

Celebrating 50 years of Indonesia- Netherlands legal cooperation

Strengthening legal certainty through legal aid

By Ward Berenschot

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

Pak Delfius now deals with marriage disputes, local fights, land disputes, but most of his time goes into dealing with the mining companies. His village has so far staged several demonstrations against mining companies. This has convinced the companies to provide some funding for 'community development', but the unclear legal status of customary land and the lack of cooperation from the local government has made it difficult for Buli's villagers to get a good price for the use of their land. Pak Delfius bemoans the way the village heads have been bought by the mining companies, but he is most dismissive of the local politicians and the civil servants: "There is no real democracy here. The

government here is suppressing the people, because it is in their interest to help the mining industry”.

I met Pak Delfius in 2009, when I was involved a program to strengthen access to justice in Indonesia. In that period I conducted [a study on community paralegals](#). These experiences stimulated me more recently to help set up a legal aid program in Central Kalimantan to help communities address the grievances caused by the influx of mining and palm oil companies (which, in turn, led me to initiate [a similarly focused research program](#)). Such conflicts between rural communities and mining and palm oil companies over access to (and compensation for) land are widespread in Indonesia. The resolution of such conflicts has proven difficult, as the grievances of rural communities – about pollution, land grabbing, and the paltry compensation they receive for the loss of livelihood – are rarely addressed effectively.

One reason why such conflicts have proven so difficult to solve, is that the resolution of such land use conflicts cannot really rely on legal institutions. In the context of an official legal system that is seen as remote, difficult to comprehend, expensive and corrupt, it is not easy to get to law applied to settle a specific dispute. This inaccessibility of legal institutions can limit the capacity of weaker sections of society to protect their rights. Their lack of contacts, money and education made Buli’s villagers a poor match for the well-endowed, well connected mining companies who find it easy to impose their terms on any settlement about compensation their extractive activities.

Paralegals are a relatively cheap tool to overcome the obstacles that prevent poorer sections of society from invoking legal provisions to defend their rights and increase their bargaining power. Perhaps just as importantly, such legal aid might be a tool to strengthen legal certainty: the legal knowledge and organizational skills provided by paralegals can serve to protest against malpractices of politicians and civil servants that often undermine the application of the law. Access to justice has declared Access to Justice as [one of the sustainable development goals](#) (SDG 16), thus stimulating governments and donor organisations to make greater efforts to make the law work for everyone.

Yet this awareness of the potential of legal aid is not really visible on the ground in Indonesia. At present, the very limited number of legal aid organisations in Indonesia are overwhelmed by the large number of land use conflicts such as the one in Buli. There are too few paralegals to address these conflicts, and while there are a number of projects (including [ones set up by Dutch donor organizations](#)), the investment is small compared to the need. And while the Indonesian government has adopted a legal aid bill (UU Bantuan Hukum) to fund legal aid, much of this funding is focused on legal representation in court. Both the Indonesian government as well as foreign donors seem to prefer more traditional legal development programs, which focus on strengthening legal institutions by, for example, training judges and civil servants and drafting new regulations.

In Indonesia, the big drawback of such top-down legal reform efforts is that they generally leave intact the nefarious incentive structure facing civil servants, politicians and judges – [which I have discussed elsewhere](#). Already weak legal institutions are easily undermined by informal exchanges of favours between, for example, above-mentioned mining companies, politicians and civil servants. These exchanges are a driver of legal uncertainty, as they allow such actors to evade a straightforward application of laws and regulation. The incentives underlying such exchanges are not a matter of a lack of skills or legal knowledge. This incentive structure is due to the lack of a countervailing civil society [that can serve as a deterrent to such exchanges](#). That is what bottom-up legal empowerment programs can provide. Governments and development organizations need to spend less time supporting well-off judges through trainings in fancy hotels. Instead they need to get down to the ground and support the communities that are trying to make the law work for everybody.