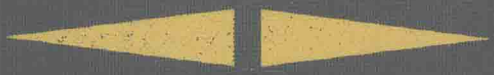

THE LONDON-LEIDEN SERIES ON LAW, ADMINISTRATION AND DEVELOPMENT

Adriaan Bedner

Administrative Courts in Indonesia

A Socio-Legal Study

Kluwer Law International

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A Socio-Legal Study

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De tout cela nous pouvons tirer qu'il n'y a pas d'ordre sans équilibre et sans accord. Pour l'ordre social, ce sera un équilibre entre le gouvernement et ses gouvernés. Et cet accord doit se faire au nom d'un principe supérieur. Ce principe, pour nous, est la justice.

Albert Camus (Combat 7 octobre 1944)

Voor Karina

PREFACE

More than two years following the demise of Soeharto, Indonesia is still grappling to find a way out of a profound economic, political and social crisis. How long this struggle will last and what the outcome will be is impossible to predict. However, one point of consensus seems to have emerged from the diversity of opinion concerning Indonesia's plight: if the position and performance of the judiciary does not radically improve, the prospect of any lasting stability is slim. For this reason, the judiciary has now become the focus of much public debate, with many politicians, scholars and others proffering suggestions to solve the problems that have plagued the administration of justice for so long.

This study hopes to contribute to this quest for a functional judiciary, particularly with regards to the administrative courts. Many Indonesians assumed the administrative courts, having become operational in 1991, would facilitate greater control over the New Order administration and provide citizens with a more effective means of protection against the state. I will show that this goal has not been achieved, although the courts' record in this respect is not altogether negative. I will argue that the root of the problem lies partly in the limited jurisdictional mandate of the administrative courts and the general problems of administrative law in Indonesia. In addition, non-legal factors, such as judicial corruption and the general political environment under the New Order, have had detrimental effects on the quality of the justice administered. Finally, I will offer a number of suggestions to bolster what has been achieved and to redress what has not.

This study evolved out of a PhD-proposal written by Jan Michiel Otto of the Van Vollenhoven Institute (VVI). Upon starting my research in 1992, I was optimistic that I would do the job in about five years. The fact that it took me three more years has had two main advantages: firstly, I have had considerably more time to think about my analysis and have been able to consider previously unexplored theoretical angles, and secondly, I have been able to cover a longer period, even if the emphasis is on the years between 1992 and 1995. After having defended the study as a PhD-thesis in April 2000, I have also been able to rework many comments into this new version.

This is, of course, the appropriate time and place to thank a number of people, without whom this study would have suffered greatly. First of all, professors Jan Michiel Otto and Thijs Drupsteen who supervised the PhD-project. The stimulating discussions with the former and the 'common sense' approach of the latter have much shaped my academic mindset and the course of the research. Sebastiaan Pompe deserves special reference, for innumerable discussions on the Indonesian judiciary and for his own research on the Indonesian Supreme court, which has proved an invaluable reference. Many of my other colleagues at the VVI need to be mentioned here: Nicole Niessen (my former co-Indonesia researcher at the VVI), Barbara Oomen, Harold Munneke, Ab Massier, David Nicholson, and Brian Tamanaha have all contributed valuable insights for this study, valuable materials (Albert Dekker, Cora de Waaij and Sylvia Holverda), or otherwise fruitful discussions and moral support (Laila al-Zwaini, Julia Arnscheidt, Leon Buskens, Carola Klamer and Nel de Jong).

And then there have been others outside the VVI. Outside the VVI, Dan Lev was the first to introduce me to a 'political science' approach to courts and the law, during the

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first phase of this project. Later, Kyong Rijnders helped me find a way out of the socio-legal labyrinth, while Nick Huls reminded me not to lose sight of the 'red thread'. Ben Tahyar helped 'sharpen my pen' and get the message across and was of great assistance in correcting my use of legal English. Finally, Sandra Jones has been a most efficient copy-editor and moreover very pleasant to work with, while Paul Janse did the great job of getting everything into the right template.

Of course many others have helped getting this study finished. My parents and my family in law – both in the Netherlands and Indonesia – deserve special reference, as do my children who only knew that daddy was working on 'his judges' again and let him most of the time.

This brings me to the Indonesian side of this enterprise. Without the help and often friendship of a number of Indonesian scholars and judges this whole endeavour would have been doomed to failure. Professors Hadjon, Syafrudin and Sutantio have been more than helpful and generous with their precious time. The same goes for Professor and now Supreme Justice Lotulung. While Administrative Court Judges Siahaan, Sukardi, Mangkoedilaga, Fachruddin, Nurdu'a, Wahyunaidi, Soedewo, Aryanto, Harmani, Sugiya, Soejoedono, Hamid, Anshari and many others have helped me to understand what administrative courts do and why they do it.

There is no way that I can mention here all of those who have helped me along the way. But one person cannot be forgotten, since without her I would neither have commenced nor finished this book: my wife Karina to whom it is dedicated.

ABBREVIATIONS

ABRI	Angkatan Bersenjata Republik Indonesia [Armed Forces of the Indonesian Republic]
ACA	Administrative Court of Appeal
ACF	Administrative Court of First Instance
BAL	Basic Agrarian Law [Law no. 5/1960]
BAPEK	Badan Pertimbangan Kepegawaian [Tribunal for Civil Service Affairs]
BLJP	Basic Law on Judicial Principles [Law no. 14/1970]
BPHN	Badan Pembinaan Hukum Nasional [Agency for National Law Development]
BUPLN	Badan Urusan Piutang dan Lelang Negara [Agency for the Management of State Loans and Auctions]
CL	Circular Letter
DALDI	Diagnostic Assessment of Legal Development in Indonesia
DGI	Dewan Gereja-gereja di Indonesia [Indonesian Synod]
DIM	Daftar Isi Masalah [Register of Grievances]
DPR	Dewan Perwakilan Rakyat [Parliament]
ET	Eks Tahanan Politik ['politically suspect']
GR	Government Regulation
HIR	Herzien Indonesisch Reglement [Civil Procedural Code]
ICEL	Indonesian Centre for Environmental Law
IKADIN	Ikatan Advokat Indonesia [Indonesian Bar Association]
IKAHI	Ikatan Hakim Indonesia [Indonesian Judges Association]
IPTN	Industri Pesawat Terbang Nusantara [National Aircraft Industry]
JAI	Jemaat Ahmadiyah Indonesia [Indonesian Ahmadiyah Community]
KASI	Kesatuan Aksi Sarjana Indonesia [Action Group of Indonesian Graduates]
KIPP	Komite Independen Pemantau Pemilu [Independent Committee for Election Monitoring]
KKN	Kolusi, Korupsi dan Nepotisme [Collusion, Corruption and Nepotism]
KORPRI	Korps Pegawai Republik Indonesia [Indonesian Civil Service Association]
KP3N	Kantor Pelayanan Pengurusan Piutang Negara [Service Offices for the Management of State Loans]
LAC	Law on Administrative Courts [Law no. 5/1986]
LAN	Lembaga Administratif Nasional [National Institute for Administration]
LBH	Lembaga Bantuan Hukum [Legal Aid Bureau]
LPHN	Lembaga Pembinaan Hukum Nasional [Institute for the Development of National Law]
MAWI	Majelis Agung Waligereja Indonesia [Indonesian Supreme Vestry]
MPP	Majelis Pertimbangan Pajak [Tax Tribunal]
MPRS	Majelis Permusyawaratan Rakyat Sementara [People's Provisional Consultative Congress]
MUI	Majelis Ulama Indonesia [Council of Indonesian Muslim Scholars]
NGO	Non-Governmental Organisation
P4D	Panitia Penyelesaian Perselisihan Perburuhan Daerah [District Tribunal for

	Labour Disputes]
P4P	Panitia Penyelesaian Perselisihan Perburuhan Pusat [Central Tribunal for Labour Disputes]
PDI	Partai Demokrasi Indonesia [Indonesian Democratic Party]
PERSAHI	Persatuan Sarjana Hukum Indonesia [Association of Indonesian Jurists]
PHDP	Parisada Hindu Dharma Pusat [Supreme Council of the Hindu/Bali Religion]
PLN	Perusahaan Listrik Negara [National Electricity Company]
PN	Pengadilan Negeri [district court]
PPP	Partai Persatuan Pembangunan [United Development Party]
PPR	Partai Proklamasi Republik [Proclamation of the Republic Party]
PRD	Partai Rakyat Demokratik [Democratic People's Party]
PUPN	Panitia Urusan Piutang Negara [Committee for the Management of State Loans]
REI	Real Estate Indonesia [Organisation of Real Estate Developers Indonesia]
S	Staatsblad [place of publication for colonial regulations]
SC	Special Committee
SCM	Special Committee Meeting
WALUBI	Perwalian Umat Buddha Indonesia [Trusteeship of Indonesian Buddhists]
WCM	Working Committee Meeting

CONTENTS

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CHAPTER 1
INTRODUCTION

One of the most remarkable changes in Indonesia's legal system in the past decade has been the establishment of administrative courts. Legal protection and the rule of law (which these courts are designed to serve) are concepts not commonly associated with the authoritarian New Order regime, and to many their introduction came as a surprise. From 1991 onwards they have passed hundreds of judgments in cases against the administration, and while most of these involved petty matters and have gone unnoticed, some of them – notably *Tempo* and *IPTN* (also known as Reforestation Fund) – have attracted international attention. In Indonesia itself, the administrative courts are perceived to have revolutionised the legal landscape. They have become a part of daily life, thanks to the intensive press coverage, and there is no reason to assume that this will change in the near future.

Conversely, scholarly interest in the courts has been less than overwhelming. There have been a few publications in English, but most of these were fairly general in nature, providing only the outlines of the system[1] or commenting on their establishment from a political science perspective.[2] Indonesian publications on the administrative courts outnumber the English, but the majority are mere formal legal elucidations of administrative procedure, which fail to deal with the manner in which justice is administered in practice.[3]

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[1] Lotulung, P.L., 'Judicial Review in Indonesia' in Zhang, Y. (ed.) *Comparative Studies on the Judicial Review System in East and Southeast Asia* (The Hague, Kluwer International Law, 1997); Boestomi, T., 'Historical Development of the Administrative Court in Indonesia' in Creyke, R., J. Disney and J. McMillan (eds.) *Aspects of Administrative Review in Australia and Indonesia* (Canberra, Centre for International and Public Law Australian National University, 1996); Mangkoedilaga, B. 'Indonesian State Administrative Courts: Existence, Challenges and Expectations', (1996), 2 *Indonesian Law and Administration Review*, at 16–21. The most thorough legal analysis in English so far is Hadjon, P.M., 'Government Liability in Indonesia' in Zhang, Y. (ed.) *Comparative Studies on Government Liability in East and Southeast Asia* (The Hague, Kluwer International Law, 1999).

[2] Quinn, B., 'The Administrative Review Act of 1986: Implications for Legal and Bureaucratic Culture'. Unpublished Honours thesis (Australian National University, Canberra, 1994); Linnan, D., 'Decentralisation versus Administrative Courts: Which Path Holds Greater Promise?' in Lindsey, T. (ed.) *Indonesia: Law and Society* (Sydney, The Federation Press, 1999). Although Quinn deals mainly with the question of how the administrative courts should be understood in the Indonesian political context – in a highly illuminating way – he also accurately describes the legal framework for administrative court review and refers to a number of early cases. Otto and Bedner use 'law-and-development' perspectives to predict or assess the effectiveness of the administrative courts from a rule-of-law perspective; see Otto, J.M., *Conflicts between Citizens and the State in Indonesia: the Development of Administrative Jurisdiction* (Leiden, Van Vollenhoven Institute for Law and Administration in Non-Western Countries, Working Paper no. 1, 1992) and Bedner, A.W., 'Administrative Jurisdiction in an Executive-Dominated State: the Case of Indonesia', in Zhang, Y. (ed.), *Comparative Studies on the Judicial Review System in East and Southeast Asia*. (The Hague, Kluwer International Law, 1997).

[3] For example, Tjakranegara, S., *Hukum Acara Peradilan Tata Usaha Negara Di Indonesia* (Jakarta, Sinar Grafika, 1994); Pudyatmoko, Y.S. and W.R. Tjandra, *Peradilan Tata Usaha Negara Sebagai Salah Satu Fungsi Kontrol Pemerintah* (Yogyakarta, Universitas Atma Jaya Yogyakarta, 1996). Exceptions are Indroharto, *Usaha Memahami Undang-Undang Tentang Peradilan Usaha Negara. Buku I: Beberapa Pengertian Dasar Hukum Tata Usaha Negara* (Jakarta, Pustaka Sinar Harapan, 1993) and Indroharto, *Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara. Buku II: Beracara di Pengadilan Tata Usaha Negara* (Jakarta, Pustaka Sinar Harapan, 1993), which contain thorough discussions of the LAJ. In addition, Hamidi analyses the position of the

This study aims to provide what has been lacking so far: a comprehensive analysis of the origins, jurisdiction and performance of the administrative courts, from both a legal and a social scientific standpoint. The main objective of this analysis is to evaluate whether the administrative courts have offered effective legal protection to citizens from a rule-of-law perspective, what the powers of the courts are, and how they are used. Moreover, I shall explore a number of legal and institutional factors that have impacted on the administrative courts' performance, relating them to a wider political context by examining the history of the courts' genesis. I shall also address the question of whether the administrative court system has had any political effect upon the New Order. Finally, based on my analysis, I shall make a number of legal and institutional recommendations.

1 Academic Background

In the course of the research, it became clear to me that this study is part of an international trend towards greater interest in courts in less developed countries, especially in Asia. This is reflected not only in the court projects funded by foreign donors,[4] but also in the number of scholarly projects and conferences on the subject.[5] In Indonesia itself interest in the judicial system has also been on the rise for a long time; there have been new publications,[6] the establishment of an NGO aimed at promoting an independent judiciary,[7] and a constant stream of newspaper articles.

Among the recent works dealing specifically with the Indonesian judicial system, those of Daniel Lev and Sebastiaan Pompe are noteworthy for their lucid analysis of the political and legal aspects.[8] Their examination of the manner in which the Indonesian judiciary has been manipulated and undermined, in order to serve the needs and interests of successive Indonesian governments since independence, has greatly influenced the

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principles of proper administration, while Setiadi reflects upon the origin of many important LAC provisions: see Hamidi, J., *Penerapan Asas-Asas Umum Penyelenggaraan Pemerintahan Yang Layak (AAUPL) Di Lingkungan Peradilan Administrasi Indonesia: Upaya Menuju 'Clean and Stable Government'* (Bandung, Citra Aditya Bakti, 1999) and Setiadi, W., *Hukum Acara Pengadilan Tata Usaha Negara: Suatu Perbandingan* (Jakarta, PT Raja Grafindo Persada, 1994).

[4] See, for example (1999) 1 *Law and Development Bulletin*, which alone lists 16 projects related to judiciaries in Asia.

[5] These include the PIOOM-studies on the judiciaries in the Philippines (Bakker, J.W., *The Philippine Justice System* [Leiden and Geneva, PIOOM/Centre for the Independence of Judges and Lawyers, 1997]) and Burkina Faso (Yonaba, S., *Indépendance de la justice et droits de l'homme: le cas de Burkina Faso* [Leiden and Geneva, PIOOM/Centre for the Independence of Judges and Lawyers, 1997]) and the final project report (Bakker, J., 'Final Summary Report of the PIOOM Project'. Unpublished report [Leiden, PIOOM, 1997]), conferences on comparative studies of judicial review in Asia (Zhang, Y. [ed.] *Comparative Studies on the Judicial Review System in East and Southeast Asia* [The Hague, Kluwer International Law, 1997] and Zhang, Y. [ed.] *Comparative Studies on Government Liability in East and Southeast Asia* [The Hague, Kluwer International Law, 1999]), and many individual books and articles, including those of the London-Leiden Series of which this book is also a part. One of the first important works which attempts to provide an overview of judicial issues in several less developed countries is Tiruchelvam, R. and R. Coomaraswamy (eds.) *The Role of the Judiciary in Plural Societies* (London, Frances Pinter, 1987).

[6] For example, Harahap, M.Y., *Beberapa Tinjauan Mengenai Sistem Peradilan Dan Penyelesaian Sengketa* (Bandung, Citra Aditya Bakti, 1997) and Harman, B., *Konfigurasi Politik Dan Kekuasaan Kehakiman Di Indonesia* (Jakarta, ELSAM, 1997).

[7] The *Lembaga Kajian dan Advokasi untuk Independensi Peradilan*.

[8] See the bibliography.

social-scientific parts of this book. Two other studies that deserve to be mentioned are those by Von Benda-Beckmann[9] and Colombijn,[10] which provide useful insights into the administration of justice by first-instance courts in the Indonesian Minangkabau province. However, they focus on the effect on the litigants, rather than on the internal workings of the courts. The same applies to the article by Burns, which deals with litigation initiated by rubber traders in North Sumatra.[11]

Another major reference source was the literature on judicial review in Western countries, in particular the comparative studies. As the Indonesian administrative courts are modelled on the Dutch system of judicial review, and have also been exposed to the influence of France and Australia, such information is particularly relevant.[12] Of special interest here are the conferences on judicial review and government liability in East and Southeast Asia, which not only mapped the judicial review systems in this region, but also compared them with the European systems that inspired them.[13] More general works on legal transplants have also broadened my insight into the Indonesian situation.[14]

Finally, the comparative literature on European systems of judicial review has helped me to develop a more detached perspective on the Dutch system on which the Indonesian administrative courts were modelled.[15] However, my detailed 'inside' knowledge of that system has been equally indispensable now that so many Indonesian administrative law concepts are rooted in Dutch administrative law.

In addition to these law and law-related sources, a number of more general works in the social sciences have influenced my analysis. These will be examined below.

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[9] Benda-Beckmann, C.E. von., *The Broken Stairways to Consensus: Village Justice and State Courts in Minangkabau*. (Dordrecht, Foris, 1984).

[10] Colombijn, F., 'Dynamics and Dynamite: Minangkabau Urban Landownership in the 1990s', (1994), 148-IV *Bijdragen tot de Taal-, Land- en Volkenkunde*, 428–464.

[11] Burns, J.J., 'Civil Courts and the Development of Commercial Relations: the Case of North Sumatra', (1980) 2 *Law and Society Review*, 150–161. For a useful overview of the literature on courts in Western countries in general, see Cotterrell, R., *The Sociology of Law* (London, Butterworths, 1992), at 205–244 and 339–344. I have found no studies pertaining to administrative courts of first instance.

[12] Publications that compare the Indonesian system of administrative justice with the French or the Australian include Creyke, R., J. Disney and J. McMillan (eds.), *Aspects of Administrative Review in Australia and Indonesia* (Canberra, Centre for Interantional and Public Law, Faculty of Law, Australian National University, 1996) and Sayuti, D. [et al.], 'Rumusan Kesimpulan Hasil Ceramah/Diskusi Tentang Perbandingan Peradilan Administrasi Perancis Dan Peradilan Tata Usaha Negara Indonesia', (1997), 10 *Gema Peratun*, 91–98.

[13] Zhang, Y. (ed.) *Comparative Studies on the Judicial Review System in East and Southeast Asia* (The Hague, Kluwer International Law, 1997) and Zhang, Y. (ed.) *Comparative Studies on Government Liability in East and Southeast Asia* (The Hague, Kluwer International Law, 1999). These and other publications on systems of administrative justice in Asia (such as Pei on China: see Pei, M.H., 'Citizens versus Mandarins', [Dec. 1997] *China Quarterly*) show that the problems in Indonesia are by no means unique.

[14] Watson, A., *Legal Transplants and Law Reform: An Approach to Comparative Law* (Athens and London, The University of Georgia Press, 1993); Watson, A., 'Aspects of Reception of Law', (1996) 44 *The American Journal of Comparative Law*, at 335–351. Attempts to develop a comparative theory of courts include Shapiro, M., *Courts. A Comparative and Political Analysis* (Chicago, University of Chicago Press, 1981) and Schmidhauser, J.R., 'Alternative Conceptual Frameworks in Comparative Cross-National Legal and Judicial Research' in Schmidhauser, J.R. (ed.), *Comparative Judicial Systems: Challenging Frontiers in Conceptual and Empirical Analysis* (London, Butterworths, 1987).

[15] Koopmans, T., *Vergelijkend Publiekrecht* (Deventer, Kluwer, 1986) and Banda, P.H., *Administratief procesrecht in vergelijkend perspectief: een rechtsvergelijkende studie naar de invloed van de functie van het beroep op de rechter bij de regeling van het administratief procesrecht* (Zwolle, Tjeenk Willink, 1989) The former analyses and compares the principle aspects of public law in France, Germany, England and the United States, while the latter looks at administrative procedure in France, Germany and the Netherlands.

2 Theoretical Perspectives

The first perspective used is a legal one. It assumes that the principles underlying the law in Indonesia are basically the same as in other civil law traditions, a carry-over from the colonial period.[16] However, one significant difference between Indonesia and most Western civil jurisdictions is the relative lack of information pertaining to case-law. Although this may not be immediately clear from my analysis, which uses a rather straightforward common legal internal point of view, most of the cases discussed have not been published. Some discussions are moreover based on newspaper reports. Strange as this may seem to many 'Western' legal scholars, it reflects a reality common to most countries around the globe. However, it is also important to keep in mind that the formation of law and legal discourse in such a system is very different from what one might expect to find on the basis of experiences in 'developed' countries. In particular, the fact that those inside the legal system of developing countries still hold on to the basic points of departure of legal doctrine – for instance that case-law is a source of law – sometimes yields serious tensions.[17]

Using this internal perspective, I have analysed the Law on the Administrative Courts (LAC) and its implementing regulations, in order to assess their powers, competence and procedure. Furthermore, I have explored three fields of substantive law which are of particular importance in administrative court practice: civil service law, land law and constitutional law. After analysing a number of judgments in these fields, I assess the manner in which judges interpret substantive law. This has led to the conclusion that in all these fields there are serious problems pertaining to legal interpretation.

The second perspective derives from both legal sociology and development administration. It examines administrative court performance on the basis of the various factors that influence judicial reasoning, behaviour and authority. An initial analytical distinction is made between factors deriving from inside and outside the court organisation. The 'internal' factors cover human and financial resources, leadership and control. They can be further subdivided into those related to the entire administrative court branch and those that apply specifically to courts of first instance. The factors related to the entire branch are the size and management of the administrative court budget; the nature and operation of the recruitment and career systems; the system of disciplinary supervision; and the forms of judicial control and supervision in the lower courts. Factors pertaining to the first-instance court are scale and workload; composition and working order of the panels of judges; distribution of cases; attempts to reform procedures and upgrade judicial knowledge; and finally supervision of and support from the registry.

The external factors include, first of all, those associated with the litigants: intervention, non-execution, refusal to appear, and corruption. Second, there are outside factors concerned with the relationship of the administrative court to the civil courts, to political allies, to complaint bodies, and to other bodies which review government action.

The model is inductive, based as it is on my analysis of fieldwork materials. However, it has been influenced by several models used for comparable purposes, notably the

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[16] Lev, D.S., 'Colonial Law and the Genesis of the Indonesian State', (1985) 40 *Indonesia*, 57-74; Gautama, S. and R. Hornick, *An Introduction to Indonesian Law: Unity in Diversity* (Bandung, Alumni, 1983).

[17] This will be further elaborated in Chapter 8 section 4.

Institution Building Model as developed from Esman by Otto;[18] the study on the Indonesian Supreme Court by Pompe;[19] and James Q. Wilson's classification of government agencies.[20] While the perspective is basically functionalist,[21] it does devote attention to the views and opinions of those who are the object of the research, viz. the judges. In that respect it also builds on the more anthropologically oriented ecological development administration of Riggs, which looks at the internal motivation and discourse of actors.[22] This approach is supported by the qualitative research method I have used, in addition to the analysis of legal materials.

The third perspective I have employed might be termed 'macro-functionalist'. It is customarily used in political science, legal sociology and history, and it will help us to understand why the courts were established in their present form, and to what extent they have supported the legitimacy of the New Order. The point of departure was that in principle the administration of justice serves the legitimation of the legal and social order in society, by maintaining the rule-of-law ideology.[23] This implies that the position of the courts is closely related to the nature of the sources of state legitimation, which may be

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[18] Otto, J.M., *Conflicts between Citizens and the State in Indonesia: the Development of Administrative Jurisdiction* (Leiden, Van Vollenhoven Institute for Law and Administration in Non-Western Counrties. Working Paper no. 1, 1992). Originally a public administration model for assessing the causes of the ineffectiveness of government agencies, the Institution Building Model has been adapted by Otto for court analysis. Although I have drawn on some of the Model's variables in defining my own, the notion of 'transactions' which is central to the Model's assessment of an institution's effectiveness is very difficult to define in the case of courts.

[19] Pompe, S, 'The Indonesian Supreme Court'. As Pompe's study looks at the apex of the judicial system while my focus has been on the base, the analytical framework could not be transmitted. However, many of the different aspects Pompe deals with are also discussed in this book.

[20] Wilson, J.Q., *Bureaucracy: What Government Agencies Do and Why They Do It* (New York, Basic Books, 1989). The distinction Wilson makes between 'operators', 'managers' and 'executives' and the different constraints that operate on them have been especially helpful in shaping my thoughts about what moves the different actors in the administrative court hierarchy.

[21] Functionalist in this context must not be confused with purpose; function refers to the 'contribution to the maintenance of existing social or economic institutions' (Cotterrell, R., *The Sociology of Law* [London, Butterworths, 1992], at 72), not to the purpose the legislator had in mind when a particular institution was created. The two may, of course, coincide. For the functionalist approach in public administration, see Parsons, W., *Public Policy: An Introduction to the Theory and Practice of Policy Analysis* (Cheltenham, Edward Elgar, 1997), esp. at 99.

[22] A good example of a similar perspective in court studies is the interpretivist study into the Micronesian judicial system by Tamanaha (Tamanaha, B.Z., *Understanding Law in Micronesia: An Interpretive Approach to Transplanted Law* [Leiden, Research School CNWS, Leiden University, 1993]). Studies that attempt to bridge the gap between the two perspectives include Pompe, 'The Indonesian Supreme Court'; Otto, J.M., *Aan de voet van de piramide: Overheidsinstellingen en plattelandsontwikkeling in Egypte: een onderzoek aan de basis* (Leiden, DSWO Press, 1987); and Buskens, L., *Islamitisch recht en familiebetrekkingen in Marokko* (Amsterdam, Bulaaq, 1999).

[23] In the words of Cotterrell: 'a functional view of courts might stress their contribution as agencies of government and social control to the maintenance of currents of ideology which legal doctrine shapes, reflects and reinforces and which serve to legitimise government and contribute to social order' (Cotterrell, *The Sociology of Law*, at 216, cf. Jacob, H. 'Introduction' in Jacob, H., E. Blankenburg, H.M. Kritzer [et al.], *Courts, Law, and Politics in Comparative Perspective* [New Haven and London, Yale University Press, 1996], at 3). Legitimation in this definition is not static, but rather as Alagappa has described it: 'Legitimation of power is an interactive and therefore dynamic process among the government, the elite groups, and the politically significant public: those in power seek to legitimate their control and exercise of that power; the subjects seek to define their subordination in acceptable terms' (Alagappa, M., 'Legitimacy: Explication and Elaboration' in Alagappa, M. [ed.], *Political Legitimacy in Southeast Asia: the Quest for Moral Authority* [Stanford, Stanford University Press, 1995], at 13).

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