

Justice for the Poor Reforming Legal Institutions in the Sub-National Environment

Introduction

Justice for the Poor is a World Bank project that began in June 2002 with the aim of improving the access of poor communities to legal institutions, particularly where informal, traditional methods of resolving disputes fail. The project has conducted field research all over Indonesia on the experiences and expectations of ordinary villagers with regards to the law, in an attempt to understand what interventions would be most successful for local-level legal reform projects. Simultaneously, the project also learns from – and helps design - existing projects, such as paralegal training and the provision of “barefoot” pro bono lawyers to disadvantaged communities.

The project seeks to devise strategies for legal reform that can be carried out at the sub-national level, primarily through giving poor people better access to justice. Yet also, it hopes to complement the national governance reform agenda by building up a track record of using the legal system successfully at the local level, and pinpointing the pockets where legal reform is already in existence.

This note is a summary of the purpose and main outputs of Justice for the Poor, including achievements to date.

Background

Justice sector reform is one of the most important priorities for Indonesia’s development transition. Establishing a fair and well-functioning judicial system is key to fighting poverty, ending much of local conflict, and enabling growth. It will support decentralization and Indonesia’s efforts to build institutions for accountable government.

The main elements of a national level governance and justice reform program are reasonably well known. The Bank has funded a comprehensive assessment of the elements needed for successful reform of the justice system, and both this and other complementary studies have been thoroughly discussed with government.

Despite their urgency, it is also true that expectations for judicial reform have been raised far beyond any likelihood of them being realized. Root causes of Indonesia’s weak judiciary lie in the country’s post-Independence institutional history. The rule of law in Indonesia ended in 1957. In that year, president Sukarno introduced martial law to suppress the Permesta and PRRI rebellions. The rule of law was never reinstated. Subsequently, in 1959, Sukarno returned Indonesia to the ‘integralist State’ concept, which knows no true separation of powers. Independent judges were replaced (often by members of the military), and a law was introduced that allowed the President to intervene in trials and even reverse court decisions. Although some theoretical improvements were introduced in the 1970’s, in practice this subordinated position of the judiciary has continued.

Improving Indonesia’s court system is therefore more than “reform”, more than correcting bad practice and mismanagement. It means building practically from scratch the institutions that provide the foundation for law. A technical overhaul will only provide temporary improvement, because rules

and regulations cannot ensure the essential elements of an effective judicial system: integrity, trust, public respect and authority, jealously guarded independence, and a rigorously maintained code of ethics. These are what distinguish courts from government bodies, politicking parliaments and other partisan interests. Building them requires an approach that starts with the social institutions that underlie a society of law.

The deep challenge of creating legal institutions where none existed previously is made even more difficult by a relatively low commitment by the current government to a national judicial reform program. There have been some positive statements, particularly by the president herself, but there have been few follow-up actions that would indicate that reform is underway. Reasons include the strength of the entrenched interests opposing reform both outside and within the sector, and the reluctance of the government to challenge such powerful stakeholders during the current phase of the transition. Furthermore, with the ebbing of popular support for the *reformasi* movement, there are few civil society counterweights that could bolster a national-level effort.

The barren landscape of the national legal scene is different at the sub-national level. Decentralization and *otonomi daerah* (local autonomy) have created a dynamic environment that is much more conducive to change. The range of actors who would favor or oppose reform are entirely different from those operating at the national level. Local court officers are themselves more likely to be younger and more open to change than officials who have spent many years in the system. Most importantly, the same national-level stakeholders who oppose national reform in some sense have a strong interest in local reforms since they wish to retain popular acquiescence or support for the current regime.

Evidence that the local system is in flux is anecdotal but increasingly common. An Asia Foundation Survey found that although most poor people do not use the courts, of the sample population that had gone through the legal system, 85% felt that the outcome was fair.¹ Within the Bank-assisted *Kecamatan* Development Project, villagers, local government, and NGOs have brought more than 37 cases of sub-district and village head malfeasance to the legal system, and while most are still in process, in six of these cases jail sentences and fines have been imposed on the officials. Case studies suggest that examples such as these move forward because of a combination of outside pressure - including, at times, pressure from the *bupatis* (district leaders), provincial governments, and civil society - as well as inside reformers, such as the judge in Lampung trying the case of a *camat* (sub-district head) accused of embezzling funds from KDP, who belongs to an informal network of reformist judges and prosecutors. In these cases, the logic of why outside pressure arises has been different from the logic of internal reformers, but they have come together to produce the same outcome: reform.

There is, in short, enough evidence of local-level variance across Indonesia of how well the justice system works to suggest that there are pockets of opportunity for which a strategy is needed. The proposed activity on "Justice for the Poor" will complement the national governance reform strategy described by the World Bank's Country Assistance Strategy for Indonesia, but it will operate at the sub-national level. Its purpose is to develop a sub-national reform agenda that defines a number of

¹ Asia Foundation, *Survey Report on Citizens' Perceptions of the Indonesian Justice Sector*. Jakarta: Asia Foundation, 2001. <http://www.asiafoundation.org/pdf/IndoLaw.pdf>

steps and concrete actions which will improve the access of the poor to the justice system and increase the likelihood that they will receive a just decision from it. As described earlier, this kind of program cannot be confined to a package of regulations and administrative decisions, but must begin from the social institutions within which law is embedded.

General Objectives

The “Justice for the Poor” Program has a set of analytical and advisory activities designed to support the following three objectives:

1. Build Community Legal awareness and Access to Legal Aid

Village communities suffer from chronically low levels of legal awareness. However, they are well aware that the formal legal system is costly, distant and biased in favor of wealthy and powerful interests. This is one factor leading to a strong preference for informal patterns of dispute resolution.

But our research also demonstrates that ordinary villagers have a strong desire to increase their bargaining position through enhanced legal awareness, particularly in fields relevant to their immediate needs – land ownership, access to natural resources, corruption and public service delivery. Yet building awareness of legal rights will achieve nothing in the absence of access to resources to enforce those rights. Villagers are prepared to use the legal system as a last resort if suitably facilitated by trained local paralegals or external assistance in the form of *pro bono* legal aid lawyers or facilitators from civil society organizations.

Justice for the Poor aims to develop programs to build community legal awareness and provide better access to free or subsidized legal services.

2. Enhancing transparency/scrutiny of the formal legal process

The principle of ‘judicial independence’ is misused as an argument to reject any form of public control or accountability. The public must understand that professional and personal conduct of judges should be evaluated against the highest possible standards. Steps need to be taken to increase public scrutiny of the judicial process and improve mechanisms of transparency, such as pushing for the publication of court decisions and timetables, establishing local court watch groups and educating journalists, NGOs and communities about the legal process, their responsibilities and their rights.

Justice for the Poor aims to facilitate ‘coalition-building’ between NGOs, media, civil society, and reformers within the justice system to build a strong support network for holding the legal system more accountable.

3. Better functioning of and wider access to alternative mechanisms for dispute resolution

Disputes are normal, everyday occurrences in village life. However, if local conflicts start threatening the social fabric of a community, communities should be able to seek settlements or decisions through faster, more informal mechanisms than the formal courts if they choose - without generating

new grounds for discontent. Justice for the Poor will seek entry points to support indigenous community mechanisms for dispute resolution. It will also look at the possibility of bridging the physical and conceptual gap between communities and the courts through policy reforms such as a state-sanctioned conciliation scheme and other options to build judicial autonomy at the village level.

Detailed Description of the “Justice for the Poor” Program

Thus far, the program has consisted of a set of analytical and advisory activities designed to support these three objectives. There is a strong emphasis on “learning by doing” – by seeding pilots and documenting their results, rather than simply through desk reviews and workshop discussions. However, aside from some small pilot programs, Justice for the Poor does not implement proposals, rather it is a research and project design unit. Implementation is reserved for operational partners in the program.

Activities included in the Justice for the Poor Program fall into three groupings:

- (I) **Research** to ascertain current practice with respect to the three objectives described above, and to develop frameworks, strategies and proposals for their improvement.
- (II) **Support to Operations** to make the analytic work operational, by helping to design programs for World Bank and other agencies that wish to implement local legal reform and community access-to-justice programs.
- (III) **Partnerships** with reformers in the justice system, NGOs, media, and civil society.

These three kinds of work are intertwined. Some of the analytical work consists of proposals that are designed directly to be operational, such as proposals for reforms within the Bank’s rural and urban community development projects. And the process of getting empirical information has itself helped to build coalitions for change.

I. Research

The analytical, research component of the program has a strong focus on fieldwork. It has thus far conducted a series of case studies, as well as ongoing district-level dialogues with reformers in the justice system. The fieldwork has focused on tracking dispute resolution processes at village level and researching the engagement of poor village communities with the formal legal system. A set of analytical pieces is currently being produced as a result of the empirical information gained from the field research and the messages emerging from the dialogues with reformers. This work takes two forms:

A. Case Studies

Over the past year, the program has conducted a series of 14 in-depth, ethnographic studies of cases in which poor people have attempted to use the justice system to defend their rights and interests. It does this by interviewing the full range of stakeholders who participate in local court cases - the plaintiffs, village leaders, court officers, and local and provincial governments – in an attempt to

understand the factors influencing the resolution process. Such cases have been drawn both from within World Bank projects (primarily corruption cases in its community development projects, the *Kecamatan* Development Project and the Urban Poverty Project) and from outside (such as community land claims).

The case study research has had a dual objective. First, it identifies patterns that characterize success or failure in poor people's attempts to use the legal system. This information is used to inform the design of local legal reform pilots. Second, the field-level engagement of the research team itself has had a coalition-building effect, by lending credence to the efforts of local reformers, identifying reform-minded people in the local legal system, helping to build networks among them and enabling local reform-minded groups to find access to funding for well-designed initiatives.

Completed

B. Analytical papers

The program synthesizes the knowledge gained from the case studies with the existing research and literature on legal empowerment to produce three analytical papers on issues related to local justice. The purpose of the papers is to contribute to thinking about what kinds of structural approaches to local legal reform will be successful. They thus will not be purely academic but will have an operational orientation.

1. Village Justice

The first paper, *Village Justice in Indonesia*, synthesizes the main findings of the case studies. This paper attempts to identify patterns in the interaction between rural villagers and the formal legal system. The paper begins with an overview of the cases and summary of the main findings. It focuses first on the cases, deconstructing the resolution processes by analysing the roles of the different actors involved, particularly with an eye towards the kind of incentives that would guide reform initiatives. The paper looks at both informal and formal resolution processes to examine the overall triggers which resulted in success. Also, by pulling together various interviews and personal testimonies, particularly those with villagers themselves, a clearer picture is drawn of what community preferences and expectations are vis-à-vis the formal legal system, especially versus informal, traditional means of dispute resolution. These analyses will have implications for the design of future projects, by enabling the Justice for the Poor team to identify what kind of legal reform interventions are most likely to succeed at the local level.

Due September 2003

2. Mapping Reformers

A paper entitled *Mapping Reformers* will be produced, based on a series of ongoing in-depth interviews with reform-minded police, prosecutors and judges at local level. The purpose of the paper is to identify reform champions within the justice system, draw detailed profiles of them and to document their ideas for reform of the legal system. The paper aims to reduce the sense of isolation felt by the reformers, identify means to support their work and to create an environment more likely to see the emergence of other honest legal officials (see also "Partnerships" section below).

Preliminary Paper due August 2003

Final paper due December 2003

3. Village Judicial Autonomy

The purpose of this paper will be to identify possible means to bridge the physical and conceptual gap between village and state justice in order to enhance local capacities to resolve disputes and to make the law more relevant to the lives of ordinary people. It will consider the policy implications of introducing a state-sanctioned scheme for village-level alternative dispute-resolution in Indonesia along the lines of the Barangay Justice System that operates in the Philippines. The Barangay Justice system essentially provides official state recognition of traditional dispute resolution mechanisms in the Philippines by requiring most civil and minor criminal offences to be conciliated at village level before they can be heard by a court. A successful conciliation at village/*barangay* level is acknowledged by the state and enforceable as if it were a court order.

Preparation for this paper will commence with a dialogue with the government of Indonesia and civil society organizations to determine if a constituency exists for reform of this nature. Based on this dialogue and field research, the Justice for the Poor team will produce a strategy and proposals designed to improve the quality of and access to alternative dispute resolution mechanisms. The team will collaborate with the World Bank conflict research team in this endeavour. Questions the paper will address include:

- alternative dispute resolution mechanisms at village level – where do people go and why?
- the ways *adat* and other village level institutions are used to resolve disputes
- the legal status and jurisdiction of *adat* institutions versus courts post-decentralization
- the role of trust, policing and the courts in zones of potential conflict

Due June 2004

II. Support to Operations

The Justice for the Poor team also actively across sectors in the World Bank, primarily with community based projects with dispute resolution and legal advocacy components. The project is also establishing itself as a center for ideas and research on community justice for other donor agencies.

The project has helped to design and continues to provide technical assistance to a legal aid and paralegal pilot in three provinces through the World Bank Kecamatan Development Program (KDP). Similar plans are currently being developed to support the Urban Poverty Project (UPP). The project is also designing a major legal and dispute resolution component for the Support for Conflict Ridden Areas Program (SCRAP), a new World Bank project which will support community-based development in conflict-ridden areas.

The main objectives of the support to operations are to strengthen local capacities to resolve conflicts in an inclusive, independent and just manner and to build community trust in and access to the justice sector. Planned activities include:

- Support for community-based paralegals

- *Pro bono* or “barefoot” lawyers
- Provincial legal aid centers
- Circuit judges
- Community legal education.

The program will also look to develop a framework for increasing scrutiny and transparency of the justice sector by:

- Promoting public access to court decisions
- Supporting short legal courses for the press and NGOs
- Supporting local court watch groups

Eventually, Justice for the Poor aims to mainstream legal empowerment across most projects in Rural and Social Development.

III. Partnerships

The third part of the Justice for the Poor work programme is a product of the two previous components (research and support to operations). It consists of building partnerships and supporting coalitions among different actors interested in local legal reform. The actors include: reform elements in the government and legal system; lawyers and the legal community, activist NGOs, especially at the district level, student groups and international organizations.

Understanding that legal reform cannot simply be based on changes in regulations - the objective of this set of activities is to generate the right *constituencies* for change. The program already has a government constituency within Bappenas and the Ministry of Home Affairs, as well as civil society support. But a key objective of the activity is to make this constituency grow. Documentation and dissemination of success stories through these dialogues, and bringing together reform coalitions through the work of developing the program itself, is an important component of the program.

To make maximum use of ongoing governance initiatives, the program maintains close contact with groups such as the Partnership for Governance Reform and the informal donors’ Justice Working Group.

Activities in the Partnerships section include:

(A) Mapping Reformers

As mentioned above, the *Mapping Reformers* paper will seek to understand the kind of environment that is most conducive to reform on the basis of in-depth interviews with reform minded legal officials. This work also aims to create a network among these reformers to strengthen both their individual and collective capacity to seek reform initiatives.

To this end, the Justice for the Poor team has hosted two major seminars in Jakarta on successfully resolved corruption cases at the local level and on judicial corruption, featuring judges identified through the case studies and the Mapping Reformers research. A series of seminars bringing together the reformers and others is planned for the second half of 2003.

(B) Coalition-Building

Besides reforming the system from within, pressure must also come from the outside – by media, NGOs, and civil society who represent the interests of the community and act as “watchdogs” for the police, public prosecutor, and judges to fulfill their roles effectively. These groups must have awareness of both legal *and* political strategies available to fight for the rights of the communities they represent. By working in cooperation with each other, they can create a strong support network and a widespread demand for change.

Through case study visits, the Justice for the Poor team has identified reform champions both within the justice system and outside it – NGOs, civil society, and journalists. So far, successful cases have been aided by the existence of a strong support network of NGOs and media, which publicize cases and help create community demand for successful resolutions. The Justice for the Poor team seeks to support such initiatives, and understand how such conditions could be replicated elsewhere. It has learned from the experiences of such groups on which strategies work best.

(C) Facilitation of initiatives to promote local reform

A final element of the program will be to provide facilitation and information services for groups wishing to implement local initiatives for reform. These kinds of services will primarily take the form of assistance in securing grants to fund local initiatives. The program will not itself implement such reforms, but may provide assistance in enabling access to information and sources of funding. The groups involved would primarily be NGOs, legal activist and other community advocacy groups, such as farmers’ or workers’ coalitions.

More Information

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