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Policy Research on Access to Justice in Indonesia: A Review of World Bank and UNDP Reports

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Abstract

In 2007, a joint program on Access to Justice in Indonesia commenced in which VVI, a Dutch socio-legal academic research institute collaborated with the World Bank's Social Development Unit and UNDP Indonesia. In this article one of VVI's researchers discusses seven reports on access to justice in Indonesia - six of the World Bank and one of UNDP - that are based on research conducted before 2007. The central focus is on searching for differences in approach between the VVI and the partners in this program in order to identify how the university researchers could contribute constructively to the collaboration. The main part of the article discusses the choices of subjects and the methodology of each report, and indicates assumptions that require interrogation. As introduction of the organizations involved in this program, the article starts with a short characterization of broader ideological debates upon which access to justice activities are embedded. The review inspired the author and colleagues in developing the Rolax framework for studying how justice seekers seek remedy for the problems they experience.[2] The conclusions of this article serve as academic research agenda.

Keywords: *Access to justice, 'non-state' justice, alternative dispute resolution, Indonesia, World Bank, UNDP, Rule of Law*

I. Introduction

The access to justice activities discussed in this article took place in the context of Indonesia's democratization process. When in May 1998 the Suharto regime in Indonesia collapsed, a new political era emerged in which democratization, decentralization and human rights were considered central to legal change. During the 32 years of Suharto's authoritarian regime the population suffered many forms of social injustice. The core fundamental freedoms – of speech and political organization – were limited. As a result, the very few outlets for the exercise of political activity were in the form of show case elections which always resulted in the victory of the regime's own political party, Golkar. The modes of injustice also extended to the state appropriation of millions of hectares of land that had belonged to local populations for centuries. Weak or non-existent remedial mechanisms meant that labourers had no freedom and the means with which to organize themselves to agitate for redress. Given the profound effects of what was a highly restrictive political and social order, change was not only imperative, but also inevitable.

Increasing demands for reform that had resulted in the 1998 regime change included constitutional reform to provide a legal framework for establishing a democratic state and its institutions, more authority to local and regional governments, checks and balances to enhance the accountability of the government, legal action against perpetrators of human rights violations and corruption in the past, and withdrawal of the military from politics and civil service (Crawford and Hermawan, 2002:205-12). Many international donors enthusiastically responded to the calls of the reform movement and subsequently provided funds for some of the key reform programs. With the financial support from donor agencies and multilateral partners, a door was opened that allowed these entities to extend their intervention in Indonesian state affairs by influencing and shaping policies some of which had an underlining western mindset. Elaborate legal reforms emerged in the aftermath of the 1998 regime change. For instance hundreds of new statutes and regulations were enacted and dozens of major new institutions have since been established. Some of these include a network of human rights courts, anti-corruption tribunals, a judicial service commission, anti-monopoly commission as well as local and national ombudsman commissions. These reforms have been adopted within the frame of key constitutional amendments that include the adoption of a bill of rights aligned to the foundational ethos of the Universal Declaration of Human Rights (Lindsey 2006). The effort to shape a national strategy for access to justice was part of these reforms that aim at fostering people-oriented development and justice. However, building a legal system of laws, institutions and processes alone is not sufficient guarantee that these legal reforms will be beneficial to its users. Facilitating people's access to this justice system as well as to non-formal justice systems is required for realizing access to justice. Policy makers and jurists have mostly focused on the former, although there is increasing recognition of the latter as one of the components of the rule of law (Golub, S. 2003). In a broader sense, access to justice refers to the ability of seeking remedy for incidences of social injustices, and in a more narrow sense, it refers to access to the dispute resolution institutions of the judiciary.[3] The question worth exploring, then, is how might the existing barriers for access to justice that Indonesians experience - in particular the poor and disadvantaged -- be overcome?

In 2007, a joint program on the theme *Building Demand for Legal and Judicial Reform 2007-2010: Strengthening Access to Justice* was initiated to address the institutional and normative limitations to access to justice in Indonesia. The initiate arose from collaboration between the World Bank's Social Development Unit in Jakarta, UNDP Indonesia, and the Van

Vollenhoven Institute (VVI) of Leiden University in the Netherlands. The two international donor organizations had been engaged in programs on legal empowerment and access to justice for the poor before this joint initiative. The World Bank's Justice for the Poor Program had started in Indonesia in 2002, complementing efforts of the Government of Indonesia to draft and implement a comprehensive National Access to Justice Strategy, to be incorporated into Indonesia's National Medium-Term Development Plan (2010-2014). The main activities of the Justice for the Poor program are research and operational programs aimed at improving access to justice for communities, in particular the poor.[4]

In 2004-2006, UNDP Indonesia conducted a joint assessment with the National Planning Board of Indonesia (BAPPENAS) on access to justice in the five Indonesian provinces of West Kalimantan, Maluku, North Maluku, Central Sulawesi and Southeast Sulawesi, which will be discussed below. After this assessment UNDP launched the project on Legal Empowerment and Assistance for the Disadvantaged (LEAD) in 2007. The Dutch Institutional Development and Capacity Building Trust Fund, meant for providing technical assistance and analytical services, financed the 'Building Demand' program (World Bank 2009:34). VVI participated in this joint program as academic partner aiming at a substantive and independent contribution to the efforts to improve access to justice for the poor in Indonesia. The program's activities

> combine research, analytical and operational work to assist the Government of Indonesia to (i) produce a comprehensive National Strategy on Access to Justice; (ii) execute the strategy through national level government projects such as the National Community Empowerment Program, and (iii) make a significant contribution to capacity building for civil society, local governments and universities on order to support the short-term goal of enhanced access to justice and the long-term goal of building public demand for systemic and sustainable reform in the justice sector (World Bank, UNDP and VVI 2007).

An additional challenge for VVI in this program was to respond to concerns from some scholars that much rule of law promotion work, including programs to strengthen access to justice, utilised unclear conceptual approaches (Carothers, 2006; Esman, 2004). Moreover, some critics have noted that due to the political pressure and rapid expansion of such programs they were mostly not grounded in the understanding and appreciation of the socio-political dimension of law, legal institutions and processes, or, in short, the support for rule of law suffered from a lack of thorough research (Lev, 2000).

Since 2000, both UNDP Indonesia and the World Bank Social Development Unit in Jakarta have produced a series of reports on access to justice, including the results of an impressive number of ethnographic case studies in Indonesia. When the 'Building Demand' program started, VVI researchers could benefit from these reports, using the conclusions as hypothesis for other situations and recommendations as input for their research agenda. Following up on that initial reading, this article discusses six World Bank reports and one UNDP study exploring their methodology and assumptions. The reports raise many issues for discussion that can be traced back to the ideological background of the institutions involved in the collaboration. Those issues concern (a) the way of thinking about development, (b) the interpretation of access to justice as a human right or, in a more instrumental way, as a precondition for 'inclusive liberalism', and (c) the tension between human rights or poverty reduction as primary focus of access to justice interventions.

Following this introduction, this article is organised in three subsequent parts. Part two examines the ideological contexts and research traditions of the partners involved in the 'Building Demand' program. The assumption here is that the ideological persuasion of donor agencies is often reflected in their methodological and philosophical approaches to access to justice. The question that emerges from this is the extent to which their ideological persuasions influenced the conception, scope and methodology of research areas. The third and by far the largest part of this article explores the 2007 UNDP/BAPPENAS access to justice study in respect of five selected Indonesian provinces as well as six World Bank reports on the Justice for the Poor Program. The article then concludes with a reflection on the present and future direction of research on access to justice. It is worth noting however, that the review of reports in this article is not intended as an evaluation of the activities of the access to justice initiatives of the World Bank and UNDP in Indonesia, but rather a way of exploring how these institutions together with VVI researchers could constructively collaborate, using their strengths to improve the knowledge on which interventions and policy for improving access to justice are conceived.

II. Ideological Grounding of Reform Programs

Access to justice research and interventions do not necessarily stand as isolated activities but are embedded in larger programs. For VVI, that larger program was a long-standing tradition of research centering on the complexities of the Indonesian legal system, with its layered structure that reflects the inheritances of successive regimes and the reality of legal pluralism. In the first part of the 20th century, Professor Cornelis van Vollenhoven founded the Leiden school of *adatrecht* (customary law). In the early twentieth century debates within the Dutch political circles on ways to govern the Indonesian colony, van Vollenhoven campaigned against the expansion of Western Law in The Dutch East Indies (Fasseur 1992:251-2). He opposed proposed government policy that, if successful, would have compelled Indonesians to the full acceptance of European legal principles with regard to the ownership of land in respect of large scale agrarian development from which Western enterprises would have profited most. The Leiden Adat school came under criticism for its orientalist orientation, 'confirming the 'otherness of others', and supporting a legal system that distinguished between Natives, Europeans and Foreign Orientals (Li 2007: 48-51), and for creating the 'myth of adat' (Burns; 1989), in which *adat* became the powerful conceptual framework for interpreting customs and traditions in Indonesia. Tania Li (2007:51) has argued that in contemporary development interventions the old Dutch colonial strategy of governing through adat communities manifests in a certain way. Li's argument provides a hypothesis for present research at the Van Vollenhoven Institute and for research on interventions under the theme of access to justice in particular.

The contemporary orientation of VVI research is on socio-legal research, in which analysis of the legal system is combined with empirical, legal anthropological research on how people in a particular context use that system in practice. Part of this ongoing research - just as in the days of Van Vollenhoven – is meant to inform policy decisions and understanding of changes in the Indonesian legal system especially in the context of ongoing social transformations. In access to justice research this approach incorporates research on the substance and procedures of customary and religious law, investigation of problems fundamental to social injustices as well as research on people's own ways for seeking remedy and the barriers to access these remedies depending on historical context and existing power relations.

In contrast to small ‘d’ development as an on-going historical process associated with capitalism, Development with capital 'D' refers to a set of purposeful interventions (Hart 2001); “an expert-led, universalized project that leads to depoliticizing tendencies, as it is in this move (from development to Development) that not only capitalism but also context, difference and politics are obscured from view” (Hickey 2009:474). Critical scholars like James Ferguson (1994), or more recently Tania Murray Li (2007) see the World Bank as the leading institution in ‘big D' Development. Under the heading of 'Improving Governance' the Country Assistance Strategy for Indonesia 2004-2008 described the activities planned as part of the Justice for the Poor program:

> (….) the Bank will push forward with a new initiative to enhance access to the justice system for communities and the poor. Drawing lessons from a wide-ranging study of corruption cases in the Bank’s Community Driven Development (CDD) projects, this Justice for the Poor program will seek to integrate into the CDD portfolio initiatives to strengthen alternative dispute resolution mechanisms, develop a network of community paralegals and legal assistance, lower the geographical and financial barriers to court access, and promote legal literacy (World Bank 2003:27).

With the focus on interventions that can be implemented by legal and development experts’ analysis of the causes of the social injustices and characteristics of poverty becomes less prominent. Instead, the programs of Development find their basis in an ideological narrative, a theory that connects poverty, markets, institutions and governance. David Craig and Doug Porter (2005, 2006) called the latest version of international Development theory 'inclusive liberalism', which “holds together (1) broadly neo-liberal economic settings with (2) an enormously inventive range of rationales and technologies for 'social inclusion" (Graig and Porter 2005:229).

The agenda for interventions comprises stimulating social and political forms of organization that are non-contentious or threatening to the dominant neo-liberal order (Hickey 2009:474). 'Inclusive liberalism' is the World Bank's larger ideological program in which access to justice activities are embedded. That ideological program stands in contrast to concerns over global economic instability, political fallout and popular protest over development failure or rising inequalities, and the global traffic of people and commodities (Craig and Porter 2005:230). The focus is on developing and improving institutions for which New institutional economics (NIE) provide the analytical tools in designing interventions. The core of this NIE approach is a three part framework that could be rendered as: “Inform, Enforce, Compete” (Craig and Porter 2006:102). Applied to access to justice for the poor such an approach concentrates on providing information about legal institutions (laws, rules, and organizations that can be a forum of remedy), so that citizens can use a rational strategy for seeking access to justice. ‘Enforce’ refers to strengthening the justice providers – building institutions - so that justice seekers can rely on the legal system for providing the services they need. ‘Compete’ is the market-element of the NIE doctrine, fostering competition through markets to discipline governance and service delivery, and to open opportunities for communities who obey the ‘rules of the game’ of Development.

The (market) rationale behind ‘building demand for legal and judicial reform’ is that a strong demand will stimulate the increasing volume and quality of supply of legal and judicial services. The choice for the topics of research in the series of reports produced by the Justice for the Poor program that will be discussed below, corresponds with this ideological frame of inclusive liberalism and new institutionalism. The title of the overall World Bank Country Partnership Strategy for Indonesia 2009-2012 underscores the ideological content of the

World Bank's projects: "Investing in Indonesia's Institutions for Inclusive and Sustainable Development." However, the Justice for the Poor program has a much more sophisticated approach than what the brief characterization of the general World Bank approach above suggests. In the section below on the World Bank reports the Justice for the Poor team's arguments are discussed in detail.

Collaboration with UNDP (United Nations Development Program) entered yet another larger debate in the joint program for access to justice: whether access to justice interventions are aimed at human rights protection, or whether they are primarily instrumental in reaching the Millennium Development Goals, in particular the first goal concerning poverty reduction. UNDP phrased the position of access to justice activities in its *Access to Justice Practice Note*:

> Access to justice is a vital part of the UNDP mandate to reduce poverty and strengthen democratic governance. Within the broad context of justice reform, UNDP's specific niche lies in supporting justice and related systems so that they work for those who are poor and disadvantaged. Moreover, this is consistent with UNDP's strong commitment to the Millennium Declaration and the fulfilment of the Millennium Development Goals (UNDP 2004:3).

The same report also states "Access to justice is a basic human right, as well as an indispensable means of combating poverty and preventing and resolving conflict" (UNDP 2004:3). Although these statements present the principles and practices reflected in the MDG initiative and those contained in international human rights law as perfectly consistent and compatible, there has been ample critique on that proposition (Alston 2005; Baxi 2002). The critiques include the argument that the emphasis on Millennium Development Goals (MDG) tends to limit development interventions to activities that produce measurable results expressing the impact on the goals' indicators - for example the number of poor in a specific area at a certain moment in time - in quantitative terms, while not prioritizing interventions aimed at more qualitative results. Research on access to justice from a human rights perspective would produce many more questions than the more technocratic input/output approach of MDGs (Alston 2005: 782-4).
These debates are the ideological and theoretical context in which the researchers of the joint *Building Demand* program conduct their research and write their reports. In practice of collaboration, the differences between the partners in the program are not as sharp as suggested above. The researchers are all academics – either working for UNDP, World Bank or VVI – who share the motivation to improve access to justice for the poor and disadvantaged in Indonesia. How does their institutional background influence the choice of research topic, methodology and assumptions in concrete studies on access to justice in Indonesia? The first of those studies that is discussed here was done by UNDP Indonesia in collaboration with BAPPENAS.

III. UNDP and BAPPENAS Assessment of Access to Justice

To better understand and promote access to justice in Indonesia, the BAPPENAS Directorate of Law and Human Rights and UNDP jointly initiated, in 2004, an extensive assessment of access to justice for 'the most disadvantaged populations in five provinces' (UNDP 2007:ii). UNDP teams conducted large-scale research over a period of 18 months with the majority of field assessment carried out between January and September 2005. UNDP works worldwide through networks of national or local organizations and its main thematic focus is on democratic governance, poverty reduction, crisis prevention and recovery, environment, energy and HIV/AIDS. These themes inspire the choice for priority areas in which UNDP

supports local organizations or conducts research. For example, the choice for the research locations in the access to justice assessment that will be further discussed below was a logical consequence of this combination of the first three themes: studying access to justice for the poor and disadvantaged in areas with a recent history of large scale violent conflict. The assessment's findings have led to the Legal Empowerment and Assistance for the Disadvantaged (LEAD) Project that began in 2007. Its focus is on legal awareness and legal aid in those five provinces, which are all conflict prone rural areas; Maluku, North Maluku, Central Sulawesi, South Sulawesi and West Kalimantan. The LEAD program will disburse about US$ 11 million in grants to (local) organizations for activities in this field.[5]

A. Justice for All? An Assessment of Access to Justice in Five Provinces of Indonesia

Based on the results of qualitative and quantitative research undertaken in the five provinces under review[6], the researchers wrote a report with the primary aim of identifying the key justice-related issues affecting citizens at the village level and subsequent steps taken to resolve those issues. The performance of formal and informal justice mechanisms is also considered, as are recent legislative and institutional developments with the potential to impact upon access to justice in broader terms (UNDP 2007:vii).

The final report consists of a general part which aggregates the findings of the five provinces, and a separate annex for each province report. The report is informative, with detailed information in the province annexes, and has a clear methodology. For example, the provinces in the report were selected among the ten priority provinces of UNDP because of low human development indices, high poverty rates and proneness to crisis. In each of the five provinces, two out of the ten districts in the province were selected. Within those districts two sub districts were chosen, and in each sub district two villages. The most important variables that informed selection of research sites included extent of inter-ethnic violence (one district with and one free of), prominence of *adat* institutions, key economic sectors and demographic characteristics.

The general report contains a description of "a normative framework for access to justice" limited in the sense that it refers to that part of the state legal system in Indonesia that is most relevant for the issues of access to justice. It comprises a part on the structure and the authority of the main branches of the state justice system – starting with the police – and a part on legislation which explores the recognition and protection of human rights under Indonesian law. *Adat* law receives only minor attention in the report and religious law only in the short section about religious courts.[7]

The research findings have two main components. The first relates to the key justice related issues that poor and disadvantaged people mentioned as their main problem, and the second concerns the functioning of the various justice institutions and intermediaries. In between the two parts there is a gap in the sense that it remains unclear how the key justice issues relate to the institutions and awareness. There is little analysis of the key justice related issues and how the cause of those problems could be addressed through legal empowerment. The report summarizes its conclusions:

> The key point to emerge from the assessment is that the majority of issues that villagers cite as ongoing sources of injustice are those that are not amenable to resolution via the informal justice system. As effective as informal mechanisms may be in small cases of a local nature, issues involving parties outside the village structure – such as government agencies, corporations or even citizens from neighboring

> villages –will generally be beyond their effective jurisdiction. The crux of the problem for many communities therefore lies in the fundamental mismatch between citizens' relative preference for the informal justice system and the fact that the most commonly cited cases of serious injustice are largely unsuitable for resolution via this forum (UNDP 2007:xiii-xiv).

The report seems to gravitate towards legal empowerment, being the solution for reaching access to justice as a goal. Its recommendations address legal services that are activities aligned to UNDP's partners' core business. These activities are: (a) intensify efforts to build community legal awareness, (b) support for the lobby for state provision of legal aid, (c) support the provision of community legal services by civil society, (d) focus on advocacy and empowerment to reduce discriminatory and arbitrary decision-making practices in the informal justice system, and (e) consolidate efforts to reform the formal justice system (UNDP 2007:112). The justice seeker's option of seeking redress for injustices through political action, social mobilization, violence or any other means different from legal empowerment is not addressed in this report, but seems very relevant for understanding people's perceptions of their real life problems and how they can solve them.

A broader definition of access to justice than UNDP's, like the process definition proposed by Bedner and Vel (in this issue), makes it possible to bridge the gap between people's real life problems and the process of seeking access to justice. The next sub-sections highlight three subjects raised by the *Justice for All* report that are particularly important in the debate on improving the methodology of access to justice research: defining the poor, identifying 'key justice related issues', and using UNDP's general conceptual framework for access to justice.

B. The Poor and the Disadvantaged

If the focus of research and policy is on justice for the poor and disadvantaged, how can these categories be defined or bounded? [8] This is an important question because in the end generalisations and conclusions resulting from research will be based on the information provided by these key respondents in interviews, focus group discussions or surveys like the ones conducted in the UNDP research. *Justice for All* provides several answers on how to define categories of disadvantaged and poor. The precise description of the selection process is noted in the general part of the report:

> While conducting a general socio-economic mapping exercise in each village the research teams endeavoured to identify particular groups in the community who were poor or disadvantaged by virtue of: (i) the non-fulfilment of basic rights to food, healthcare, education and other government services; (ii) discriminatory treatment by government or other community members, or (iii) the inability to participate in decision making affecting their futures (UNDP 2007:34).

It is remarkable that the report does not mention criteria of income or calorie intake or other factors relevant in the determination of household poverty. The first item connects human rights directly to the provision of government services. The second and third elements appear to elaborate on the term "disadvantaged". How these criteria are applied is not clear from the report, except that the research teams were the ones to decide on this categorization and not villagers themselves. The report notes that

> one 'disadvantaged group' was selected in each village to be the primary respondents in the qualitative phase of the assessment, on the basis that they were either worse off

> than the other groups in the village or that they constituted a type of group that had not been selected in other villages (UNDP 2007:34).

The selection process resulted in the focus on a representation of the "poor and disadvantaged" such as sharecroppers and landless, internally displaced persons, women, casual labourers, customary law communities, residents of slum areas or geographically isolated hamlets. What such a list above all illustrates is that poverty is a relative and subjective concept. Anyone who wants to draw conclusions about the poor and the disadvantaged should perhaps carefully define the characteristics of that category in the local context. The UNDP report (2007:39) adds an important remark: "the key assumption underlying the selection of disadvantaged groups as respondents is that in general, the disadvantaged would face similar barriers to access to justice as villagers who were better-off, but to a greater extent." This is a hypothesis that invites testing, because it ignores power differences as a factor that might explain that barriers to access to justice exists only for disadvantaged groups and not for the better-off.

What is also remarkable in this report is that access to justice is constantly defined as a group problem and never as an issue for an individual person. In reality, there is always heterogeneity within groups or categories, and individuals might be part of various groups such as an illiterate landowner or a wealthy widow. In 'inclusive liberalism' the poor are constituencies of justice providing institutions or in terminology of Craig and Porter (2006:25) subjects of 'quasi-territories of joined-up New Institutional Economics governance'. Consequently, when they are only acknowledged as a group, access to justice is then apparently not a basic human right for each individual human being, as UNDP (2004:3) has put central in its Access to Justice Policy.[9]

C. Key Justice related Issues

The *Justice for All* research aimed at focusing on the perspective of the poor and disadvantaged rather than the formal institutions of justice. Therefore, the provincial reports start with an inventory of 'key justice related issues'. The West Kalimantan Provincial Report (annex 2 of the main report) mentions that most respondents in the village had difficulties articulating their understanding of justice, but experienced no difficulties in providing a definition by relating concrete examples of the many injustices in their everyday lives (UNDP 2007:147). The general report concludes that "consistent with their economically-oriented conception of justice, many of the key injustices cited by disadvantaged groups relate to their social and economic welfare"(UNDP 2007:42). This result seems very obvious, but also shows the problem of translating abstract concepts into empirical research questions. Can we really say that the disadvantaged have an 'economically oriented conception of justice'? What were the questions that the surveyors or interviewers asked? Which words did the respondents use? And in what language was this communicated through?

The real life and 'mostly economically-oriented' problems of the respondents mentioned in the inventory were categorized by the authors into five more legally-oriented categories:

- access to government services and assistance,
- access to land and natural resources,
- gender violence,
- employment and labour rights, and
- post conflict security and property rights.

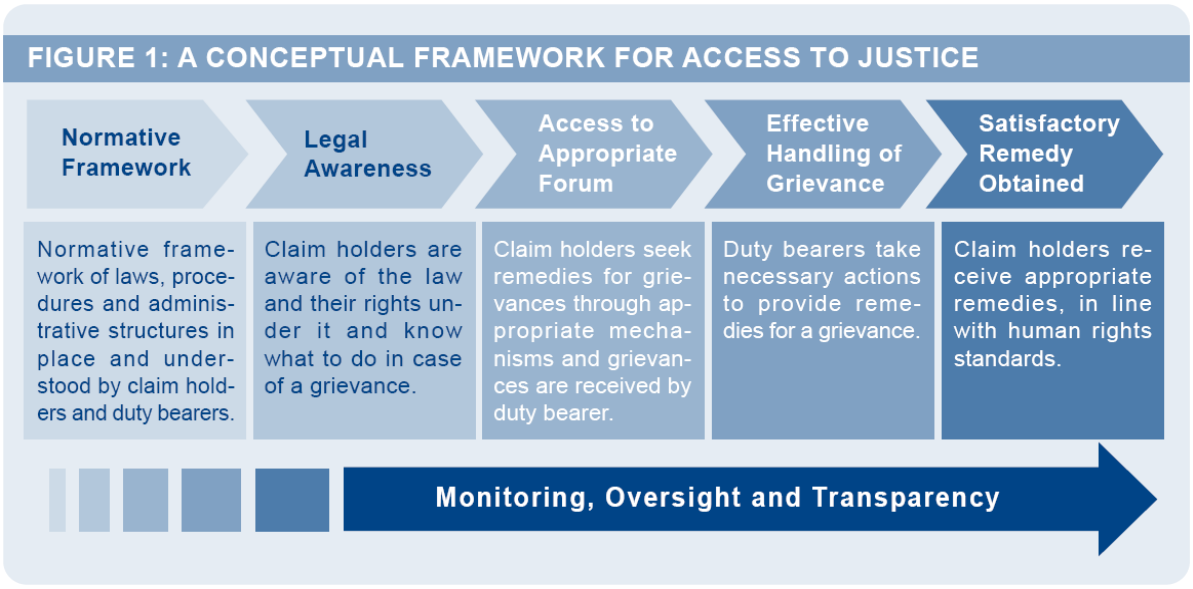
The provincial reports provide more detail on the type of key justice related issues and show that in aggregating the wide variety of everyday problems into the five categories mentioned above a wealth of information and diversity gets lost. This is a translation, in which real life problems are rephrased in terms that can render them technical and make them fit for solution by expert intervention (Li 2007:7). For example, the 'group experience' mentioned in the table that summarizes characteristics of selected disadvantaged groups in the West Kalimantan report (UNDP 2007: 148) provides some more information on the real life problems of the poor, in this case fishermen in Sutra:

> Fishermen in Payak Hitam hamlet make an uncertain living from traditional fishing methods, while facing competition from modern, well-equipped trawlers. Comprising mostly Madurese migrants, they have no alternative vocational skills. This hamlet has the lowest literacy rate of the village and has poor sanitation.

The key justice issue in this complex of group experiences is categorized as 'access to government services and assistance'. It is not clear though how access to government services and assistance could address the more structural causes of the fishermen's problems hinted at in the description of 'group experience' above, like being pushed out of the market by more powerful competitors – the well equipped trawlers. The categorization here illustrates what Li (2007:7) calls problematization that identifies the deficiencies that need to be rectified, and the way it is done is intimately linked to the availability of a solution. In order to avoid a gap between 'key justice related issues' as perceived by justice seekers and grievances as defined by researchers or legal aid suppliers we propose using a method for research on access to justice that explicitly investigates injustices from the perspective of the justice seeker (Bedner and Vel, *in this issue*). That method - Rolax framework- departs from the real life problems of the poor, and subsequently studies how those problems are redefined as injustice and then phrased as grievance in relation to a specified part of a normative system. This decreases the chance that researchers' reductions blur core problems of access to justice.

D. UNDPs Conceptual Framework and Rolax

UNDP uses one common conceptual framework for access to justice in all research and reports on this subject. The UNDP framework is clear and short, and apparently works very well as common structure for various reports about access to justice. It facilitates communication between all researchers and policy makers involved in access to justice activities.



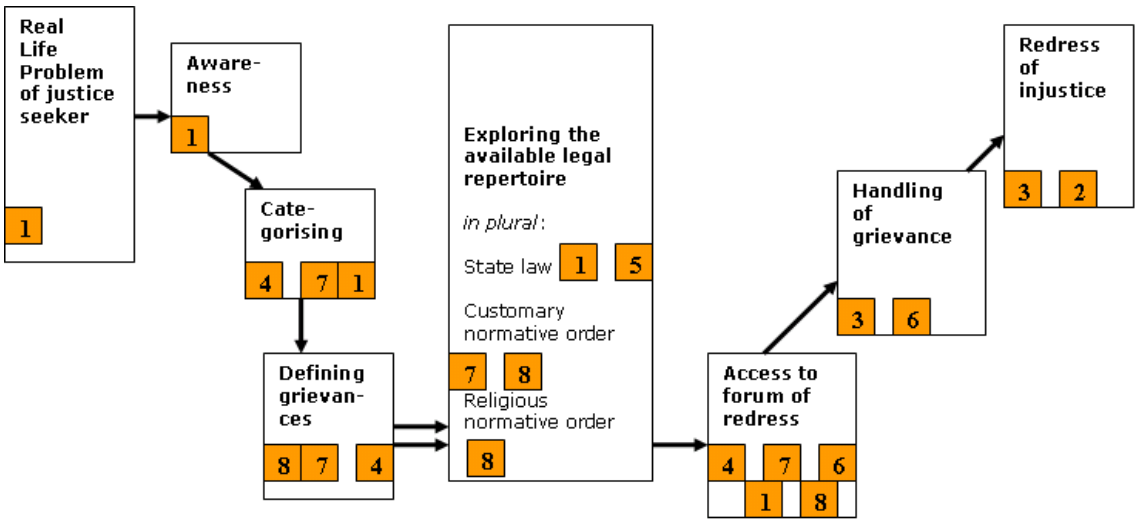
This framework was a source of inspiration for making the Rolax framework. The latter is in a way a modified version of this UNDP conceptual framework. However, there are main differences between the two. The framework is elaborately discussed in Bedner and Vel's contribution to this special issue, but the main differences between the two frameworks are represented in the table below.

Table 1: UNDP conceptual framework for Access to Justice and VVI's Rolax framework compared.

	UNDP framework	**Rolax framework**
Orientation	Expert intervention	Research
Covered process	From Identified legal claims to satisfactory remedy (shorter process)	From real life problems to redress of injustice (longer process)
Emphasis on which actors	Poor and disadvantaged people who are included in legal service process; legal service providers	Population relevant theme at hand, with special attention for the poor and disadvantaged; intermediaries; legal service providers; enforcers; legislators.
Legal system	"Normative framework" with slightly more emphasis on state law (because of intervention orientation)	"Available legal repertoire", with emphasis on the existing hybrid of informal rules, state, customary and religious law.

Figure 2 situates the reports discussed in this article in the Rolax framework and indicating which phase of the justice seeking process on which the reports lay emphasis on. The visual presentation of the Rolax framework intends to show the process that justice seekers experience when they find they have a serious problem, realise that they want to solve the problem, begin to think of it in comparison with norms and rights ('injustice'), blame someone for their problem ('grievance'), think of arguments why and how their problem could be solved (exploring the legal repertoire), find and then address a forum where they can register their claim concerning how their problem should be solved. Then the Rolax framework follows the process of handling the grievance and obtaining redress. Figure 2 shows that none of the reports discussed in this article covers all these phases in the justice seeking process, but instead, they focus on one or more phases in depth.

Figure 2: World Bank and UNDP reports discussed in this article positioned in the Rolax framework.



1. Justice for All?
2. Village Justice for the Poor
3. Mapping Reformers
4. Fighting corruption in decentralized Indonesia
5. Regional Regulations Study
6. Village Judicial Autonomy
7. Forging the Middle Ground
8. Access to Justice in Aceh

IV. The World Bank and "Justice for the Poor" Reports

The World Bank's perspective and approach to access to justice through this program developed from two research projects on 'local level institutions', conducted in 1996-7 and in 2000-1 respectively, that investigated the meaning and sources of village level capacity to address and resolve problems of local development in Indonesia (Bebbington et al, 2005:1959). The projects' attention for 'institutions' as the key to development was in line with the rise of New Institutional Economics providing the tools for the World Bank's programs (Craig and Porter 2006.). The purpose of the Local Level Institution studies was, as Tania Li (2007:246) aptly observed, "not to increase the stock of scholarly knowledge, but to diagnose deficiencies and delineate a technical field". The deficiencies of Indonesian legal institutions were numerous according to the World Bank Team:

> Thirty years of political marginalization has left Indonesia's legal institutions degraded and ineffective. Rife with corruption and poorly resourced, the legal institutions suffer from a chronic lack of public trust. At the same time, village level institutions responsible for dispute resolution have been undermined by thirty years of highly centralistic governance and now suffer from capacity and legitimacy gaps (World Bank 2007a:1).

Li argued that the findings of the two Local Level Institution studies were simultaneously the product of empirical research and blueprints for a new program of interventions, the Sub-district Development Program (Kecamatan Development Program, KDP). This program had started in 1998, covering every one in three villages in Indonesia and absorbed US $ 1 billion of loan funds. Currently, KDP is in its third phase, and is now a key component of the Government's flagship poverty alleviation program, PNPM-Mandiri. KDP provided block grants of approximately USD 55,000 to USD 110,000 to sub-districts depending on population size (Voss 2008:3-4). Experiences within the KDP informed the agenda for research and activities in the World Bank's Justice for the Poor program (J4P). With the

availability of the KDP funds for which village groups had to compete, all kinds of disputes emerged, for which people involved needed redress. Some of those reflect tensions that occurred as a result of influx of KDP funds, whereas other disputes already existed beforehand. A central issue in the research in J4P was corruption and how local communities could act against the embezzlement of funds.

The J4P program was established in 2002 to develop strategies for a sub-national, demand based approach to justice sector reform. Its aim is 'to support poor Indonesian communities to obtain fair and effective dispute resolution, through a time-efficient, unbiased and humane procedure" (World Bank 2007:5). The Justice for the Poor website[10] explains that:

> The program recognizes that wide-ranging institutional reform of the justice sector is a long-term project. In the meantime those affected by an imperfect justice system require immediate assistance to enforce their rights and secure their livelihoods. Similarly, the provision of justice services to the poor, vulnerable and marginalized can help to build constituencies for demand for legal reform and contribute to the process of systemic change from below. The program has been supporting the efforts of the Government of Indonesia to draft and implement a comprehensive National Access to Justice Strategy, to be incorporated into Indonesia's National Medium-Term Development Plan (2010-2014). This support is provided through a mix of research and operational programs aimed at improving access to justice for communities, in particular the poor.

In the period between 2002 and 2007 the J4P team produced a number of reports of their research of which the six discussed below provide a good overview of the team's developing knowledge and approach.

A. Village Justice for the Poor

The problem in KDP with embezzlement of funds, and the policy to join reform initiatives from local society motivated to investigate the ways in which combating corruption, transparency, accountability and rule of law could be supported by local level (village, hamlet) institutions. The earlier local level institutions studies concluded that "Indonesia's communities already had – or could have, with appropriate facilitation and incentives – everything good governance and village development required. To rectify deficiencies, the studies proposed that best practices already present in some villages could serve as models for authentic, endogenous development" (Li 2007: 245). In order to collect data about village level practices J4P conducted a series of ethnographic studies with the purpose to identify:

- What factors enable poor village communities to defend their interests successfully in an environment of institutional weakness
- understanding of preferences and expectations of villagers in resolving disputes and defending their interests, through both formal and informal legal institutions,
- patterns of interaction between poor communities, village institutions and the legal system,
- reformers in the legal system, and
- options to strengthen local level dispute mechanisms (World Bank 2007:3).

The first ethnographic studies resulted in the report *Village Justice in Indonesia* (World Bank 2004). The report is based on 18 studies concentrating mostly on corruption cases in village development programs (in KDP). Among the thousands of villages involved in KDP these cases were selected because they present best practices, in which villagers took action against corruption. The report concludes that villagers in general know very little about state law, distrust it and perceive it to be beyond their control. They have a preference for informal dispute resolution, because of its efficient procedures: it is quick, cheap and easier to use. The outcomes of this type of dispute resolution are not always favourable for vulnerable groups, such as women, ethnic or religious minorities.

The other conclusion reached is that trans-communal disputes across ethnic or religious boundaries and conflicts between communities and powerful external interests were difficult to resolve through local bodies, while villagers were prepared to use the formal system where village institutions failed. These conclusions were presented in these general terms, although they were drawn from studies concerning corruption cases, which is a specific type of injustice.[11] According to J4P these conclusions should lead to two logical follow up steps, which are in line with the New Institutional approach discussed above. These are that first, village institutions should be strengthened to enable villagers to take action against corruption, and second that additional research should identify the partners for such village initiatives within the formal justice system by revealing inspiring examples and characteristics of officials who really have been acting as reformers.

B. Reformers, Anti-corruption and Regional Regulations

The sequential reports were logical next steps after the conclusions of *Village Justice for the Poor*. *Mapping Reformers* (World Bank 2005) documents how a number of state officials try to reform the formal system from within. *Fighting Corruption* (World Bank 2007b) continues to explore the procedures of village based anti-corruption initiatives. The Diagnostic Study on Regional Regulations[12] (World Bank 2009) investigates whether district governments support the legal certainty of citizens regarding their rights to public services. Together these reports investigate how three different kinds of institutions - judiciary officials, civil society organisations, and district regulations - support the local level demand for justice services. The Mapping Reformers study elaborates on the conclusions of the Village Justice in Indonesia report that say that the presence of reformers within the formal justice system is one of the key factors in the success cases, and that – in spite of the deficiencies of the formal system – there are officials who are really trying to reform. What makes these actors able to act so innovatively? The report addresses part of this question in the section on the reformers' identities. Data on the 39 persons selected in this research describe their characteristics in terms of institutional affiliation, age, work experience, gender, work location and education. However, it does not provide similar data on a reference group, for example, the total population of their colleagues in the same institutions.

The report concludes from interviews that what was more differentiating the reformers from their average colleagues was their attitude: (a) a strong commitment to fight corruption, (b) an independent, critical and brave personal attitude, and (c) being open for discussion and willing to cooperate with civil society organizations. Apart from these personal characteristics of reformers, there is no explicit analysis of enabling factors in the reformers professional environment that made reforms possible. Readers of the report could feel encouraged by the examples these 'best practices' provide, but the key to successful replication remains unclear. The fact that the study could only identify a very small number of persons who meet the

report's criteria of being a true reformer begs for more thorough analysis of the existing 'bad practices', in particular corruption. An implicit assumption seems to be that corrupt practices are officials' individual activities that can be ended by changing their attitudes. Those practices in fact could well be part of a corruption system.

In contrast to the argument that wide spread corruption is a sign of weak states (institutions), it can also indicate a state that has become "stronger through the hold enjoyed by political personnel and actors associated with the state on a large part of the informal economy (embezzlement, fraud, criminal economy) and the formal economy (holdings, privatization") (Olivier de Sardan and Blundo 2006:109). McLeod (2008:200) identifies such a strong corruption system in Indonesia as a legacy of the Suharto regime, arguing that corruption is only a symptom of the fundamental problem of inappropriate personnel management practices that had been designed for a bureaucracy that was *intended* to be corrupt. He explains that the system of incentives facing civil servants was not designed to achieve effectiveness in terms of pursuing the interests of the general public, but to encourage loyalty to the regime. Such analysis informed by history and politics questions the effectiveness of interventions that only address the symptoms of problems instead of the causes.

The report *Fighting corruption in decentralized Indonesia: Case studies of handling local government corruption* does not discuss these fundamental questions relating to the causes of corruption. Instead, the report focuses on community engagement (local anti-corruption actors) in ten cases of corruption allegations dealing with Local Budget Allocations 2001-2004, that were (being) settled through formal proceedings. Reference to civil society organizations, like the anti-corruption NGOs in this report, positions the World Bank as a reservoir of expertise to assist indigenous reformers who had set their own agenda (Li 2007:240). Such civil society pressure supports World Bank efforts to improve the formal justice system. Whenever there are allegations of embezzlement or corruption the report asserts that complaints do also originate from villagers, but NGOs are always chosen as a vehicle of consolidating actors (World Bank 2007b: 39-41).

Engagement of mass media maximizes frictions between political institutions and increases pressure on the formal justice system to act. The key findings of the study on fighting corruption show that these types of “access to justice activities” deployed by anti corruption actors like NGOs, media or political parties actually tend to increase conflict rather than prevent or resolve it. This conclusion runs against UNDP's argument that access to justice is an indispensable means of preventing and resolving conflict (UNDP 2004:3). What the report also indicates is the importance of intermediaries in categorizing real life problems of their constituencies, and rephrasing those problems as grievances that can be used in lobbying campaigns and turned into claims to forums of redress. Intermediaries are not just neutral legal service providers.

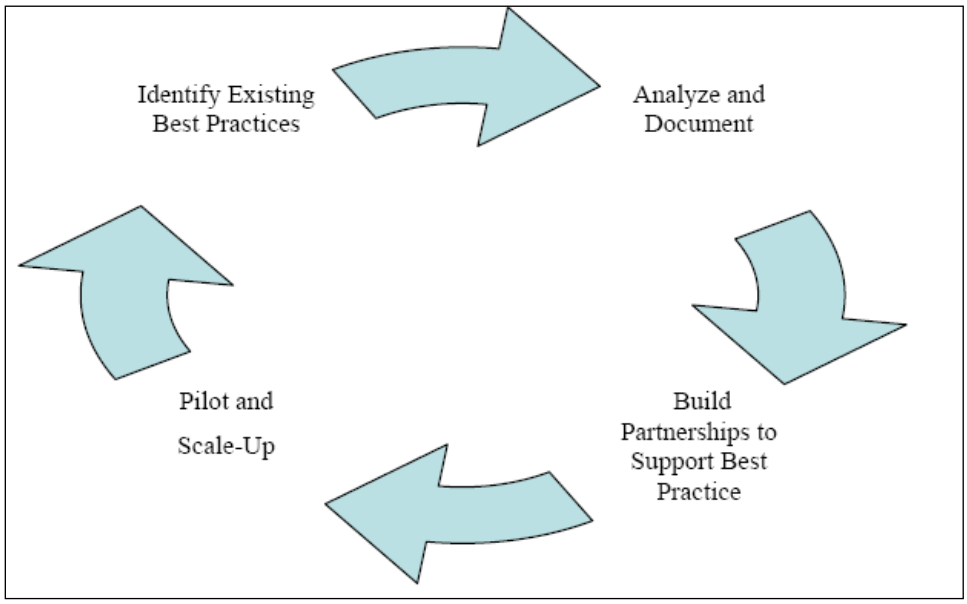
The idea behind studying regional regulations (*Peraturan Daerah ("*Perda") as a third type of institution that can support local level demand for justice services is that, since the process of granting autonomy to regional authorities began in 2001 in Indonesia, these Perda are important legal tools that provide legal certainty in respect of citizens’ rights to public services. Access to justice as a goal could be well-served by having Perda that make citizens rights in the districts more concrete. The main message of the report for readers, who are interested in whether Perda are already used as a tool for advancing access to justice, is that this legal opportunity was used only minimally up to 2008. The question *why* that is so, is not addressed in the Regional Regulations report. Following McLeod’s (2008) argument, state

officials who had been nurtured in the top down bureaucratic culture that characterised the Suharto era can not be realistically expected to adopt overnight an inclusionary democratic persuasion to governance.[13] Political parties and NGOs will have to take initiative to urge regional governments to promulgate regulations on public services. Those initiatives should be part of the access to justice research agenda.[14]

C. Emphasis on Best Practices

The series of World Bank reports following up on *Village Justice in Indonesia* shows a consequent emphasis on 'best practices'. In their 2007 strategy paper, the J4P's team explicitly chose to identify existing successful strategies for increasing access to justice as its approach for designing activities. Figure 3, copied from this strategy paper, illustrates this.

Figure 3: World Bank's best practices approach[15]



The approach thus starts with identifying existing best practices, selected by virtue of the result based on criteria that researchers have chosen. For instance, selecting among all corruption cases that occurred in a particular context those that have been brought to the court, or among all personnel on the justice system those people who are called reformers based on four criteria. In these examples, a best practice approach might start from the total number of corruption cases or whole population of justice sector employees, but the reports concentrate on the best practices only, leaving the selection process for identifying those practices rather invisible to the reader. The reports mention how the researchers weigh the selected case against the average, but the analysis of why a particular practice has gained a high score, making it a best practice remains implicit. Careful selection of best practices is a tool for advancing arguments and the empirical evidence that these practices have been implemented in practice and proved successful makes the arguments seem stronger. Still, one can question whether this selection method leads to increased understanding of how the processes involved in gaining access to justice work, what the bottlenecks are and why these exist and how they can be overcome.

Access to justice research aimed at gaining knowledge to answer these questions should take the problems that people perceive as injustices as a starting point and analyze the whole process by which they seek to resolve their problems. Such a process-approach might be more

constructive eventually than replicating best practices without sufficient attention to the factors responsible for their positive result. Recently a report published by experts involved in the world-wide Justice for the Poor program included critique on 'best practices' research, arguing that "a key goal of the outcomes should be the promotion of rule-based, transparent, and accountable decision making, not the replication of a particular institutional form" (Sage, Menzies and Woolcock, 2009:17).

D. Alternative Redress Mechanisms

The Village Judicial Autonomy studies (2005) further explore alternative dispute resolution mechanisms, whilst the report *Forging the Middle Ground* (2008) presents a synthesis of these studies. According to the J4P website the purpose of the study is to document dispute resolution processes at the local level, with a focus on the experiences of marginalized members of the community: the poor, women, ethnic and religious minorities and youth. The study in particular addresses:

- The various ways in which people seek justice before filing a court case - what types of cases are addressed and what factors contribute to or hamper access to justice.
- The impact of regional autonomy on dispute resolution at local level;
- The significance of the revival of traditional and *adat* based authorities in relation to dispute management.
- The social inclusiveness of the different fora for dispute settlement considering gender, socio economic status, ethnic and religious minorities and other vulnerable groups.

Over thirty case studies from five provinces (West Nusa Tenggara, Maluku, West Sumatra, East Java and Central Kalimantan) cover a wide array of societies and their dispute resolution mechanisms. The report *Informal Dispute Resolution in East Java* (World Bank 2005), for example, was conducted in the districts of Ponegoro and Pamekasan. In those areas, pluralism exists because there are many prescriptive identity groups, but there are no strong adat (customary) institutions as found elsewhere in Indonesia. This is also an area that relies heavily on international labour migration. The report states that in these districts regional autonomy has strengthened the position of Islamic norms and contributed to the general politicization of actors commonly involved in informal dispute resolution (World Bank; 2005:3). Many of the identity groups – for example based on affiliation to Islamic schools or clerics, affiliation to political parties, shared work, kinship or membership of a martial arts group - overlap and diverge creating complex human networks and cleavages which emerge and dissipate in conflict situations. In this context, the report concludes, there are many actors engaged in informal dispute resolution, but there are no mechanisms. Generally, disputes cannot be resolved successfully when either actors do not have the social and political legitimacy and capital, and/or when the dispute involves significant external interests (World Bank 2005:4). The study indicates that the informal 'security sector'(bajingan) as a significant innovation affecting informal dispute resolution since 'regional autonomy', which has facilitated greater discretion by police in how disputes are resolved as well as their engagement with community leaders.

This study asserts that in East Java people can engage in forum shopping (K. von Benda Beckmann, 1984:37), choosing between dispute resolution actors, who are authoritative people in spite of the fact that they often do not occupy a leader position in any normative

order hierarchy. That creates vagueness concerning the basis of their authority and legitimacy, and on the type and validity of the rules they apply. The authors argue that this situation calls for 'meta rules' which refer to overarching rules or processes for choosing between these various dispute resolution actors and norms in order to prevent disputes arising over how a dispute should be resolved and what is an appropriate outcome (World Bank 2005:20). Such meta-rules would clarify the jurisdictions over where specific types of disputes are resolved.

In spite of the fact that the study reported about the complex situation regarding local level dispute resolution in East Java, including findings that did not really suit the argument in favour of local alternative dispute resolution mechanisms, such as the emergence of militia-like groups as intervening party, the recommendations of this report all concern interventions based on the specific situations in East Java:

- Create a new village dispute resolution body, that is accessible for women and poor
- Women policing and strengthen women's rights discourse
- Create new inter-village forums
- Create an administrative tribunal for disputes between local and district government

These recommendations raise the question why the existing state law and institutions cannot mitigate these institutional gaps. Moreover, if these interventions were to be implemented, who would have the authority to do so? This question brings me back to the issue how, also in this report, access to justice for poor and disadvantaged is rendered technical so that the problems involved can be solved by building new institutions (Li 2007:7), without acknowledging that political society is the key arena for introducing pro-poor politics (Hickey 2009:474), when it concerns local dispute resolution.

E. Creating New Hybrid Institutions at Local Level

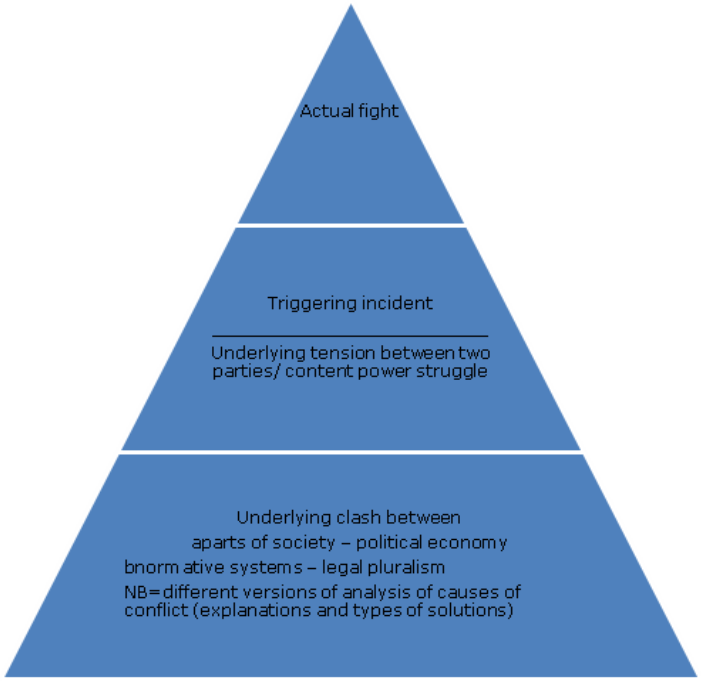
The findings of various studies within the Village Judicial Autonomy program provided the basis of a synthesis report published in May 2008 under the title *Forging the Middle Ground: engaging non-state justice in Indonesia*. This final report is policy-oriented and streamlined towards developing local, rather than traditional concepts of justice, along democratic and inclusive principles. The primary source of data for this report is 34 case studies collected from research commissioned by the World Bank's Justice for the Poor team in cooperation with local NGOs and universities. These cases concern local (meaning: village) level disputes that are handled by state and non-state justice mechanisms, and all include information of disputants, mediators and documentation. Data from the 2006 Governance and Decentralization Survey (GDS) supplemented the qualitative research. The survey uses a 'dispute typology' that categorizes reported disputes into: criminality, land conflict, inheritance, marriage and divorce, domestic violence, election disputes, abuse of authority and ethnic or religious conflict. This report departs from the GDS dispute typology, and not from key justice related issues experienced by the poor and disadvantaged as the UNDP *Justice for All report* did. In terms of the Rolax framework this report concentrates on the phases in the process of seeking access to justice that are indicated as "access to forum of redress" and "handling of grievance".

The report characterizes the 34 cases included as: 17 cases of land, natural resource and environmental damage disputes, seven of petty crime or light assault, four of murder or manslaughter, three of rape, sexual assault or domestic violence, two concerning marriage, and one of 'adat insult'. This characterization refers to the actual fights that were reported. Yet, these actual fights are usually triggering incidents that have a link with underlying

tensions between two parties to which the disputants belong. The way the actual fight takes place, why it occurred and what it represents requires a deeper analysis than the description of the cases in this report provides. A typology of reported disputes as used in GDS is limited in the sense that it categorizes only the legal disputes,[16] and does not include other aspects of the conflicts involved, which might be vital for understanding the process of seeking access to justice. Those aspects are crucial for categorizing problems, phrasing those as grievances and for deciding how those grievances are registered as claims to the most proximate source of redress the party perceived to be responsible.

Figure 4 depicts the layers that can be distinguished in conflicts.[17] The lowest layer consists of the underlying clash between groups or parts of society. At that deeper level there are various normative systems and various interest groups producing their own master narrative on the conflict and its analysis. Political economy and legal pluralism refer to the deeper layers of the conflict; case studies that only take the actual fight or triggering incident into account do not address questions of causes of power differences or normative pluralism. They address the procedures for access to justice, but not the cause of injustice and thus the road to a lasting solution (or even prevention) of the conflict.

Figure 4 Conflict layers pyramid



Forging the Middle Ground argues in a sophisticated way that non-state justice in Indonesia is critical to any efforts geared towards strengthening access to justice program. The report documents successful cases in which women and other disadvantaged groups could improve their access to justice through non-state justice mechanisms and cases in which the state and non-state justice system co-operate well. The report aims to develop a (policy-) framework 'for engagement' with non-state systems that respects local traditions but is based on Indonesian constitutional standards. This means that human rights are implicitly used as reference for substantive quality of the non-state mechanisms (World Bank 2008:28). The study was launched "to forge a meaningful middle ground of local, rather than traditional justice, tapping into broad based local constituencies for reform beyond the traditional elites" seeking "to marry the social accessibility, authority and legitimacy of informal processes with accountability to the community of the state" (World Bank 2008:9). 'Local' justice refers

to the hybrid institutions, invented and created according to principles of human rights and liberal democracy, in contrast to the 'traditional' justice that is part of the larger customary law (adat) system which is not based on those principles.
In *Forging the Middle Ground* non-state justice is basically "local dispute resolution" – arbitration and mediation practiced by village heads, traditional customary leaders, neighbourhood heads and religious leaders – sometimes based on tradition, but equally often on the subjective assessment of community leaders without explicit reference to either state or customary law"(World Bank 2008:ix). The village head is pivotal in the non-state justice mechanisms discussed in *Forging the Middle Ground*. Such a person holds a state office but has acquired it often because of legitimacy as leader in other normative orders than the state. Police is also often categorized as non-state actor, or both formal and informal or non-state. This leads to the conclusion that 'local' – village level – is a more accurate qualification than 'non-state' for the dispute resolution mechanisms the World Bank studies are looking for. The fact that in the FMG report there is no discussion on whether non-state justice mechanisms can also be found on district, provincial or national level, supports this conclusion**.**

The report measures the quality *of procedures* in non-state justice mechanisms in various ways: accessibility, pace (rapid or not), effectiveness and also transparency, accountability, equal treatment for all citizens. In the first three criteria actual non-state mechanisms perform better than the formal justice system, whereas the last three criteria are seen as weaknesses of those non-state mechanisms. That is why the FMG study seeks to combine the social accessibility, authority and legitimacy of informal processes with accountability to the community and the state. The recommendations of the report are summarized in the 'Framework of engagement':

Table 2: "Framework of Engagement": recommendations of Forging the Middle Ground (World Bank 2008)

Level	**Priority Action**
Grassroots/Community	• Increase rights awareness among women and minority groups • Increase downward accountability among dispute resolution actors, by having the public elect them • Legal literacy and circuit court programs to increase access to formal system • Support social mobilization and organization to address trans-communal disputes
Village institutions and Non-state justice actors	• Build the skills and capacity of non-state justice actors to resolve disputes professionally • Support clarification of structures and norms • Support representation for women and minorities in village institutions
District level	• Establish regional regulatory framework that enshrines constitutional standards ensuring right of appeal, humane sanctions and representation for women and minorities • Build upward accountability by supporting civil society and government monitoring and oversight
National level	• Court regulations clarifying the jurisdiction of non-state justice *vis a vis* the courts • Consider establishing Community Justice Liaison Unit to encourage compatibility and consistency between non-state and state justice

What is proposed through the recommendations in this "framework of engagement" is to create new rules and institutions that are based on a hybrid of various normative orders. This raises a number of questions: what is "non-state" justice? What is the legitimacy and authority of non-state leaders based on? If the aim is to have new, hybrid institutions, who would be able to decide on making such a hybrid and its substance and procedures? Reference to non-state justice mechanisms in FMG does not mean that this report includes findings of research into the substance of other normative orders than state law. Yet, understanding the existing normative repertoire and whether various categories of people can make use of it, and how they develop preference for one normative system and its redress mechanisms over the other, is only possible through insight in the substance of those alternative normative orders. However, the FMG report concentrates on the procedural rules that belong to each normative order, and it documents leadership and enforcement. The recommendations of the FMG also particularly address the procedural and institutional issues for 'priority action'. They do not pay attention to the basis of validity of the desired innovative hybrid. In other words, what are the driving forces that support innovative local dispute resolution, allowing them to differ from the existing justice mechanisms?

The final issue pertaining to 'non-state justice' is whether the FMG report really promotes mechanisms that do not belong to the state. Reading the recommendations of the FMG report one gets the impression that these are actually directed at the members of an overall institution that can decide on these issues, and implement (or enforce) them. Wouldn't that be the state? The envisaged 'framework for engagement with non-state systems' includes "making dispute resolution actors accountable, making them electable by the public, building capacity to resolve disputes more professionally, supporting clarification of structures and norms, establishing a regional regulatory framework and regulating the jurisdiction of non-state justice." The 'framework for engagement' thus seems to be a program for activities by a state-like apparatus to reorganize existing dispute regulation mechanisms making them more accountable and democratic and incorporating them in an overall structure for monitoring and oversight. That overall structure has the power to regulate, as the recommendations for the district and national level suggest. In this way, the plea for non-state justice turns into a set of recommendations on how to reorganize state institutions.

V. Conclusions

Research on the scope of existing barriers for access to justice that Indonesian citizens experience, in particular the poor and disadvantaged, and how this can be overcome has various approaches. The discussion in this article has shown that both the World Bank's Justice for the Poor as well as UNDP's team involved in *Justice for All* study utilized a research approach in which their organization's ideology is reflected in the selection of topics and methodology, which ultimately influenced the scope and nature of recommendations proffered. The Justice for the Poor program rephrased the question in terms of problems that can be resolved by expert intervention.

The recommendations resulting from J4P research projects propose interventions to improve 'a failing justice system'. These include a series of activities that echo the mantra "Inform, Mix, Create, Enforce" rather than the three part framework of New Institutional Economics "Inform, Enforce, Compete". The J4P reports' recommendations concern increasing rights awareness and legal literacy among villagers as well as strengthening women's rights discourse (Inform); mix the efficient procedures of 'non state justice' with substance derived from state law and human rights principles (Mix); create a new bureaucratic culture through

fighting corrupt practices; creating new institutions like a new village dispute resolution body, that is accessible for women and poor, new inter-village forums, and an administrative tribunal for disputes between local and district government (Create); include all these new rules and institutions in a regulatory framework and a National Strategy that can be enforced (Enforce).

The UNDP study *Justice for All* shows that the research team addressed both questions of poverty and access to justice. However, the report also illustrates how difficult it is to link these two features without discussing the political economy context of the areas involved. Moreover, on a conceptual level, access to justice is a right that cannot always be linked with poverty eradication, because it is much broader in scope, and applies to all citizens and not just the poor. In access to justice research concentrating on 'the poor and disadvantaged', it is necessary to define these categories and specify in each context who are included. Since being disadvantaged is a relative and often subjective attribute, it should also be clear who decides on the definition of being disadvantaged. The definition used in the *Justice for All* report is difficult to apply, leaving it up to the research team to select for surveying. Most important, the report does not discuss that ultimately politics decide on which poor will be protected or will gain access to justice.

In contrast to one of the main general results of studies on 'little d' development in rural areas that show that capitalist development leads to rural differentiation and class formation (Boras, 2009:13) the UNDP report (2007:39) posed the statement that "the key assumption underlying the selection of disadvantaged groups as respondents is that in general, the disadvantaged would face similar barriers to access to justice as villagers who were better-off, but to a greater extent." The contributions of D'Hondt and Vel and Makambombu in this issue provide evidence against such a view that ignores the actuality of persistent inequality. Taking key justice related issues that poor people experience as a point of departure for research on access to justice for the poor - as UNDP's *Justice for All* did - seems to be a more logical approach than starting with a pre-determined type of (intervention-related) solution.

However, in the report there is a disconnect between the key injustices as mentioned by respondents and the proposed measures for overcoming the barriers to justice. Further research could focus more attention on analysis of the injustices or key justice related issues experienced by the poor, and to initiatives that do not necessarily follow the path of legal awareness-legal empowerment-access to formal justice institutions. The VVI approach can be seen as building on UNDP research that begins by describing the key justice related issues identified by the poor and disadvantaged. The Rolax scheme begins with the 'real life problems of the justice seekers' and then connect these to the normative repertoire available to the justice seeker through the process of becoming aware, categorizing, phrasing grievances and making claims.

This point reveals the tension between policy intervention research and knowledge research, which characterizes the difference in approach between VVI, UNDP and J4P. The core of that difference is whether "interventions are the product of experts' design or need to be understood as emerging in response to historical and underlying processes of (capitalist) development and political processes of state and citizenship formation, i.e. in relation to 'little d' development rather than 'big D' Development" (Hickey 2009: 475). Collaboration can accomplish that knowledge generated by studies on little 'd' development can provide realistic analysis of the existing barriers for access to justice, and will be used by the practitioners to

design interventions that will have greater prospects of decreasing those barriers than interventions based on ideological blue-prints.

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[2] See the article of Adriaan Bedner and Jacqueline Vel in this issue.
[3] See Bedner and Vel in this volume for a discussion on the definitions of 'access to justice'.
[4] Website of the Justice for the poor program: http://go.worldbank.org/6KD7VL0ZJ0 (accessed August 2010)
[5] LEAD website: http://www.undp.org/legalempowerment/projects_indonesia.shtml

[6] The provinces selected in this study are: West Kalimantan, Maluku, North Maluku, Central Sulawesi and Southeast Sulawesi.
[7] In the report *Access to Justice in Aceh: Making the Transition to Sustainable Peace and Development in Aceh*, published by UNDP and Bappenas, there is ample attention for religious law and adat law that exist next to state law.
[8] See also: Bruce 2007:3.
[9] See also the LEAD website http://www.undp.org/legalempowerment/projects_indonesia.shtml
[10] Justice for the poor program website's page for Indonesia, http://go.worldbank.org/6KD7VL0ZJ0 (accessed 10 Auguts 2010).
[11] See for more elaborate discussion of this issue the chapter on legal pluralism in village politics in my book *Uma Politics* (Vel 2008:108-111).
[12] The title of the report that is written in Indonesian is: *Dynamika penyusunan, substansi dan implementasi pelayanan publik.*
[13] See also M. Ryaas Rasyid (2003) "Regional Autonomy and Local Politics in Indonesia" in Edward Aspinall and Greg Fealy (eds*), Local Power and Politics in Indonesia: Decentralisation & Democratisation* Singapore: Institute of Souteast Asian Studies, p 63-71.
[14] Dewi Novirianti analyzes an example of NGO initiatives for making a regional regulation to protect a specific vulnerable group of citizens in one district in West Java (see Novirianti *this issue*).
[15] World Bank 2007:8.
[16] A dispute exists when a claim based on a grievance is rejected in whole or in part. It becomes a civil legal disputes when it involves rights or resources which could be granted or denied by a court (Miller and Sarat 1980-1:527).
[17] See Tilly (2003), Brass (2003), and Vel (2008:125-48) for an application of Brass' analytical framework on an Indonesian conflict situation.