fight the case. The police dropped the case. Another citizen involved in the land dispute states, “We have always been cornered. It was very unfair for the citizens to receive a compensation of [only] 500,000 Rupiah [approximately USD 57.00] . . . some of the citizens were afraid of the terror, either made by the police or the thugs of Rizal.”

The same year, Rizal filed a civil lawsuit against the remaining 35 families in Makassar District Court. The case lasted in district court for one year, with a decision rendered in favor of the respondents. The road to victory was costly, however, as the families had to travel several hours by minivan each way to reach the courthouse. Emi estimates they appeared in court over 10 times. Costs of transportation and meals mounted, too, because they traveled as a group. After losing, Rizal filed an appeal before the High Court. The case took approximately one year to be decided, again in favor of the respondents. Rizal next filed a cassation before the Supreme Court and lost. Even though the families ultimately won at all levels, the case has taken over 6 years to resolve, at considerable cost, and the decision has still not been enforced.6

In this report, Indonesian Rupiah [hereinafter Rupiah] are converted to United States dollars [hereinafter USD] at the average rate of conversion at the time when interviews were conducted (Indonesian Rupiah 8766.63 = USD 1.00).

The families who stayed on to fight the case founded an advocacy organization, PERCASI, to mobilize their efforts while their case was pending before the courts. They have attracted approximately 500 citizens to join their efforts, and expanded their mandate to provide advocacy on the most pressing needs of their communities, including the delivery of health and education governmental services.
Story 3:
A land dispute between the sons of Sumang, Ruddin and Kamariah, and M. Rais has been unresolved for over a decade, starting in 1985. In 1985, based on a power of attorney, M. Rais was appointed as the broker of Sumang’s family. M. Rais deceived Kamariah by taking him to Makassar Religious Court, not to renew his inheritance letter, but to deed the family land to him by donation. The deed of donation was considered legally invalid because it was not signed by all the heirs of Sumang. Based on the deed of donation, M. Rais created two false documents, a deed of inheritance and a deed of donation at Panakukkang sub-district.

That same year, Ruddin brought the case before Team Committee 7 on land dispute settlement. The Team Committee 7 decided that M. Rais should restore ownership of the land to Sumang. M. Rais signed a notarized statement that he would destroy the false documents, and, additionally, made a statement he would do so to the sub-district head.

However, M. Rais remained on the land, and used the false documents to register a land title deed in his name. More than ten years after the team committee’s decision, Kamariah filed a case against M. Rais to Makassar police headquarters on charges of fraud, embezzlement, and forgery. Two years later, the Makassar District Court found M. Rais guilty of forgery and sentenced him to 1 ½ years of imprisonment. M. Rais in turn filed charges against Ruddin, accusing him of land-grabbing. In 2011, the district court found Ruddin not guilty.

The land in dispute became part of a National Road Widening Program. To seek compensation for the land, M. Rais claimed he was the landowner. That same year, Ruddin and Kamariah filed a case against M. Rais with the police. M. Rais, together with thugs, destroyed a house and building owned by Sumang’s heirs. During the incident, the police who were at the scene took no action, despite the fact that M. Rais’s actions were unlawful. Ruddin and Kamariah have received no response from the police about their complaint.
Indonesia: Elements of Access to Justice

Element I. Legal Framework

Laws and regulations establish citizens’ rights and duties, and provide citizens with mechanisms to solve their justice problems.

Conclusion

The Indonesian government has promulgated hundreds of thousands of laws and regulations. There is a tremendous amount of law on the books. With respect to land rights and land ownership, Indonesia has a comprehensive legal framework that establishes citizens’ rights and duties. Although this legislation, in particular the 1960 Basic Agrarian Law (BAL) was intended to solve legal uncertainty and create positive reform, it has caused many problems. As with other laws in Indonesia, the Basic Agrarian Law provides only substantive principles, leaving many specific issues related to implementation to be fleshed out in implementing administrative regulations. As such, this has resulted in poor implementation of the law, which itself is overly complicated and difficult to apply. Implementing regulations of the BAL that currently exist fail to elaborate, and are even contradictory to, *adat* principles.

With respect to acquiring land for public use, the lack of a land acquisition law has halted the progression of Indonesia's infrastructure development. Unclear rules have caused land disputes to take years to resolve. On December 16, 2011, the DPR passed a new Land Acquisition Law that aims to facilitate more infrastructure development, as part of a government plan to expand and improve the country's infrastructure to meet the connectivity requirements of the ASEAN economic community in 2015. The law sets out a clear timeframe, an independent price valuation mechanism, and appeal procedures for land acquisitions for government-commissioned infrastructure projects. The provisions are intended to reduce land acquisition conflicts. Although the law has been passed, it will take some time to become fully operational.

The legal framework is sufficient for citizens to seek to assert their rights in the formal justice system. The criminal and civil procedure codes set forth the procedures and the rights of citizens at different stages of the trial process in land-related disputes. The informal justice system involves alternative methods of dispute resolution outside of the formal justice system that combine negotiation and mediation, usually at the sub-district or the village level.

Analysis

The land, the waters and the natural riches contained therein shall be controlled by the State and exploited to the greatest benefit of the people.8

The legal framework is the set of laws and regulations that is the foundation on which citizens can seek solutions to their justice problems. It establishes citizens’ rights and duties and provides for citizens to bring legal proceedings to protect their rights. A comprehensive legal framework is essential: if the law does not grant rights to citizens in need, and the opportunity to argue, they will have no redress in case of abuse by those more powerful. In this section, we examine the sources of laws that regulate land issues and justice institutions. We begin with an overview of the evolution of Indonesian land law and land ownership, and then describe in some detail the frameworks under which citizens can assert their rights in formal justice systems, both criminal and civil, and the informal justice system.

Land Laws and Land Ownership

For most Indonesians, land is a vital factor of life. Land has not only economic value as a commodity but also social, political, cultural, and even religious values. Because land is so essential, citizens are willing to put their lives at risk over land conflicts.

Basic Agrarian Law (BAL)

Presently the laws of Indonesia recognize the holding of property under both customary land law and formal land law. In the 350-year period before independence in 1945, a dualism in land law accommodated Western-style systems to meet the interest of colonialists and the traditional unwritten laws based on adat rights to land. In 1960, the Indonesian government declared Law No. 5 Year 1960 on the Basic Principles of the Agrarian Law (BAL)\(^9\) (Undang-Undang Pokok Agraria/ UUPA) as the umbrella law governing land ownership in Indonesia.

Article 33 of the Constitution (Undang-Undang Dasar 1945) helped to frame the basic assumptions of the BAL.\(^10\) A broad mix of leftist, nationalist, and anti-colonialist ideals that were influential at the time the Constitution was drafted originally inspired Article 33. The third paragraph of Article 33 states that “[t]he land, the waters and the natural riches contained therein shall be controlled by the State and exploited to the greatest benefit of the people.”\(^11\) This article of the constitution is socialist in nature, and fairly accurately reflects the popular views of the vast majority of Indonesian, both at the time of the framing of the Constitution to the present day. The BAL integrated rights under adat law and Western law;\(^12\) it declared that national land law is adat law, while, at the same time, provided for the registration of individual rights to land.\(^13\) In theory, the BAL prioritized state land for citizens with the aim of redistributing it to poor peasants to improve their livelihood and maintain social justice. According to the BAL, having land was an “obligatory right;” every family that depended on agricultural activities for their livelihood, especially sharecroppers and landless peasants, was entitled to the use and control of a minimum of four acres of land.\(^14\)

Under adat principles, which evolved and devolved through the centuries to the present and remain a recognized source of law, the right to land was based on kinship, ethnicity, and village. Based on oral, not written practices, the head of the adat community, usually a village head, applied adat law. The most common form of adat land tenure is a communal right shared by all members of an adat community (Hak Ulayat). Before enactment of the BAL, adat land was also land that an individual originally acquired

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\(^9\) LAW ON THE BASIC PRINCIPLES OF THE AGRARIAN LAW (Law No. 5 Year 1960) [hereinafter BAL].

\(^10\) CONST., art. 33.

\(^11\) Id., art. 33, § 3. The other paragraphs of art. 33 – less important for purposes of this assessment – are as follows:

(1) The economy shall be organized as a common endeavour based upon the principles of the family system.

(2) Sectors of production which are important for the country and affect the life of the people shall be controlled by the State.

(4) The organisation of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy.

(5) Further provisions relating to the implementation of this article shall be regulated by law.

\(^12\) Id., arts. 33, §§ 1, 2, 4, and 5.

\(^13\) Under Western law, the Agrarian Law of 1870 set up a legal system that was used during Dutch colonialism in Indonesia. The law stated that the state had ownership interest in all lands under the control of the Dutch. Europeans and foreigners from the East were entitled to property rights, while indigenous peoples were only given usage rights.

\(^14\) BAL, Chapters 7, 17.

BAL; LAW ON DETERMINATION OF THE SIZE OF AGRICULTURAL LANDS (Law No. 56 PRP Year 1960), art. 8.
through forest clearing with approval from the head of the *adat* community. The cleared land could then be transferred by sale and purchase, grant or inheritance. After enactment of the BAL, land acquisition from forest clearings require the approval from the governor of the province, where the land is located, and the Ministry of Forestry. A citizen can only prove ownership of a transferred plot of customary land by registering it under the BAL and with a subsequently issued land certificate.

Government Regulation No. 24 Year 1997 regarding Land Registry\(^\text{15}\) provides the legal framework for the registration of land ownership in Indonesia. Rights to land are recorded in the national register (*Buku Tanah*) with the National Land Agency (*Badan Pertanahan Nasional*) [hereinafter BPN], established in 1988 as the agency responsible for all non-forest land in Indonesia, including the recognition, registration, and administration of property rights and dealings.\(^\text{16}\) The BPN has offices in all provinces and districts of Indonesia. Once the right is recorded, the BPN issues a land title deed, or a land certificate (*Sertifikat Tanah*) to registered owners. In most cases, this certificate is for freehold (*Hak Milik*). A land certificate based on land registration is the strongest evidence of ownership. If a plot of land is not registered, the owner will have difficulty in proving ownership.

**Implementation of the BAL**

The pro-people legal framework during the Old Order era (1945-1966) was aimed at executing the BAL, particularly through agrarian and land reform. The Old Order strongly rejected foreign capital investment and foreign debts to help development in order to protect citizens’ proprietary rights over land and access to natural resources.

However, implementation of the BAL’s intent ended during the New Order era (1967-1997), shortly after Suharto took power in 1966. The New Order not only stopped implementation of the BAL, but all rural organizing activities were restricted. The New Order’s capitalist orientation and the shift in agrarian politics from reform to the top-down green revolution without land reform all contributed significantly to poor implementation of the BAL. The New Order opened Indonesia to foreign capital investment and made foreign debts the main source of development funding. The BAL was interpreted to support absolute state control over ownership over land and natural resources. Violence was used to impede those who demanded their proprietary rights. Although they acknowledged the BAL, the New Order never planned to execute it and rejected the execution of land and agrarian reforms. Based on their new interpretation of the BAL, the New Order issued sectoral laws that directly contradicted the BAL.

\(^{15}\) **GOVERNMENT REGULATION REGARDING LAND REGISTRY** (*Law No. 24, 1997*) [hereinafter Government Regulation 24/1997].

\(^{16}\) BPN has a wide mandate:

- Formulating policies and planning for land reform and land use;
- Formulating policies and planning for the ownership of land with the principle that land has a social function as defined in the BAL;
- Administering survey, mapping, and registration of land to provide security for land ownership;
- Granting land rights to maintain order in land administration;
- Research and development in land matters and the training of personnel to support BPN operations; and
- Other duties as decided by the President.
The BAL stipulates land title rules. Below is a summary of each type of land title available.\textsuperscript{17}

Primary titles (titles directly derived from the state):

- **Right of ownership (Hak Milik)** [hereinafter HM]. HM is the most complete land title available under Indonesian law. HM is transferable and may be encumbered. HM is equivalent to freehold land or fee simple absolute under the common law system. Except for certain legal entities designated by the Indonesian government, only Indonesian citizens are allowed to hold HM.

- **Right to cultivate (Hak Guna Usaha)** [hereinafter HGU]. HGU gives the owner the right to exploit land for a certain period for the purposes of agriculture, fisheries or cattle breeding. HGU is transferable and may be encumbered. Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia may own land with HGU title. HGU is granted for a maximum period of 35 years and extendable for a further 25-year period. Upon the expiration of such extension, the HGU may be renewed.

- **Right to build (Hak Guna Bangunan)** [hereinafter HGB]. HGB gives the owner the right to construct and own buildings on land. Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia may own land with HGB title. HGB is granted for a period of up to 30 years and extendable for another 20-year period.

- **Right to use (Hak Pakai)** [hereinafter HP]. HP is the right to use and/or to harvest from land, which is directly controlled by the State, or land of other persons. HP may be owned by: Indonesian citizens; legal entities established under the laws of Indonesia and domiciled in Indonesia; departments, non-departmental state agencies, and regional governments; religious and social organizations; foreigners residing in Indonesia; foreign legal entities that have representatives in Indonesia; representatives of foreign countries and international organizations. Ordinarily, HP is granted for a period of up to 20 years and can be extended for 20 years. Upon expiration of the extension period, HP may be renewed.

Secondary titles (titles granted by holders of primary titles on the basis of written mutual agreement):

- **Right to lease (Hak Sewa)** [hereinafter HS]. An owner of HS is entitled to use the property of others, with the owner of HS obligated to make rental payments to the owner of such property. There is no fixed term for HS. The following persons are eligible to hold HS: Indonesian citizens; foreigners residing in Indonesia; legal entities established under the laws of Indonesia and domiciled in Indonesia, including PMA companies; foreign legal entities that have representatives in Indonesia.

- **Right to clear land and collect forest products (Hak Membuka Tanah dan Memungut Hasil Hutan).** Only Indonesian citizens may hold this right.

- **Right of use of water (Hak Guna Air)** and **Right to cultivate and catch fish (Hak Pemeliharaan dan Penangkapan Ikan)**

- **Right of use of airspace (Hak Guna Ruang Angkasa)**

\textsuperscript{17} BAL, chapter 2.
Development projects taken on by the New Order regime caused land conflicts in many parts of Indonesia. Privatization propelled Indonesia and its natural resources into trade liberalization and the free market system.\textsuperscript{18}

The pro-privatization legal framework during Reformasi (1998-present) accommodated the BAL by issuing regulations regarding agrarian reform, while continuing the New Order’s practice of accommodating foreign investors and debts, particularly allowing the privatization of natural resources.

In practice, the BAL provides very little legal support for actually implementing adat solutions. For example, it provides no way to register communally owned land or otherwise legally protect adat holdings. This is because the existence of communal notions of tenure under adat is beyond the scope of market mechanisms based on individual ownership. The root of the problem is that, as with many laws in Indonesia, the BAL provides only substantive principles, leaving many specific issues related to implementation to be fleshed out in implementing regulations. Implementing regulations of the BAL that currently exist fail to elaborate adat principles. In particular, Hak Ulayat was never converted to a Western-style statutory right, and laws to clearly define the extent and status of Hak Ulayat under the BAL were never forthcoming. One regulation does provide procedures for the settlement of disputes concerning Hak Ulayat, but it is contradictory to adat principles. The State Minister of Land Affairs/Head of National Land Agency’s Regulation No. 5 of 1999\textsuperscript{19} states that Hak Ulayat will not be recognized or recorded, where land is already subject to statutory ownership right.

Essentially the struggle centers on claims based on customary rights to land, with land conflicts more frequently involving large power imbalances and property rights for citizens fast disappearing. A significant number of citizens depend on land as their only means of livelihood. Land disputes are rife because the BPN has not legally certified parcels of land, and tenants and land-users do not possess certificates to prove ownership and other entitlements.

\textit{2011 Land Acquisition Law}

The absence of a land acquisition law has halted the progression of Indonesia’s government-commissioned infrastructure development. Unclear rules on acquiring land for public use and the lack of provisions of formalized fair compensation for individual landowners have caused land disputes to take years to resolve. On December 16, 2011, the DPR passed a new land law\textsuperscript{20} that aims to facilitate more infrastructure development, as part of a government plan to expand and improve the country’s infrastructure to meet the connectivity requirements of the ASEAN economic community in 2015.

The Land Acquisition Law is intended to streamline the process and reduce the time for obtaining ownership. The Land Acquisition Law provides for a public consultation period of 60 days; if no objections are raised during that time, all legal procedures for an acquisition are to be completed within 260 days. The public will be able to bring objections to the state administrative court, which would be required to issue a ruling within 30 days. A further appeal could then be lodged within 14 days with the Supreme Court, which would then need to rule within 30 days. The Land Acquisition Law reinforces what has been

\textsuperscript{18} Other pro-privatization legislation that relate to specific industries are: \textit{LAW ON INVESTMENT} (Law No. 25, 2007), \textit{LAW ON FORESTRY} (Law No. 41, 1999) [hereinafter Law No. 41/1999 on Forestry], \textit{LAW ON PLANTATION ESTATE} (Law No. 18, 2004) [hereinafter Law No. 18/2004 on Plantation Estate], \textit{LAW ON WATER RESOURCES} (Law No. 7, 2004), \textit{LAW ON MANAGEMENT OF COASTAL AREAS AND SMALL ISLANDS} (Law No. 27, 2007), \textit{LAW ON MINING} (Law No. 4, 2009), and the recent enactment of the Law on Land Acquisition, discussed below. The overall legislation has legalized the expropriation of people’s rights over land, forest, mining, fishing areas, indigenous and village area and territory for the benefit of investors. The Constitutional Court recently annulled articles in Law No. 18/2004 on Plantation Law that criminalized landless farmers.

\textsuperscript{19} \textit{STATE MINISTER OF LAND AFFAIRS/HEAD OF NATIONAL LAND AGENCY’S REGULATION} (Law No. 5, 1999) [hereinafter State Minister of Land Affairs Regulation 5/1999].

\textsuperscript{20} \textit{LAW ON LAND PROVISION FOR THE DEVELOPMENT FOR PUBLIC INTEREST} (2011) [hereinafter Land Acquisition Law].
a significant shift in the national attitude towards land by prioritizing the needs of the public over an individual or community for infrastructure projects by giving the government the right to acquire the land.

Although the law has been passed, it will take some time to become fully operational, while the government passes implementing administrative regulations, such as on the appointment of independent financial assessors who will determine the value of land. There could also be issues regarding the ability of the Indonesian courts to settle disputes within the law’s stipulated timeline and, more importantly, whether their rulings will be enforced. Low public confidence in the integrity of the judicial system may make landowners in some instances unwilling to accept compensation decisions and refuse to leave their land. All political parties in parliament have supported the law, but land-rights groups have expressed their dissatisfaction with it, arguing that it is too “pro-business.” Corporations are likely to still face local community resistance over land acquisition by the government.

**Criminal Trial Process**

The Indonesian Penal Code\(^{21}\) (Kitab Undang-undang Hukum Pidana) contains several provisions for land-related offenses: Article 167 (land-grabbing);\(^{22}\) Article 378 (fraud);\(^{23}\) Article 372 (embezzlement);\(^{24}\) Article 23 (forgery);\(^{25}\) and Article 385 (related).\(^{26}\) Indonesia’s Criminal Procedure Code\(^{27}\) (Kitab Undang-Undang Hukum Acara Pidana) determines the procedures and rights of individuals at different stages of the criminal trial process: arrest, detention, investigation, prosecution, and trial.

Under the KUHAP, the police may arrest a person “who is strongly presumed to have committed an offense based on sufficient preliminary evidence.”\(^{28}\) The police must produce a warrant upon arrest if the

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21. **Penal Code** (enacted February 27, 1982, as amended by Law No. 27 of May 19, 1999) [hereinafter KUHP].
22. Art. 167 states:
   (1) Any person who illegally forces his way into the dwelling or the enclosed room or grounds, used by another, or staying there illegally does not move away immediately at the demand of or on behalf of the rightful claimant, shall be punished by a maximum imprisonment of nine months or a maximum fine of three hundred Rupiahs;
   (2) Any person who has forced an entrance by means of breaking or climbing in, false keys, a false order or a false costume, or who, without prior knowledge of the rightful claimant and having entered otherwise than by mistake, is found there by night, shall be deemed to have forced his way into it.
   (3) If he expresses threats or uses means capable of intimidation, he shall be punished by a maximum imprisonment of one year and four months;
   (4) The punishments laid down in the first and third paragraphs may be intensified by one third, if two or more united persons commit the crime.
23. Art. 167 provides: “Any person who with intent to unlawfully benefit himself or another, either by assuming a false name or a false capacity, or by crafty artifices, or by a web of fictions, induces someone to deliver any property or to negotiate a loan or to annul a debt, shall, being guilty of fraud, be punished by a maximum imprisonment of four years.”
24. Art. 378 provides: “Any person who with deliberate intent and unlawfully appropriates property which wholly or partially belongs to another and which he has in his possession otherwise than by a crime, shall, being guilty of embezzlement, be punished by a maximum imprisonment of four years or a maximum fine of sixty rupiahs.”
25. Art. 372 provides: “(1) Any person who forges or falsifies a writing from which & title, a contract or a release from debt may arise, or which is intended to serve as evidence of a fact, with intent to use or to cause others to use it as genuine and unfalsified, shall, if from said use may result an injury, being guilty of forgery of writing, be punished by a maximum imprisonment of six years.
   (2) By the same punishment shall be punished the person who with deliberate intent makes use of the false or falsified writing as if it were genuine and unfalsified, if from said use may result an injury.”
26. KUHP, art. 385.
27. **Criminal Procedure Code** (Law No. 8, 1981) [hereinafter KUHAP].
28. *Id.*, art. 17.
suspect is not apprehended in *fiagrante delicto*. They must also send a copy of the warrant to the suspect’s family.\textsuperscript{29} Suspects must be released within one day of arrest unless the investigator, prosecutor or judge orders a detention.\textsuperscript{30} Detention is limited to offenses liable to imprisonment of five years or more and crimes under Article 21, Sec. 4(b).\textsuperscript{31} Suspects may be detained for a maximum of 60 days without judicial consent.

During the investigation stage, investigators must inform the public prosecutor of the start of their investigations.\textsuperscript{32} If the investigation is terminated due to insufficient evidence or if the event does not constitute an offense, investigators must also notify the prosecutor and suspect.\textsuperscript{33} During investigation, investigators have the authority to summon witnesses for examination. When the investigation is completed, investigators must submit the dossier of the case to the public prosecutor. If the public prosecutor believes that the investigation is incomplete, he will return the dossier and order a supplementary investigation.\textsuperscript{34} The dossier is then resubmitted.

During the prosecution stage, after examining the dossier of the case, the public prosecutor will determine if the case meets the requirements to be brought to court. If he decides to prosecute, he or she must prepare a Bill of Indictment and bring the action before an appropriate district court.\textsuperscript{35} Summonses will then be issued to the suspect and witnesses, if any, to attend trial. If the prosecutor decides to cease prosecution, he or she must produce a written decision to be sent to the suspect, the investigator, and the judge.\textsuperscript{36}

Pre-trial proceedings are limited to examining whether the arrest and/or detention was legal and to decide whether the District Court has the jurisdiction to try the case. At the outset of trial, the prosecutor will read out the Bill of Indictment. The judge will then summon the accused and witnesses to give their testimonies, which will be examined. The head judge will lead the examination at trial. The prosecutor and defense counsel may question the witnesses through the head judge.\textsuperscript{37}

After examination, the prosecutor will submit his charges before the accused submits his defense. The prosecutor may reply to the defenses proffered, provided that the accused has a right to reply.\textsuperscript{38} The head judge will then consult other judges on the bench before he or she reaches a decision. The court will acquit the accused if guilt has not been legally and convincingly proven or dismiss all charges if the acts do not constitute an offense.\textsuperscript{39} If the court concludes that the accused is guilty of committing the offense, it will impose a punishment.\textsuperscript{40} The prosecutor will then execute the judgment.\textsuperscript{41}

**Civil Trial Process**

Indonesian Civil Procedure is based on two regulations that were inherited from the Dutch Colonial system, *Herziene Inlandsch Reglement* and *Rechtsreglement voor de Buitengewesten*. The institution of a civil proceeding usually commences with the plaintiff submitting a complaint (*Surat Gugatan*) to the chairman of the District Court located in the defendant’s domicile. The plaintiff is then required to register the civil suit with the deputy registrar of the District Court and pay a filing fee. Upon registration, the deputy registrar must issue a letter of summons to the defendant at least three days prior to the first court
hearing. If the defendant fails to appear at the first court hearing, he or she is summoned to a second hearing and, if necessary, to a third hearing. If the defendant has not made an appearance by the third hearing, it is within the discretion of the Court to issue a default judgment (Putusan Verstek), unless the plaintiff's lawsuit is clearly without merit. Such a default judgment is subject to appeal and not binding or conclusive.

A Supreme Court regulation dictates mediation and conciliation procedures in court. At the first hearing where both parties appear, the judge is obliged to encourage the parties to reach an amicable settlement or conciliation and to adjourn the hearing until the mediation period ends. If the mediation is successful and the parties are able to reach an agreement, the agreement must contain a clause regarding the withdrawal of the lawsuit or a statement stating that the dispute is settled. The judge may affirm the agreement and incorporate it into a decision (Putusan Dading), which is not subject to appeal and is final and binding. In the majority of land cases, informal mediation and conciliation procedures are not successful.

If the mediation process has not been successful, the first court hearing is devoted to receiving the statement of the defendant and to certain administrative matters. The judge is empowered to give directives to the parties regarding the evidence and legal alternatives available to each side. The main arguments during the course of the trial are in the form of written submissions.

When the defendant's response to the original summons has been filed with the court, the court adjourns for a period during which time the plaintiff is permitted to file his counterplea (Replik). The defendant may also file a counterclaim against the plaintiff’s claim simultaneously with his or her first response. The counterclaim may be for an amount that is the same, higher or lower than the amount of the claim. The filing of the plaintiff’s counterplea triggers the commencement of a second period during which the defendant is required to file a rejoinder or response to the counterplea (Duplik).

When the written submissions have been filed with the court, another session is scheduled to examine the written exhibits. The originals of the exhibits are not produced initially. The purpose of this session is for the judge to verify the copies with the originals. After the judge examines the written exhibits, a subsequent court session is scheduled to hear the witnesses for the plaintiff and the defendant. The plaintiff is required to produce at least two witnesses. The witnesses for the plaintiff are heard first, and then the witnesses for the defendant are heard.

Each witness is examined by the lawyer calling him, and may also be cross-examined by the lawyer opposing and then re-examined by the first lawyer. The judge is also entitled to question the witness. A written record of the testimony is made by an officer of the court and given to the judge. It is usual for the lawyers representing each party to approach the court officer to review the record and seek correction of any errors. If the lawyers disagree with the record, they are entitled to approach the judge for purposes of verifying the accuracy of the record and to seek the judge's approval in order to correct any errors contained therein.

The next court session is scheduled for the purpose of accepting final written submissions from each party (Kesimpulan). Upon the receipt of these final submissions, the judge usually adjourns the court for two to three weeks in order to review the submissions and to render a decision. At the final court session, the judge will issue a decision. In accordance with Supreme Court rules, a civil case must be resolved and ruled upon by a District Court within a period of six months. If a case cannot be completed within six months, the Chief Justice of the District court must report the reasons to the Chief Justice of the relevant High Court.

The losing party at the District Court level is entitled to appeal to the High Court. The appellant is required to file the appeal with the deputy registrar of the same District Court that rendered the initial decision. The appellant need only sign the statement of appeal (Akta Banding) and to pay the appeal fee in order to successfully file the appeal. No legal grounds justifying the appeal need be included in the appeal; dissatisfaction with the decision of the lower court is sufficient. If an appeal is filed, the respondent may file a counter statement if he wishes, but there is no requirement to do so. The appeal to the High Court
may ask to review both matters of fact and law and is based on written submissions made on behalf of each party.

From a decision of the High Court, the losing party may appeal by seeking a cassation to the Supreme Court. The application for cassation and a cassation statement have to be filed with the original District Court. This application must be filed within 14 days calculated from the time the losing party received the notice of decision. Within 14 days of the application for cassation being filed, the statement containing the reasons for the cassation (Memori Kasasi) must be submitted to the Court. The respondent, if he or she so desires, may also submit a counter statement (Kontra Memori Kasasi) within 14 days calculated from the date that he or she received a copy of the appeal. The Supreme Court does not review the facts but only decides on matters of law, including the issue of whether the lower courts properly applied the law.

**Informal Justice**

The informal justice system in South Sulawesi involves alternative methods of dispute resolution outside of the formal justice system that combine negotiation and mediation, usually at the sub-district or the village level. These legally non-binding components include adat practices in adat communities, and other social norms, customs, and traditions that determine the dispute resolution processes and procedures. Usually, adat applies to the specific ethnic communities in particular localities of South Sulawesi.

In villages where adat is not strong, the informal justice system encompasses the exercise of quasi-judicial functions by neighborhood heads, sub-district heads, village heads, and other community or religious leaders. The informal legal framework also does not provide rules for dealing with large-scale commercial transactions. The legal basis that allows companies to enter the area and start operations is part of state law, consisting in practice of permits issued by the national and district governments. Local landowners base their land claims on adat law.
Element II. Legal Knowledge

Citizens are aware of their rights and duties, and the mechanisms available to solve their justice problems.

Conclusion

The assessment found that citizens’ legal knowledge of specific rights protected or established by Indonesian land law is low. However, the assessment showed that citizens take action that demonstrates a general awareness that they have been wronged in some way. Even though citizens often take the initiative to complain to a relevant state agency or customary authority, they often do not know what additional steps to take if they do not receive a response as a result of their complaint. With respect to knowing about the various options available to them to resolve their justice problems, citizens are not sufficiently aware. They are unaware of the services of lawyers or legal aid, unless they learn about them through a family member or their community.

Once promulgated, legislation is published in the State Gazette of the Republic of Indonesia and the State Report. Most citizens, however, do not have access to either of these two publications. The main obstacle that prevents citizens from having legal knowledge is the lack of legal socialization by the state, notwithstanding an obligation under the law to promote legal knowledge. Over the last few years, the state has made some effort to disseminate legal information by developing the websites of various governmental departments that enable citizens to access downloadable laws and regulations. Unfortunately, the low telephone density across Indonesia and the small number of citizens with access to a telephone reduces the effectiveness of the state’s internet law dissemination program. In most cases, it is still necessary to visit relevant government departments to request assistance in obtaining legal materials. However, access to governmental departments is still geographically limited to the capital, making it nearly impossible for more than 200 million citizens living outside of the capital to access legal information. Where government efforts are lacking, a vibrant civil society has stepped in to enhance knowledge of citizen rights.

Analysis

“The law means people with power. The village chief [is] the law, the police [are] the law, the judge and the court [are] the law and they must be feared. We do not know the functions of the police, the lawyer and the judge. All we know is that nothing would prevent these people from taking something from uneducated people.” – Andi, focus group participant.

“Let alone the law, even only hearing the work ‘police,’ we became very frightened.” – Iskandar, focus group participant.

In order to obtain solutions to their justice problems under the legal framework, citizens must have legal knowledge – an understanding of their basic rights and duties and the steps and strategies they need to employ to solve their justice problems, or at least that they have been wronged in some way. At the same time, justice institutions have a responsibility to provide good information to citizens who rely on their services. In this section, we discuss to what extent citizens are able to acquire the necessary knowledge, understanding, awareness, and ability to exercise their rights, supported by responsive justice institutions.

The assessment found that citizens’ legal knowledge of specific rights protected or established by Indonesian land law is low. However, the assessment showed that citizens take action that demonstrates a general awareness that they have been wronged in some way. For example, they report to the local government authority or police that their land has been seized without their consent. They also know how to claim their rights by showing proof of a land ownership certificate, rincik (a land document issued during the Dutch colonial period), or land title deed (Sertifikat Tanah). Even though citizens often take the initiative to complain to a relevant government agency, they often do not know what additional steps to take if they do not receive a response as a result of their complaint. At other times, citizens perceive that
their rights are breached but take no action for reasons, including fear of the police or other government actors, their weak bargaining position, and the expense of pursuing their rights. At worst, citizens’ lack of knowledge about available options implies that they feel resigned to accept whatever mechanisms are available, regardless of the quality of services rendered.

With respect to knowing about the various options available to them to resolve their justice problems, citizens are not sufficiently aware. They are unaware of the services of lawyers or legal aid, unless they learn about them through a family member or their community.

In one case, a citizen’s legal knowledge was minimal at the beginning of a lawsuit but increased as the case evolved and was processed through court. The citizen gained knowledge about legal matters from the experience of handling a case himself. Some citizens view legal knowledge as out of the realm of understanding for laypersons and as knowledge reserved for lawyers and government officials. These citizens know nothing, and are not concerned, about the legal aspects of their cases, relying on the services of a lawyer to help them navigate the justice system.

State Efforts to Promote Legal Knowledge

Once promulgated, legislation is published in the State Gazette of the Republic of Indonesia (Lembaran Negara Republik Indonesia). An official explanatory memorandum, the Elucidation (Penjelasan) accompanies certain types of legislation, such as laws and government regulations. The Elucidation is published in the Supplement to the State Gazette (Tambahan Lembaran Negara) and is generally authoritative for purposes of interpretation. In addition to the State Gazette, there is the State Report (Berita Negara), which contains government and public notices.

Most citizens, however, do not have access to either of these two publications. The main obstacle that prevents citizens from having legal knowledge is the lack of legal socialization by the state. The national police and the main legal advisor to the government, the Attorney General, have long been responsible to promote legal public awareness and are required to allocate budgets for legal awareness programs. According to Article 14 of the Law No. 2 Year 2002 on the Indonesian National Police, the Indonesian National Police have the duty to “develop the society in order to increase their participation, legal awareness, and obedience to the law and legislation”. The Attorney General has a similar obligation. Notwithstanding these laws, there has been a limited, even non-existent, level of socialization of existing laws by these and other state entities such as the judiciary.

Over the last few years, the state has made some effort to disseminate legal information throughout the entire Indonesian archipelago. It has developed the websites of various governmental departments that enable citizens to access downloadable laws and regulations. Unfortunately, the low telephone density across Indonesia and the small number of citizens with access to a telephone, much less the internet, reduces the effectiveness of the state’s internet law dissemination program. In most cases, it is still necessary to visit relevant government departments to request assistance in obtaining legal materials. Depending on the availability of government officials, the accuracy and detail of responses provided is less than uniform and complete. Access to governmental departments is still geographically limited to the capital, making it nearly impossible for more than 200 million citizens living outside of the capital to access legal information.

In 2007, the National Development Planning Agency [hereinafter BAPPENAS], with support from the United Nations Development Programme [hereinafter UNDP] and other international donors, launched a major initiative to improve access to justice for the poor. Among other things, the initiative aims to

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42 LAW ON THE INDONESIAN NATIONAL POLICE (Law No. 2, 2002) [hereinafter Law No. 2 Year 2002].
43 Id., art. 14 § 1(c).
44 LAW ON THE ATTORNEY OF THE REPUBLIC OF INDONESIA (Law No. 16, 2004), art. 30 § 3(a).
45 The initiative was in response to a comprehensive assessment of access to justice in targeted provinces conducted by BAPPENAS and UNDP and consultations with over 600 stakeholders at national
provide strategic policy advice to the government on how to work with poor communities to improve access to information and free legal assistance. Through the initiative, BAPPENAS convened a working group that included representatives from government, academia, civil society organizations, and UN agencies to devise a National Strategy on Access to Justice [hereinafter National Strategy].

The National Strategy emphasizes that reform must encompass all sectors, not only the police, prosecutors, courts and legal aid, but also ombudsmen, legal education and government departments providing public services, as well as civil society and community-based organizations with a role in community empowerment. Part of the National Strategy is to produce a paradigm shift of legal development and legal education by developing community-based critical legal awareness. The National Strategy’s recommendations was integrated into Indonesia’s Mid-term Development Plan for 2010-2014, and its concrete action plans are both supporting line ministries and justice institutions in carrying out their tasks and functions, and improving the results of ongoing community development initiatives.

**Civil Society Efforts to Promote Legal Knowledge**

Where government efforts are lacking, civil society groups have stepped in to enhance knowledge of citizen rights. In Makassar alone, there are approximately 100 civil society groups involved in information dissemination initiatives, including outreach and education campaigns, trainings on domestic and international laws, and paralegal education programs. In Bulukumba District, there is only one, and in Gowa District, none exists.

One of many examples of civil society efforts to raise legal awareness comes from the international non-profit organization, Search for Common Ground [hereinafter SFCG]. SFCG implemented the Access to Justice Public Awareness Media Campaign with the Indonesian Supreme Court to increase citizens’ knowledge of the judicial system and improve public access to justice and legal assistance. The media campaign included a radio drama series, Looking for Justice (Mencari Keadilan), a “know your rights” radio contest, public service announcements, comic strips, and comprehensive advertising and marketing.

The radio drama series was broadcast in Makassar, as well as 5 other major urban centers throughout Indonesia, representing more than 50 million citizens, and covered a wide range of legal issues, including domestic violence issues, land law, labor law, family law, inheritance law, and human rights issues. It proved to be a highly effective means to convey information, especially to citizens with previously limited or no knowledge, and to socialize new attitudes and ways of behavior. The radio dramas substantially increased awareness that the justice system is accessible if approached properly. In conjunction with the radio dramas, an interactive “know your rights” contest was created to engage participants in thinking about access to justice issues, and give them a chance to demonstrate basic comprehension of their rights. The contest encouraged participants to listen to the radio dramas regularly by creating quiz questions based on knowledge contained in the radio dramas. SFCG awarded prizes to quiz winners.

The public service announcement campaign provided audiences with specific information that increased their knowledge about their basic legal rights, while improving their ability to access justice in their communities. The public service announcements provided specific information, as determined by the outcomes of public forums facilitated by SFCG, on issues such as the accessibility of pro bono legal aid. SFCG also designed “know your rights” comic strips to inform the public of their basic rights to justice and reach a more marginalized audience that was less familiar with formal terminology. The comic strips relied on visual elements and colloquial language to ensure they were reaching the target audience. The comics reinforced key messages on domestic violence, marriage and divorce, and land and labor issues.

and provincial levels. See U.N.D.P., NATIONAL DEVELOPMENT PLANNING AGENCY, Justice for All?: An Assessment of Access to Justice in Five Provinces in Indonesia (December 2006).

46 The National Strategy aims to create a framework for policies and regulations that are inclusive of poor communities and afford them access to justice. It covers eight sectors, including legal and judicial reform; legal aid; local governance; land and natural resources; women; children; labor; and poor and disadvantaged groups.
Element III. Advice and Representation

Citizens can access the legal advice and representation necessary to solve their justice problems.

Conclusion

Legal advice and representation should reach even the most marginalized populations in rural areas. Few citizens consider private lawyers a feasible option because of the perceived and actual costs of hiring one. There is also a general distrust of lawyers shared by many citizens. Lawyers are regulated under the Indonesian Advocates Law, which confirms a lawyer's obligation to provide pro bono legal assistance to the indigent. Last year, the national bar association, the Indonesian Advocates Association (PERADI), issued new guidelines to provide free legal aid. Although the catalog of provisions for legal aid is impressive, the reality has been less so. Lawyers rarely provide pro bono services, despite their obligation under the law, which is not enforced. Further, there are far too few lawyers to meet the demand of those in need of legal aid. In Sulawesi, with a population of over 17 million citizens, there are only approximately 2,000 lawyers, the majority of whom are located in three densely populated capital cities. There is an estimated 1,000 lawyers at the provincial level in South Sulawesi for approximately 8 million people. Most of them work in Makassar.

No state-sponsored legal aid currently exists. Civil society organizations supply legal aid, through lawyers and paralegals, but their services are limited in scope, under-funded and not well-known among those in need of legal aid services. Paralegals fill the gap in the delivery of legal services to some extent, but they are unregulated and lack a legal definition and status. As a result, most citizens continue to appear in court without counsel. On October 4, 2011, the House of Representatives passed a new law on legal aid, Law No. 16 of 2011 Concerning Legal Aid. The law mandates that legal counsel be available to indigent citizens involved in civil, criminal, administrative procedural, and non-litigation matters, and establishes standards that legal aid providers must meet to receive state funding. The law also provides greater opportunities for paralegals to provide legal aid services. However, the effect of the new law remains to be seen, as it will take some time for the government to pass implementing regulations.

Analysis

"The number of lawyers residing in Bulukumba is four, but only two are active in court. Even then they do not have an office, and, when someone is in need of [legal counsel] he has to come to their home. None of the lawyers is willing to provide free legal assistance. There is no legal aid organization in Bulukumba.”

– Paralegal, Ahmad K., focus group participant.

Even if citizens have legal knowledge, they will likely struggle to navigate justice institutions on their own. Citizens should be able to avail themselves of advice and representation, including free legal advice and representation, when confronted with a justice problem. Governments bear the responsibility to provide legal services to poor citizens. Where they cannot, other organizations, such as civil society organizations, pro bono lawyers, and even paralegals may provide these services. In this section, we explore the legal, political, and institutional factors that affect whether citizens can access necessary legal advice and representation.

Lawyers

Lawyers, or advocates, are regulated under Indonesian Advocates Law No. 18 of 2003.47 The term “advocate” is used in common practice to refer only to those Indonesian lawyers who practice as

47 LAW ON INDONESIAN ADVOCATES (Law No. 18, 2003) [hereinafter Law No. 18 Year 2003].
The law also distinguishes between advocates, legal consultant, and foreign advocates. Lawyers are qualified to practice if they have an undergraduate law degree, are not employed by the government, have attended a pre-service training program, passed a qualifying bar examination administered by a national bar association, and completed a two-year internship in a law office.

The oldest national bar association, the Indonesian Advocates Association (Perhimpunan Advokat Indonesia) [hereinafter PERADI], was established in 2005, as required by Law No. 18 Year 2003. Although Law No. 18/2003 stipulates there should be a single national bar association, consolidating the regulation of lawyers within one bar association has been unsuccessful. In 2007, a dispute broke out within PERADI that resulted in the creation of a new, competing organization, the Congress on Indonesian Advocates (Kongres Advokat Indonesia) [hereinafter KAI]. KAI also claims the authority to regulate the licensing of lawyers and report such appointments to the Supreme Court and the Minister of Law and Human Rights, offers a pre-service training program, and has even developed its own code of ethics. Law No. 18/2003 stipulates that the only institution authorized to administer examinations for prospective lawyers is PERADI, yet PERADI has not been able to maintain exclusive control over the bar examination. KAI has received de facto recognition, and, as a practical matter, both PERADI and KAI are now accepted as institutions authorized to oversee the bar examination.

In total, there are approximately 24,000 lawyers to serve a population of 240 million citizens in Indonesia. In Sulawesi, with a population of over 17 million citizens, there are only approximately 2,000 lawyers, the majority of whom are located in three densely populated capital cities, Makassar, Palu, and Kendari. No data was available on the number of private lawyers at the provincial level in South Sulawesi, although one lawyer estimated there were approximately 1,000 lawyers in Makassar for approximately 8 million people in South Sulawesi. In the other 2 pilot sites, there were only 15 lawyers in Gowa District and 4 lawyers in Bulukumba District, 2 who were active. Since most lawyers work in the capital of provinces or large, urban cities, legal advice and representation fails to reach the most marginalized populations in rural areas.

Further, few citizens consider private lawyers a feasible option because of the perceived and actual costs of hiring one. Of the citizens interviewed, the majority indicated a general distrust of lawyers, believing that lawyers put too much focus on the fees of representation rather than the merits of the case. The cost of legal representation in South Sulawesi province is determined largely by lawyers, according to the difficulty of the case and the financial situation of the client. A lawyer in Makassar stated that, on average, it costs 5 million Rupiah (approximately USD 571.00) for his services. For many citizens, 5 million Rupiah represents almost half a year’s salary.

Under Law No. 18 Year 2003, the state confirms a lawyer’s obligation to assist minorities, the poor or any other marginalized people in their search for justice. Law 18 Year 2003’s provisions state:

- Legal assistance is legal service that an advocate provides pro bono to an incapable client;
- In performing his duty an advocate should not discriminate against potential clients based on gender, religion, political interest, ethnicity, race, and cultural or social background;

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48 Law No. 18 Year 2003 defines “advocate” as “a person with a profession to provide legal services, either inside or outside the court, and [who] has met the requirements set forth in this law.” Law No. 18 Year 2003, art. 1, ¶ 1.
49 Id., art. 3, ¶ 1(f) (stating that prospective lawyers should pass the exam administered by the national ‘Organization of Advocate’).
50 There are no meaningful differences in the subjects that are tested on the exams administered by PERADI and KAI.
51 Membership data, PERADI, November 2011. Data for KAI members was unavailable. Although the data is not comprehensive, it does give a partial picture of the demographic statistics of lawyers in Indonesia.
52 Palu is the capital of Central Sulawesi province.
53 Kendari is the capital of Southeast Sulawesi province.
54 Law No. 18 Year 2003, art. 1, ¶ 9.
• An advocate has an obligation to provide pro bono legal assistance to justice seekers who are without financial means, and
• Through the legal assistance he/she provides, an advocate is performing his/her professional duty to provide justice based on the law in the interests of justice seekers, including empowerment efforts.

A government regulation obligates advocates to provide pro bono legal assistance to “incapable justice seekers.” Last year PERADI issued new guidelines to provide free legal aid as a mandate of Law No. 18 Year 2003 and Government Regulation No. 83 Year 2008. PERADI Rule No. 1 Year 2010 stipulates that advocates are suggested to provide pro bono legal assistance at least 50 hours of work every year. This provision will be used as one of the requirements to obtain or to renew the Advocate Identity Card. If advocates cannot meet this requirement, issuance of the identity card will be deferred until the requirement is fulfilled. To facilitate the provision of pro bono legal assistance, PERADI has also established legal aid centers.

**Legal Aid**

Free legal aid is partially regulated in several types of legislation. Law No. 4 of 2004 on Judiciary provides that “everyone who is involved in a lawsuit is entitled to legal aid.” Under Indonesia’s Criminal Procedure Code, only those who face a sentence of more than five years are guaranteed access to a legal representative, and the state does not have the responsibility to guarantee an advocate in other cases. In addition to these, as well as Law No. 18/2003 and GR No. 83/2008, there are many other laws and regulations that discuss legal aid.

Under Article 11 of SEMA No. 10 Year 2010, to apply for legal aid, citizens must submit the following documents: a certificate of financial incapability from the village head, or other types of proof such as a poor family Card, community health insurance (jamkesmas), hopeful family program identification, and direct cash assistance program card. The applicant must sign the certificate of financial incapability, to be then acknowledged by the Chief of the District Court. In practice, an indigent citizen must typically obtain a letter from the chairman of the smaller and larger neighborhood units and show current proof of payment of property taxes. Although there is no legal basis regulating costs for the documents, citizens are typically requested to pay an administration fee of 5,000 Rupiah (approximately USD 0.60) – 20,000 Rupiah (approximately USD 2.30).

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56 *Id.*, art. 18, ¶ 1.
56 *Id.*, art. 22, ¶ 1.
57 *Id.*, Elucidation, General Provisions.
58 **GOVERNMENT REGULATION ON REQUIREMENTS AND PROCEDURES FOR PROVISION OF FREE LEGAL AID** (Regulation No. 83, December 31, 2008) [hereinafter GR No. 83/2008].
59 The regulation specifies: “to get free legal aid, justice seekers must submit a written request to the advocate or through their advocate organizations or legal aid institutions.” GR No. 83/2008, art. 4, § 1.
60 **RULE ON THE GUIDELINES TO PROVIDE FREE LEGAL AID** (Rule No. 1, July 8, 2010) [hereinafter PERADI Rule No. 1 Year 2010].
61 **LAW ON JUDICIARY** (Law No. 4, 2004) [hereinafter Law No. 4/2004], art. 37.
62 **KUHAP**, art. 56.
63 **BOOK OF CIVIL PROCEDURAL CODE**, art. 237; **SUPREME JUSTICE CIRCULAR LETTER ON GUIDELINES FOR THE PROVISION OF LEGAL AID (No. 10, 2010)** [hereinafter SEMA No. 10 Year 2010]; **MINISTER OF JUSTICE INSTRUCTION ON GUIDELINES FOR THE IMPLEMENTATION OF LEGAL AID PROGRAM FOR FINANCIALLY INCAPABLE COMMUNITY THROUGH LEGAL AID INSTITUTIONS** (No. M 01-UM.08.10, 1996); **MINISTER OF JUSTICE INSTRUCTION ON GUIDELINES FOR THE IMPLEMENTATION OF LEGAL AID PROGRAM FOR FINANCIALLY INCAPABLE COMMUNITY THROUGH THE DISTRICT COURT AND THE STATE ADMINISTRATION COURT** (No. M 03-UM.06.02,1999); **CIRCULAR LETTER FROM THE DIRECTOR GENERAL FOR GENERAL AND STATE ADMINISTRATION JUDICIAL INSTITUTIONS ON GUIDELINES FOR IMPLEMENTATION FOR LEGAL AID FOR FINANCIALLY INCAPABLE COMMUNITY GROUPS THROUGH LEGAL AID INSTITUTIONS** (No. D Um.08.10.10, May 12, 1998).
Although the catalog of provisions for legal aid is impressive, the reality is less so. Lawyers who were interviewed said that they rarely provide *pro bono* services, despite their obligation under Law No. 18/2003, which is not enforced. Further, there are far too few lawyers to meet the demand of those in need of legal aid services. Legal aid offices do not exist in most jurisdictions. For example, there are no legal aid offices in Bulukumba or Gowa Districts. As a result, most citizens continue to appear in court without counsel.

**State-sponsored Legal Aid**

According to an Instruction Letter of the Ministry of Law and Human Rights, the Ministry is required to allocate funds for legal aid cases. Based on the Instruction Letter, the government provides a legal aid budget through the State Court. The State Court will appoint a lawyer to represent an indigent defendant on a *pro bono* basis. However, there is no data on whether this system continues to be implemented. According to lawyers and CSOs interviewed, no government funds are currently allocated for legal assistance. If citizens cannot access a legal aid organization, they must represent themselves or pay for a private lawyer.

On October 4, 2011, the DPR passed a new law on legal aid (Undang-undang tentang Bantuan Hukum). Law No. 16/2011 provides legal counsel to every indigent citizen involved in civil, criminal, administrative procedural, and non-litigation matters. Law No. 16/2011 establishes standards that legal aid providers must meet to receive state funding. The legal aid provider must be officially registered and accredited, and have a permanent office, board, and a legal aid program. The Ministry is obligated to carry out accreditation of legal aid organizations or social organizations to fulfill their role as providers of legal aid. To carry out the accreditation process, the Minister will form a panel composed of Ministry department, academics, civil society, and legal aid organizations. The accreditation process will be implemented every three years. The Ministry will handle payments with government funds, with procedures to be set by ministerial decree. Legal aid providers are not restricted to being solely dependent on public funding, as they can also receive money from other sources, such as grants and donations.

According to the executive director of a legal aid organization, Makassar Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Makassar) [hereinafter YLBHM], the new law provides greater opportunities for paralegals to provide legal services. Article 9(a) of Law No. 16/2011 states that legal aid providers may recruit lawyers, paralegals, lecturers, and students from the law faculty to provide legal aid services. However, the effect of the new law remains to be seen. It will take some time to become fully operational, while the government passes implementing regulations.

**Civil Society Organizations**

Since 2002, legal aid institutions have covered the operational costs of legal aid assistance, without state funding, relying on funding from the community, as well as international and domestic donors. The legal aid movement started in 1970 with the creation of the Jakarta Legal Aid Institution (Lembaga Bantuan Hukum Jakarta) [hereinafter LBH Jakarta] by the Indonesian bar association, at that time called PERADIN (Persatuan Advokat Indonesia). In 1980, in a national meeting of legal aid institutions, the Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesia) [hereinafter YLBHI] was established as the umbrella organization of those legal aid institutions. YLBHI outlined five priority areas: case advocacy, education, policy research and study, network development, and campaign and

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64 INSTRUCTION LETTER OF THE MINISTER OF JUSTICE (No. M.24 UM.06.02, 1985).
65 LAW CONCERNING LEGAL AID (Law No. 16, 2011) [hereinafter Law No. 16/2011]
66 LAW ON LEGAL AID (Law No. 16, 2011), art. 14. Legal aid applicants are required to submit an application letter containing at least the applicant's identity and brief description of the main problems for which Legal Aid is requested; documents related to the legal case; and a letter of incapability statement from the chief or other authority at the legal aid applicant’s area of residence.
67 Id., art. 8.
68 Id., art. 7.
publication. YLBHI and its member offices provide pro bono legal aid to members of the community who cannot afford to pay for a lawyer.

A branch of YLBHI, the Makassar Legal Aid Institution (Lembaga Bantuan Hukum Makassar) [hereinafter LBH Makassar], is divided into three focal areas: civil and political rights; economic, social, and cultural rights; and women and children. With an annual budget of approximately 100 million Rupiah (approximately USD 11,407.00), LBH Makassar employs 13 full-time legal aid lawyers and 2 non-lawyer staff persons, who serve the populations of South Sulawesi and West Sulawesi. LBH Makassar will interview the applicant and investigate the initial information provided by the applicant before deciding whether to take the case. LBH Makassar’s clients typically eke out a living on 1 million (approximately USD 114.00) to 1 ½ million Rupiah (approximately USD 171.00) per month. In 2011, LBH Makassar handled 300 cases, the majority of which related to civil land dispute claims. Of the 300 cases, 30-40 included criminal, civil, and state administrative matters that were litigated at trial or an administrative hearing. Between 2008-2010, LBH Makassar handled criminal land cases relating to the following articles:

- Article 167, Sec. 1 of the KUHP on land-grabbing, punishable with a maximum of nine months’ imprisonment and Article 2 of Law No. 51Prp of 1960 on the Banning of the Use of Land without the Owner’s or the Authorized Party’s Permission, punishable with a maximum of three months imprisonment and/or a fine of 5,000 Rupiahs (approximately USD 0.60). All of the cases handled by LBH Makassar were resolved as not guilty;

- Article 78 in connection with Article 50, Sec. 3 of Law No. 41 Year 1999 on Forestry, punishable with a maximum of ten years’ imprisonment and a fine of a maximum 5 billion Rupiah (approximately USD 570,345.00). LBH Makassar’s client received a guilty verdict with 1 year and 6 months imprisonment;

- Article 47, Sec. 1 of Law No. 18 Year 2004 on Plantation Estate, punishable with a maximum of five years’ imprisonment and a fine of a maximum of 5 billion Rupiah (approximately USD 570,345.00). All of the cases handled by LBH Makassar were resolved guilty as charged with a punishment of 1 year to 1 year and 6 months;

- Article 170 of the KUHP on public destruction by group punishable with a punishment of a maximum five years and six months and Article 406, Sec. 1 of KUHP on the destruction of others’ property punishable with a maximum of two years and eight months imprisonment. LBH Makassar’s clients were resolved guilty as charged with a punishment of between one year and one year and six months;

- Article 263, Sec. 2 of the KUHP on the use of false documents, punishable with a maximum of six years’ imprisonment. LBH Makassar’s client was found guilty and punished with a one-year imprisonment.

On average, citizens are in pre-trial detention for 3 to 4 months; the trial itself takes approximately 3 months to verdict. LBH Makassar lawyers often prepare and request a postponement of detainment or a change of detainment status from detainment in jail to detainment in-town, supported by a letter of guarantee issued by the client’s family.

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69 LBH Makassar receives its funding from Tifa Foundation, Partnership for Governance and Reform, and the USAID.

70 New lawyers who are completing their two-year internship before they can practice law receive no salary. The salary of the vice-director is approximately 1 million Rupiah (approximately USD 114.00) per month.

71 LBH Makassar did not handle any criminal land dispute cases in 2011.
There are two other civil society groups in Makassar that handle land dispute cases. Founded in 2004 by a group of academics, activists, and students, in response to a dearth of organizations providing legal aid, YLBHM provides assistance to poor communities in South Sulawesi, West Sulawesi, and Central Sulawesi.\textsuperscript{72} YLBHM has 6 lawyers and 3 paralegals, handling, on average, 26 cases per year. According to the executive director of YLBHM, approximately half are land-related cases. The other civil society organization in Makassar that handles some land-related cases is the Indonesian Legal Aid and Human Rights Association (\textit{Perhimpunan Bantuan Hukum dan HAM Indonesia}), but its staff comprises only three lawyers.

\textbf{Paralegals}

Because of the obstacles citizens face in acquiring advice and representation from lawyers, including the cost of a lawyer, and the shortage of lawyers in general and those willing to work in poor communities, a significant gap in legal services delivery exists. Community-based paralegals address this gap to some extent; however, they are generally limited to a facilitative role, although they also engage in advocacy and mediation. YLBHM has been working with community-based paralegals to empower communities and individuals, many of whose stories are described throughout this report, to assert their rights. YLBHM trains approximately 40 community-based paralegals in core legal principles on land rights, on methods to assert legal rights, and on key principles of litigation and community mediation. Community-based paralegals play a key role in increasing rights awareness at the community level and encourage citizens to assert their rights before informal and formal justice systems. YLBHM’s paralegal trainings have substantially benefited hundreds of marginalized citizens in the midst of limited availability of legal aid and the high costs of private lawyers.

Paralegals, however, continue to be unregulated and lack a legal definition and status. YLBHM and other civil society groups that work with paralegals face a shortage of funding to provide the necessary oversight and follow-up training of paralegals. Further, paralegals face much resistance from many justice actors, including bar associations, which feel threatened at and reject the idea of paralegals providing representation in court. In light of Law No. 16/2011, YLBHM would like to expand its paralegal education program by designing a standardized training and curriculum for paralegals, including a certification process that tests paralegals’ acquired skills and knowledge. Paralegals should also be trained on case documentation and receive ongoing supervision and monitoring from YLBHM lawyers. YLBHM is also interested in community participatory monitoring and evaluation of the impact of paralegal activities, such as training, case handling, community legal education, advocacy, level of community participation in activities, problems encountered and proposed solutions.

\textsuperscript{72} YLBHM’s mission is to implant, nurture, and spread the values of people’s sovereignty and lawful democratic state upholding social justice, to all strata of the society; to encourage the growth of critical attitude among the people in formulating and expressing their interest; to encourage the growth of civil society organizations as vehicles for their collective struggles; and to encourage the creation of a preliminary condition that supports efforts directed towards legal reforms accommodating the needs within the society.
Element IV. Access to a Justice Institution

Justice institutions exist, whether formal or informal, which are affordable and accessible, and process cases in a timely manner.

Conclusion

Because the majority of land disputes are not effectively resolved by informal means, citizens are forced to use the formal justice system to claim a right or settle a land dispute. They generally are not satisfied with their experience in going to court, and cite cost and the length of time it takes for their case to be resolved as the major obstacles to achieving justice through the courts. In addition to informal costs, including traveling expenditures, the formal costs a citizen faces in bringing a lawsuit is a barrier to access the justice institution. Citizens typically lack the funds to pay for the expenses required for handling a case. The overwhelming limitation is that citizens never know exactly how much they need to spend in real terms for the costs required during the court trial process. Further, in accordance with Supreme Court rules, a District Court must resolve and rule upon a civil case within a period of six months. If a case cannot be completed within six months, the Chief Justice of the District court must report the reasons to the Chief Justice of the relevant High Court. Despite this rule, the time period from the commencement of legal proceedings at the District Court level until judgment is rendered is rarely less than six months and can be a year or more.

The informal justice system in South Sulawesi involves alternative methods of dispute resolution outside the formal justice system that combine negotiation and mediation. Adat practices are not particularly strong, and dispute resolution usually means the exercise of quasi-judicial functions by the mayor or local authorities such as the sub-district head or village head. Although citizens use informal justice mechanisms to resolve some small-scale disputes with other citizens, most land disputes concern issues outside the village structure. Citizens who choose to seek police assistance to resolve their land dispute decide to because they are familiar with the location of the police station and expect fair treatment and a fair outcome.

Although most citizens are aware they are required to register their land, in reality the vast majority of land held by citizens is not registered at the Land Agency. Often citizens are required to pay prohibitive fees to obtain the necessary documents from their village head and additional fees to register their land with the Land Agency. As a result, land disputes are rife because parcels of land have not been legally certified, and land users do not possess certificates to prove ownership and other entitlements.

Analysis

“When there [was] an invitation from the Bulukumba District Court on Monday to be present at 9 am [and] the invitees came at 9 am, the judge [did] not examine the case until as late as 14.00 pm or even [sometimes] cancelled or rescheduled [the case] for the next day. The case then [became] expensive because of having to spend money on food and drinks and also the cancellation of people’s routine work. In the end, it [was] simply beyond calculation. For the costs to incur for a court case, there are many [costs] to be paid, such as registering the case, registering the letter of attorney, registering evidence and also for the interpreter. For a minor case that is worth 500.000 Rupiah [approximately USD 57.00], we must be prepared to spend 1.000.000 Rupiah [approximately USD 114.00] to win it.” – Sri Puswanti, focus group participant.

In this section, we analyze the extent to which citizens are able to use justice institutions to solve their justice problems. We consider whether citizens are able to afford the costs of bringing a justice problem before the institution, and whether the justice institution is physically accessible and processes cases in a timely manner.
**Formal Justice**

The formal justice system is the institution that the majority of citizens interviewed prefer for claiming a right or settling a land dispute. Some believe in the court as an institution where they will find justice. Others say they believe they have no choice but to pursue a formal action.

**Distance and Traveling Expenditures**

There are courts of first instance in Makassar, and Bulukumba and Gowa Districts, and one High Court in South Sulawesi, which is located in Makassar. Appeals from the High Court may be made to the Supreme Court in Jakarta, which can hear cassation appeals and conduct case reviews.

The majority of citizens interviewed who lived in or near Makassar and Gowa District do not complain about distance as an obstacle to accessing the formal justice system at the district level. Most citizens say they are not required to be present in court at the appellate levels, so there is no need to travel outside of their immediate area.

For those who have to access the Bulukumba District Court, however, the distance to the courthouse from their village and the travel expenses incurred are considered to be burdensome. Paralegal Nur Dianti relates one example. She advocated on behalf of Bira citizens who were evicted from their land by the village head and local government in order that the village of Tanjung Bira could be developed into a tourist destination. As a result of the forced government overtaking, many Bira citizens lost their livelihoods as food vendors. Many plots of land that they owned became the property of other people with land ownership certificates. There were even several plots of land that had double certificates, and many had been sold repeatedly.

For Nur Dianti and other Bira citizens, access to the court was “at significant distance and significant cost.” Although it is only a 40-kilometer journey from Bira to Bulukumba District Court, it is not supported by adequate public transportation. The only available public transportation are public minivans that pass through town infrequently. The minivan’s final stop is the bus terminal; the journey continues by using a taxi to get to the courthouse. Transportation costs range from 60,000 to 70,000 Rupiah (approximately USD 7.00-8.00) per person for transport and meals for each visit to the Bulukumba District Court. According to Nur Dianti, these costs became greater as the case lagged: “Just for the District Court required between 4 and 12 months before a verdict was issued. Even worse, the case that went through the Supreme Court [took] up to 5 years before a binding resolution was issued. Such an extended period of time grossly affected the costs in getting a case resolved.”

It is common practice to attend court hearings with a group of supporters. This habit raises costs considerably, as all group members have to eat, and a truck or bus is required for transportation. The costs involved in bringing a case to the district-level or appellate court can therefore be very high especially for people who reside in remote or less accessible mountain areas and must travel long distances to access the justice institution.

**Formal Expenditures**

In addition to informal costs, including traveling expenditures, the formal costs a citizen faces in bringing a lawsuit is a barrier to access the justice institution for most citizens interviewed. Citizens typically lacked the funds to pay for the expenses required for handling a case, including the lawyers fee, the trial process fee, survey of the land, and executing settlement or filing an appeal. Below is an estimate of formal expenditure costs by one private lawyer interviewed. The overwhelming limitation, however, is that citizens never know exactly how much they need to spend in real terms for the costs required during the court trial process. The court’s bulletin board does not expose accurate information on what costs are required to be paid.
<table>
<thead>
<tr>
<th>Service</th>
<th>Cost (Rupiah)</th>
<th>Cost (USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyers fee</td>
<td>5,000,000</td>
<td>Approx. 570.00</td>
</tr>
<tr>
<td>Registration of letter of attorney</td>
<td>200,000</td>
<td>Approx. 23.00</td>
</tr>
<tr>
<td>Interpreter</td>
<td>15-20,000</td>
<td>Approx. 1.70-2.30</td>
</tr>
<tr>
<td>Administering oath to the witness</td>
<td>50,000</td>
<td>Approx. 5.70</td>
</tr>
<tr>
<td>Trial process fee</td>
<td>1-1.5 million</td>
<td>Approx. 114.00-171.00</td>
</tr>
<tr>
<td>Survey of the land (costs are divided between the parties)</td>
<td>2-2.500.000</td>
<td>Approx. 228.00-285.00</td>
</tr>
<tr>
<td>Executing settlement (winning party pays)</td>
<td>10-15 million</td>
<td>Approx. 1140.70-1711.05</td>
</tr>
<tr>
<td>Filing an appeal (losing party pays)</td>
<td>1.5-2 million (High Court)</td>
<td>Approx. 171.00-228.00</td>
</tr>
<tr>
<td></td>
<td>2.5 million (Supreme Court)</td>
<td>Approx. 285.00</td>
</tr>
</tbody>
</table>

The state through the Supreme Court down to the District Court has granted the exemption of fees for the economically disadvantaged that seek to resolve their legal cases. In order to do this, citizens who qualify need to fulfill the requirements of supplementing their documents with an official statement issued by the Village Head, regarding their disadvantaged economic condition. This statement is to be submitted along with the lawsuit.

**Time to Process Cases**

In accordance with Supreme Court rules, a District Court must resolve and rule upon a civil case within a period of six months. If a case cannot be completed within six months, the Chief Justice of the District court must report the reasons to the Chief Justice of the relevant High Court. Despite this rule, the time period from the commencement of legal proceedings at the District Court level until judgment is rendered is rarely less than 6 months and can be a year or more. For example, according to a judge of the Gowa District Court, a land dispute case typically takes eight to nine months from the registering of the complaint to resolution. The estimated time includes mediation by a judge or a certified mediator that proceeds for a maximum of 40 days. The judge cites a shortage of judges and staff as the reason for the delay in processing cases. The Gowa District Court employs 8 judges and 50 support staff. In 2011, the Court heard 43 cases, 30 of which were land cases.

**Informal Justice**

The informal justice system in South Sulawesi, involves alternative methods of dispute resolution outside the formal justice system that combine negotiation and mediation. *Adat* practices are not particularly strong, with the exception of the Konjo-speaking citizens of an indigenous community in Bulukumba District, Kajang Dalam, and dispute resolution usually involves the exercise of quasi-judicial functions by the mayor or local authorities such as the sub-district head or village head.

The majority of land disputes between citizens begin at the informal level; those that are unresolved by mediation wend their way to the police or to the formal justice system. Most of YLBHM’s clients turn to informal justice mechanisms first to resolve land grievances; if there is no resolution at that level, their clients find YLBHM. The executive director said that he often advises his clients to return to the informal justice institution to see if the dispute can be settled there.

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73 No data was available as to case processing times for the appellate courts. Anecdotally, however, the research team was informed that an appeal to the Supreme Court can take three years or more before a final decision is issued.

74 In 2008, 35 of 41 civil cases were land-related; in 2009, 31 of 38 civil cases were land-related; and in 2010, 23 of 34 cases were land-related.

75 See Country Background, above, for a discussion of the Kajang Dalam.
Several citizens who were interviewed said that they prefer to resolve their land disputes informally. An example of this was the case of Dg. Selong, who was a clammer for most of his life in the area that is now a public meeting building, the Celebes Convention Center, in Makassar. According to Dg. Selong, the local government appropriated the land and fenced the area off, prohibiting Dg. Selong and others from clamming. Dg. Selong and the other clammers were told “the sea and all that were in it belonged to the government.” The mediation process finally reached an agreement in which the clammers were given compensation for their lands from the Ministry of Maritime Affairs and Fishery.

Still others who were interviewed prefer not to use informal justice mechanisms for various reasons, including a perception that the process is biased or a lack of trust of local authorities. For example, a citizen who had tended a parcel of land for decades, Sampara, had a dispute with the village chief of Bira over that land. Sampara believed resolving the case through informal channels at the hamlet and village levels would be ineffective because any decision would be biased in favor of the village chief. Sampara reported the village chief’s land-grabbing actions to the police but never received a response. Unfortunately Sampara could not pursue his case in the formal justice system because he could not afford to. He was forced to give up his land.

The jurisdiction of an informal justice system is generally limited to the village in which it is based, as parties from outside the village will not necessarily acknowledge the moral authority of the relevant informal justice actor. While some citizens report using informal justice mechanisms to resolve predominantly small-scale disputes with other citizens who reside in the same village, the majority of land dispute cases are not effectively resolved by informal means. This is because land dispute cases typically involve issues and parties, such as corporations and the government, outside the village structure.

**National Land Agency**

As discussed above in Element 1, the BPN regulates how citizens are required to register land. A land deed official (Perjabat Pembuat Akte Tanah) [hereinafter PPAT], who is commonly a notary, is responsible for land transfers, in the case of a sale or inheritance, and land registration. Because most citizens possess what is known as a rincik – a land ownership document issued during the Dutch colonial period –, under Government Regulation of Land No. 24 Year 1997, they must first take steps to obtain official statements from the village head, demonstrating that they are in physical ownership of the land and have paid taxes on the land, and their land is unencumbered. Once a citizen submits all relevant documents to the PPAT, the PPAT submits the documents to the Land Office. The registration process should be completed within a five-day statutory limit. The Land Office inserts the name of the landowner in the land book, and stamps and signs it. Once the right is recorded, the Land Office issues a land title deed (Sertifikat Tanah), or land certificate, to the registered owner. A survey certificate (Surat Ukur) that documents the location and dimensions of the land accompanies the land title deed. The costs of registration include a fee of 1/1000 of the property value, an administrative fee of 50,000 Rupiah (approximately USD 6.00), and a stamp duty of 6000 Rupiah per document (approximately USD 0.70) (two are required).

Although most citizens are aware they are required to register their land, in reality the vast majority of land held by citizens is in fact not registered at the BPN and is held under Hak Ulayat. Although the service provided by the village head is supposed to be free of cost, often citizens are required to pay prohibitive fees, ranging from 300,000 Rupiah (approximately USD 35.00) to millions of Rupiah, depending on the policy of the village head, to obtain the necessary documents to convert their rincik to a

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76 This was especially true where the adat tradition was strong, such as with the Kajang Dalam. For this community, even with the formal justice system nearby, citizens of this community have more trust in their adat laws.

77 GOVERNMENT REGULATION CONCERNING LAND REGISTRATION (No. 24, 1997) [hereinafter Government Regulation No. 24 YEAR 1977].

land title deed. Further, many citizens cannot afford the fees required to register their land with the BPN, and, in practice, the wait is much longer than the five-day statutory limit because of the backlog.

With a poor landownership database, enforcement of property rights for many citizens, particularly the poor and the marginalized, remains weak. With few satisfying avenues to resolve disputes, thousands of unresolved land conflicts continue to result in clashes.

**Police**

The most common formal action among citizens interviewed is to file a complaint with the police. The filing of a complaint with the police regarding a land dispute begins with the Police Service Center, which submits the complaint to several different units that investigate the merits of the complaint and decide whether to arrest the accused named in the complaint. Under the Chief of Indonesian Police's Regulation No. 12 Year 2009 on the Supervision and Control of Handling Criminal Cases by the Police, the period from the filing of the complaint to the decision to handle the case should take 30 days for an easy case and 120 days for a very difficult case calculated from the date of the police received the investigation warrant.

According to the Head of the Criminal Division of the Land and Building and Economic Development Unit, at the Makassar City Police Department, his unit of 20 police officers handles approximately 120 cases per month – approximately 20%, or 24, of those are land-related criminal cases. Less than half of the 24 cases have any merit; the rest are dismissed. The complaints most commonly involved citizens against citizens on charges of land-grabbing, forgery, fraud, and land rights embezzlement.  

Citizens who choose to seek police assistance decide to because they are familiar with the location of the police station and expect fair treatment and a fair outcome. Others decide to go to the police because they lack knowledge of what else to do. Some citizens interviewed go to the police without filing a case. It is unclear whether going to the police without filing a case reflects a deliberate choice on the part of the citizens or whether their plans are actually frustrated, due to a lack of knowledge on how to proceed with their grievance, or a failure of the police to register the case or otherwise assist. Among those who choose not to pursue formal legal action, once they have exhausted their options with the police, the primary reasons given are a belief that the court action will be a waste of time, the prohibitive cost of going to court, and a failure to understand that they have a strong legal case.

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70 Id.
Element V. Fair Procedure

Justice institutions, whether formal or informal, ensure that citizens have an opportunity to present their case and disputes are adjudicated impartially and without improper influence. Where cases are resolved by mediation, citizens make voluntary and informed decisions to settle.

Conclusion

Article 27, Sec. 1 of the Constitution provides for the fair treatment of all citizens. Further, several laws regulate fair procedure, including the KUHAP and Law No. 48 Year 2009 on Judiciary. Law No. 48 Year 2009 stipulates that, in order to uphold the human rights of every citizen, citizens have a right to a fair public trial. It states that a court of justice shall conduct trial without discrimination against citizens, and mandates that the court of justice shall assist citizens in seeking justice and in overcoming obstacles that prevent a quick, simple, and inexpensive trial. With respect to the rights of accused persons in criminal cases, Law No. 48 Year 2009 instructs on several points concerning due process, a presumption of innocence, the right to legal representation, and other rights. With respect to the rights of parties in civil cases, the Civil Procedure Code sets forth provisions for a fair trial.

The “judicial mafia,” the term given for corruption in Indonesia, is an obstacle to access to justice. The judicial mafia takes many forms, including bribery, blackmail, the fixing of lawsuits, the intimidation of witnesses, and all of the exceptions to regulations that money can buy. Bribery is far too common. According to a civil society representative, in criminal cases, accused persons can bribe prosecutors to drop a case against them or those who report a crime can bribe the police to take the investigation more seriously or bribe judges or court officials to lean a certain way. Several years ago, following a national outcry against corruption, President Susilo Bambang Yudhoyono declared the eradication of corruption as one of his top priorities. He has since formed an Anti-Judicial Mafia Task Force and the Corruption Eradication Commission.

Analysis

“If I am asked about justice, I think the court of justice is not being fair to poor common people. What is justice in court is for people with money, while those without money do not enjoy justice.” Adnan, focus group participant.

A fair procedure followed by justice institutions allows citizens to make arguments in support of their case and, where factual issues are in dispute, to call witnesses. It also ensures that disputes are resolved impartially and without improper influence. In this section, we review the procedures followed by justice institutions to resolve disputes, and how they are applied in practice. We then consider the main obstacle to a fair procedure – the “judicial mafia,” the term given for corruption in Indonesia.

Article 27, Sec. 1 of the Constitution provides for the fair treatment of all citizens: “All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exception.” Further, several laws regulate fair procedure, including the KUHAP and Law No. 48 Year 2009 on Judiciary. Law No. 48 Year 2009 stipulates that, in order to uphold the human rights of every citizen, citizens have a right to a fair public trial. It states that a court of justice shall conduct trial without discrimination against citizens, and mandates that the court of justice shall assist citizens in seeking justice and in overcoming obstacles that prevent a quick, simple, and inexpensive trial.

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80 Const., art. 27, § 1.
81 LAW ON JUDICIARY (Law No. 48 Year 2009 on Judiciary) [hereinafter Law No. 48 Year 2009].
Formal Justice System

Criminal Due Process

With respect to the rights of accused persons in criminal cases, Law No. 48 Year 2009 instructs on several points concerning due process, a presumption of innocence, the right to legal representation, and other rights.

To implement the principles contained in Law No. 48 Year 2009, the KUHAP guarantees rights for the accused. One of these principles is a presumption of innocence. Every citizen who is accused of committing a crime has the right to be presumed innocent until proven guilty, when a final and binding judgment by the relevant court is rendered.

As an innocent person, the accused has rights: the right to be examined promptly, the right to know the crime alleged to have been committed, the right to know the content of formal charges, and the right to have legal representation. Further, all statements by the accused are required to be given freely without intimidation or coercion. Any refusal by the accused to sign the statement must be recorded in the police report of the investigative process. Once an indictment has been issued, the accused then has a right to a speedy trial by a competent court, and the right to have the indictment and any other charges in a language in which they can understand, among other rights.

Civil Due Process

The parties are required to attempt to negotiate an amicable settlement prior to appearing before the court. If the mediation effort is successful, the parties will draw up a binding and enforceable settlement agreement. If the mediation process fails, there are typically eight hearings or sessions from the registration of a case to rendering of the verdict. A panel of three judges renders judgment in most civil cases. The law further requires that all judgments be read in open court. The amendments contained in Law No. 4 Year 2004 also obligate judges to deliver a written opinion with every judgment, including dissenting opinions. Once a verdict has been rendered, the losing party has 14 days within which to submit an appeal; if the party submits an appeal, the verdict does not take effect and is unenforceable. On appeal to the High Court, the High Court reviews the materials submitted by the parties at the District Court. The losing party has 14 days within which to submit a cassation to the Supreme Court. There are no restrictions, other than time limits, to bring a case before the Supreme Court. Further, there is no mechanism to review the admissibility of cassation based on legal grounds. The Supreme Court can hear a cassation appeal that is the final appeal from the lower courts, and reviews the same materials presented at District Court.

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82 See Element 1, above, for a full discussion of the KUHAP.
83 Law No. 48 Year 2009 provides that all legal enforcement before the trial such as arrest, detention, search, and seizure have to be conducted based on written orders or warrants from an authorized officer, and has to be done in accordance with the law.
84 Law No. 48 Year 2009 provides that no one can be considered guilty before a judgment that is final and binding is rendered.
85 Law No. 48 Year 2009 provides that everyone charged with a crime has a right to legal representation or legal aid.
86 For example, Law No. 48 Year 2009 provides that the accused has a right to be informed of what charges are contained in the indictment and the legal basis for the indictment, and the court hearing must be conducted in the presence of the defendant.
87 KUHAP, art. 66.
88 Id., art. 50.
89 Id., art. 143.
90 Id., art. 154.
91 Id., art. 56.
92 Id., art. 50.
93 Id., art. 51.
94 See Element 1, above, for a full discussion of civil procedure law.
Judicial Mafia

The “judicial mafia,” the term given for corruption in Indonesia, is an obstacle to access to justice. The judicial mafia takes many forms, including bribery, blackmail, the fixing of lawsuits, the intimidation of witnesses, and all of the exceptions to regulations that money can buy. According to a lawyer interviewed, the “judicial mafia is a culture in the judicial process, one that recognizes that money and power can talk. Indonesians recognize the culture, and see it as involving the whole system, from the lowest-ranked police officer to the highest-ranked governmental body.” Bribery is far too common. In criminal cases, accused persons can bribe prosecutors to drop a case against them or those who report a crime can bribe the police to take the investigation more seriously or bribe judges or court officials to lean a certain way. Transparency International reported that, in 2010, 18% of Indonesian citizens stated that they had paid a bribe in the last 12 months. An accused person without resources, money, or the desire to participate in corruption is heavily disadvantaged in the trial process before it even begins.

A legal aid director related a tale of judicial corruption involving his clients, seven families, against a state-owned corporation. The government and the corporation decided to build a shopping mall on land that the families had occupied for generations, claiming that the land was state land. The corporation offered inadequate compensation, and negotiations between the parties failed. The corporation then brought criminal charges against the families, and the families were found guilty of land-grabbing under Article 167 of the KUHP in Makassar City District Court. The legal aid organization reported to the Chief of Justice of the High Court and the Supreme Court that there was possible corruption in the case, including ex parte conversations between the prosecutor and the judge, and the disappearance of testimony supporting the defendants’ case from the record. The legal aid organization was able to prove corruption occurred, the charges against the defendants were dismissed, and the defendants were released.

Several years ago, following a national outcry against corruption, President Susilo Bambang Yudhoyono declared the eradication of corruption as one of his top priorities. He has since formed an Anti-Judicial Mafia Task Force of six members who are in charge of investigating and reporting on cases of corruption. Between 2009 and 2011, the Task Force logged close to 5000 reports of alleged misconduct by the National Police, court officials, and prosecutors. The President has also been supportive of the independent government organization known as the Corruption Eradication Commission (Komisi Pemberantasan Korupsi) [hereinafter KPK]. The KPK investigates and prosecutes cases of lost state finances valued at over 1 billion Rupiah (approximately USD 110,000.00). For smaller corruption cases, the KPK passes them onto law enforcement and occasionally monitors their cases to completion.

Corruption in the system comes from several causes. First, citizens understand corruption to be so prevalent that many feel they must acquiesce to it in order to stay on an even level. Corrupt officials are not punished for their actions, while clean officers feel the system lacks the ability to reward them for their integrity. Second, the government is not transparent. A 2011 study by Transparency International ranks Indonesia 100th out of 183 countries in a ranking of national transparency and accountability. The score of 3.0 out of 10 places them in a tie with countries such as Argentina, Benin, Malawi, and Mexico. The majority of citizens who are not satisfied with their experience in going to court report they could not get a fair decision and the judge was not impartial. Even citizens who emerge as the winning party say

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96 Of the 4,950 reports of alleged misconduct, reports of alleged misconduct by the National Police were the highest (1,367), followed by reports of alleged misconduct by court officials (1,296) and prosecutors (720) (http://www.thejakartapost.com/news/2011/12/31/police-court-officials-top-list-judicial-mafia-reports.html).
97 Transparency International, Corruptions Perceptions Index 2011, The Perceived Levels of Public Sector Corruption in 183 Countries/Territories around the World (2011), p. 46. When asked, “To what extent do you perceive the following institutions in this country to be affected by corruption? (1 being not all corrupt; 5 extremely corrupt),” Cambodians gave public officials an average rating of 3.2 and the judiciary 3.3. Id. at 43. When asked, “In the past three years, how has the level of corruption in Indonesia changed?” 43% of Indonesians said it had increased, 27% said it had decreased, and 30% said it stayed the same. Id. at 41.
that their level of satisfaction with the formal justice system is very low because of the prevalence of corruption. Citizen Nurliah shares one example. She lost her case before the District Court, despite having paid the court a bribe. On appeal before both the High Court and the Supreme Court, she won her cases because she paid bribes at all levels of the court process, using money she had to borrow. However, her case is still far from over; Nurliah states, “the debts have accumulated, but the case is still not finished.”

**Informal Justice**

Informal actors exercising quasi-judicial functions tend to use negotiation and mediation to reach consensus among parties to a dispute. No formal rules of procedure exist. Citizens reported they were reluctant to use informal justice mechanisms because of bias and improper influence on the part of the mediator in relation to the issues or parties involved in the dispute.
Element VI. Enforceable Decision

*Justice institutions are able to enforce their decisions, including through the use of sanctions.*

Conclusion

In criminal and civil cases, the procedures of reaching a decision that is final and binding are similar. The enforcement of any judgment given at the District Court is generally stayed until a final decision is made with regard to the appeal. A case will also not necessarily end once the Supreme Court renders its verdict. Parties to the dispute can always reopen the case if they can furnish new evidence that has a bearing on the decision.

In civil cases, if the plaintiff prevails at the District Court, High Court or Supreme Court, to enforce the judgment, the plaintiff applies to the court to obtain an enforcement order that is delivered to a court enforcement officer. If the defendant fails to comply with the enforcement order, an attachment or execution order is issued. Execution takes place by the judge notifying the defendant that there is an outstanding order. If the defendant does not satisfy its obligations under the order, the judgment will be satisfied by the sale of the defendant's assets at a public auction.

A common criticism is that law enforcement is weak, even when the law is clear, and when courts issue clear rulings. In recent years, this criticism has often been made of the operations of the Supreme Court as well as the operations of other parts of the formal justice system. The central problem is that the institutions and mechanisms for enforcement of the justice system, including the decisions of the Supreme Court, are under-funded and are operationally ineffective. There are thus numerous instances of long delays in the enforcement of the decisions.

Analysis

In order for a justice institution’s resolution to a dispute to be meaningful, citizens must be able to enforce it in the outside world, including through the use of sanctions against individuals who refuse to comply with the justice institution’s decision. In this section, we discuss what procedures exist to provide for decisions to be enforced and obstacles that prevent decisions from being enforced.

**Formal Justice**

**Enforcement in Criminal Cases**

Under KUHAP, the procedures of reaching a decision that is final and binding in the criminal justice system are similar to the procedures for civil cases. Criminal matters are first tried in the District Court. Once the court has reached a decision, it reads the decision in open court in order to be valid, and, within seven days, the defendant may file an appeal to the High Court. No appeal can be filed against a judgment of acquittal or judgment of dismissal of all charges. The defendant can appeal his case as a cassation matter to the Supreme Court.

**Enforcement in Civil Cases**

The enforcement of any judgment given at the District Court is generally stayed until a final decision is made with regard to the appeal. If the plaintiff prevails at the District Court, High Court or Supreme Court, to enforce the judgment, the plaintiff approaches a court enforcement officer, such as a court bailiff or sheriff, or a private bailiff. The plaintiff then applies to the court to obtain the enforcement order (e.g. seal on judgment), and pays the fees related to the enforcement of the judgment. The judge attaches the

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98 All judgments that have been deemed final and binding at the last appellate level may seek a final extraordinary legal remedy (Peninjauan Kembali). This remedy is a judicial review or cassation that is used for the good sake of law (Kasasi Demi Kepentingan Hukum).
The court’s enforcement order is delivered to a court enforcement officer or a private bailiff. Plaintiff, the court enforcement officer or a private bailiff makes a final request to the defendant to voluntarily comply with the judgment, and, if the defendant fails to comply, an attachment order in respect of the defendant's assets (Conservatoir Beslag) is issued. If the court decision is final and binding, the conservatory attachment order is changed to an execution order. Execution takes place by the judge notifying the defendant that there is an outstanding order. The defendant can oppose aspects of the enforcement process before the judge to delay the enforcement of the judgment. If the defendant does not satisfy its obligations under the order, the judgment will be satisfied by the sale of the defendant's assets at a public auction. The judge calls a public action by, for example, advertising or publishing in the newspapers. A special administrative board (Juru Lelang) under the Ministry of Finance effectuates the public auction. If necessary to force a non-compliant defendant to release property that is the subject of the auction, the court may call for police assistance. Finally, the court orders that the proceeds of the public auction or the direct sale be delivered to the plaintiff.

Enforcement of the Supreme Court's final judgment may take an additional three to six months. A case will also not necessarily end once the Supreme Court renders its verdict. The next challenge is to enforce the verdict, and parties to the dispute can always reopen the case if they can furnish new evidence that has a bearing on the decision.

Many citizens feel that cases processed in court do not have any final legal power, and many have cases that are still pending after years. For those citizens who are victorious in court yet have not been able to take control of their lands through execution, they conclude that the justice system is expensive and does not provide legal certainty. For citizens who lose in court, they consider the non-executable verdicts as giving them justice. This is because the community does not accept the court’s verdict, when they have occupied the land for decades; they consider their loss as the result of a money game.

A common criticism is that law enforcement is weak, even when the law is clear, and even when courts issue clear rulings. In recent years, this criticism has often been made of the operations of the Supreme Court in Indonesia as well of the operations of other parts of the Indonesian legal system. The issue is, in principle, a serious matter for the Supreme Court because enforcement of decisions of the Supreme Court sets standards for the enforcement of decisions across much of the rest of the Indonesian legal system. The central problem appears to be that the institutions and mechanisms for enforcement of the legal system are under-funded and are operationally weak. There are thus numerous instances of long delays in the enforcement of court decisions.

**Informal Justice**

The informal justice system lacks any coercive force to enforce agreements reached between parties to a dispute. Thus, effective enforcement relies on strong community norms and respect for the justice institution’s decisions within the community. Where community norms are not strong, citizens have no further avenues in the informal system through which to ensure a decision is enforced.

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90 The defendant is required to reimburse plaintiff's enforcement fees.
List of Acronyms

ABA ROLI  American Bar Association Rule of Law Initiative
BAL  Law on the Basic Principles of the Agrarian Law (Law No. 5, 1960)
BAPPENAS  National Development Planning Agency
BPN  National Land Agency (Badan Pertanahan Nasional)
DPD  House of Regional Representatives
DPR  House of Representatives
HGB  Right to build (Hak Guna Bangunan)
HGU  Right to cultivate (Hak Guna Usaha)
HM  Right of ownership (Hak Milik)
KAI  Congress on Indonesian Advocates (Kongres Advokat Indonesia)
KPK  Corruption Eradication Commission (Komisi Pemberantasan Korupsi)
MPR  People’s Consultative Assembly
PERADI  Indonesian Advocates Association (Perhimpunan Advokat Indonesia)
PERADIN  Persatuan Advokat Indonesia
SFCG  Search for Common Ground
USAID  United States Agency for International Development
USD  United States dollars
UNDP  United Nations Development Programme
YLBHI  Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesia)
YLBHM  Yayasan Lembaga Bantuan Hukum Makassar