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Cover Page Footnote

I thank Prof. David Henley for our discussion, which helped shape this paper. Of course, all errors are fully my own.

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Can Affordable Homes be Healthy? Legal Strategy, Socio-Legal Studies and Activism in Indonesia

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Abstract

This article uses two Constitutional Court decisions in Indonesia to exemplify the importance of analysing legal strategies. These decisions declared a rule barring developers from building and selling tiny houses to be unconstitutional and invalid. The article shows that 'justice' in legal procedures still needs further definition, and that judges' elaboration of decisions and their legal reasoning still needs improvement. The article will first discuss the cases, using Legal Strategy analysis. It will then highlight problems with the commoditisation of houses. Finally, it will argue that the problem of unhealthy and unaffordable housing in Indonesia can be resolved, by bringing together activists and researchers in a joint enterprise and tackling the issue as a collective societal project. In turn, socio-legal scholars need to keep including in-depth analysis of case law as one of the foundations of their work in law and society development.

Keywords: Public housing, legal strategy, social movement.

Abstrak

Artikel ini menggunakan dua putusan Mahkamah Konstitusi sebagai contoh untuk menunjukkan pentingnya menganalisa strategi hukum. Putusan-putusan tersebut menyatakan bahwa sebuah aturan hukum yang tadinya menghalangi developer untuk membangun dan menjual rumah-rumah kecil, menjadi tidak mengikat dan tidak konstitusional. Artikel ini menunjukkan bahwa prinsip Keadilan dalam prosedur hukum masih memerlukan definisi, dan penjelasan hakim dan legal reasoning mereka masih perlu dikembangkan. Artikel ini akan pertama-tama mendiskusikan kasus tersebut menggunakan analisis Legal Strategy. Kemudian artikel ini akan menyoroti masalah dari komoditisasi rumah. Akhirnya, kami berpendapat bahwa masalah perumahan yang tidak sehat dan tidak terjangkau di Indonesia dapat diselesaikan, dengan menyatukan para aktivis dan peneliti dalam sebuah usaha bersama dan menangani masalah tersebut sebagai proyek sosial kolektif. Sebaliknya, para ilmuwan sosio-legal perlu terus memasukkan analisis mendalam tentang yurisprudensi pengadilan (case law) sebagai salah satu landasan kerja mereka di bidang hukum dan pembangunan masyarakat.

Kata kunci: Perumahan rakyat, strategi hukum, gerakan sosial

I. Introduction

In many countries, the gap between house prices and income continues to widen (OECD 2021).[1] As a consequence, around the world many people are forced to live in increasingly smaller homes. Journalists have reported cases in Hong Kong, China and India, where poor and migrant working class families are reported to be living in so-called 'coffin cubicles'—extremely small, claustrophobic one-room apartments.[2] In the United Kingdom, during the Covid-19 pandemic, journalists expressed concern about the quality of education for children who lacked a space in which to study privately in their home. They reported a correlation between childrens' educational performance and the size of their homes, and warned that this was being overlooked by the government.[3]

Researchers have described how previously affordable public housing complexes have made way for exclusive and elite enclaves, leading to displacement and gentrification (e.g. Herscher 2015; Madden 2015). They have also argued that housing policy—including for social housing—and governance has taken a neoliberal turn. Researchers have called for state intervention, pointing at the huge private profits made by developers who use public resources, and their consequent predatory and competitive behaviour which disturbs the market (e.g. Kockelkorn 2015).

Kockelkorn (2015) gives examples of the commercialisation of public housing projects in Germany, China and the United States, including problems with repossession of houses that had previously been advertised as social housing by banks, and with people renting out or even selling their social housing. She argues that the result is a social environment that is economically segregated. State intervention in regulating these problems has been demonstrated in Singapore, where housing segregation is indeed the central policy consideration for general issues regarding the welfare system (Lee & Vasoo 2008).

[1] For example, in the Netherlands Rabobank presumes that this condition is not going to improve anytime soon: https://economics.rabobank.com/publications/2021/december/price-growth-hit-its-peak-but-dutch-housing-market-is-far-from-cooling-down/

[2] See reports by The Guardian in 2017: (https://www.theguardian.com/cities/gallery/2017/jun/07/boxed-life-inside-hong-kong-coffin-cubicles-cage-homes-in-pictures), and The New York Times in 2019: (https://www.nytimes.com/interactive/2019/07/22/world/asia/hong-kong-housing-inequality.html).

[3] https://theconversation.com/how-tiny-living-spaces-affect-our-wellbeing-individually-and-societally-172182

In Indonesia, there is a general backlog of available public housing.[4] Additionally, law and policy ensuring access to public housing still discriminate against outsiders (Kusumawati et al. 2018). Kusumawati also argues that this is exacerbated by division, and by the confusion of local and national government roles that accompanied decentralisation, in spite of the constitutional rights prescribed in the 1945 Indonesian Constitution. Article 28(H) specifically guarantees socio-economic rights; amongst others, the right to a healthy living environment, the right to a place to reside, the right to social security, and the right to receive special treatment in order to obtain equality.

The Constitutional Court in Indonesia has the power (amongst others) to review the constitutionality of laws.[5] It can declare laws to be unconstitutional, and thereby invalid. In this article I will describe two Constitutional Court decisions concerning the issue of healthy and affordable housing. One case was submitted by three low-income citizens and the other was submitted by a developers' association.

II. Two cases, one decision

These cases concern Article 22(3) Law No. 1/2011 on Housing and Residential Areas, which states that the minimum floor area for 'single houses' (*rumah tunggal*) and 'row houses' (*rumah deret*) is 36 square metres.[6] This article has been declared not binding by the Constitutional Court, which I will further discuss below.

The cases were not submitted to the court registrar at the same time, although they were registered as if they had been. The citizens' case was submitted first, and a week later the developers' association followed suit.

Reading the court decisions was cumbersome. Many sections were repetitive, seeming to be mentioned only as a formality, without any purpose or further examination of why (for instance) international standards, rules and definitions regarding what healthy homes entail were mentioned, and what weight they would play in the decision-making process, if any. I will summarise important points from the decisions below.

[4] According to the Indonesian National Bureau of Statistics (BPS), this continues to increase - from 11.377.871 units in 2015 to 12.750.000 units in 2021.
[5] Article 24C(1) 1945 Constitution.
[6] This article may not regulate apartments (r*umah susun*) or non-landed housing units, because there is a separate regulation for apartments (Law No. 20/2011), although this is not made clear and was not resolved in the decisions.

1. The citizens' case (No. 12/PUU-X/2012)

The applicants are low-income citizens claiming that owning a house is unaffordable, since their income is only sufficient for day-to-day subsistence. Moreover, they cannot afford houses as big as 36 square metres. The applicants' background and claims are brief, almost scant.

However, the witness for the applicants provides an elaborate argument. The witness recommends that the government and parliament revise Article 22(3) to state that the floor area of single/landed houses and row houses must both meet the eligibility requirements and be affordable. The witness states further that, by eligibility, he means that houses have to be healthy, be of an adequate size, and have good lighting, ventilation, infrastructure, water access, and all the necessary basic facilities. By affordable, he means that the government must provide a subsidy of at least 30% for low-income citizens, calculated according to the ratio of average housing and income at the time the case is being considered; otherwise, low-income citizens would never be able to afford to make a house purchase.

On the other hand, one of the witnesses for the government is director of a public housing development company. He states that he "always follows the purchase price determined by the government" (p. 81 of No. 12).

The judges reject the claims, and declare the case *ne bis in idem* with the case described in the following section.

2. The developers' case (No. 14/PUU-X/2012)

The developers' case is lengthier and more elaborate than the citizens' case described above. It is more than 50 pages longer. The developers describe their background and claims more elaborately, and that they agree on how difficult it is for low-income citizens to own houses.

They claim that Article 22(3) is preventing low-income citizens from owning houses, that financing facilities provided by the government are not enough, and that they should be allowed to build and sell houses that are within 21 square metres and less as well. Witnesses for the government are concerned that houses with an insufficient floor area will not be healthy, because they are too small for a family. They are also concerned about how the Article overlaps with citizens'

ability to be exempt from tax, since the Ministry of Finance regulates tax exemption so that it can only be granted for the purchase of houses that are less than 36 square metres.[7] However, this was not articulated very clearly.[8] What is clear is that developers want to be able to build houses that are smaller than 36 square metres.

The court approves of this, declaring Article 22(3) of the Law on Housing and Residential areas, which states that the floor area of single houses and row houses should be a minimum of 36 square metres, to be unconstitutional.

Many questions remain. In the decisions, the character of the nation (*kepribadian bangsa*) and identity (*jati diri*) of society was discussed by expert witnesses from the government. Their main point was that family is important in Indonesian society, and that people often live in one house along with their extended family. Families therefore tend to extend their houses, and such extensions might be constructed from cheap, unsafe, and unregulated materials.

International rights and standards - such as those of the World Health Organization, the International Covenant on Economic, Social and Cultural Rights, and the UN Declaration of Human Rights - were discussed, as well as using standards in other countries (such as Australia, the USA and European countries) by way of comparison. They cited a socio-legal literature and submit them as evidence[9] as well, but as mentioned earlier, this elaborate listing remains without purpose. The lists seem to be there for show, and they did not play a role in the judges' consideration.

Even though the decisions show that international standards and regulations are important to mention, not much can be learned from these decisions regarding what kind of aid can be accessed. The government claims they are not preventing low-income citizens to access financial aid and purchase a house. However, in case No. 12 above, the low-income citizens did not claim rights to any available subsidies or facilities; they claimed only that they cannot afford big houses. Shortly afterwards the judges cancelled Article 22(3).

[7] Article 2 Ministry of Finance Regulation No. 31/PMK.03/2011 (revision of regulation No. 36/PMK.03/2007).
[8] I had to interpret this when reading the decision.
[9] Djaka Suhendera, "Sertifikat tanah dan Orang Miskin – Pelaksanaan Proyek Ajudikasi di Kampung Rawa, Jakarta", Penerbit HuMa, Van Vollenhoven Institute, dan KITLV-Jakarta, Jakarta, 2010.

While the judges stopped their consideration on the issue of whether or not citizens have the right to own houses, Hamdan Zoelva, dissented[10] that not only citizens have the right to own houses, but they also have the right to decent, healthy houses, as prescribed by international rules and standard. He stated that,

"*…the two issues of people's purchasing power and of floor area are not always relevant. The main issue is that affordable houses should not be small. […]. This also means that the state has an obligation to provide facilities for low-income citizens to obtain healthy and affordable houses, otherwise it is equivalent to the state letting its citizens live indecently and unhealthily*".

This is a positive aspect that we learned from these decisions; that there is still room for international rules and standards to be drivers for improvement, if they are taken into consideration in decision-making. They can act as safeguards, to help Indonesia avoid having "coffin cubicles" homes like Hong Kong. Nevertheless, the trend of building quantity, not quality housing is increasingly found globally, as housing is the safest and most profitable commodity for repeat-player developers. This dilemma between availability of housing for the poor and its quality was also not resolved in the decisions. Why? The answer, or at least further analysis, may be found in legal strategy analysis.

III. Legal Strategy Analysis

Legal strategy analysis was originally developed by law and management scholars, in the context of assessing how corporations use law to improve performance, regarding the creation of value and the management of risks (Masson & Shariff 2010). However, the same form of analysis can be used to examine any powerful repeat-player institutions, as has been done when analysing the influence of strategies on the Rule of Law in Indonesia (Kouwagam 2020).

Legal strategy is defined as the decisions actors make about how to deal with the legal system's constraints and opportunities, in order to further their own objectives (Kouwagam 2020:25). We are not implying that actors always perform legal strategies after they have given them lengthy consideration, but we are acknowledging that they may be performed tacitly and pre-reflectively (Swartz 1997:90).

[10] In contrary to Hendrianto (2018), who found that Hamdan Zoelva did not issue many "bold" decisions on the merits of the cases (p. 204-7).

Legal strategy theory can be classified into three approaches: managerial, judicial, and normative. All of these approaches are analytically complimentary (Masson & Shariff 2011). The managerial approach views legal strategy from the perspective of business people, who need to make themselves familiar with the law, in order to be able to use it to manage or avoid risks, and to achieve competitive advantage by outperforming rival companies via legal astuteness (Bird 2010). The judicial approach focusses on litigation and the relationship between lawyers, judges, and legal strategy. It emphasises that legal outcomes are the products of complex human interactions, which cannot be elaborated by 'written law' alone. This judicial approach also implies a normative component: that legal systems should be redesigned to consciously minimise strategic opportunities. The normative approach focusses on the misuse of norms and explores the conditions that create opportunities for legal strategy.

In essence, legal strategy analysis puts actors and how they utilise the law in the spotlight.[11] LoPucki and Weyrauch (2000) aptly describe it, as follows: "[O]ne can no more predict the outcome of a case from the facts and the law than one can predict the outcome of a game of chess from the positions of the pieces and the rules of the game. In either case, one needs to know who is playing" (LoPucki & Weyrauch 2000).

However, so far the analysis has only taken the perspective of litigants and their lawyers.[12] Scholars view judges only as respondents to strategies developed by litigants and their lawyers. LoPucki & Weyrauch (2010) classify legal strategies into: 1) strategies requiring willing acceptance by judges; 2) strategies that constrain judges; and 3) strategies that transcend the judge. However, the case studies above demonstrate that judges also strategise. But before discussing this, let me first provide an analysis of the litigants and how they used the legal system.

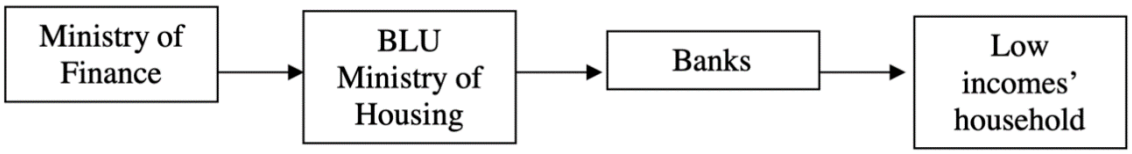
The low-income citizen-litigants were between 23-25 years old.[13] If they claim to only be capable of day-to-day subsistence, how are they paying their lawyers? Their lawyers can be categorized as 'brokers' (Kouwagam & Bedner 2019). The law firm is called Indonesia Property Law, but the office is a run-down house without signage. Their expert witness, HR Abdussalam, is a writer who frequently publishes legal opinions.

[11] Let us put aside the debate on viewing law instrumentally and undermining its ideals and principles (i.e. Justice, Rule of Law) (e.g. Tamanaha 2006).
[12] This theory was developed in the context of the United States.
[13] At the time they submitted the claim to the court.

The developers' association, DPP Apersi, abbreviation of the Central Board of Association of Housing and Settlement throughout Indonesia, was originally formed to pool the interests of medium and small developers in order to get proportional attention from the government. By then and now, it is a large institution with branches all over Indonesian cities, and it has thousands of corporate members that are in the business of constructing houses for low-income citizens. With the lawsuits, DPP Apersi have indeed gained attention from the government.

The Minister of Public Works and Housing then, Djan Faridz responded to the lawsuit in writing to a news media outlet that some developers were able to build 36 square meter houses anyway. The association stated that this is not possible considering the prices of building materials and land, and affordability of the houses for consumers/low-income citizens. Following this debate, the association directed their complaint to the Ministry of Finance, that they could not obtain credit facility from the said ministry because it is allocated only for houses that are 36 square meters.[14] This financing system is illustrated as follows:

Figure 1



Note: This image illustrates housing funding program for the poor. From "Corporate Social Responsibility (CSR) as a Mechanism for Enhancing Low Income Household in Accessing a Quality Affordable House" by Lubis, E. (p. 11), 2018.

As illustrated above, it remains unclear where is the position (and corresponding interests) of DPP Apersi's and developers in general in this program and funding.

To date, the association remains to be in a very close relationship with the government, particularly the Ministry of Public Works and Housing. It receives funding from the ministry to construct public housing, but actual construction is still lagging

[14] https://investor.id/property/30182/pengembang-dapat-membangun-rumah-tipe-36-terjangkau

behind schedule.[15] It has been warned by the government audit board, because of this recurrent issue.[16] In other words, DPP Apersi has not delivered the goods which its sole client/customer—the Ministry of Public Works and Housing—purchased. However, it has never been clear how DPP Apersi is assigned to provide public housing; whether the association has received money from the government to construct houses but has not been constructing them, or the association has to build houses to be sold at a certain price so banks can distribute subsidized mortgage to low-income citizens as consumers.

This brings us to the question of banks. Banks are also interested parties which have been left out of the picture so far, and their role was not considered by the judges in either of the court decisions.[17] As commercial institutions, banks can trade money in the client's account on the global financial market,[18] but their duties and obligations in managing public funds are unclear. Can they withhold payment to DPP Apersi if houses have not yet been delivered? Can they transact the funds that could be in DPP Apersi's account in the financial market? Should they do these? What about the financial structure and liabilities between the ministries, DPP Apersi's account(s), and people's mortgage accounts? These needs urgent further research.

Programmes and financial schemes for more public housing have always received unified support from the government.[19] Recently, the Jokowi administration declared a "Programme for A Million Houses", which has become a buzzword in online media. But, why have the accountabilities of the government and DPP Apersi in regulating the price of housing not been questioned? In the decisions, it seems that the increasing price of building materials is taken for granted, and therefore was not discussed further by the

[15] In July 2019, the Ministry of Public Works and Housing paid for 48,463 unit houses, costing Rp. 4,65 trillion: http://pembiayaan.pu.go.id/news/detail/38/Bangun-10586-unit-rumah-Tahun-2019-Pemerintah-harapkan-Apersi-Tingkatkan-Penyediaan-rumah-bagi-MBR
[16] https://www.bpk.go.id/news/bpk-temukan-permasalahan-berulang-dalam-lhp-atas-lk-kementerian-pupr-dan-kementerian-pertanian. Last accessed, 18 September 2022.
[17] An integrated government institution (part of the Ministry of Public Works and Housing) has been established according to the Indonesian Law on Public Housing Savings, which cooperates with national and regional banks – for instance, Bank BTN, Bank Mandiri, BNI, BRI, and Artha Graha International (see https://ppdpp.id). This law is problematic, because banks can refuse to liquidate people's savings which they have withdrawn monthly as a kind of income tax (see https://www.leidenlawblog.nl/articles/the-panama-papers-as-a-warning-for-indonesian-law-on-public-housing-savings)
[18] id.
[19] id.

judges. The price of land is also mentioned as a problem, illustrating the practice of throwing problems between government institutions.[20]

Moreover, legally speaking, the citizens' case should not have been decided to be *ne bis in idem* alongside the developers' case. Even though their interests might be intertwined, and the goal to cancel Article 22(3) seemed to be mutual, what they were expecting the court to determine was actually different. The citizens wanted to afford healthy homes, whereas the developers wanted to be able to build and sell houses at a price that is accessible to their consumers. They are different parties, with different (albeit related) interests.

Since 2005, the Constitutional Court issued Guidelines for Proceeding in Cases for Judicial Review (No. 6/PMK/2006) which makes it possible to merge similar cases to one integrated decision. Is this the form of merging? Why did the judges seem to disregard the citizens' case? Were they biased towards developers? Did the judges strategise, and if so, how and why?

We cannot find out exactly what the judges were considering and discussing when deliberating in a closed room, but there are court minutes from a voice recording of the hearing as the court was reading out the decisions.[21] In one paragraph, the then Chief of the Constitutional Court, Mahfud, reveals why the court adjudicated the developers' case first, even though it was submitted later than the low-income citizens' case. He states, "*…we will start with case number 14, even though number 12 is an easier case (*perkara yang lebih mudah*), because in number 14 there are more articles being examined on the same law; we will start with this case, so that the case with fewer articles will be included under one consideration*".

This statement shows that judges strategise as well, in order to deliver judgements as efficiently as possible. However, if they are doing so because of indifference, or for their own convenience (to get the work done quickly), who is overseeing the Constitutional Court judges? The Constitutional Court has an internal ethics board, but

[20] The issue of price and availability of land for development is one that potentially involves the Ministry of Agraria and Spatial Planning/National Land Agency.

[21] https://www.mkri.id/public/content/persidangan/risalah/risalah_sidang_Putusan%20Perkara%20Nomor%2078.PUU-IX.2011,%2012,14.PUU-X.2012,%20tanggal%203%20Oktober%202012.pdf . Last accessed, 18 September 2022.

externally, in a decision issued by themselves,[22] they refused to be supervised by the Judicial Commission. This makes external supervision the task of scholars. And they are not alone; activists and the public can also take on this role. In the previous edition of this journal, Bedner and Vel (2021) argue that there is a lack of communication between actors in the legal system, and that the purpose of legal education is still incoherent. This article looks further into the relationship between socio-legal scholars and activists in Indonesia.

IV. Socio-Legal Study and Activism in Indonesia

In thinking about the case study above, and how activism can contribute to people not ending up in the so-called coffin cubicle in Indonesia, an article by de Sousa Santos (2015) on social movement springs to mind. Santos describes two kinds of illegality: illegality of the powerful, and illegality of the powerless. Illegality of the powerful works in two ways. The powerful can use their resources to twist legal adjudication to their advantage, and they can manipulate the legislative process via illicit means (corruption). Those resisting the illegal acts of the powerful risk severe punishment (p. 135-6). Keeping this in mind, I would like to mention that *all* activist work in Indonesia is admirable and more is needed.

Case study above shows disarray between government institutions; Ministry of Housing and Ministry of Finance,[23] which is a contributing factor to the inability of developers[24] to fulfill their obligation to the detriment of the poor and the low-income citizens. Bringing the case to the court also did not solve citizens' problem, since the court only decided on the size of the houses that can be built and sold by developers; small narrow ones are possible, and did not consider the citizens' propositions. The citizens also were not successful in connecting their rights (which has been given by the government in the form of subsidies and aids) and their claims (living in a quality, healthy homes, not cheap but affordable houses).

In this particular area, activism is needed in order to understand and improve access to aid. Please note that the access to aid that I will discuss here is more specific than the discussion on access to justice, which has gained significant attention because of its connection to human rights. In this case, access to aid concerns socio-economic rights;

[22] No. 005/PUU-IV/2006
[23] Also involving Ministry of Agraria, if we take the issue of availability of land into account. Id at 20.
[24] In this case since DPP Apersi received funding from government, they can be considered a quasi-government institution as well.

exclusion of which from human rights is like attempting to draw a line in the sand, it is hard to keep separating one from the other (cf. Sen 2009:385).

1. The Landscape of Legal Activism in Indonesia

Activists are professionals doing non-profit work and dealing with issues of public interest. They reformists who are driven by an ideology for social change. By legal activists, I mean not only lawyers who carry out public interest litigation, but also (for instance) legal drafters, legal experts in governmental institutions, project managers in civil society organisations, and commercial lawyers doing pro-bono work.

Legal activists in Indonesia are individual advocates and issue-based organisations.[25] They can be categorised into three types depending on their proximity to government and judicial institutions: 1) activists who play more active roles in reform process from within the institusions, for instance the Judicial Reform Team in the Supreme Court of Indonesia; 2) activists who take critical position against the government but are willing to compromise in order to support the government's reform agenda. They base their work from academic studies and began their work with policy advocacy;[26] and 3) activists who work entirely from outside of the institutions and are advocating against them through for instance public engagement and public interest litigation, for instance Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI) and Wahana Lingkungan Hidup Indonesia (WALHI).

Activism and scholarship are near neighbours. University campuses are usually important starting locations, which allow for a world full of rich debate. In Indonesia, socio-legal scholars and activists are often close friends, and there is mutual learning between professors and their students. This friendship is built on exchange; for instance, on discussions and travels during fieldwork. Socio-legal scholars from abroad have spent significant time learning about and living in Indonesia. Some examples are the friendship between Daniel Lev and Indonesian

[25] They are also referred to collectively as cause lawyers. See Lindsey & Crouch (2013).
[26] For example Indonesian Centre for Environmental Law (ICEL), Lembaga Kajian & Advokasi Independensi Peradilan (LeIP), Center for Indonesian Law & Policy Studies (PSHK), and Indonesia Judicial Research Society (IJRS).

lawyer Yap Thiam Hien, Adriaan Bedner (whose professorship in Leiden is specific to law and society in Indonesia) and his PhD students, and PSHK activists who cooperated in developing Jentera Law School.[27]

However, activism which deals with Indonesian law has its weaknesses this is perhaps reflected by the condition of the legal system itself.[28] Many individual activists have had to rely on their reputation and charismatic leadership to gain authority in order to be effective. This can be a drawback if the activist is trapped in maintaining their reputation and charisma, and in forgetting what they were striving for when they gained their authority (for example, gaining a seat as a legislator). This also resonates with Kadafi (2016), who is concerned that lawyers who are involved in shaping and drafting public policy whilst concurrently running a commercial practice have not internalised professional rules.

Another weakness is that many issue-based organisations depend on international funding in order to perform (reported by USAID in 2018[29] and research by Australian government in 2015[30]). This dependency is problematic, because the funder can select which development projects to fund or not to fund, and the motives behind this selection become blurry. This is especially notable in terms of government funding, for which political willingness is necessary to keeping projects going.[31] But this issue does not weaken them, they are resourceful and manage to keep projects going, even expanding their funding base to include more donors, albeit still from international funders in the form of bilateral support and multilateral institutions such as UNDP and ADB. Nevertheless, we need to keep making sure there remains strong links between scholarship and reality of legal needs in Indonesia.

[27] For example, Herlambang Wiratraman, Surya Tjandra, Widodo Dwi Putro, and Rikardo Simarmata.
[28] The legal system has been found to be unequally favouring the powerful and the repeat-players, for instance in cases of land development projects (Kouwagam 2020).
[29] Assessment report: Civil Society Organization in Indonesia, in https://pdf.usaid.gov/pdf_docs/PA00T6KQ.pdf. Last accessed, 18 September 2022.
[30] The NGO sector in Indonesia: Context, Concepts, and an Updated Profile, in https://www.ksi-indonesia.org/assets/uploads/original/2020/02/ksi-1580493585.pdf. Last accessed, 18 September 2022.
[31] By way of illustration, in 1992 Indonesia terminated all legal development projects from the Netherlands, because of a statement issued by the Dutch minister of Development Cooperation, which criticised human rights violations by Indonesia in East Timor. Later, the Dutch Council for Cooperation with Indonesia in Legal Matters (*Nederlandse Raad voor Juridische Samenwerking met Indonesie*) was dispersed into separate bodies, for research or substantive legal matters (Van Vollenhoven Institute), and for the management of development cooperation projects (Centre for International Legal Cooperation). See https://www.cilc.nl/inside-cilc-why-and-where-it-all-began-stories-from-the-founding-fathers-2/

These challenges on funding also concerns challenges in obtaining scholarships. Many of the activists and scholars who are able to examine their country and their government critically are educated abroad. The scholars' and activists' ability to be independent is determined by the funding conditions they received. Foreign and/or private funding bodies often grant funding with fewer conditions and restrictions. Rather, scholarships from Indonesian governments often came with restrictions such as prescribing a list of which universities recipients are allowed to go[32], which courses they can take,[33] even seemingly monitor lifestyle of the awardees.[34]

Nevertheless, knowledge and development cooperation projects concerning theoretically big and important issues are quite rich in Indonesia. This is perhaps a reflection on the condition of the autonomy of law in the country itself; for instance issues concerning judicial independence and the rights of indigenous people (cf. Bedner 2016). But as the case study above has shown, there are still many potential everyday legal issues in the courtrooms, which are particular and specific, and which have been overlooked by analysis. This 'law in everyday life' needs to be studied by bridging instrumental and constitutive approaches to legal scholarship (cf. Sarat & Keams 1993). For this we need more socio-legal scholars in courtrooms, studying 'the back of' those courtrooms.

2. A Call for Action for Justice in the Legal Procedure

Indonesian courts have been criticised for their performance. The courts try to reduce these complaints by improving efficiency. They use forms to hasten the decision-making process (Kouwagam 2020: 45-7). This was probably an important push factor in the judges' minds, when they were deciding the two cases above.

In our research, the way legal institutions operate is also an important approach. This has been shown in many exemplary studies on (for instance) the Supreme Court (Rositawati 2019, Pompe 2005), the Administrative Court (Bedner 2001), and the Prosecutorial Service (Afandi 2021). The studies have shown that the internal management of an institution also contributes to its ability to deliver

[32] Following international rankings of universities, acknowledged by the funder.
[33] Following government's priority areas, for instance in Kampus Merdeka exchange scholarship program.
[34] 'Lurah' sistem for LPDP scholarship awardees abroad.

substantive justice. Therefore, justice in legal procedure is not only determined by judges, but also by (for instance) the court registrar, and (to an extent) even the judges' wives (Kouwagam 2020: 116-7). Research on procedural justice needs to be broadened from the narrow meaning of people's perception about whether or not justice is being delivered (Tyler & Lind 2002), to whether or not principles of justice are being applied in the rules and implementation of legal procedure, especially litigation procedure.

3. Housing as a *societal project*

Even though it seems that the mechanism and real workings of public housing finance in Indonesia is still opaque and requires more research, many aspects of the case study above strike a similar chord to what happened in New York. There, a real-estate developer who was well connected to government elites and seemingly able to operate above a democratic system, Robert Moses, enriched himself with money from "public works", by building parks, bridges, and highways, whilst caused a complete failure to the city's public housing system (Caro 1974). In both New York and Indonesia, the housing market is a close-knit network of elite government and capitalists, which shows the need to regulate the market away from unhealthy competition and exploitative practices.

Caro's book (1974) is unrivalled in its thorough descriptions of the political intricacies in urban development projects. There is no literature about this in the context of Indonesia. This is because actors have an interest in keeping their strategies elusive, in order to maintain their competitive advantage. This also applies when using law as a tool to outperform one's rivals (Bird 2010). In Indonesia, this kind of examination about how the powerful use the legal system is still lacking; this is a task for socio-legal scholars.

Socio-legal studies, which involve anthropological and empirical methods - such as participant observation, interviews, fieldwork, etc., - are also concerned with finding an objective truth; to study people's behavior, their motivations, interests and rules, which are guiding them and not enacted only when the researchers are observing. In order to do this, researchers are told to keep a certain distance from their subjects, in order to be objective. Bourdieu was engaged with

these questions of objectivity in his many writings (e.g. 1980; 2003), but he changed his tone in one of his last publications, urging researchers to bring the achievements of science and scholarship into public debate, in order to fight "against the tyranny of the market" (Bourdieu 2003).

Bourdieu (2003:13-14) argues for a new relationship between researchers and social movement, to design new forms of organisations that are capable of bringing together researchers and activists in the collective work of critique and proposition, leading to novel forms of mobilisation and action. This article shows that, in Indonesia, we have to make public interest litigation more transparent. For this, better communication between legal researchers and practitioners is not the only requirement (Bedner & Vel 2021), they will all also have to keep working together with activists. In turn, activists and practitioners have to keep listening to scholarship, to be able to mobilise and act to improve society. This should not be too hard, after all, we are often the public, the activist, and the researcher all at once.

V. The way forward

The following are some recommendations for substantive improvements; not only by doing further research on the issues I have identified above, but also by pushing for better socialisation of available aid. Social insurance systems are increasingly important as preventive measure. People need to understand their access to aid for instance in case of housing; in form of subsidies and tax distribution programs.

For socio-legal scholars, this is two-fold. We must analyse laws in Indonesia by including analysis of the "socio" part of our socio-legal studies and incorporating it into legal education. It is important that legal education fosters empirical knowledge of society, so that future lawyers and activists can help people translate their problems and issues into legal language and seek solutions from the legal system. Moreover, case law analysis needs to be incorporated into the curriculum in Indonesian law schools. Judgements *are* a source of law in civil law systems, even though some may think they are not, and we should treat them as such, because it is impossible to understand a legal rule without studying case law (Smits 2022, Bedner 2016).

This article could also be a reference to the widely-used IRAC (Issue, Rule, Analysis, Conclusion) methodology for legal analysis. Universities in Indonesia have

started using the method in classroom exercises, but they still have to train students to find facts, including background, the perceptions and claims of the litigants, and the story as judges understood it.[35] If the student cannot find such facts, at least we will make them aware of what it is still missing.

[35] According to my own experience teaching law students at Universitas Hasanuddin, and the module developed by SLEEI (https://sleei.law.ugm.ac.id) project in training law lecturers in eastern Indonesia.

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