



# THE STATE AND ILLEGALITY IN INDONESIA

## THE STATE AND ILLEGALITY IN INDONESIA



V E R H A N D E L I N G E N  
VAN HET KONINKLIJK INSTITUUT  
VOOR TAAL-, LAND- EN VOLKENKUNDE

269

THE STATE AND ILLEGALITY IN  
INDONESIA

EDITED BY

EDWARD ASPINALL AND GERRY VAN KLINKEN



KITLV Press  
Leiden  
2011

*Published by:*

KITLV Press

Koninklijk Instituut voor Taal-, Land- en Volkenkunde

(Royal Netherlands Institute of Southeast Asian and Caribbean Studies)

PO Box 9515

2300 RA Leiden

The Netherlands

website: [www.kitlv.nl](http://www.kitlv.nl)

e-mail: [kitlvpress@kitlv.nl](mailto:kitlvpress@kitlv.nl)

KITLV is an institute of the Royal Netherlands Academy of Arts and Sciences (KNAW)



K O N I N K L I J K E N E D E R L A N D S E  
A K A D E M I E V A N W E T E N S C H A P P E N

*Cover:* Creja ontwerpen, Leiderdorp

*Cover photos:* Front: *A pendekar* (strongman) of the Betawi Brotherhood Forum.  
Photo by Ian Wilson

Back: Members of the Betawi Brotherhood Forum at the group's  
headquarters in Cakung, Jakarta

Photo by Ian Wilson

ISBN 978 90 6718 371 0

KITLV Press applies the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Unported License (<http://creativecommons.org/licenses/by-nc-nd/3.0/>) to books, published in or after January 2011.

Authors retain ownership of the copyright for their articles, but they permit anyone unrestricted use and distribution within the terms of this license.

Printed in the Netherlands

# Contents

Acknowledgements	vii
About the authors	ix
Edward Aspinall and Gerry van Klinken The state and illegality in Indonesia	1
<i>Theoretical and historical perspectives</i>	
Robert Cribb A system of exemptions: historicizing state illegality in Indonesia	31
Ross H. McLeod Institutionalized public sector corruption: a legacy of the Suharto franchise	45
Howard Dick and Jeremy Mulholland The state as marketplace: slush funds and intra-elite rivalry	65
<i>Cases and sectors</i>	
John F. McCarthy The limits of legality: state, governance and resource control in Indonesia	89
Michele Ford and Lenore Lyons Travelling the <i>aspal</i> route: grey labour migration through an Indonesian border town	107

Marcus Mietzner	
Funding <i>pilkada</i> : illegal campaign financing in Indonesia's local elections	123
Gerry van Klinken and Edward Aspinall	
Building relations: corruption, competition and cooperation in the construction industry	139
J. Danang Widoyoko	
The education sector: the fragmentation and adaptability of corruption	165
Simon Butt and Tim Lindsey	
Judicial mafia: the courts and state illegality in Indonesia	189
 <i>Illegality and insecurity</i>	
Gerben Nooteboom	
Out of wedlock: migrant-police partnerships in East Kalimantan	217
Ian Wilson	
Reconfiguring rackets: racket regimes, protection and the state in post-New Order Jakarta	239
Jun Honna	
Orchestrating transnational crime: security sector politics as a Trojan horse for anti-reformists	261
Abbreviations	281
Glossary	285
Bibliography	287
Index	319

## Acknowledgements

This volume is the product of an extended and intensive process of collaboration in which many individuals participated. It has its genesis in a panel at the European Association for Southeast Asian Studies (Euroseas) conference in Naples, Italy, on 12-15 September 2007. Several of the papers in that panel were published in a special edition of *South East Asia Research* in 2008 (Volume 16, Number 2). A second workshop on the State and Illegality in Indonesia brought together some of the Naples authors with a considerably enlarged group of researchers a year later. It was hosted by the Australian National University in Canberra on 22-24 September 2008. Participants presented and debated their draft chapters. We would like to thank the Australia Netherlands Research Collaboration (ANRC) for generously funding this workshop.

Above all, we the editors would like to thank all contributors, who brought their diverse backgrounds to this elusive yet important topic, and did so in a highly collaborative manner. We found it a delight to take part in a series of meetings where participants contributed their ideas so creatively and generously. Afterwards, it was gratifying to work with authors who approached the task of writing and revision with such seriousness. In addition, we would like to thank other participants in the conference panel and workshop who liberally shared their research experiences and insights. They included Najib Azca, Laurens Bakker, Lois Bastide, Michael Buehler, Luky Djani, Andreas Harsono, David Jansen, Barak Kalir, Akhiruddin Mahjuddin, Akiko Morishita, Loren Rytter and Sophie Schuette.

At the Australian National University, Allison Ley and Lyn Ning provided invaluable assistance in organizing the research workshop. Allison Ley also helped to prepare the glossary and bibliography. The index was prepared by Angela Grant. At KITLV Press, we thank Ireen Hoogenboom for careful fine editing, and Kees Waterman for so enthusiastically supporting the project



through to completion. We also thank two anonymous reviewers appointed by the press.

Edward Aspinall and Gerry van Klinken

Canberra and Leiden

October 2010

## About the authors

Edward Aspinall is Head of the Department of Political and Social Change, School of International, Political and Strategic Studies, College of Asia and the Pacific, Australian National University. His latest books are *Islam and nation; Separatist rebellion in Aceh, Indonesia* (2009) and *Problems of democratisation in Indonesia; Elections, institutions, and society* (2010) (edited with Marcus Mietzner).

Simon Butt is Senior Lecturer at the University of Sydney where he teaches Indonesian law, intellectual property, dispute resolution in Asia, and law and investment in Asia. He has published widely on a number of areas of Indonesian law and is currently working on several research and book projects relating to Indonesian legal institutions and Indonesian law. His research and consultancy interests include law-making, policy and law, corruption, Islamic law, human rights law, the judiciary, the rule of law and the legal implications of regional autonomy in Indonesia.

Robert Cribb is Professor of Asian Politics and History in the School of Culture, History and Language at the Australian National University. His research focuses on the history of Indonesian identity, problems of mass violence, historical geography and environmental history. He is the author of the *Digital atlas of Indonesian history* (2010) and editor (with Michele Ford) of *Indonesia beyond the water's edge; Managing an archipelagic state* (2009).

Howard Dick is Professorial Fellow in Management and Associate of the Asian Law Centre at the University of Melbourne and Conjoint Professor in Business and Law at the University of Newcastle, New South Wales. His research into governance has focused on the shadow economy, law reform and anti-corruption strategies, and he co-edited with Tim Lindsey *Corruption in Asia* (2002).

Michele Ford chairs the Department of Indonesian Studies at the University of Sydney, Australia, where she teaches about politics, social activism and human rights in Indonesia and other parts of Asia. Michele's research is

focused on social movements in Southeast Asia and the Indonesia-Singapore borderlands. Her publications include *Workers and intellectuals; NGOs, trade unions and the Indonesian labour movement* (2009) and *Indonesia beyond the water's edge; Managing an archipelagic state* (2009) (co-edited with Robert Cribb).

Jun Honna is Professor in the Faculty of International Relations, Ritsumeikan University in Kyoto, Japan. His research interests include civil-military relations, security policies and democratization in Indonesia. He is the author of *Military politics and democratization in Indonesia* (2003).

Gerry van Klinken is Senior Researcher with the KITLV/Royal Netherlands Institute of Southeast Asian and Caribbean Studies in Leiden, the Netherlands. His interests have included human rights, ethnicity, post-authoritarian transition, and historical memory. His most recent sole-authored book is *Communal violence and democratization in Indonesia: small town wars* (2007).

Professor Tim Lindsey is Director of the Asian Law Centre and Director of the Centre for Islamic Law and Society, both in the Law School at the University of Melbourne, where he is also an ARC Federation Fellow. He publishes widely, and is the editor of *Indonesia; law and society* (2d ed, 2008), and *Law reform in developing and transitional states* (2007).

Lenore Lyons is Research Professor in Asian Studies at the University of Western Australia. Recognized as the leading scholar on the feminist movement in Singapore, she is the author of *A state of ambivalence; The feminist movement in Singapore* (2004). She recently completed a major study of citizenship, identity and sovereignty in the Riau Islands of Indonesia (with Michele Ford) and is currently working on a project that examines migrant worker activism in support of female domestic workers in Malaysia and Singapore.

John McCarthy lectures in the Australian National University's Crawford School. He researches agrarian change, land tenure, environmental governance and natural resource policy. He has carried out various assignments with agencies in Australia and Indonesia including AusAID and the Centre for International Forestry Research (CIFOR). He currently has an Australian Research Council grant to research agrarian change and oil palm expansion in Malaysia and Indonesia. He is the author of *The fourth circle; A political ecology of Sumatra's rainforest frontier* (2006).

Ross McLeod is an economist with the Indonesia Project at the Australian National University. He has been working in and on Indonesia as postgraduate student, consultant and academic researcher since 1978, and has been edi-

tor of the ANU's *Bulletin of Indonesian Economic Studies* since 1998. He is the joint editor, with Andrew MacIntyre, of *Indonesia; Democracy and the promise of good governance* (2007).

Marcus Mietzner is Lecturer in Indonesian Studies, School of Culture, History and Language, College of Asia and the Pacific, Australian National University, Canberra. He is the author of *Military politics, Islam, and the state in Indonesia; From turbulent transition to democratic consolidation* (2009) and editor (with Edward Aspinall) of *Problems of democratisation in Indonesia; Elections, institutions, and society* (2010).

Jeremy Mulholland is a PhD candidate in the Department of Management and the Asian Law Centre at the University of Melbourne on the topic 'Intra-elite rivalry in Indonesia; A new institutional economics perspective'.

Gerben Nooteboom is Lecturer and Researcher at the Department of Anthropology and Sociology, the University of Amsterdam. He teaches state and society, social theory, Southeast Asia, and the anthropology of development. His research has been on social security, poverty, inequality, ethnic violence, livelihood, migration, child labour, illegality and human adaptation in East Java and East Kalimantan. He wrote his PhD dissertation at Radboud University Nijmegen, the Netherlands, on 'A matter of style; Social security and livelihood in upland East Java' (2003).

J. Danang Widoyoko is the Coordinator of Indonesia Corruption Watch (ICW), a respected anti-corruption NGO in Indonesia. He has written numerous investigative reports on corruption cases, for example involving government budgets, state-owned enterprises, the public service, oil and extractive industries, and forestry. He also conducts training on investigative reporting, public service monitoring using report cards, and budget analysis. Danang graduated in electronic engineering from Satya Wacana Christian University, Salatiga. He serves as chairperson of the board of INFID (International NGO Forum on Indonesia Development), an NGO coalition that focuses on monitoring the impact of development and foreign debt.

Ian Wilson is a Research Fellow at the Asia Research Centre and Lecturer in the School of Social Sciences and Humanities, Murdoch University, Western Australia. His research interests include gangs, militias and non-state sources of violence, informal street economies and political corruption. He has published extensively on gangsters, organized crime and political violence in Indonesia in journals such as *Critical Asian Studies* and *Nationalism and Ethnic Politics*.



EDWARD ASPINALL AND GERRY VAN KLINKEN

## The state and illegality in Indonesia

In July 2007, at the height of a government military operation against separatist rebels in the Indonesian province of Aceh, a short but curious article appeared in the local newspaper.<sup>1</sup> It quoted the Aceh military commander, Major General Endang Suwarya, warning members of the public not to be hoodwinked if they received a telephone call from someone claiming to be him and asking for money. Apparently, a group of swindlers had been telephoning rich people in the province, with one first pretending to be Endang's adjutant. After ascertaining the identity of the person being called, the 'adjutant' would hand over the telephone to 'the commander' who would then ask for hundreds of millions of rupiah in order to help pay for the military operation. A number of local officials and businesspeople had apparently already fallen for the trick, and transferred large sums to the bank accounts in Jakarta nominated by the swindlers. Endang was angry: 'For as long as I've been serving here, I have never telephoned anyone to borrow or ask for money.'<sup>2</sup> Yet this was not the first time, nor the last, that confidence tricksters had pretended to be members of the security forces in order to extort money from people in Aceh; on the contrary, there have been repeated reports of individuals pretending to be police officers, army soldiers or agents of the State Intelligence Agency (Badan Intelijen Negara, BIN) for this purpose.<sup>3</sup>

There is, of course, an unspoken irony in such stories. Here we have ordinary civilians engaging in what are apparently acts of pure criminality that do not involve abuse of state office or misuse of state funds, but in order to do so, they find it most convenient to imitate corrupt state officials. Everybody involved apparently takes it for granted that this act of imitation is logical, even crafty. Neither the military officers being imitated, nor the police officers in charge of investigations, nor those being swindled, nor the reporters, ques-

<sup>1</sup> Small parts of this introductory chapter are based on Van Klinken 2008. The authors thank Ian Wilson, Howard Dick, Ross McLeod and Robert Cribb, and the two anonymous reviewers, for their very helpful comments on earlier versions.

<sup>2</sup> 'Mayjen Endang Suwarya dicatut untuk memeras', *Serambi Indonesia* 22-7-2003.

<sup>3</sup> See for example 'Rekan tersangka BIN gadungan dipanggil polisi', *Serambi Indonesia* 27-6-2007; 'Coba memeras geuchik, lima BIN gadungan dibekuk di Langsa', *Serambi Indonesia* 22-4-2009.

tion the effectiveness of the trick. And little wonder: the swindle is entirely plausible. Everyone in Aceh at the time of the story described above knew that military personnel were involved in all sorts of extortion rackets, as well as engaging in a variety of other 'off-budget' fundraising techniques, involving skimming off money from government development budgets, extracting protection payments from large companies, and participating in all manner of legal and semi-legal activities ranging from the marijuana trade to illegal logging. Ordinary soldiers and policemen routinely demanded payments from drivers of vehicles who drove through their checkpoints, or they stole money, household goods, livestock and other valuables from ordinary citizens' homes and farms when they raided villages in their hunt for separatist rebels. Hence the logic of the swindle: in order to be a criminal, so it seems, it helps if you are first a state official, or at least can pretend to be one. And although such swindles were especially common in Aceh, where the security forces were until recently an overwhelming presence, they also occur throughout Indonesia. National and regional newspapers frequently run stories about extortion scams by 'fake police' (*polisi gadungan*), fake soldiers, fake intelligence agents, fake prosecutors, fake anti-corruption commissioners and many other varieties of fake state officials.<sup>4</sup>

### *Empirical and theoretical starting points*

The concept of legality is inherent in the modern concept of the state. It is the state that defines what is legal and illegal and invests that distinction with legitimacy. The state also has the power to enforce the law, using violence if necessary, at least in theory if not always in practice. Every state that joins the United Nations subscribes to these ideas. Yet in reality state officials are themselves also not infrequently implicated in illegality of various kinds. This simple observation, which certainly holds true for Indonesia, is the starting point for the explorations in this volume.

Throughout Indonesia, as in many other countries of the world, the involvement of state officials in illegal activity is both ubiquitous and a matter of public knowledge. At the upper level of the state are the major scandals that habitually excite public opinion when evidence comes to light of senior government officials stealing from the public purse, striking shady deals with private entrepreneurs, or fleecing money from them. Very often the logic of illegality in such cases is nakedly self-serving and predatory, summed up by the Supreme Court judge in Tim Lindsey and Simon Butt's chapter in this

<sup>4</sup> See, for example, 'KPK gadungan ditangkap', *Kompas* 18-7-2006, 'Polisi gadungan ditangkap karena diduga memeras', *Pikiran Rakyat* 21-1-2010.

volume whose questions to a supplicant's lawyer are blunt: 'Do you have money or not? If you don't, I'll make an offer to your adversary.' As we move down, the same predatory dynamic underpins much official illegality, ranging from the policemen who extort money or sexual favours from suspects if they want to be released without trial, through to the impecunious elementary school teacher who charges the parents of his or her pupils unofficial but obligatory fees. However, as the naked greed of the wealthy senior official gives way to the more modest demands of the lower civil servant, who levies fees only in order to maintain a humble lower middle-class lifestyle, social attitudes toward such behaviour often change, with the demands of the less senior official frequently viewed as reasonable and sometimes even regarded with sympathy. Moreover, as some of the contributions in this volume make clear, illegality by state officials often also serves useful functions for large groups of ordinary citizens, thus not only for those who are cut special deals at the expense of others (such as rival litigants in court cases). As a result, such illegality is often viewed as entirely legitimate by large sectors of society. Consider, for example, the helpful immigration officials in the Riau Islands who sell migrants 'real but fake' travel documents cheaply so the latter can move on quickly to Malaysia or Singapore and who, as Michele Ford and Lenore Lyons explain in their chapter, are seen by local people as resisting an unjust and unworkable legal regime imposed on them by Jakarta.

It is when we begin to consider the social approval that such illegal behaviour often evokes that the censorious and normatively charged tone that surrounds much discussion of corruption, defined conventionally as the 'misuse of public office for private gain', begins to come under strain. This conventional understanding of corruption is also strained when we find examples of illegality that are ostensibly for 'public' purposes, such as a dramatic case in 1999 that involved some of Indonesia's most senior military officers counterfeiting Rp 19.2 billion (US\$2 million) in Rp 50,000 notes in order to buy weapons for pro-integration militia in East Timor. According to one of those charged in the case, this activity was carried out with the approval of officials at Bank Indonesia (BI), so long as 'the amount printed did not exceed Rp 200 billion. The numbers and series were to be given by BI, the quality of the printing had to be good, and the fake notes were not to circulate outside East Timor.'<sup>5</sup> As both Ross McLeod and Howard Dick and Jeremy Mulholland make clear in their contributions to this volume, state officials routinely violate their own cumbersome and opaque rules just to ensure the regular functioning of the bureaucracy. To further complicate matters, many state officials are also involved in 'ordinary' illegality that occurs in the societal domain and does not involve as its main focus the predation of state resources. Wherever one goes in Indonesia, state

<sup>5</sup> 'Investigation: smiling – all the way to the bank', *Tempo* 10-16 July 2001.



officials are especially likely to be involved in criminal activities that involve a high degree of organization, such as extortion and protection rackets, smuggling, illegal logging, and the narcotics trade, while law enforcement officers enjoy close and murky relations with everyday criminals.

Before we go further, a qualification is in order. We certainly do not believe that illegality is the exclusive preserve of state officials, nor that state officials never take action to uphold legal order. Much illegal activity in Indonesia is carried on entirely by individuals who are not directly connected with the state. Indonesia has its share of robbery by taxi drivers, enslavement of domestic servants by wealthy entrepreneurs, tax dodging by restaurateurs and the full range of mendacity, cruelty, crimes of passion and of desperation that modern societies are capable of generating. Moreover, the state employs a large number of functionaries to police the rules it sets for society. We do not wish to create the impression that state officials never uphold these rules. Many police detectives, prosecutors, judges, jailers, as well as teachers, social workers, and other public moralists do in Indonesia more or less what they do in other countries to control this kind of behaviour. Indonesia is by no means a Hobbesian jungle. According to (somewhat problematic and dated) comparative official statistics (Arthur and Marenin 1995), homicide, rape and robbery rates in Indonesia have historically been among the lowest in the world. But we have chosen not to focus primarily on these state successes in maintaining legal order. The reason is not that we dispute their reality. Rather it is that control of crime is so often overshadowed by other forms of illegal activity in which state functionaries collaborate or are even the directing agents.

Why, then, did we write this book? In the first place, phenomena that so constantly undermine public faith in the state cry out for morally engaged comment and analysis. The popular 1998 *reformasi* movement that brought down President Suharto's New Order regime demanded above all an end to illegal practices by state officials, from military human rights abuses to nepotistic investment policies. This movement created as its main rallying cry the condemnation of Corruption, Collusion, Nepotism (Korupsi, Kolusi dan Nepotisme, KKN), a phrase that has remained central to public political discourse to this day. The problem of corruption, which in public perception seems to trump all other forms of illegality, has stimulated a flood of advice to every government since that of Suharto, both from within and outside the country. Yet today corruption and other illegal practices by state officials have proven more resistant to reform than people had hoped. Many new anti-corruption regulations have been created, new institutions built, elections have introduced a measure of accountability for parliamentarians and elected executives, and the much lauded Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK) has made spectacular arrests. Yet Indonesia has crept up only slowly on international corruption lists. It has

gone from 2.0 to 2.8 (on a scale of 0 to 10) between 1998 and 2009, according to Transparency International's corruption perception index (admittedly an index that has been widely criticized for the methods that it uses).<sup>6</sup> According to the World Bank, Indonesia had by 2008 improved to 31% on 'control of corruption' from an absolute low of 9% in the chaotic year of 1998, but it has still not quite returned to its late New Order level of 33% measured in 1996.<sup>7</sup> Public opinion surveys in Indonesia itself likewise record alarmingly low levels of trust in public institutions, and a common view that corruption is all-pervasive. Indonesia's public political domain is still characterized by animated discussion of corruption and the abuse of power by public officials: this alone makes a scholarly treatment of this topic urgent and appropriate.

This ubiquity and resilience of corruption and other illegal practices by state officials points to a second reason why we wrote this book. As many reports have put it, corruption and other forms of state illegality in Indonesia are 'entrenched'. We argue it is precisely this entrenched character that requires attention. Rather than add to the flood of advice with another survey of the list of things that should be, could be, or had already been done to combat illegal practices, we wanted to do some serious intellectual work on the problem of entrenched illegality. What is state illegality entrenched in and how does it become entrenched? Answering this question involves first studying actual cases of state illegality, and trying to understand them, as far as possible, from the standpoint of the participants. In particular, as will become apparent through this volume, it especially requires studying closely the webs of relationships that run in all directions, both within and beyond the state. Within the state, for example, a senior teacher has to bribe his or her Education Department superior if he or she wants to be appointed school principal (as related in Danang Widoyoko's chapter). The 'backing' (*beking* or *deking*) that petty gangsters enjoy from military patrons who help to enforce their protection rackets among Jakarta's street vendors cross the formal boundary between state and society (see Ian Wilson in this book). Motorcycle thieves, pirates, drug dealers, prostitutes, illegal timber cutters, their clients and financiers, who sometimes appear to operate purely within society, are often protected by state actors. Comparative statistics throw little light on these relationships. Only detailed case studies of the kind included in this book can do that.

A third goal of the volume, therefore, was to see what inquiring into the nature of illegal activities by state officials would tell us about the nature of the state itself. Much discussion of corruption and other forms of illegal behaviour by state officials takes a highly normative view of the state, see-

<sup>6</sup> [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009](http://www.transparency.org/policy_research/surveys_indices/cpi/2009). For one criticism see Galtung 2006.

<sup>7</sup> Kaufmann et al. 2008: Table C6. Continually updated rankings available on full dataset, available through <http://info.worldbank.org/governance/wgi/> (accessed 8-3-2010).

ing them as deviations from an ideal bureaucratic machine bound by legal rationality. Even the words we use to describe this sort of behaviour betray these assumptions: misconduct, misuse, misdemeanours and so on. By looking at both the broad patterns and micro processes of state illegality, we wish to describe and understand the state as it is, not as we believe it should be. Taking this approach does not entail abandoning the moral engagement that underpins our work, but is simply necessary for thinking clearly about the state and illegality. Clear thought is especially necessary in circumstances where, as we explain below, there is a large gap between activities that are formally in contravention of state law and hence illegal and those which are the target of social opprobrium and hence illicit. Our observations of actual practices led us to rethink some fundamental ideas about the nature of the state in Indonesia, especially regarding its socially embedded character.

In noting the ubiquity and entrenched character of corruption and state illegality, and its centrality to how the state operates, we are of course not breaking entirely new ground in the study of Indonesian politics and society but instead building on a long tradition of close observation of illegal practices built up during the New Order and before it. Studies by Harold Crouch (1979), Richard Robison (1986) and others on the centrality of corrupt patronage distribution to the functioning of the New Order have become classics in the field. In the late New Order years, a growing focus on the state's links with criminal groups,<sup>8</sup> and historical research on the anti-communist pogroms of 1965-1966 (Cribb 1990) opened researchers' eyes to the illegal violence the state perpetrated. To mention just one other example, in a striking essay written in the aftermath of the collapse of Suharto's New Order regime, Tim Lindsey (2001:284) wrote of the New Order as a 'criminal state' in which 'the real structures and systems by which the New Order operated were illegal'. We have learned much from these and other prior research efforts, and present this volume as a contribution to an ongoing discussion about the nature of the state and illegality in Indonesia.

Studies of state actors' entanglement in illegality in Indonesia, and beyond, can be conveniently divided into four broad streams: marketist, culturalist, statist and strategic-relational approaches. The first category is the dominant one in writing on corruption, and has surprisingly little to say about the state except as the field in which corruption takes place; the final three are distinct approaches to the study of the state that imply different emphases and postures regarding the study of illegality by state functionaries. While the boundaries between the approaches are somewhat fuzzy, each has a distinct view on how to explain the sources and motivations of the intermeshing of state and illegality in countries like Indonesia.

<sup>8</sup> Especially in the so-called 'Petrus', or 'mysterious shooting', killings of 1983 (Bourchier 1990, Siegel 1998).

The first interpretation, which is dominant in the international scholarly literature on corruption, posits that state officials operate according to a market logic. Illegality by state officials – like all forms of crime – is a consequence of rational choice, in which participants balance the likely benefits of crime against the risk of being apprehended. Individual officials act like rational entrepreneurs seeking to maximize their ‘rents’. There is nothing inherently problematic with the state in this view, except that it is sometimes too weak to enforce its rules on all its members all the time. The Africanist Colin Leys (1965) wrote a pioneering paper articulating this viewpoint. He urged the study of corruption not primarily as a moral problem but as one involving material incentives for officials operating in an impoverished and poorly disciplined state. The political scientist James Scott was another pioneer of this approach with his observation that corruption was a businesslike affair (Scott 1969) (although Scott also emphasized the nature of the regime that dispensed corrupt patronage and thus foreshadowed the statist interpretation). On the assumption that people act collectively only if it brings them a private return (Olson 1971), neo-liberal economists subsequently developed a theory of rent-seeking behaviour that remains influential. In this view, officials enjoy 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 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 of government funds to cream off some of those funds on the way. Governments that implement regulations, for example, to restrict imports or license businesses, merely create opportunities for corruption that, on balance, cost society more than having no regulation at all (Krueger 1974). The implications were not only that corruption was more costly to society than previously thought, but also that the way to solve the problem was to reduce government intervention in the market, thus reducing the opportunities for state officials to act corruptly. The economist James M. Buchanan won the 1986 Nobel prize for developing these fundamentally anti-state ideas into a field of study known as public policy (Buchanan, Tollison and Tullock 1980). The approach long remained agenda-setting in anti-corruption prescriptions produced by multilateral agencies like the World Bank. By the late 1990s, however, the emphasis was shifting from pushing back government intervention, regulation and discretion to improving government discipline (Rose-Ackerman 1999). The World Bank, USAID, the United Nations Development Program and other international agencies have produced numerous expert ‘good governance’ reports over the last decade advising the Indonesian government how to reform its institutions to improve free market competition, reduce government red tape, protection and subsidies, and strengthen checks and balances. Most of

Indonesia's governance reforms since the International Monetary Fund intervention in 1997 have been technically informed by this advice. Yet the marketist approach has been criticized by many authors, including some in this book (see in particular the chapter by John McCarthy) on a range of grounds. One criticism has been that by locating the motive for corruption and other forms of state illegality in individual greed it misses wider contexts. For example it closes its eyes to the very embeddedness of such practices in state institutions, the often political motivations that guide such behaviour, and the social and cultural codes that govern and legitimate it.

The second approach, which we call culturalist, imagines that illegality by state officials is rooted not in rational calculation but in a moral order that legitimates certain forms of behaviour by officials even when they contravene the state's formal laws. Individuals act not primarily according to calculations of potential personal benefit balanced against the risk of exposure and punishment, but according to a coherent set of moral values. Very often, the roots of such a moral order are depicted as lying in the precolonial past. 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, it persists as a theatrical device in discourses aiming to discredit rivals; but everyone understands that such talk is hypocritical. Africanists find the culturalist argument so compelling because the modern state south of the Sahara is often so weak that it resembles a thin institutional veneer over a society whose roots lie far deeper (D.J. Smith 2006). In Indonesia the state is far less dysfunctional than in, say, Sierra Leone, yet here too it is much more thinly spread than in a developed economy. This is evident from statistics of, for example, civil servants as a proportion of the population, or the state budget as a proportion of GDP.<sup>9</sup>

Scholars studying weak states and resurgent authoritarianism in Southeast Asia in the 1960s and 1970s began to describe elite behaviour in terms of a return to a precolonial template. Several took an interest in the role of patronage in providing internal coherence to these states, in the power of the patrimonial values behind authoritarian and corrupt bureaucratic practices, and in the precolonial origins of both the values and the practices (Resink 1975; T.M. Smith 1971; Wertheim 1964). Indeed, the Austrian ethnologist Robert Heine-Geldern had helped found modern Southeast Asian studies in the United States with a 1942 paper on Southeast Asian notions of kingship

<sup>9</sup> Indonesia's central government tax revenue was 12.8% of GDP in 2001, less than a third of the 38.2% in the Netherlands, while 2.0% of the total population worked for the Indonesian government in 1997, less than half the 4.6% in the Netherlands in 1995 (Tables 1 and A.4 in UNPAN 2002).

(Heine-Geldern 1956). This led Benedict Anderson to write his influential paper on the resurgent influence of allegedly traditional Javanese values of deference on contemporary Indonesian politics, in which he ascribed official corruption to 'the residual influences of the appanage system [of precolonial times] in contemporary administrative behavior' (Anderson 1972:48). Harold Crouch, in his analyses of New Order military politics, likewise drew on the idea that precolonial styles of personal rulership had experienced a revival in the postcolonial state. Sharing insights common in Africanist and Asianist circles, he saw the bureaucracy as a highly personalized hierarchy of neo-patrimonial relations, in which 'traditional modes of thought and behavior have often continued to influence the workings of apparently modern institutions' (H. Crouch 1979:194). The idea of a 'culture of corruption' rooted in Java's feudal traditions remains strong in journalistic circles (Loveard 1999), and above all in Indonesian public discourse. For example, some years ago, the Indonesian historian Djoko Suryo wrote:

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 realized this was wrong after Multatuli in [the novel] *Max Havelaar* harshly criticized their tribute practices.<sup>10</sup>

During the late 1970s and 1980s serious doubts began to arise among scholars of Indonesia about such an approach, under the impact of both Marxist-oriented structuralism (see especially Robison 1981) and Edward Said's powerful critique of Orientalist scholarship, much of which, in Said's view, presented an ahistorical and essentialized understanding of the East and its culture. For Indonesianists these doubts were expressed in an important book by John Pemberton (1994), which showed that Javanese political culture had not remained static since precolonial times. On the contrary, it was largely constructed out of the interaction between the Javanese courts and the growing Dutch state during the nineteenth century. The manipulation of 'culture' continued during the New Order, when the regime invoked themes of Javanese subservience to enforce its authoritarian rule. Pemberton did not intend by this observation to replace the power of culture with that of the state, but rather to contextualize it. Thus, while culturalist explanations for involvement by state officials in illegal behaviour can often be revealing, they need to avoid reifying culture as static and somehow isolated from the behaviours they seek to explain. Rather, the cultural codes governing illegality are best seen as themselves embedded in and constructed out of dynamic

<sup>10</sup> 'Pamomong: budaya 'korupsi' di Jawa (1)', *Suara Merdeka* 14-8-1997.



interactions between state and societal actors.

The preceding two interpretations of the state's entanglement in illegality – the one marketist, the other culturalist – tend to think of the modern state as largely unable to discipline its members. The first sees state actors as primarily acting out of their own material interests, and the second sees them as mainly motivated by a complex of cultural obligations. A third interpretation, sometimes called the statist approach, attributes a great deal of autonomy to the state as a unit. Rather than seeing it as being too weak to prevent illegality, or as confounded by competing moral values, it views the state itself as a predatory institution designed to extract benefits for the people who control it.<sup>11</sup>

The dominant image of the state in the study of Indonesian and Southeast Asian politics and history is of an alien and sovereign force imposing its will upon society. The injurious effects of a relatively autonomous colonial bureaucratic machine upon an agrarian society became a major theme in Southeast Asian studies, notably at Cornell University under the influence of Oliver Wolters and Benedict Anderson. The model was attractive for many observers for a long time because colonial and independent states that lacked legitimacy and acted violently formed a pattern throughout the region in much of the twentieth century. Anderson took this approach to its apogee in an influential essay that posited something resembling a zero-sum contest between state and society in Indonesia. He described the New Order regime as representing little less than the victory of state over nation (Anderson 1983). This approach, which tends to see the state as a leviathan, undifferentiated and monolithic, gave rise to many revelatory studies of Indonesian politics. It especially helped explain instances of gross violence perpetrated by state officials against citizens (Anderson 2001). But this approach is arguably less useful for explaining the quotidian practices of everyday corruption and petty illegality with which this book is mostly concerned. Borrowing from Robert Cribb, we might also argue that this approach has little to say about the motivations behind state illegality, except to point to 'personal lust for extraordinary power – and a drive to maintain that power'.<sup>12</sup>

A fourth approach to the study of the state that has been gaining ground in recent years has sometimes been called 'strategic-relational'.<sup>13</sup> In this approach, illegal behaviour by state officials is best understood as a product of competitive strategizing among the heterogeneity of interests and actors that populates the state. While wanting to retain a central place for the state

<sup>11</sup> We are grateful to Robert Cribb for this formulation.

<sup>12</sup> Cribb 2009:2. Cribb made this comment in relation to early studies showing participation by Western states in clandestine and illegal activities, such as the heroin trade in Southeast Asia, pointing to the difficulties the insights conferred by such research had in meshing with conventional political science analysis.

<sup>13</sup> Jessop 2007. An alternative nomenclature would be derived from what Migdal (2001) calls a 'state-in-society' approach.

in their analysis even in developing countries, the scholars who formulated the strategic-relational approach have preferred to see the state less as an autonomous actor and more as an arena that favours certain kinds of strategic action while obstructing others, and where multiple players compete for influence, make alliances, and expropriate resources. One of the most influential authors in this field, Joel Migdal (2001:15-6), defines the state as 'a field of power marked by the use and threat of violence and shaped by (1) *the image of a coherent, controlling organization in a territory, which is a representation of the people bounded by that territory*, and (2) *the actual practices of its multiple parts*'. Viewing the state as 'field of power' is central to this emerging revisionist political science literature. Abandoning the conventional Weberian ideal type of the autonomous, bureaucratic state 'firing on all cylinders' (as Migdal 2001:14 put it), it proposes simply studying actual state practices with the eye of the ethnographer, minus the Weberian assumptions. It no longer sees the state as a 'thing', but as a relational arena. In this view, the essence of the state is relationships and strategies, developing through time and space, rather than static structures or impersonal rules.<sup>14</sup> The basic argument is to envision the state as a competitive arena and site of strategic struggle for the ultimate rule-making authority. The 'ideal' state, meanwhile, should be studied for what it is, namely an ideological construct or, in Migdal's term, an image, deployed by both state officials and their opponents in society. Another thrust of this thinking is that the homogeneity of the state, and its autonomy from social forces – themes prominent in writing about Indonesia during the New Order – have been greatly exaggerated. Instead, the study of the state is increasingly being reinserted into the study of society, and anthropologists, political scientists and others are becoming more alert to the ways in which state actors seek out and collaborate with societal allies, often to such an extent that the boundary dividing state from society may be blurred almost to the point of erasure, especially at the local level.

A strategic-relational approach helps illuminate the problem of illegality and the state in several ways. It can throw light on the ways in which the socially embedded character of the state shapes and impels certain forms of illegality. An example may be drawn from Gerben Nooteboom's study in this book of the relationships between police officers and Madurese migrant entrepreneurs, including ones engaged in illegal activity, in East Kalimantan.

<sup>14</sup> The theoretical political science literature on the state is too voluminous to trace here. One of us (Van Klinken) co-authored two introductory chapters tracing its links with writings about the state in Indonesia from the 1950s to the 2000s (both in Van Klinken and Barker 2009). A powerful statement rejecting the concreteness of the state and calling for an ethnographic study of actual state practices in all their fragmentedness is Abrams (1988). Van Klinken owes a debt to Bob Jessop's 'strategic-relational' approach to the study of the state (Jessop 2007). Jessop develops at length a provocative statement by Nicos Poulantzas that 'the state is a social relation', by which he meant that we cannot study the state without having a clear grasp of what we mean by society.



Here we see a complex web of relationships in which state actors not only threaten and exploit, but also depend upon, societal actors. As Nooteboom writes 'The police in Samarinda need to permit a certain level of criminality in order to keep criminality under control.' Police officers who collaborate with petty criminals while tolerating and profiting from certain forms of illegal behaviour can gain access to criminal networks. They need access to obtain the information, resources and agents they need to act against other forms of illegality they consider more serious. Here engagement by state actors in illegality is not so much a sign of venality or of the overbearing power of the state over society as it is of the state's dependence on societal actors. Seeing the state as an arena in which competing forces contend for power and resources also provides a political motive for state actors to engage in activity that can be illegal according to the state's normative rules. An example is drawn from Marcus Mietzner's chapter on illegal funding practices by political parties. We cannot understand this behaviour simply through a marketist lens, for there must be easier and less risky ways of making quick money than running a public election campaign. Nor will cultural deference to patrons do as an explanation, for frequently the relationships are quite businesslike. And, of course, by disaggregating the state into smaller units that often compete against each other, the strategic-relational approach avoids the statist trap of assuming the state is a single 'leviathan'.

The authors of this book debated these fundamental issues about the state and illegality at two workshops. We did not seek to reach a common view, but some commonalities did emerge. One of these is a certain theoretical ecumenism. Most of us feel the pull of all four approaches discussed above, and we believe all have made durable contributions to our understanding of the problem of the state and illegality. We are not necessarily trying to burst any paradigms, or to create new ones. There is, as we have indicated, a rich tradition of studying the state and illegality in Indonesia, even if it does not always use the same terminology and nomenclature that we use here. We want to contribute to this growing tradition. Before we explain how we hope to do so in conceptual terms, it is necessary to explore the methods contributors to this book used in their research.

### *Methodological challenges*

Illegality is notoriously difficult to study directly. In most situations, illegal activities are either fully or partly hidden. Individuals involved in illegal behaviour typically have strong interests in concealing that involvement, because

they fear legal sanction, social opprobrium or both.<sup>15</sup> Their individual interests in concealment are typically reinforced by strong collective codes of silence in institutions and networks involved in the illegal behaviour, codes that can be policed socially, by exclusion from the benefits of illegality or by physical violence. Even where participants know that certain forms of behaviour (petty corruption, for example) are highly unlikely to invite juridical punishment, even a small risk is typically enough to discourage them from breaking their habit of silence to discuss their involvement openly with non-participants. Where the illegal activity in question, such as logging in state forests or unofficial border crossing, is locally socially acceptable or legitimate, and takes place more or less in the public eye, participants can be more willing to talk. But even then they are likely to fear that open acknowledgment to a researcher or journalist might invite the unwelcome attention of outside law enforcement officials. Moreover, illegal behaviours are often conducted in a highly coded language that can be next to impossible for non-initiates to penetrate.

In general, secretiveness increases in tandem with both the illicitness and illegality of the behaviour in question, and with the risk and magnitude of punishment. It is easier to research petty corruption than grand corruption, and easier to research, say, the smuggling of contraband where it is everyday and visible (for example, ordinary trade goods on the Thai-Burma border) than where it is highly secretive (for example, the smuggling of narcotics through major airports). Finally, and of particular concern for this book, illegality involving state officials is almost by definition difficult to research because, as already indicated, modern bureaucratic states are based on the principle, or at least the fiction, that they are rule-bound and disciplined organizations. Hence, no matter how ubiquitously state officials engage in corrupt and other illegal practices, they are typically unwilling to acknowledge them publicly.

As a result of this combination of circumstances, directly researching illegality can be both difficult and risky for researchers and those who help them. Investigative journalists and other researchers who have looked into organized crime in some countries have been killed; some Indonesian journalists who have dug too deeply into corruption cases have suffered the same fate. Many others have been subject to non-fatal forms of violence, or threats of it. The more common problem is that of information failure: the frustrating experience of coming up against a blank wall, of knowing that a particular form of illegal behaviour is everywhere around you, but learning that nobody will even acknowledge its existence in anything but the most platitudinous terms. Little wonder, therefore, that so much literature on illegality ends up relying on data produced by law enforcement agencies or on anonymous

<sup>15</sup> For interesting comparative discussions of the practical, ethical and methodological challenges of researching criminality, see Ferrell and Hamm (1998).

surveys and other forms of arms-length research.

How did the contributors to this volume try to get around these problems? What kinds of methods did we use and what lessons might be drawn from our approaches to benefit scholars studying similar phenomena in different countries and contexts? Answers to these questions begin with three observations.

The first observation is that many of the contributors to this volume did not become interested in the topic of illegality by design. Instead, many of us were drawn into it as a by-product of other research on a highly diverse range of subject matters ranging from party system institutionalization to migrant risk-taking cultures, from armed insurgency to local politics. That so many of us ended up becoming concerned with illegality is itself indicative of the centrality of this phenomenon, especially corruption, in Indonesia's economic, social and political structures.

But this background also had implications for the methods that many of us used in researching illegality. In most of the cases in this book where the interest in illegality arose as part of a wider research agenda, researchers were able to use the local or sectoral knowledge, expertise and contacts they had built up over long periods to gradually learn more about illegality. Some contributors had spent long periods getting to know informants from particular locations and/or sectors: Madurese brick makers in East Kalimantan (Nooteboom), former guerilla fighters in Aceh (Aspinall), political party leaders in Jakarta (Mietzner), senior officials in state security bodies (Honna) and so on. We were, in other words, able to draw on relations of familiarity and trust built up over long periods of fieldwork – sometimes totaling years – to slowly learn more about the illegal behaviours that are the subject of this book. If expressed schematically, we might say that our research typically progressed through phases: first, becoming generally familiar with a topic area, research site and set of actors; next, learning about the 'public transcript' (Scott 1985) of legally sanctioned activity concerning that topic; then, gradually picking up second-hand stories and rumours about the shadow world of corruption and illegality; and, finally, being able to discuss under-the-table details of such illegal behaviours directly with participants.

In one respect, therefore, this book is founded on what is typically called an area studies approach. Contributors to the book include persons trained in various disciplines (anthropology, economics, political science, sociology and history), but those of us from outside Indonesia have all spent long periods of training on the language, history, culture and politics of the country, and have spent years acquiring the research skills needed to conduct fieldwork there. The techniques most of the contributors used to research their chapters will be familiar to area specialist scholars with a variety of disciplinary backgrounds: long immersion in field sites, participant observation, semi-structured interviews, intensive utilization of local press reports, and so on.

As one of our contributors, Howard Dick, put it, our research often involved asking the basic question of all fieldwork: 'What do people do and why do they do it?' Curiosity about the social, economic and political interactions we witnessed around us prompted us to inquire into illegal practices, but doing so would have been impossible without knowledge of local culture, politics and language. Such knowledge was essential for at least beginning to understand the often subtle signals associated with illegal behaviour and to begin to penetrate the largely hidden world of illegality.

In some respects, therefore, this book may be read as a defence of area studies approaches, or at least as a demonstration of what theoretically informed area studies scholarship can produce. Indeed, we suspect that the skills that area studies training provides are essential for collecting data on, understanding, and theorizing about the sorts of behaviours discussed in this book. This comment applies not only to Indonesia: the inter-penetration of state and illegality discussed in this book is not just an Indonesian phenomenon but is strikingly similar to patterns described by scholars working in diverse settings in Africa, Latin America, Asia, Eastern Europe and the former Soviet states, and in parts of the developed world. The 'shadow state' is close to being a universal phenomenon, at least in the developing world (Wilson and Lindsey 2009). New understandings of the state that take into account this reality are almost exclusively products of area studies scholarship. Without the insights that grew from applying our area studies skills, we would still be constrained by highly stylized and abstract notions of the state that bear little resemblance to the state's actual workings.

A second observation is that, for most of us, conducting fieldwork research on illegal practices also meant adopting a considered approach to our informants, whereby we guaranteed their anonymity and safety and avoided judging them personally for participating in the activities we set out to study. Scholars who have researched similar topics in other places have been required to adopt a similar posture. Giorgio Blundo and Olivier de Sardan (2006:9), for example, in the introduction to their study on the everyday politics of corruption in Africa note that 'it was important that, *as researchers*, we refrained as far as possible from all moral condemnation and normative judgment throughout the duration of the study'. This posture derives from practical considerations flowing from the imperative that, if we are to understand it, corruption and state illegality 'has to be studied from the viewpoint of the participants' (Olivier de Sardan 1999:25). Research on illegality most often fails because informants seek to maintain secrecy. Both in order to overcome this challenge and for ethical reasons we were required to ensure confidentiality of sources to ensure that none of our informants or the persons close to them were harmed directly or indirectly because they assisted our research. This could at times lead to uncomfortable situations for the researcher. By not

stating disapproval of illegal acts, the informant might assume the researcher approves of them or might even wish to participate. Thus, one of our number (Ian Wilson) was once unexpectedly asked to address a group of about 200 petty gangsters, with police in attendance, to explain why he thought the group was within its rights to demand 'taxes' from businesses. Those present assumed that he would be a public advocate on their behalf.<sup>16</sup>

A third observation about the contributions in this volume is that many of their authors were informed by or made use of what some readers may consider to be a surprisingly large array of material available from public sources, especially from the Indonesian media. Especially since the fall of the Suharto government in 1998 (but even before that), the media have been full of reports about corruption and other impropriety by state officials. Indeed, we might say that exposing corruption has become the major concern of especially the quality print press over the last decade. The pervasiveness of this sort of reporting is itself a product of two contradictory features of illegality (especially corruption) in contemporary Indonesia that have already been remarked upon: its ubiquity, pervasiveness and centrality in virtually all forms of state activity on the one hand, and the social illegitimacy of much of it on the other. This combination of circumstances means, for one thing, that there has been an enormous volume of public reporting on corruption and other illegal behaviour by state officials, even if relatively little of this reporting is deeply investigative, and if there remain many silences and inconsistencies in it. The silences are due in part to what is commonly called the 'envelope culture' in the media itself – so named for the most common method for conveying cash payments to journalists. Yet the envelope culture has not silenced some extremely revealing public reports about corruption. The story of involvement by state intelligence officers in mass-scale counterfeiting near the start of this introduction is one of them. Highly detailed stories abound about bribes and commissions paid by aspiring politicians in the regions to legislators or party officials whom they believed would further their ambitions. Almost all the contributors to this book have learned a great deal about their topics from the Indonesian media and we should acknowledge our debt.

Even with the combination of sources, skills and methods elaborated upon above, the contributors to this volume still faced a set of challenges that we suspect are common to researchers on the state and illegality anywhere in the world. These challenges can constrain the approaches that researchers take to their topics and limit the information they acquire. Some of these limitations are evident in this book, perhaps not so much in what it does contain as in what it does not touch upon.

A first limitation concerns sources. It remains very difficult to conduct

<sup>16</sup> Our thanks to Ian Wilson for sharing this experience with us.

research on illegality and the state by obtaining information directly from state officials involved in illegality. Most of the scholars in this book approached their topics from the margins. There were exceptions, but our overall tendency was not to seek or obtain information from state officials involved in illegal activities, but from people who had dealings with them. We spoke with Madurese migrants struggling to establish themselves economically, rather than with the police officers who levy fees on them; with ex-combatants trying to make it in the contracting industry, rather than the government officials they bribe and intimidate; with petty gangsters rather than the police officers with whom they cooperate, and so on. Sometimes we were able to cross-check information from other sources, such as the press and NGO reports. Most respondents naturally show a bias determined by their position in the system of relations in a particular illegal activity, so the ongoing problem is how we can obtain a full picture. Where illegal behaviours are locally legitimate and carried on more or less in full public view, it can be less difficult to access state officials. Thus Michele Ford and Lenore Lyons had greater success in speaking directly with state officials engaged in irregular border crossing in the Riau Islands than did most of the researchers who contributed to this book. By contrast, Ian Wilson chose, for his research on relations between gangsters and police in Jakarta, to interview retired police officers rather than active ones. This technique has also been long used by researchers working on the Indonesian military.

Our preferences are part of a broader pattern. With only a few exceptions, scholars have not been able to observe closely the everyday operations of state officials in such a way as to attain direct insights about their involvement in formally illegal activities. (One notable exception is Joshua Barker, who wrote a PhD dissertation on the police and local security in West Java: Barker 1999a). This is not only because state officials tend to be reticent about such activities, but also because of a wider culture of secrecy in the bureaucracy that makes it difficult to obtain official permission to conduct such research. One participant in the workshop that led up to this volume, but who did not end up contributing a chapter, had achieved the rare feat for a foreign researcher of building close research relationships with police officers in one Indonesian town. He observed that he did not want to make inquiries of them or other informants about police involvement in corruption because he believed that such inquiries would jeopardize his relationships and lead to them cutting off all contact. Another participant (Gerben Nooteboom), whose field research touched directly upon illegal activity by police officers, did not attempt to even make contact with those officers, fearing this would attract unwelcome attention. Many other participants agreed that they deliberately minimized their direct contacts with state officials – especially those from law enforcement and security agencies – because they feared that if their research



interests became known the authorities could take action to interrupt or stop their research, or even have them expelled from the country. As a result of such practical difficulties, in Indonesia as elsewhere, we still have a long way to go in understanding what might be called the internal modalities of state officials' involvement in illegal activities, especially the norms and moral codes governing that involvement.

A second limitation concerns the range of topics we address in the book. Certain types of activity remain very difficult to research and are hardly touched upon in this book. One contributor, Ian Wilson, remarked that while he found it possible to observe the daily activities of small-scale gangsters running local protection rackets in Jakarta, as soon as his inquiries began to touch upon the activities of much more secretive, violent and wealthy gangs known to be involved in more highly organized criminal activities such as the narcotics trade, he was immediately warned off in a threatening manner. Petty gangsters themselves also warned him he would end up 'out of his depth'. In his research on contracting activity in post-conflict Aceh, Edward Aspinall found it much easier to obtain information about the activities of relatively poor, low-ranking and unsuccessful ex-combatants than about how their leaders were managing to strike deals with senior government officials. As a result of such difficulties, where high-scale elite corruption or illegality in Indonesia is discussed publicly, the discussion tends to be either highly charged and condemnatory (in the media or advocacy literature) or, in the scholarly literature, rather formal and abstract. Where flesh is put on the bones of such analyses, it is common to rely on a relatively small number of cases that have been exposed by the media or anti-corruption NGOs, or which have been prosecuted. As a result, while we have a relatively clear picture of the ubiquity of corruption in the upper echelons of the state, we often get little more than glimpses of its fine mechanics there or how it is comprehended by the participants. When close studies are made of the lived experiences of corruption and state involvement in illegality (and this book is one of the first concerted efforts to do this for Indonesia), the tendency is to focus on the petty rather than the grand, the everyday rather than the spectacular, the local rather than the national. Thus, this book contains discussions of small-scale street gangsters, but nothing on high-level organized crime; we have a chapter about the important topic of massive illegal border crossing by people, but not about the smuggling of narcotics; we learn about how low-ranking police officers interact with impoverished migrants in Kalimantan, but not how their most senior leaders exchange fees and favours with politicians in Jakarta.

All of this leads to an obvious point: we hope that this book will be a spur for future research efforts to comprehend more fully the relationship of state and illegality in Indonesia. We believe that we have only begun to scratch the

surface of many of the most intriguing and perplexing questions in the field. Key among them are those regarding the way state involvement in illegality is understood and legitimated by participants, how it is regulated by them, what systems of norms govern it, and how participants themselves draw the line between tolerated and excessive illegality.

### *The approach of this book*

Most of the authors gathered in this volume are university academics (one is a member of an important Indonesian anti-corruption organization). None are directly engaged in making policy or advising government. This gives us less access to the inner workings of government, but arguably a sharper eye for the unexpected twists and ironies that policy inevitably brings about. The academics all consider themselves social scientists – historians, anthropologists, political scientists, and economists – and at the same time area specialists. No doubt with some of the conceit that comes from enjoying what we do, we feel we have something to contribute that the well-funded multilateral agencies are missing.

The following pages sets out what we consider to be the main messages of this book. The starting point for our project was our agreement that illegal activities by state officials are best understood, not as an aberration external to the normal workings of the state, but as somehow part of its very logic. Others had explored this line of reasoning before us (Heyman 1999), but not for Indonesia. It implied a research agenda of looking for contexts and processes that cut across the state-society divide. Doing that led us to fresh insights, and thence to the thematic chapter division.

The book begins with a set of essays which contextualize the problem of illegality and the state historically and theoretically. Robert Cribb begins by arguing that a central problem in Indonesia is not that law does not matter, but that there is an elaborate ‘system of exemptions’ that means it does not apply to many persons, especially state officials. ‘Indonesia is not a lawless society, but rather one in which law is unevenly implemented’, he writes. Understanding this system, he argues, requires paying attention to three factors – state weakness, the disjuncture between law and popular moral values, and the fragility of a tradition of social contract. Each of these he traces back to the colonial era and the early decades of Indonesian independence when state criminality was necessary to ensure the state’s survival. Next, we have an analysis that contextualizes the current period of pervasive state corruption by looking back to the three decades of President Suharto’s New Order regime (1966-1998). In this period, argues Ross H. McLeod, Suharto constructed a ‘franchise system [...] the fundamental purpose of which was to use the coer-



cive power of government privately to tax the general public and redistribute the revenue to a small elite'. The 'franchisees' in the system – virtually all state officials – were allowed to exploit the economic opportunities their positions brought for their own benefit, but they also had to make payments to the 'franchisor' to secure their positions in the system. A key to the system's resilience was the low formal remuneration paid to civil servants, making them permanently dependent on the system of private taxation in which they participated, and in a state of permanent political dependence on their superiors and, ultimately, Suharto himself. Howard Dick and Jeremy Mulholland, viewing the state as a 'political marketplace' draw particular attention to the use of slush funds to buy the loyalty of associates, rivals and subordinates within the state. Analysing the chief varieties of such slush funds, they trace the transition from a system under Suharto in which their use was arranged in a hierarchical pattern, to a much more fluid and complex Reformasi pattern of horizontal intra-elite rivalry and competitive party politics. In both periods slush funds play a key role in achieving an 'elite consensus that moderates intra-elite rivalry and the social divisions that would flow from it'.

The second section of the book consists of a set of closely observed case studies on state illegality in various sectors of Indonesian government. Each one of these studies also raises broader conceptual and analytical issues about the relations between state and illegality. The first two essays in this section both illustrate how local regimes of legality/illegality can come into conflict with those imposed from the centre. The first essay, by John F. McCarthy, looks at the vexed topic of 'illegal logging' in Indonesia. He points to a 'mismatch between legal logic and everyday practices' in the management of Indonesia's natural resources. He does this by describing instances in which local people exploit the forest 'more in keeping with local perceptions of justice than the formal law', and instances when, following Indonesia's democratic and decentralizing reforms from the late 1990s, local administrations authorized forestry activities that technically violated existing state laws. Michele Ford and Lenore Lyons illustrate the extent and pervasiveness of the phenomenon of local state illegality as they explore a sprawling but efficient web of migration agents and public servants in the Riau Islands. They cooperate to assist would-be 'illegal' migrants to obtain 'real but fake' documents that help them to cross the international border to Singapore and Malaysia to find employment. This system of illegality is understood by its participants not as something exploitative or oppressive, but as a helpful response to local needs as well as the needs of migrants, in the face of an alien and unjust migration regime imposed on them by the national government in Jakarta. If Ford and Lyons describe state illegality from the perspective of some of the most marginalized and disempowered people in regional Indonesia – undocumented labour migrants – Marcus Mietzner, by contrast, looks at the

apex of political power in the regions. He details how aspirants for state office at the local level – candidates in direct elections for local government heads – systematically and flagrantly disregard the legal regime governing campaign finances. They raise money from private donors, to whom they remain indebted after winning office. Gerry van Klinken and Edward Aspinall take up the same theme of the intermeshing of local economic and state power by examining the construction sector, which in Indonesia is the source of income for a hugely politically influential class – contractors – who are dependent upon state largesse for their success. In the Suharto era, relations between state actors and contractors were organized through formal corporatist organizations. Since democratization, contractors have remained tightly bound to the state, but now through complex and informal webs of influence and exchange. The pervasive system of corruption that results has proven resistant to attempts to reform construction and clean up government procurement. J. Danang Widoyoko explores corruption in the education sector. His analysis identifies four levels of corruption, from the Ministry of National Education and the national parliament in Jakarta, down to the principals and teachers at the school level. As with the preceding two chapters, Widoyoko also illustrates the intrinsically political nature of corruption. Everyone, from officials at the Ministry of National Education in the centre down to school principals in the villages, needs extra money. Whether they gain it from the national budget or from fees they illegally levy on students, they use it partly to buy political support and pay off superiors and potential adversaries. The recipients range from obstreperous legislators able to sabotage Ministry policy at the centre, to local bureaucrats able to transfer principals to remote and poor schools. In the last piece in this section, Simon Butt and Tim Lindsey provide a detailed exploration of illegality in the judicial system. Given the central role of the judiciary in upholding legality, this is clearly a crucial case study. Yet the judiciary is itself deeply implicated in illegality in Indonesia. Butt and Lindsey distinguish between ‘internal illegality’ and ‘external illegality’. The former covers illegal actions by judges themselves in the discharge of their judicial functions, typically in the form of deciding cases not on their merits but on the basis of corrupt payments. The latter concerns the judicial endorsement of illegal acts performed by other agents of the state. On the one hand, external illegality may have declined in the post-Suharto period: the judiciary has become more inclined to find that certain actions of state officials are illegal. (Human rights abuses by military officers constitute an important exception.) Internal illegality, on the other hand, is as entrenched and pervasive as ever, with judges fighting hard to resist attempts to impose external accountability mechanisms on them.

Finally, the connection between insecurity and illegality was strong enough that we placed the essays dealing with this problem in a third section of their

own. The poverty of the good governance approach to the problem of illegality is nowhere more evident than in its inability to sense the extent to which people's actions are motivated by fear. Conversely, insecurity is central to our political approach to the problem. It is the logical consequence of the internal competition that characterizes the state. Hence, the very marginality and legal tenuousness of many of the business activities engaged in by Madurese migrant entrepreneurs in East Kalimantan is what drives them into the arms of the police as both protectors and exploiters (Nooteboom). The racketeers Ian Wilson describes are not simply entrepreneurs engaged in a benevolent market. They are engaged in a frequently violent struggle for political mastery over territory. Nor does it help to view their activities as evidence that the state is weak. On the contrary, they owe their strength to the superior repressive capacities of their 'backers' within the state apparatus. The irony of predatory violence emanating from the state whose most basic function is to keep citizens safe is a most pressing reason to review mainstream views of the state. The failure of the mainstream discourse on the state can have serious practical consequences. This is evident in Jun Honna's chapter on the international dialogue about transnational crime. The discourse permitted Indonesia's security agency charged with the 'war on drugs' to argue effectively for increased international funding in the name of capacity building, while shielding it from the consequences of the state's own involvement in drug crimes.

The idea in this book was not to cover every conceivable sector or aspect of illegality, but rather to explore patterns that may be common to many sectors. Readers may object that some key sectors – fisheries, for example – have been neglected. Our book also does not deal at length with certain aspects of illegality that are arguably crucial, among them gendered aspects of illegality, and the role of customary law (*adat*) as an alternative source of notions of legality. Nor, as already pointed out, did we seek to achieve a uniform view of the correct meaning of the inter-penetration of the state and illegality. Nevertheless, we think that the volume contributes a breadth of discussion that is rarely found in analyses of state illegality and corruption, suggesting new avenues for future research, and pointing toward new ways of thinking about the topic. The following pages abstract from the essays in this collection what we, the editors, think are among the most important insights into the subject of illegality and the state in Indonesia.

#### *The ubiquity and centrality of illegality to the state*

If we hope this book will convey one simple message it is this: illegality by state officials is as central to the way that the state operates in Indonesia as are the formal rules and bureaucratic structures that constitute the state on

its surface. It should thus be a central task of scholars to integrate consideration of such illegal practices into the way that we conceive and analyse the Indonesian state. Although, as we have noted, much of the literature on corruption in Indonesia points to its 'entrenched' and 'pervasive' character, too often the discussion remains trapped in a limiting normative framework that takes either positive law or idealized notions of good governance as their starting points. It thus sees corrupt or illegal activities by state officials as aberrations.<sup>17</sup> In reality, if there are pockets in state institutions where formal bureaucratic procedures and legal rules are scrupulously observed, it is these pockets that are the aberrations, not the illegal practices that are so ubiquitous. The levying of illegal taxes on students by school principals who need the money to buy protection or promotions from their supervisors; the collusive networks that determine how government construction contracts are awarded, the cooperative arrangements that local police officers systematically build with local gangsters: these practices are not just an aberration or an undermining of the state, they are the state.<sup>18</sup>

#### *The political character and functions of illegality*

Another lesson to be derived from this book is that it is essential to understand illegality by state officials through a political, rather than merely a legal, lens. Political structures and arrangements shape the 'syndromes of corruption' (Johnston 2005) that are experienced in different countries, and Indonesia is no exception. Of course, involvement by state officials in illegal behaviour frequently involves personal enrichment as one of its goals, but making this mundane observation does not get us very far. More importantly, our contributors also show that such illegality almost invariably occurs as part of collective, patterned, organized and collaborative acts, linked to the competition for political power and access to state resources. Understanding illegality in this way is helped by viewing the state less as a bureaucratic machine and more as a field of power characterized by competition and insecurity. Particular instances of illegality by state officials can almost always be viewed as connected to the distribution of material resources and political opportunities. These goods pass up, down and sideways through and along the patron-client networks and alliances that pervade state institutions and that crisscross the boundary between state and society. Some of the contributions in this volume demonstrate this dynamic clearly. The political problem of purchasing internal cohesion in an insecure system riven with competing fac-

<sup>17</sup> As already noted, one important exception is Lindsey 2001; see also Lindsey and Dick 2002.

<sup>18</sup> The authors would like to thank Ward Berenschot for this formulation.

tions is central to Ross McLeod's evocative essay on the 'Suharto franchise'. In McLeod's analysis, the New Order strongman encouraged officials to 'live off the land' in order to retain their loyalty. Since all of them were guilty of legal transgressions, he could easily threaten to exclude any of them from these perks by waving the rule book. As in a commercial franchise, incumbents were free to use their wits for their own self-advancement, while preserving the trappings of uniformity. In Howard Dick and Jeremy Mulholland's essay on political slush funds, rivalry between elite factions is again the operative principle, with slush funds providing the fuel that powers that rivalry, but also the resources that buy elite cooperation and social peace. Many of the close local case studies in the book also point to the ubiquity of political motives in illegality: petty gangsters act as muscle in electoral and other political conflicts (Wilson, Nooteboom), small-time contractors are drawn into political networks and fund election campaigns if they want to succeed in the construction field (Mietzner, Van Klinken and Aspinall). Indeed it might be possible to argue that the vast majority of illegality by state officials in Indonesia concerns the construction of political networks, specifically involving the purchase of political protection or access from above, or the purchase of political support or acquiescence from below, or to exclude rivals laterally.

There is of course also an exclusionary element and a class dimension to these bureaucratic politics that we should not lose sight of. Those with power to allocate state resources not only distribute them to buy support from above and below, but in doing so, they inevitably block access to actors who lack such privileged access. Those who are not part of the network find it hard to get jobs, their communities receive school buildings and bridges that crumble before their time, and they resent those who do manage to build privileged access. It is precisely for such reasons that condemnation of corruption remains a powerful rallying cry in Indonesian political life. It explains why local anti-corruption groups try to focus their campaigns on increasing community awareness about the effects of corruption and on opening up channels for them to participate more fully in the political process.

### *The benefits of illegality*

Yet awareness of the exclusionary and hierarchical framework that organizes much illegal behaviour by state officials should not blind us to the wider integrative and stabilizing functions that such behaviour may also have. Indeed, one of the revelations that was shared by most participants in the workshops that gave rise to this book was that many of the illegal practices we discussed had aspects that could be described as socially beneficial. Particularly at the lower end of the social ladder, they sometimes seemed essential to the proper

functioning of the state and provided benefits even to marginal groups. Sometimes those benefits occur in an exploitative context: the petty collusion between police and small-time entrepreneurs in East Kalimantan that Gerben Nooteboom describes costs the latter 5-15% of their turnover; but it also helps them get around many obstacles that would otherwise impede their activities. Police collaboration with criminals also, as Nooteboom argues, allows the police 'to keep criminality under control', an outcome that arguably has wider social benefits. Collusive favouritism and networks of illegality can provide working solutions to difficult problems. These include how to facilitate the speedy and convenient exit from Indonesia by would-be migrant workers (Ford and Lyons), or how to ensure that volatile and potentially violent ex-combatants are satisfied with the outcome of a peace process by giving them a stake in the existing system (Van Klinken and Aspinall). Indonesia's shadow state may be an alternative to a smoothly functioning, Weberian taxation and policing system. Precisely because it is a state that is based on personal contacts and networks rather than impersonal hierarchies and rules, it is also a system that gets lots of things done.

#### *The blurring of the state-society boundary*

The next point follows logically from our earlier one about how much illegal activity by state officials takes place in networks that both pervade the state but also cut across the boundary separating formal state institutions from society. If we view the hidden illegal practices of the state as being as central to its functioning as the bureaucratic structures and procedures that appear in the formal sphere – and we do hold this to be so – and if these practices involve alliances, networks and partnerships that cross the state-society divide, then it follows that our conceptual boundary between state and society begins to break down. At the very least, thinking seriously about state involvement in illegality helps us to think of the state as being socially embedded. As Joel Migdal has written, the presence of behaviours like 'corruption' and 'criminality' by state officials might in fact reflect the influence of alternative moral codes derived from society. This might lead us to re-think our image of the state:

Various parts or fragments of the state have allied with one another, as well as with groups outside, to further their goals. Those practices and alliances have acted to promote a variety of sets of rules, often quite distinct from those set in the state's own official laws and regulations. These alliances, coalitions, or networks have neutralized the sharp territorial and social boundary that the first portrayal of the state [that is, as a dominant and integrated entity that monopolizes rule-making in a given territory] has acted to establish, as well as the

sharp demarcation between the state as preeminent rule maker and society as the recipient of those rules. (Migdal 2001:20.)

Certainly, the following pages provide many illustrations of this dynamic at play. In particular, they illustrate just how many state (or at least state-like) functions in Indonesia (for example, the levying of 'taxes', the redistribution of material resources, the maintenance of order and suppression of certain forms of criminality) are carried out not simply by state institutions in their formal, bureaucratic mode, but by networks of state and societal actors, in which both sides are engaging in activities that are formally illegal.

### *The licitness of illegal activities*

Another theme that recurs in the chapters that follow therefore concerns the social legitimacy or 'licitness' (Abraham and Van Schendel 2005) of much of the illegal behaviour that we discuss. Many of our contributors draw attention to what we have already indicated is one of the striking characteristics of illegal behaviour by state officials: its often brazen openness. As Marcus Mietzner puts it in his chapter on elections: 'many politicians, entrepreneurs and rent-seekers simply ignore the law and expect that nobody will notice or care'. In some cases, as in those depicted by Mietzner and by Widoyoko, political apathy on the part of citizens accounts for their passive acceptance even of activity that may be disadvantageous to themselves. They are habituated to a system where everybody knows the formally illegal acts in question are unlikely to be punished. In such cases, state illegality may be illicit, or socially disapproved, yet still ubiquitous and open. However, another explanation is provided in chapters by John McCarthy and by Michele Ford and Lenore Lyons. These explore how societal actors and state officials in Indonesia's regions cooperate to build mutually beneficial local regimes, for example to regulate logging and migration. Both parties view the central government's rules as intrusive and antagonistic to local needs. Both of these accounts portray the central state as a predatory outsider, a hostile leviathan, that does not understand or connect with the real social world at the grassroots, a world in which low-ranking local state officials are immersed, adopting its rules and seeing its interests as their own. In such accounts we see conflict between local regimes of licitness and state legality, as well as conflict between the state's commanding heights at the centre and its socially embedded functionaries at the local level. In yet other chapters licitness differs between insiders and outsiders. Simon Butt and Tim Lindsey point to modes of illegal behaviour in and around the judicial organs where insiders apparently adhere to reasonably well-regulated rules and norms, while outsiders, from whom these behaviours are hidden, regard them



disapprovingly and call their practitioners the 'judicial mafia'. In such cases we may perhaps speak of 'insider's licitness'. All of this is to reinforce a point we have already made above, namely, that we hope this book will help to prompt future research into the internal modalities that shape state officials' involvement in illegal activities and, we might add, how those modalities intersect with broader societal norms concerning the licitness of such activities.

### *Policy implications*

Few of the contributors to this book are deeply engaged in the work of making policies or building institutions designed to combat corruption or other forms of illegal activities by state officials. As students of the deep structures, quotidian practices and social embeddedness of state illegality in Indonesia, it is perhaps not surprising that when we turned to the global discourse of good governance that has now become so dominant in shaping the fight against corruption in the country, the overwhelming instinct of most participants in this project was to stress the difficulties that beset that fight and the ironies that occur when the global good governance discourse is translated into practice. Most good governance anti-corruption strategies aim to depoliticize the state, to reduce the 'fight' to a technical operation. Here, cleanliness is to be achieved by separating vested interests from decision-making processes and by empowering oversight and investigatory agencies to enforce the law and police the probity of state officials (see Dick 2002). We feel the pervasiveness of illegality makes this a process fraught with difficulty. Very often the new regulations and institutions simply end up providing new opportunities for predation. No clearer example exists in Indonesia than the decentralization legislation passed in 1999. The legislation was intended to bring government closer to the people and thus make it more accountable, more responsive and, by implication, cleaner. Yet, as is widely known, decentralization also provided manifold new opportunities for local actors to engage in novel forms of predation. A similar example, given in this volume, is reform of school governance in the education sector (Widoyoko). Moving control of funds to the schools simply shifted the locus of corruption to the school level. Reform of government procurement is another case (Van Klinken and Aspinall). By creating a new class of supervisory consultants empowered to ensure that projects proceed on track, it created a new layer of predators in the system. In a slightly different vein, global discourses of good governance and crime prevention, and the funding support they promote, can readily be turned by state actors to their own, often particularistic interests. We see this in Jun Honna's analysis of how Indonesian security agencies seized upon new international discourses about transnational crime to expand their own authority.



Instead of trying to depoliticize corruption and the fight against it, we argue for accepting that both are political processes. The key to progress – even if it is by necessity very slow progress – will be in making politics accountable to a broader public. This requires greater politicization, not less. As Michael Johnston (2005:3) has argued,

[opposing corruption] is a matter not only of improved public management but of justice. It requires ‘deep democratization’: not just elections but vigorous contention over real issues among people and groups capable of defending themselves politically, and of reaching settlements sustained by their own lasting interests.

Combating corruption and other forms of illegality thus requires what has been called in another context a transition ‘from clientelism to citizenship’ (Fox 1994). Such a transformation – still in many respects a distant dream in Indonesia – would require a new form of socially embedded state: one that is embedded not in webs of clientelism and particularistic dependency, but in a politically engaged citizenry.