

SPECIAL ISSUE:
*THE STATE AND ILLEGALITY IN
INDONESIA*

Introduction

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Corruption talk in Indonesia is so old that it has its own classics. Mochtar Lubis's moving description of its effects in his novel *Twilight in Jakarta* appeared in 1963. Outrage about it was central to the people power movement that unseated President Suharto in 1998. President Susilo Bambang Yudhoyono won a large popular mandate in 2004 for his promise to do something about it. But things change only slowly. The country's Transparency International corruption perception index rating still wallows near the bottom of the global list, somewhere between Russia and Sierra Leone. As I write, a decade into the 'reform era', one newspaper article reports that up to 70% of the archaeological treasures in one national museum may have been sold and replaced with fakes, and another that the police are now the most distrusted government institution, closely followed by the judiciary and the legislature.¹ Most people write about corruption using the word 'entrenched'. They link it with other problems such as bureaucratic red tape, legal uncertainty and political unresponsiveness; and they mean that it will take a long time to fix.

So what are these illegal practices 'entrenched' in? It might seem logical to think in the first place of the state. How otherwise could they have survived so long, if the state did not somehow need them to function properly? Yet that has by no means always been the reasoning. Long-standing popular discourse in Indonesia traces the problem to individual moral failings – selfishness or lack of religion. The New Order naturally encouraged talk of 'bad apples' [*oknum*], aiming to

¹ Marianne Kearney (2007), 'Dutch art expert on the run after theft of artefacts', *South China Morning Post*, 6 December; *The Jakarta Post* (2007), 'Police seen as most corrupt', 7 December.

deflect attention from the systematic nature of the abuses. But of course, no serious analyst believes that Indonesia has proportionately more immoral people than, say, Sweden. A more sophisticated explanation current in Indonesia is that illegal practices are entrenched in culture. This was Mochtar Lubis's own view. Some years ago, the historian Djoko Suryo said:

'Under the Javanese kings the word corruption did not exist. But that doesn't mean behaviour similar to corruption did not exist. Tribute beyond taxation was one example. That was normal at the time.... Probably the regents of those days only realised this was wrong after Multatuli in [the novel] *Max Havelaar* harshly criticised their tribute practices.'²

The Africanist J.P. Olivier de Sardan (1999) has explained contemporary corruption with the logic of a 'moral economy of corruption', in which tribal chiefs expect tribute, private and public affairs are indistinguishable, and ordinary folk are not citizens with rights, but subjects who must ingratiate themselves with the chief to get anything done. Illegality disappears from this literature as an inappropriate alien imposition. At most, illegality persists as a theatrical device in discourses aiming to discredit rivals; but everyone understands that such talk is hypocritical. The cultural argument remains an influential line of thought, particularly among Africanists, many of whom think, with reason, that the modern state is but a thin institutional veneer over a society whose roots lie deeper. Western Indonesianists, too, have long used the concept of (neo-)patrimonialism to capture the inequality in political relationships. But in recent decades, their emphasis has increasingly shifted to the 'neo' part of the term, meaning that modern phenomena such as cash and bureaucratic power now overshadow traditional deference.

Internationally more popular among policy makers is a corruption paradigm that in fact resembles the Indonesian *oknum* discourse, except that it finds selfishness natural. Here, the state is seen as part of the market. Officials are rational entrepreneurs who try to extract as much 'rent' from the system as they can get away with. They enjoy a degree of discretion in the way they collect or spend the large sums of state money that pass through their hands. If their salaries are low, if

² *Suara Merdeka* (1997), 'Pamomong: Budaya "korupsi" di Jawa (1)', 14 August.

they are under pressure from all sides to do more than they can realistically achieve, or if hardly anyone looks over their shoulder while they work – so the argument goes – they are likely to collude with the taxpayers or recipients to cream off some of it on the way. The literature on rents and rent-seeking originates with neo-liberal economists. They had in mind individuals who made rational choices to further their own, usually short-term, economic interests. This continues to be the approach of mainstream literature on combating corruption (eg Rose-Ackerman, 1999).

The state thus takes a curiously low profile in both the culturalist and the marketist accounts. However, there is a substantial and growing third stream of literature on illegality that does take the state seriously. Policy makers should take a greater interest in it. It comes in the first place from area studies specialists (often historians), and more recently from political scientists and economists as well.

In the introduction to an edited volume on ‘criminality’ in South East Asia, Vicente Rafael (1999, p 10) quoted British scholar John Furnivall’s ironic 1930s observation on the origins of crime in a Burma administered by the colonial ‘Leviathan’:

‘When, under Leviathan, the ties of social life are loosed and men become, as it were, free among the dead, one thing is as reasonable as another; theft becomes as reasonable as honesty, provided that it is not discovered. Leviathan may be omnipresent and all powerful, but he does not, like your neighbour, live next door, or like your conscience, nearer still. That is the explanation of the paradox that Leviathan is least efficient where he is most effective; he cannot maintain law and order so well as a society that maintains order without law.’

In Furnivall’s view, the modern state operated as an alien force in a pre-existing cultural environment. Crime emerged, not out of the pristine culture, but out of this colonial interaction. This became a major theme in South East Asian studies, notably at Cornell University under the influence of O.W. Wolters and Benedict Anderson. It was an appropriate model for a long time. Colonial and independent states that lacked legitimacy and acted coercively formed a pattern throughout South East Asia in much of the twentieth century. Studies on bossism in the Philippines (Sidel, 1999), gangsterism in Thailand and Indonesia (Barker, 1998; Phongpaichit, Piriyanangsan and Treerat, 1998; Ryter, 1998),

patron–client relations in Thailand and the Philippines (McCoy, 1993; Ockey, 2004) – to name but a few examples – all explored the venality, violence and unfair particularism that emerged at the interface between state and society.

Now that Indonesia is a democracy, new lines of enquiry are emerging that recognize the state as more socially embedded than previously thought. Fortunately, a set of intellectual tools is being developed by both economists and political scientists that will lead to more subtle understandings of the state in the developing world. Both are reading the area studies literature. The economists Mushtaq Khan and K.S. Jomo (2000) have proposed a bold Asian studies research agenda on ‘rents and rent-seeking’ that recognizes the state as a socially useful set of institutions. They see the state as a public arena that, contrary to the neo-liberal originators of the term ‘rent-seeking’, cannot simply be reduced to the market. Its redistributive functions are often unfair and even predatory, but they also often help reduce conflict and improve ecological sustainability. Khan and Jomo identify real-world mechanisms linking economic incentives (rents) to socially useful objectives such as learning, technological innovation, natural resource conservation, and even political stability (buying off dissent). They then identify mechanisms by which organized groups, including bureaucrats, politicians, capitalists and non-capitalist ‘intermediate classes’ compete to obtain these rents (in a process called rent-seeking).

Meanwhile, an emerging revisionist political science literature on the state is also picking up and refining the somewhat wry take on the state that has been commonplace in non-Western area studies for some time. Abandoning the conventional Weberian ideal type of the autonomous, bureaucratic state ‘firing on all cylinders’ (as Migdal put it in a foundational text in this area [2001, p 14]), it proposes simply studying actual state practices with the eye of the ethnographer, minus the Weberian assumptions. The state is no longer seen as a ‘thing’, but as a relational arena. Its practices arise out of the interaction of numerous social forces at different levels of the polity, from the commanding heights to the village. The ‘ideal’ state, meanwhile, should be studied for what it is, namely an ideological construct deployed by both state officials and their opponents in civil society.

All four pieces in this themed edition of *South East Asia Research* fall broadly into this third stream. They take the state seriously, but are under no illusions that it is a cohesive bureaucratic machine. Illegality emerges within the state precisely because it is an arena for

contestation among many social forces. Instead of focusing on individuals out to improve their lifestyles, these papers look at whole units. The motivation for taking part in illegal activities, too, has important long-term and strategic aspects that may overrule individual greed. In every case, the key idea is that state institutions are in competition with each other. The core institutional interest is to maintain freedom of action.

Kirksey and Harsono's paper about a multiple murder on a mountain road near the fabulously rich Freeport mine in Indonesia's remote Papua province in 2002 is in the first place a thoroughly documented examination. Three teachers, two Americans and an Indonesian, die in a hail of bullets. Who did it – Papuan separatist guerrillas, or Indonesian soldiers? These authors make the surprising case that it may have been both. Was there an elaborately engineered deception to make a military attack on a civilian convoy look like a separatist attack and thus to induce Freeport to increase its spending on military security against separatist sabotage? The central character, a Papuan villager named Antonius Wamang, who was convicted of the crime, typifies that shadowy zone in which insurgency, counter-insurgency and black-marketeering meet. The very distinction between legality and illegality becomes confused when the state authorizes violent men in remote places to use guns as they see fit. But behind this story lies the political economy of off-budget financing. These murders might not have taken place if the military had been wholly financed out of the official, democratically audited state budget.

McLeod's paper on the 'Suharto franchise', and Mietzner's on illicit fund-raising by politicians, soldiers and bureaucrats, also focus on underfunding. They complement each other superbly. Both take a macro look at the whole nation and a period of decades – the New Order (McLeod) and even the 60 years since independence (Mietzner). Both describe the semi-legal and illegal off-budget economic activities state actors engage in to make up the shortfall. Significantly, both emphasize that the reason for constructing inadequate budgets is *not* lack of funds. Here they stake out positions that contradict the mainstream view on this subject. Instead, they both highlight strategic reasons why some state actors prefer off-budget financing. They do differ somewhat on what those reasons might be. McLeod points to the top leader's need for loyalty. By making all below him dependent on him for their positions and on funds generated at the expense of the general public for their incomes, Suharto kept them loyal. Mietzner points to the historic

preference of state units – from the army to political parties – to self-fund in order to prevent others from interfering with them.

Buehler's paper on *syariah* taxes in Indonesia's South Sulawesi province is a local study. But it too is about state actors seeking independent financing. Rather than view the implementation of Islamic taxes as an expression of public morality, Buehler prefers to see it as rent-seeking by district-level power holders. Taking a percentage out of civil servants' salaries in order to help support religious activities is not very clearly illegal, but it is a form of political corruption. The money collected in the name of the poor is actually used by the incumbent for his own political purposes. Buehler picks up an argument from James Scott that political corruption and machine politics have a historical institutional setting, namely the early phases of democratization, and in particular democratic decentralization. Pork-barrelling brings in the votes by appealing both to voters' sense of morality and to their hip pocket.

These papers were among a larger number presented at a well attended panel of the Fifth Euroseas Conference in Naples, Italy, in September 2007. We will soon be holding a workshop around this theme again, with a view to producing an edited volume.

One of the questioners at the panel objected that the term 'illegality' in the panel's title was a blunt instrument, since not all illegal actions were widely felt to be immoral as well; indeed, they often contribute to the mutuality of a healthy community. At the same time, not all immoral actions by government officials are illegal. Our reply to this is that, whether considered immoral or not, illegality introduces its own, sharply competitive dynamics into a social situation. Being outside the official tolerance of the state creates a special status. This limits the kinds of people who can conduct these practices, and enhances the kinds of profits that can flow from them. Illegal (collusive or nepotistic) business deals create the space collective state actors need to build political coalitions with societal partners against perceived rivals. Such coalitions are unstable and insecure, and even potentially violent, since the deals that underpin them cannot be enforced in the law courts. They are also unfair, elitist and predatory. They are not built on universal law, but on the local, the contingent and the particular – on personal relations, patronage and moral myths. They are all about building hegemony under insecure conditions. If we can understand this, we have also understood more clearly that the state is a 'material condensation' of interrelating social forces, as Poulantzas put it (1978, pp 128–129). It is a constantly contested system for political domination, at different

levels; and it does not inherently require the law. The law is applied pragmatically and selectively, not to restrain the state, but to dispose of rivals, to reduce pressure from too many claimants and to preserve relations with foreign powers.

A central message of this edition of SEAR is thus that we must first put in the effort to understand how illegality works, what it is 'entrenched' in, before we design recipes for change. None of this means, of course, that we quietly think nothing *will* change. All five authors are clearly driven by feelings that they know they share with many Indonesians. Outrage about human rights abuse and impunity lies just below the surface of Kirksey and Harsono's forensic investigation. Behind McLeod's piece lies a conviction that states should not use their coercive powers to facilitate private enrichment. Mietzner and Buehler each structure their papers around popular hopes in democracy. In Indonesia's *longue durée*, therefore, it is not only illegality that is entrenched, but also the growing protest against it.

References

- Barker, J. (1998), 'State of fear: controlling the criminal contagion in Suharto's New Order', *Indonesia*, Vol 66, pp 7–42.
- Khan, M. H., and Jomo, K. S., eds (2000), *Rents, Rent-seeking and Economic Development: Theory and Evidence in Asia*, Cambridge University Press, Cambridge.
- McCoy, A. W., ed (1993), *An Anarchy of Families: State and Family in the Philippines*, Center for Southeast Asian Studies, University of Wisconsin, Madison, WI.
- Migdal, J. S. (2001), *State in Society: Studying How States and Societies Transform and Constitute One Another*, Cambridge University Press, Cambridge.
- Ockey, J. (2004), *Making Democracy: Leadership, Class, Gender, and Political Participation in Thailand*, University of Hawai'i Press, Honolulu.
- Olivier de Sardan, J. P. (1999), 'A moral economy of corruption in Africa?' *Journal of Modern African Studies*, Vol 37, pp 25–52.
- Phongpaichit, P., Priyarangsan, S., and Treerat, N. (1998), *Guns, Girls, Gambling, Ganja: Thailand's Illegal Economy and Public Policy*, Silkworm Books, Chiang Mai.
- Poulantzas, N. (1978), *State, Power, Socialism*, New Left Books, London.
- Rafael, V. L., ed (1999), *Figures of Criminality in Indonesia, the Philippines and Colonial Vietnam*, Southeast Asia Program Publications, Cornell University, Ithaca, NY.
- Rose-Ackerman, S. (1999), *Corruption and Government*, Cambridge University Press, Cambridge.
- Ryter, L. (1998), 'Pemuda Pancasila: the last loyalist free men of Suharto's order?' *Indonesia*, Vol 66, pp 44–73.
- Sidel, J. T. (1999), *Capital, Coercion, and Crime: Bossism in the Philippines*, Stanford University Press, Stanford, CA.