How lawyers win land conflicts for corporations: Legal Strategy and its influence on the Rule of Law in Indonesia

Kouwagam, S.U.

2 The Illusion of Prestige: Business and Politics of Lawyers in Indonesia

The lawyer calmed down as soon as we landed in Singapore. He was slouching, his shoulder down while gazing through the car window. He took the time to sit down for lunch. His meetings were creative and rational, sharing and discussing technical knowledge on law and finance with CEOs and accountants. 'I always relax when I'm here,' he said, probably because he did not have to be constantly on edge, not thinking about another trick he could pull from his sleeves, like in his meetings in Jakarta.

As we have seen from the previous chapter, lawyers play the active role that judges should in legal interpretation. They practice law by educating clients and translating the language of the law, predicting outcomes and resolving disputes (cf. Barclay 2004). Lawyers bridge citizens and the legal system, and society and the law. They monopolize this representational role in judicial proceedings. Lawyers have certain duties and responsibilities towards clients, alongside a certain degree of autonomy. This autonomy is awarded to the profession to uphold and promote the law and the idea of justice. The duties and privileges are similar globally, with principles and standards internationally enacted by organisations such as the United Nations and the International Bar Association.

Chapter 1 explained the lack of clear rules regarding legal procedure, determined instead largely by practice. This chapter serves to understand the structures underlying this practice. I will argue that how lawyers perform different roles in operating the legal system, and their use and invention of strategies make them the most dominant actors in shaping the development of the legal system and legal procedure.

The following questions guide my argument: How much independent judgment do lawyers have to practice in the absence of legal certainty? What guides their decisions? What is the role of normative ethical framework and is it being enforced? What kinds of professional relationships do they have and how do they use these relationships in practice?

This chapter answers these questions by explaining the role and functions of lawyers in Indonesia, their background, training, and education, and the imbalances between their beliefs and the rules about professional duties and responsibilities. It will describe how law firms are a key arena where lawyers form their professional ideology (cf. Nelson & Trubek 1992) and how firms establish their image to attract certain kinds of clients. It will also describe how lawyers conduct their relationships inside the firm, with lawyers from other firms, and with clients, notaries, judges, police, prosecutors, and bar associations.

There is a rich array of research on private lawyers in the United States and United Kingdom (e.g., Moorhead 2014; Heinz & Laumann 1982; 2005; Abel 2003; Nelson & Trubek 1992; Galanter & Palay 1991) and research on lawyers and their ethical dilemmas from having corporate clients (e.g. Bagust 2013; Jonas 1987). Some research has also focused on private lawyers in China (e.g., Thornton 2008; Liu 2006; Lo & Snape 2005; Zongling 1993; Zheng 1988; Gayle 1978). Dezalay and Garth (1997) presented the role of lawyers and their social capital in business. Studies of Indonesian private lawyers cover pre-*reformasi* periods well.[1] That coverage was part of Daniel Lev's work, one of the most productive socio-legal scholars on Indonesia. After his passing in 2006, researchers have paid little attention to private lawyers, focusing instead on cause lawyering and legal aid.[2]

2.1 Role and Functions of Lawyers

During colonial times in 1928, the first law school opened in Batavia to fill posts in *landraad* (courts for natives) and to assist European judges, with the rationale that native Indonesians are more capable of relating with native litigants and defendants (Massier 2008: 79-85). However, the role of lawyers remained ambiguous for many years.

The 2003 Law on Lawyers was the first statute that regulated the role of lawyers in Indonesia, enacted 58 years after the declaration of independence. Before that, references about lawyers or "legal advisor/consultant" are mentioned in various regulations since 1947.[3] The Law on Lawyers states that '[l]awyers are people with a profession to give legal service, in and outside of courts […]'.[4] It includes the enactment of a Code of Ethics, an Advocates' Council, and a new Bar Association. It also includes registration and discipline, supervision, rights and responsibilities, remuneration, responsibility to provide legal aid, foreign lawyers, and attributes of a lawyer.

The Indonesian Constitutional Court has detailed the role of lawyers as 'to give legal consultancy, legal assistance, perform power of attorney, represent, accompany, defend and conduct other legal actions for clients' legal interest in and outside of courts. The role of lawyers outside of courts

1 Reformasi is a period starting in 1998 after the fall of Soeharto.

2 See work by Crouch and Tim Lindsey. It has to be noted that a number of socio-legal scholars completed an unfinished work of Daniel Lev after his passing and published a biography of Yap Thiam Hien in 2011. See Lev (2011).

3 See footnote 12 and 13 below.

4 Art 1(1) Law No. 18/2003.

has given meaningful contribution for empowerment of society [sic] and national legal reform, including settling disputes outside of courts.'[5]

The International Bar Association (IBA) prescribes a set of principles of professional conduct to lawyers around the world. These international principles are quite general, as assessing the criteria for imposing liability, sanctions and disciplinary measures are left to local bar associations. In Indonesia, only PERADI is active in building a relationship and cooperation with the IBA, and since even PERADI is now split in three associations, this likely applies to only a single 'branch' of PERADI (see section 2.2.1 below).

There is a clash between the international principles by the IBA and the Indonesian Code of Ethics regarding the role of lawyers in defending clients' interests. The international principle states "a lawyer shall treat clients' interests as paramount, subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards".[6] While the Indonesian Code of Ethics place lawyers above their clients. The preamble of the Indonesian Code of Ethics states that lawyers are law enforcers ("penegak hukum") who are at par with other law enforcers[7], and it is an honor profession ("officium nobile"). In the Indonesian Code of Ethics, the prestige of lawyers is preserved more than its role as legal service providers. Lawyers in Indonesia shall be "honest and responsible in carrying out their profession, both to the Client, the court, the State or the community, and especially to themselves". Additionally, the Indonesian Code of Ethics provides several clauses not only allowing lawyers to reject clients or cases[8] but requiring them to do so[9] because in their role as lawyers, they are "free and independent" (Art. 3(c)). In sum, while the international normative framework put the interests of clients paramount, in Indonesia, lawyers are most responsible to themselves and to their own conscience ("hati nurani" (Art. 3(a)).

The Indonesian Code of Ethics describes the role of lawyers by using morally normative words such as polite, honest, and respectable. This is comparable to the condition of the unclear rules of legal procedure I mentioned in the previous chapter. When the boundaries about 'duties to the court' and 'observing the law' are unclear, putting clients' interest paramount to those could mean using the lack of clarity for the clients'

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5 See Constitutional Court decision No. 26/PUU-XI/2003, on whether lawyers are protected from civil and criminal prosecution only inside of courts, or also when performing their work outside of court. The Constitutional Court revised Article 16 of the Law on Lawyers (No. 18/2003) to read that lawyers cannot be civilly or criminally prosecuted while performing their professional duties and responsibilities in good faith while defending their client's interest both in and outside of courts.

6 Principle 5 of IBA International Principles on Conduct for the Legal Profession.

7 Police, prosecutors and judges.

8 Article 3(a) of Indonesian Lawyers' Code of Ethics.

9 Article 4(g) of Indonesian Lawyers' Code of Ethics uses the word "must". "Lawyers must reject cases that they believe to having no legal basis".

advantages. Therefore maintaining ethical standard should be paramount to protecting clients' interest in Indonesia.

Despite the 2003 Law on Lawyers and the Code of Ethics, the profession is still viewed with disapproval and suspicion. A joint study by USAID, the Asia Foundation, and PSHK found that lawyers value government recognition over society's trust (Kadafi 2001: 96-99). The study found that half of the respondents disagreed that lawyering is an honorable profession, because professionals did not meet their expectations (as enforcers of justice, defenders of the weak, and bridges between society and the legal process), seemingly focused instead on being willing to do anything to win, being money oriented, distorting facts, and playing with the law (Kadafi 2001: 267-270). These findings resonate with the dilemmas between zealously defending clients and maintaining ethical conscience I mentioned above. This lack of trust towards lawyers, added with the civil procedure's inefficient and uncertain characters analysed in the previous chapter, leads to a general distrust of the legal system. This chapter will also make apparent that the internal competition between lawyers is another major cause of the distrust of the profession, competition that the media widely exposes.

2.2 Organization of Lawyers

In the colonial era, Indonesian lawyers were a small group of accomplished and independent professionals. They were Javanese aristocrats trained in the Netherlands and devoted to the Dutch institutions and codes.[10] Possessing skill and status, they became the most actively involved actors in forming the national government after independence (Lev 1976:134). However, many of them left private practice for this purpose, which made the already small number of lawyers decline even further.[11]

Over the years, the autonomy of the profession has constantly been challenged along with the unstable political climate and ambiguity about the profession's function. The significance of the profession fluctuated along with regulations enacted about the judiciary, in which references about lawyers were only symbolic. The profession was implicitly referred to as 'a representative who is given authority' in the 1947 law about appellate courts in Java and Madura. This law was enacted to replace Japanese[12]

10 'Well-educated and self-confident as they have to be, to join a profession dominated by the Dutch. They criticized adat (customary) law and traditional authority, and their métier remains the codes written for Europeans. However, they refused to work for colonial government, being nationalists but not nativists, they were sensitive to tensions between public authority and private rights' (Lev 1992:4; 2011:108–10).

11 The first law school in Indonesia (Jakarta, then Batavia) was a late investment of the Dutch colonial government and it only opened in 1924. For an overview of the importance of lawyers' political capital, see Dezalay & Garth (2010).

12 Law No. 20/1947 was to replace Osamu/Sei/Hi/No. 1753.

regulations of the judiciary, then replaced by emergency law No. 1/1951, which was enacted to unify the judiciary in Indonesia. Despite the newly established national legal system, the existence of the profession remained ambiguous as it was only based on scattered references in various laws.[13]

During the 1950s, the judiciary's autonomy increasingly came under pressure, until it plummeted in 1965 with Law No. 13/1965, which gave power to the president to intervene in judicial processes. In the first years of the New Order, the autonomy of the judiciary seems to have increased. Various judiciary regulations were issued but were undermined by clever appointments made by Soeharto. Nevertheless, by contrast, lawyers gained more political significance because of the association of lawyers' (PERADIN) role in defending civil rights[14]. The number of lawyers grew along with economic growth because of increased foreign and domestic commerce (Lev 1992:5). The right of citizens to seek legal assistance from a lawyer was first recognized by Law No. 14/1970.[15]

However, this upward movement did not last long. Lawyers' associations were put under government supervision through the law on civil organizations.[16] Subsequently, the New Order government initiated the first national assembly of all lawyers to be unified into one association,[17] *Ikatan Advokat Indonesia* (IKADIN).[18] The autonomy of the profession as an institution declined even further with Law No. 2/1986, which appointed the Heads of District Courts to supervise lawyers, even in day-to-day operations.[19] This process of a government-driven establishment of IKADIN was the start of separating and grouping the Indonesian bar association(s), a topic we will return to later in this chapter.

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13 Other laws with references to the profession are: Law No. 1/1950 about the Supreme Court, which refers to 'defender' in Article 42, Law No. 19/1964 amended with Law No. 14/1970 about Judicial Power, which outlines entitlement to legal assistance, Law No. 13/1965 amended with Law No. 14/1985, which describes 'legal advisor are those who give legal advice in connection with court procedure', Law No. 1/1981 or Criminal Code, which regulates rights to a lawyer and how to be connected to a lawyer, Law No. 2/1986 about General Courts, which acknowledges the existence of a legal advisor in giving legal assistance to defendants. References to the profession were also issued by the Supreme Court and Ministry of Law in various letters.

14 YLBHI (Legal Aid Foundation) was founded with support from PERADIN in this period.

15 The law uses the term *penasehat hukum*, or legal consultant.

16 Law No. 8/1985.

17 Before IKADIN, there were at least 10 bar associations.

18 Some lawyers claimed they are forced to do so. Interview with Frans Winarta, February 2014.

19 One of Indonesia's famous defense lawyer, Adnan Buyung Nasution, clashed with judges about this concept during a high-profile case concerning General Dharsono, which triggered the issuance of the Supreme Court Decree No. KMA/005/SKB/VII/1987 about Procedure of Supervision, Enforcement and Defense of Lawyers, which significantly reduced lawyers' autonomy by putting them as subordinates of courts and the government. Further, it was used as a basis for claims against lawyers regarding contempt of court.

Even though there were several laws enacted regarding the judiciary in the late 1980s and 1990s, they only sporadically refer to lawyers.[20] These laws did not bring any change to the profession's condition, except for Law No. 8/1995, which defines 'legal consultants as legal experts who give legal opinions and are registered with Indonesian Capital Market Supervisory Authority' (*Otoritas Jasa Keuangan* or OJK, previously *Badan Pengawas Pasar Modal* or BAPEPAM). The role and organization of consultants, not *pengacara*, were explained for the first time.[21]

In the *reformasi* era, the struggle to define the profession's significance and autonomy has continued. After many complaints of lawyers being the *enfant terrible*[22] amongst other legal professions, a three-year process started during Abdurrahman Wahid's presidency to both regulate lawyers and acknowledge their profession. To this end, Law No. 18/2003 about lawyers (advocates) was enacted.[23]

The law requires that all practicing lawyers take an oath of office. Before the law was enacted, registration had never been a requirement to practice law. To be able to take the oath, law graduates have to be members of a bar association.[24] This requirement jumpstarted the significance of license and registration for lawyers, and entering a bar association became a serious issue.

2.2.1 Struggle for the Indonesian Bar Association(s)

The idea of professionalism has been discussed at great length in the literature on the legal profession. Bar associations commonly regulate lawyers' behavior as professionals. Their practice is made exclusive by requirements to enter the profession, enhancing status, and restricting internal and external competition (Abel 1989; 2011). The professional regulation, along with its regulatory bodies, should guarantee independence from the

20 Law No. 5/1986 about Administrative Court, Law No. 7/1989 about Religious Court, Law No. 3/1993 about Juvenile Court, Law No. 31/1997 about Military Court, and Law No. 4/1998 about Bankruptcy.

21 To be registered at OJK, they have to be a member of Himpunan Konsultan Hukum Pasar Modal (Capital Market Legal Consultant Association).

22 The term *anak bawang* (the child who is always being picked last) is invariably used for this purpose.

23 This was also driven by a Letter of Intent signed between the Indonesian government and the International Monetary Fund (IMF). One clause asserts that all lawyers practicing in Indonesian courts are to have licenses and a uniform ethics code. To carry out this clause, the government formed a team to draft the law, led by Prof. HAS Natabaya (chairman of Badan Pembinaan Hukum Nasional) and Adnan Buyung Nasution (a well-respected human rights lawyer), with representations from a number of lawyers' associations, such as IKADIN, Asosiasi Advokat Indonesia (AAI), Ikatan Penasehat Hukum Indonesia (IPHI), dan Asosiasi Konsultan Hukum Indonesia (AKHI). The team concluded its task in September 2000 by submitting the draft law to the House of Representatives (DPR) through letter No. R.19/PU/9/2000.

24 Article 3(1) and 30(2) Law No. 18/2003.

government and promote the lawyerly quest for the advancement of civil rights. Another point of attention in scholarly literature is the accountability of the profession towards clients and the lack of effective self-regulation, which is often said to be underdeveloped, even in countries with well-established legal professions, such as the United States and Germany (e.g., Fortney 2012; Rhode 2011; Abel 2011).

In Indonesia, organizing the legal profession has always been difficult. Before independence, the small number of lawyers was organized in an association called *Balie van Advocaten,* which predominantly had Dutch members. The informal Indonesian bush-lawyers[25] organized themselves into Persatuan Pengacara Indonesia in 1927. There is no record about lawyers' organization before that (Kadafi 2001:362-365).

The first national attempt of lawyers to organize started after independence with the establishment of PERADIN in 1963 as a national association to unite all Indonesian lawyers. PERADIN was politically strong and advocated constitutionalism and the rule of law. President Soeharto recognized PERADIN one year after he came into power.[26] With support from the regime, the tide was favorable to make PERADIN the sole bar association in Indonesia.

However, this did not materialize. PERADIN continuously challenged the authoritarian government and in 1978 declared itself a 'struggle organization'[27], driving some members to leave and set up a new association (Lev 2008:51). Lacking support from the regime, the idea for PERADIN to become the single bar association also subsided. To weaken PERADIN, in the early 1980s, the government initiated a strategy designed first to absorb PERADIN and smaller organizations into a single national association, IKADIN, and then to impose official disciplinary control over the entire profession (Lev 2008:62). Supreme Court Chairman Mudjono, Ministry of Law Ali Said, and Attorney General Ismail Saleh proposed this unified organization (Lev 2008:63). Despite pressures from these powerful government officials, PERADIN and other associations refused to disband and submerge themselves completely in IKADIN. Instead, they engaged in a slow battle

25 Known as *pokrol-bambu*, they were active in the legal profession but had limited legal education.

26 PERADIN was appointed by the military in 1966 through *Surat Pernyataan Bersama Menteri Panglima Angkatan Darat selaku Panglima Operasi Pemulihan Keamanan dan Ketertiban (Pangkopkamtib)* to defend the alleged perpetrators of G 30S PKI movement. Together with this appointment, PERADIN was declared as the sole custodian of all lawyers in Indonesia.

27 They declared a pledge to defend human rights, to pursue the struggle to establish truth, justice and law, to promote democracy, clean government, and an independent judiciary based on Pancasila, to fight for representative bodies that truly serve the people's interests, to obey the advocates' code of ethics, to defend the weak and the poor, to oppose all arbitrariness and oppression, and to be open to all criticism and correction from any quarter (Album Kongres V, 97–98, in Lev 1992:20).

with the government for control of the organization. Harjono Tjitrosoebeno, the chairman of PERADIN, was appointed as the first chairman of IKADIN.

When IKADIN was to appoint a new chairman following Tjitrosoebeno's term, there was a protest from Gani Djemat and Yan Apul, board members of IKADIN Jakarta, who disputed the method of voting. With support from the then Minister of Law, Ismail Saleh, Djemat and Apul's group walked out in the middle of the election procedure and established AAI (*Asosiasi Advokat Indonesia*) (Nasution et al. 2004:29)

There is little information on what happened with the merging and separating amongst lawyers between 1998 and the 2003 Law on Lawyers. Although seven bar associations signed a Code of Ethics in 2002,[28] this period perhaps saw a deeper division between public interest or cause lawyers and commercial lawyers. Many lawyers who were active in the reform movement became disillusioned by the result of their efforts in overthrowing the New Order government to achieve social justice (Lindsey & Crouch 2013). On the other hand, many commercial lawyers viewed this period as an opportunity. The Commercial Court that was required by the same IMF reform package as the 2003 Law on Lawyers was just in its infancy, as it opened just months after Soeharto resigned. Referring to this new arena, some lawyers claim that they did not have to seek work, particularly from foreign and national corporations,[29] so perhaps commercial lawyers were quite comfortable, while cause lawyers were still laying low in anticipation of the upcoming Law on Lawyers.

With the 2003 Law on Lawyers, a committee was formed temporarily to establish a single and unified bar association within two years.[30] A lawyer named Sudjono[31] was the chairman of the committee with the support from Supreme Court Chairman Bagir Manan.[32] From this committee,

28 This is the Code of Ethics enacted together with the 2003 Law on Lawyers. Seven out of eight founding associations signed this Code of Ethics. Indonesian Sharia Lawyers Association (APSI) did not sign the code. See the eight associations in footnote 36 below.

29 In a conference organized by lawyer Hotman Paris, a number of lawyers claimed that '*the crisis of1998 was heaven, since there were 'so much money that [they] almost did not have to do anything to get it*'. Jakarta, 9 September 2014.

30 The committee is called *Komite Kerja Advokat Indonesia* or KKAI.

31 Sudjono was the lawyer appointed to defend Xanana Gusmao, the former leader of the East Timor independence movement, from charges brought by the Indonesian government for rebellion and secession under the Indonesian Criminal Code (Articles 106 and 110). This appointment was controversial since other lawyers were denied access to visit Xanana when he was under custody, and he originally refused to be represented by any Indonesian lawyer (see Human Right Watch report Vol.5 No. 8, April 1993, p.12. https://www.hrw.org/sites/default/files/reports/INDONES3934.PDF. Last accessed: 19 October 2018).

32 During my interviews I found another claim that because Sudjono passed away before the 2003 Law on Lawyers, Otto Hasibuan as the General Secretary went on to become the head of 'the bar association' mentioned in the law. PERADI was essentially only a name change from KKAI to strengthen the position of Otto Hasibuan as the new chairman.

eight bar associations merged and established PERADI.[33] However, they merged with a disclaimer that the eight 'founding' associations continued to exist, even though the authority of drafting, examining, supervising, and dismissing lawyers on the basis of ethics was moved to PERADI.

This harmony did not last long. A newly established association KAI challenged the authority and legitimacy of PERADI, while PERADI insisted that the establishment of KAI was illegal because the time limit to set up a bar association (under the 2003 Law on Lawyers[34]) had passed. Several lawyers started KAI because of PERADI's alleged corruption and for expelling Todung Mulya Lubis, a prominent lawyer who also had a stint in legal aid activism.[35] The battle then continued on issues about recognition and unification, with involvement of the Supreme Court[36] and lawsuits filed before the Constitutional Court.[37]

The dispute was brought ahead by a Letter issued by Supreme Court Chairman Harifin Tumpa,[38] stating that there should only be one bar association and that before the dispute would be resolved, the Heads of High Courts should not swear in new lawyers, due to the concern of violating the Law on Lawyers[39].

The Supreme Court claimed that the letter was a result of inquiries and confusion by the Heads of High Courts. They were in a difficult position because when they swore in KAI members, PERADI would file a lawsuit against them, and when they did not swear them in, they received threats from KAI.[40] Violent incidents also occurred with KAI protestors when PERADI was to inaugurate new lawyers, demanding that KAI members should also be sworn in because they are as eligible as PERADI members. KAI went to the parliament in an effort for the letter to be canceled but with little success.[41] Only after the chairman of the Supreme Court was sued for

33 Ikatan Advokat Indonesia (IKADIN) Chairman: Otto Hasibuan, Asosiasi Advokat Indonesia (AAI); Chairman: Denny Kailimang, Ikatan Penasihat Hukum Indonesia (IPHI); Chairman: Indra Sahnun Lubis, Himpunan Advokat dan Pengacara Indonesia (HAPI); Chairman: Jimmy Budi Harijanto, Serikat Pengacara Indonesia (SPI); Chairman: Trimedya Panjaitan, Asosiasi Konsultan Hukum Indonesia (AKHI); Chairman: Frederik BG Tumbuan, Himpunan Konsultan Hukum Pasar Modal (HKHPM); Chairman: Soemarjono Soemarsono, Asosiasi Pengacara Syariah Indonesia (APSI); Chairman: Taufik CH.

34 The Law gives a two-year time limit from when the law was enacted to establish a bar association. This is described in Article 32 Law No. 18/2003.

35 On the grounds of conflict of interest related to a big dispute regarding ownership of the biggest sugar plantation in Indonesia.

36 Issuance of Circular Letters No. 52 and 89, amongst others.

37 See summaries of the cases in the Appendix.

38 SEMA No. 052/KMA/V/2009.

39 Article 28 Law No. 18/2003.

40 https://news.detik.com/berita/d-1683709/kai-perkarakan-ketua-pt-bila-enggan-sumpah-pengacaranya. Last accessed 22 February 2019.

41 https://www.hukumonline.com/berita/baca/lt4e6ef72418da1/kai-adukan-ketua-ma-ke-dpr Last accessed 22 February 2019.

tort by KAI at the Central Jakarta District Court[42] and the Jakarta Administrative Court[43] did the Supreme Court issued a letter revising its opinion.

Not only did PERADI receive attacks from KAI, but cracks also appeared internally. In early 2015, PERADI was to elect a new chairperson, replacing their first and ten-year-long chairperson, Otto Hasibuan.[44] A few names emerged as candidates for this position,[45] and PERADI commenced a national assembly ('*Musyawarah Nasional*') to elect a new chairperson.[46] The lawyers again could not agree on the method of voting and three candidates each declared to be the new chairperson of PERADI: Fauzi Hasibuan, Juniver Girsang, and James Purba. Otto Hasibuan decided to postpone the national assembly, causing an uproar among Juniver Girsang's supporters, who claimed that Otto could not accept him as the newly elected chairperson.[47] This was followed by a media battle in major newspapers, television, and websites. In the newspapers, various announcements were published[48] declaring that the chairperson Fauzi Hasibuan had been elected, followed by a number of rebuttal announcements. At the time of writing, the three PERADIs still exist.

Months before the PERADI chairman issue arose, a draft of a new law on lawyers was discussed by the parliament. The new law would have established a *Dewan Advokat National* (National Advocates Board) to supervise and uphold the code of ethics, and parliament would have selected the members of the Board. Questions on whether Indonesia should have a unified bar association or multiple bar associations emerged again. Some senior lawyers who were members of PERADIN supported the establishment of the Board. They blamed their separation on the New Order government and past traumas of government interference.[49] They were concerned

42 KAI asked for, amongst others, fifty billion rupiahs in damages. They claim that 75% of the amount was for a donation to victims of natural disasters in Merapi, Mentawai, and Wasior. The district court and the appeal court did not grant the request. Decision No. 557/Pdt.G/2010/PN.Jkt.Pst and No. 198/PDT/2016/PT.DKI.

43 Decision No. 120/G/2010/PTUN-JKT.

44 Otto Hasibuan was the previous chairman of IKADIN.

45 Juniver Girsang, Luhut Pangaribuan, Fauzi Hasibuan, Hasanudin Nasution, Jamaslin James Purba, Humphrey Djemat, and Irwan Muim.

46 The national assembly in a hotel convention hall in Makassar resulted in a standoff. Lawyers were shouting and pushing each other, requiring the local police's assistance to neutralize the situation. https://nasional.tempo.co/read/653488/munas-ricuh-peradi-pecah-jadi-tiga-kubu Last accessed 13 February 2019.

47 All of the candidates declared that all Indonesian lawyers needed to be united, although they did not agree on the method of voting. One side wanted voting to be done through each representative's offices throughout Indonesia. Otto Hasibuan established these representative offices. Another side wanted a 'one man one vote' method.

48 These newspaper announcements all used PERADI's letterhead. Over the internet, two PERADI websites have emerged, one using the long-standing web address of www.peradi.or.id with Fauzi Hasibuan as its chairperson, and the other using the web address of www.peradi.org with Juniver Girsang as its chairperson.

49 Interview Frans Winarta February 2014.

that a unified bar association would only provide means for a government to control lawyers, as occurred during the New Order era.[50]

On the other hand, lawyers under the umbrella of PERADI strongly disagreed with the proposal and responded to this draft law by demonstrating in the streets with black robes they usually wear in court.[51] In response to the demonstrations, parliament then stopped the discussion, stating that they could not reach a consensus.

According to Lev (1992:27), the advocates' inability to organize adequately or to impose discipline was the result of a lack of government interest in regulating the profession. Current development has proven that this is not the case. After regulating the profession with the 2003 Law on Lawyers, the inability to organize and discipline lawyers has instead escalated, with fierce clashes amongst lawyers, and between lawyers and the government. However, Lev (in Lindsey 2008) was accurate in his analysis when he placed lawyers as the actors between state and society. This dilemma and the divided opinions on whether lawyers are part of the state or the guardians on behalf of the society in facing the state is reflected in how frequent the Law on Lawyers has been submitted to the Constitutional Court to be reviewed.[52]

2.3 Becoming a Lawyer: Training and Certification

There are approximately 13.000 law graduates in Indonesia each year, many of who wish to become lawyers.[53] After the establishment of PERADI, these law graduates flocked to take the bar exam to get their licenses. In 2014, PERADI claimed that their membership was 26.000 and 6.000 more were waiting to be sworn in. [54] This is because modern Jakarta law firms require PERADI licenses from applicants.[55]

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50 They filed a case before the Constitutional Court to voice this concern (Constitutional Court Decision No. 66/PUU-VIII/2010).

51 Kompas 24 September 2014. Tolak RUU Advokat, Peradi Unjuk Rasa di Bundaran HI (Refusing the Draft Law on Lawyers PERADI stages a demonstration at the HI roundabout).

52 By the time of writing there were more than 20 petitions. See summaries of the cases in the Appendix.

53 This number is an approximation based on information from law lecturers and news reports. The last research conducted was in 1999 by the World Bank through a private law firm ABNR, titled Diagnostic Assessment of Legal Development in Indonesia, World Bank Project IDF Grant No. 28557, Reformasi Hukum di Indonesia, Jakarta: Cyberconsult, 1999.

54 There are a number of other bar associations and the number of their members are unknown. It is also unknown whether these numbers are consolidated from other bar associations, since PERADI was (and claims to still be) the unification of eight bar associations.

55 Hadiputranto Hadinoto and Partners, Soewito Suhardiman Eddymurthy Kardono, Lubis Santosa Maulana, and Dermawan and Co, to name a few.

Training on the job is a crucial aspect of becoming a lawyer in Indonesia, as studying law in Indonesian universities does not give law students the skills required for practice. In university, the teaching methods consist mostly of lectures while teaching materials consist mostly of codes, lacking a focus on Supreme Court decisions. Students are rarely given chances to observe court procedures. They only learn black letter law, making them removed from issues in society, as they are not taught about social, economic, political, or philosophical values in those codes, and they do not have the skills for working in legal institutions later on.

As a result, law graduates only have an abstract understanding of law and justice. They also lack the crucial ability to write a consistent and logical legal opinion or memorandum (ABNR 1999:50-51). Those with opportunities to study abroad do so to strengthen their ability in English, a skill widely required to work in modern Jakarta firms. By studying abroad, they also have the opportunity to communicate with the international legal community and to read newer and more advanced materials (ABNR 1999:149). Target countries to study law are the Netherlands, the United States, Singapore, and Australia.

To become members of a bar association in accordance with the 2003 Law on Lawyers, law students need to hold a *Sarjana Hukum* (Bachelor of Law) degree, which is only given by Indonesian universities, causing most lawyers to only study abroad for their master's degree. This is not easy for most candidates, because studying abroad is expensive. When they are already practicing, they have to choose between pursuing their career and advancing their legal knowledge. Only a handful of law firms give them the opportunity (and sometimes funding) to go abroad and study.[56]

To qualify to be a member of a bar association, law graduates need to pass the bar exam, for which they must take a professional course. Most candidates follow courses by a private firm called Faizal Hafied & Partner Education of Law, which has been approved by PERADI and IKADIN.[57] Some law firms also provide the course, such as OC Kaligis & Associates. The course involves lectures by practitioners on the role and function of lawyers, the Indonesian judicial system, professional ethics, and procedural laws, with a mock exam or 'try-out'. The certificate given upon completion of this course is needed to apply to take the bar exam.

The bar exam consists of around 200 multiple choice questions on the ethics code, the roles and functions of Indonesian lawyers, as well as civil, criminal, religious, industrial, and administrative court procedures. The exams also have two 'essay' questions: one to draft a Power of Attorney, and the other to draft a court claim. The majority of points can be gained by correctly performing all formalities, such as submitting the address of the parties, fulfilling the stamp duty, and so on. The strength of the argument

56 When they receive their degree, they have to work at the firm that gave them funding for some time (or a loan), or they simply have to resign.

57 www.fhp-edulaw.com. I cannot confirm why IKADIN is still involved in this.

or writing and reasoning ability in the lawsuit does not give significant points. Furthermore, the mock case is quite simple and remains the same each year.[58]

After passing the bar exam, law graduates have to do at least two consecutive years of internships at a law firm.[59] They then need to pass 'verification' by PERADI.[60] The procedure to be sworn in, because of the disputes between bar associations I explained above, is a negotiation process between a bar association and the Head of a High Court. Therefore, there is no set time and place for this swearing-in ceremony. Only when the Head of a High Court agrees to commence the ceremony will it be announced in the PERADI website or newspapers. Desperate to be sworn in to be able to practice law independently, this uncertainty drives the 'candidate lawyers' to make fake identification cards at the location of the next swearing-in ceremony because they never know when and which High Court will agree to do the next ceremony. Even at the start of practicing law, lawyers are almost forced to do something that is not entirely 'legal'.[61]

Currently, practicing lawyers have to hold an 'Advocate Card', which is a form of identification. The bar association[62] issues this card, and litigating lawyers often need to show it in court.[63] Theoretically, the corporate lawyers who do not go to court would not need such identification, but even signing a letter on behalf of their clients exposes them to the risk of being accused of incapability by their opponent. In the next part, I will discuss different types of lawyers according to their practice.

2.4 Types of Lawyers and Law Firms: Between stoic law-abiders and goal-oriented players

Lev classified Indonesian lawyers into four types: informal mediation, notaries, bush-lawyers, and advocates, referring to corporate lawyers existing in a 'comfortable commercial stratosphere' (Lev 1996). Since then the notaries and advocates have remained in the same position. However, only advo-

58 From year to year, the mock case was usually about a dispute on sale and purchase of property: a car or a house.

59 Article 3(1)(g) Law No. 18/2003.

60 Only when their names have been on the 'verified' list can candidate lawyers register to be sworn in at the High Court of their domicile. PERADI's status was quite secure from 2010–2014 and it then required candidates to submit reports of a summary of at least six civil cases and three criminal cases they had observed during the internship as part of the verification requirement. KAI did not require this.

61 Based on the author's own experience.

62 There is an identification number on this card, which contains a code identifying which of the eight founding organizations it originated from (see footnote 33). This information is guarded by PERADI. Interview with PERADI's data manager, 2015.

63 However, a clause stating criminal liability for acting as a lawyer without a license (Article 31 Law No. 18/2003) has been annulled by the Constitutional Court (Decision No. 006/PUU-II/2004).

cates and lawyers who do not handle litigation can exist in this 'comfortable stratosphere'. Litigation is messy and dirty, sometimes in a literal sense. Court buildings do not have adequate facilities (e.g., parking is outsourced) and some court buildings do not have clean toilets.[64] The inefficiency of the hearing schedule exacerbates this. Lawyers have to wait for hours before a hearing can start, and sometimes it will be canceled altogether. Aside from delay strategies, this happens more often because of lack of proper management by the court and lack of professionalism by the judges. These frustrations push law graduates to seek to avoid courts altogether, allowing the idea of working as corporate lawyers to pull them even more.[65]

Therefore, to explain the current typology of lawyers more accurately, I have to deviate from Lev's classification. The primary reason is that before the 2003 Law on Lawyers, two kinds of legal representatives concerned themselves with litigation: bush-lawyers and advocates. What makes them different is formal education, registration, and the kinds of clients whom they represent (Lev 1996:145). By requiring *all* lawyers to have formal education and be licensed and registered, the 2003 Law on Lawyers practically dissipated Lev's bush-lawyers. Nowadays, the practice of litigation itself draws a thick line separating the types of lawyers, as it requires different skill sets.

Most lawyers in Indonesia now are somewhere between 'professionals' and 'fixers' (Kouwagam & Bedner forthcoming), resembling the 'brokers' of routine civil litigation in the US (Kritzer 1990). I refer to 'professionals' as corporate transactional lawyers, as they do not usually practice litigation. 'Professionals' who practice litigation commercially are the exceptions, and they are all from modern firms. They are law-abiding, and even though the rules are often unclear, they focus on following them to the letter.

Another group of lawyers has a different orientation and capital. They are 'fixers' or 'problem-solvers', using the law as a means to an end or even break it to achieve their goals. Fixers operate in the grey areas of law, in business and politics, presenting themselves as experts in manipulating the justice system in order to 'get things done'. They enjoy considerable autonomy from clients and have different views about professional ideals and ethics. 'Brokers', which constitute the majority of Indonesian lawyers, strive to abide by the rules like professionals, but they are still goal-oriented, and sometimes bend the rules for their clients.

I will illustrate lawyers in Indonesia according to their area of practice (corporate transactional and litigation) and law firms according to two types (traditional and modern firms).

64 Some judges will go as far as building a toilet inside their chambers with money from their own pocket. Interview with a former judge JMT.

65 Interview with LW, IM.

2.4.1 Corporate transactional lawyers and Litigators

Traditionally, Indonesian lawyers as civil law advocates were like the English barrister, formally concerned almost entirely with litigation. Drafting documents, e.g., articles of incorporation, contracts, and wills, was managed by the notary (Lev 1976:135). These tasks are less of a notary function today. As commercial transactions began growing more complex, lawyers also started to take on the role of drafting legal documents. I refer to such lawyers as corporate transactional lawyers. If the legal document is drafted by their clients—who are businessmen with their own in-house counsel—their role is also to check whether or not the legal document is in accordance with Indonesian law. By contrast, the practice of litigators is almost exclusively concerned with legal procedures.

I will further explain the differences between litigators and corporate transactional lawyers through five criteria: attitude towards clients and other lawyers, knowledge of the law, qualities, approach, and remuneration and involvement in legal education.

2.4.1a Corporate transactional lawyers

Corporate transactional lawyers in Indonesia are a similar group to that ascribed to lawyers in other countries in a globalized legal profession. They are usually part of a modern law firm, and they do not go to court. They are known to receive significantly higher income compared to all other legal professions, sometimes even in US dollars (ABNR 1999:49). They practice highly specialized areas of law and do not delve into other areas. These specializations are in accordance with their relevancy in the country's economy and areas of law related to foreign investments, such as natural resources, plantation businesses, and manufacturing.

They mainly assist clients in commercial transactions, expect their clients to know why they are coming to them, and co-operate with clients on the details of legal documents they draft for them. With a highly specialized nature of practice, their knowledge of law is in depth for researching detailed rules and regulations of a certain area of business. In a commercial transaction, they also do 'due diligence' for their clients, researching the legal details, the companies involved, and the credibility and legality of the transaction. Hence, clients need corporate lawyers mainly for legal research and drafting.

For these, the quality required from corporate lawyers is to be meticulous. The analysis that corporate lawyers use is technical, one that presumes the black letter law will work as it is written. According to corporate transactional lawyers I interviewed, the problems are not in law but in enforcement.[66]

66 Interview MI, GR, FS.

The remuneration transactional lawyers receive is mostly in US dollars, with salaries ranging from USD$800 to USD$10,000 per month. These estimates do not include their annual and performance bonuses. The annual bonus is at least two months worth of salary, while the performance bonus is calculated by the hours they bill. For clients, transactional lawyers are paid on an hourly basis. Associates charge between USD$70 to USD$500 per hour, and partners charge between USD$425 to USD$1000 per hour.[67] They usually estimate how many hours they expect to work on a certain case and draft an engagement letter, as well as a fee proposal before they start working. Clients rarely pay the bill for the total number of hours the lawyers spend working. Most of the time, the lawyers will give 20% to 50% discounts to their clients.[68]

Corporate transactional lawyers are usually members of the Capital Market Legal Consultant Association (HKHPM), which is a prerequisite for being able to issue Legal Opinions for publicly listed companies.[69]

By way of contributing to legal education and building their public image, corporate lawyers provide lectures and training in universities and government offices[70] and write in the type of legal journals that are partly commercial and partly academic (i.e., they only explain the practice and black letter law) as a means of promotion.[71]

2.4.1b Litigators (brokers and fixers)

There are only a handful of commercial litigators who are 'professionals' since most professional litigators choose to remain in cause lawyering (see, e.g., Lindsey & Crouch 2013; Crouch 2011; Lev 2011). Here, I will focus on the majority of litigators who are brokers or fixers.

Litigators are the contrast of transactional lawyers in almost every respect. Unlike corporate transactional lawyers, litigators are very vocal in the media. Litigators have competitive attitudes towards other lawyers, and to some extent towards their clients, stating that the clients are their 'worst enemies' (see the next section of this chapter about professional relationships).[72]

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67 Approximation from various interviews and observation up to 2014.

68 Interview GO, TE, AS.

69 Indonesian Financial Services Authority (OJK) would only receive legal opinions from the members of HKHPM (OJK Regulation No. VIII B. 1/2011).

70 Foreign lawyers are required to do this by the Ministry of Law and Human Rights in order to obtain a work permit.

71 Firms need to pay a fee ranging from USD$2500 for a paragraph to USD$25,000 for a full profile of their article to be included in a legal publication. The amount varies by page length and the position of article (whether it is in the spotlight of the 'practice journal'). See, e.g., the International Financial Law Review (published by EuroMoney Institutional Investor PLC), International Comparative Legal Guide (published by Global Legal Group), and reviews published by Law Business Research LTD.

72 Interview with LC, OS, AS, DK.

Unlike corporate transactional lawyers who are very open to giving opinions about how the law is, litigators always speak highly of the law but avoid talking about their practice, often followed with assurances (to me) that their only job is to defend their client to the best of their abilities. They often add, as an afterthought, that they do so 'as far as it is in accordance with the law'. In reality, they are known to defend clients blindly[73] by using any possible means (ABNR 1999:40). They do so by approaching judges, playing golf with prosecutors and police.[74] They apply the idea of zealous advocates too far, highlighting the weak disciplinary mechanism in place, which will be discussed further in this chapter.

Furthermore, quite often, there are incidents of litigators in court aimlessly attacking and mocking their opponents. This suggests that they are unable to make sound logical legal arguments, and instead often speak just for the sake of arguing. By way of example, in a hearing at an Administrative Court, a fixer stated to an opposing counsel that he was ugly and bald and that he was corrupt with no self-value.[75]

Unlike transactional lawyers, litigators are the only ones who know the nuts and bolts of legal procedure. They also practice criminal law and know their way around enforcement, some of them using extra-legal means such as employing *preman* (thugs)[76] or maneuvering their way into forcing certain actions on their opponents with threats. Their network is their best quality.

Litigators' approach towards practice and the way they analyze cases is highly strategic. When they are supposed to talk about the law and the idea of justice, they make a speech about what they think should be, then relate it to a case they are handling. They also publish announcements and use the media to make sure these speeches are known to the public, looking to influence judges when they read about cases they are adjudicating in newspapers.[77] They research the character and weaknesses of judges, which newspapers they are reading, whether they have mistresses, whether they need money for their sick child, and change judges' opinions by influencing them outside of court unilaterally. They approach the court

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73 The expression *membabi buta* was used, which is translated as blindly, disregarding everything else, or uncontrollable.

74 Interview FW, PM.

75 At a hearing at the Jakarta Administrative Court dated 14 November 2013, Hotman Paris stated to the counterparty's lawyer, 'you used to wear sandals, now you wear nice shoes and you are being served when you go to weddings. People bow to you. You have no self-value, people's ideals change when they get paid'. This is a rather hypocritical statement since Hotman Paris is known to flaunt his wealth in the media. In an interview published by the New York Times, he stated that 'no lawyers are not corrupt' (23 April 2010).

76 During one of my interviews, there was a *preman* present in the room. The interviewee (KG) mentioned that the person was sent by [the name of a famous *preman*].

77 They strategically time these announcements and news, paying the newspapers for the announcements and have familiar journalists who will publish their story.

registrar to know how far their case is progressing, and they hang around the courthouse and police station to research potential clients. In other words, to find out whether an 'attractive'[78] lawsuit has been filed, then find the defendant's contact. When they contact the defendant, they will try to convince this potential client to hire them because they 'always win'[79]. This potential 'client' could also include lawyers from modern law firms needing assistance with litigation,[80] as I will explain further in Chapter 4.

The salary of a litigator ranges from Rp. 2,500,000 to 30,000,000 per month (USD$200-$3000),[81] far less than corporate lawyers. However, they receive yearly bonuses, and some of them receive a percentage of fees when they win a case. They charge their client a discretionary 'professional fee' to smooth their way with public officials. Instead of writing a detailed engagement letter to clearly define their scope of work and obligation to their clients, they keep these details vague, unlike corporate lawyers. Their responsibilities are only stated in the Power of Attorney. They have professional responsibilities only when a Power of Attorney is signed. Before that, they are free to talk to the opposing party, testing the waters. It is to no surprise that litigators are referred to as *makelar*[82] *kasus* (intermediaries for cases), and as part of the judicial mafia (see Butt and Lindsey 2011).

2.4.2 Modern and traditional firms

There are three possible law firm models in Indonesia: (1) a sole proprietorship or a collection of lawyers without any formal institution, (2) a firm, and (3) a civil partnership.[83] The most common model is a firm, the only model that has its own legal entity, making it similar to a company. A firm requires a notarial deed of establishment and an article of association.

Indonesian law firms have increased rapidly in size. In 1999, 75% of law firms only had one or two partners, and not more than 15 members (ABNR 1999:43). Nowadays, modern firms have approximately 15 partners and up to 108 associates. Asian Legal Business publishes yearly rankings of the biggest law firms in Indonesia.[84] In 2014, they were as follows:

78 Meaning that large amounts of money or high value objects are at stake.
79 Interview LC, HM.
80 For example, Capital Profile, a commercial legal and market research publication, listed his wins in an article, which is then sent to corporate lawyers [copy with the author].
81 Data from observations and interviews up to 2014.
82 *Makelar* is from the Dutch word *makelaar*, meaning 'agent'.
83 Also referred to as *maatschap*, a firm based on a co-operation agreement (Article 1618 of Indonesian Civil Code).
84 We have to keep in mind that members of traditional firms are often not listed. This does not necessarily mean that traditional firms are smaller in size.

2014 Rank	Change from 2013 Rank	Firm	Partners	Associates	Total fee-earners
1	+1	Ali Budiardjo, Nugroho, Reksodiputro	15	73	106
2	–1	Hadiputranto, Hadinoto & Partners	16	75	93
3	=	Assegaf Hamzah & Partners	16	63	89
4	=	Hanafiah Ponggawa & Partners	11	56	70
5	=	Lubis Ganie Surowidjojo	9	55	64
6	=	Soewito Suhardiman Eddymurthy Kardono (SSEK)	6	45	63
7	+2	Makarim & Taira S.	11	42	57
8	NEW	Makes & Partners	4	40	44
9	–1	Soemadipradja & Taher	8	31	42
10	–3	Mochtar Karuwin Komar	6	29	38
11	NEW	Melli Darsa & Co	5	30	37
12	–2	DNC Advocates	N/A	N/A	28
13	NEW	Ginting & Reksodiputro	4	19	27
14	NEW	Widyawan & Partners	5	17	24
15	NEW	Susandarini & Partners	3	13	22

Modern firms are institutionalized and apply the Cravath management system, meaning its lawyers have clear hierarchical positions: they have partners, associates, and paralegal or legal assistants. Partners are responsible for bringing in clients and leading a case (Galanter & Palay 1991:9-11). The establishment or modernization of firms started soon after the Law on Foreign Investment was enacted by the New Order regime.[85] Ali Budiardjo, Nugroho, Reksodiputro was the first modern law firm, with Freeport as its first client (Dezalay & Garth 2010:221). The model of Indonesian modern law firms follows the American model, which can probably be explained from the fact that the founders of the first generation of modern law firms graduated from American universities (Dezalay & Garth 2010:65).

Modern firms are mostly composed of transactional lawyers. A number of these firms only recently delved into litigation, per the request from their clients for a 'cleaner' legal process, one reason being that they are subjected to the American Foreign Corrupt Practices Act.[86] However,

85 http://www.hukumpedia.com/ahmadassegaf/besar-itu-perlu-sejarah-perkembangan-kantor-advokat-modern-di-indonesia; https://www.hukumonline.com/berita/baca/lt55e410bde081b/sekelumit-sejarah-law-firm-modern-di-indonesia

86 Interview MI, HS.

they prefer dispute resolution through arbitration instead of litigation.[87] If they have to go to litigation, the policy on litigation practices is different between modern and traditional firms. Modern firms accentuate litigation practice that is free from corruption, believing that once they do their best in drafting and responding to claims, the case will be out of their hands for the judge to decide. This is contrary to traditional firms, where control of litigation is the main policy.

The first distinction between modern and traditional law firms lies in technology. Modern law firms are more advanced in the use of communication technology and data management, which is also needed to facilitate hourly billing. This has a significant impact on practice, as having communication technology makes co-operation within the firm easier.

The second distinction is between firm structures. The most distinct aspects of the traditional firm structure are that modern firms often co-operate with foreign or international firms, have equity partners, and have foreign lawyers, tax consultants, and accountants. Traditional firms are usually a one-person operation, meaning that the name found usually manages everything from handling cases to budgets.

The third distinction is in the hiring process of new lawyers. Modern firms look for good grades and co-operation characteristics, of not wanting to always be ahead of others and not being competitive.[88] By contrast, traditional firms look for those who have or can cultivate personal relations with police officers, prosecutors, judges, politicians, and court registrars. Lawyers from traditional firms are usually hired on the spot without following any hiring procedure[89] and do not have a written employment agreement. Lists of lawyers in traditional firms are rarely published, unlike modern firms with their advanced uses of websites as promotional and informational tools.

Modern firms put up an image of professionalism: that they are efficient, have high credibility, and a good reputation. They advertise themselves on ranking websites for networks of international law firms such as LEGAL 500 and AsiaLaw, while traditional firms accentuate an image of winning cases in court.

Fee structures for clients also differ between modern and traditional firms. Modern firms charge hourly or fixed fees, while traditional firms charge lump-sum, success fees and only rarely charge hourly fees. Modern firms have websites and promote themselves in international legal journals

87 To give an example, Lubis Ganie Surowidjojo stated in its 2011 litigation report: 'In formal court litigation the parties have no control over the appointment of the judges who will hear the case or the applicable civil procedures law. In arbitration the parties can determine the applicable procedures and can, to a certain extent, control the appointment of the arbitrator(s) who will handle the proceedings.' One of the partners, Kiki Ganie, is a senior member of Badan Arbitrase Nasional Indonesia (BANI).

88 Interview with partners LW, SG.

89 This (lack of) procedure is apparently the same in LBH. See Pangaribuan (2016:186-7).

and business publications. Traditional firms do not concern themselves with these, but some appear in a televised weekly 'Indonesian Lawyers Club' talk show, where they talk (or more often, argue extensively) about cases and current legal issues. Modern firms commence yearly sports competitions amongst themselves, called *Pertandingan Persahabatan Antar Konsultan Hukum* (Friendly Competition between Legal Consultants), with games ranging from cheerleading to tug of war, while traditional firms sponsor golf outings with police officers and judges.

Lawyers in modern firms are organized into specialized practice areas, while traditional firms are more generalist. The most important distinction for this research is that modern firms do not take cases about land disputes, they do not practice criminal law, and they very rarely handle cases in the Administrative Court, making these three areas of law the exclusive domain of traditional firms. Instead, modern firms practice in an area of law they refer to as 'project finance', which is basically about managing all aspects of land transactions aside from litigation and enforcement.[90]

2.4.3 Premier league fixers: 'Family' lawyers

One select group of fixers constitute a class of their own. The firms they lead are fully dependent on their personal image and networks and offer a 'boutique, one-stop service'. As mentioned above, the most common form of law firms is similar to those of companies. Like companies, there is no regulation preventing a lawyer from opening multiple offices. They are allowed to do so as long as they report it to the bar association.[91] Some *'family' lawyers* operate so-called 'satellite firms' and can mobilize an army of lawyers in other countries where their clients are active, such as Singapore and Hong Kong. For their satellite firms, the *'family' lawyers* use their associates' name in the notarial deed of establishment. The offices have different addresses and phone numbers. In every respect except for funding and control, these satellite firms are different entities from the 'central firm'. The salaries of satellite firm members come from the central firm, and the office is just an empty room. The actual places of work of the 'satellite' firms are in the central firm. With this system, they can manage to represent several parties in the same case, thus evading the professional code of ethics.

These *'family' lawyers* are entrepreneurial, serving the two roles of litigators and corporate transactional lawyers interchangeably. For them, the ends justify (almost) any means. In this sense, they are no different from common fixers, but their means are more powerful and complex. Their main practice areas are land disputes, tax, antitrust, securities, and real estate development. They delegate certain work (e.g., drafting contracts) to employees and

90 Interview with IA, AM.
91 Elucidation of Article 5(2) Law No. 18/2003 on Advocates.

rarely go to court. Instead, they 'fix' licenses, design complex (sometimes shady) financial transactions, and 'resolve problems'. They see their clients as business partners, often taking a financial stake. These lawyers often refer to themselves as 'the lawyer of [a client's] family'.[92] Their clients are not corporations but individual heads of family corporate groups, mostly Chinese-Indonesian businessmen active in construction and natural resource exploitation. For anything that concerns the law, these businessmen will contact their *'family lawyers'*.

2.5 Professional relationships

Professional relationships are at the centre of the majority of lawyers' business. These relationships also serve as their capital. The following are the findings on how lawyers conduct these professional relationships.

Between lawyers and their clients

Lawyers, like doctors, have a fundamental dilemma of professional responsibility that they share, which is whether they should impose on their clients their preferred way of handling a case or to try their best to give opinions and explain the risks and consequences for the client to make their own decisions.

Before being faced with this dilemma, lawyers need to find out what their clients really want. This is not often as clear, especially in litigation about land, as it tends to be highly emotional.[93] The initial interview between a lawyer and client is tense and often conducted in an interrogative manner. This dilemma is, therefore, closely connected with how lawyers and clients manage exchanges of information.

Lawyers from traditional firms keep power to themselves by limiting their client's access to information. They do not disclose how they work. According to Flood (1991), this is a way for lawyers to manage uncertainty in their work. However, this goes so far in Indonesia that it undermines the professional responsibility of lawyers.

Furthermore, this information limit creates a gap of impunity and the attitude of being enemies of their client. By way of illustration, a litigator stated, 'I always make my clients write their story to me and sign it with a stamp duty. Sometimes I even notarize this affidavit. First of all, I will only represent someone if I believe he is right. This document proves that. It also keeps me safe to both the client and in front of the law. If it turns out the client is lying, and they are guilty, I have the affidavit to protect myself in

92 This term 'advokat keluarga' was also referred to in one Supreme Court decision I reviewed for Chapter 1, no. 741PK/PDT/2009.

93 This is not the case when both the plaintiff and defendant are companies. Interview South Jakarta District Court Registrar and Judge Suprapto. August 2015.

front of the law and I can also prove myself in front of the client.'[94] Nevertheless, this way of practice is not surprising, as we learned in Chapter 1 about how evidence is handled in Indonesian civil procedure.

Lawyers from traditional firms also limit information because it is seen as a tactic. They need to withhold information about their network because it is seen as capital, as an asset and trade secret. They only meet clients to discuss things they cannot discuss on the phone, afraid of being taped or recorded by their opponent or the government. They rarely talk on the phone since there is no need to collect billable hours.

On the other hand, litigators from modern firms gladly give all the power to their clients, citing communication and full disclosure as the most important way of keeping their practice free from corruption, giving clients the power to hire another lawyer, who will be the fixer if the clients want to do otherwise.[95] The fixers keep all power to themselves by giving their clients no information about their work. This attitude of 'helping' or 'granting wishes' for the client follows the notion that lawyers are independent, a 'noble profession'[96] and has to be respected, placing them as agents who can be more powerful than their principals.

Between transactional lawyers and litigators

Relationships between lawyers in modern firms differ greatly from such relationships in traditional firms. In traditional firms, lawyers rarely spend time with each other, and when they do, they mostly discuss things other than work. They call and instant message each other as the main form of communication. They rarely use email. The unclear structure makes competition fiercer as their position can change informally and rapidly. In modern firms, lawyers work in a closed room together, doing due diligence or drafting legal documents, making dynamic co-operation crucial to the job, as mentioned above.

Lawyers from different firms have the dynamics of a rivalry or playing a game of hot potato. In transactional relationships, they are accommodating but still make sure they do the proper investigation and do not take words at face value. Litigators seek to work together with corporate transactional lawyers, suggesting that it is to draft contracts from the perspective of enforcement. However, they also look down on one another. Corporate

94 Interview DK.

95 This is the same pattern described by Lev: 'Daniel Lev's discussion of lawyers in Indonesia makes the point that when informal or even illegal operations are called for in the course of a case, a more explicit division of labor develops between advocate and client outside the court. While formal legal matters are attended to by the advocate, illegal work is left to the client or his underground counsel, usually a professional or ad hoc fixer' (Lev 1973 in Morrison 1974).

96 Officium nobile: see Law No. 18/2003.

transactional lawyers allege that litigators are corrupt,[97] and litigators allege corporate lawyers steal money from clients by overcharging and wasting time.[98] As one litigator stated in an interview, 'corporate lawyers always say that their job is to avoid litigation, that is why they draft this long useless contract, wasting their clients' time and money, but when asked about litigation, they said they do not want to do or be near to that practice. Well, how can you avoid something you do not understand?'[99]

Modern firms which started to include litigation as one of their practice areas (as explained in section 2.4.2 above) have a withdrawal policy, depending on the reputation of the lawyer counterpart. They perceive that they 'have to play a different game' if they go against a known broker or fixer and prefer to withdraw from the case.[100]

These indicate that transactional lawyers and litigators know each other's practices well, but try to avoid working together as much as possible. At best, they treat each other with distant respect.

Lawyers with notaries

Lawyers see themselves as consumers of notaries. They need the notaries to formalize the contracts they draft into deeds. Other than being in a 'normal' professional relationship where the independence of both parties is maintained, lawyers and notaries are either in a commercial relationship (being a *langganan,* i.e., a customer, subscriber, or shop one frequents), or they are in an employer-employee relationship, as notaries are often hired to work in law firms.

Lawyers familiarize themselves with the character of notaries they frequent. They classify notaries by their reputation and price. Lawyers say notaries have two types of reputations: those who are 'brave' in that that they are willing to legalize unconventional deeds,[101] and those who are famous because they have an established practice and have served numerous clients.

97 They refer to litigators as '*lawyer gang macan*' (literally: tiger alley lawyers), implying that it is not prestigious. When interviewed, they do not know where the terms came from. I traced the closest reference to a name of an alley in Jakarta that was filled with rows of illegal gambling houses and brothels. Interview DD, KS.

98 Normatively speaking, this attitude violates lawyers' principle of conduct on maintaining highest standard of integrity towards colleagues (see for instance International Bar Association Principles on Conduct for the Legal Profession Chapter 2, and Indonesian Lawyers Code of Ethics Articles 3(d) and 3(h)).

99 Interview BR.

100 Interview Fikri Assegaf and Frans Hendra Winarta.

101 Sometimes this means backdating deeds.

Litigators with judges

A judge cannot be a practicing lawyer at the same time.[102] The Lawyers' Code of Ethics states that a judge can be a lawyer, but they are not allowed to handle cases from their former courthouse for at least three years after they resign from the courthouse.[103]

Like with notaries, brokers and fixers made themselves aware of the character of judges, knowing their opinion on moral issues and values in society, enabling them to construct a targeted influential argument. Judges claim they have 'good relationship' with lawyers but claim to avoid spending time with them, 'because it is an ethic violation'.[104] Some lawyers do not reciprocate this view. Brokers and fixers in particular claim they keep personal relationships with judges, visiting judges' homes frequently to talk about cases (which without involvement of the counterparty is a clear violation of Code of Ethics[105]) and give 'support' to judges.[106]

Litigators with police/prosecutors

Litigating lawyers often perceive themselves as ATM machines in the eyes of police officers, presuming that police officers will treat them like one when they are working on a criminal case.[107] Some lawyers think of police officers as *peliharaan*, the Indonesian word for a pet. They vet these police officers and the police officers feel indebted to them.[108]

Litigating lawyers have similar kinds of relationships with prosecutors, but compared to police officers, prosecutors are considered to be more committed to delivering what they have agreed to with the lawyers. Lawyers favor approaching prosecutors over police officers because the *Kejaksaan* (Prosecution Service Offices) is considered to be more efficient and clearly organized. In a single case, dealing with a prosecutor is a one-to-one issue. By contrast, when dealing with police officers, many will claim to have authority over the case.[109] The nature of these relationships goes against the Code of Ethics, which requires lawyers to behave with respect to other legal professions as equals.[110]

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102 Elucidation of Article 31(2) Law No. 48/2009 about Judicial Authority.
103 Article 8 Code of Ethics.
104 Interview Supreme Court judge.
105 Articles 7(c) and 7(d).
106 Interview LC, OS, AR, AS, HM.
107 'They always come back for more [money].' Interview PM, AR, AS.
108 Interview PR, PM, VK, AR, AS.
109 '*mereka lebih satu pintu*' (they are more 'one-door' (compared to police officers)). Interviews OS, AS, PR, PM, VK, LB.
110 Preamble of the Code of Ethics and Article 8(a).

Lawyers and academics

Indonesian legal procedure recognizes 'legal expert' witnesses, who are retired judges and scholars invited by either a plaintiff or defendant to court hearings to give expert testimony on the law on behalf of either of them. These expert witnesses will give their opinions and even interpretations of law by siding with the party who invited them. Many retired judges went on to pursue this 'legal expert' witness profession.[111] They write books that they can refer to, as a way of portraying themselves as academics after retirement.

Carrying out such (corrupt) relationships does not mean that lawyers are not faced with ethical dilemmas in their practice. It is quite the opposite. Lawyers in Indonesia are very well versed of what is required of them in terms of professional and ethical conduct, together with the risks for violating them, which will be discussed in the following section. One argument to make from their side, is that as long as the demand from clients still exist for lawyers who are willing to put aside their ethics requirements, for instance to guarantee outcome of cases and fixing problems rather than resolving them, some lawyers (especially those newly started practicing) have to meet the demands to be able to survive.[112] Another argument is why not make an example and abandon the corrupt practice altogether. This means avoiding litigation and Indonesian courts. Only transactional lawyers are able to do this (only writing contracts and opinions and performing due diligence) while maintaining their business, and those who are reflexive enough mournfully stated that in that case, they 'might never be fully a Lawyer, rather just a part of it'.[113]

2.6 Liabilities from violating ethical frameworks

The authority of a bar association is important in supervising and controlling lawyers. However, having multiple bar associations competing for this authority means lawyers who get sanctioned (for instance by revocation of license) in practice can obtain a license from another bar association. The non-functioning of the bar associations in this aspect is making profes-

111 One testimony in court could go as high as USD$5000 in 2009.

112 In my interviews, when asking about why they are willing to perform unethical conducts, I repeatedly found remarks such as 'I will not do this anymore once I'm more senior', 'while we are young we can still be brave', or 'I need to do this first to make a name for myself, then I will turn to a clean practice once I have a permanent client'. Interviews TM, IM, LC, DK, LB, AR, AS.

113 Interviews TE, LW.

sional liability a distant, yet more severe risk.[114] Lawyers do not concern themselves with the risk of losing their license to practice, but they could be criminally prosecuted for corruption.

Based on data from the Jakarta High Court in 1996, there has never been any case involving revocation of a license due to a lawyer's misbehavior (Kadafi 2001:160). There was a one-year suspension of Adnan Buyung Nasution by the Ministry of Justice (now Ministry of Law and Human Rights) upon the recommendation of the Supreme Court in 1986, which was the relevant procedure before the 2003 Law on Lawyers. Since that law's passage, this function is performed by the Advocates Ethics Board (Dewan Kehormatan Advokat).[115]

In 1999, a modern law firm, Dermawan and Co was reported by its client as having a conflict of interest at the South Jakarta District Court. I could not find the outcome of this proceeding. In 2001, another modern law firm, Hadiputranto, Hadinoto and Partners was sued by its client for unlawful action by allegedly settling a case without the client's permission.[116] South Jakarta District Court found that the plaintiff did not prove this case.[117] In 2013, Ali Budiardjo, Nugroho, Reksodiputro (ABNR), a modern law firm and the largest in Indonesia, was also sued by its client for malpractice, by allegedly drafting an incomplete legal opinion that caused losses for their client. The lawyer for the client in this lawsuit stated that the relationship broke when ABNR failed to respond to their client's concern 'in a sincere manner'.[118] Again, the South Jakarta District Court found in favor of the law firm. In these three cases, all modern firms were sued institutionally by their clients under the civil procedure for monetary damages, and the court found in favor of the firms.

This is in contrast to lawyers from traditional firms, who are usually sued personally, albeit while acting in their professional capacity, under corruption charges for bribing judges,[119] court staff,[120]and police officers.[121] The courts found them guilty in each of those cases. I will discuss two of

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114 Liabilities from violating Code of Ethics are supposed to be enforced by an Ethics Board, and the procedure is prescribed in the code but it is hard to assess the actual procedure and outcomes because the hearings are closed. Furthermore, the appointment and authority of the board to judge a case itself become the fighting ground with the groupings of lawyers into different associations. PERADI data manager in an interview in 2015 stated that there were approximately two ethics hearings per week at PERADI headquarter in Jakarta, but he had no information about hearings in regional offices.

115 Article 7, 8(1) and 26 Law on Lawyers (18/2003) and Code of Ethics Article 9 to 21.

116 https://www.hukumonline.com/berita/baca/hol3902/gary-l-powell-hhp-menyelesaikan-perselisihan-tanpa-seijin-kliennya. Last accessed 22 February 2019.

117 https://www.hukumonline.com/berita/baca/hol4042/hhp-tak-terbukti-lakukan-perbuatan-melawan-hukum. Last accessed 22 February 2019.

118 Interview BM.

119 Harini Wijoso, Adner Sirait, Yagari Bhastara, Otto Cornelis Kaligis.

120 Tengku Syaifuddin Popon, Mario Bernardo, Yagari Bhastara.

121 Haposan Hutagalung, Lambertus Palang Ana.

these cases, which are connected to the independency of lawyers: the cases of Mario Bernardo and Otto Cornelis Kaligis.

Mario Bernardo, a partner at a traditional firm (Hotma Sitompul & Associates) was arrested by the Corruption Eradication Commission in July 2013 for allegedly giving money to a Supreme Court staff member, to be distributed to Supreme Court Judges who were presiding over a case he was handling. Both Mario and the Supreme Court staff were found guilty of corruption. However, Hotma Sitompul was not charged. Clients admitted to giving money for 'taking care' of the case, but the clients were free from prosecution.

This case contrasts with that of Otto Cornelis Kaligis, who was charged with corruption as a result of his associate's action. OC Kaligis, as he is known, is one of the most senior lawyers in Indonesia, and a lot of Indonesian litigators have been trained or have worked in his office. He had handled several controversial cases and clients who have high political profiles, e.g., the late President Soeharto when he was accused of corruption after his presidency ended, and the Golkar Party,[122] one of the biggest political parties in Indonesia.[123] He was also the Head of Counsel in the National Democrat Party[124] and filed a lawsuit against PERADI.[125] In July 2015, his associate was caught bribing judges and a court registrar in Medan. OC Kaligis was quickly charged as well because his associate claimed that Kaligis had instructed him to attempt the bribery.[126] In this case, the client was a government official (the Governor of North Sumatra) and was also charged. One of the lawyers associations, *Asosiasi Advokat Indonesia* or AAI, having close to 150 lawyers, jumped to his defense. During every hearing, around 20 to 30 lawyers from AAI were representing him. He was found guilty and sentenced to five and a half years in prison.[127]

In sum, this shows that modern law firms are institutionally liable and that the plaintiffs sought sanctions in the form of monetary damages. There has not been a case in which the court has sanctioned a modern firm. By contrast, in traditional firms, lawyers have been found personally liable and guilty through criminal prosecution. The claims for criminal prosecution

122 Golkar was one out of three political parties during the New Order.

123 A dispute inside Golkar about who should be the chairman of Golkar: Agung Laksono or Aburizal Bakrie. He won the case in the Administrative Court on behalf of Agung Laksono.

124 The Head of Counsel has the authority to solve internal conflicts in the party.

125 Decision No. 148/Pdt.G/2014/PN.Jkt.Brt was about conflict of interest in his ethics hearing. The case is related to Decision No. 159/Pdt.G/2014/PN.Jkt.Brt about dispute over representation of a client (Nazaruddin) in a corruption charge by the Corruption Eradication Commission (KPK).

126 Interview with KPK officials.

127 He filed an appeal, which resulted in an increase of imprisonment to 7 years (Decision No. No.14/Pid/TPK/2016/PT.DKI), then he filed a cassation which resulted again in an increase of imprisonment to 10 years (Decision No. 1319 K/Pid.Sus/2016), then he filed a Review and the Supreme Court reduced the sentence by 3 years from the previous decision (Decision No. 176 PK/Pid.Sus/2017).

do not come from the lawyers' client, but government officials, notably the Corruption Eradication Commission ('KPK'). This means that while lawyers insist on being considered professionals capable of self-regulating, they are not doing well, resulting in the emergence of another means of control using criminal law. In other words, by squandering their own independence, lawyers are subjecting themselves to harsher liability.

2.7 Conclusion

This negative development of having some types of lawyers who will use their (illicit) relationships with other "law enforcers" for their advantage is not recent.[128] In turn, the lack of a unified front from lawyers undermines their ability to provide protection from the government and other (powerful) citizens. Lawyers' own internal competition prevents them from providing the protection, and the lack of this unified front—whether in the form of single or multiple bar association(s)—to oversee their own norms or ethics makes them more vulnerable to other more severe means of control (e.g., by the KPK).

This condition is a push factor for lawyers to move away from litigation, with globalization as a pull factor for traditional firms to change into modern firms. However, while the latter may comply with all ethical standards in their transactional practice, when it comes to litigation, these firms often rely on the brokers and fixers to which they refer their clients. These push-pull factors compartmentalize: making one impersonal and specialized, and the other relational and generalized. The practice regarding land is divided accordingly, with modern firms practicing its financial aspect, and traditional firms practicing the aspects of dispute and enforcement.

The independence of lawyers from their clients and the government is necessary to uphold the law and promote the idea of justice. In the United States' context, it was found that lawyers value prestige with work that is 'professionally pure', so they are drawn to work for the rich and powerful because of the legal purity and complexity of such work (Heinz & Laumann 2005:81). Compared to the two extremes of lawyers I found in this chapter, the prestige described by Heinz and Laumann exists in a chimerical form in Indonesia. One extreme is the corporate transactional lawyers who follow the rules and draft contracts even though these will be irrelevant in disputes. They manage to appear prestigious by being 'professionally pure'. On the other extreme are the fixers, who value power per se -not prestige from serving the powerful- in the form of being able to provide a kind of certainty. In the middle, there are the brokers who are pulled from one extreme to the other.

128 Ko Tjay Sing, a lawyer who joined Besar Mertokoesomo, the first law firm established in colonial Indonesia (Lev 2011:67), had observed this during his practice. Interview with his son, Ko Swan Sik, 24 August 2016. Ko Swan Sik was an associate in his father's firm.

Nevertheless, there is another kind of prestige that is overlooked by most of these commercial lawyers. It is the ability and willingness to defend clients who are poor and disadvantaged for the sake of social and political principles such as equality and government accountability.[129] This contribution of lawyers to redistributive social change depends upon the organization and culture of the legal profession (cf. Galanter, 1974). Now a few firms contribute part of their revenue from powerful clients for legal education and research.[130] Unfortunately, the brokers and fixers who handle litigation about land will represent non-wealthy clients only when they have the opportunity to receive a part of the proceeds from the litigation, which will be discussed further in the following chapters.

129 Obviously, there are also public interest lawyers or cause lawyers in Indonesia, although it is not the focus of this study. See footnote 2.

130 For instance, Assegaf, Hamzah and Partners and Lubis, Ganie, Surowidjojo by establishing Jentera Law School and Hukum online.