

## **Going to Court, or better not? Considerations of 'ordinary people' and judges in regional Indonesia**

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Indonesia's legal system foresees in a court of law in each of the nation's regions (*daerah*) with the possibility to appeal at the provincial and –ultimately- the national level. However, the court system is plagued by a heritage of corruption (real or perceived) dating back to the pre-*reformasi* New Order as well as by a reputation of inaccessibility that in local legal circles is thought to keep the 'common citizen' away, even if he has a case that should be brought before the court. Regional-level judges, usually young people off on their first assignment, express both frustration as well as a lack of understanding of this. Why are so few cases lodged with them, and why only under certain circumstances?

Yet judges as well as these 'ordinary people' are aware that other conflict-deciders are available as well; village elders, customary leaders and local interest organizations often fulfill this task with considerably less fuss and procedure, even though legal procedure may leave much to be desired and application to these forums is not always voluntary.

This paper considers litigation choices made by 'ordinary people' in cases in East Kalimantan regions. I discuss why certain forums are addressed in specific cases, and where the courts of law stand among the various conflict-deciding authorities. This leads me to consider the position of the courts within the legal consciousness of local society as well as the types of justice that are being accessed through the various forums. Are the courts and a new generation of judges able to shed their inherited reputation, or is justice still going to the highest bidder?

## **Legal consciousness and its relation to access to Justice in Southeast Asia**

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This paper explores how legal consciousness is related to access to justice in the context of Southeast Asia. After an overview of the literature on how legal consciousness shapes behaviour of potential justice seekers, the paper examines whether the categories and insights from this literature are helpful to analyse processes of poor and disadvantaged groups who may or may not perceive their problems in terms of injustices, and who may or may not enter a corresponding avenue to seek redress. To this end the relevant results of twelve case studies of a project called Access to Justice in Indonesia are used. The paper also pays attention to the consequences following from framing problems as injustices, which is one of the main features of the current policies promoting access to justice and legal empowerment.

## **Mediating Justice: Paralegals and the politics of grievance handling in Indonesia**

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This paper is a study of the functioning of two groups of paralegals that form part of a UNDP and a Worldbank project that both aim to help poor and disadvantaged citizens to deal with experienced injustices. As part of intensifying efforts to strengthen the rule of law through the ‘legal empowerment’ of the poor, both the Worldbank and UNDP have started projects to train and support local paralegals as a means to address the unequal access to justice in Indonesia. These paralegals do not just operate at the crossroads between citizens and justice systems, they also operate at the crossroads between state and non-state justice systems (as they advise their clients on which forum would be more appropriate to handle their grievance), at the crossroads between considerations about law and rights and considerations about local power structures (paralegals and the cases that they handle are elements of local power struggles) and at the crossroads between the language of local normative frameworks and the language of the law (as paralegals help to translate the grievance felt by the client into justifiable claims). This study aims to gain insights into how paralegals operate at these different crossroads: By combining ethnographic fieldwork of the functioning of paralegals with a study of the documentation gathered by UNDP and Worldbank, this paper discusses how paralegals of both projects deal with the tension between their (and their project’s) commitment to the strengthening of rule of law and their need to help clients by dealing pragmatically with the local ‘rules of the game’.

## **VIRTUOUS LEGALISM: THE WORLD OF THAI JUDGES**

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In May 2006, prominent public intellectual Thirayudh Boonmi coined the term *tulakanpiwat* (judicialization) to describe a new turn in Thailand’s political life. Judicialization has entered popular discourse as a shorthand for a series of apparently royally-mandated moves by the judiciary that have helped reshape the country’s political direction. Thirayudh’s starting point was a speech by King Bhumibol that precipitated the annulment of the controversial April 2006 elections. In that speech, Thailand’s long-serving monarch directly called upon the judiciary to help solve the country’s most intractable political problems. Since then, the courts have banned several political parties, removed prime ministers from office, and confiscated 43 billion baht in assets belonging to former premier Thaksin Shinawatra. Thailand’s three thousand judges have become central to understanding their country’s politics – but who are they? Drawing on fieldwork currently in progress, this paper focuses on their recruitment, promotion, career trajectories, world-views, aspirations and self-understandings, with special reference to their attitude to the political tensions currently tearing Thailand apart.

## **Perceptions of Justice in the Khmer Rouge Tribunals: Anthropological Perspectives on the ‘Glocalization’ of International Law**

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This paper presents an anthropological analysis of concepts of justice in contemporary Cambodia in the context of the Khmer Rouge Tribunals and addresses issues regarding the glocalization of international law and universal (or ‘natural’) ethics. Adopting a basically cultural-relativist perspective, legalist notions of ‘international justice’ will be critically discussed and alternative ways of localizing ‘global’ ethics proposed.

Based upon an analysis of perceptions of justice in traditional Cambodian society on the one hand, and notions of social justice and the idea of ‘just(ified)’ violence during the Khmer Rouge period on the other hand, this paper surveys the myriad concepts of ‘justice’ as they have been displayed in the course of the Khmer Rouge Trials in the Extraordinary Chambers in the Courts of Cambodia (ECCC), a hybrid tribunal, set up to charge senior leaders of Democratic Kampuchea and those ‘most responsible’ for crimes committed during April 1975 and January 1979. The analysis of ‘justice’ concepts in this context is not limited to legal precepts of retributive and restorative justice, but includes also the wider aims of the tribunals – reconciliation and strengthening the rule of law in contemporary Cambodia – as well as the persistence of alternative (extra-legal) ideas of justice in the court room, e.g. notions of ‘psychological peace’ and demands for vengeance among the Civil Parties and the Victim’s Unit of the ECCC, or personal justification strategies of Kaing Guek Eav alias ‘Duch’, former director of the political prison S-21 (Tuol Sleng) and currently accused of crimes against humanity, grave breaches of the Geneva Convention and crimes under the Cambodian Penal Code of 1956.

On the basis of courtroom observations, interviews and a review of the transcripts of the proceedings, this paper suggests that the tribunal has, so far, failed to foster “Western” notions of the “rule of law” in Cambodia. However, the existence of the ECCC and the wide interest Cambodian society has taken in its work, has stimulated public discourse on ‘justice’ and continues to help reconstituting alternative frameworks of legal consciousness in contemporary Cambodia.

## **Alternative Notions of Social Justice and Customary Law Councils in Post-New Order Bali**

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In 2001, Balinese provincial legislation revitalized local customary law by declaring traditional villages as autonomous law units. This revitalization entailed the institutionalization of Traditional Village Law Councils on the sub-district, district and

provincial level. The legislation was slightly amended in 2003 and received legitimacy on the national level through Decentralization Update Law No. 32/2004.

The paper will first of all discuss the religious embeddedness of the legislation and the institutions it has brought forth, in order to then take a close look at the kind of grievances it has responded to. An overview over cases that have so far been brought to the attention of the Traditional Village Law Councils will illustrate notions of social justice that have remained unaddressed by State Law.

## **Judicialization and Social Movements in Thailand**

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In Thailand, the question of judicialization of politics is in the very centre of the current political conflict between the yellow royalist-conservative elite and the red-shirt camp of Thaksin supporters. The process of judicialization can be traced back to the constitution of 1997 and the introduction of various "politically neutral" bodies like the constitutional court, the administrative court, the election commission etc.. However, it was only after the coup d'etat in 2006, with the King's address to the judges and publications like Thirayuth Boonmee's essay on *tulakanpiwat* (judicialization or rule of law) that the issue was openly discussed - and challenged: the yellow camp calls for further judicialization to overcome the problems of the political system. The red camp sees courts as part of the undemocratic system of aristocratic dominance (*amatyathippatai*).

Although the term *tulakanpiwat* is ubiquitous in current Thai political discourse, it is suspiciously absent in the debates of social movements. In other words: the current political discourse seems to be de-linked from political groups with a long term agenda, working on specific social and political problems.

For illustration, I will analyse the campaigns of one grass-roots social movement, the *Thai Network of People Living With HIV and AIDS* (TNP+) which has been very active and politically influential between 1999 and 2008. TNP+'s main goal was access to essential drugs for the treatment of AIDS. Initially, their campaign was conceptualized as legal struggle, centering on a court case against a transnational pharmaceutical company. What was at stake was the tension between different fundamental rights, like the right to medical treatment versus intellectual property rights.

However, although TNP+ succeeded in court – at least partly - they left the legal arena and shifted to political campaigns under the umbrella of a coalition of groups working on bi-lateral free trade agreements. This re-orientation can also be seen in the way how TNP+ engaged in the constitution drafting process in 2007. However, it contrasts to the strategy of fellow movements like *Treatment Action Campaign* (TAC) in South Africa who consistently use the legal arena to fight for their cause.

As a tentative conclusion, I will argue that my paper supports the findings of Engel's 2005 work on legal consciousness in Thailand – albeit from a different angle: Political activists on the grass-roots level seem to move away from a legal concept of political struggle. However, differently from what Engel describes as re-emergence of traditional world views, social movements seem to develop an alternative progressive pattern of political practice, very much based on a rational assessment of their concrete political experience.

Engel, David M., 2005, Globalization and the Decline of Legal Consciousness: Torts, Ghosts, and Karma in Thailand. *Law & Social Inquiry*, Vol. 30, No. 3 (Summer, 2005), pp. 469-514

## **The Tricky Fishermen Seeking Justice in Fishery Disputes**

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Some scholars, bureaucrats and company employees perceive the fishermen of the Mahakam Delta of East Kalimantan, Indonesia as greedy, tricky and money oriented. They accused the fishermen have practiced some tricks to trap the company as of the company did ruined their vessels and gears, as well as caused their shrimps died. Apart from the label given to them, the fishermen actually have developed various arguable explanations why they think that they are entitled or deserved to get redress. Some of them used economic consideration, while others used historical consideration. The argument does not always depart from the way they see them selves, but also from they way they perceive bureaucracy and the company. In trying to get the redress from government and the company, the fishermen use informal and formal mechanism. *Punggawa* system and politico-kinship network are part of the informal mechanism, while *Tim Penyelesaian Masalah* or District Committee for Conflict Resolution is part of the formal mechanism. Instead of using those two mechanisms separately, the fishermen often used them at the same time.

This article aims to examine the arguable explanation used by the fishermen to ask redress. Part of it is how the fishermen have developed their perception about their rights and other user's rights over the fishery resources. Further, this article will describe various rooms the fishermen chosen to settle their fishery disputes. Part of it is their initiatives to converge the social and political network.

## **Access To Justice For “The Guilty Ones”: The Trial Of Duch In The Extraordinary Chambers In The Courts Of Cambodia (ECCC)**

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In the eyes of French colonial scholar-administrators, criminal justice in early-modern Cambodia was largely a matter of policing and punishment. Civil disputes were mediated, sociologically and administratively, by local headmen whose rulings or instructions were often guided by *chhbap*, normative codes of conduct enjoining individuals to respect and to submit to customary status hierarchies. France established the framework for a modern criminal justice system in order to secure and protect its diverse political and economic investments but this operated alongside the indigenous justice system. A neo-colonial, hybrid system persisted after independence from colonial rule but slowly disintegrated under the militarized Khmer Republic (1970-75). The revolutionary Democratic Kampuchea regime (1975-78) had no court system or penal code; its system of state surveillance effectively criminalized free speech, political opposition and “immorality”. The criminal justice system reorganized since the 1980s is widely seen as ineffective and lacking in independence from the state. *Access* to justice, defined as recourse to law, a fair trial and equitable sentencing, is

an elusive political aspiration for most Cambodians. Victims of illegal, unlawful or criminal acts are frequently denied legal redress while those arrested, detained or imprisoned by the state are “the guilty ones”. In the absence of any presumption of innocence or of adversarial due process, hearings are brief and verdicts often swift to follow. Defendants lacking in power, influence, wealth or other forms of social status rarely succeed in disputing the charges laid against them. Lack of judicial independence, the procedural legacies of colonial and people’s tribunals and normative pluralism are readily apparent in the work of the United Nations supported Extraordinary Chambers in the Courts of Cambodia. This paper explores problems of ‘legal consciousness’ and conflict in relation to criminal justice in Cambodia with special reference to the trial of Duch.

### **Legal consciousness and contested spiritual landscapes on Lombok, Indonesia**

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In January 2008, a Hindu Balinese temple (Pura Sangkareang) located on the border of West and Central Lombok was attacked by a large mob. Citing the need to prevent the escalation of conflict, local authorities have declared that Balinese may not conduct rituals at the site. By examining how Balinese conceived this incident and their attempts to resolve the situation, this paper contributes to discussions of the interplay between different legal orders, what Santos (1995) calls interlegality. I approach the issue of legal consciousness by highlighting the spatial dimensions of different legal orders in relation to ongoing religious reform among Balinese and Sasak. Although the Sangkareang temple and its sacred spring is part of a ‘spiritual landscape’ (Allerton 2009) connecting Balinese and Sasak for centuries, their shared involvement with the land and its forces was largely absent in ‘official’ efforts to solve the situation. The incident was lifted out of its localised territorial context, and framed as a ‘religious’ issue pitting (local) Muslims against (non-local) Hindus. In their efforts to seek redress, Balinese invoked the normative order of modern state law and appealed to the global rhetoric of human rights. While state officials blamed the Balinese for failing to obtain a permit to build the temple, as stipulated in the Joint Ministerial Decree on Houses of Worship (2006), Balinese held that they complied with the law since the temple was simply renovated. The paper also considers why the Balinese involved the National Indonesian Human Rights Commission, and discusses why this strategy failed to give most Balinese a substantial sense of justice.

### **Embodying Autonomous Consciousness for Ideal State of Social Order (exploring a theoretical framework for empowering people access to justice)**

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This article shows the importance of the embodiment of autonomous consciousness in creating and strengthening the ideal state of social order. It elaborates some constitutive elements in the existence of human being, such as material (physical level); cellular (biological level); autonomous consciousness. In this respect, the core existence of human being stems from consciousness that creates positive values either for personal or collective life, such as truth, honesty, goodness, love, generosity, and so forth. The embodiment of those positive values is a minimum requirement to guarantee the ideal state of social order. Based on the above reason this article offers two main approaches in embodying those positive values, that are: (i) normative approach, and (ii) practical approach. At the normative approach, the government may identify, classify, review, reevaluate and reconstruct any incoherent values (in positive laws) to the autonomous consciousness elements. Then, at the practical approach, the government and society may create learning communities that facilitate dialogues and communication for stimulating, and strengthening the legal awareness of people in understanding, appreciating, and practicing the autonomous consciousness in creating the ideal state of social order.

### **Divorce practice and post divorce rights in Cianjur, Indonesia.**

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In Indonesia women and their children are often left by their husbands without a proper divorce and without financial arrangements with their former husband having taken place. Although legal awareness about divorce-related rights (common property, alimony, child support) is very high, these divorced women often lack the will to bring a case to the courts when the husbands is not willing to fulfill his legal (and religious) obligations voluntarily. Furthermore, Cammack, Heaton, Feener (2007) have estimated that as many as 50% of the divorces are legally invalid as conducted out-of-court. In these divorces women obviously cannot seek enforcement of divorce-related rights by the Islamic court as the divorce is not legally recognised. For Cianjur, West Java, the number of invalid divorces is even higher. Why do so few women in Cianjur take their divorce to court as required by law?

This paper proposes two main answers. One lays in a lack of access to justice, including access barriers to the court - but also a lack of enforceability of court decisions concerning post-divorce rights. The second answer is more striking: women don't need the alimony and are economically well-capable to live independently from their former husband's financial contribution. This paper thus challenges the often heard assumption that after a divorce women are left with less economical means to take care for themselves and their children.