

EMERGENCE OF HUMAN RIGHTS ACTIVITIES IN AUTHORITARIAN  
INDONESIA: THE RISE OF CIVIL SOCIETY

DISSERTATION

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## ABSTRACT

My dissertation focuses on the activities of the human rights organization LBH (Lembaga Bantuan Hukum, the Legal Aid Institute) in Indonesia as a case study to assess its role in the rise of civil society, and possibly democratization.

I argue that the academic foci on democratization so far have been upon, in general, the importance of large macro-structures and political elites. In particular, socioeconomic, cultural, and structural variables are treated as critical determinants of democracy. As for the micro-level approach, the political elites are the major players, at least for the short-run “transition” and “consolidation.” Although the macro-level variables and political elites are important, there are critical links between the macro-level variables and micro-level variables, which have been left unexamined. The existing literature on civil society fails to specify possible formation processes of a civil society in different political settings, and merely provides an ideal typology.

In this dissertation, I propose a new approach to understanding the property and the dynamic workings of civil society by examining the state-society relations in authoritarian Indonesia between 1990 and 1998. I describe the interaction between the state and the society, as well as how social actors in their relationship to the state find ways not only to survive in an authoritarian regime but also to actively influence the state.

I first examine both conservative and reformist elites in the Indonesian government, and how they find themselves in conflict, which creates a split within the state. Second, I argue that the split which took place in the Indonesian government has been occupied by the activities of LBH, both institutionally through the court system and functionally through personal networking. Once the penetration of human rights organizations into the state is successful, the state is no longer the same as the pre-penetration state and this new condition of the state sets an arena for another round of conflict between reformists and conservatives within the state. Through this series of conflict-driven cycles of change, the state and the society interact with each other, thereby creating and enlarging a relatively autonomous civil society.

I endorse the view that human rights organizations and their activities are an important part of the development and maintenance of civil society, thus it is a vital element for democratic capacity and the possibility for democratization. In other words, vigorous civic activities through social movements in an authoritarian setting, such as Indonesia, are a healthy indicator of civil society, and hence democratic capacity. I advocate the view that nonviolent actions, which are generated through social movements, provide a political arena in which democratic principles can be sustained and people are encouraged in an orderly fashion to move toward democracy.

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## CHAPTER 1

### THEORETICAL TERRAIN

#### 1.1 Overview

How does democracy come about? In this dissertation, I investigate the micro-level democratization attempt in Indonesia led by the activities of the professional lawyers in the human rights organization LBH (Lembaga Bantuan Hukum, Legal Aid Institute). I must state first of all that this political phenomenon does not indicate full democratization. In addition, I have no intention of providing the overtly optimistic view that there will be democracy in Indonesia. Instead, this study is an investigation of the nature of political dynamics, and in particular, the interaction between the state and society, which has been neglected in the existing frameworks on democratization.

For analytical purposes, I will divide the literature on democratization into two broad categories: macro-level analyses and micro-level analyses. The macro-level analyses deal with large social categories, such as culture and economic growth. The micro-level analyses, on the other hand, deal with smaller units, such as organizations and politicians.

In the macro-level analyses, there are three approaches to democratization: (1) economic development as the determinant of democratization; (2) culture as the determinant; and (3) class as the determinant. The first is characterized by modernization theory. The second approach is characterized by cultural determinism and the concept of “Asian uniqueness.” And finally, the third approach is characterized by structural and historical determinism.

In the micro-level analyses, there are three approaches: (1) elite negotiation and regime change as the determinant; (2) civil society as the determinant, and (3) social movement as the catalyst for the creation of a civil society. The first approach is proposed by the democratic transition/consolidation theorists, the second by a sophisticated version of culturalists and romanticists, and the third by scholars of social movement approaches and some political scientists.

My position argues for the incorporation of the civil society concept into the social movement literature as a new approach to the study of democratization. This is because, I argue, the civil society literature (1) fails to explain the dynamic transformation of a developing society since it idealizes the static notion of “virtue” as the foundation of civil society; and therefore, (2) results in a fatalistic notion that civil society is unattainable for societies without such virtue. I contend that this defect can be supplemented by the analytical examination of civic organizations with the help of the frameworks from the social movement literature. Below, I will discuss each approach in brief, and show why my approach provides more insight into the Indonesian case. First, I will review the macro-level analyses, followed by a discussion of the micro-level analyses.

In this dissertation, I study the emergence and sustaining activities of a human rights organization, LBH (Lembaga Bantuan Hukum, Legal Aid Institute), in Indonesia. To do this, I extend the focus of social movement literature into the civil society concept and study the survival and death of civic organizations in the context of political liberalization and possibly democratization in the context of authoritarian politics.

## 1.2 Civil Society and Democratization

If Indonesia is on a path towards developing a civil society, and hence, democracy, as evidenced by active social movements, we would also expect there to be a growing awareness among the people that they should participate where they can in the political process. There is some evidence of this awareness. For example, only one year before the fall of Suharto in 1997, a leading Indonesian newspaper, *Kompas*, featured an editorial article entitled, “How to build a dynamic society for democratization.”<sup>1</sup> The heart of the editorial was to pose the question as how to encourage social participation in politics as a part of the democratization process. The editorial mentioned one important example of social groups: the Lembaga Swadaya Masyarakat (LSM, or Self-reliant Community Development Institution). LSM is an Indonesian version of a non-governmental organization. The editorial also mentioned that LSM plays a role in *masyarakat madani* (civil society).

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<sup>1</sup> “Bagaimana Mengembangkan Dinamika Masyarakat untuk Demokratisasi,” *Kompas* (July 29, 1997), 4.

Although the term “civil society” is difficult to grasp in the Indonesian language, the concept has gained increasing attention among Indonesians.<sup>2</sup> There are many domestic reasons for this rising interest in civil society among Indonesians. The first reason for the increasing interest is the recent emergence of politically active organizations and movements in the country, such as pro-democratic Muslim activism, labor activism, and independent journalism, all of which are not easily subjugated by the state.<sup>3</sup>

The second reason for this increasing interest in civil society is that the term, “civil society,” sounds hopeful for Indonesian activists who have been repressed by the iron fist of centralized authoritarian politics for more than three decades. Whether the term “civil society” applies to Indonesia or not, it gives a strong connotation of social empowerment and decentralization of power, autonomous from the state, if not against the state. Thus, the term is attractive as a hopeful indicator of democratization.

The third reason is that the emergence of non-governmental organizations and democratic activists in the 1990s seems to have become self-sustaining and stayed firm in their beliefs, contrary to past political activists who joined the power, or were co-opted by the state into abandoning political idealism (Sobary 1997). Indeed, modern Indonesia has a full record of co-optations. Many of the political activists who were critical of President Suharto in the late 1960s and early 1970s joined the state by becoming

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<sup>2</sup> A recent theoretical work on “civil society” in Indonesian is, Muhammad Hikam, *Demokrasi dan Civil Society* (Jakarta: LP3ES, 1996). Because of the translation difficulty, Hikam used English word, “civil society,” throughout his book, instead of *masyarakat madani*, *masayrakat kewargaan*, or *masyarakat sipil*.

<sup>3</sup> Ibid., 7. The emergence of non-governmental organizations and the reasons for it are much debated. An obvious and important socio-economic background for the emergence of the NGOs is the rapid urbanization and deterioration of living environment. It is perhaps instructive to consider Japan’s experience of urbanization/pollution and the emergence of civil organizations which were concerned about deteriorating quality of local life in the 1960s.

members of Parliament, Ministers, and were given other authoritative positions which often came with attractive opportunities for personal gain through corruption. Some justified it by claiming they wanted to make changes from within the system, but obviously most have made no effort to change the system since joining the government.<sup>4</sup> Those who maintained their idealism and tried to fight effectively did not succeed, and eventually left the country.<sup>5</sup>

However, in the 1990s, more actors of the new democratic forces were determined in spirit and consistent in action while others were still co-opted by the state.<sup>6</sup> Perhaps one reason for these seemingly strong democrats who were not co-opted may simply be that the number of positions in the system was saturated, while the absolute number of political activists was gradually increasing. However, this does not sufficiently explain the reasons for the strength of the NGOs or the timing of the

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<sup>4</sup> An example of the 1990s co-optation is the formation of ICMI, a Suharto-sponsored Islamic Intellectual Union of Indonesia, established in 1990. Some important democrats, for example Nurcholish Madjid, joined this obviously political tool of Suharto in the hope that they could change the system from within. According to Nurcholish's view, the head of ICMI, then Minister of Science and Technology B.J. Habibie (and the third president) was wealthy from "patents" of his technological innovations. This was an obvious message to defend Habibie's wealth from accusations that Habibie is simply corrupt. A speech delivered at The Ohio State University, August 9, 1997. It is important, however, to point out that there are at least a few young thinkers within ICMI who believe that they can, and will, change the system from within. Therefore, one may convincingly argue that it is too early to tell whether or not ICMI will bear the burden of democratization in Indonesia. Another example, which is rather surprising, is LBH's founder Adnan Buyung Nasution, who surprisingly became close to B.J. Habibie in 1996. He publicly attacked *The Jakarta Post*, an English daily, for its report on a plane crash in May 1997 as "untrue" and the report is "insulting and slandering" to PT IPTN, a Bandung-based airplane company which produced the crashed plane. IPTN is owned by B.J. Habibie. An interesting aspect of this case is that Buyung was said to be co-opted by Habibie and led the initial attack on *The Jakarta Post*. While Buyung led the team of lawyers to defend Habibie, *The Jakarta Post* was defended by a team of lawyers led by T. Mulya Lubis, a former LBH lawyer who worked with Buyung for fifteen years. See *Media Indonesia* June 18, 1997. A rumor suggests that Habibie's insistence in attacking *The Jakarta Post* is that the newspaper promotes non-Muslim (Catholics mainly) views.

<sup>5</sup> Arief Budiman, Ariel Heryanto and George Aditjondoro.

<sup>6</sup> It is not difficult to find those who were co-opted among the former activists in recent days. See the list of newly elected (read: appointed) members of the Indonesian parliament (*Dewan Perwakilan Masyarakat*, or DPR) after the May 29 election this year.



emergence of LBH (Legal Aid Institute). For example, if the saturation of power positions is the reason, why didn't the emergence occur in the 1970s when the number of seats in power relative to the number of activists was small? Furthermore, this view neglects the interaction of activists with the state, as well as other critical factors, such as regime change and international support.

### 1.3 Review of Democratization Literature

I will now review the democratization literature to show that a new approach is needed to explain the rise of LBH (Legal Aid Institute) and its success in authoritarian Indonesia.

### 1.3.1 Macro-level Approaches

There are three streams of thought in the macro-level approach to democratization. All of them are essentially structuralist in conception, and long-term in perspective. The first approach is that economic development is the determinant of democracy. This view is characteristic of the modernization theorists who perceive that wealth brings a more secular life, a higher living standard, and more frequent communication among the population which reduces social divisions based on traditional racial, religious, and ethnic cleavages. Essentially, this approach has evolved from the dichotomy between tradition and modernity in terms of development, and between orthodoxy and reformation in terms of religion. The change to modernity does not occur very quickly; therefore, this view assumes the long-term transformation of a given society.

The second approach is the cultural argument, which again recently became popular amongst high level bureaucrats, business executives and politicians. This view defines cultural categories based on the compatibility of each culture, such as Islam and Christianity, with democratic principles. This view understands culture as a set of social norms which are very static. This view also assumes an even longer term change of a given society because it focuses on the static aspect of culture, or even singles out the static “essence” or “core” of the given society’s culture as the only determinant. The third approach is the class structuralist argument which sees the rise of the middle class as a drive toward democracy. This view is popular among those in the Marxist tradition.

### 1.3.1.1 Economic development as determinant

In his classical work, Seymour Martin Lipset found the general tendency that democracy is likely to be found in both wealthier and more Protestant nations (1960). This argument is both economic and cultural and has been used to support the claim that capitalism, as well as the socio-cultural traits of Protestantism, are the critical elements in sustaining democratic political systems and the reinforcing factors of democracy. This hypothesis provides the two critical links which explain how democracy comes about: the first between capitalism and democracy, and the other between culture and democracy.

The modernization theorists attempted to prove the above two links at the same time. In the 1950s, they believed that socio-economic development inevitably brings about the gradual demand of non-state actors for political liberalization (Deutsch 1961; Lerner 1958; Shils 1962). This theory assumed a trickle down effect of modernizing society, which would create groups of non-state actors as agents to control the state. The promise of modernization was to witness flourishing diverse social interests which were secular in culture and wealthier in income in order to control the state power and its likely abuse as the level of economic development increased. One of the problems, however, is that this “theory” emerged with a US global political agenda. As a counter-balance against the Soviet hegemony of communism, the critical national interest of the United States was to promote capitalism as an alternative to the audiences of the newly independent nations after World War II.<sup>7</sup> Another problem, which has often been cited,

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<sup>7</sup> For details of how academics were drawn into the world politics, see Irene L. Gendzier, *Managing Political Change: Social Scientists and the Third World* (Boulder & London: Westview Press, 1985), Chapters 3 & 4.

is that the modernization approach was ethnocentric. Wealthy nations expected poor nations to follow the same path of nation-building and democratic development as they did. As demonstrated in the late 1950s and early 1960s, the promise of modernization did not bring democracy to the third world.

The decade of the 1960s instead witnessed the serious abuse of state power around the world, often carried out by the military. The context from which the military authoritarian regimes emerged was, in general, the collapse of national economies and unworkable democratic systems following independence. Samuel Huntington was quick to respond to this “political decay” in his claim of praetorianism, which asserted the danger of the imbalance between the growing mobilization of popular demands and the lack of institutionalization of political systems to accommodate popular participation (Huntington 1968). However, many of these non-democratic regimes received political sympathy, and often active support in the cold war context, from the “free world” governments as long as they remained anti-Communist. Indonesia was a prime example.

The causal link between capitalist development and democracy, which was initially described in a deterministic way by the modernization theorists, was modified into a more voluntaristic one. Diamond argued that economic development is not a “prerequisite,” and said that economic development fosters democracy if it creates a high level of physical infrastructure shared equally by a majority of the population (1992). The consideration of economic distribution, which is a product of political crafting by the state, became central to this modified argument. This revised modernization theory at least acknowledges the strong correlation, if not a causal link, between capitalist

development and the emergence of democracy (Diamond and Plattner 1995).<sup>8</sup> In sum, underlying the modernization thesis, whether classical or modified, is the idea that capitalist development generates fundamental changes in social structure, people's norms, and culture, all of which place pressure on authoritarian regimes for political liberalization. It is not surprising that after the collapse of communism, the worshipping of liberal capitalism was further strengthened by the timely declaration of the triumph of liberal capitalism by Francis Fukuyama (1992).

#### 1.3.1.2 Culture as determinant

Most would agree that culture, in the broadest sense, matters in analyses of democracy (Diamond 1993). The classic work on culture which is the critical determinant of democracy is Almond and Verba's study of "civic culture." They claimed that there are elements of culture ("national character") which are common among existing democracies (Almond and Verba 1963). This work took cues from social psychology and sociology to clarify the positive correlation between the people's norm of tolerance and trust, and the legitimacy of democratic political institutions. Although culture was understood as a rather static concept, this study framed basic perspectives of the culturalist argument regarding its relationship with democracy.

A similar research design, which is a variation of modernization theory, was carried out by another culturalist, Lucian Pye, who did a study on Burma. Pye gave a

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<sup>8</sup> See also a classic work which critically examines the success of Newly Industrializing Economies (NIEs) and proposes a communitarian notion of democracy and capitalism by Walden Bello and Stephanie Rosenfeld: *Dragons in Distress: Asia's Miracle Economies in Crisis* (NY and London, Penguin Books, 1992).

social psychological account of Burmese politics, emphasizing the early socialization within the family environment (Pye 1962).<sup>9</sup> The weakness of this work is his bias toward the ethnic Burmese as representatives of the country when other powerful ethnic groups also played a critical role in national politics. Pye continued his social psychological analysis. One seminal work was his study of Asian culture and authority (Pye and Pye 1988). The Asian cultures are said to stress the legitimacy of hierarchy and social harmony over individual liberty and freedom. Another major work by Pye with the same overtone is on the Chinese culture where he argues that China's cultural durability is the reason for the survival of the nation despite severe political upheavals in its history (Pye 1988). Pye states that culture consists of both enduring and changing elements, but his analytical emphasis is on the enduring side of culture, and how culture shapes political context.

Samuel Huntington's influential work on "the third wave" of democratization also set the discussion in a new direction. According to Huntington, from cultures conducive to democracy in the West to cultures unsuitable for democracy in the Confucian and Islamic world (Huntington 1993), cultures are a decisive element determining whether a country becomes democratic or not. Although Huntington was careful enough to state that the cultural factor is not an absolute determinant, the message given to the wider audience in Asia and the rest of the world was basically cultural determinism. Furthermore, Huntington's recent thesis that future international conflicts will occur

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<sup>9</sup> This study was influential not only to the Western academics, but also to the Burmese. See Khin Maung Kyi, "Patterns of Accommodation to Bureaucratic Authority in a Transitional Culture: A Sociological Analysis of Burmese Bureaucrats with Respect to Their Orientations Towards Authority," A Ph.D. Thesis, Cornell University (June 1966).

between different civilizations has fueled strong reactions and even anger amongst Asian leaders. The source of anger among Asian leaders comes from Huntington's distrust and fear of the forces of Islamic and Confucian traditions. Asian leaders are also unhappy at his provocation of the West versus the East rivalry at a time when US foreign policy identified China as the prime threat to the US interest in the Asian region (Huntington 1993b).

As a reaction to the Huntington thesis, the defenders of Asian authoritarianism began promoting "Asian uniqueness" in politics. They view the link between capitalist development and democracy differently. This is the fourth approach in the culturalist tradition. While active promoters of Asian values are few in number,<sup>10</sup> they present a popularly attractive opinion in Asia on cultural grounds while resisting the link between capitalist development and democracy. Although it is difficult to find a single authoritative account of the Asian mode of democracy, the general characteristics consist of the following.

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<sup>10</sup> Political leaders of Singapore, Malaysia, and Indonesia are the active ones, while there are sympathizers in other Asian nations. See a Japanese financed conference report, *Towards a New Asia* (Commission for a New Asia, 1994). This report claims to establish "a quieter, more Asian, humility" as "a manifesto for an Asian Renaissance."

First, the assertion is almost always in contrast to the “Western” mode of democracy.<sup>11</sup> This claim attempts to separate the Western style of competitive and individualistic democracy from the Eastern style of consensus and communal interest-based democracy.<sup>12</sup> For instance, the promoters of the Asian mode of democracy use Lipset’s culturalist argument for their defense: since the Protestant ethic promotes individualism, materialism, and confrontationalism, the Western mode does not fit with the Asian mode of social ethics, which is based on harmony and consensus.

Second, the Asian democracy argument is based on a simple, and often distorted dichotomy between the materialism of the West and the spiritualism of the East. This argument is particularly directed toward domestic audiences because the elite fears that economic development brings home “mobil phones, McDonalds, and middle class” which may erode the existing political system (Robison and Goodman 1995). This argument intimidates the domestic conservatives with the threat that the “Westernization” of society, economy, culture, and politics, comes with all sorts of negative human acts, such as the use of drugs, more crime, disrespect for elderly persons, divorce, and the collapse of the family (Lawson 1996).

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<sup>11</sup> It must be pointed out that both academic provocation by Samuel Huntington’s “Clash of Civilizations” thesis and Clinton’s human rights diplomacy promoted the monolithic concepts of culture in Asia. As a result, we have seen strong opposition from Asian leadership who promoted “Asian” democracy as a counter balance against the political “hegemony” of the West. In my view, there is no single account of “Asian” democracy, or for that matter, Asian anything, except that most of the people in Asia eat rice as a main dish.

<sup>12</sup> An irony of the “Asian” claim of “community before self” is that what they claim is “Asian” is derived from the West, in particular the Hegelian notion of integralistic community. Hegel’s notion of society was conducive to the realization of individual interest through incorporation into super-individual collectives, the state. See Marsillam Simanjuntak, “Unsur Hegelian dalam Pandangan Negara Integralistik,” a thesis submitted to the University of Indonesia Faculty of Law (1989).



Finally, and most importantly, the promoters of Asian values argue that the end result of capitalism is different from the prescribed democracy by the West. Asian democracy will be their own democracy, because it is created from their own soil. This argument is extended to assert that the Western bias to give too much emphasis to institutional forms of democracy is not applicable to the East, because the East values substantial cultural norms which are based on indigenous social structures and traditions. Nonetheless, the promoters of “Asian-ness” have not yet found their own version of “democracy,” and openly violate their own peoples’ rights to participate in and control political power.

Meanwhile, the regimes are facing authoritarianism’s dilemma: while authoritarian governments are mandated to perform well in the economy to justify their legitimacy, a good economic performance tends to promote more openness of authoritarianism (Diamond 1992:125).<sup>13</sup> As a result, the authoritarian regimes have been busy both creating and promoting their versions of cultures and democracies. For example, there is “Pancasila Democracy” in Indonesia and “consencracy” in Singapore. More recently, Malaysia even questioned the validity of the Universal Declaration of Human Rights. They did this because they saw it as a product of the West’s ethnocentrism.<sup>14</sup>

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<sup>13</sup> William Liddle calls this “performance legitimation.” See William Liddle, “Suharto’s Indonesia: Personal Rule and Political Institutions,” in *Leadership and Culture in Indonesian Politics* (Australia: Allen & Unwin, 1996), 23-27.

<sup>14</sup> For “consencracy,” see Wu The Yao, *Politics East-Politics West* (Singapore: Pan Pacific Book Distribution, 1979), 58. The recent academic trend to investigate the Asian-mode of democracy resulted in some academic books. See Chua Beng-Huat, *Communitarian Ideology and Democracy in Singapore* (London and NY: Routledge, 1995); Michael Hill and Lain Kwen Fee, *The Politics of Nation Building and Citizenship in Singapore* (London and NY: Routledge, 1995). Malaysian Prime Minister Mahatir Mohammad questioned the validity of the UN Declaration of Human Rights at the July 1997 ASEAN

This can be viewed as a process of political “myth” making.<sup>15</sup> It can, therefore, be seen as a way to overcome the dilemma of authoritarianism by providing alternative versions of governance and political participation.

However, the causal arrow between culture and democracy is very complicated. Some may view culture as the foundation for democracy while others do not. Others, however, argue that culture is not a “producer” of democracy, but instead simply a “product” of it (Schmitter and Karl 1993). To make the issue more complicated, some argue that a seemingly anti-democratic Asian culture also has elements conducive to democracy (Jung 1994).

What is important is the fact that the impact of culture on political outcome varies depending on time and place. Therefore, it is critical to treat culture as a living and an ever-changing object. Even though we accept this living culture view, we still have much left in our analysis of democracy. Since the culturalist view deals with the grand, hard-to-manipulate variable of culture, it is difficult to analytically explain political change.

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meeting. His view was welcomed by some of other ASEAN members who were increasingly frustrated by the Western nations which express concerns and sometimes condemn human rights abuses in Southeast Asia.

<sup>15</sup> One can argue that politics is about mythmaking. From point of view of structuralists and post-structuralists, myth encompasses every aspect of existence, including social pattern, language and institutions. Obviously, this relativist position which demands “demythologizing” of everything is not accepted by those who believe in unifying cultural constructs. For the view to see culture as a means of repression by the powerholders, see Roland Barthes, *Mythologies* (NY: Hill and Wang, 1972). For literature which argues that not only powerholders dominate the use of culture, but also those without power do, see James Scott, *Domination and the Art of Resistance* (CT: Yale University Press, 1990); Kevin O’Brien, “Rightful Resistance,” *World Politics* 49 (October 1996), 31-55.

Another weakness is that this view may fall into easy reductionism. For example, it provides unhelpful explanations of political change in multi-cultural countries, such as Indonesia and Singapore, and Myanmar (Burma). A simple question like, 'What is Indonesian or Singaporean culture?,' falls short in explaining the complexity of interaction among very different cultural traditions in these countries.

#### 1.3.1.3 Class as determinant

The third approach is class determinism. The theories of class determinism are also very structural. First, Marxists generally argue that authoritarian regimes are not capable of resolving growing class divisions in the age of industrial capital accumulation and mobility.<sup>16</sup> According to the argument, the democratic labor force, the growing bourgeois middle class, and the mobility of international private capital, increasingly play a role independent of the state. This view assumes that if capitalism continues, there will inevitably be more room for private interests, which are relatively independent of the state, and this group will erode authoritarianism, and therefore bring about democracy.

Second, some historians also argue that the rise of the middle class is the key for the emergence of democracy. As Barrington Moore described in detail, there is no democracy without the political participation of the bourgeois middle class. Moore's three class types, the royalty, the nobility, and the peasantry, provide scenarios for the

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<sup>16</sup> For the rise of labor organizations and their pressure on regimes to democratize, see D. Rueschemeyer, Stephens, and Stephens, *Capitalist Development and Democracy* (IL: University of Chicago Press, 1992). For Indonesia, see Robison's work on the rise of capitalist class. Richard Robison, *Indonesia: Rise of Capital* (Sydney: Allen & Unwin, 1986). A recent example dealing with capital mobility is, Jeffrey Winters, *Power in Motion: Capital Mobility and the Indonesian State* (NY: Cornell University Press, 1996).

emergence of democracy. Although there are five “conditions” for democracy to occur, the emphasis is given to the rise of the middle class under stable political conditions. For example, there must be appropriate forms of commercialized agriculture, which result in the reduction of the size of the peasantry and the accumulation of capital while the landed elite experiment with commercial agriculture. Further, the alliance against the peasants by the noble and bourgeois elements needs to be avoided in order to prevent the rise of rightist authoritarianism (Moore 1966).

In essence, Moore placed the major emphasis on the independent role of the bourgeois class in balancing the conflict between the governing elite and the peasantry in order to achieve representative democracy. Another sociologist is Anthony Giddens. Giddens provides the strict distinction between state and citizenship based on the class distinction (Held 1989). Therefore, according to Giddens, class struggle is the driving force of historical development toward democratic governance.

The essence of class determinism comes from the Marxist assumption that the forces of economy, or market relations, is the only determinant of human behavior: actors are simply those who possess or don't possess the means of production. Hence, capitalism, according to this view, is the only independent force to create the social stratification of class. The view also claims that capitalism creates many negatives: suffering of the poor, inequality, inflation, concentration of capital, and a political tendency for authoritarianism and imperialism.

However, this approach is still grandiose in categorizing society based on class distinction alone. There are many questions regarding class categorization such as: who really are the middle class people, what guarantees that the middle class is democratic, and how can the positive aspect of capitalism be taken into account in their analyses.

#### 1.3.1.4 Critiques of Macro-level Approaches

With the above contrast in mind, it is important to point out that there is a triangular relationship among culture, capitalism, and democracy. I think it is clear that there is fault with the linear view of social progress from capitalism to democracy, or from culture to democracy (Inglehart 1988). As Lipset argued recently, capitalism is “a necessary condition” for the emergence of democracy, but not a sufficient one (Lipset 1994). Huntington similarly put the same thesis this way: economic development makes democracy possible, but “political leadership makes it real” (Huntington 1991).

There are several important points which can be concluded from the existing literature, however. First, modernization/capitalist development is not a sufficient cause of democracy, yet is an important ground for social change. The trickle down effect of capitalist development to bring about democracy does not occur, but capitalist development can be an important factor to alter socio-cultural beliefs and values.

As Diamond put it, if capitalist development creates “a dense cluster of social changes and improvements [basic physical human requirements] broadly distributed among the population” and it reduces social tensions, then it is only possible, not inevitable, for a society to democratize (Diamond 1992:125-6). Therefore, there are more steps involved in the process of democratization than a simple linear progress from higher growth to democracy.

Second, the culturalist argument goes too far in perceiving culture’s enduring aspect instead of its changing nature caused by humans. The culturalist argument is weak in the sense that it may explain what kind of choices were not made since they were culturally unacceptable, but cannot adequately explain why one choice was made over another when both choices were culturally acceptable. By throwing “choice” into the analysis, it becomes apparent that the culturalist argument often treats politics as a static play without conscious individuals who make choices.<sup>17</sup> This is partially the problem with the grandiose claim to interpret and characterize one culture as a distinct set of political entities,<sup>18</sup> and also the problem of the structuralist argument which is weak in giving adequate weight to the delicate choices available to key political actors.

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<sup>17</sup> Leslie White, a Michigan anthropologist, was the hard-core “culturologist” in this tradition. His claim of “basic law of cultural evolution” said that culture determines human behavior, not individuals who influence culture. See Leslie White, *The Evolution of Culture* (NY: McGraw-Hill, 1959).

<sup>18</sup> Surely, the other side of the coin is that culture is useful in comparative explanation. It is not a waste to characterize one political culture compared to another, in order to clarify the differences and similarities of how one option was not chosen in one culture while it was chosen in the other.

Why did President Suharto make the choice to borrow millions of dollars from the West when many believed that the Indonesian political character was essentially anti-West? Why do Japanese politicians fight fiercely when the Japanese political culture is said to be consensual and harmonious? Does this mean that the cultural characterization was wrong, and needs a new culture?

This simple example brings up an important point: the culturalist argument is essentially about artifacts of the ways in which cultures are studied, but not the facts about cultures. Nonetheless, I do not dismiss the importance of culture. Culture is important in understanding the context in which politics takes place. It must be emphasized that cultural determinism needs to be avoided while context sensitive cultural interpretation needs to be encouraged. Culture can be studied by careful interpretation of a particular context so as to give a fruitful explanation and characterization of the dynamic processes of political change.<sup>19</sup>

Third, class determinism departs from an unreliable assumption: capitalism is the source of human sufferings. It is not an appropriate starting point since the lack of capitalism does not mean that human sufferings do not exist. Furthermore, as I mentioned earlier, the broad claim to categorize people based on class provides no precision for analysis. Who is the middle class? Are they the ones above \$6,000 per capita per year? Or, are they those who own the means of production? In addition, there is a false assumption: the middle class people want democracy. It is difficult to establish the leap between the rise of the middle class and the desire for democracy.

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<sup>19</sup> Bradley Richardson's recent volume on Japanese politics gives a sound and careful treatment of Japanese political culture. See his, *Japanese Democracy: Power, Coordination, and Performance* (New Haven and London: Yale University Press, 1997).

### 1.3.2 Micro-level Approaches

Contrary to the macro-level approaches which see larger structures, such as the market, culture, and class as the primary determinants of democracy, the micro-level approaches cut deep into the structures and attempt to assess human agency's choices, decisions, and dilemmas in the process of making things happen. Central to the claims of the micro-level approaches is the role of agency in its relationship to structure, and how political actors behave under various circumstances. In this sense, the micro-level approaches are less deterministic in explaining the dynamics of democratization, but at the same time, if the research design is not carefully crafted, they may fall into chaotic "mere descriptions" of political stories.

I introduce here three major approaches which can be categorized as micro-level approaches: (1) the transition literature; (2) the civil society literature; and (3) the social movement literature. In this section, I will first assess the transition literature, and critique it. The main point is that the transition literature provides elite-centric analyses (elites in public offices including bureaucrats and politicians) useful in understanding the short-term direction of the democratization process, but the literature lacks a focus on non-elites who play an important role in determining the long-term durability of democratization.

After the critique of the transition literature, I will introduce the civil society literature as a way to provide a context for the social movement literature. The purpose of introducing the civil society literature is to argue that the social movement literature supplements the vagueness of the civil society concept by giving it analytical clarity.



Thus, my central claim is that the social movement approach fills the analytical gap in the civil society literature, and therefore provides a useful tool to analyze the transformation of the social sphere in relation to democratization literature.

#### 1.3.2.1 Transition Literature

The transition literature is essentially a study of regime change. The focus therefore is the role of agency in shifting the types of regimes from non-democratic to democratic. It was Dankwart Rustow who produced a model of regime transition (1970). The three stage model, from preparatory stage, to decision phase, and finally to consolidation phase, is the original process-oriented blueprint of this school which soon after filled with empirical studies, mainly from the experiences of Southern Europe and Latin America (O'Donnell, Schmitter, and Whitehead 1988).

Guillermo O'Donnell's seminal work in 1973 also shifted the direction of the research on political change from the emphasis on socio-economic development to the decisions of political actors in authoritarian settings. O'Donnell criticized the then dominant macro-level analysis which had placed emphasis on socio-economic development as driving toward democracy. Instead, the emphasis was given to the processes of how elites (technocrats and the military) responded to both the needs of the international economy and the demands of the domestic popular sector to create a "bureaucratic authoritarian" regime. Although the approach proposed by O'Donnell resembled that of the dependencia school, his thesis which emphasized the elite alliance and contingent decisions was also the early part of the transition school.

A recent work by Linz and Stepan also follows this process-oriented analysis. They identified seven explanatory variables, which put more emphasis on regime types and national character (called “stateness” - essentially differences between the state- and nation-building processes), and less on economic development (Linz and Stepan 1996). The Linz/Stepan thesis provides a new insight into democratization since it downplays economic development as a critical factor, and examines instead the relationships of the seven variables. The seven explanatory variables are: (1) stateness - complex relationship between state, nation, and democratization; (2) regime types - totalitarian, post-totalitarian, authoritarian, sultanistic; (3) political leadership; (4) who initiates and controls the transition to democracy; (5) international influence; (6) political-economic legitimacy; and (7) the constitution-making environment. Of these, the first two are, according to the authors, the most important.

Although there has been an attempt to use the rational choice framework to explain why elites prefer democracy (Przeworski 1988), the process-oriented transition approach mostly tends to accumulate empirical cases on the decisions of elites. Yet, as more studies are carried out, there is an increasing awareness that the interplay between social-level actors and elites, and that between the structural (cultural, economic, social) factors and human agency must be taken into account. In fact, a recent book on democratization reflects this expanded focus to include institutional design, civil-military relations, civil society, and economic development (Diamond, Plattner, Chu, and Tien 1997).

### 1.3.2.2 Critique of Transition Literature

So far, I have outlined the key elements of transition theory. The first weakness of this literature is that transition literature is mainly concerned with the ways to democratize the state, while declining to include social actors as a valuable force to democratize a nation-state. Dryzek criticized the existing transition literature for the excessive emphasis on how to democratize the state. Dryzek instead promotes focusing on “democratization against” and “apart from” the state as a more meaningful way to achieve democracy. The examples of democratization against the state are associated with new social movements, such as radical environmentalists, antinuclear activists, and radical feminists. The examples of democratization apart from the state are workplace democracy and moderate feminism (Dryzek 1996). Essentially, Dryzek argues for a participatory, instead of representative, notion of democracy. With his skepticism of capitalism and state-led democratization, Dryzek places his hope on the formation of a civil society.

However, no civil society can operate by itself, but only in association with the state. Therefore, Dryzek promotes a passive and exclusive state under which civil society operates democratically. According to him, a society which operates under a passive and inclusive state is a plural society, which, as portrayed in the American society, is “biased in favor of business interests.” On the contrary, a society which operates under a passive and exclusive state is “social corporatism” in which popular will is expressed at a local level and concerns over public matters are realized without excessive pursuit of business interests.

Second, since the transition literature is concerned with to-be-democratized states, the unit of analysis is political elites and thus, there is a lack of insight into the emerging process of civil society. The best prescription given to a majority of the population in the conventional literature is to have a “civil society” as a vehicle to consolidate democracy, as if it is automatically given when the state democratizes. Thus, unfortunately, a detailed analysis of the emergence and sustainability of a civil society is simply left out, or given a superficial explanation that it is a by-product of capitalist development (Diamond, Linz, and Lipset 1995). This linear view that a democratic state creates a civil society which consists of civic associations, such as issue-oriented movements, mass media, research and educational institutions, and religious organizations, overtly assumes the process by which a civil society emerges and sustains itself. Furthermore, this view assumes that all civil societies are democratic. These two assumptions on which the transition theory regarding civil society is based are simply unwarranted.<sup>20</sup> For example, the process by which a civil society emerges is not empirically validated, and there are civic organizations which are not democratic at all. I believe that the assumption that the rise of civil society as a function of the macro-social change of democratization is simplistic, and therefore worth investigating.

With these points in mind, it is important to further develop our investigation of democratization by focusing on the process by which a society democratizes. This does not mean the state is unimportant. It must be emphasized that civil society develops in its association with the state, as I explain below. In the following, I will discuss the

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<sup>20</sup> Obviously, a large number of assumptions makes a theory weak. In other words, a theory cannot be based on assumptions but it must explain and predict circumstances. I thank Rizal Mallarangeng for pointing this out.

approach to democratization taken by the civil society literature. I will evaluate its strengths and weaknesses. Let us now ask the question: what is civil society?

### 1.3.2.3 Civil Society Literature

Although the concept has been used since the time of Thomas Hobbes, it was revived in the early 1990s in the hope that the authoritarian societies in the third world would become more democratic. The particular occasion to bring back the concept is the fall of communism in the Soviet Union and the Eastern Europe, and the rise of civic organizations which are autonomous from the state.

It was since the time of Adam Ferguson who wrote the book entitled, *Essays on the History of Civil Society*, that the detachment of society from the state was made clear in Western political thought. A particular historical experience in mid-18th century Europe, which many other social theorists shared at that time, was the industrialization and commercialization of the economy and increasing division of labor. Inheriting the contractarian notion of law-abiding citizenship, Ferguson saw the progress of commerce and technology as an equally important foundation for civil society. After witnessing the reality of an increasing division of labor and commercialization which transformed the traditional order of society, Ferguson idealized that civil society was a living condition which was urban, had its legal code of living, and was refined in commercial development which affords comfort of living.<sup>21</sup>

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<sup>21</sup> This context is common to all thinkers who can be characterized as “Scottish Enlightenment” thinkers, including David Hume and Adam Smith. See D. Miller, J. Coleman, W. Connolly, and A. Ryan eds., *The Blackwell Encyclopaedia of Political Thought* (Oxford and Cambridge, MA: Blackwell Publishers, 1991),

Hegel and Karl Marx equated the rise of civil society with the commercialization of economy. Hegel saw civil society as an arena where individuals seek self-interest by engaging in economic activities within social institutions which guide individuals into rational life. The state, for Hegel, was the engineer of the social institutions. Marx claimed that the laws of capitalist development benefited only the privileged bourgeoisie and he was skeptical about the modern social transformation based on capitalist development as a means to improve life. For Marx, civil society (*bürgerliche Gesellschaft*) was an autonomous realm of private property and exchange relations dominated by capitalist market forces. Essentially, Marx stripped the moral tone of enlightenment thinkers and defined civil society to mean simply the modern form of the capitalist economy, thus lessening the usefulness of the term.

Antonio Gramsci brought back the moral tone in his interpretation of civil society, however, in a different sense. Gramsci detached civil society from the economy, contrary to Hegel and Marx, and combined it with the state. Using the concept of hegemony, Gramsci asserted that civil society is an arena of hegemonic expression by the ruling class (the Church, schools, trade unions are all institutions of civil society), while the arena at the same time can be challenged by the counter-hegemonic struggle which asks “whether what ‘ought to be’ is arbitrary or necessary; whether it is concrete will on the one hand or idle fancy, yearning, daydream on the other” (Golding 1992:110). Once this hegemonic struggle (cultural guerrilla warfare) by the ruled against the ruling class is complete, civil society becomes the “...repository of the collective will.”

In other words, civil society becomes an organic expression of the people. Gramsci further claimed that since the collective will also embodies the state, “civil society and the State are one and the same” (Golding 1992:118).

The notion of cultural warfare against existing social norms gained popular support during the 1960s and 1970s among the social movement leaders and radical scholars, but the concept of civil society itself, developed by Gramsci, did not survive in the discourse. It was not until the rise of non-state groups in Eastern and Central Europe, a primary example being Solidarity in Poland in the early 1980s, that the concept of civil society gained back some attention.

Quite contrary to the European thinking on civil society, in the American context, the concept of civil society does not involve much on the issue of class conflict or the struggle against the emerging state. The American notion of civil society can be seen on July 4, in Upper Arlington, Ohio.<sup>22</sup> A large number of civic organizations parade on the main avenue of the city to celebrate the US independence day. The civic organizations are various in kind including firefighters, high school cheerleaders and bands, the Pearl Harbor survivors association, the Bingo lovers club, baseball teams, environmental groups, and a retired business women’s club. This is the idealized notion of American democracy, one may argue, referring to the notion of civil society in *Democracy in America*, a Tocqueville’s classic analysis of civic spirit in the young American republic.

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<sup>22</sup> Obviously this Upper Arlington example can be seen as an idealized exception in the view that the US urban life is filled with violence and de facto racial segregation.

Robert Putnam applied this notion of democracy which is built upon civic organizations to his detailed study on Italian politics.<sup>23</sup> He called the dense cluster of civic organizations “social capital” which is embedded in Northern Italy’s local culture (Putnam 1993). Central to Putnam’s argument is that the social capital which consists of a dense network of civic organizations which foster “trust” among citizens is the definite causal force of workable democracy since it reduces the transaction costs to ensure cooperation to deliver public goods without having the free-rider problem in collective action. Democracy is built upon the self-interest maximizers who trust each other for the sake of avoiding the loss of individual interest in the future. People help each other in advance before disasters occur upon individuals. This trust, according to Putnam, came from the historical development of communitarian republicanism in a part of Northern Italy, and was a necessary compromise of self-interest maximizers in order to live together (Putnam 1993:137-140). The obvious message from this study, therefore, is that people with this “social capital” have a better chance to have democracy but it is bad news to those without social capital. Putnam even rejects the hope of many of the third world scholars and modernization theorists that modernization (socio-economic development) creates social capital as the society modernizes. According to him, there is no evidence that economic development results in the formation of social capital; quite the contrary, he asserts that existing social capital (“civic tradition”) results in wealth (Putnam 1993:152-162).

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<sup>23</sup> It is an understandable consequence that Putnam’s current work concerns “civic disengagement” in the United States after applying the ideal type American civic political culture to Italy while finding a lack of the civic culture in current United States.



The core notion of democracy in both the American and Italian cases is centered on the concept of civil society. Although Putnam used “civic traditions” instead of “civil society” in his analysis in order to emphasize the historical origin of current political culture in Northern Italy, essentially his analysis rests in the civil society debate. The civil society concept also traveled to Asia. After the tragic 1989 Tiananmen incident, some China scholars examined the concept of civil society, and did not find a strong analytical use of this concept due to the lack of clear understanding of the relationship between civil society and the state in the Chinese political context.<sup>24</sup>

#### 1.3.2.4 Critique of Civil Society Literature

The current interest in civil society is fragmented in scope, which is no doubt at least due to the problem of the broadness and looseness of the concept, as well as our lack of a clear and modern definition suitable to clarify the relations between the society and the state.

Therefore, the best definition of civil society at this point is also inherently broad and loose: “certain community and group identities exist independent of the state and ... certain types of self-constituted units are capable of acting autonomously in defense of their own interests and ideals. Moreover, these identities and interests must not only be dispersed throughout the country, they must also be capable of being concentrated when the occasion demands, that is, they must be organized for coherent collective action” (Schmitter 1986:6). Here, three key elements of a civil society are identified: (1)

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<sup>24</sup> See *Modern China* April 1993 issue for the series of articles which dealt with the concept of civil society and its applicability to contemporary China.

identities independent of the state; (2) autonomous action; (3) capability of collective action when necessary. The obvious emphasis is the autonomy of civil society from the state. What does this “autonomy” mean and how is it realized? And most importantly, where does civil society come from?

In terms of the origins of civil society, as I explain below, there are four different views: (1) the historical legacy based on rational calculations to avoid risks in advance (Putnam’s thesis); (2) the socio-economic development which creates a mass middle class who demands autonomy from the state (Marxist structuralist/Modernization theory); and (3) regime change (transitions theorists). This research proposes a fourth view, echoing some social movement theorists, that active social movements are the basis of civil society.

Another weakness of this literature is that the idea of “civil society” can easily lead us to believe in romanticism. A modernization theorist, Edward Shils, delivered a thesis that emphasized “virtue, or public spirit or civility” of Montesquieu’s thought as a foundation of civil society (Shils 1964). His emphasis on “civility” as consistent with some modernization theorists in the 1950s misleads us to believe that civil society can only be built upon an attitude which embodies an “appreciation of or attachment to the whole society...an attitude of concern for the good of the entire society” (Shils 1964:11). However, this philosophical romanticism which leads us only to wishful thinking does not provide a useful analytical tool for this study.

In this regard, Robert Putnam’s study I discussed above is instructive. He provides an analytical characterization of the elements of a lively civil society. Putnam

argued that, based on his readings of James Coleman's concept of "social capital"<sup>25</sup> and Mark Granovetter's network thesis (1973)<sup>26</sup> as well as his empirical study of Italian politics, a lively civil society should be based on the networks of civic organizations which are (1) densely connected to each other, (2) the members are weakly tied, and (3) organizations are horizontally structured (Putnam 1993:173-181). According to Putnam, these three important aspects of ideal civil society networks are critical in sustaining a democratic society.

Let me elaborate on Putnam's assertion. First, the whole network must be densely connected. Putnam explains this as "intense interaction" of each network. In other words, each network should interact in high frequency. Second, the membership tie must be weak. In contrast to the strong network consisting of kinship, blood and family-tie based organizations, weak networks include acquaintance and membership organizations. Third, the organizational structure must be horizontal. In contrast to the vertically structured networks of Mafia organizations and the Catholic Church, horizontal networks include sports communities, mutual aid societies, and cultural associations. Examples of the ideal type networks of civil organizations (in Putnam's words, "the networks of civic engagement") are symbolically expressed in the following sentence: "Good government in Italy is a by-product of singing groups and soccer clubs, not prayer" (Putnam 1993:176).

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<sup>25</sup> Putnam cites James Coleman, *Foundations of Social Theory* (Cambridge, MA: Harvard University Press, 1990). The original idea came from James Coleman, "Social Capital in the Creation of Human Capital," *American Journal of Sociology* 94 (Supplement), S595-S5120.

<sup>26</sup> Also see M. Granovetter, "Economic Action and Social Structure: The Problem of Embeddedness," *American Journal of Sociology* 91 (1985), 481-510.

There are four other advantages, according to Putnam, for a society to have dense networks of civil engagement which are weakly tied and horizontally structured in order to have a workable democracy. All of them are reasons for how such networks can overcome the two critical dilemmas of collective action as explained by Mancur Olson: the free-rider problem and the trivial contribution problem (Olson 1965). First, such networks of civic engagement “increase the potential costs to a defector in any individual transaction.” Since the network is densely connected, there is little room for opportunists to ride free. Second, they “foster robust norms of reciprocity.” A high frequency of interactions provides a likely ground for participants to develop acceptable norms of behavior for public welfare. Third, they “facilitate communication and improve the flow of information about the trustworthiness of individuals.” They reduce the uncertainties of information about others, thereby feeding participants with reliable information of others. This facilitates mutual trust. Fourth, they “embody past success at collaboration, which can serve as a culturally-defined template for future collaboration” (Putnam 1993:173-176). This refers to the importance of memory.

The difference between Putnam and transitionists such as O'Donnell, Linz and Stepan who also give credit to civil society as a foundation of democracy, is that while Putnam sees civil society as a product of the historical legacy of democratic governance, others see it as a product created as a result of the regime changes which open up opportunities for social movements.<sup>27</sup> The straightforward relationship between the emergence of civil society and regime change is characteristic of works on past Latin American politics.

Therefore, as I argued above, we now have three, and possibly four as I propose later, different approaches regarding the origin of civil society: (1) a long historical legacy based on practical individual calculations to reduce costs and risks (Putnam's traditional culture thesis); (2) socio-economic development which creates a mass middle class who eventually demand autonomy from the state (classical modernization theory/Marxist structuralists); and (3) regime change (transition theorists). In addition, as the fourth theory, the social movement theorists claim that social movement itself is the basis of civil society. So, where does civil society come from? Here, it is time to examine the fourth approach from the social movement literature which sees social movement itself as the basis of civil society, thus clarifying the processes of dynamic formation of a civil society.

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<sup>27</sup> A classic work is Guillermo O'Donnell, *Modernization and Bureaucratic-Authoritarianism: Studies in South American Politics* (Berkeley, CA: University of California Press and Institute of International Studies, 1973). A recent work is Juan Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (MD: Johns Hopkins University Press, 1996)

### 1.3.2.5 Social Movement Literature

Social movement literature consists of a variety of perspectives. For some analysts, social movement theory focuses on post-industrial society's sociocultural and technocratic domination, power relations in knowledge, and rise of civil society, all of which can be found in so-called "new social movement" literature. This type was, to a certain degree, influenced by European-born critical theory and post-modernism. The major characteristics of this literature are the following: (1) its research subject was political institutions and policy issues of advanced West European industrialized nations; (2) the scope was cross-national (comparative); and (3) its methods were survey-based as well as historical and institutional.<sup>28</sup> The growing interest in cross-national focus is understandable in the wake of increasing European integration, as well as academic interest in theory building.

For others, social movement theory focused on the reasons for the emergence of social movement organizations, movement personalities and their strategies, and their whereabouts during the course of organizational development. This focus was dominant in 1970s American sociology in which the micro-level unit of analysis was individuals who were used to explaining the emergence of social movements. At the same time, American scholars attempted to include social structure, called political opportunity structure, as a major factor in the emergence of social movements.

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<sup>28</sup> See works by Hanspeter Kriesi, Herbert Kitschelt, and Ruud Koopmans.

The major characteristics of the American social movement literature are the following: (1) its analytical unit is individual-based; (2) the scope is single case studies; and (3) its methods are interviews and time-series analyses to clarify the protest cycle.<sup>29</sup>

Recently, the integration of the above two trends has been attempted, and the focus has shifted to a more theoretical one (McAdam, McCarthy, and Zald 1996 and Jenkins and Klandermans 1995). There are several key aspects of this newly revamped social movement literature which are of interest to my project. First, the social movement literature has its focus beyond formal political institutions, such as political parties and interest groups. Particularly, this focus is useful in a study of authoritarian politics where formal channels of political participation are very limited, or usually meaningless.

Second, the focus on the emergence and outcome of social movement forces us to explain the relationship between the state and society. Although the literature usually does not pay explicit attention to what “the state” refers to, the strength of the approach rests on the theorization of the dominant political structure and contentious actors within the structure (Jenkins and Klandermans 1995). Third, mainly owing to the theoretical development of resource mobilization theory in the US, the social movement literature theorizes how contentious actors mobilize important resources, such as money, facilities, labor and legitimacy in order to achieve goals (McCarthy and Zald 1977).<sup>30</sup> And finally, although in the minority, recent social movement theorists understand the role of social

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<sup>29</sup> See works by Doug McAdam (1982) on black insurgency and Freedom Summer (1988); Craig Jenkins and Perrow (1977) on farm workers; Mayer Zald and John McCarthy.

<sup>30</sup> Also see C. Jenkins, “Resource Mobilization Theory and the Study of Social Movements,” *Annual Review of Sociology* 9 (1983): 527-553.

movements in their relationship to civil society. Once defined as a group aimed at attacking and modifying the dominant social values and norms which are seen as the source of unfairness, inequality, and injustice in society, a social movement is not merely a matter of succeeding in mobilizing the masses under the changing opportunities.<sup>31</sup> Instead, a social movement is a means to radicalize civil society and hence, develop democracy. This view is the position I accept, in the hope to incorporate the role of social movements in the formation of a civil society. Therefore, I see a civil society as an object which is shaped by the direction of social movements and is improvising constantly. This view is voluntaristic, yet the advantage is that this view does not impose a romanticized view of civil society on developing societies.

What are the current key concepts in the social movement literature? As more studies are conducted by both American and European scholars, there are three key concepts which have emerged over the past decade in social movement research and the interaction of these concepts is important in understanding social movements: Political Opportunities, Mobilizing Structures, and Framing Processes.

Tarrow defines the concept of political opportunities as “consistent... signals to social or political actors which either encourage or discourage them to use their internal resources to form social movements” (Tarrow 1996). Political opportunities arise with the changes in the institutional structure (formal political institutions, the state) or “informal power relations of a given national political system” (e.g. elite cohesion and its

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<sup>31</sup> Jean Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge, MA: MIT Press, 1992). See Chapters 10 & 11. For an empirical study of social movements and democratization, see Bronislaw Misztal and J.Craig Jenkins, “Starting from Scratch is not Always the Same: The Politics of Protest and the Postcommunist Transitions in Poland and Hungary,” in J.C. Jenkins and B. Klandermans eds., *Politics of Social Protest: Comparative Perspectives on States and Social Movements* (Minneapolis, MN: University of Minnesota Press 1995), pp. 324-340.



breakdown). Generally, this concept encompasses four aspects. These are (1) relative openness or closure of the formal political system; (2) stability of elite alignments; (3) presence of elite allies; and finally (4) the state's capacity for repression.

This concept attempts to capture the relationship between movement and formal politics in order to explain the following: (1) the timing of movement emergence; and (2) the outcomes of the movement. McAdam provides critical assessment of the concept (1996). First, as an independent variable, this concept is vague and is a too broad, "hard-to-operationalize" variable. Quoting Gamson and Meyer, McAdam warns that "the term...threatens to become an all-encompassing fudge factor for all the conditions and circumstances that form the context for collective action" (McAdam 1996:25). In a sense, this concept may turn into a political door which simply opens to release social movements or closes to restrict them without specifying under what conditions the movement emerges. In response, McAdam calls for specifying dimensions of political opportunities depending on which question you seek to answer in your research design.

Second, the concept can be independent or dependent variables. This at least calls for the precision of logic of analysis to specify what you are explaining, and what is explained. On this point, Tarrow sees this aspect as rather useful in explaining the rise and fall of social movements in *Power in Movement*. Tarrow's claim is fair as he engages in explaining the role of political opportunities in a movement's success or failure, and the dynamic nature between the state and society, rather than testing rigorously the causal mechanism in which one set of opportunities causes a particular movement outcome (in King, Keohane, and Verba's words, Tarrow engages in "descriptive inference" rather than "causal inference").

The second concept, mobilizing structure, is defined as “those collective vehicles, informal as well as formal, through which people mobilize and engage in collective action” (McAdam, McCarthy, and Zald 1996:3). Examples of the “vehicles” (or organizational resources activists can deploy) are formal and informal networks and local institutions, which link movement leaders with the organization. This concept is categorized into informal and formal, as well as non-movement and movement forms. For example, the informal and non-movement mobilizing structure is neighborhoods, work and friendship networks. The informal and movement structures include memory communities, activist networks, and affinity groups. The formal and non-movement structures are churches, unions, and professional associations. And finally, the formal and movement structures include social movement organizations, protest committees, and social movement schools.

In essence, the task of mobilizing structure for movement is a matter of coordination and management between the leaders and followers of movements under political opportunities. This concept addresses the issues internal to movement, such as the existence of committed adherents, the embeddedness of potential participants in existing social organizations, and the forms of movement organization (centralized or decentralized, hierarchical or horizontal, local or national). This is the aspect which Putnam emphasized in his study of organizational features of civil society in Northern Italy.

The focus on mobilizing structures therefore is a complement to the focus on political opportunities. The concept of mobilizing structures explains the internal dynamics of social movement while the concept of political opportunities explains the external dynamics of a social movement's success or failures.

The third and last key concept in social movement literature is framing processes. The concept of framing processes is based on the belief that culture is strategically produced, not static and embedded in a community. The framing process, according to Zald, is a proactive process in which activists use metaphors, symbols, and cues "to render or cast behavior and events ... and to suggest alternative modes of action" (Zald 1996:262). Taken from Ervin Goffman's 1974 concept of "framing," and developed by Snow and others, this concept explains the strategic processes of mobilization through the innovation of linguistic and cognitive signs. These processes are transmitted through mass media and at places where personal interactions take place, such as bars, meeting halls, and coffeehouses. Importantly, however, employing framing processes is not the monopoly of movement leaders. Their opponents also engage in the same processes, thereby creating a contest of framing against the movement. In addition, access to framing opportunities is unequally distributed among different social groups.

Framing is an exercise of cultural creation and consumption at the same time. For example, while a writer who is a moral entrepreneur, tries to define issues, "invent metaphors, attribute blame, [and] define tactics," the writer not only creates different views of the existing culture but also is part of it. The twin dynamics of consumption and creation of culture is an important finding in explaining the ephemeral and amorphous nature of social movement.

Linking framing processes to mobilization and political opportunities, Gamson and Meyer's contribution provides a useful way to categorize political opportunities: they are both volatile and stable (Gamson and Zald 1996). By looking into the volatile aspect of political opportunities, which is a reflection of "struggle over meaning within movements" (Gamson and Zald 1996:289), they demonstrate how the framing processes of political opportunities both favor and go against movements.

#### 1.3.2.6 Critique of Social Movement Literature

Although the framework presented by the social movement theorists is useful, there is a need to address the different purposes of movement, especially between democratic and anti-democratic ones. As an implicit assumption, generally the social movement scholars deal with social movements which are aimed at creating a just and democratic society. However, there are other movements which may not explicitly be working toward a just and democratic society. Some racist movements, such as the Ku Klux Klan in the US and the Left Front in Italy, are a few examples.

Second, another weakness is its failure to explicitly analyze the state and its relations to society in terms of democracy because the state's relationship with social movement is a delicate and inherent interdependency. The state protects the rights of individuals and social movements search for the ultimate democracy by influencing the state. In other words, without the state, social movements do not exist. The main problem of the treatment of the state-society relations in the social movement literature in general, therefore, is that the relationship is seen in superficial structural terms without taking into account the meaning of the relationship.

For example, there are a number of reasons for the need to emphasize the role of the state, especially in the authoritarian context: (1) the state is the major contesting arena for movements; (2) the state's capacity in influencing society - through taxation and distribution of resources, and the use of coercion when not complied - has been growing. This phenomenon begs a question regarding the genesis of democracy: how is it possible to make politics both more accountable and more democratic? We need to answer the following question: what is the role of social movements in their relationship to democracy?

In addition, Tarrow implies, the world is moving toward transnational movement societies due to the transnational nature of issues brought forward by social movements, such as environment, religion, and gender. Does this mean that we are witnessing the end of the state because it is helplessly incapable of solving these issues? The answer is clearly no, since the sovereign state has a vital role in protecting the rights of individuals while at the same time the state possesses the dangerous capability of violating citizens' rights. The importance therefore is how to guarantee a democratic state which protects

individual rights while minimizing the abuse of power. According to this logic, the state is a necessary institution for democracy as there is no alternative so far. How can we ensure a democratic state? One claim is that there is a need to link social movement to civil society, which can become the social basis of a democratic state. Since there is often a tendency for the social movement activists to assume all social movements are democratic, the state is treated as a simple obstacle to achieve the goals of movements, instead of the state being the only institution which also gives life to social movements by protecting individual rights.

In political science, there is a growing interest in incorporating the social movement literature to explain issues of democratization in developing areas. Scholars on Latin American politics proposed the concept “associative network” as the way to explain the emerging role of social movement organizations, and their mode of political participation in politics. Chalmers explains that the associative network consists of diversity of different organizations and associations which are identity-oriented. This network also connects the so-called popular sector with national politics (Chalmers, Martin, and Piester 1997). The major characteristics of this approach are its emphasis on informal channels of politics, the “bargaining” relationship between the social organizations and the state (Martin 1997), identity politics, and finally the mobilization processes of social movements.<sup>32</sup>

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<sup>32</sup> See Kathryn Hoschstetler, “The Evolution of the Brazilian Environmental Movement and Its Political Roles,” in Chalmers et al. *The New Politics* pp. 192-216. Also see the same author, “Social Movements in Institutional Politics: Organizing About the Environment in Brazil and Venezuela,” a Ph.D dissertation. Department of Political Science, University of Minnesota (1994).

## 1.4 LBH: A Social Movement Organization in an Authoritarian Setting

### 1.4.1 Definining the Survival of Social Movements

How can a social movement organization “survive” or “cease to exist” in an authoritarian setting? I believe that durable democracies need to have in place active social movement organizations which are the social basis of democratic civil society. Civil society by definition refers to, as explained above, a broad concept: the “arena of polity where self-organizing groups, movements, and individuals, relatively autonomous from the state, attempt to articulate values, create associations and solidarities, and advance their interests” (Linz and Stepan 1996:7). This working definition of civil society is expanded in this research to include the strength of civil society which can be assessed by the activity levels of social movement organizations (SMOs) that are nonviolent in nature, as the indicator of democratic capacity.

The activity levels of social movements, in theory, can be assessed by examining the nature of non-violent actions. The non-violent actions include contentiousness and coerciveness of SMOs toward the state (Bond, Jenkins, Taylor, and Schock 1997). By contentiousness, I mean that the action is disruptive to the existing conflict resolution procedures of a political system. The contentious action may include sit-ins, building occupations, legal parades and demonstrations. By coerciveness, I mean that the action imposes negative social, economic, political, or physical sanctions for noncompliance. This includes the threat to strike, demonstrate, or parade if demands are not met.

Combining both contentiousness and coerciveness, it is possible to assess the intensity of conflict between the social movement and the state (i.e. when both contentiousness and coerciveness are high, the conflict is the most intense). The subject organization in this research, LBH (the Legal Aid Institute), is a suitable example of a non-violent organization.

Since this research will assess the survival (and death) of social movement organizations, it is important to examine the factors both internal and external to the organization. First, I define “survival” to mean that the organization maintains the following two critical aims of social movement: (1) the inclusion of isolated and disadvantaged people into the polity and (2) the fundamental change of cultural and normative values which are thought to be the source of social problems (Cohen and Arato 1992). First, a social movement aims at empowering the disadvantaged within the formal political system. This goal includes passing legislation to protect civil rights and enforcement of such legislation. This inclusion changes the existing formal political system in a number of ways, yet the formal political system remains an institutionalized channel to express voice and influence the political outcome.

Second, a social movement also aims at influencing the dominant cultural forms and changing the dominant perceptions. In other words, a social movement aims at fostering civil society by undoing unfairness, inequality and injustice, and promoting fairness, equality, and justice. In this view, a social movement is not merely a matter of succeeding in mobilizing the masses under the changing opportunities. Instead, a social movement is seen as a means to radicalize civil society and hence democracy. In my research, I accept this “dualistic character” of social movements. Therefore, there are



two variables in assessing the survival of social movements. These are (1) what is the activity level (whether it is high or low), which is the indicator of the strength of civil society, and (2) whether social movements maintain the two principal aims. Figure 1.1 below clarifies this aspect.

CATEGORY	SUBCATEGORIES	MOST EFFECTIVE CASE
Activity Levels	Contentiousness	High
	Coerciveness	High
Aims	(1) Inclusion into Polity	Maintained
	(2) Challenge Culture/Norms	Maintained

Figure 1.1: Typologies of Conditions of Survival

This table only gives an example of the most effective case of social movement. There will be variations on the effectiveness depending on the combination of subcategories.

Second, by “death” of social movements, I mean that a social movement organization (1) fails to achieve either or both aims of the organization; (2) is co-opted unwillingly (compromise, concession, settlement) or actively (joining the power); and (3) is ended unwillingly (repression, arrests) or actively (exit). These three are obviously not mutually exclusive. For example, an organization may seem to be co-opted unwillingly (compromising with the regime), yet, it still maintains the above two critical aims of the social movement, thus it is still an important part of the democratic civil society (see Figure 1.2).

	CO-OPTED	ENDED
ACTIVELY	<ul style="list-style-type: none"> <li>-joining the power</li> <li>-career building</li> <li>-automatic loss of movement aims (or change from within)</li> </ul>	<ul style="list-style-type: none"> <li>-exit</li> <li>-escape</li> <li>-automatic loss of movement aims</li> </ul>
UNWILLINGLY	<ul style="list-style-type: none"> <li>-compromise</li> <li>-concession</li> <li>-settlement</li> <li>-movement aims may or may not be lost.</li> </ul>	<ul style="list-style-type: none"> <li>-repression</li> <li>-arrests</li> <li>-killings</li> <li>-loss of movement organization and thus, loss of movement aims</li> </ul>

Figure 1.2: Typologies of “death” conditions of social movements

With the above definitions in mind, this research will assess the reasons for the sustaining existence (survival) of the human rights organization LBH in Indonesia. What are the factors responsible for the organization’s survival for almost three decades in authoritarian politics? And what potential is there in the future? I will now identify several independent variables to explain the reasons for the organization’s survival: (1) organizational democracy; (2) social relations of the organization; (3) political opportunity structure; (4) ideology and political culture; and (5) socio-economic change.

## 1.4.2 Factors determining the survival of a social movement

### 1.4.2.1 Organizational Structure

First, organizational democracy means that the LBH itself is operated with democratic principles in which the organizational leaders are sensitive and accountable to the member's demands. The hypothesis is that the internal democracy of a movement's organization determines the democratic nature of a movement's development.

As discussed in the previous section, Putnam used the ideas from the sociology of networks to discuss the organizational structure: whether the organization is horizontally structured or vertically structured. The horizontally structured organizations are better suited to the ideal type of the networks in civic organizations. Yet, this concept only refers to the superficial structure of the organization as if having horizontal organizational structure is enough. This research does not stop here. I go further to say that democratic activist organizations are constantly under pressure from their members to function democratically.

Therefore, I seek to evaluate the Michelsian model of the linear process of organizational evolution. According to Michels' iron law of oligarchy, the initial goals of a political party are inevitably compromised by the maintenance needs of the leadership, rather than of the organization as a whole (1958). Although Michels did not clearly define the concept (Prins 1968), he was interested in the process of oligarchization.<sup>33</sup>

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<sup>33</sup> By showing the seemingly inevitable tendencies of a political party to become oligarchic, he showed his decline of participatory democracy. Michels' example was the German Socialist Party. There was a dispute over what Michels meant by "a party." Here, I have no intention of defining party in Michels'

Here, the process of oligarchization is defined as “the concentration of power...in the hands of a minority of the organization’s members” (Zald and Ash 1966:328). Lipset et. al. similarly define the concept as a “situation in which at the head of the organization there stands a small group of men, most of whom have held high office in their organization’s government for a long time, and whose tenure and control is rarely threatened by serious organized internal opposition” (Lipset, Trow, and Coleman 1956). The essence of oligarchy therefore is the concentration of power held by a few who are rarely challenged by the members.

In the dominant approach of the sociological study of movement organization, oligarchization is seen to undermine the very reason for the movement’s existence: to change the existing cultural and normative values. In other words, every social movement organization faces the fear of losing the very foundation of the movement by becoming more oligarchic in the process of joining the formal political processes.<sup>34</sup>

In the American model of democratic polity, the process of inclusion into the polity is a little troublesome. On the one hand, it is nonsense to discredit the achievement of the civil rights movement to pass equal rights laws, or the inclusion of the NAACP<sup>35</sup> into the main stream of Washington politics. Yet, one may claim that the important

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book, but only understand that a party and a movement organization are the same as far as this project is concerned. According to Prins, Michels meant that oligarchization process is applicable to any organization “with a certain, well-defined goal” (Prins, 1968:23).

<sup>34</sup> The process of oligarchization should not be confused with institutionalization of an organization in politics. The institutionalization of an organization within national politics as defined by the supporters of procedural democracy (Dahl 1956) differs from institutionalization, or better to say bureaucratization in the Weberian sense, of an organization. For Dahl, the institutionalization of oppositions within national politics should be encouraged as one important foundation of democracy. Therefore, it is important to keep in mind that the process of oligarchization refers to the undemocratic tendency within an organization in which a few ruling elites repeatedly dominate the power of the organization at the expense of the members.

<sup>35</sup> National Association for the Advancement of Colored People.

initial aim of the civil rights movement in the 1960s - to change values of racism and discrimination - seems to have been acquiesced in the process of the movement's inclusion into formal politics. However, again in the American democratic polity, the aim of value change can be addressed within the movement, in terms of the creation of internal democratic channels from the organization members to the organization leaders, since the organization leaders are accountable to their member's demands (Wilson 1995). In this model, the inclusion of a social movement into formal politics may diminish the popular energy for social change, yet does not kill the possibilities for improvement. In other words, the dissatisfied members can challenge the leadership by threatening to exit the organization. This democratic interpretation of internal organizational dynamics challenges the assumption of Michels.

Nonetheless, in an authoritarian setting, like that of Indonesia, social movements face a serious challenge: contrary to the democratic setting, not only does a movement's organization face aggressive co-optation attempts and repression by the state, but also the movement itself is discouraged from the start. In this difficult setting, the movement's inclusion into formal politics achieves no more than co-optation and thus the movement's aim (social change) is shattered. An important question arises: does this mean that the internal democracy within the organization is important when the organization aims at achieving Cohen/Arato's "dualistic character" of two social movement goals while resisting the coercive state? In other words, if internal democracy is not realized, i.e., the organizational leadership is oligarchic and does not translate the members' demands into movement outcomes, is the movement's organization more susceptible to the state's co-optation attempts?

The answer to the above question is positive in the sense that (1) the oligarchic leadership is likely to be influenced by the co-optation attempts and repression by the state since the leadership lacks membership support (lack of internal democracy); (2) in the case of the inclusion into formal politics, this means that the organization is co-opted (co-optation); and (3) the oligarchic leadership discards movement aims in the name of the survival of the leaders and at the expense of the members (end of social movement). What does the exit option, which is the critical means to let the leadership know of the members' dissatisfaction, mean for the dissatisfied members under authoritarianism? Once you exit, you are likely to face the challenge of high start-up costs of a new movement organization unless you give up the aim of social change. Compared to the conditions under democracy, the start-up cost of a new social movement is higher. What then does the exit option mean for the movement leaders? The authoritarian state is likely to leave the organization alone as long as it does not challenge the state (Linz 1975). Alternatively, when a challenge does take place, the state is likely to pressure the leaders to support the state agenda, or to destroy the organization by coercive means.

To pursue this logic further, democratic governance guarantees the health of social movement and hence active civil society, while the lack of democratic governance not only discourages the rise of the social movement but also is inclined to destroy the health of the social movement. Obviously, this statement is pessimistic. Yet, there is surely room for social movement organizations to change the governance from authoritarian to more democratic governance. At least in the context of organizational democracy, the strong ties between the movement leaders and their members strengthen the organizational capacity for democratic change.

#### 1.4.2.2 Inter-organizational Relationships

Second, the social relations of the organization refer to the configuration of the organizational network which LBH maintains and develops overtime. This has two aspects: (1) domestic and (2) international. First, the domestic aspect of the social relations can be assessed based on Putnam's typologies which he derived both theoretically from sociology and empirically from his observations in Northern Italy. Let me again go back briefly to these typologies. The networks of civic organizations in civil society can typically have the following features: (1) organizations are densely connected to each other; (2) their members are weakly tied; and (3) organizations are horizontally structured (See Section II 3.4). These typologies are derived from a democratic society where the rule of law is maintained and the freedom of assembly and speech is guaranteed. Thus, in an authoritarian setting, these typologies would not be applicable to reality. Yet, they are useful in assessing reality as long as they are used as an ideal type. Therefore, I will assess the features of LBH in (1) its organizational relationship to other local organizations, including other NGOs, religious institutions, and political parties; (2) the types of membership (either "strong" (exclusive) - blood and family, and ethnic-based ties - or "weak" (inclusive)- acquaintance and membership). The third aspect, the organizational structure being horizontal or vertical is discussed above as a separate factor.

Second, the international aspect of social relations refers to, in this case, mainly the financial contribution to the organization. In a repressive regime, it is difficult, if not impossible to obtain financial support from domestic sources.

Also given the lack of philanthropic activities in Indonesia, the domestic source of support is scarce. As a result, the organization is heavily dependent on support from a Dutch organization, and to a lesser degree from the Ford Foundation and the Asia Foundation in the US.

#### 1.4.2.3 Political opportunity structure

Third, political opportunity structure is defined as “consistent... signals to social or political actors which either encourage or discourage them to use their internal resources to form social movements” (Tarrow 1994:54). Political opportunities arise with the changes in the institutional structure (formal political institutions, the state) or “informal power relations of a given national political system” (e.g. elite cohesion and its breakdown). As Tilly et al. (1975) have shown, collective violence in Germany, France and Italy over a century did not occur as a result of social transformation per se, but was directly linked to the changing map of political struggle at the national level. Kitschelt similarly showed how the impact of the anti-nuclear movements in Europe varied across different political contexts (1986). Kitschelt argued that the state’s institutional receptivity to popular demands differs greatly from country to country, and this difference in institutional configuration makes a difference in facilitating social movements.

Yet, at the analytical level, political opportunity structure refers to many aspects of the political environment, thus it is not useful without a clear definition based on what is really going to be explained (McAdam 1996). Defining clearly what it means is



particularly important since opportunities give birth to movements at the same time that movements create new opportunities. Since the goal of this research is to explain why and how the human rights organization survived under the authoritarian regime, I will focus particularly on the changing political map of the state, which is perceived as an opportunity by the movement organization. Thus, the following four dimensions, based on the work of McAdam, are identified in this research: (1) the presence or absence of elite allies; (2) elite divisions and conflict; (3) openness or closure of political system; and (4) the state's capacity and propensity for repression (1996:27). The particular focus on political elites, instead of political parties, is for the following reason. The political elites, defined as both the military and high-level officials trusted by the president, are far more important in sending signals to the public regarding the stability/instability of the political system in Indonesia. Although many studies of European social movements emphasize the importance of the movement's access to political parties, the same assumption does not work here. The Indonesian political system has not given much power to political parties (even to the governing party) to formulate and implement important policies. Thus, the access to political parties is less important than the personalized networks of powerful elites.

To assess the first dimension, that is the presence or absence of elite allies, I will investigate the interaction of key individuals of the LBH with the state actors, such as military generals and politicians. As claimed by social network theorists, the interpersonal position of the key actors within the relevant social system at the early stages of social movement development is the crucial variable which determines the success and failure of the movement development (Gould 1994; Kim and Bearman 1997).

Especially under the authoritarian or totalitarian regimes, the structural basis for resistance is small-scale interpersonal relationships among the key actors. In this dissertation (Chapter 4), I found that LBH lawyers interacted with state actors, such as director general of ministry of justice Baharuddin Lopa and Attorney General and Supreme Court Justice Ali Said. There were also judges who sympathized with LBH's activities.

To assess the second dimension, elite division within the state, I examine, in Chapter 2, the changing map of high politics based on my analysis from the newspaper reports, scholarly analyses, and interviews. Although it is often difficult to escape simple speculative inference of elite divisions within the state, it does not mean it is impossible to access the elite divisions. A few examples of the elite division may be promotion of a military general over another, removal of a minister from office, the public accusation of one office by another, or the informal rivalry among them.

To assess the third dimension, that is the openness or closure of a political system, I draw my analysis from newspaper reports, scholarly works, and interviews. One example pertinent to this topic is the establishment of the National Human Rights Commission (Komisi Nasional Hak Asasi Manusia, or Komnas HAM) in 1993. This committee, drawn from both government and non-government actors, has been an arena for formal dialogue between the state and society. Through this commission, various social movement organizations interact with the government officials and exchange views (Komisi Nasional Hak Asasi Manusia 1997).

To assess the fourth dimension, that is the state's capacity and propensity for repression the size and mobilizational capacity of the repressive machine (police and military) and the state control of media based on the reports of actual events.

#### 1.4.2.4 Ideology and political structure

The fourth explanatory factor is ideology and political culture. Indonesia was an ideological state (Ramage 1993). The dominance and penetration of the state ideology, called Pancasila<sup>36</sup>, in every aspect of ordinary life was obvious during the Suharto era, particularly after the mid-1980s. Any new forms of activities and demands, according to the state, must conform to the Pancasila ideology. Since this state ideology is broad in nature, anyone, both the government and activists alike, have been able to interpret it in the ways by which, for the government, they can easily suppress political challenges posed by the activists. For the activists, they can interpret it another way to challenge the government. One example is the discourse over the second ideology, "justice." The challengers may claim what they perceive as "justice" to persuade the state to meet their demands.

This polemic over rhetoric and syntactic meaning in modern language is one way for the social movement organizations to challenge the government's authority. As O'Brien points out, this form of "rightful resistance" is a product of state-building processes in which the modern concepts of justice, the rule of law, and equality, for

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<sup>36</sup> There are five principles in this state ideology: (1) belief in supreme god; (2) Justice and civility among people; (3) Unity of Indonesia; (4) Democracy through deliberation and consensus among representatives; and (5) social justice for all.

example, are accepted by the common people and used to challenge the powerful (O'Brien 1997). Thus, it is important to pay attention to social movements which attempt to find ways to accommodate two things. The first is the ideological demands of the state and the second is to challenge the state by reinterpreting the meaning of the ideology and throw their own interpretation back to the state.

It is a plausible proposition that political culture, defined as shared meaningful values and norms which become a blueprint for political action, shapes the ways politics is structured. From classical psychoanalytic studies<sup>37</sup> to mass survey research (Almond and Verba 1963), this once popular subject has come back (Almond 1993). The major theoretical focus to bring back political culture, at this time, comes from, first, the historical institutionalism which emphasizes the historical context of timing and temporality of institutional formation (Orren and Skowronek 1995); second, the new institutional economics which emphasizes the ways by which the determination of transaction cost is in fact culturally derived (North 1990; Ensminger 1992); and finally third, the social movement literature which sees culture as one of the resources political actors can deploy to achieve a goal. Particularly in the social movement literature the concept of culture was developed to be both a context and a resource for actors (Zald 1996). Thus, culture both constrains actions and gives opportunities. These studies, although they do not particularly speak to culture per se, directly deal with the context specific norms, values and attitudes in a specific locale which are responsible for structuring institutions that shape social outcomes.

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<sup>37</sup> See studies by Ruth Benedict, Margeret Mead, and Erich Fromm.

Yet, the Indonesian political culture is hardly easy to identify. The Dutch in the colonial times saw the vast cultural differences in the colony and concluded conveniently that the state's unity could only be maintained by a strong colonial administration. Yet, if the essence of the political culture argument is to argue based on the "dominant" culture in political life, the Indonesian dominant culture, at least among the agreement of many Indonesianists, is the Javanese culture which is seen to be becoming the national culture (Jackson 1978). This is the context which indicates what is appropriate and not appropriate to actors.

The Javanese culture is often characterized by (1) being feudal/aristocratic in personal relationships, (2) avoiding direct conflict and obvious grievance expression, and (3) being personalized/centralized in power utilization. The purpose here is not to establish a link between the Javanese culture and national culture. Yet, if I accept the characterization of "Indonesian culture" as given, it is possible to hypothesize that this characterization of the Indonesian culture influences the fate of the human rights organization. This cultural assessment is obviously closely related to the examination of the movement organization as discussed above. What if, for example, the fall of organizational unity was claimed to be due to the feudal characteristic of the organizational leadership? I suspect that the defining term "feudal" would be critical in a careful assessment of the impact of political culture on the organization. It is only important here that the feudal leadership in the organization means undemocratic, thus making the organizational effectiveness weak.

However, as I argued above, culture can be a resource for actors to deploy in order to achieve a goal. This obviously applies to both those in power and challengers.

This notion of culture refers to, instead of dominant Javanese culture, myths and symbols, values, and cultural/historical themes. As Scott noted, and social movement theorists agree, the use of the popular sector cultural myth, symbols, and historical themes in contentious collective action is a way to express grievances and pose a challenge to the state (Scott 1976).<sup>38</sup>

#### 1.4.2.5 Socio-economic change

Socio-economic change means that the changes in demography (education profiles, gender), urbanization, and industrialization are also an important context for the explanation of the emergence and sustainability of LBH. This aspect is explained in Chapter Two. Since the majority of the contested issues which the lawyers handle are land disputes and labor issues, industrialization and urbanization are two major social changes which are relevant to the organizational activities. A simple hypothesis is that the high level of urbanization and industrialization create the affluent middle class. Some of these people, well educated and socially motivated, decided to pursue the legal defense career, or support a good cause as volunteers. These motivated lawyers along with other activists (college students and academics) supported the cause of LBH, and this became the backbone of the organizational strength.

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<sup>38</sup> Also by the same author, *Weapons of the Weak* (New Haven and London: Yale University Press, 1988). From social movement theorists' view, see William Gamson and David Meyer, "Framing Political Opportunity," in McAdam et al. *Comparative Perspectives*, pp. 275-290. Also see a whole volume dedicated to the cultural issues in social movement, Hank Johnston and Bert Klandermans eds., *Social Movement and Culture* (Minneapolis, MN: University of Minnesota Press, 1995).

To find this out, it is critical to find out where these lawyers came from. Thus, I conducted a short (4 pages) survey to ask the personal background of the current lawyers and interviewed some of the past lawyers to find out the same background.

## 1.5 Organization and methodology

This dissertation is divided into five parts. Chapter one discusses the theoretical background of democratization and state-society relations, and uses this framework to analyze the case study of the role of the LBH in political change in Indonesia between 1990 to 1997.

Chapter Two is the description of both society and the state. This chapter will help the readers understand the realms of both society and the state between which LBH is sandwiched as an interface. This chapter also describes the economic and political changes during the 1990s in Indonesia to highlight the social climate which is important for the emergence of new social demands. This is important to shed light on the interface between LBH and society because LBH is the organization which represents the interests of the society. To underline the significance of why such social demands emerge, and how LBH finds it important to respond, this chapter is a necessary one. It gives readers the background of economic and political change in the 1990s. Chapter Three introduces the historical background of LBH and its emerging activities in the 1990s. This chapter will also clarify the organizational aspect and the workings of LBH. Chapter Four analyzes the LBH's activities based on an extensive study of newspaper articles and interviews. This chapter describes the micro-level activities of LBH and puts them into

the perspective of broader social change. This chapter will also describe the state response, with concrete reference to the individual ties which appear to be important in both sustaining the LBH's activities in an authoritarian regime and in further pushing the state for regime change. Chapter Five gives conclusions and suggests further research on democratization and state-society relations.

This study is a result of extensive fieldwork carried out in Indonesia from June 1998 to November 1998. This fieldwork brought the author to Jakarta, Bandung (West Java), Semarang and Yogyakarta (Central Java), Surabaya (East Java), Lampung, Medan, and Banda Aceh (Sumatra). During the fieldwork, a short survey to gather information on the organizational aspect of LBH lawyers was conducted. The 14 offices of LBH nationwide were the subjects of this survey, and the result of the survey is presented in Chapter Four.

In addition, the author conducted extensive interviews with LBH lawyers, academicians, intellectuals, state actors, and civic leaders in all cities visited. The library research to gather newspaper articles on LBH between 1990 to 1997 was also carried out in the libraries in Indonesia.



## 1.6 Conclusion

In this chapter, I have reviewed both the macro-level and the micro-level approaches to democracy and democratization. The macro-level approaches emphasize (1) the social correlates of democracy, such as socio-economic development (modernization theory), (2) the rise of the middle class (Marxists/structuralists), and (3) the broad notion of persisting cultural forces (culturalists). On the other hand, the micro-level approaches emphasize (1) negotiated settlements of a limited number of elites within sovereign states (transition theorists), and (2) active civic organizations with civic virtue (civil society literature).

From the above critiques, we see the major problems with these approaches. Modernization theory is criticized for perceiving democratization as the inevitable outcome of socio-economic development. The class argument is criticized for its limited application of the class concept, and its bias toward economic variables over political variables. The culturalist approach is criticized for its grandiose claims of the force of culture which tend to neglect possibilities for change. The transition approach is criticized for its failure to understand how the social actors may be incorporated in the democratization process because it focuses solely on the initiation and consolidation processes at the state level in general, and the elites in particular. The civil society literature is criticized for its romanticism, and its conceptual weakness for explaining a variety of state-society relations in a variety of contexts.

I propose a new approach to explaining the formation and the dynamic workings of civil society by introducing the social movement approach and its frameworks. I argued that the primary concepts of the social movement literature shed light on the connection between the state and the society, as well as explain how social actors find ways to overcome organizational and structural obstacles in the process of the formation of a civil society.

In my dissertation, I study a particular social movement, LBH, operating under the constraints of an authoritarian regime. There are four ways in which this research is theoretically significant. First, this research contributes to our understanding of civil society. In particular, this research challenges the dichotomy between the state and civil society by looking into the gray area between the two, as already pointed out in studies on Asian societies.<sup>39</sup> Considering the initial decade of LBH during which both state and social actors interacted, it is critical to examine the dichotomy, which I believe to be too simplistic to explain the emergence of LBH and its sustaining activities.

Second, this research sheds light on the issues of structure and agency. The main body of this research is to explain the emergence and sustaining activities of LBH in an authoritarian setting. The focus of this research is on the role of agency which maneuvers under structural constraints. In essence, this research challenges both structuralist arguments and the voluntaristic approach. On the one hand, structuralist arguments, such as modernization thesis, the statist argument, materialist determinism, and hard-core

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<sup>39</sup> A historian, Philip Huang argued that the binary opposition between state and society is “inappropriate” for the analysis of China. He proposed instead “the third realm” between state and society, an arena in which both state and society participated. Examples are found in the late imperial period and contemporary setting as well. See Philip Huang, “‘Public Sphere’/‘Civil Society’ in China? The Third Realm between State and Society,” *Modern China* 19, no.2 (April 1993), 216-240. See also the following discussion for details.

rational choice theorem, assume that large non-human forces (capitalist development, state, mode of production, and structure-induced equilibrium) drive history. This view lacks insight on the role of creative agencies, such as innovative leadership and ideas, and even virtue and fate. The rational choice theorem, for example, conceptualizes institutions as game forms which provide rules for self-interest maximizing individuals who find equilibrium choices (Shapsle 1995). However, the rational choice theorem is based on dubious assumptions (i.e. all individuals are self-interest maximizers) which must be verified before it is applied.<sup>40</sup>

On the other hand, the voluntaristic approach places its emphasis on individuals, the smallest unit of analysis, and decisions or choices as the driving forces of history. On the contrary, this view lacks focus on structural opportunities and constraints which shape the actions of human agency, and is often “a-theoretical.” New institutionalism, an unfortunate label for this body of diverse approaches, may provide a perspective which integrates structure and agency in their analysis, but is often not successful in explaining the changing nature of institutions themselves (North 1990). As North is well aware, the institutional analyses take institutions as a given, and then proceed to see how particular institutions shape political outcomes. As a result, it has been difficult to explain why institutions emerge and change, and similarly, how this affects behavior.

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<sup>40</sup> It is doubtful that altruism is an act of self-interest maximizing, the most critical assumption of rational choice theorem.

This research demonstrates the dynamic relationship between structure and agency by emphasizing the relations among human agencies, in particular the network of key actors in both social and state spheres, in creating a space to maneuver in relation to structural constraints. In other words, this research assesses the interaction between structure and agency by examining the process of the network formation by key individuals in the democratic movement LBH under an authoritarian political system.<sup>41</sup> Only with a detailed examination can one explain the emergence and sustainability of a democratic society.

Third, this research provides a first-hand empirical case study which can be used to test the theories mentioned in this essay, and to compare other case studies to which have been carried out in English language environments. The contribution to the field of political science is substantial since this research draws a case from a non-English language environment.<sup>42</sup>

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<sup>41</sup> I borrowed this notion of relationships of key actors and social network as key category to explain political behavior, instead of conventional social categories, such as class, race, urban/rural, and religion, from structural sociology and social movement literature. See, Barry Wellman and S.D. Berkowitz, *Social Structures: A Network Approach* (NY: Cambridge University Press, 1988). For application in business analysis, see Nitin Nohria and Robert Eccles, *Networks and Organizations: Structure, Form, and Action* (Boston, MA: Harvard Business School Press, 1992). For social movement literature, see Doug McAdam, John McCarthy and Mayer Zald eds., *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings* (NY: Cambridge University Press, 1996). My notion of network formation as an explanatory variable is closest to “mobilizing structure” in social movement literature. For further explanation, see below discussion.

<sup>42</sup> It is regrettable that model builders of social science discipline seem to look down on so-called “area” studies specialists who understand local languages. It is perplexing that Robert Bates, who in 1990 provided his defense of “students of developing areas” who work on local cultures, now says that “area studies has no place in the university worth respecting, and practioners of it should not be hired.” See Robert Bates, “Macropolitical economy in the field of development,” in James Alt and Kenneth Shepsle eds., *Perspectives on Positive Political Economy* (NY: Cambridge University Press, 1990), 54. See a comment by Bruce Cummings in a section “Viewpoints” in *Asian Studies Newsletter* (Summer 1997), 8, for the latter comment by Bates. In my view, the importance of language skills and its potential to understand different cultures cannot be neglected. I agree with Whitehead who says, “Comparative work on democratization requires the thorough and careful evaluation of a large range of contextual factors ... In fact, comparing regime change in whole political systems requires familiarity not just with the special

Fourth, this research provides a case from an Asian society, instead of the West, which has been the testing ground for most literature on social movements. Major works on civil society so far have concentrated on European and Latin American cases. Is there a particularistic path for democratization in Indonesia due to the contextual difference? Is there something conducive to the democratization process which is connected in particular to “Asian-ness”? There is a need to assess such concepts carefully with a detailed “thick description”(Geertz 1973) from Asia.<sup>43</sup>

The limitation of this study is that since it is a case study of one organization in one country, the findings from the in-depth study cannot generalize beyond the case itself. The question of whether this case is representative of movement dynamics in general is an interesting possibility, yet cannot be confirmed here. Second, I do not intend to overstate the impact of LBH on democratization in this study. Since the democratization process and its possibilities are still unclear in Indonesia, the claim for the impact of LBH on democracy must wait for the future development and research.

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connotations attaching to individual terms but also the more general political idioms in which these terms are embedded.” See L. Whitehead, “Democratization Studies,” in Robert Goodin and Hans-Dieter Klingemann eds., *A New Handbook of Political Science* (NY: Oxford University Press, 1996), 368-9.

<sup>43</sup> One “civil society” research focused on Asia was published recently, but its focus concerns funding agencies and research institutes and does not provide a rigorous analysis of politics. See Tadashi Yamamoto ed., *Emerging Civil Society in the Asia Pacific Community: Nongovernmental Underpinnings of the Emerging Asia Pacific Regional Community* (Tokyo: Japan Center for International Exchange & Singapore: Institute of Southeast Asian Studies, 1995).

## CHAPTER 2

### ECONOMIC, SOCIAL, AND POLITICAL CHANGES IN THE 1990s AND HOW THE LEGAL AID INSTITUTE FOUND A NICHE

#### 2.1 Introduction

This chapter discusses the economic, social, and political changes that took place in Indonesia from 1990 up to 1998. The socio-economic changes which took place during the 1990s, along with political changes, created cracks within the state-controlled system of the Suharto regime. These cracks in state control provided opportunities for the democratic activists to push democratization forward. As activists began to push for a more democratic society, some of them brought their claims to court. Thus, the judicial branch of the government became a critical point of contact between the state and the democratic forces.

In Section 2.2, I explain the economic and social changes, and in Section 2.3, I continue by explaining how these changes led to political changes, which eventually led to a more active civil society movement. Understanding the background of economic, social, and political changes will provide the readers with the context in which Indonesia's social movement worked.

The reference to economic changes is important. As I explained in chapter one (see 1.4.2.5), because the majority of cases the LBH lawyers handled were land disputes and labor issues, industrialization and urbanization are two important social changes which must be taken into account in this dissertation.

The section on the political changes (2.3) explains how political opportunities emerged and how LBH took advantage of these political opportunities. There are three illustrating cases by which I describe the slot for LBH to play an important role in political liberalization. The first case was how the student movements were allowed by the state to exist to a certain extent and when repression occurred, LBH represented the students. The second case illustrates how the state crackdown on the media opened up the opportunity for political change, and the suppressed media was represented by LBH. The third case illustrates state violence against an opposition party, PDI (Indonesian Democratic Party), and how this event created an opening in the state whereby LBH was able to represent PDI clients.

## 2.2 Economic and Social Changes in the 1990s

Goldstone said that a socio-structural change can be a factor in eventually leading to regime change (Goldstone 1991). As there were far-reaching socio-structural changes in Indonesia during the 1990s preceding the downfall of the Suharto regime in 1998, it is necessary to examine those changes that were occurring in Indonesia. It is important to examine these changes in the context where state-society interaction took place. First, I will describe below various economic and social changes which took place in the 1990s.

### 2.2.1 Consistent Macro-Economic Growth

First, I consider the facts related to Indonesia's macro-economic growth during the period from 1990-1998. In the early 1990s, Indonesia was highly praised as an "emerging giant" in terms of its economic growth (Hill, 1996). The real gross domestic production (henceforth, GDP) per capita was well over US\$600, and was consistently growing at a rate of 5% per year. The share of agriculture in the GDP decreased to 19% in 1990, down from 53% in 1965. Industry, on the other hand, had spectacular growth, occupying 40% of the GDP in 1990. In human index terms, the poverty rate also declined to 10% in 1990, down from 61% in 1965 in Java. Outside Java, the poverty rate also declined to 7% in 1990, down from 52% in 1965. Although the debt amount increased from \$2.4 billion in 1965 to \$84 billion in 1990, debt as a percentage of total exports significantly declined from 524% in 1965 to 231% in 1990.



In other words, Indonesia was producing more, borrowing more at the allowable level, and the general welfare of the people was improving. From the perspective of 1990, Indonesia appeared to be on the road to maintaining a steady and consistent growth rate.

### 2.2.2 Population Growth

The demography of the country was also changing. From 1990 to 2000, the Indonesian population grew from 179 million to 203 million at an average annual growth rate of 1.5%. This was considered successful because the population growth rate in the 1990s was a reduction of 0.4% while during the previous decade, the growth rate was reduced by only 0.2%. Yet, in spite of this success, there was still an increase of more than 2 million people every year, and the absorption of this increased population into the labor market was a policy challenge for the government.

### 2.2.3 Income Gap Widened

Income gap between agricultural household and non-agricultural urban household has widened dramatically in the 1990s. In 1990, for example, the annual income for agricultural household was 438,000 rupiah whereas the non-agricultural urban household had an income of 1,882,000 rupiah. This means that non-agricultural household had 4.8 times more income than agricultural household in 1990. This ratio widened dramatically in 1998 to be 9.3 times. This corresponds to the urbanization process, which is discussed below.

#### 2.2.4 Pressures from Urbanization

Urbanization is also a striking feature of Indonesia in the 1990s, during which large portions of the rural population became dependent on an urban economy. By 1996, 34% of the total population lived in cities, and by 1999, over 40% (80 million people) lived in cities. The urban population growth rate never dropped below 4% per year in Indonesia in the 1990s, and this is one of the fastest growth rates in Asia (UNDP 2000). Particularly, the Jakarta metropolitan area, called Jabotabek, and large cities such as Surabaya and Medan, attracted industrial investments, where most of the industrial production sites were located.

#### 2.2.5 Service and Construction Sectors Grew

Does this mean that industrial workers flocked into urban areas? The data shows that what grew the most are the service sector and utilities and construction. This betrays an image that large number of factory workers dominated urban workers. For example, the data on labor structure since the 1990s did not show a drastic change in the manufacturing sector as seen in the table below. Industrialization, which usually reflects the growth of the manufacturing sector including utilities and construction sectors, shows a moderate percentage growth, but the manufacturing sector alone such as shoe making and electronics factories (in other words utilities and construction excluded) did in fact fall in 1998. The fastest growth sector in the 1990s, as in the 1980s, was the service sector, such as banking and retail sectors.

	1990	1995	1998 <sup>44</sup>	2000
Total employment (in millions)	72	80	88	90
% Distribution Agriculture	51	44	45	45
Manufacturing <sup>45</sup>	20	24	22	18
Manufacturing only	12	12	11	12
Services <sup>46</sup>	29	32	33	37

Figure 2.1: Changes in Employment Structure, 1990-2000<sup>47</sup>

<sup>44</sup> The statistical bureau for unknown reason changed the definition of “employment” starting from 1998 data. The total employment population meant the working population “10 years and over” until 1997 data, yet, the 1998 data up to now refer to the working population who are “15 years and over.” Yet this change did not affect the result significantly.

<sup>45</sup> Manufacturing includes manufacturing, utilities, construction, and transport.

<sup>46</sup> Services include trade and services.

<sup>47</sup> The source for the 1990 data is Manning (1993) and for the 1995, 1998, and 2000 data is BPS, The Statistical Yearbook of Indonesia.

## 2.2.6 Poverty Level Decreased Mainly in Urban Java

The poverty level<sup>48</sup> also declined from 15.1% in 1989 to 11.3% in 1996. However, the poverty level gradually increased to 17.7% in 1997, and jumped to 24.2% during the financial crisis in December 1998 (BPS various years). With a closer look at the poverty reduction effort, one finds that the faster reduction rate lies in the urban areas in the first half of 1990s. The available data shows that urban population grew at the rate of over 4% per year while urban population under poverty decline at the rate of 7% per year.

What do all these figures in the previous sections mean? They mean that urbanization continued with a growth of a better-off urban population over the 1990s up until the financial crisis, and urban areas grew as a result of the growth of services and construction industries. The metropolitan areas in Indonesia witnessed rapid construction in the form of high rises, and an increase in service and trading industries. Meanwhile, industrial workers in factories grew in numbers but at a slower rate than the growth of the service sector.

The poor population in percentage decreased in Indonesia, but a more detailed study revealed that the poverty level in fact increased outside of the island of Java (Booth 2000). This suggests that the fast-industrializing Java helped reduce the poverty rate in Java through the increase of service and construction industries. The data indicates that the growth of the urban service and construction sector was the drive for economic growth and this also infers that the outskirts of the urban areas were acquired by

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<sup>48</sup> Poverty level is defined as “daily minimum requirement of 2,100 kcal per capita plus the non-food minimum requirement” by the Central Statistical Bureau of Indonesia.

businesses to develop housing and industrial estates. Given the fact that Java is one of the highest population density areas in the world, the acquisition of land in urban areas often meant the removal of residents, and it was not an easy task. Land disputes were increasing in the 1990s urban Indonesia, and the rise of disputes required free legal assistance for the socially disadvantaged residents.

#### 2.2.7 Labor Strikes Increased and Longer Hours Lost

The impact of the fast growth in the service and construction sectors on labor needs some consideration here because labor is often seen as a main actor of social change. The labor sector indeed grew gradually, and the following tables on labor strikes and hours lost due to strikes show that there were an increasing numbers of labor strikes from 1990 up to 1996 as the peak. What accounts for this rise of labor strikes?

The labor relations were regulated by the Law on Manpower (Law No. 14/1969) until 1999. This law guaranteed labors the right to organize freely, and allowed anyone to join labor unions. Yet the government control of labor during the Suharto era was strong through the arms of the military. The government, with the help of the law on anti-subversion (Law No. 5/1969), freely intervened in organizing labor activists perceived to be anti-government because the law defined “subversion” very loosely. These two contradictory legal frameworks – one to guarantee the freedom to organize labor unions and the other to allow the state apparatus to intervene in labor unions – asked for a judgment by the judicial branch. Therefore, the role of the courts in solving labor dispute became an acute focal point between disputing parties.

Meanwhile, the government, realizing the importance of having a labor union under its control, established the All-Indonesian Worker's Union (SPSI) whose members were handpicked by the government.<sup>49</sup> SPSI was a corporatist organization with a top-down decision making structure and those who opposed the government policies were either detained due to subversion charges or simply fired. By 1985, then Labor Minister Sudomo required all labor unions in the country to join the SPSI, which became a political vehicle for the ruling party Golkar. The labor control by SPSI appeared to be complete, but at the same time the rigidity of SPSI in resolving the labor problems, such as demands for wage increase and better benefits, became a source of dissatisfaction for an increasing number of workers. This prompted the establishment of an anti-government labor union, called the Indonesian Worker's Prosperity Union (SBSI) in 1992 by a noted lawyer Mochtar Pakpahan.<sup>50</sup>

The repressive labor relations under the government control gradually changed in the 1990s because in 1990 the Minister of Labor issued a decree to allow the employees to sue the management (Gaffar and Pratikno 1996:2). This new decree gave an incentive for labor activists to use the courts as a venue for struggle.

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<sup>49</sup> SPSI was originally established as F-SPSI, a federation of loosely connected small labor unions. This government-made labor union developed into SPSI in 1985, and this strengthened the central control of the labor organizations by eliminating the sector-based individual unions. After pressured by lower level union members to loosen central control, SPSI leaders and the ministry of labor decided to re-establish sector-based unions in 1995. This, however, did not have a democratizing effect in this organization. See Gaffar and Pratikno, 1996, p.19.

<sup>50</sup> Mochtar Pakpahan, born in 1953, became a foremost labor activist during the 1990s after his doctorate study at the University of Indonesia. He received many international awards for these labor union activities, including the Goerge Meany Award from AFL-CIO in 1997, Labor Rights Award from CNV Netherlands in 1999. He was also one of the awardees on the occasion of 50-year celebration of human rights declaration in December 1998.

With the political opening started in early 1990, as will be discussed in section 2.3, the rise of labor activism is obvious from the available data as shown below. Figure 2.2 below shows the number of labor strikes nationwide between 1990 to 2000, and Figure 2.3 shows the number of hours lost due to the strikes. There is a clear increasing trend of labor strikes from 1990. The 1996 peak reached 346 times per year, and this is a six-fold increase since 1990. Similarly, the table on the hours lost due to strikes shows that between 1994 to 1998 the lost hours became much longer than previous years.

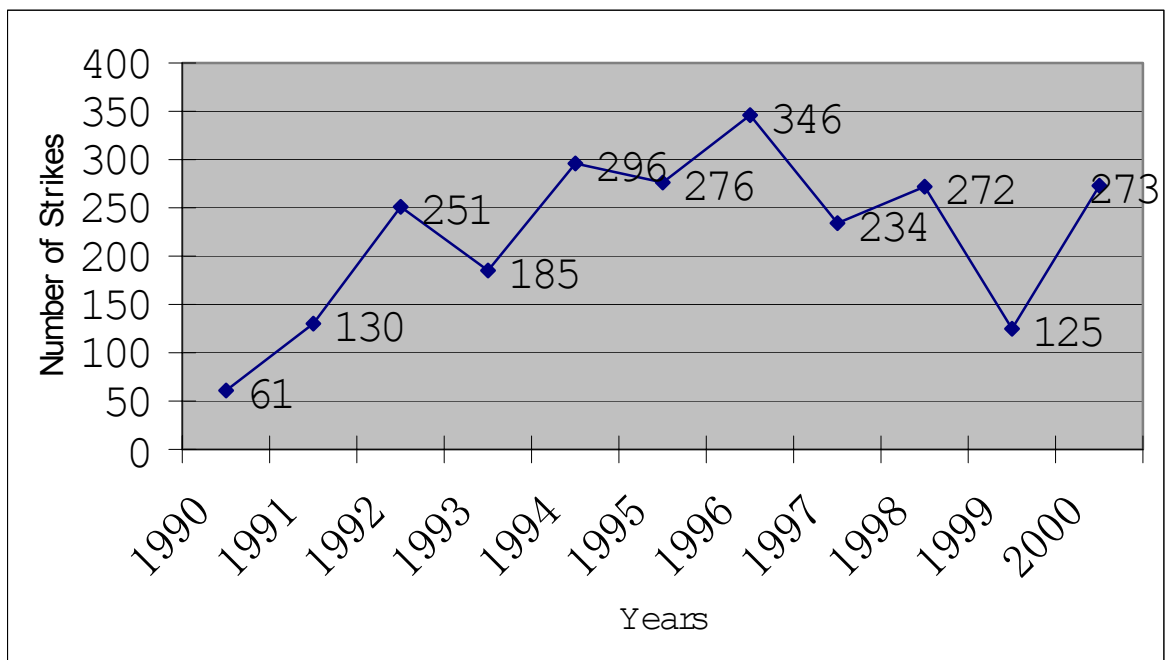


Figure 2.2: Number of Strikes, 1990-2000<sup>51</sup>

<sup>51</sup> Data source: Ministry of Labor and Transmigration

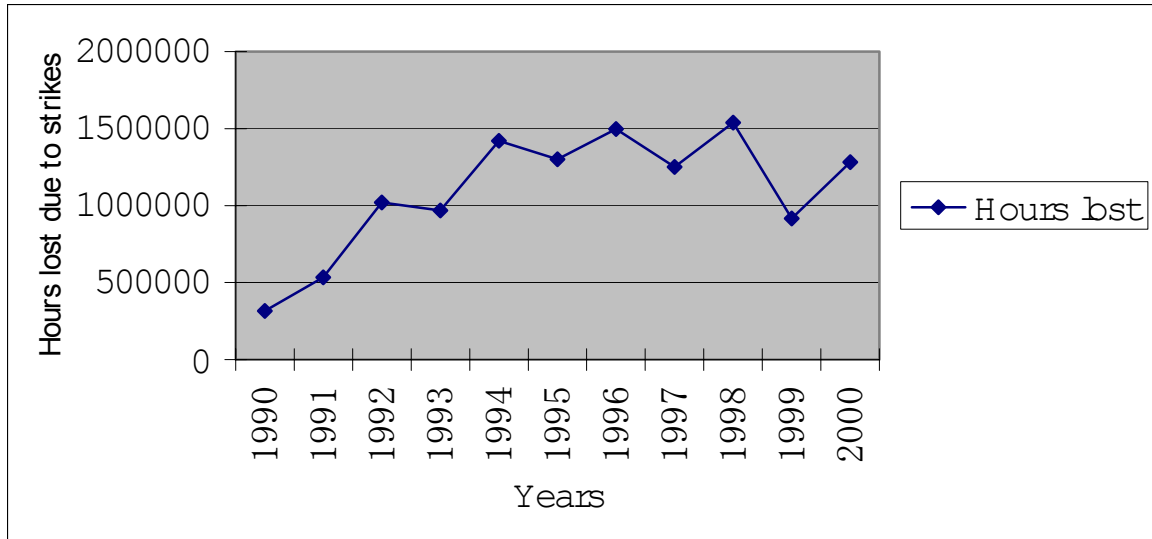


Figure 2.3: Number of Work Hours Lost due to Strikes, 1990-2000<sup>52</sup>

#### 2.2.8 Tertiary Education Expansion

Higher education was also experiencing an expansion. The number of highly educated youths increased year after year, and students who were enrolled at the tertiary level in both public and private schools grew from 271,000 in 1971 to 938,000 in 1985 to 2.2 million in 1994 and to nearly 3 million students in 1998<sup>53</sup>. This rapid expansion of tertiary education meant that tertiary education was no longer the monopoly of a handful of elite students as it was in the 1970s. This expansion is also reflected in the increasing variety of private schools in cities, particularly in Jakarta. The state schools also accepted increasing numbers of students. This expansion of the tertiary education sector was

<sup>52</sup> Data source: Ministry of Labor and Transmigration

<sup>53</sup> Central Bureau of Statistics, various years. The high school level enrollment in 1998 reached 5.5 million, while the elementary school students numbered at 28 million in the same year.



important. It meant that many demonstrating students throughout the 1980s and 1990s came from a variety of schools. Thus, anti-government demonstrations were also no longer the monopoly of elite school students as was the case in the 1960s and 1970s (Rahman 2000: 117-123).

#### 2.2.9 The Rise of President Suharto's Family Businesses and Cronies

After spectacular export-led growth, prompted by economic liberalization introduced in 1988, the maturity of Suharto's economic regime meant the following three things in economic terms. First, as Suharto's children grew, they had an increasing appetite for wealth. Second, there was a rise of Suharto's closest cronies on the one hand and the increasing alienation of businesses outside of the Suharto circle on the other. And third, there was continuing state dominance in the economy, which was transfigured into a state-crony partnership economy. This meant that the role of economic technocrats, who were leading market-oriented economic liberalization, quickly declined after the formation of new cabinet in 1993. Let me explain these three characteristics below.

First, the businesses of the children of Suharto were growing to be the largest businesses in Indonesia in the 1990s. Although older children had already been engaged in business activities since the 1980s, even faster acquisition of business interests by Suharto's children and his grandchildren took place in the 1990s. Most companies were in partnerships with the Sino-Indonesian businesses and foreign investors, and this arrangement meant that Suharto's children and grandchildren did not have to know or engage in the actual management of their companies. They merely acted to be the

political luster for the hungry businesses, both domestic and foreign. The rise and prominence of Suharto's children in the business world can be seen from the number of companies controlled by the presidential family. For example, the first daughter Siti Hardiyanti Rukmana owned or had majority share of 74 companies, the first son Sigit Harjojudanto 45 companies, the second son Bambang Trihatmodjo 66 companies, the second daughter Siti Hediati Prabowo 34 companies, the third son Hutomo Mandala Putra 80 companies, the third daughter Siti Hutami Endang Adiningsih 2 companies, and two of the grandchildren together owned or had majority shares of 37 companies (Prospek June 8, 1998).<sup>54</sup>

The government also was forced to adopt obvious monopoly policies which were clearly against the principles of market-oriented economic liberalization. For example, the economic ministers were forced to allow a much criticized policy on the clove monopoly rights, which were given to Suharto's third son, Hutomo Mandala Putra (Tommy) in 1991. Another blow to the market was the announcement of the "Timor" national car program in June 1993. This program was run by the youngest son of Suharto, eventually and fully implemented in 1996 even after public and international outrage. In this government program, the Ministry of Industry introduced "incentives" to allow fully assembled Korean cars to be imported with little import taxes.

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<sup>54</sup> All of the companies were spread to all sectors, but notable concentration in trade, banking, and resource extraction industries.

Although the truth may never be known, some cabinet ministers defended Suharto and blamed his children for expanding the crony economy. For example, Bustanil Arifin, who was Minister of Cooperatives and Head of Logistic Agency (basic foodstuff distribution agency), claimed that Suharto was not informed of many favors given to his children most of the time, and if any favor given by a government official was known by Suharto, Suharto dismissed the corrupt government official (Arifin 1998).

Second, the cronyism in the economy was reaching the highest level. The cronies were both Sino-Indonesian businessmen, who controlled about 70% of the cash economy in the early 1980s (Robison 1986) and the military. Although there were instances where the Sino-Indonesian business groups opposed new economic policies in favor of Suharto,<sup>55</sup> the overall trend of the rise of cronyism showed the mutual cooperation between the Sino-Indonesian businesses and the family of Suharto. Research by a respected economic journal in 1996 claimed that, out of the top 200 conglomerates, the Sino-Indonesian businesses dominated the top ten, except for 6<sup>th</sup> place which was taken by one of Suharto's children. Furthermore, about 74% of the 200 conglomerates were owned by the Sino-Indonesians.

The rest were owned by the military generals, and indigenous Indonesian businesses (Warta Ekonomi November 26, 1996:36-50). An interesting feature of the data is that all of the conglomerates were family-owned, and they were those who shared

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<sup>55</sup> One such instance where the large business groups informally disagreed was that in March 1990 Suharto called a meeting with 31 major mostly Sino-Indonesian business groups and requested up to 25% of their equity for cooperatives. This was a political pressure for Sino-Indonesian businesses to give up their profit for political protection.

companies with Suharto's children and the military generals.<sup>56</sup> Not all businesses had easy access to Suharto's children. This meant that those not in Suharto's favor or those who disagreed with the Suharto family's dominance were alienated. These included growing urban-based middle class businesses and those who opposed Suharto's policies. The first group was those in favor of further economic liberalization and free competition, which was in contrast to favoritism and cronyism. The second group was those in the state business sector who opposed Suharto's children.<sup>57</sup>

Third, more than 180 state-owned corporations in the 1990s were active in all sectors of the national economy, and this was perhaps the fastest money-losing economic activity. The rate of return, as reported by an informal review team of the Ministry of Finance in the mid-1980s, was only 2 to 4 percent, which was significantly below the inflation rate (Hill 1996: 103). Meanwhile, the sales amount of the state-owned corporations dominated about 30% of the total GDP, which tells of the significant dominance of the national economy by the state, and the huge loss. This money-losing activity was also shored up by the marriage of convenience between state bureaucrats, the military, Suharto's family, and Sino-Indonesian cronies. High government officials were often appointed as commissioners and directors, and given housing, automobiles and additional expenses by a state-owned company.

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<sup>56</sup> An example is an olefin factory, called Chandra Asri. This huge US\$1.6 billion factory was a partnership project by two Sino-Indonesian businessmen who were close to Suharto, and Suharto's second son. This factory project was also pushed by the state-owned oil company, Pertamina, which interests were largely shared by former military officers.

<sup>57</sup> Many of state-owned company officials were fired by Suharto, as they did not give in to favor Suharto's children. Those included Muhammad Suparno, president of national airline company, Cacuk Sudarjanto, president of state telephone company, Ishadi, president of national television company, Ermansyah Yamin, president of national electric company.

With the help of state policies, not only Sino-Indonesian businesses, but also a small number of pribumi (“indigenous” or non-Chinese descent) businessmen grew. The background of this rise is the government policy that gave significant power to a team of 10 government officials to oversee government procurements between 1979 to 1988 (Pangaribuan 1995). The origin of this idea to give procurement power to the 10 government officials was that the financial mismanagement created by massive corruption by the national oil company, Pertamina, needed to be controlled by government regulations. By rationalizing the procurement procedures under the authority of the team of 10, Suharto aimed at deterring the power of Pertamina. However, while deterring the power of Pertamina saw a degree of success, this policy controlled by pro-pribumi bureaucrat Ginanjar Kartasasmita gave procurement opportunities to a limited number of pribumi businessmen. This policy of giving government procurement to pribumi created a small circle of pribumi businessmen, many of whom became prominent businessmen-turned politicians after the fall of Suharto. Those who benefited from this policy include Fadel Muhammad, Iman Taufik, Jusuf and Achmand Kalla, Fahmi Idris, Siswono Yudhosusodo, Suryo Sulistio, Rudy Pesik, Surya Paloh, Kamaludin Bachir, Kusmo Martoredjo, Bambang Rachmadi, Ponco Sutowo, Agus Kartasasmita, Abdul Latief, Adiwarsita Adinegoro, Hashim Djojohadikusumo, and Subagio Wiryoatmodjo (Schwarz 1999: 119).

## 2.2.10 New Money: Amount of Investments and Borrowings

How much new money was invested into this increasingly favoritism-dominated economy since 1990? The fresh money came from the following two sources: investments and borrowing. Available data on the realized investment activities are shown in Figure 2.4 for domestic investment and Figure 2.5 for foreign investment and clearly show the unrecoverable decrease of new investment activities starting in 1996. The domestic investment activity, which usually responds more sensitively to the domestic political condition, picked up after Suharto was elected for the 6<sup>th</sup> term in March 1993, and continued to increase until 1995. However, into the 4<sup>th</sup> year of his presidency in 1996, the domestic businesses sensed the political instability and started to withhold new cash for new investment.

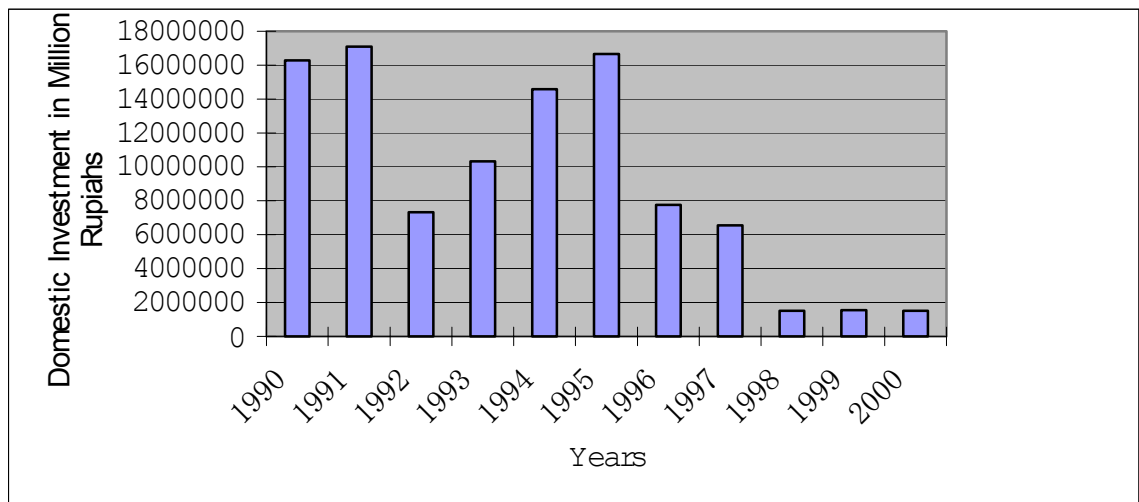


Figure 2.4: Realized Domestic Investment in Indonesia, 1990-2000<sup>58</sup>

<sup>58</sup> Kompas, April 24, 2002.

The foreign investors were also feeling the same although the sense of crisis was not as acute as those of domestic investors. As the graph below shows, they maintained their investment activity level throughout the first half of the 1990s. The investment activities by foreigners showed a small decline in 1996, and dipped in 1997 when the Asian economic crisis hit Indonesia.

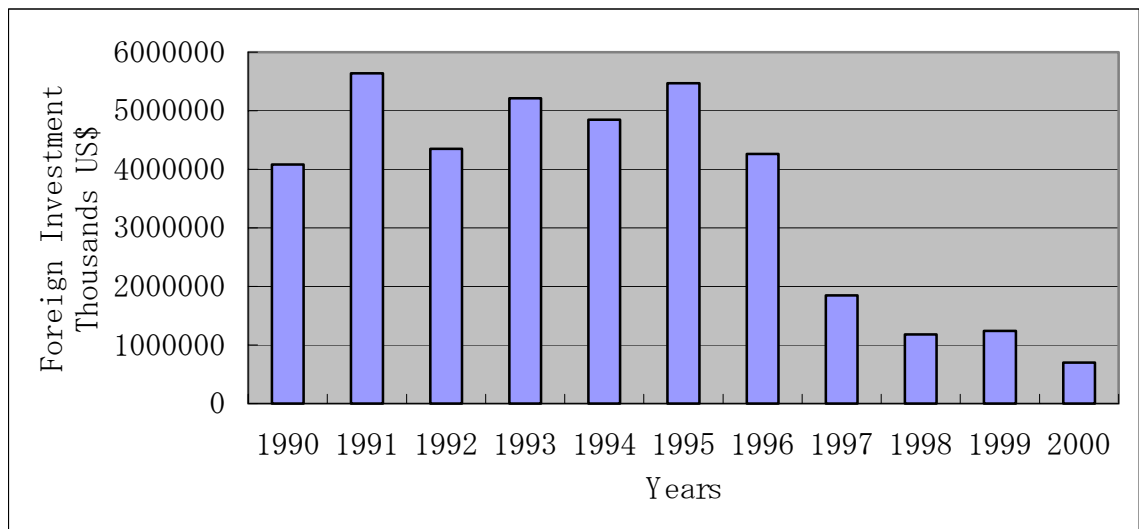


Figure 2.5: Realized Foreign Investment in Indonesia, 1990-2000<sup>59</sup>

Meanwhile, the foreign governments under the banner of the Consultative Group on Indonesia (CGI<sup>60</sup>) kept pouring in dollars to Indonesia. Although the use of the CGI

<sup>59</sup> The source for this data is Kompas, April 24, 2002. The Kompas quotes data daily from BKPM, a government agency in charge of investment activities.

<sup>60</sup> On March 25, 1992, the government suddenly announced that Indonesia would no longer receive any kind of assistance from the Dutch government, and terminated existing programs. This is the end of Inter-Governmental Group on Indonesia (IGGI), and the birth of Consultative Group of Indonesia (CGI) whose membership excluded the Netherlands. A month later, the Minister of Home Affairs prohibited social organizations including NGOs to receive funds from the Dutch sources. This decision was made after the Dutch Minister for Development criticized Indonesia's human rights record, and tied its development

funds varied from time to time, fresh loans were used to finance large development projects. The use of the funds, particularly in the 1990s, came under public inquiry, as there appeared to be a large amount of misuse. An internal World Bank document, which leaked in August 1998, said that “at least 20-30 percent of (the) GOI (Government of Indonesia) development budget (is) diverted through informal payments to GOI staff and politicians and there is no basis to claim a smaller ‘leakage’ for Bank projects as (outside) controls have little practical effect on the methods generally used.”<sup>61</sup> An Indonesian government official in private confirmed<sup>62</sup> that a similar amount was siphoned off from the CGI loans, but added that it is increasingly “tight” to siphon off the loans after the 1997-1998 economic crisis because the loans were mainly used to fill the financial gap, and the Bank imposed a stricter control over the project financing.<sup>63</sup> In addition, a U.S. official previously in the aid business also made a comment that the primary goal of development financing during the Suharto era was “how to pump in fresh money to keep Suharto going.”<sup>64</sup>

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assistance to Indonesia’s progress in human rights protection. In response, Indonesia banned the Dutch assistance saying that the Dutch government used “development assistance as an instrument of intimidation.”

<sup>61</sup> As quoted in Schwarz 1999, p.316.

<sup>62</sup> Personal communication.

<sup>63</sup> Confidential communication, Jakarta. August 12, 2001.

<sup>64</sup> Confidential communication, Jakarta. September 2, 2001. I thank Douglas Ramage to help me meet this person.



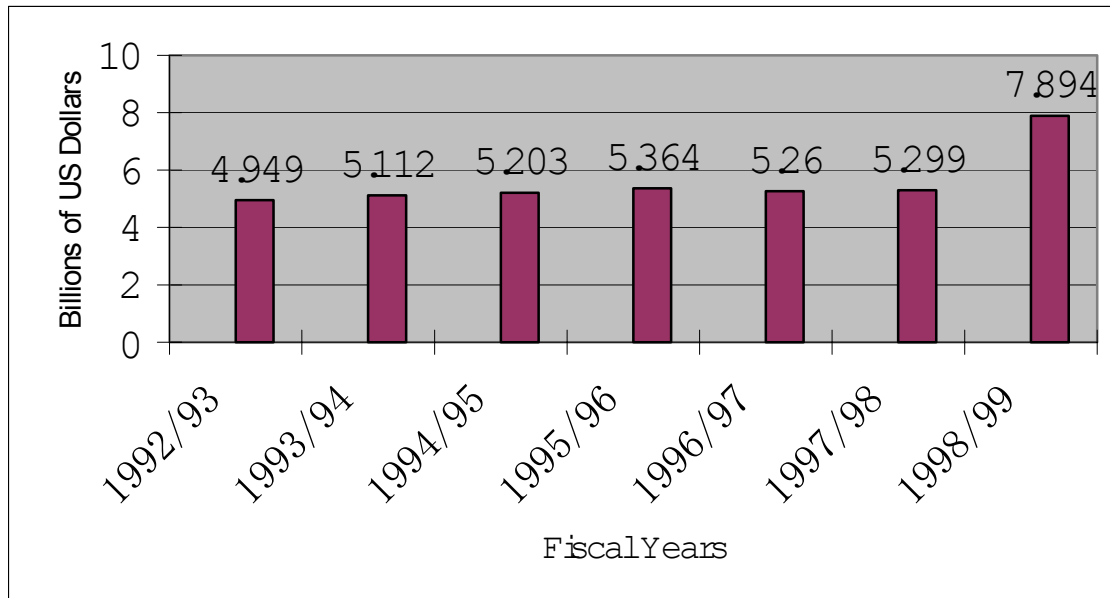


Figure 2.6: CGI Loans to Indonesia, 1992-1998<sup>65</sup>

#### 2.2.11 Summary of Economic and Social Changes

As discussed above, the decade of the 1990s showed the following economic and social changes. First, with economic liberalization efforts started in the mid-1980s, the macro-economic numbers showed a steady growth. But this did not mean the economy was free of problems. There were worrying signs in the growing income disparity between the urban and rural areas. While the poverty rate decreased in urban areas in Java, the number of people in poverty outside Java was increasing. Urbanization was driven by the growth of service and construction industries, which created an urban class relatively better off than the rural population in terms of wages. Labor strikes increased due to the rise of newly organized labor unions and an opening of opportunity for

<sup>65</sup> Ministry of Finance of Indonesia.

workers to sue their employers in court. The peak of the labor strikes was 1996. The tertiary education level expanded significantly, and the main actors of the student movement also expanded to include non-elite schools. In the business world, Suharto's family grew to have the fastest growing businesses, with assistance from Suharto's profit-hungry cronies. This trend resulted in the collusion of private businesses and high government officials, including the military establishment. The state-owned industry also grew along with the collusion, and kept growing with the help of international financial injection through CGI. Yet, at the same time, there was a worrying sign when new private investment activities started to slow down after 1996.

### 2.3 Political Change in the 1990s

The changing political environment provided opportunities for social movement to emerge. As described in Chapter 1 (1.4.2.3), McAdam (1996) identifies four dimensions of the political opportunity structure: (1) presence or absence of elite allies; (2) elite divisions and conflict; (3) openness or closure of political system and (4) state capacity and propensity for repression. By using the concept of political opportunity structure, I will explain the changing opportunities in Indonesian politics below. This exercise is important to understand the political environment from which LBH (Legal Aid Institute) emerged. In this section 2.3, I will discuss the opportunities for the political opening, and how these opportunities fit with the activities of LBH. To start, I will first describe the political opening initiated by president Suharto himself. In an authoritarian setting, the initiation of the president was indeed a political opening.

Second, I will explain three such cases of political opening: increasing student activism and state repression; vocal media activities and the state crackdown; and the rise of Megawati Soekarnoputri and the state crackdown. These three cases illustrate the state opening, and how LBH could play a role in the opportunities for political liberalization.

### 2.3.1 Suharto and “Openness”

For President Suharto, the 1990s should have been the decade of maturity and honor. As it turned out, the decade was his “decline, fall, (and) accounting (Elson 2001: 267).” For him, 1989 is a significant year because Suharto’s pride of success to create the nation of his ideal is spelled out clearly in his book *My thought, deeds, and action* in which he proudly says, “thanks to God, finally we have arrived at a system which can guarantee the continuation of our state and nation (Suharto 1989: 566).”

After being satisfied with the domestic political architecture he created, Suharto started to act as an international leader in maintaining peace and stability. Suharto won the chairmanship of the Non-Aligned Movement in 1992, and succeeded in increasing Indonesia's international recognition as a leader of developing nations. He also decided to reject all forms Dutch aid in 1992, which surprised the Dutch government, with the reason that the Dutch government was trying to tie economic aid to Indonesia's human rights conditions. His "bravery" to reject aid from the former colonial master was a popular policy at home. Also, in 1994, he hosted the Asia Pacific Economic Cooperation (APEC) meeting in Bogor, and sent a clear message to the world that Indonesia was a genuine participant in globalizing international community.

At the international level, this was the year of the collapse of communist regimes. In 1989, Suharto made a state visit to the Soviet Union, and witnessed its liberalization policies. Witnessing the collapse of the communist block starting in 1989, Suharto learned the "difficulties of keeping imperiums intact in an era of growing neo-nationalism and waves of democratization (Elson 2000: 270)."

Also in May 1989, departing US Ambassador to Indonesia, Paul Wolfowitz, left with a comment that Indonesia needed "openness (keterbukaan)." This popular US Ambassador's comment which was expressed in the context of worldwide waves of collapse of communist block, stirred a social polemic in Indonesia. Suharto even responded by stating that the national ideology "Pancasila" was an "open ideology (Schwarz 1999: 232)."

Thus, Suharto allowed a public discussion on "openness" starting in 1989, but he was aware that if Indonesia did not want to repeat the same fate as the Soviet Union, he

had to act on controlling the excess of the openness. Therefore, Suharto turned to criticize the so-called Western democracy as being biased too much to individualism, and said in his state address in August 1990 that Indonesian democracy required much more “consultation, exchange of ideas and dialogue.” This line of thinking was also reflected in the defense of Indonesia’s human rights as expressed in numerous speeches given on human rights after the establishment of a National Commission on Human Rights in 1993 (see 2.3.5 for the commission). Suharto was concerned with the growing tide of human rights diplomacy to press Indonesia in resolving the East Timor problem. Indonesia’s human rights record was not something the government was proud of, and the government was forced to listen to the sharp criticisms at the annual UN human rights commission meeting in Geneva. There were also a large number of East Timor lobbies in the U.S. and European countries to put pressure on Indonesia.

With an effort to emphasize the Indonesian “uniqueness” in making democracy work, the government tried to avoid negative media portraits of Indonesia based on what they perceived as a Western standard. In the late 1990, the victims fell. The New York Times was denied access to Indonesia and its international version, the International Herald Tribune, was banned from circulation for 4 months after carrying an article on Suharto. The Australian Financial Review as well as the Economist magazine were also banned from circulation in Indonesia.

Hence, Suharto’s move to allow the liberalization process was met with an effort to balance this by making the West and liberalism the enemy of Indonesia. There was an effort to fend off any moves, which criticized Indonesia’s appalling human rights record.

At least for the international audience, what was most appalling was the human rights violations in East Timor. However, for domestic human rights defenders like LBH lawyers, what was appalling was the daily happenings of human rights violations in all aspects of life.

### 2.3.2 Student Activism and Cracks within the State

Since 1989, a series of student demonstrations were tolerated by the military, and this created a considerable openness in freedom of expression, at least on university campuses. Because since 1980 the government, with the help of the military, had a firm grip on campus activities,<sup>66</sup> the loosened grip of the military over students' activities created a political space for students to maneuver. For example, on August 5, 1989, when Minister of Home Affairs Rudini visited the Bandung Institute of Technology (ITB) to initiate a course on Pancasila, the five state principles, the students protested to reject the minister's visit. The angry minister responded to the students by arresting its student leaders<sup>67</sup> on August 7. Meanwhile, students on other campuses were allowed to protest against this arrest. It was unusual to be allowed to demonstrate.

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<sup>66</sup> A bill called "NKK (*Normalisasi Kehidupan Kampus*, or campus life normalization) bill was passed by DPR in 1980. This bill was introduced after 1977-78 student demonstrations, by Minister of Education and Culture, Daoed Jusuf.

<sup>67</sup> Jamhur Hidayat and Arnold Purba.

Another protest movement took place again in ITB until the worrying university authorities shut down ITB on August 16, 1989. In response to this shut down, the students protested by staging a hunger strike on September 4, 1989. Other students in major cities issued their statements expressing their sympathy to those who were arrested and those on hunger strike, and November 3, 1989, one ITB student started “Gerakan Melawan Diktator (Movement Against Dictator),” calling Suharto a dictator.

The limit of tolerance by the government was stretching. The activist students<sup>68</sup> were soon arrested and put on trial and they were represented by LBH lawyers. As a show of defiance, the students walked out the court room on January 3, 1990. This walkout was widely reported in the newspapers, and the newspapers carried stories of LBH lawyers. Eventually, the lower court sentenced them in absence, and the students were sentenced more harshly than what the prosecutors had asked for at the high court. The sentenced students asked for a judicial review from the Supreme Court, which rejected the request in August 1990.

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<sup>68</sup> Syahganda Nainggolan and Fadjoel Rachman.

Up to this point, the justice system appeared to work according to what authoritarianism had asked for. However, the aftermath of sentencing the students showed a crack within the state in the making. When the students were suddenly transferred to a remote and notorious Nusakambang prison on September 7, 1990, this news was leaked by LBH lawyers who were representing the students. To respond, Ismail Saleh, Minister of Justice, and Baharuddin Lopa, the Director General of correction facilities, expressed surprise by saying that they both did not have any knowledge of the transfer. Baharuddin Lopa was already known at that time for his opposition to Suharto's excessive repression, and was a frequent writer for newspaper columns on law and justice (Lopa 2001).

On September 13, 1990, other student activists sympathized with the transferred students asked for a meeting with the national parliament to protest the students' transfer, and very unusual for the regime under Suharto, the parliamentary commission listened to the demands of the students. The arrested students were finally transferred back to the Bandung prison. After the students were transferred back to the Bandung prison, Minister Saleh said to the media, "the transfer was (a) pure administrative mistake, and there is no one involved in the transfer." (*Pikiran Rakyat* September 22, 1990). It was a victory for the students. Baharuddin Lopa as Director General of correction facilities was sympathetic to the students. This chain of incidents shows that there was increasing room for student activists to maneuver by having their arrests and arbitrary transfers exposed by the media, and having contacts with sympathetic state officials including Baharuddin Lopa and the parliament.



There were other examples of student activism allowed by the state. One example is, as explained in more detail in Chapter 4, the case of the Kedung Ombo dam (1989-1996) where students, along with LBH and other social movement organizations, succeeded in pressing the interests of disadvantaged.

As this case illustrates, the state allowed the students to stage a protest, and the students went far enough to be arrested, and then LBH lawyers came in to help the students. As a result, because it was a legal process, LBH lawyers became the main actors. Yet, LBH was not only providing legal assistance, but was engaging in wider advocacy activities which were sometimes beyond the realm of legal assistance. Also, this was possible because of the state actors who sympathized with the cause of the arrested students.

### 2.3.3 Media Battle and Cracks within the State

The media played an important role in opening up the state, which was not only due to the pressure from below – it was indeed a complex interaction of the mutual benefits between the profit hungry media businesses and the craving of the people for more information during the process of economic expansion.

In 1990, the state-owned TV station, TVRI lost its monopoly in the broadcasting business. This was due to the growing pressure, from the side of Suharto and his family, to seek business opportunities in the TV business. The second son, Bambang Trihatmodjo, established his private TV station “RCTI,” and the first daughter Siti Hardijanti Rukmana established “TPI” (Sen and Hill 2000: 115). The birth of these

private TV stations was soon followed by Sudwikatomo, Suharto's cousin, Liem Sioe Liong, Suharto's close business associate, and Abu Rizal Bakrie, a non-Chinese businessman who was soon to head the Indonesian Chamber of Commerce (Schwarz 1996: 245). Although new private TV stations were not allowed to broadcast news programs initially, these became a popular entertainment source for the rural Indonesians, whose information source is limited to a handful of newspapers.

The response to this flourishing of private television stations from the Ministry of Information, at that time headed by Golkar politician Harmoko who was also the owner of the gossip daily "Pos Kota," was not outright opposition as most of the new owners were Suharto's close associates. In addition, the TV business was new to Indonesia, and the Ministry was not prepared to tackle this "outbreak" of TV businesses through ministerial regulations. The Minister issued a Ministerial Decree No. 111/1990, which only defined the formality of the language and a vague limit of program content, citing that the private TV programs were required to support the 1945 constitution and the state motto, "Pancasila." The tool of control the Ministry had at that time was only for printed media through the Ministerial decree No. 1/1984, which allowed the Minister of Information to withhold the printing permit. According to the above decree, the Minister had discretion to issue the order to either renew or withhold the permit based on arbitrary decisions.

In fact, the political considerations were subdued by the appetite for profit by Suharto's families and cronies who saw massive profit potential in the business. Indeed, the spread of the TV business in the 1990s showed a remarkable growth, and it was a lucrative one with a large advertisement income. Driven by more than 30% per year

growth in advertisement income, the TV business grew to handle over Rp. 3.3 trillion in advertisement income by 1995, and this grew to almost exceed Rp. 4 trillion (Sen and Hill 2000:116; Forum Keadilan No. 8, 2001, 19-20). To show the significance of this figure, it was about the same as the Jakarta capital city government's annual expenditure, and about 5% of the national budget. The news programs on the private TV stations, starting in May 1996, was attracting a larger and larger audience, thereby generating more advertisement income. The private stations competed with TVRI for audiences, and TVRI quickly lost the race.

The pioneer of private TV news, RCTI's "Seputar Jakarta (Around Jakarta)" news program (which later became "Seputar Indonesia") attracted a larger audience for a simple reason – RCTI spent more time covering the opposition movement despite the fact that the station was owned by Suharto's second son (Sen and Hill 2000: 126-131). The person behind creating this attractive news program was Ibrahim G. Zakir who was the chairperson of the student body at prestigious University of Indonesia, and a signatory of the Petition of 50, a group established by political dissidents in 1980 to criticize Suharto's authoritarian tendencies.<sup>69</sup>

While the TV stations flourished, media owners as well as journalists were also becoming more assertive. One example is a group of Christian media businessmen, such as Aristides Katoppo and Katoppo's associate and lawyer Albert Hasibuan. As discussed

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<sup>69</sup> Interview with Ibrahim Zakir, Jakarta, May 4, 2001. The Petition of 50 was declared on February 20, 1980, as a critical response to Suharto's authoritarian tendency, and signed by prominent retired generals (Abdul Haris Nasution, Hoegeng Imam Santoso, Ali Sadikin, Muhammad Jasin), Islamic leaders who were mostly former ministers and intellectuals (Muhammad Natsir, Burhanuddin Harahap, Syafruddin Prawiranegara, Muhammad Sanusi, Anwar Harjono), nationalist leaders (Manai Sofyan, Slamet Bratanata, Ny. Walandou, Ny. SK. Trimurti), and student leaders (Ibrahim G. Zakir, Judil Herry Justam, Chris Siner Key Timu, A. M. Fatwa, Maqdir Ismail), and others. See Kelompok Kerja Petisi 50.

in Chapter 4 in more detail, Hasibuan was the first person to be the secretary of LBH Jakarta in the early 1970s. Both of these two figures, both Christian activists, were consistent critical voices from the beginning of the Suharto era. They represent the Sinar Harapan newspaper group, which had a book-publishing arm, called Pustaka Sinar Harapan. Despite its setback when the Sinar Harapan newspaper was banned in 1986, both did manage to restart their newspaper under a different name, Suara Pembaruan. Meanwhile, Pustaka Sinar Harapan kept publishing books on human rights, democracy, and even socialism.

Another example is Surya Paloh, whose newspaper “Prioritas” was banned on June 29, 1987. Prioritas was known for its provocative and often critical editorials, called “Selamat Pagi Indonesia (Good Morning Indonesia).” Surya, who also owned a national newspaper called Media Indonesia, played an important role in opening up the state control. In 1993, he appealed to the Supreme Court on the legality of the Ministerial decree No. 1/1984 (which allowed the minister to withhold the print permit), in which he claimed that the ministerial decree conflicted with the Press Law of 1982 as the press law guaranteed the freedom of press. Although the Supreme Court dismissed Surya’s appeal on a technicality, his appeal forced the Supreme Court to issue a regulation<sup>70</sup> that defined the procedures for judicial review, which in turn helped open the opportunity for civil society activists to use this regulation to ask for judicial review (Matra April 1995: 16).

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<sup>70</sup> Peraturan Mahkamah Agung No. 1, 1993.

The Supreme Court was headed at that time by the Chief Justice Ali Said, who was known to be a reformist in the justice sector, and a person close to senior lawyers of LBH (see 2.3.5). Before this regulation was issued, the civil society groups did not have a legal basis to ask for judicial review from the Supreme Court. In other words, the distance between civil society and the Supreme Court was shortened by the issuance of this regulation.

Surya's action became an important precedent for Tempo magazine's legal battle after it was banned in 1994 (see Chapter 5 for the case of Tempo). This magazine, whose article on the government's alleged markup on the purchase of used East German battleships offended the government, had its print permit taken away in June 1994. The magazine editors, Goenawan Mohamad and Fikri Jufri, brought the issue to court.<sup>71</sup> In a 1995 interview, Surya gave encouraging comments on the battle of Tempo magazine to ask for judicial review (Surya 1995: 21):

I told Goenawan Mohamad (Tempo editor) that a struggle has begun. Don't quickly give up, or feel satisfied with the result. Giving up is not necessary, or is satisfaction...We should accompany (with Tempo) with our prayers. I don't know how long this (legal battle) process is going to take. But at least Goenawan has started this struggle. This legal process is going to be long, not like how (minister of information) cancelled the print permit. This is an interesting phenomenon in the existence of national media – how are we going to have a change, which we think is already fit to the rules of the game in this time?

Surya's background is interesting. He was born in 1951 in Banda Aceh as a son of an army officer, and grew up in Medan, the capital of North Sumatra province. In his

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<sup>71</sup> The Tempo case needs a special attention in this dissertation, as the lawyers who brought the issue to court were former LBH and active LBH lawyers. For the purpose of this chapter, it is not necessary to go into details at this time. See Chapter 5 for more details.

youth, he headed the North Sumatra branch of Pelajar Mahasiswa Golkar, a student arm of Golkar, between 1969 to 1972, and joined the Indonesia Youth Chamber of Commerce, becoming the national president between 1977 to 1979. In 1978, he joined with others to establish the Association of Sons/Daughters of Retired Armed Forces Officers (FKPPI), which was to become one of the powerful pressure groups behind the military in the years to come.

In essence, this man is a nationalist-oriented businessman who in the 1990s became particularly critical of the direction of Suharto. With large disposable income for new investment, and outstanding business talent, Surya grew to be one of the most prominent media tycoons, while at the same time criticizing the government to a degree. Besides the above-mentioned court battle, he owned a part of “Detik,” a weekly tabloid magazine also very critical of government policies. Detik was also banned in 1994 along with Tempo.

The Detik tabloid was also a medium to transmit the opposition voice. Edited by Eros Djarot, a film director who was also a close personal friend of PDI (Indonesian Democratic Party) chairperson Megawati Soekarnoputri, Detik was also critical of Suharto. There were frequent articles on Suharto’s children and their business involvements in Detik, and the tabloid became increasingly popular since 1993. The tabloid was on the government’s watchlist. Djarot was at the same time an informal political advisor and speechwriter for Megawati. This film maker-turned politician was closely monitored by the government.

#### 2.3.4 PDI's July 27<sup>th</sup> Affair and Cracks within the State

The July 27<sup>th</sup> affair is a case where the rivalry in the military leadership created a political opportunity for the rise of Megawati-backed PDI to emerge as a threatening force for Suharto, and this opened the opportunity for political liberalization. In addition, the subsequent crackdown on PDI by the state gave LBH a chance to seize the opportunity to play an important role as a provider of legal services to the dissident PDI members.

For Suharto, the real challenger to his presidency was the ghost of Sukarno whom he successfully unseated in 1966. Nationalist political support, as supposed to Islamic political support, was supposed to be the large political force in Indonesia's political map. The nationalists in the 1950s gave 35% of votes to Sukarno, and were supposed to give the same for PDI (Indonesian Democratic Party) during the Suharto era. But, the government created a corporatist state driven by Golkar, a semi-political party consisting of sector-based state associations. Farmers, cooperatives, teachers, laborers, and journalists were all put together under the umbrella of Golkar. PDI on the other hand faced state repression and intimidation if it wanted to grow.

Yet, when Megawati Soekarnoputri (current president) joined PDI as a legislator in 1987,<sup>72</sup> the party's vote increased from 7.88% in 1982 to 10.87%. This sent a clear signal that Sukarno's ghost was still alive. PDI again showed strength in 1992, when it gained 4% more than 1987. The PDI seats in the parliament increased 24 seats in 1982, 40 seats in 1987, and 56 seats in 1992. Surjadi, then PDI chairman, who owed much to

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<sup>72</sup> Megawati joined PDI in 1983, and became Jakarta branch chair.

the political aspirations Megawati provided simply due to her father's image, admitted that he himself was not the main strength after seeing the regional PDI branches demanding to elect Megawati as the PDI chair. On December 3, 1993, the PDI extraordinary congress in the east Java city of Surabaya voted for Megawati's chairmanship with 261 votes out of the total of 300. Suharto did not want Megawati at this time. The Ministry of Home Affairs intervened, and the opposition to Megawati refused to recognize the vote.

Then, a group of military officers took sides with Megawati. Those who went against the will of the president were Agum Gumelar, then Director "A" of BAIS (the army intelligence board), Hendropriyono, then Commander of Jakarta Regional Military Command, Zaky Anwar Makarim, then Intelligence Assistant of Jakarta Regional Military Command. The fact that both Agum and Hendropriyono are currently Megawati's cabinet ministers says much about how these army generals are now appreciated by Megawati. An analysis claims that the military was increasingly dissatisfied with Golkar's dominance of politics, and that of Suharto, and was already preparing for post-Suharto leadership (Zulkifli 1996:100). In the end, Suharto was forced to accept the leadership of Megawati in PDI.

The state repression against Megawati reappeared in 1996 when the government which was increasingly dominated by Suharto's family and his loyalists sponsored a political coup to oust Megawati. Already by March 1996 more than one year before the 1997 general election, it seemed that the military was split between those sought to maintain Suharto's presidency and those who foresaw post-Suharto. The main person who supported Suharto was R. Hartono, the army chief of staff, who called all members



of armed forces Golkar members. This comment was later clarified by the military headquarters, but reflected the opinions of the pro-Suharto group within the army. Those who foresaw the politics of post-Suharto were those who bet on Megawati, such as Agum Gumelar and Hendropriyono, as discussed above.

The 1996 PDI congress in the Sumatran city of Medan blocked Megawati's attendance at the congress, and forcefully unseated Megawati and her followers, and restored Surjadi as the PDI chair. It was clear that Surjadi, who lost his chairmanship to Megawati in 1993, was the government's puppet. Megawati protested by displaying a show of force by mobilizing her supporters and occupying the PDI headquarters in Jakarta and delivering daily speeches and publications criticizing the government. The tension between the government and pro-Megawati PDI supporters rose over a period of one month until the military-backed thugs attacked the PDI headquarters on July 27, 1996 to remove the Megawati supporters, and killed dozens.

This bloody incident, called the July 27<sup>th</sup> affair, caused Megawati's popularity to shoot up. Internationally, Megawati came to be known as a voice of opposition since the timing of this tragedy coincided with the ASEAN ministerial meeting in Jakarta when many of the international leaders, including the US Secretary of State Warren Christopher were visiting Jakarta.

The call for the government to thoroughly investigate the incident came from the public, and the government responded to this call by blaming the leftist student organization, PRD (Democratic People's Party), for plotting to topple the government.

Megawati at this time did not resort to mass political movement to protest against Suharto, but instead, she waited the result of the July 27<sup>th</sup> affair investigation by the National Human Rights Commission (discussed below), and formed a team of lawyers to seek justice. This team, TPDI (Team to Defend Democracy in Indonesia), put together prominent human rights lawyers including those from LBH (Rekaman Peristiwa 1996: 18).

The government also followed the legal process by arresting Budiman Sudjatmiko, chairman of PRD, and his associates, as well as Mochtar Pakpahan, a respected labor activist and the chairman of SBSI (see section 2.7 on labor above). Both Budiman Sudjatmiko and Mochtar Pakpahan were represented by LBH in court. Furthermore, the government brought 124 pro-Megawati PDI members to court for ignoring the government's call to evacuate the PDI headquarters before July 27<sup>th</sup>. In November, all 127 members were found not guilty, and this verdict in favor of Megawati strengthened Megawati's popularity much further, and the public was, instead of calming down, criticizing the government for not seeking justice by bringing the military-backed thugs who stormed the PDI headquarters, and the military who failed to stop the riot to court.

Also, there was a call to search for those missing (the official figure was 74 people missing) from the riot, and this call was also assisted by LBH lawyers. The government was losing control. Megawati's popularity was growing, and legal battles were becoming a show of democratic spirit and at the same time a show of the state brutality. There also was LBH which was representing those PDI members who were arrested by the government. The cracks initially created by the military rivalry gave birth to the rise of Megawati's PDI and the subsequent crackdown on PDI gave LBH lawyers an opportunity to push for people's rights.

#### 2.3.5 National Human Rights Commission and Cracks within the State

The establishment of the Indonesian National Commission for Human Rights (Komnas HAM) was a significant step toward liberalization, and at the same time a risky step taken by Suharto. Initially promoted by a diplomat Hassan Wirayuda<sup>73</sup> (current foreign minister), and established as a follow-up step from a 1991 Indonesian seminar on human rights co-sponsored by the UN human rights commission, Komnas HAM was a response to the growing criticisms by the United States and several European countries of Indonesia's poor human rights record.

Already by the early 1990s even before the establishment of Komnas HAM, Indonesia spent considerable time and effort in defending its record on the East Timor problem. It was a difficult defense as the Indonesian army, much hated by the East Timorese, continued to carry out brutal repression. The Santa Cruz incident in November

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<sup>73</sup> I thank Cornelis Lay for pointing this out.

1992, and the visual images of the killings near the graveyard in Dili were broadcasted worldwide, and was the real blow to Suharto's defense. Foreign Minister Ali Alatas tried to downplay the magnitude of the Santa Cruz killings, but in vein. The strong criticisms continued to fall on the government, and in the end, Minister Alatas tried to downplay Indonesia's policy toward East Timor by saying that the province was a "pebble in a shoe."

This apology remark did not help Indonesia. In late 1992, the Indonesian army in East Timor captured the East Timor rebel leader Xanana Gusmao. International eyes were on the trial of Xanana, and there was a growing campaign for his release. President Clinton even expressed his concern to Suharto in Tokyo in March 1993. Contrary to the demands of the international community, the Indonesian court convicted Xanana to life in prison. With the international pressure, and perhaps due to the softening change of climate in the 1993-1998 cabinet, the Foreign Ministry was able to open a channel with Portugal and responded to the consistent international criticisms. Interestingly, Xanana survived not only due to international pressure on Suharto, but also due to a group of LBH lawyers who defended him in his court trial. Hendaridi, who then was a director of operations at LBH, has since then maintained his close relationship with Xanana, even after Xanana was elected in 2002 as president of a new independent nation, Timor Lorosae.

Suharto needed to pick the members of Komnas HAM carefully. Suharto decided on Ali Said, a moderate military lawyer who had ties with the human rights activists and was a social critic, to lead the commission. Ali was a military prosecutor who was appointed as the country's attorney general in 1973, promoted to be Minister of Justice in

1981, and further moved up to be the Supreme Court chief justice in 1984. During his tenure as the Minister of Justice, he was more than willing to appear at events held by LBH and became an important pipeline between LBH lawyers and the military. Ali became close to major LBH figures such as Todung Mulya Lubis and Buyung Nasution (Said 1997: 341-346), and Ali's wife was a roommate with the wife of another major LBH figure, Harjono Tjitrosoebono (YLBHI's chairman of the Board of the Trustees between 1996 and 1998). Probably, Suharto bet on Ali to become the buffer of the state against the rising tide of the human rights agenda as a political force in Indonesia because of Ali's ties to human rights activists including LBH lawyers.

Ali after six months of preparation submitted his staff list to Suharto. Suharto approved. The list contained a political science professor Miriam Budiardjo and a reformist legislator Marzuki Darusman as vice chairs, and the Director General in the ministry of justice Baharuddin Lopa as the secretary general of Komnas HAM. Albert Hasibuan, co-founder of LBH along with Buyung Nasution was also included as a member of a sub-commission, and a reformist legislator from the police Roekmini Koesoemo Astoeti was the secretary of the education sub-commission. There were seven academics out of a total of 25 members. The faces of Komnas HAM needed to be seen as a government-initiated reform in upholding human rights in Indonesia.

This commission established by a Presidential Decree<sup>74</sup> was meant to be an independent body (Article 3), and given the duties of publishing a human rights report as well as given the right to "monitor and investigate the implementation of human rights and present views, considerations and suggestions to state institutions on the

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<sup>74</sup> Keputusan Presiden No. 50/1993.

implementation of human rights (Article 5).” In other words, this body could investigate instances of human rights violations, but could not persecute the human rights violators. This may seem a weak body to do anything much, and indeed, there were such criticisms initially.

However, Komnas HAM’s investigative and documentation role was more than enough to stir controversies. In 1994, the first working year for Komnas HAM alone, there were already plenty of cases to be investigated and documented: 3 respected magazines (Tempo, Editor, Detik) were banned; a labor activist Marsinah was mysteriously killed; Adnan Buyung Nasution (LBH founder) and Pramudya Ananta Toer (novelist) were banned from speaking in public; the Kedung Ombo (dam project) case was given a verdict in favor of the government and this caused protests by human rights activists; 21 students who were accused of insulting the president asked Komnas HAM for a fair trial; jailed East Timor rebel leader Xanana Gusmao asked Komnas HAM via LBH to have access to a lawyer; Komnas HAM was requested to investigate the alleged abuse of prisoners by the military in Aceh; and labor activist Mochtar Pakpahan was accused of provoking a riot in Medan. There were many other issues related to land disputes and labor strikes which were brought to Komnas HAM. The list was a history of human rights violations which were investigated and documented by the state institution, Komnas HAM, and because it was a state institution, the reports published by it had weight in the eyes of the public. Komnas HAM members were overwhelmed. The cases brought to Komnas HAM in 1995 reached 1,137 cases, and this increased to 1,927 in 1996, and a striking 2,589 in 1997. The annual Komnas HAM human rights report was becoming thicker every year.

Because Komnas HAM did not have the right to prosecute but gave legitimate authority as the state institution to its own investigation report, LBH used the data provided in the Komnas HAM reports in their court trial. One example is a case of PDI's July 27<sup>th</sup> incident, described above (2.3.4). The team of lawyers including those from LBH used the Komnas HAM's investigation report on the July 27<sup>th</sup> affair in the court trial in which hundreds of Megawati supporters were accused of disobeying the government order.

Thus, important credit can be given to Komnas HAM in opening up the state. First of all, Ali Said as the first chair of the commission should also be given a credit for opening up the state. He brought his ties to LBH lawyers to the commission and picked political reformists as his commission members. He also allowed until his death in June 1996 well-organized investigations of human rights, and his legacy was continued by his secretary general Baharuddin Lopa (who later became Attorney General and later Minister of Justice under President Wahid). Second, because Komnas HAM was a state institution, its documents carried legitimate weight. The public saw the Komnas HAM investigation reports as state documents, and as such, were legitimate records of past human rights violations. Even the main culprit of human rights abuse, the military, could not ignore the Komnas HAM reports. Hundreds of documents produced by the Komnas HAM were legitimately used toward the late 1990s as evidence in court trials.

## 2.4 Conclusion

This chapter described the social change along with the political change in the 1990s and argued that political liberalization occurred while rapid social change took place and the political elite, including President Suharto, liberalized in their responses to the changing reality. There appear to be several key factors which political elites considered in making decisions toward liberalization. The first one is the changing international climate that came as the fall of communism and the rise of human rights as a major value system at the international level. The second factor was that some military leaders saw opportunities in post-Suharto Indonesia, and in publicly defying Suharto. A case in point is PDI's July 27<sup>th</sup> affair.

Meanwhile, there was a craving for profit on the side of Suharto's family, particularly his children, and their cronies. This was driven by the expanding economic opportunities created by the success of economic development. The evidence for this is seen from the media industry.

Political liberalization created activist groups and they could no longer be suppressed by force. The forceful suppression by arresting dissidents without trial was not a popular means to control the opposition. The legal battle was the legitimate means for the government, and also for the opposition. Therefore, the meeting point for both the government and the opposition was court, and this was where LBH laid the groundwork for building civil society.



## CHAPTER 3

### THE HISTORY AND ORGANIZATION OF LBH

#### 3.1 Introduction

This chapter explains briefly the history of the human rights organization LBH (Lembaga Bantuan Hukum, Legal Aid Institute), and discusses the organizational aspect of LBH. I will first introduce the historical development of LBH in order to understand the origin of LBH. In addition to the historical background of LBH, the current structure, organizational goals, and ideological basis are also discussed. Second, I will present the results of a survey given to LBH lawyers to highlight the background of LBH activists.

#### 3.2 The Beginning of the Legal Aid Institute

After graduating from the Law Faculty of the University of Indonesia in 1963, Adnan Buyung Nasution (hereafter called Buyung), future founder of the Legal Aid Institute (Lembaga Bantuan Hukum), already had the desire for founding a legal aid office for the poor. At the same time, he was an ambitious and courageous man who

built an extensive network in elite political circles in Jakarta for the purpose of lobbying for his legal aid organization. During his tenure at the Attorney General's office, Buyung Nasution approached in 1969 the then governor of Jakarta, Lieutenant General Ali Sadikin for his support. The governor agreed (Suara Pembaruan, April 28, 1993). Buyung Nasution also approached the powerful Major General Ali Moertopo, a military intelligence officer who was then the personal assistant to President Suharto. Ali Moertopo gave the green light.

On October 28, 1970, Peradin (Persatuan Adovokat Indonesia, Indonesian Advocates Association) at its national congress approved the establishment of an office of LBH as part of the Peradin organization (Kompas, October 26, 1995). This was, as Buyung Nasution himself wrote, a highly significant move by Peradin as the LBH was given the task to reform the legal system (Buyung 1981: 109-110). Peradin stated that the establishment of LBH had the following three goals: first, LBH was to give free legal aid to those in poverty; second, LBH was to help increase the understanding of legal rights among the people; and third, it was to help "modernize" the legal system according to the needs of social change. Among these three, the last aim, which used the word "modernize," was in essence asking for more than a legal aid charity to the poor, but meant to engage in social change.

Buyung soon was received by Governor Ali Sadikin, who at that time agreed to provide financial assistance to LBH<sup>75</sup>. In April 1971, a small LBH office on Katapang Street in central Jakarta was officially opened by the Governor Ali Sadikin.

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<sup>75</sup> The financial assistance given by the Jakarta Governor (from its city budget) to *LBH* was reportedly as follows: 1971 Rp. 300,000; 1973 Rp. 500,000; 1974 Rp. 600,000; 1975 Rp.900,000; 1976 Rp. 1,750,000; 1977/78 Rp. 2,500,000. See Ramadhan 1995, p. 244.

Buyung Nasution was the first director, and Albert Hasibuan became the first secretary of LBH. Also joined with Buyung Nasution were lawyers known for their integrity, such as Yap Thiam Hien, and Suardi Tasrif.<sup>76</sup>

According to a journal published by LBH in 1989, the original inspiration for the founding of the LBH came from the nationalist aspiration of Buyung, who saw the strong need for social justice for all in order to create a prosperous Indonesian nation. The author, Paul Moedikdo, states:

The LBH's practice orientation is consistent with the hope of Indonesia's nationalist independence movement, which was based on the glory of the 1945 Constitution... When I asked Buyung for his opinion, he agreed that the LBH's orientation is the hope of Indonesian independence, that is to establish one just and prosperous society, only in an instinctive way, not in an intellectual or cognitive way (Moedikdo 1989: 56-59).

The nationalist rhetoric of Buyung and his symphasizers echoed with the energy of elite constituents who agreed with this "instinctive" desire for social justice. This was the point of contact for Buyung to gain support from military figures and nationalists, such as Governor Ali Sadikin and Major General Ali Moertopo.

Buyung's reference to the 1945 Constitution appears sometimes in his writing. The reference to the constitution is perhaps used as a shield to defend LBH as an organization, or it may be more simply a cover for Buyung to protect himself after experiencing two-years in jail due to his involvement in an anti-government

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<sup>76</sup> Yap Thiam Hien was born in 1913, and was perhaps the most prominent human rights lawyer in 20<sup>th</sup> century Indonesia. To honor Yap's career and legacy, a group of human rights lawyers and intellectuals established a "Yap Thiam Hien Award" honoring those who defended human rights since 1992. Yap died in 1989. Suardi Tasrif was born in 1922, and was well-known for his strong ethics as a lawyer and a journalist. When LBH was first established 1970, he was general secretary of PERADIN (Indonesian Advocate's Association) He died in 1991 at the age of 69.

demonstration. Take a look at how Buyung became careful in citing the constitution and Pancasila as the principle all must adhere to. Take a preface from the Annual Report on Fundamental Human Rights in Indonesia written by Buyung himself:

"We must be familiar with the data and thereupon undertake improvements. It would be unwise to improvise continuously, especially in matters involving fundamental human rights. Improvisation may come up to 'crime' here. The 1945 Constitution and the Pancasila (Five Basic Principles) expressly order us to earnestly uphold the fundamental human rights, no matter where and when. It is the true meaning of the principle of 'just and civilized humanity.' Moreover, it must be born in mind that our basic idea is to set up a state based on the rule of law, which puts 'human rights' as its main pillar." (Nasution, 1980: vi)

Buyung was successful in providing legal aid to those who needed it. This success can be seen from the numbers of legal complaints LBH handled between April 1971 to March 1972. For that period, LBH received 1,603 complain from Jakarta residents, and it processed 1,385 cases through arbitration and in some cases through litigation (Kompas, October 29, 1995). Many of the cases LBH Jakarta handled then involved land and housing disputes, many of which were in dispute with the Jakarta city administration. Because of this, Governor Sadikin himself was also brought to court by LBH. The Governor did not mind. Although his administration was accused more than 200 times in the 1970s, as he says to a biographer later, he recognized the need for giving legal aid to the socially disadvantaged and that this became a tool of social control (Ramadhan 1995: 245).

While successful, Buyung was rebellious. In June 1971, a group of intellectuals established an organization calling for a boycott of the coming 1971 election, and

Buyung was a member of this “Golput” (white ballot group) movement. Golput activists called for rejecting Suharto’s regime as they saw increasing dictatorial tendencies in Suharto’s leadership. Besides Buyung, other Golput members were Arief Budiman,<sup>77</sup> Marsilam Simanjuntak<sup>78</sup> and Julius Usman<sup>79</sup> (Kompas, June 4, 1971). As Buyung took part in this movement, the government, particularly the military, became suspicious of him (Kompas, June 9, 1971).

When the anti-government movement went on a rampage on the occasion of the Japanese prime minister’s visit to Jakarta on January 15, 1974, Buyung as Director of LBH along with other lawyers was arrested on the charge of inciting riots, and was sentenced to and remained in jail until October 27, 1975. After his release, however, Buyung renewed his commitment to deepen legal aid activity which aimed at social change (Kompas, October 28, 1975).

### 3.3 Financing LBH

Funding for LBH branches initially came from local governments. For example, since the 1970s, the Jakarta administration supported LBH Jakarta. Other provincial governments, such as North Sumatra, West Sumatra, South Sumatra, West Java, Central Java, and East Java, gave substantial amounts of money to LBH offices in their respective

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<sup>77</sup> Currently Professor at University of Melbourne, Australia.

<sup>78</sup> He held ministerial positions (State Secretary, Minister of Law and Human Rights) during the Wahid Administration.

<sup>79</sup> He was, many years later along with outspoken Sri Bintang Pamungkas, a founder of the Indonesian United Democratic Party or PUDI, and currently parliamentarian from ruling the Indonesian Democratic Party – Struggle or PDIP.

provincial capitals. Yet, all cut funding to LBHs in the respective capitals when both the central government and the provincial governments felt the LBH activism threatened their very existence by claiming that the governments were the source of the problem, not the solution (Lubis 1990: 248-249). For example, the Central Java provincial government, which since May 1978 supported LBH in its capital city of Semarang, cut off its funding in 1989 when LBH Semarang brought the provincial government to court for failing to compensate the people evacuated from the site of a large-scale dam.<sup>80</sup>

The finances grew as the organization expanded. The budget of Rp. 4.6 million in 1971 grew to Rp. 375 million in 1983, Rp. 520 million in 1984, and Rp. 1.7 billion in 1993. The process of financial expansion is the result of further foreign assistance, and this trend is driven by the mutual interests between foreign donors, and LBH-affiliated democratic activists in Indonesia. Among the foreign donors, NOVIB, a Dutch NGO, was the most active in reaching out to contact LBH since the late 1970s, and continued to be the largest donor to LBH.

LBH's operation was for many years very dependent on foreign donors. Throughout the 1990s, LBH received constant grants from both foreign governments and private foreign donors. Available data shows that between 1994 to 1998, YLBHI, a holding institution on behalf of LBH branches, received Rp. 8.18 billion (US\$ 3.8 million dollars) in grants,<sup>81</sup> and this amount occupied about 90-95% of the operational expenses. The rest came from domestic contributions and publication sales.

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<sup>80</sup> Interview with Hadi Sasono, Semarang, September 1, 1998.

<sup>81</sup> *YLBHI* internal documents. Calculated at the rate of Rp. 2150 per US\$1. The grants came from NOVIB (the Netherlands), the National Endowment for Democracy (the U.S.), and the United States Agency for International Development, Quaker Service of Australia, Canadian government, Swedish International

NOVIB was set up in 1958 as the Netherlands Organization for International Development Co-operation and was financially heavily subsidized by the Dutch government.<sup>82</sup> One of NOVIB's goals is to assist NGOs in developing nations to structurally change societies for a more democratic and equal future. NOVIB entered Indonesia in the late 1970s and actively sought grantees. It made serious efforts to communicate with LBH activists and democratic intellectuals as described below (NOVIB 1981).

### 3.4 LBH's Early Sympathizers

LBH activists and democratic intellectuals in the late 1970s and early 1980s included Adnan Buyung Nasution, Abdurrahman Wahid, Soekardjo Adidjoyo, Rendra, Marhaban Zainun, Todung Mulya Lubis, Aswab Mahasin, Abdul Rahman Saleh, H. Princen, and Harjono Tjitrosubeno, and they were the target group of NOVIB. They exchanged views with the NOVIB representatives, including NOVIB activist Sjeff Thuenis and Dutch political anthropologist Nico Schulte Nordholt. The above-mentioned Indonesians were the group of committed social rights activists and religious figures who were critical of the authoritarian tendencies of the Suharto government at that time, and later became key persons in pushing political liberalization.

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Development and Cooperation Agency, NCOS (Belgium). Also for the programs for 1998-2001, *YLBHI* received, as of October 1998, almost US\$ 2.5 million dollars.

<sup>82</sup> The Annual Report (2000) published by *NOVIB* shows that about 80% of the total income came from Dutch government subsidies.

Abdurrahman Wahid was later in 1984 elected as the Chairman of Nadhlatul Ulama, a powerful Islamic social organization with tens of millions of members and supporters, and elected 4<sup>th</sup> President of Indonesia in 1999. His role in the liberalization of Suharto's authoritarianism is well documented (Ramage 1996; Barton 2001). Wahid was also the coordinator for Forum Demokrasi (Democratic Forum) which played a very important role in liberalizing Indonesia.

Todung Mulya Lubis later became Chairman of LBH and currently is a noted lawyer. Aswab Mahasin became the chief editor of Prisma magazine which promoted social activism and sustainable development, and was a key person in promoting bottom-up approach to development, rather than the top-down government approach.

Abdul Rahman Saleh became second Director of LBH Jakarta after Buyung in the late 1970s, and in 2001 was appointed as a Supreme Court judge. H. Princen, a deserted Dutch soldier, sided with Indonesian independence guerrillas in the late 1940s while directing his human rights organization and was a member of LBH's Board until his death in 2002.



### 3.5 The High Profile Political Cases Handled by LBH in the 1980s

LBH's activities continued based on what was originally promised: giving free legal aid to the poor. Yet at the same time, LBH took up politically high profile cases even though these cases were still elite-centered. The case of the Petition of 50 in which a former military general turned dissident, H.R. Dharsono, was charged with subversion was the first political case taken up by Buyung. Dharsono, a co-signer of the Petition of 50, was a close friend of another co-signer of the petition and a member of the Board of Directors of LBH, Ali Sadikin, the former Jakarta governor.

Another high profile case was the trial of Andi M. Fatwa, the current parliamentary vice speaker and a close associate of Amien Rais, who was charged with subversion in 1984 after the deadly killings of Muslim activists in Jakarta harbor by the army. While the Dharsono case was handled by senior lawyers including Buyung Nasution, the Fatwa case was handled by younger generation lawyers (YLBHI 1987; Fatwa 2001).

### 3.6 Regional Offices Established

The extension of LBH to the regions was also done during the 1980s. In 1973, the government prohibited the extension of LBH to be established in the regions, but this decision was reversed in 1978. The prohibition came probably because the central Java army officers were accused of crimes by LBH in 1973, and additionally, Buyung's arrest in 1974 did not help ease the army's suspicion. However, after the sweeping victory by Golkar with 62% in the 1977 election, the government started to ease the limits on social organizations, including LBH.

The initial effort to establish LBH in the regions came with the help of Peradin (the Indonesian Advocates Association). Although there was a decision of Peradin in Jakarta to establish an LBH office in Medan, the capital city of North Sumatra province, in 1976, it was not until 1978 that the LBH Medan office was officially established, only after the government decided to permit LBH to establish regional offices. To see the extent of LBH and government cooperation, the LBH Medan office is an interesting case. As I described in the section above, the provincial governments initially supported LBH by funding their offices. The office in Medan which was permitted by the then Governor of North Sumatra province E. Tambunan was also given financial aid from the governor's office.

The other regional branches were established gradually, and most were welcomed by the local governments initially. Established as a Peradin office in 1978, LBH Semarang was once headed by a retired police officer, Colonel Soemadi, until 1991, and the Central Java provincial government donated 1-2 million rupiah per month until 1989.<sup>83</sup> By 1990, LBH had 13 offices in Jakarta, Bandung, Semarang, Yogyakarta, Surabaya, Ujung Pandang, Jayapura, Manado, Padang, Palembang, Medan, Lampung and Bali.

By 1998, YLBHI and its 14 LBH branches all over Indonesia established a respectable reputation not only domestically,<sup>84</sup> but also internationally.<sup>85</sup> With more than 200 lawyers and advocates supported by volunteers and administrative personnel, this organization became one of the largest legal aid organizations in Indonesia.

### 3.7 Establishing a Foundation Structure

LBH initially was susceptible to state intervention as LBH was established under the sponsorship of Peradin. Peradin in the late 1970s was under considerable pressure from the government to merge into a new corporatist organization for lawyers, Ikadin (Indonesian Union of Indonesian Advocates). Peradin was in the end merged into the government-sponsored Ikadin in 1984. To avoid being controlled by the government, Buyung decided to establish a foundation as a legal umbrella organization and put the

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<sup>83</sup> Interview with Hadi Sasono, Director of LBH Semarang, August 31, 1998.

<sup>84</sup> See Chapter 5 for LBH's reputation in the eyes of domestic audience.

<sup>85</sup> In 1992, *LBH* was awarded the Roger Baldwin Medal of Liberty from the American Civil Liberties Union.

regional branches under the newly established foundation. The foundation established in 1981 was called the Indonesian Legal Aid Institute Foundation, or YLBHI (Nasution 1994: 114-115). The foundation structure was much less susceptible to government intervention as it was legally autonomous from the government (Bylaws of YLBHI 1980).

### 3.8 Structure of LBH

In this foundation structure, the Board of Trustees (Dewan Penyantun) is the sole and final decision maker, and supervises the Executive Board (Dewan Pengurus). The YLBHI Executive Board handles daily business and has the power to decide programs and administrative policies, and is headed by the Executive chairman. The Executive chairman is responsible for determining the general direction of the annual programs, and it receives annual program proposals from the regional offices. In other words, regional offices send in their annual programs and budget proposals to YLBHI's Executive Board for consideration. The Executive Board of the YLBHI decides the budget for regional offices, with an approval from the Board of Trustees. Therefore, the Executive Board has considerable power over the activities of the regional offices, while the Board of Trustees is the final decision maker.

The Executive Board must also authorize the personnel changes in the regional offices, and this intervention often caused problems between YLBHI and the regional offices. The Executive Board is headed by the Executive chairman who is assisted by three secretaries, namely the Board secretary, the internal affairs secretary, and the operations secretary. The Executive chairman directs three divisions and four sections: labor, civil/political rights (sometimes civil and political cases were separated in internal documents), and land/environmental divisions; information/documentation, research/documentation, finance, and human resources sections.

Each regional office has a very similar organizational structure. For example, LBH's Medan branch is headed by the director who is assisted by division heads for the operation and for the internal administration. The internal administration division deals with maintenance, documentation/library and secretarial services. The finance division is directly responsible to the director. Under the operational head, there are four divisions – environment, labor, land, and social/political rights – each is headed by a division chief. With few exceptions, all of them are full-time lawyers. These divisions are also assisted by so-called “volunteers,” many of whom are university students and interns and future lawyers. These volunteers are seeking to gain experience in law practice, and they participate actively in paralegal training at the institute. Thus, LBH also functions as an educational institution for future lawyers.

### 3.9 Recruitment Process

The majority of the students who are interested in joining LBH are recruited through an LBH recruitment program, called KALAMBAHU (Karya Latihan Mahasiswa Bantuan Hukum, Legal Aid Student Workshop). This workshop has a relatively set format for the recruitment of new lawyers and is provided by each LBH regional office. This workshop initially accepts applications from law students in universities in the jurisdiction and selects the best applicants to attend the workshop. The application process is sometimes competitive. For example, in the year 1997, the Surabaya branch selected 34 out of more than 100 applicants. Once selected, the trainee who must be at least in the third year of the law faculty (which means at least 21 years old) or have already finished a bachelor's degree in law will attend a 3 to 5 day workshop on broad aspects of legal aid. The workshop speakers/presenters are active and former LBH lawyers, judges, prosecutors, and university professors. A workshop held in 1997 by LBH Surabaya illustrates the broad range of material covered, as seen below:

- Legal Aspect of Politics in Indonesia
- Human Rights Law and Protection of Human Rights
- History of Legal Aid in Indonesia
- Professional Lawyer and Paralegal
- Criminal Law in Theory and Practice
- Problems of Civil Law: Labor Law, Land Law, Environmental Law
- Problems in Administrative Court
- Special Crimes
- Advocacy Strategy in Public Interest Case
- Ethics of Legal Aid Profession
- Criminal Code in the Perspective of Human Rights
- Mechanism of Alternative Dispute Resolution
- Participation Action Research and Investigation Technique
- General Study on Law in Context

The Legal Aid Student Workshop has proven to be an effective way to gather new recruits because this was one of the few opportunities for youths to expose themselves to critical social thinking during Suharto's rule. The university campuses also gave space for students to gather through clubs and social organizations on campus, but the LBH Workshop was perhaps the only one specializing in legal affairs for law students which also had content critical of the government. The law faculties on campuses did not dare to provide classes to criticize the government.

### 3.10 Objectives of LBH

With this structure in mind, LBH had the following three objectives as is stated in their brochure published in 1993 (YLBHI 1993:4-5):

- To provide legal assistance, in the broadest sense, to those whose civil, political, socioeconomic and cultural rights are violated including the right to development, in particular for those social groups lacking wealth and political power, regardless of religious differences, parentage, race, ethnic group, gender, political beliefs or social and cultural background;
- To uphold and defend human rights and the values of the rule of law within the legal and political system, through constitutional means to carry forward social transformation in order to realise a just, equitable and democratic society;
- To develop a role, within the framework of influencing the formulation, renewal and legal enforcement which conforms with the aspirations of independence which are implied and written into the preamble of the 1945 Constitution and internationally recognized human rights standards.

These objectives reflect both the legalistic role of providing legal assistance to the poor and the activist role of engaging in “social transformation” through “constitutional means.” The tension between these two roles, even though they do not necessarily contradict each other, was often a source of internal tension. As I will explain in Chapter 4, there is a gradual shift from the former to the latter, and the force to pull back the latter to the former, which sometimes resulted in the breakup of the organization in 1996.

### 3.11 Ideological Basis: Between Legalism and Activism

The ideological origin of this gradual shift from a legalistic approach to a more activist approach seeking to transform society is the core idea of the “structural approach.” The structural approach was originally in 1978 defined as follows:

- The structural approach to legal aid is any effort given to those people who are not able to afford legal assistance and needs collectively in need of legal protection, and these include defending people in court, educate them, do research on social issues, and disseminate ideas (All Indonesia LBH Workshop 1978<sup>86</sup>).

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<sup>86</sup> Hasil Lokakarya Bantuan Hukum Se Indonesia tahun 1978.



The original 1978 definition was sharpened further according to the reality in the 1990s. The words to explain the structural approach became much more radical, mobilizational, and sometimes confrontational. Consider the following:

- LBH, by this (structural) approach, means to directly combat the structural sources of poverty and human rights abuses, by educating, energizing and ultimately mobilizing communities to challenge the state in seeking justice, legal redress, and dignified and fair settlements. The structural approach demands that Indonesians become aware of their rights under law and oppose the further erosion of these rights by government action. ... To ensure success in this, LBH works through a national network of NGOs and village groups, students, professional groups and individuals. The strength of the structural approach is therefore embedded in the strength of the consortium of collaborating bodies and a common understanding of the current economic and political situation and models of change (YLBHI 1993, p. 13).
- Legal aid should not be based on charity, giving service alone, but emphasis should be placed on the Government changing laws and removing structural impediments to equity and human rights. The idea is to empower people through human rights education and legal resource education to improve their own destiny. It is their role to be the power brokers (Abdul Hakim Garuda Nusantara, Executive Director of YLBHI 1987-1993, quoted in YLBHI 1993).

This more radicalized version corresponds well with the two critical aims of social movements suggested by Cohen and Arato (1992) as explained in Chapter 1 (1.4.1). These two aims, inclusion of isolated and disadvantaged people into the polity and the fundamental change of cultural and normative values which are thought to be the source of social problems, are the same as the core principles of structural legal aid as described above.

In more concrete terms, the first aims at, for example, passing human rights legislation within the institutional arrangement so that the disadvantaged can be included in the formal political system. On the other hand, the second aims at challenging the existing forms of culture and perceptions by undoing unfairness, inequality, and injustice.

Because these two aims are directed at two different outcomes, there is also a tension between the two, although these are not mutually exclusive. LBH is no exception in this case. There were two forces at work. The first force was represented by those who were inclined to pursue legalistic activities to achieve what Cohen and Arato described as the first aim of a social movement. This group, for the purpose of this dissertation, is called the “legalism” group. The second force is represented by those who wanted to radicalize LBH by changing it into a substantive, less procedural, force for democratization. This second group, the “activism” group, tried this by expanding LBH’s network to labor, student, and research organizations to challenge the social structure. This group toward the end of the 1990s developed ties with the left-leaning student and labor organizations.

The general trend seen in LBH's vision and activity level is that there was a pendulum shift from legalism to activism throughout the 1990s. This happened due to the following reasons. First, the leadership change made YLBHI much more leaning toward activism. When Abdul Hakim Garuda Nusantara took the Executive Directorship of YLBHI in 1987, the goal of the organization was set to be more active in directly participating in mass movements for social change. The team of Garuda Nusantara at that time were Mulyana W. Kusumah, Hendardi, Benny Harman, and to a lesser extent, Ahmad Santoso. Garuda Nusantara's Executive Chairmanship was succeeded by Mulyana Kusumah in 1993, and this team pushed the same activist agenda until 1996 when there was an internal succession problem at YLBHI.

Second, the opening of the state (see Chapter 2) provided a political opportunity structure for political liberalization, and this new opportunity provided LBH with more room to maneuver. There was an increasing easing of state control in the late 1980s, particularly when Suharto himself thought that the state-making project in his image was almost complete, and realized that he would need to respond to the changing international climate. The easing of state control meant that other social movement organizations could emerge, and this created plenty of opportunities for LBH to make alliances with other NGOs. One example is a well-organized, active environmental NGO called Walhi (Wahana Lingkungan Hidup, Environmentalist Association) with which LBH worked very closely on environmental advocacy works.

### 3.12 Characteristics of LBH in Survey

The author conducted a short survey of LBH branches in Indonesia in June - October 1998. The timing of the survey followed the devastating May 1998 Jakarta riot which caused hundreds of deaths and eventually led to President Suharto's resignation after his 32 years in power. There was little sense of which direction the country was heading at that time, while activists were feeling the sense of relief but challenges ahead as President Habibie, seen as Suharto's crony, took power. Therefore, the timing of this survey at least implies the fact that the survey was carried out during unusual times, compared to times of stable politics.

A total of 105 respondents in twelve branches of LBH, which represent about 56% of the total professional staff, were included in this survey. The Jakarta LBH office survey was jointly carried out with YLBHI which shares the same address with the building. Other branches are the ones in Bandung, Yogyakarta, Semarang, Surabaya, Palembang, Lampung, Aceh, Medan, Ujung Pandang, Bali, and Jayapura. The author personally distributed and collected the survey in Jakarta, Bandung, Yogyakarta, Semarang, Surabaya, Lampung, Medan, and Aceh, while the rest were carried out through postal mailing.

### 3.12.1 General Characteristics

The majority of the respondents (75) identified themselves as lawyers while 30 of them are support staff, which include enrolled law students in their training periods, and library and research staff. The household maintenance staff such as drivers and cleaning staff did not participate in this survey.

The number of respondents in 12 cities is shown in Figure 3.1.

Branch in City	Jakarta	Bandung	Yogyakarta	Semarang	Surabaya	Palembang
Number of Respondents	15	14	14	7	11	6
Branch in City	Aceh	Medan	Ujung Pandang	Jayapura	Bali	Lampung
Number of Respondents	4	8	7	8	5	6

Figure 3.1: Numbers of Respondents by LBH Branches

The characteristics of respondents are shown in Figure 3.2 below. The religious background corresponds well to the nation's religious composition. The dominant Muslims in the nation also occupy the same dominance in LBH. This, however, does not mean that having faith in a particular religion had any significance in the organization, as religion was never an important factor in this organization's activities. We can also see that LBH is a youthful organization. The average age from this survey is 28.7 years old.

SEX			
MALE		FEMALE	
76		29	
RELIGION			
ISLAM	CHRISTIAN	HINDU	NO ANSWER
83 (79%)	19 (18.1%)	1 (1%)	2 (1.9%)
EDUCATION LEVEL AND MAJORS			
4 year national university	4 year private university	Others	No Answer
39 (37.1%)	31 (29.5%)	1 (1%)	34 (32.1%)
Law	Social Sciences	Others	No Answer
67 (63.8%)	8 (7.6%)	3 (2.9%)	27 (25.7%)

Figure 3.2: Basic Characteristics of LBH Respondents

The income-level per month for all respondents reveals low income for the LBH workers (see Figure 3.3 below). According to the government statistics, the average monthly income for production workers (not at the supervisory level) in 1999 was Rp. 385,400. The professional lawyers of LBH according to the survey receive on average Rp. 522,000 per month. This figure seems to be very low for professionals. However, because the LBH lawyers are young, and mostly single, this wage may be acceptable. In addition, LBH lawyers are allowed to open their own law offices to make a living, and the creative ones also write articles for newspapers and teach in higher education institutions for extra income.

Monthly Household Income	Numbers of Respondents
Lower than Rp. 200,000	19
200,000 – 500,000	42
500,001 – 1,000,000	22
1,000,001 – 1,500,000	6
1,500,001 – 2,000,000	2
2,000,000 – 3,000,000	2
Over 3,000,001	2

Figure 3.3: Monthly Income Level of LBH staff in 1998<sup>87</sup>

### 3.12.2 Sons and Daughters of Civil Servants

Interestingly, LBH lawyers come from the families of civil servants. 51.4% of the respondents say that their father is a non-military civil servant, which includes judges and prosecutors. Compared with the fact that the total number of non-military civil service was only 0.9% of the total adult population (3.7 million), 51.4% is indeed a significant number. This figure may indicate the fact that those who grew up in a family of civil servants may exceed in school and graduate with a university degree, which is certainly a debatable assumption. For the mother's job, a plurality, 47.7%, answered that their mothers are homemakers. The second largest group, 17.4%, said that their mothers are civil servants. Only 12.8% of fathers and 11% of mothers are farmers. A smaller number is recorded for laborers or factory workers, 5.5% for fathers and 0.9% for mothers. This result shows that a civil servant's family is indeed the dominant family background for LBH lawyers.

<sup>87</sup> The Indonesian Rupiah quickly depreciated against the United States dollar in the middle of 1997, and fell to Rp. 14,000 per \$1 in 1998. The exchange rate of the Rupiah at the time of this survey was around Rp. 12,000 per \$1.

### 3.12.3 Motivation to Join LBH

How about the motivation to join LBH for the first time? The largest number (38 people) answered that they wanted to use legal knowledge to help the poor and help defend the “small people” (rakyat kecil) from the state’s power abuse. The second largest number (28) answered that they wanted to participate in human rights protection and raise social awareness of human rights. These two are the same view as the official goal of LBH. On the other hand, there was more practical motivation. The third (24 people) answered that they joined LBH because they wanted to brush up on their legal knowledge and skills as a lawyer. A more activist motivation can be seen in 13 people who answered that they wanted to “challenge the state” through legal battles and advocacy. Fewer (6) answered that they sought income by joining LBH. Thus, based on the perception of the members, there is a clear indication that LBH is a goal-oriented civic organization.

Before joining LBH, the majority of the prospective activists/lawyers knew about LBH from newspaper articles. 55% of the respondents answered that they knew of LBH from a newspaper article about LBH. This means that the paper coverage indeed had an impact on spreading the word on LBH, and that this even motivated readers to join LBH. The second largest number (44.5%) answered that they knew of LBH from friends at their university. Taking a closer look, we see that 74% of those who answered that they knew of LBH from newspaper articles also answered that they knew from friends. There is a good chance that they came to know of LBH over conversations with friends about newspaper articles which talked about LBH.



#### 3.12.4 Organizational Network of New Recruits

The survey also asked the names of organizations they belonged to at the time of joining LBH. 60% of the respondents said they belong to a college organization. Among the organization on campus, the largest number (31 people) answered that they were members of a university student senate, which indicates that they are student activists. The second largest number (28 people) answered that they are members of an Islamic student association, and this is followed by those (6 people) who belong to a Christian/Catholic student association. Only two answered that they belong to a nationalist student association.

There are also people who previously belonged to other NGOs and social organizations. Eleven answered that they are members of human rights NGOs and ten belong to environmental NGOs. Six are former labor activists.

It is clear that most of the respondents had organizational experiences, and they brought their experiences and personal network to LBH. Since most of the organizations the respondents mentioned are political activist organizations (there were not artistic or cultural organizations), it is safe to conclude that the network of activism is brought from campuses to LBH at the time of recruitment.

### 3.13 Conclusion

From its inception, LBH maintained its cooperative relationship with the government, which had been a necessity at the beginning. LBH needed government permission, and the local governments were gladly financing LBH offices, because the governments at that time saw LBH as a charity organization. However, as the cases brought by LBH directly interfered with the agenda of the government, the government cut financial support to LBH offices.

The gradual challenge posed by LBH against the government through lawsuits on issues such as land dispute and labor relations made the government suspicious but it did not result in a severe crackdown. Because LBH was needed by the poor, and the government was unable to provide the same services to the poor, LBH was allowed to operate. In the time of fast economic development, LBH was the only institution to give free legal services to those in need.

However, while maintaining the services of free legal aid, LBH was moving toward radicalizing structural legal aid, which aimed at changing the existing social structure for permanent change. When there was little funding expected from the government, LBH looked for funds to a Dutch NGO in international development, NOVIB (the Netherlands branch of Oxfam). NOVIB wanted to address the structural problems of developing countries. With funding from NOVIB, and occasionally from other foreign donors, LBH has grown to be a premier legal aid organization.

The current state of LBH, as reflected in the survey is that LBH staff is young and idealistic. The interesting finding is that the majority of them are sons and daughters of civil servants. Many of the new recruits, lawyers and social activists, bring their own organizational experiences to their position in LBH, resulting in a dynamic organization, poised and dedicated to make social change.

## CHAPTER 4

### LEGALISM AND ACTIVISM IN LEGAL AID

#### 4.1 Introduction

LBH's main activity is to provide legal services to those in need but who cannot afford the legal service. The type of legal assistance given to those in need varies from those who were forcibly removed by security personnel hired by business establishments to those who were petty criminals. This is a passive activity for LBH in the sense that the legal problem had happened already before LBH played the role of responding to the legal problem.

LBH also made an effort to seek social change before an incident happens. This is a much more active role than mere legal consultation, and this active effort to seek social change is called, as described in Chapter 3, the structural approach to legal aid. This activism for social change involves community education in order to make the public aware of their legal rights and responsibilities, a political campaign to seek accountability of public officials, and seeking fundamental values and structural change through social campaigning with the broader participation of social activists.

In the 1990s, this activism was also extended to coalition building with other NGOs for social change, and efforts to become stronger through public support. As a result, LBH was often eyed with suspicion by the state.

This chapter will trace the LBH activities in the 1990s and assess their impact on social change. First, I will describe the LBH activities based on the data collected in the newspapers. This section will be complemented by LBH's documents. Second, I will explain the trend from legalistic activities to activism-type activities throughout the 1990s. This section will assert that LBH indeed created a democratizing network through its emerging coalition with both students and the mass media.

#### 4.2 Report on LBH Activities

One way to examine LBH activities is to collect data on LBH activities from newspapers. Although the Indonesian press was far from free, the authoritarian government allowed a degree of news coverage on LBH activities as long as articles did not threaten the immediate interests of Suharto. The interests of Suharto, instead of the state, became much more important during the 1990s. Here is the reason why.

While the 1980s was the decade of Suharto's "relative autonomy" (Liddle 1996) where Suharto was able to make major economic policy decisions despite the heavy bargaining between patrimonial interests and rational economists, the 1990s was the decade of Suharto's increasing personal rule in which he was surrounded by a small number of people including his immediate family members and dozens of patrimonial businessmen. In other words, this is the decade which signified the loss of economic rationality; instead the decisions were taken over by the patrimonial ties.

In political terms, the 1980s meant that Suharto successfully managed to put down at least three of the perceived enemies of the Pancasila state: communists, radical Muslims, and regional rebellions in Aceh, Irian Jaya and East Timor. The problems of communism and Muslim radicalism were put down to the point that they did not reappear in the 1990s.

The first reason is that the communists were wiped out by the army in the 1965-66 military operation following the failed "attempted coup" by the Indonesian Communist Party. This operation probably killed nearly one million communists and suspected sympathizers of communist party.

Second, the radical Muslims were put down by a series of intelligence operations with arbitrary arrests, which resulted in at least 157 suspected radicals sentenced to 1-20 years in jail (Tapol 1998: 159-161).

Yet, the regional rebellions reappeared in the 1990s and each had a different magnitude. The Aceh and Irian Jaya rebellions did not pose an immediate threat to Suharto's rule. Suharto did not see these two regional rebellions as a serious threat simply because they were far away from Jakarta and were still operationally manageable. But

the huge difference between Aceh and Irian Jaya on the one hand and East Timor on the other was that the Aceh and Irian Jaya rebels had never been supported by foreign governments. In other words, the rebels in those areas did not succeed in garnering international support. However, the East Timor rebels had strong international support. They were actively supported by Portugal, and the United Nations never recognized Indonesia's annexation of East Timor. There were well-organized East Timor dissidents who organized sophisticated international campaigns for independence. Suharto, therefore, put a strict limit on the number of foreign visitors to East Timor, and placed East Timor under heavy military control.

The political climate change in the 1990s, such as the "opening" explained in Chapter 2 and the prominence of human rights on the diplomatic agenda, was putting pressure on Suharto, while at the same time encouraging human rights organizations including LBH to be more active. Due to the change of the political climate in the 1990s and the aging of Suharto himself, the issues of concern, or weak spots, for the state shifted from stability for economic development to more short-term concerns regarding the regime's survival. These issues were (1) Suharto's succession issue, particularly the challenge posed by the aura of Megawati Soekarnoputri whose father was the first president of Indonesia, (2) Suharto's family business and corruption, and (3) the growing tide of political liberalization, firmly buttressed by international pressure and domestic liberal activists including LBH.

### 4.3 Assessing LBH Activities

In order to assess the LBH activities in the 1990s, I gathered newspaper articles from most national newspapers.<sup>88</sup> For the period January 1990 to December 1997, I gathered 823 national newspaper articles on LBH. This means that at least once in 3.5 days a newspaper carried an article on LBH. This number could be much higher if one includes the newspaper coverage of LBH in local newspapers. Although a number of papers carried the same LBH event, LBH's exposure in the national media is significant. The continuous attention given by the mass media to LBH appeared to be for the following three reasons.

First, the media owners had personal affiliation with LBH. Albert Hasibuan, the first man to take the secretary position of LBH in April 1971, came to run a Christian newspaper, called *Sinar Harapan*. His associate was Aristides Katoppo, who was the main drive to run critical stories on Suharto's rule. In 1986, *Sinar Harapan* was banned by the government, and was forced to renew its publication under a different name, *Suara Pembaruan*. Under the leadership of Hasibuan and Katoppo, the *Suara Pembaruan* newspaper, and its publisher the *Pustaka Sinar Harapan*, became the medium to transmit LBH messages, such as the rule of law, human rights, and, most of all, the protection of the right to speech. In addition, *Kompas'* editor in chief, Yakob Utama, was a personal friend of Adnan Buyung Nasution, LBH's founder, and Yakob donated funds to LBH.<sup>89</sup>

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<sup>88</sup> The national newspapers covered here are *Kompas*, *Media Indonesia*, *Suara Pembaruan*, *Republika*, *Bisnis Indonesia*, *Suara Karya*, *Merdeka*, and an English daily *Jakarta Post*.

<sup>89</sup> Financial statements by YLBHI. Besides *Kompas*, *Tempo*, *Gramedia* were also important media donors. Professor Daniel Lev from University of Washington regularly contributed.



Second, the newspapers which covered LBH helped protect the right to free speech on behalf of the media, and in return, the media covered LBH activities (Winarta 2000: 114). LBH after all, in the eyes of the mass media, was the only institution which helped protect the mass media through existing legal processes. Thus, the government could not deny LBH's legitimate attempts to use legal procedures on behalf of the defendant. In other words, there was a mutual benefit between LBH and the mass media.

Third, more and more people wanted to know about LBH in the news as LBH had gradually gained over the past 20 years its respected status in the eyes of the public as the defender of people's rights. According to a public survey in 1993, 68% of the total respondents said that they have heard the name, "LBH," and out of those, 46% said LBH was capable of defending the poor (Media Indonesia April 25, 1993). In addition, another public survey carried out by the largest daily Kompas in September 2001 said that the public trust in legal institutions ranked LBH the second with 13.1%, after the National Commission on Human Rights with 18.7%. The number 13.1% may appear to be low, but considering the fact that those who answered "(There is) no institution (I can) trust" were 37.8%, LBH did well by beating the police (10.1%), the attorney general's office (7%), the court (4.6%) and the parliament (3.3%).<sup>90</sup> Thus, LBH's reputation after years of legal assistance and advocacy made the institution a well-respected one.

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<sup>90</sup> The survey asked via phone to 885 respondents in most major cities, such as Jakarta, Yogyakarta, Medan, Surabaya, Palembang, Samarinda, Manado, and Makassar.

#### 4.4 Categories of LBH Events

The categories used to clarify LBH events from the above-mentioned newspaper articles in this dissertation are as follows: (1) interviews and comments, (2) written articles in newspapers, (3) panel discussions and seminars, (4) press releases and briefings, (5) demonstrations, and finally, (6) litigations. These categories are chosen based on the actual protest events carried out by LBH activists, and these are in order from the most passive activity to the most active one. These categories may appear to be all passive ones since they do not include extreme actions such as riots and revolutions (Anderson 1996). The reason for the lack of extreme actions is simply that there were no riots carried out by LBH in this time period. Because LBH was a professional lawyer's association, the lawyers happened to stick with more conventional protests, and they mostly played their role within the limits imposed by the state. The definitions and explanations for the chosen categories are given below.

First, “interviews and comments” refers to two situations. In the first situation, an activist is interviewed by a journalist on newsworthy issues and the activist’s comments and answers are covered by the newspaper. In the second situation, an article which mentions an LBH lawyer and/or LBH as the main subject even without a quotation of an LBH lawyer. This situation is passive since the activist does not have to create a situation for media exposure, and usually happens when a journalist approaches the activist. This is a usual method for LBH to press issues with the public by cooperating with the media through their coverage. However, such a method is often used by democratic activists and reformers under Suharto’s authoritarianism to push political liberalization further and at the same time “play” safely within limitations imposed by the state.

Second, “writing articles in newspapers” refers to activists writing opinion pieces for newspapers in order to state a position, and this requires active creativity to produce a lengthy writing of 500-1000 words. The real effect of publishing a political opinion in a national newspaper may not be known without detailed media research. However, the audience in mind when writing an article is other activists and lawyers who have common interests with the LBH lawyers, or the state actors who pay attention to the writer for political reasons. It must also be noted that article writing is also one way the activists can earn a living. Creativity pays, and for this reason, the writer may not aim at making a difference socially, but only to earn more income. Thus, this category is classified as the second passive activity.

Third, “panel discussions and seminars” refers to a situation where either LBH lawyers and/or other similar organizations together hold a public discussion and seminar

and invite interested public. This is a form of public education and can be a statement of solidarity with other civil society organizations. This activity also creates a forum for meeting like-minded people, and has a networking effect. This also requires LBH lawyers to participate in public, and adds the burden of being observable only by the society but also by the state.

Fourth, “press releases and briefings” refers to a situation where LBH invites the media to issue a public statement for the purpose of gaining the widest publicity. This mode usually produces a strong public statement critical of injustices. For the period covered here, press releases issued by LBH were sometimes long (more than 20 pages). Many of them were accompanied by reports, including investigative reports of incidents, and recommendations to the government to resolve problems.

Fifth, “demonstration” refers to a display of mass expression through public gatherings, marching, acting, and speaking. From the articles covered here, most of the demonstrations were not organized by LBH, but LBH participated in the demonstrations organized by students and labor unions.

Finally, “litigation” refers to a formal court struggle. These court struggles include those that were reported to be brought to court, and those that were planned to be brought to court by LBH. Either way, the time and preparation of litigious activities requires a very large expenditure of both time and effort by LBH lawyers.

Figure 4.1 below shows the distribution of activities<sup>91</sup> categorized from the newspaper articles. The decrease of news coverage in 1994 may be due to the repressive atmosphere created by the government's crackdown on three prominent mass media groups, including Tempo and Detik (see Chapter 2).

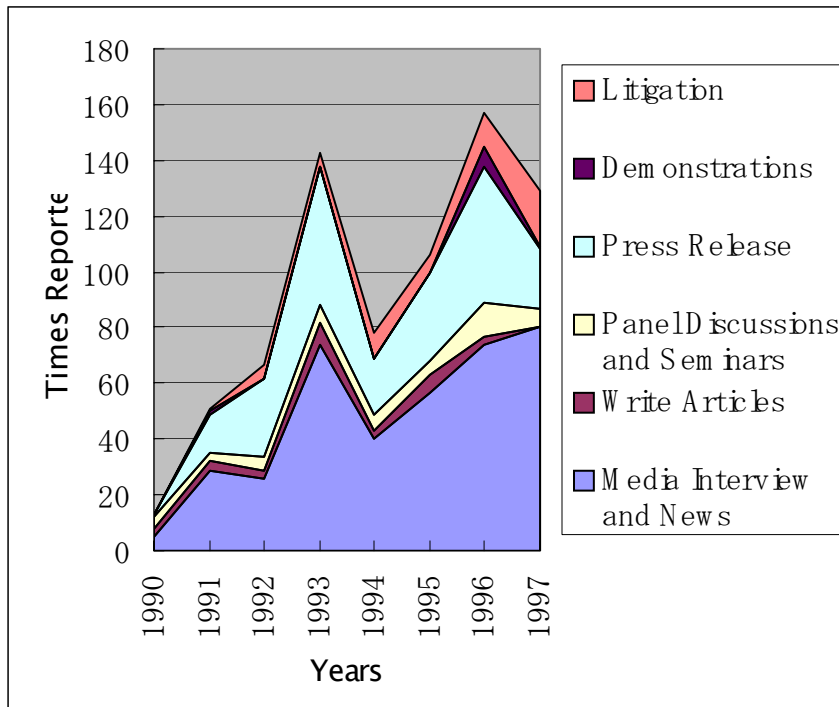


Figure 4.1: LBH Activities as Reported by National Newspapers

#### 4.5 The cases handled by LBH

The increasing level of LBH activities reported in the newspaper is consistent with the data on the number of cases handled by LBH as far as the analysis of the

<sup>91</sup> The recorded ones amounted to 744 cases, and the decreased numbers from the total of 823 articles is due to the overlapping of news coverage on the same event.

available data goes. The LBH data groups the cases into the following five categories: civil cases, political rights cases, criminal cases, environmental cases, and labor cases. Although it was not possible to compile data from all regional branches on all cases due to difficulties in obtaining reliable data, I was able to find that the number of cases taken by LBH nationwide increased by 60-120% from 1995 to 1996 and in 1998.<sup>92</sup> The highest rate of increase was seen in land and political cases with a rate of 105% for land cases and 120% for political cases. The sudden rise in 1996 which continued to 1998 was due to the increase of social and political problems as discussed in Chapter 2. This means that LBH was accepting and processing the cases constantly as part of their duty to process legal cases. However, the extent to which the public activities such as panel discussions and press releases declined is not very clear. The decline as reported in figure 4.1 was due to the state repression of the media, despite the fact that public activities took place, or that the public activities did not take place as frequently as in previous years.

How about the total number of cases handled by LBH nationwide? Each year from 1990 to 1995, YLBHI (the umbrella foundation to oversee LBH regional offices: see Chapter 4) along with LBH regional offices in total received about 3,000 cases, and about 10-15% of the total cases brought to LBH are not accepted. This means that almost 2,700 cases are pursued, but the cases brought to court for litigation and ended with a verdict were less than 10% of the pursued cases.<sup>93</sup> Of the 3,000 cases per year, about

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<sup>92</sup> The Year End Report by LBH Yogyakarta, Jakarta, Bandung, Semarang, Surabaya in 1992-1997. For 1998, a tentative conclusion was made from the data of Jakarta and Surabaya offices. I want to thank Punky from LBH Surabaya for helping to conclude this estimation.

<sup>93</sup> Interview with Adnan Buyung Nasution, October 8, 1998.

50% are related to civil cases and civil/political rights cases. The accurate data which separates civil cases (eg. family-related issues and money lending issues) from political cases (eg. subversion charges and insulting public officials) is, unfortunately, unavailable. But given the political cases reported in the newspapers, I estimate that the political rights cases amount to less than 100 cases per year. The other 1,500 cases are divided into land and labor dispute cases, and a small number of cases are environmental.

There are also great regional differences in terms of the numbers of cases brought to LBH, as seen in Figure 4.2. LBH Jakarta handles the most cases as it is located in the capital city which has a population of 9 million.<sup>94</sup> The number of cases corresponds roughly to the size of the cities.

Location of the Cases	Number of cases in 1989
Medan	548
Padang	32
Palembang	249
Jambi	80
Bandung	241
Semarang	269
Yogyakarta	418
Surabaya	249
Banjarmasin	93
Ujungpandang	76
Manado	194
Jayapura	161
Jakarta	1283

Figure 4.2: Total Cases Handled by LBH Offices<sup>95</sup> in 1989<sup>96</sup>

<sup>94</sup> Early 1990s figure from BPS, various issues.

<sup>95</sup> The city refers to the location of the cases handled by a LBH office. Therefore, it does not mean LBH offices are located in all cities mentioned in this table.

<sup>96</sup> Source is YLBHI, 1993. What Price Freedom, pg.6.

#### 4.6 Internal Bargaining: Legalism or Activism?

As I described in Chapter 3 (see 3.11), the structural approach to legal aid was bound to pull the LBH activities into two directions which are not mutually exclusive: the legalistic approach and the activist approach. To refresh our understanding, let me briefly explain the two here. The legalistic approach (legalism) tries to stick with the conventional aim of legal aid. LBH legal services address the legalistic problems, such as law reform and land reform in their legal services. Although this activity is not pure charity to help the poor, this approach, as described in section 4.1, is still passive compared to the second approach. The activist approach (activism) aims to change society by not only addressing the socio-structural problem of injustices, but by creating a network of alliances with non-legal NGOs and student activists so that together they can push reforms in the system. These two approaches coexist in tension.

Theoretically speaking, these approaches in tension are the core reason for the battle for more control over the management of the organization. The conservative Board of Trustees of YLBHI resisted the demands of the younger and more activist groups of YLBHI and the LBH regional offices. Because YLBHI was a foundation where the foundation Board of Trustees had sole power over personnel appointments and budget allocation, the activist group found it undemocratic and oligarchical. The Board of Trustees, the activists accused, maintained power for the sake of maintaining power, and did not listen to the democratic aspirations of the wider audience. As explained in Chapter 1 (1.4.2.1), a hypothesis is that the internal organization of a movement and the extent to which it is democratic determines the democratic nature of the movement's



development. How could oligarchy legitimately claim to be pursuing a democratic agenda? This was the question raised by the activist groups who aligned with students and non-legal aid NGOs.

Interestingly, in an authoritarian setting, allowing an organization to be influenced by outside forces (often sponsored by the state), whatever the reason, unfortunately invites serious state intervention. The cases of Nahdlatul Ulama during the 1990s, especially the 1996 national congress (see Chapter 3, 2.3.6), and the case of the Indonesian Democracy Party (see Chapter 2, 2.3.4) are two cases in point. It is worth remembering that the original purpose was to establish the foundation form (YLBHI) from the start. As Chapter 4 explains, legally, a foundation in the 1980s was much less susceptible to state intervention because by law a foundation was guaranteed financial and administrative independence. The dilemma for LBH leadership (in this case the YLBHI Board of Trustees) therefore was the balance between accepting the demands of new voices from within and outside of the organization for democratic purposes, and avoiding state intervention by maintaining independence. Logically, for the YLBHI Board of Trustees, in order to avoid state intervention, their stubbornness in rejecting the voices for more activism was well-justified. Yet, at the same time, the leadership should maintain the original aim of the organization by resisting the cooptation attempts by the state. Unfortunately, it appears that Buyung Nasution, the founder of LBH, once fell victim to cooptation by the state in 1996. To survive authoritarianism is indeed a difficult navigation. The following description of the internal bargaining over control illustrates the difficulties faced by LBH.

#### 4.6.1 Transition in 1993

As early as 1993, there was a conflict between those who aimed to evolve the conventional legalistic activities into more activist ones, and those who aimed to maintain legalistic activities. As described in Chapter 3, according to the bylaws of YLBHI, the YLBHI Board of Trustees holds much power over budgeting and general management and must approve programs proposed by the Executive Board. The regional offices are located at the bottom of the hierarchy as they are required to report to the YLBHI's Executive Board. They are also financially dependent on YLBHI. Although the bylaws do not prohibit regional offices from seeking outside funding, in this case foreign funding, the regional offices were required to get permission from the foundation (YLBHI) first. In addition, the problem for regional offices was that the foreign donors were not, at first, willing to trust the financial management of regional offices, and second, they were hesitant to ignore the powerful YLBHI. After all, YLBHI and particularly the Board of Trustees had the final word in decisions including personnel changes.

The trouble between YLBHI and regional LBHs in the 1990s first started in early 1993, and it was at the time of leadership change. This indicates that the tension came as a battle over control and leadership, and this battle was fought between the legalist and activist groups.

When the LBH founder, Adnan Buyung Nasution, came back to Indonesia after his completion of a doctorate degree in the Netherlands in 1992, he came back with stronger ties to LBH's traditional donor, NOVIB. It was also time for the YLBHI to select the new Chairman of the Board of Executives (the Executive Chairman). The Chairman of the powerful Board of Trustees Soekarjo Adidjoyo and his eight members were responsible for appointing the new Executive Chairman.

The tension between the activist and legalist groups over who should be the next Executive Chairman initially started out as a small voice from LBH alumni and non-LBH NGOs criticizing LBH's "undemocratic" method of picking the Executive Chairman. By July 1993, the voice for LBH's new engagement with other NGOs came from both inside and outside of LBH, mainly from the activist group. For example, LBH alumni who were running law offices, such as Muhammad Assegaf (then the national Chairman of Ikadin, the Indonesian Advocates Association), Abdul Rahman Saleh, and Teguh Samudra spoke of the need for a stronger engagement of LBH in the activities of other civil society organizations and NGOs (Kompas July 2, 1993).

On July 4, a group of NGOs in Jakarta staged a protest against the YLBHI Board of Trustees because these NGOs claimed that YLBHI's election method to choose the Executive Chairman was undemocratic. They astonishingly demanded an election of the Executive Chairman to be carried out by NGOs (Kompas July 5, 1993). To respond to this radical demand calmly, Frans Hendra Winarta, also a prominent lawyer and a member of the YLBHI Board of Trustees, stated that the protest by NGOs indicated the fact that LBH was embedded in society and this fact should be taken positively (Kompas July 6, 1993).

By July 14, 1993, the criticism to force the YLBHI Board of Trustees to carry out an election with wider participation came from LBH regional offices (Jakarta Post July 15, 1993). The dissatisfaction was spreading to the regions. The most active criticism came from LBH Bandung and LBH Yogyakarta where there were strong and active LBH ties with labor organizations and students (LBH Bandung) and student-led NGOs (LBH Yogyakarta). Fifty NGOs from Yogyakarta sent a letter demanding that YLBHI Board of Trustees pick a new Executive Chairman who was suited to fight for democracy (Media Indonesia July 20, 1993).

Other LBH regional offices such as LBH Bali and LBH Palembang which felt uncomfortable with the demands of LBH Bandung and LBH Yogyakarta. They thought that the LBH might be wrongly influenced by the NGOs to become a more activist organization rather than maintaining itself as an organization which provides legal services to the poor. The tension between the legalistic-minded lawyers and the activist-type lawyers within the organization was growing. The activist group accused the conservative Board of Trustees of being undemocratic and challenged the bylaws.

This tension between legalism and activism was reflected in the LBH regional offices' nomination of two individuals to lead the next Board of Executives: Adnan Buyung Nasution and Mulyana Kusumah, where Buyung was supported by the legalism group and Mulyana was supported by the activism group (Media Indonesia July 21, 1993). In the end, the Trustees elected Buyung as the new Executive Chairman on July 25, but to appease the activism group, Buyung said upon his election that he acknowledged the lateness of the regeneration process in LBH (Bisnis Indonesia July 26, 1993). Todung Mulya Lubis, former Executive Chairman of YLBHI (1983-87) said that

the regeneration process of LBH had failed. Buyung was in a difficult position at that time. Further criticism came from Hendardi, a former student activist and an engineer-turned LBH activist, who said that selecting Buyung meant that LBH was still a conservative and traditional organization (Media Indonesia July 28, 1993). Hendardi was not a law faculty graduate and never had a training to be a lawyer.

Buyung as a compromise decided to meet the demands of the activism group. He created a new structure – the creation of Executive Director under the Executive Chairman Buyung Nasution. Buyung chose Mulyana Kusumah, his contender for the executive Chairman, as the Executive Director on August 4 (Media Indonesia August 5, 1993).<sup>97</sup> Thus for the next three years, LBH under the leadership of YLBHI Executive Chairman Buyung Nasution and the Executive Director Mulyana Kusumah experienced divergence in two different directions, one maintaining the legalism direction to provide legal services and the other to become an activist organization and form and expand alliances with students and other NGOs aiming for further democratization.

There was, however, a pendulum shifting toward a more activist role under the daily leadership of Mulyana Kusumah as Executive Director, and this pendulum shift for activism was not stopped by Buyung Nasution. Buyung saw it as a product of political liberalization, and saw it as doing no harm to LBH as long as LBH protected itself from any outside interventions be it from the state or other democratic movements. Yet, this pendulum shift to activism collided with the forces to stop the pendulum in 1996. Those who wanted to stop the pendulum were Buyung Nasution himself and his friends in the Board of Trustees, as they saw the danger of the intervention of outside forces.

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<sup>97</sup> This decision was made through the letter of Executive Chairman No. 136/Skep/YLBHI/VIII/1993.

#### 4.6.2 Transition in 1996

The 1996 dispute, which was the internal bargaining between legalism and activism, came to be the most serious internal dispute as it threatened the organizational integrity of LBH by forcing LBH to break up. The essential disagreement over to-be or not-to-be an activist organization was swelled into the battle over control launched by YLBHI activists who had ties with outside democratic movements and by activist-minded LBH regional offices.

The 1996 dispute was also due to the transition for the Executive Chairmanship which was about to take place. The dispute came into sight when Buyung announced on the 25<sup>th</sup> anniversary of LBH on October 25, 1995, that he would resign from the post as Executive Chairman of YLBHI. Until the new Executive Chairman was selected, the Trustees appointed a “caretaker” leader in place of the Executive Chairman, which consisted of the members of Board of Trustees: Sukardjo, Amartiwi Saleh, Frans Hendra Winarta, Aswab Mahasin, Ahmad Santoso, and H. Princen (Republika October 28, 1995).

To dissuade the activism pendulum from going too far upon his resignation, Buyung stated that the social expectation of LBH to be an agent of change is “too heavy” a duty for LBH, and continued that “LBH is not a political party, and cannot be a political party” (Media Indonesia October 28, 1995). Former member of DPR (Dewan Perwakilan Rakyat, the People’s Representative Council) from the police faction and then a member of the National Commission for Human Rights Police Brigadier General (ret.) Roekmini also said that he was disappointed to see the internal conflict between those who wanted more activism and those who opposed it within LBH (Media Indonesia October 25, 1995).

To push the activism agenda, the Director of LBH Jakarta, Luhut Pangaribuan, said that all programs by LBH should aim at carrying out the agenda for the birth of democratization (Kompas October 25, 1995). Hendaridi, Director of communication and special programs of YLBHI also pushed the activism agenda by saying that lawyers' organizations were never meant to be for themselves but they were agents of change and responsible to the needs of society (Kompas October 30, 1995).

The Trustees were also divided on this issue. The head of the "caretaker" executive Board Soekarjo Adidjoyo accompanied by another caretaker member H. Princen disclosed that the Trustees were divided between Ali Sadikin and Buyung Nasution on the legalism side and Mochtar Lubis and Aswab Mahasin on the activism side (Bisnis Indonesia October 31, 1995). The caretakers were scheduled to hold an election for the Executive Chairman by February 1996 at the latest.

On February 9, 1996, the caretakers announced that they would hold the election for Executive Chairman to replace Buyung Nasution, and picked 12 candidates (Media Indonesia February 27, 1996). To convince the LBH lawyers regarding the method of selecting one out of 12 candidates was a sensitive business for the caretakers. The caretakers decided that the LBH regional offices should have a say in this process. The letter dated February 13 by the caretakers to the regional offices said that each LBH office was allowed to pick 2 names out of the 12 candidates.

The strategy to let regions have a say backfired. This letter was met by heavy criticism by both YLBHI's activist groups and the regional offices. Hendaridi, foremost advocate of activism, wrote an open letter to demand that the way by which the caretakers attempted to choose the next Executive Chairman was a conspiracy by Buyung

Nasution (non-active Executive Chairman), Todung Mulya Lubis (trustee member), Bambang Widjojanto (then the powerful Director of operations at YLBHI's Executive Board), and Achmad Santosa (trustee member) to choose Bambang Widjojanto as the next Executive Chairman. Hendardi was not too far from the truth. Luhut Pangaribuan, Director of LBH Jakarta echoed Hendardi, by saying that the method to choose the new Executive Chairman was a setback for YLBHI's democracy (Media Indonesia February 27, 1996).

The activism group was also gaining support from NGOs. An alliance of Bandung's NGOs, Forum Kerjasama LSM Bandung (Bandung's NGO Cooperation Forum), sent a letter of protest that the YLBHI was feudalistic (Kompas February 27, 1996). LBH Ujung Pandang in Sulawesi also sent a protest letter to stop the election set up by the caretakers on the grounds that the method was not democratic. A student organization also joined in favor of the activism group (Merdeka; Suara Pembaruan February 28, 1996). The protest was spreading.



Frans Hendra Winarta tried to cool down the heat by explaining that the bylaws of YLBHI gave the power to the Board of Trustees so that there was not any rule violation in this election method. Worried about the growing criticism by both LBH regional offices and NGOs and students outside of LBH, the caretakers announced that they would limit the candidates from the activism group, and to do that they had to sacrifice a legalist. Thus, as the plan goes, the candidates from the activism group, namely Hendardi, Rambun Tjahjo, H.Princen, and Amartiwi Saleh and to a lesser extent Nursyahbani Katjasungkana<sup>98</sup> were to be removed from the candidacy list, while the sacrificed legalist would have been Frans Hendra Winarta (Republika February 29, 1996).

The remaining four, according to this plan, were to be equally divided between the legalism group and the activism group. From the legalism group, there was supposed to be Bambang Widjojanto and Soekarjo Adidjoyo, and from the activism group, the plan was Mulyana Kusumah and Luhut Pangaribuan. This formula in the end was changed by the Board of Trustees which selected four final candidates for the trustee vote, namely Bambang Widjojanto and Soekardjo Adidjoyo both of whom were supported by legalism group, and Amartiwi Saleh and Luhut Pangaribuan both of whom were supported by the activism group.

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<sup>98</sup> Interview with Nursyahbani Katjasungkana, October 22, 1998.

To avoid further internal conflict, the new Executive Chairman had to be selected as soon as possible. The Trustees held a meeting to pick the new Chairman on March 1. The Board of Trustees with a participation of 10 members (Harjono Tjitrosoebono, Aswab Mahasin, Amartiwi Saleh, M. Zaidun, Mulya Lubis, Ali Sadikin, Mahyudanil, Frans Hendra Winarta, Tuti Herati Roosseno, Soekardjo Adidjoyo), and four members who did not attend but voted (Buyung Nasution, Hoegeng Imam Santoso, Victor Sibarani, and Abdul Rahman Saleh), picked Bambang Widjojanto as the new Executive Chairman. The voting result was that Bambang Widjojanto received 7 votes, Soekardjo Adidjoyo 5 votes, and Luhut Pangaribuan and Amartiwi Saleh 1 vote each.

With protesters waiting outside the Boardroom, the voting scene was so tense that the trustee members were afraid of physical confrontation.<sup>99</sup> The legalism group well exceeded the activism group in votes. Five members who did not agree with the election method (Mochtar Lubis, H. Princen, Anwar Harjono, Abdul Hakim Garuda Nusantara, Syarif Siregar) refused to vote (Kompas March 6, 1996). A famous novelist and the YLBHI trustee Mochtar Lubis who was sympathetic to the activism group even walked out of the March 1<sup>st</sup> trustee meeting and this walk-out was widely reported in national newspaper (Kompas March 1, 1996).

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<sup>99</sup> Interview with Ali Sadikin. October 2, 1998.

Immediately thereafter, due to this result, LBH Yogyakarta, LBH Jakarta, LBH Bandung, LBH Semarang, LBH Bandar Lampung issued a statement that they did not recognize the election result because, according to them, it was not a democratic election. This boycott of the election result was followed by LBH offices at Bali, Manado, and Ujung Pandang. The LBH office of Padang, Palembang, Medan, Surabaya, and Jayapura neither accepted nor denied the election result. The LBH regional offices under YLBHI were facing a breakup.

On March 6, Mulyana Kusumah, Hendaridi, Rambun Tjahjo, Luhut Pangaribuan, Amartiwi Saleh, and H. Princen decided to break from YLBHI by establishing FLBHI or the Federation of LBH Indonesia (Suara Pembaruan March 7, 1996). The showdown intensified when Buyung Nasution and the treasurer of the Trustees Frans Hendra Winarta blocked the bank account of YLBHI which could be used by the Executive Director Mulyana Kusumah, while Ali Sadikin sent a letter informing the LBH regional offices that the YLBHI account had been blocked, which in effect meant cutting the funding to the regional offices (Media Indonesia March 26, 1996).

The impact of the funding cut spread to the regions. In April, afraid of a financial collapse, LBH Yogyakarta alumni “took over” LBH Yogyakarta’s existing Board of Trustees and declared that LBH Yogyakarta which supported FLBHI was no longer active (Kompas April 10, 1996). The YLBHI Board of Trustees appointed five new members to fill the vacant seats, including the former Executive Chairman Todung Mulya Lubis. The new Executive Chairman Bambang Widjojanto dissolved the Executive Board which was headed by Mulyana Kusumah. At the same time, the Board of Trustees was proposing to have a national dialogue meeting to resolve the dispute.

The internal dispute which created two different households under one roof was continuing. An YLBHI trustee member Harjono Tjitrasoebono publicly expressed how difficult it was to have conflicting parties start a dialogue (Merdeka April 26, 1996). Hendaradi was threatening to sue YLBHI if it decided to “clean up” the Executive Board led by Mulyana Kusumah. Because there were no mediators, Mulyana Kusumah and Bambang Widjojanto had to talk directly when the YLBHI Board of Trustees came up with the idea to hold a national dialogue to overcome the conflict.

The two conflicting leaders finally agreed that the national dialogue proposed by the Trustees should be held. But at the same time, the Board of Trustees was pressuring the FLBHI led by Mulyana Kusumah by threatening to audit the Executive Board’s financial records due to financial mismanagement (Merdeka May 15, 1996). The accusation was serious. Rambun Tjahyo, who was responsible for the financial management, was under the intense spotlight. There was also a rumor that a financial division female worker, who was said to know the financial discrepancies, was fired due to her role in knowing about the mismanagement.<sup>100</sup> The Board of Trustees believed that Mulyana Kusumah and his staff were using LBH resources to fund demonstrations by giving seed money (lunch money and transportation fares) to students and other NGOs. There appeared to be plenty of evidence.<sup>101</sup>

Mulyana Kusumah (Executive Director) and his friends, such as Rambun Tjahyo (Internal Affairs Director), Benny Harman (Strategic Division Head), Sigit Pranawa (Human Resource Director), Tedjabayu (Documentation Division Head) and Hendaradi

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<sup>100</sup> Many interviewees clearly indicated that Mulyana Kusumah and Rambun Tjahyo are the persons to blame for the financial mismanagement.

<sup>101</sup> Confidential communication. September 23, 1998.

(Communication Director) fought back by suing the YLBHI Board of Trustees on the basis that they were dismissed unlawfully. Even a National Commission for Human Rights member Muladi issued a statement saying that he hoped that the internal problem could be resolved soon (Kompas May 8, 1996). Even the court which initially accepted the trial responded that the court hoped that the internal problem in LBH could be resolved peacefully (Suara Pembaruan June 13, 1996).

Another moment of serious tension came in August when trustee member Ali Sadikin came into Mulyana's room in the YLBHI building to throw out Mulyana's belongings. This violence was the highest point of dispute.

A settlement had to be made. Toety Herati Rooseno, a lawyer for YLBHI, mediated for the conflicting parties on September 10<sup>th</sup>, 13<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup>. The agreement between the groups of FLBHI and YLBHI was that YLBHI pay compensation to the FLBHI group. This compensation, according to Mulyana, would be used to help people who were charged with subversion. Toety declined to comment on the amount of the compensation (Suara Pembaruan September 20, 1996).

The long battle over the control of YLBHI was settled, but with a few significant casualties. The recovery from the dispute after the settlement was the most difficult job for the new leadership.<sup>102</sup> LBH lost Mulyana Kusumah, Hendardi, Benny Harman, Abdul Hakim Garuda Nusantara, Nursyahbani Katjasungkana, to name a few. In the regions, LBH lost Dedy Marwadi from LBH Lampung and Alamsyah Hamdani from LBH Medan.

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<sup>102</sup> Interview with Dadang Trisasongko, November 2, 1998.

#### 4.6.3 The Impact of the Internal Dispute on LBH and Democratization

How should the impact of this dispute be evaluated? How about the aftermath of the dispute? Was the impact of the dispute positive for Indonesia's civil society and democratization?

The internal dispute occurred between 1993 and 1996 and showed the tendency of the Board of Trustees to be conservative particularly under the leadership of Buyung Nasution who truly disliked outside intervention in LBH. His personality to be suspicious of people with whom he was not familiar also disrupted internal harmony. The tension between the legalism and activism in the course of organizational development can be healthy for the growth of the organization, given that the organizational doctrine implies both directions. To those in need of legal assistance due to structural reasons, having free legal assistance and seeing social change is a good thing. But for the LBH as an organization, the battle in 1996 ended in the break up of LBH, and in the resignation from LBH of many activists.

In general, the dispute and its aftermath did not hurt democratic civil society, but instead the breakup strengthened it. If we look at where the expelled LBH lawyers went, an interesting picture emerges – they all established their own human rights/advocacy organizations, and all of them have been very active even until today.

For example, Mulyana Kusumah, who was the key figure to advocate more activism in LBH, joined other NGOs to establish KIPP (Komite Indepen Pemantau Pemilu, the Independent Election Monitoring Committee). KIPP played an important role in pressuring the government during the corrupt general election in 1997, and also

became the civil society body to educate the public in election participation for the 1999 election, the first democratic election in 30 years in Indonesia. Abdul Hakim Garuda Nusantara with his friend Benny Harman set up another human rights organization called ELSAM (Lembaga Studi dan Advokasi Masyarakat, The Institute for Social Advocacy), which became active in community organizing and publications. Nursyahbani Katjasungkana in 1996 established her own human rights organization, specializing in women's rights issues, LBH-APIK (Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan, The Legal Aid Institute Association for Indonesian Women's Justice). Hendarli in 1996 set up a human rights organization, PBHI (Perhimpunan Bantuan Hukum Indonesia, Indonesian Legal Aid Association), and this was joined by Dedy Marwadi and Alamsyah Hamdani. All of the above new organizations gathered former LBH lawyers and activists, and still well into 2002, are very active organizations attempting to uphold justice and democracy in Indonesia.

How about LBH itself which lost a significant number of capable lawyers after 1996? Was the powerful Board of Trustees who kicked out the activism group isolating themselves and becoming less responsible to members' demands, thereby weakening the aims of LBH? Or did the Trustee members discard LBH aims in order to insure their own survival?

Interestingly, LBH became stronger and much more active in maintaining both legalism and activism agendas. The new YLBHI Executive Board under the Chairmanship of Bambang Widjojanto gathered many activists who could hardly be categorized as traditional legalists. Dadang Trisasongko was an activist-type lawyer from LBH Surabaya and became the YLBHI Secretary for Internal Affairs. He was very

active in protecting people in land disputes. He had the experience of being arrested without a warrant and had been severely beaten by police during his detention in Surabaya. Munir, also from LBH Surabaya became the YLBHI head of civil and political rights division. He was also an active labor rights campaigner, and soon in 1998 became the founder of Kontras (Komisi untuk Orang Hilang dan Korban Kekerasaan, the Commission for Missing Persons and Victims of Violence), an organization to search for those kidnapped by the state (see Chapter 6).

Robertus Robert, who was appointed as research and development head of YBLHI, was a student activist from SMID (Solidaritas Mahasiswa untuk Indonesia Demokrasi, Indonesian Student Solidarity for Democracy), the left-leaning student organization which established the dissident political party PRD (Partai Rakyat Demokratik, People's Democratic Party,) in 1995. These members were a prominent activism group. The only difference between them and those who left LBH after the dispute was the age difference. Thus, Indonesian society witnessed more human rights organizations emerge under the leadership of the graduates of LBH and LBH itself. This strengthened the activism line in the organization. A question can be asked at this point: what happened to the Board of Trustees who was interested in a legalistic agenda?

The new Board of Trustees was headed by seasoned veteran lawyer and former Chairman of Ikadin (Ikatan Advokat Indonesia, the Indonesian Advocate Association) Haryono Tjitreosoebono. Haryono, after taking the Chairmanship, did not intervene in the directions made by the Executive Board. The number two person on the Board was Abdul Rachman Saleh, another veteran lawyer. The most charismatic person and LBH founder, Buyung Nasution, became just one of the trustee members, and his relationship



with then Minister of Science and Technology B.J. Habibie (later to be the third president in 1998), tainted his reputation in the eyes of LBH lawyers nationwide.<sup>103</sup> Buyung lost credibility because he was too close to Minister Habibie, and it was also rumored that Minister Habibie contributed large sums of money to Buyung Nasution. According to Todung Mulya Lubis, another trustee member, the Board of Trustees learned a lesson from the prolonged 1996 dispute: the Board would concentrate in guiding the Executive Board but not in intervening in it as long as the management of the Executive Board was clean.<sup>104</sup>

My analysis of the newspaper reports on LBH activities during and after the 1996 dispute also indicates that LBH, including YLBHI as the umbrella organization and LBH regional offices, continued to press for justice through legal means, and made democratic alliances with student, labor, law, and academic organizations to challenge the state. In other words, the leadership dispute did not stop their original activities. For example, since Buyung Nasution's announcement that he was resigning from the Executive Board chair in 1995 until the end of the dispute in September 1996, I have recorded 59 articles on legalistic activities (eg. issuing statements on legal disputes, pressing charges against the police, discussion of legal issues) with 25 articles on activism-type activities (alliance with other non-legal aid organizations to question and attack the social structure). From October 1996 to December 1997, I found 41 articles on legalism while there were 21 articles on activism.

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<sup>103</sup> From my interviews in LBH offices nationwide, all lawyers without exception questioned Buyung Nasution's integrity when he joined Minister Habibie's defense team in a suit made by the Minister's airplane company against the Jakarta Post daily.

<sup>104</sup> Interview with Todung Mulya Lubis, September 25, 1998.

In conclusion, even after the divisive dispute in 1993 and 1996, both of which happened when the leadership change took place, LBH survived, and even became stronger in maintaining its aims of legal aid. There are several reasons for the survival. First, although this is an indirect reason, it is important to note that those who rebelled against the Trustees were able to find jobs after leaving LBH. In other words, if the LBH work was the only job for them and they were desperate in maintaining their status for the sake of survival, the dispute may have continued much longer. For this reason, the Board of Trustees gave a sum of compensation to Mulyana's group as start-up funds for the new positions. Second, the charismatic founder of LBH Buyung Nasution was gradually fading away from the scene. Because he was the founder and did have an extraordinary record as a capable lawyer, no one in 1993 could challenge him.<sup>105</sup> But as he became closer to Minister Habibie and shifted his position closer to the state actors, the admiration for Buyung among LBH lawyers declined. This absence of Buyung Nasution's charisma was a positive opportunity for the new generation to emerge.

Third, LBH had the right lawyers in the next generation to take over the leadership after the dispute so that the aim of providing structural legal aid was maintained. The younger generation of lawyers was not only capable as lawyers but they also had experienced first-hand state repression. They also brought their network of alliances with students and labor organizations to the LBH leadership.

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<sup>105</sup> Interview Apang Herlina, September 28, 1998.

Finally, the society demanded LBH. The rising tide of political liberalization in 1996 and 1997 provided plenty of opportunities for LBH to engage in democratization. The grip of the New Order state was weakening and a split between the state actors was becoming obvious as I described in Chapter 2.

#### 4.6.4 Merging with the Students

The student movement has often been at the forefront of political change in Indonesia starting with the time of the fall of Sukarno. Well-organized student groups were the main critics of Sukarno in 1964-65, and they were backed by the military that saw danger in Sukarno's increasing closeness to PKI (Partai Komunis Indonesia, the Indonesian Communist Party). The students then were campus-based, and at the same time, they were organized based on religious orientations, such as the Indonesian Islamic Student Association (Himpunan Mahasiswa Islam), the Indonesian Islamic Student Movement (Pergerakan Mahasiswa Islam Indonesia), the Indonesian Catholic Student Association (Perhimpunan Mahasiswa Katolik Republik Indonesia), and the Indonesian Christian Student Movement (Gerakan Mahasiswa Kristen Indonesia).

Another phase of the student movement came in the late 1970s. This time, the movement was also organized from the campus. The student movement emerged in the late 1980s and had different characteristics from previous times. The late 1980s was the height of the Suharto regime, and there seemed to be little room to maneuver on the streets. Many of the activists were co-opted by the regime where student activists were met with iron fists. However, strict state control weakened starting in 1989 as was explained in Chapter 2.

There was a growing tendency for LBH to merge with student activism in the 1990s, and this aspect of LBH is a significant aspect of LBH, because it places itself as an agent of social change and critic of the state. The case of Kedung Ombo illustrates this aspect.

The Kedung Ombo case was a land dispute case brought by farmers in central Java who demanded fair compensation for the land seized by the government for the development of a large-scale dam. The method of acquisition of land was controversial as the local authorities along with the army forcibly removed some farmers. The supposed compensation amount was also not given to the landless farmers, and there was corruption in the local government which siphoned off the compensation funds (YLBHI and JARIM 1991).

The first struggle in support of the farmers was carried out by the students in Yogyakarta, Salatiga, and Surabaya. A meeting held at Satya Wacana Christian University in Salatiga in January 1989 put in place a student organization to fight for the interests of the farmers. Initially, the farmers did not trust litigation-oriented LBH Semarang and LBH Yogyakarta. The farmers bypassed LBH regional branches and went directly to YLBHI in Jakarta to take the issue to the court.

LBH was also learning to be an activist. In their developing network, LBH joined the students in networking to gain the trust of the farmers. Both the students and LBH Yogyakarta and LBH Semarang worked together to organize rallies, and set up meetings for the farmers. Meanwhile a struggle for legally assisting farmers was initially carried out by Johnny Simanjuntak, a young lawyer who belonged to a Protestant social relief organization in Surakarta, a Javanese city near the Kedung Ombo site. Simanjuntak started out with the goal of educating the farmers, but did not have a wide network for coalition building in Indonesia's activist circle. LBH provided the national network.

By 1991, LBH Semarang and LBH Yogyakarta started to collect evidence and prepare for a court trial. The class action suit against the government which was filed by LBH on behalf of the farmers demanded a huge amount in compensation for their land. This was the first suit of its kind in Indonesia's history.

To press the government, LBH also used its membership in INGI (International NGO Forum on Indonesia) to lobby international NGOs. Established in 1985, INGI was an international network of NGOs worldwide with a special concern for Indonesia. INGI pressured the World Bank, the funding agency for the Kedung Ombo dam project.

With the lessons learned through the case of Kedung Ombo, which taught that connecting themselves with lower class activism needed students, LBH since 1991 constantly made an effort to join with student activism. Examples are plenty. In 1993, when a demonstrating student was hit in the head by police, LBH Bandung represented the student in the suit against the police (Suara Pembaruan April 6, 1993). On January 6, 1994, YLBHI, LBH Jakarta and Ikadin (Indonesian Advocate Association) established a legal team to defend 21 students who were arrested on the charge of insulting Suharto. The team was called “the team of defenders of (the) pro-democracy student.” In terms of newspaper reporting, there was an increase of LBH defending and/or working with students from 1993 to 1997. In 1993, 13 cases were reported, and this increased to 14 cases in 1994, 17 cases in 1995, 22 cases in 1996, and the same 22 cases in 1997.

#### 4.6.5 Merging with Media

The second case illustrates the extent to which LBH developed its network with the media. There were occasions where LBH worked to protect the media from the abuse of power by the state; the most significant case handled by LBH which created a strong coalition with the media was the case of Tempo.

The ban on perhaps the most respected magazine came in the wake of political liberalization. The announcement by the Minister of Information to withhold the publishing license of Tempo on June 21, 1994, sent a shockwave to not only the mass media, but also to the NGOs. Tempo was banned for leaking a possible mark-up in the government’s purchase of ex-East German battleships. The victims along with Tempo

were a weekly magazine Editor and a political tabloid Detik. Detik was edited by Eros Djarot, who was at that time an informal political adviser to Megawati Soekarnoputri (see Chapter 2). The implication of removing Eros Djarot's tabloid Detik from the mass media meant more pressure on Megawati who had just been elected to lead the opposition Indonesian Democratic Party.

In response to this ban, LBH was quick to issue a statement, and became the first organization to lead street demonstrations against the decision (Hill 1996). Then, the Chair of the YLBHI's Board of Executives, Adnan Buyung Nasution, issued a statement that the Minister's decision to ban Tempo, Detik, and Editor was against the existing law, and politically wrong (Budiman and Thornquist 2001:132).

YLBHI's Executive Director Mulyana Kusumah was also gathering a group of anti-government activists and establishing a group called SIUPP (Solidaritas Indonesia Untuk Pembebasan Pers, Indonesian Solidarity for Free Press). This was the same acronym as the official publishing license, SIUPP, given by the state and hated by the media. SIUPP clearly reflected the network of LBH lawyers. It was the coalition of LBH Nusantara Bandung, whose Director was a former LBH Bandung lawyer; LBH Cianjur and Ampera Bogor; the student organization SMID (Solidaritas Mahasiswa Indonesia untuk Demokrasi, Indonesian Student Solidarity for Democracy) and its political arm PRD (Partai Rakyat Demokratik, Indonesian People's Democratic Party); the student organization PIJAR (Indonesian Center for Reformation Action Network and Information); Walhi (the largest environmental NGO whose Board member was former YLBHI Executive Director Abdul Hakim Garuda Nusantara); the Petition of 50 (a dissident group of retired military generals and retired politicians whose founder was

YLBHI Board of Trustees member Ali Sadikin). It also included other student organizations from all over Indonesia. The movement SIUPP demanded the government to cancel the Minister's Decision No.1/1984 which authorized the Information Minister to withhold the publishing license.

Meanwhile, Buyung was contacting Minister of Science and Technology B.J. Habibie to pressure the government to withdraw the decision. Habibie, a German educated engineer, was the person who arranged the purchase of the ex-East Germany battleships. Habibie refused Buyung's request (Budiman and Tornquist 1996:129).

Tempo's editor Goenawan Mohamad, the most respected writer to spread the ideas of freedom of thought and expression (Liddle 1996) decided to pursue the legal battle against the government's decision. The lawyers were Adnan Buyung Nasution (then Chair of YLBHI's Board of Executives), Todung Mulya Lubis (former Chair of the Board of Executives from 1983-87), and other prominent lawyers who were either former LBH lawyers or close associates of LBH. The suit claimed that the Minister's decision was illegal in the eyes of the National Press Law which guaranteed the freedom of press and expression.



The lawsuit had a great impact. The first verdict on May 3, 1995 after 19 court trials since November 1994 at the State Administrative Court (PTUN) was in favor of Tempo, and the second trial only strengthened the verdict from the first trial. These verdicts in favor of Tempo produced broad publicity both domestically and internationally because they were truly unanticipated given the lack of credibility in the Indonesian court system. Despite the first two verdicts in favor of Tempo, the Supreme Court two years later in 1996 on a technicality issued a verdict against Tempo, but this controversial verdict only added to the popularity of Tempo, and put the government in the spotlight for more public criticism.

Although the ban on Tempo was a huge setback for the freedom of press and expression in Indonesia, the incident resulted in putting together democratic activists in two ways. First, the incident gathered the people around the legal battle led by LBH lawyers. The key people were Buyung Nasution and Todung Mulya Lubis, who led the court battle. This battle was also supported by the mobilization of SIUPP activists who supported then YLBHI Executive Director Mulyana Kusumah.

Second, the banning of Tempo gathered like-minded democratic activists in a newly established journalist's association, AJI (Asosiasi Journalis Independen, the Independent Journalist Association), which was established in August 1994 by Goenawan Mohamad and Fikri Jufri, another editor of Tempo. The government struck back by stripping away Goenawan's official membership in the government-sponsored PWI (Perhimpunan Wartawan Indonesia, the Indonesian Journalist Union), but both Goenawan and Fikri were strongly encouraged and supported by the young journalists who expressed their anger at the government's decision to put this kind of pressure on Goenawan.

AJI in fact did not need official recognition from the government because it had the support of both democratic activists and international media organizations. The domestic audience who lost favorite magazines were also sympathizers. Tempo at that time published about 200,000 copies per week, Detik about 300,000 copies per week, and Editor about 100,000 copies per week. All of them were critical of the government's actions which, as discussed in Chapter 2, were showing signs of nepotism and corruption, all in favor of Suharto and his family. There were also splits between politicians and the military. The domestic audience enjoyed reading the critical stories published by the banned media, and the loss of them was drawing nation-wide criticism of the government (ibid 135).

The international audience was also encouraging the independence of a free press by supporting AJI. The prestigious Committee to Protect Journalists gave AJI the World Press Freedom Award in 1994 immediately after its establishment, the International Federation of Journalists gave them the Rob Baker Award in 1996, and the International Press Institute and Freedom Forum gave AJI the Free Media Pioneer Award in 1997.

Indeed, those who gathered together in the name of a free press, and those who sympathized with the democratic movement after the banning of Tempo, were the middle classes. They were able to afford to purchase the magazines, had an awareness of contemporary political and economic developments, and some of them had a stake in the government's political and economic policies, and after all, they were able to read well. This population who supported Tempo, Detik, and Editor was urban, affluent, and well educated. The circulation of these three magazines was concentrated in urban areas and the rural population did not even have access to purchase these. The internet version was not yet available at that time.

However, it is important to point out that due to the aftermath of this incident and the subsequent court battles, the government started losing control and there was a rise of the "informal" mass media. The media which sprung up in the mid-1990s was "informal" in the sense that the publishers did not register with the information ministry, or did not have an editorial address. Their publication format was close to that of flyers, but contained both analytical and critical messages on political affairs. The ministry of information up to the mid-1990s controlled the formal mass media which has permanent staff and offices with its crucial weapon being the power to withhold the publication license.

With the legal victory of Tempo as a precedent, the journalists, who fought for press freedom and subsequently lost their jobs as Tempo, Editor or Detik journalists, were psychologically encouraged to be much more brave. Taufik Ahmad, for example, was the chief architect of the illegal tabloid Independent, and was jailed along with his journalist colleagues. Yet, the defiance of journalists was exposed in the news coverage of the arrest of Taufik and his friends which showed photos of smiling Taufik and his friends in their jail cell (Sinar Harapan 1995, Rekaman Peristiwa). At that point, it was clear that the ministry of information was no longer effective in suppressing the blooming media: flyer-type political magazines such as Seruan PRD, Kompak, Suara Independen, and Pijar became commonplace. It is important to point out that the opposition PDI (Partai Demokrasi Indonesia, Indonesian Democracy Party) under Megawati Soekarnoputri also used this method of informal publication to criticize the government.

Subsequent ties between LBH and the media continued and strengthened. For example, on November 10, 1996, a media NGO, ISAI (Institut Studi Arus Informasi, the Institute for Free Flow of Information), asked LBH Bali to represent their suit against the Bali Police Chief after the police chief prohibited ISAI from holding a journalist's training event in Bali. Many of these events continued throughout 1997. There were frequent bans on opposition figures from speaking in public and in front of students on campuses. The ban on these events, clearly a violation of the constitution, were questioned, protested and sometimes brought to court by LBH.

#### 4.7 Conclusion

This chapter traced the LBH activities in the 1990s and assessed their impact on social change. First, I described the LBH activities based on the data collected in the newspapers. The finding from the newspaper reports is that LBH's activities were very gradually radicalized, and the activity level was increasing. Second, I found that there was an internal struggle in LBH between legalistic activities and activism-type activities throughout the 1990s. This struggle reached crises in 1993 and 1996, both of which were times of leadership change in LBH. The 1996 dispute resulted in the breakup of LBH, but it had little impact on the overall operation of LBH nationwide. Overall, I found that the breakup turned out to be a positive move for the strengths of democracy in Indonesia because those who left established their own human rights organizations and the LBH was staffed by vocal and activist-oriented young lawyers. This section also asserted that LBH indeed created a democratizing network through LBH's merging coalition with students, and with the mass media. The weakness of LBH, however, is that financially it was dependent on foreign donors.

## CHAPTER 5

### CONCLUSION

#### 5.1 Introduction

This dissertation assessed the survival and growth of the Lembaga Bantuan Hukum (LBH), a legal aid institute which grew to become the premier human rights organization in Indonesia. The theoretical interest in assessing this organization is that I see LBH as a social movement organization which engages in (1) incorporating the socially disadvantaged into the formal political process by providing free legal assistance to this group; and (2) modifying the dominant social values and norms which are seen as the source of unfairness, inequality, and injustice through which civil society is created. LBH's principle of structural legal aid addresses these two aims of the organization, which has become a social movement providing the basis of democratic civil society in Indonesia.

From the evidence gathered in this research, what is clear is that LBH has succeeded in shaping Indonesia's civil society. LBH worked successfully as a legal aid organization to provide free legal assistance and incorporate the socially disadvantaged

into the existing political process. LBH also called for the government to act on legal reforms, many of which included the revision or complete rewriting of laws. At the same time, LBH aimed at reforming the existing political system by becoming deeply embedded in the network of radical social movements and addressing structural injustices. The extent to which LBH positioned themselves at the core of democratic civil society was assessed in Chapter 4. LBH took advantage of state openings, which most of the time were created as a result of elite conflict. LBH also had a degree of access to the state actors who were sympathetic to its activities. Chapter 2 also provided the evidence that economic development without a transparent legal system was causing many problems regarding land disputes and labor problems. As a result, the courts were called on to resolve disputes. LBH was there to help.

Standing between the state and society, LBH succeeded in shaping the state and at the same time succeeded in not turning off the general public from participating in LBH's activities. The state had no choice but to accept the legal challenges posed by LBH because LBH used the existing legitimate, legal process for redressing grievances between social movement organizations and the state. No one rejects the way in which the legal battle was fought. The arena for the battle was the court, and therefore, the courts became the final battleground. The more LBH spoke up for evidence and truth, the more the court ignored the evidence, which made the trials seem a political comedy. The public trust in the judicial sector fell to its lowest level, and this lack of public trust in the judicial system was costing the state more than the activists. By mid 1990, the student activists and journalists ridiculed the court, and were proud to be sentenced and jailed.

At the same time, the public was willing to participate in LBH activities via asking for help, pressing issues, joining campaigns, and contributing small funds because in an authoritarian regime, institutionalized politics leaves little room for political participation. The formal political system was not functioning as a reflection of the people's aspirations. For the people, there were several options often used by the social organizations in Indonesia to influence the state: a show of force by mass gatherings, which was used by mass Islamic organizations like Nahdlatul Ulama; often violent demonstrations by students and labor unions; and the use of legal battles as taken on by LBH.

## 5.2 Agent Centered Approach

In order to explain why LBH succeeded in not only surviving authoritarianism, but also in establishing itself as a premier human rights organization with broad networks to social movements, this dissertation focused on the state-society relations and analyzed the interaction between the state and society through the framework of social movement concepts. The concept of political opportunity structure is used and it was supplemented by detailed descriptions of how individuals (agents) interacted with the opportunity. The state openings in 1990 and subsequent rivalries within the state over the succession issue, gave a context in which the reformist agents found the room to maneuver.



An entrance to the state which was always open to society was the legal battle, and this path was fully utilized by LBH. In other words, LBH acted as an agent to bring social complaints to the state, while succeeding in keeping the social attention high to LBHs own activities. For this, the media played a very important role.

Liddle's pioneering work on how democratic ideas spread in the context of Indonesian politics under Suharto focused on three liberal intellectuals: Goenawan Mohamad (journalist), Sjahrir (economist), and Nurcholish Madjid (Islamic scholar), all of whom played a role in spreading ideas without turning off the audience. The story Liddle presents is a history of coalition building among liberal intellectuals. The three intellectuals survived the authoritarian regime, and the ways they survived was to utilize available resources to penetrate the realm of defenders of the state interest, but by using acceptable means. Liddle's definition of resources is broad and "even infinite," yet, he sees the resources of the three "challengers" of the state as anything that contributes to the networking of coalitions (Liddle 1996: 152, 159-168).

The core of the argument in Liddle's view is that it is not abstract social forces which determine the outcome of politics at one point of time, but what matters the most is how actors within the culture (context) maneuver to win support for social change. In concrete terms, the resources are constituents and messages (words). There are no arms, threats, or state apparatus. For the three challengers, their support base (constituents) came from their personal ties as a core, and the so-called "undecided" general audience as a periphery constituent. All of them are active participants in producing words, which carried messages to the public, and the mediums of message transmission were public gatherings, seminars, radio broadcasts, magazines, newspapers, and book publications. Also, as Goenawan puts it, he met his radical associates in secret in smaller hotel cafes as police and intelligence apparatus usually did not show up in these locations.<sup>106</sup>

This dissertation argues along a similar line, although LBH as an organization is one level higher than Liddle's individual level analysis. LBH, which started as a tiny law office providing free legal aid for those who could not afford it, had become the premier human rights organization and the center of democratizing forces until the fall of Suharto. The story, which this dissertation tells, is not a story of a great man's history, but it is a story of constant bargaining between the social forces and the state in the course of political liberalization. This is also an illustration of how political change takes place in an authoritarian setting through the bargaining of agents in both state and society. I argue that structural change merely provides a context in which agents may or may not act.

This dissertation found the following agent-centered reasons why LBH was able to survive, and even grew.

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<sup>106</sup> Interview with Goenawan Mohamad, September 4, 1998.

First, LBH from its inception was welcomed by both the state and society. The free legal aid was a necessity for both the state and the society and was tolerated by the state as long as the principle of a nation governed by law was maintained. The state needed LBH and LBH needed the state. It is worth remembering that the early days of LBH offices were financially supported by local governments.

Second, because the majority of LBH lawyers were active in campus-based student activism before joining LBH, LBH could easily establish a network with the student activists by using their old ties from the campuses. Many LBH lawyers, according to the result of the survey, were exposed to student activism and knew political context and risks. In addition, many of the lawyers had experience in national student organizations, such as the Islamic Student Union (HMI) and the Indonesian Catholic Student Movement (GMKI). These national organizations are well-knitted organizations that have political influence in the national scene. Thus, LBH lawyers brought their experiences and organizational networks to LBH.

Third, also related to LBH recruitment is the fact that LBH provided opportunities to think critically (at the recruitment workshop, for example), and as a result, many campus-based activists were attracted to LBH. In other words, LBH was an arena for telling “the truth” when no others could freely speak the truth. This attraction is a product of authoritarianism, and this is an achievement that LBH could maintain an organizational space for critical thinking.

This also relates to how lawyers were educated in LBH over the years. A close examination of the 1993 and 1996 dispute (Chapter 4) shows an impressive lineup of young lawyers who were trained both in the field and the court. Munir, for example, excelled when he established in 1998 the Commission for Missing Persons and Victims of Violence (Kontras). These young lawyers, the third generation of lawyers after the generation of Buyung Nasution and Mulyana Kusumah, were capable lawyers.

Fourth, there were key state actors sympathetic and helpful to LBH. Most of them are in the generation of the LBH founder (Buyung Nasution). They are Ali Said (Attorney General, Minister of Justice, Supreme Court Chief Justice, and finally Chairman of the National Commission on Human Rights); Baharuddin Lopa (Director General at Ministry of Justice and former general secretary of the National Commission on Human Rights); vocal parliament member Roekmini; and to a lesser extent Ali Sadikin (former Governor of Jakarta and secretary general of ASEAN). To bring human rights to the government's important agenda, which resulted in the encouragement of LBH activities, foreign ministry officials such as Hassan Wirayuda played an important role.

Fifth, LBH had alliances with the media circle, and received considerable attention in the media. In other words, the media and LBH had a mutual interest in protecting each other – LBH fights for the freedom of press via legal procedures and the media publicized the activities of LBH. Particularly in the authoritarian setting, to counter state repression by police and military, LBH lawyers had no means to protect themselves except by being helped by the media publicity and public pressure. This mutual relationship reached its friendly peak in the case of the Tempo trial in 1994.

Because mass media has an inherent interest in protecting freedom, LBH was a natural ally. However, farmers are not the same type of partner to LBH as the mass media is. The case of Kedung Ombo showed that the initial distrust among the farmers destroyed the LBH's formation of alliances with the farmers. The farmer's interest is not to protect freedom, but to be compensated for their land. The LBH's logic of structural change for equal society did not matter much to the farmers. This is the difficulty in making a meaningful alliance with farmers. A similar argument can be made for the laborers. Unless the union movement becomes a much more important political force, the laborer's interest has little to do with the freedom of assembly. Their immediate interests are wage increases and better social security benefits for lesser hours, not the unionization itself.

### 5.3 Prospects for the Future

Did Indonesia's civil society benefit from LBH's activities? The answer is positive in the sense that there are currently many prominent LBH lawyers who occupy important positions to keep democracy alive. Before presenting the list of LBH lawyers who occupy important positions, let me first present a good example which also shows the strength of the LBH network.

By late 1997, Suharto's regime was struggling for survival. Those in the state apparatus moved to remove democratic activists, many of whom were active around the crowd of LBH lawyers. The intelligence agents and military figures, at least some of them if not all, decided to carry out drastic actions: they decided to kidnap democratic

activists starting in early 1998. Pius Lustrilanang, a student activist, went missing on February 4 in Jakarta. He was freed on April 3, after being tortured by electric shocks and submerged in water. Herman Hendrawan, a student from Surabaya's Airlangga University, was attending an activists' meeting at the LBH office in Jakarta on March 12. He was missing after he left the LBH office, and never came back. Petrus Bima Anugerah, also a student activist from Driyarka Philosophy School in Jakarta, was kidnapped on March 31 and never came back. Desmond Mahesa, a close lawyer colleague of former LBH lawyer Effendi Saman, was kidnapped near the LBH office in Jakarta. Desmond was freed with Pius. Faisal Reza, Raharja Jati, and Nezar Patria all from Yogyakarta's prestigious Gadjah Mada University, were all kidnapped at once near the LBH office on March 12.

Faisal and Raharja were freed on April 29 after being seriously tortured, and Nezar was freed on March 15 after being beaten and tortured. Andi Arif, who escaped from Jakarta in fear of more kidnapping, was picked up on March 28 by an unknown group of men at his brother's house in Lampung province, 300 km away from Jakarta. Andi was a national chairman of SMID (Indonesian Student Solidarity for Democracy), a left-leaning student organization. He was released on April 16 after being tortured. Even a leader of Megawati's democratic party, Haryanto Taslam (currently a parliament member) was kidnapped on March 12 and freed on April 15. The military intelligence was the main culprit.

The response from LBH was fast. Munir, YLBHI's operation director, put together former LBH members and social activists to set up the above-mentioned Kontras (Komisi untuk Orang Hilang dan Korban Kekerasaan, Commission for Missing Persons

and Victims of Violence) in 1998. Kontras was coordinated by Mulyana Kusumah, who was fired from LBH in 1996. The members were Bambang Widjojanto, who took over Mulyana Kusumah's executive chairmanship. Many former LBH lawyers joined Kontras along with the social activists from all elements of society. Curiously absent was the LBH founder Adnan Buyung Nasution.

Munir's senior lawyers who were the LBH lawyers are now still active lawyers. Luhut M.P. Pangaribuan, former director of LBH Jakarta, is one of the top lawyers. He is a member of the legal assistance team of the Financial Sector Policy Committee (*Komite Kebijakan Sektor Keuangan*), a government committee to oversee the banking reform processes. Todung Mulya Lubis is also a prominent lawyer who holds leadership positions in lawyer's associations. He is known for his defense of *Time* magazine which published an article exposing the Suharto family's wealth. Lawyers for the Suharto family sued the magazine, and Lubis successfully defended the magazine in an Indonesian court.

Lubis' activism continued even after the fall of Suharto. He was a co-founder of an NGO, called *UNFREL* (University Network for Free and Fair Elections), to monitor the 1999 general election. The extension of *UNFREL* has developed into CETRO (the Center for Electoral Reform), which has fought for and made possible direct elections in Indonesia. Abdul Rahman Saleh, the second director of LBH Jakarta, and Artidjo Alkoster, former LBH Yogyakarta lawyer were appointed as Supreme Court Justices in 2001. Abdul Garuda Hakim Nusantara, former YLBHI executive chairman, was appointed to head the National Commission on Human Rights. Mulyana Kusumah was appointed as a member of the National Election Commission in 2002.

The above are only a few examples of the network of LBH lawyers and its graduates. In current Indonesia in transition, many of the graduates occupy important positions in the government. The current leadership of LBH is in the fourth generation of LBH lawyers, and has been given an important duty to run the organization with domestic funds. This is the evidence, which indicates the success of LBH in the past 32 years.

If we define, as I believe, the two aims of social movement organizations as (1) to strive for the inclusion of the disadvantaged into the political process, and (2) to challenge dominant cultural and structural forms by creating a civil society committed to ending unfairness and injustice, I believe LBH has done a notable job over the past 32 years in laying the groundwork for a civil society that has led to the real possibility of a democratic future for Indonesia.



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