DEFENDING LEGAL FREEDOMS IN INDONESIA

THE INDONESIAN LEGAL AID FOUNDATION AND CAUSE LAWYERING IN AN AGE OF DEMOCRATIC DECLINE

Tim Mann
“Tim Mann’s *Defending Legal Freedoms in Indonesia* is an exciting new history and analysis of cause lawyering in Indonesia that sheds new light on the challenges to and successes of the major cause lawyering movement there. It provides a framework for thinking about the rocky course of cause lawyering and public interest law more broadly in Asia and beyond, and will become a crucial text for academics and lawyers as they think about these important areas.”

Mark Sidel, Doyle-Bascom Professor of Law and Public Affairs, University of Wisconsin-Madison

“In this outstanding study, Tim Mann brings alive the many dilemmas and obstacles members of Indonesia’s Legal Aid Institute have encountered when using the legal system to extend and defend democratic rights. As well as providing a definitive account of Indonesia’s most distinguished human rights organisation, *Defending Legal Freedoms in Indonesia* is packed with valuable insights for scholars and activists anywhere interested in democratic decline and how to resist it.”

Edward Aspinall, Professor of Politics, Department of Political & Social Change, Coral Bell School of Asia Pacific Affairs
Defending Legal Freedoms in Indonesia

*Defending Legal Freedoms in Indonesia* provides fresh insights into how cause lawyers navigate political and institutional change, by presenting and analysing the Indonesian Legal Aid Foundation (YLBHI), the oldest and most influential legal and human rights organisation in Indonesia.

Based on rich ethnographic research, this book charts the developments of the organisation since its founding in 1970, its contribution to the ending of the authoritarian, military-backed New Order (1966–98), its relative decline in the years following Indonesia’s democratisation and its revival in recent years as Indonesian democracy and human rights have come under threat. The author examines the tactics the organisation has used, including show trials and cooperation with grassroots communities, organising them and educating them about their rights. It highlights how this organisation flourished more under an authoritarian regime than under democracy and how its present, prominent, adversarial-political version of cause lawyering is playing a leading role in civil society’s resistance to further erosion of democracy and human rights. The book addresses recent democratic erosion under President Joko Widodo, and documents pivotal moments in Indonesia’s contemporary history, such as the ‘Reform Corrupted’ mass demonstrations in 2019, illuminating how democracy shrinks, and how lawyers push back.

The first book on Indonesia’s crucially important cause lawyering, activist lawyers’ group, Defending Legal Freedoms in Indonesia will be of interest to researchers in Asian Law and Indonesian Studies. It is also an essential point of reference for future research in public lawyering in Asia.

**Tim Mann** works in the development sector. He is an associate of the Centre for Indonesian Law, Islam and Society (CILIS) at Melbourne Law School, University of Melbourne.
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Lilis Mulyani

23 Defending Legal Freedoms in Indonesia
The Indonesian Legal Aid Foundation and Cause Lawyering in an Age of Democratic Decline
Tim Mann
Defending Legal Freedoms in Indonesia
The Indonesian Legal Aid Foundation and Cause Lawyering in an Age of Democratic Decline

Tim Mann
Contents

List of illustrations ix
Preface and acknowledgements x
List of abbreviations xiii
Glossary xx

PART ONE
Cause lawyering and the birth of the legal aid movement in Indonesia 1
1 Introduction: Cause lawyering and democratic change 3
2 The making of a ‘locomotive of democracy’: Cause lawyers under Soeharto’s New Order 34

PART TWO
Cause lawyering in a time of democratic reform and regression 71
3 Transitions and troubles: Organisational challenges after Soeharto 82
4 Mobilising the law: New opportunities, new strategies 119
5 Movement building: Community organising and legal empowerment 162
6 Accommodation and opposition: Engaging with the state 190
PART THREE
Revival

7 The ‘revival’ of structural legal aid and YLBHI’s return as an oppositional force

8 Conclusion

Index
Illustrations

Figures
2.1 The changing role of LBH (Isnur, n.d.) 58
3.1 Simplified YLBHI organisational structure (2023) 88
3.2 YLBHI directors of the post-Soeharto era 89
3.3 YLBHI income 2010–21 99
4.1 Complaints received by LBH offices during 2019 (YLBHI 2020, 16) 121

Table
3.1 YLBHI income 1996–2003 97
This book focuses on Indonesian cause lawyers and the strategies they use to promote social change. I owe a tremendous debt to the many Indonesian lawyers and activists who have dedicated their lives and careers to defending poor and marginalised Indonesians, and tirelessly fighting for Indonesian democracy, under incredibly challenging and sometimes dangerous circumstances.

Although this book is largely concerned with how cause lawyers push back against democratic decline, I began thinking about this project about a decade ago with a very different question in mind: what happens to activist lawyers after they get what they want? Under Soeharto’s authoritarian New Order (1966–98), the Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesian, YLBHI) had developed a reputation as a hub of resistance to authoritarian rule, an outspoken champion of democratic values and human rights in the face of significant state repression. When the Soeharto regime finally collapsed in 1998, Indonesia began a sweeping process of democratic reform, instituting many of the reforms that lawyers had been demanding. Despite this, after the democratic transition, there was a perception that YLBHI had failed to meet the promise it had demonstrated during the authoritarian New Order years. In the early 2010s, I worked with the Jakarta office of the international nongovernmental organisation The Asia Foundation. During this period, I managed grants to YLBHI and its regional Legal Aid Institutes (Lembaga Bantuan Hukum, LBH), and came to know many current and former staff members. I occasionally heard disparaging comments from other donor organisations, and members of Indonesian civil society, suggesting that YLBHI had struggled to adapt to the changing times. Some believed that the democratic transition had provided new opportunities to contribute to policy reform and YLBHI had yet to capitalise on them.\(^1\) Donors sometimes complained that YLBHI continued to deploy blunt direct action strategies, rather than undertaking “nuanced political and stakeholder analysis” that would allow for the development of “sophisticated and tailored” approaches to reform (Antlöv, Brinkerhoff, and Rapp 2010, 428).\(^2\)

This was a view to which I was sympathetic – partially, at least. It is significant that most people expressing this viewpoint were, like me, based at international donor organisations, which tend to prioritise governance
programming and formal policy change. I have no doubt that my own views were also coloured by my experiences working for a donor organisation with a strong governance focus. I was initially interested in exploring whether – and why – YLBHI had found it difficult to adapt to the democratic transition. As this book will make clear, however, my views quickly changed, especially as the extent of Indonesia’s democratic decline became clear.

Before I begin, I must thank the people who helped this book come into being. It would not have been possible without the support of YLBHI. In particular, I would like to thank Asfinawati (Asfin), Muhamad Isnur, Siti Rakhma Mary Herwati (Rakhma), Febi Yonesta (Mayong), Arip Yogiawan (Yogi), Era Purnama Sari, Fanti Yusnita and April Pattiselanno Putri, along with the rest of the YLBHI staff. Thank you for your wisdom and enthusiasm – you were exceedingly accommodating and generous with your time. It was inspiring to come to Diponegoro 74 every day and learn from you all.

I would also like to thank Syahrul from LBH Banda Aceh, Ismail Lubis from LBH Medan, Wendra Rona Putra from LBH Padang, Arif Maulana, Pratiwi Febry and Muhammad Rasyid Ridha from LBH Jakarta, Willy Hanafi, Lasma Natalia and Abdul Muit Pelu from LBH Bandung, Abdul Wachid Habibullah, Mohamad Soleh, Habibus Shalihin and Sahura from LBH Surabaya, Haswandy Andy Mas, Rezky Pratiwi, Andi Muhammad Fajar Akbar, Edy Kurniawan Wahid, Salman Azis, Abdul Aziz Dumpa and Ady Anugrah Pratama from LBH Makassar, Zainal Arifin, Eti Oktaviani and Herdin Pardjoangan from LBH Semarang, Emanuel Gobay from LBH Papua, Barita Lumbanbatu and the many other LBH staff, including finance and support staff, who I spoke to in more casual conversations. Thank you, too, to Abdul Fatah, Alghiffari Aqsa, Carolina S. Martha, Dadang Trisasongko, Erasmus AT Napiturpulu, Hasbi Abdullah, Hendardi, Herlambang P. Wiratraman, Indro Sugianto, Iqbal Felisiano, Luhut Pangaribuan, Meila Nurul Fajriah, Nurkholis Hidayat, Nursyahbani Katjasungkana, Patra M. Zen, Poengky Indarti, Ricky Gunawan, Robertus Robet, Taufik Basari, Todung Mulya Lubis, Yasmin Purba, Yunita, Patrick Burgess, Craig Ewers, Mohamad Doddy Kusadrianto, Renata Arianingtyas, Ajeng Wahyuni and Windu Kisworo.

This book started out as a PhD project, and I remain extraordinarily grateful to my supervisors, Tim Lindsey and Jennifer Beard, at Melbourne Law School, University of Melbourne. Tim, your enthusiastic encouragement, mentorship and friendship over several years has meant a great deal to me. You have been unwaveringly supportive of this project ever since I first began speaking about it with you years ago. Likewise, Jenny, I would not have completed my thesis without your thoughtful and incisive questions and calm encouragement. I could not have asked for better or more complementary supervisors. I am truly thankful to you both.

My thesis depended on the funding and scholarship I received from the University of Melbourne, and the assistance of the staff of the Research Office of the Melbourne Law School. I would also like to thank current and former staff at the Centre for Indonesian Law, Islam and Society (CILIS), Debbie Yu,
Ade Suharto, and Kathryn Taylor, for their support. I am indebted to Bivitri (Bibip) Susanti and Jentera Indonesia School of Law for facilitating and supporting my research process in Indonesia. I must also express my gratitude to other scholars and students in Melbourne, particularly Helen Pausacker, Annisa Beta, Tessa Toumbourou, Ken Setiawan and Laura (Lette) Nevendorff, whose guidance, advice and friendship helped me get through my PhD.

Additional research for this book was completed at the Nordic Institute of Asian Studies (NIAS) at the University of Copenhagen. It was a sad time to be at this important institution during its last year of operation. The closure of NIAS is an incredible loss for Asian studies in the Nordic region. I am grateful for the institutional support I received during my time there, and the opportunity to work with impressive and inspiring colleagues like Birgit Bräuchler, Terese Gagnon, Myunghee Lee, Cécile Medail, Rubkwan Thammabooosadee, Mai Van Tran, and Dechun Zhang. Thanks, too, to Inga-Lill Blomkvist, Frode Hübbe, Gerald Jackson, Ida Nicolsaen and Fanny Töpper for your warmth and companionship during the strange final months of NIAS.

I would also like to thank my friends and colleagues in Indonesia, from whom I have learned so much over the years. I would especially like to thank Sandra Hamid, Laurel MacLaren, Budhy Munawar Rachman, Lies Marcoses, Hana Satryo, the late Leopold Sudaryono, Kharisma Nugroho, Fitriana Nur, Ahsan Jamet Hamidi, Yurifa and many more current and former staff at The Asia Foundation in Jakarta. I am equally grateful to current and former staff at Yayasan Humanis dan Inovasi Sosial, including Tunggal Pawestri, Jonta Saragih, Siska Dewi Noya (Chika) and Tazia Teresa Darryanto. You all shaped my understanding of Indonesia and Indonesian civil society in important ways. Thank you for your generosity in sharing your knowledge and experience and, above all, your friendship.

Finally, love and thanks to my parents, Susanne and David, for your constant support. This book is dedicated to them.

Notes
1 See Davis (2015, 4) for an example of this critique.
2 Antlöv, Brinkerhoff, and Rapp make this observation about Indonesian civil society in general terms, but their phrasing here mirrors the kind of criticism that I often heard about YLBHI.

References
List of abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AJI (Aliansi Jurnalis Independen)</td>
<td>Alliance of Independent Journalists</td>
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<tr>
<td>amdal (analisis mengenai dampak lingkungan, or analisis dampak lingkungan)</td>
<td>environmental impact assessment</td>
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<tr>
<td>Bakin (Badan Koordinasi Intelijen Negara)</td>
<td>State Intelligence Coordination Agency</td>
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<td>BEM (Badan Eksektutif Mahasiswa)</td>
<td>Student Executive Body</td>
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<td>BIN (Badan Intelijen Negara)</td>
<td>State Intelligence Agency</td>
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<td>BMUA (Baku Mutu Udara Ambien)</td>
<td>Ambient Air Quality Standards</td>
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<td>BNN (Badan Narkotika Nasional)</td>
<td>National Narcotics Agency</td>
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<td>BPHN (Badan Pembinaan Hukum Nasional)</td>
<td>National Law Development Agency</td>
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<td>BPN (Badan Pertanahan Nasional)</td>
<td>National Land Agency</td>
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<td>CLS</td>
<td>Critical Legal Studies</td>
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<td>CSO</td>
<td>civil society organisation</td>
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<tr>
<td>Densus 88 (Detasemen Khusus 88)</td>
<td>Special Detachment 88, the Indonesian National Police’s counter-terrorism unit</td>
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<tr>
<td>DFAT</td>
<td>Australian Department of Foreign Affairs and Trade</td>
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<tr>
<td>DPD (Dewan Perwakilan Daerah)</td>
<td>Regional Representative Council</td>
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<td>DPR (Dewan Perwakilan Rakyat)</td>
<td>People’s Representative Council, the national legislature</td>
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<td>Acronym</td>
<td>Full Form</td>
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<td>DPRD</td>
<td>Dewan Perwakilan Rakyat Daerah</td>
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<td>Elsam</td>
<td>Lembaga Studi dan Advokasi Masyarakat</td>
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<td>Fitra</td>
<td>Forum Indonesia untuk Transparansi Anggaran</td>
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<td>FPI</td>
<td>Front Pembela Islam</td>
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<td>FPKR</td>
<td>Forum Pemurnian Kedaulatan Rakyat</td>
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<td>Gerakan Fajar Nusantara</td>
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<td>Golongan Karya</td>
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<td>HAM</td>
<td>hak asasi manusia</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICEL</td>
<td>Indonesian Centre for Environmental Law</td>
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<td>IDLO</td>
<td>International Development Law Organisation</td>
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<td>ICJR</td>
<td>Institute for Criminal Justice Reform</td>
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<td>ICW</td>
<td>Ikatan Advokat Indonesia</td>
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<td>ISSI</td>
<td>Institut Sejarah Sosial Indonesia</td>
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<td>ITB</td>
<td>Institut Teknologi Bandung</td>
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<td>IUP</td>
<td>Izin Usaha Penambangan. May be specified further, as in IUP Eksporasi, IUP Operasi Produksi</td>
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<td>JMPPK</td>
<td>Jaringan Masyarakat Peduli Pegunungan Kendeng</td>
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<td>Kalabahu</td>
<td>Karya Latihan Bantuan Hukum</td>
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<td>KIPP</td>
<td>Komisi Independen Pemantau Pemilu</td>
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<td>Kajian Lingkungan Hidup Strategis</td>
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<td>Komunitas Milah Abaraham</td>
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<td>Komisi untuk Orang Hilang dan Korban Tindak Kekerasan</td>
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<td>Komisi Kejaksaan</td>
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<td>Regional People's Representative Council</td>
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<td>Institute for Policy Research and Advocacy</td>
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<td>Indonesian Forum for Budget Transparency</td>
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<td>Islamic Defenders Front</td>
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<td>People's Sovereignty Purification Forum</td>
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<td>Archipelagic Dawn Movement Functional Groups, the political party of former President Soeharto</td>
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<td>human rights</td>
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<td>Institute for Criminal Justice Reform</td>
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<td>Indonesia Corruption Watch</td>
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<td>Indonesian Advocates League</td>
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<td>Indonesian Institute of Social History</td>
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<td>Bandung Institute of Technology</td>
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<td>Mining Business Licence. Mining Business Exploration Licence, or Mining Business Production Licence.</td>
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<td>Community Network for the Kendeng Mountains</td>
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<td>Legal Aid Training, or Legal Aid Workshop</td>
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<td>Independent Election Monitoring Committee</td>
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<td>Strategic Environmental Study</td>
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<td>Abrahamic Religion Community</td>
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<td>The Commission for Disappeared and Victims of Violence</td>
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<td>Prosecutors Commission</td>
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<td>Abbreviation</td>
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<tr>
<td>Komnas HAM</td>
<td>Komisi Nasional Hak Asasi Manusia (National Commission on Human Rights)</td>
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<td>Komnas Perempuan</td>
<td>Komisi Nasional Anti Kekerasan Terhadap Perempuan (National Commission on Violence Against Women)</td>
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<td>Kompolnas</td>
<td>Komisi Kepolisian Nasional (National Police Commission)</td>
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<td>Kopkamtib</td>
<td>Komado Pemulihan Keamanan dan Ketertiban (Command for the Restoration of Security and Order)</td>
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<td>Kostrad</td>
<td>Komando Strategis Angkatan Darat (Army Strategic Reserve Command)</td>
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<td>KPA</td>
<td>Konsorsium Pembaruan Agraria (Consortium for Agrarian Reform)</td>
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<td>KPK</td>
<td>Komisi Pemberantasan Korupsi (Corruption Eradication Commission)</td>
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<td>KRHN</td>
<td>Konsorsium Reformasi Hukum Nasional (National Consortium for Law Reform)</td>
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<td>KSUM</td>
<td>Komite Solidaritas untuk Marsinah (Solidarity Committee for Marsinah)</td>
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<td>KUHP</td>
<td>Kitab Undang-Undang Hukum Pidana (Criminal Code)</td>
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<td>KUHAP</td>
<td>Kitab Undang-Undang Hukum Acara Pidana (Code of Criminal Procedure)</td>
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<td>KY</td>
<td>Komisi Yudisial (Judicial Commission)</td>
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<tr>
<td>LBH</td>
<td>Lembaga Bantuan Hukum (Legal Aid Institute)</td>
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<td>LBH Apik</td>
<td>Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan (Legal Aid Institute of the Indonesian Women’s Association for Justice (not related to the YLBHI network))</td>
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<td>LBH Masyarakat</td>
<td>(not related to the YLBHI network)</td>
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<td>LBH Pers</td>
<td>Lembaga Bantuan Hukum Pers (Legal Aid Institute for the Press (not related to the YLBHI network))</td>
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<tr>
<td>LPH YAPHI</td>
<td>Lembaga Pengabdian Hukum Yekti Angudi Piadeging Hukum Indonesia (YAPHI Legal Services Agency)</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>LeIP</td>
<td>Lembaga Kajian dan Advokasi untuk Independensi Peradilan</td>
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<td>LPSK</td>
<td>Lembaga Perlindungan Saksi dan Korban</td>
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<td>Malari</td>
<td>Malapetaka Lima Belas Januari</td>
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<td>MaPPI, sometimes MaPPI</td>
<td>Indonesian Court Monitoring Society (of the Faculty of Law, University of Indonesia)</td>
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<td>FHUI</td>
<td>Masyarakat Pemantau Peradilan Indonesia, Fakultas Hukum Universitas Indonesia</td>
</tr>
<tr>
<td>MKMK</td>
<td>Majelis Kehormatan Mahkamah Konstitusi</td>
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<tr>
<td>Monas</td>
<td>Monumen Nasional</td>
</tr>
<tr>
<td>MPR</td>
<td>Majelis Permusyawaratan Rakyat</td>
</tr>
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<td>MUI</td>
<td>Majelis Ulama Indonesia</td>
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<tr>
<td>Nasdem</td>
<td>‘Normalisation’ of Campus Life</td>
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<td>NKK</td>
<td>Normalisasi Kehidupan Kampus</td>
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<td>NKTSAN</td>
<td>Negeri Karunia Tuan Semesta Alam Nusantara</td>
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<td>Opsus</td>
<td>Operasi Khusus</td>
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<tr>
<td>PBHI</td>
<td>Perhimpunan Bantuan Hukum Indonesia</td>
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<tr>
<td>PDI</td>
<td>Partai Demokrasi Indonesia</td>
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<td>PDI-P</td>
<td>Partai Demokrasi Indonesia Perjuangan</td>
</tr>
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<td>Peradin</td>
<td>Persatuan Advokat Indonesia</td>
</tr>
<tr>
<td>perda</td>
<td>peraturan daerah</td>
</tr>
<tr>
<td>Perkap</td>
<td>Peraturan Kepala Kapolres Republik Indonesia</td>
</tr>
<tr>
<td>Perludem</td>
<td>Perkumpulan untuk Pemilu dan Demokrasi</td>
</tr>
<tr>
<td>Perppu, or Perpu</td>
<td>Peraturan Pemerintah Pengganti Undang-Undang</td>
</tr>
<tr>
<td>PI</td>
<td>Perhimpunan Indonesia</td>
</tr>
<tr>
<td>PK</td>
<td>peninjauan kembali</td>
</tr>
</tbody>
</table>

Abbreviations:
- Indonesian Institute for an Independent Judiciary
- Witness and Victim Protection Agency
- The Fifteenth of January Disaster
- Indonesian Court Monitoring
- Society (of the Faculty of Law, University of Indonesia)
- Honorary Council of the Constitutional Court
- National Monument
- People’s Consultative Assembly
- Indonesian Council of Ulama
- National Democrat Party
- ‘Normalisation’ of Campus Life
- Archipelagic Nation of the Grace of the Lord of the Universe
- Special Operations
- Indonesian Legal Aid Association
- Indonesian Democratic Party
- Indonesian Democratic Party of Struggle
- Indonesian Advocates Union
- regional regulation
- Police Chief Regulation
- Association for Elections and Democracy
- Government Regulation in Lieu of Law, or interim emergency law
- Indonesia Association
- reconsideration, or reopening of a case by the Supreme Court
List of abbreviations

PKI (Partai Komunis Indonesia)  
Indonesian Communist Party
PKS (Partai Keadilan Sejahtera)  
Prosperous Justice Party
Polri (Kepolisian Negara Republik Indonesia)  
Indonesian National Police
PPP (Partai Persatuan Pembangunan)  
United Development Party
PRD (Partai Rakyat Demokratik)  
Democratic People’s Party
PSHK (Pusat Studi Hukum dan Kebijakan Indonesia)  
Indonesian Centre for Law and Policy Studies
PTUN (Pengadilan Tata Usaha Negara)  
State Administrative Court
PUDI (Partai Uni Demokrasi Indonesia)  
Indonesian United Democracy Party
RKUHP/ RUU KUHP  
Draft revised Criminal Code, or Criminal Code bill
(Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana)  
draft law or bill
RUU (Rancangan Undang-Undang)  
bill on mining of minerals and coal
RUU Minerba (Rancangan Undang-Undang Pertambangan Mineral dan Batu Bara)  
bill on land (tenure)
RUU Pertanahan (Rancangan Undang-Undang Pertanahan)  
bill on the crime of sexual violence
RUU TPKS (Rancangan Undang-Undang Tentang Tindak Pidana Kekerasan Seksual)  
Southeast Asian Freedom of Expression Network
SAFEnet  
Indonesian Workers Welfare Union
SBSI (Serikat Buruh Sejahtera Indonesia)  
Corrections Database System
SDP (Sistem Database Pemasyarakatan)  
Senior Staff and Leadership College of the Indonesian National Police
Sespimti, or Sespimti Sespim  
Sespimti, or Sespimti Sespim
Lemdiklat Polri (Sekolah Staf dan Pimpinan Tinggi Lembaga Pendidikan dan Pelatihan Polisi Republik Indonesia)  

xvii
List of abbreviations

SIUPP (Surat Izin Usaha Penerbitan Pers)  Press Publication Business Licence
SIUPP (Solidaritas Indonesia untuk Pembebasan Pers)  Indonesian Solidarity for Press Freedom
Supersemar (Surat Perintah Sebelas Maret)  11 March Instruction
Surpres (surat presiden)  Presidential Letter
TMII (Taman Mini Indonesia Indah)  Beautiful Indonesia in Miniature Park
TNI (Tentara Nasional Indonesia)  Indonesian military
TPHKI (Tim Pembela Hukum dan Keadilan Indonesia)  Team of Defenders of Law and Justice in Indonesia
UGM (Universitas Gadjah Mada)  Gadjah Mada University
USAID  United States Agency for International Development
Walhi (Wahana Lingkungan Hidup Indonesia)  Indonesian Forum for the Environment
Wantimpres (Dewan Pertimbangan Presiden)  Presidential Advisory Council
WIUP (Wilayah Izin Usaha Pertambangan)  Mining Business Licence Area
YLBHI (Yayasan Lembaga Bantuan Hukum Indonesia)  Commonly translated as Indonesian Legal Aid Foundation, a direct translation is Indonesian Foundation of Legal Aid Institutes
akta pendirian
Aliansi Nasional Reformasi KUHP
aliran kepercayaan, aliran kebatinan
anggaran dasar
anggaran rumah tangga
Ashura
asisten pengabdi bantuan hukum
bantuan hukum
beres
buta hukum
cacat formil
celaka
Cipta Lapangan Kerja, or Cipta Kerja
Dewan Pembina
Dewan Pengawas
Dewan Pengurusp
dwifungsi
Fraksi Rakyat Indonesia
Gejayan Memanggil

halal
Indonesia Vrij
Indonesia Menggugat
Insiden Monas, Tragedi Monas

foundation document, deed of establishment
National Alliance for Reform of the Criminal Code (KUHP)
traditional belief
articles of association, or
organisational constitution
organisational bylaws
A holy day observed by Shi’ā Muslims
assistant legal aid lawyer
legal aid
settled, sorted out, in order
ignorant of the law
procedurally flawed
disaster, harm, accident
Job Creation
Advisory Board
Supervisory Board
Board of Directors
dual function (of the military),
the political and social role of the military
Indonesian People’s Faction
Gejayan Calling, referencing the name of a street in Yogyakarta that was the site of a major student protest in 1998 permitted under Islam
Indonesia Free
Indonesia Accuses
Monas Incident, or Monas Tragedy, an attack on supporters of religious
Kamisan
kasar
keberpihakan

keterbukaan
Koalisi Ornop untuk Konstitusi Baru
Komite Masyarakat Sipil Untuk
Pembaharuan KUHAP
Komite Pembelaan Rakyat
lembaran putih
mafia hukum or mafia peradilan
Maulid Nabi

menembus batas
Milah Abraham

modernisasi hukum
Mosi Tidak Percaya
naskah akademik

negara hukum
Ombudsman Republik Indonesia
Pancasila

pedagang kaki lima
Pedoman Pokok Nilai-Nilai
Perjuangan YLBHI dan Kode
Etik Pengabdi Bantuan Hukum
pembangunan hukum
pendidikan hukum kritis
pengabdi bantuan hukum

pengacara
penodaan agama
penyadaran
peraturan

freedom by members of the Islamic Defenders Front (FPI)
Thursdays
rough, coarse, rude, crude
literally partisanship, alternatively ‘concern for…’
openness
Civil Society Coalition for a New Constitution
Civil Society Committee for Criminal Procedure Code Reform
People’s Defence Committee
white paper
judicial mafia
The commemoration of the birthday of the Islamic prophet Muhammad
breaking boundaries or crossing the boundary
‘Religion of Abraham’, a new religious movement connected to Gafatar
legal modernisation
Motion of No Confidence
the academic study or academic paper that accompanies a new bill, sometimes translated as ‘policy paper’
Rule of law. Literally, ‘law state’
Indonesian Ombudsman
The Five Principles, Indonesia’s state ideology
informal street traders
Guide to YLBHI Struggle Values and Code of Ethics for Legal Aid Lawyers
legal development
critical legal education
LBH legal aid lawyer, literally ‘legal aid servant’
lawyer
blasphemy
consciousness raising
regulation
<table>
<thead>
<tr>
<th>Indonesian</th>
<th>English</th>
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<tbody>
<tr>
<td>perbuatan melawan hukum</td>
<td>unlawful act, act in contravention of the law</td>
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<td>Peringatan</td>
<td>Warning</td>
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<td>Peristiwa 27 Juli</td>
<td>27 July 1996 Incident</td>
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<tr>
<td>Rechtsstaat</td>
<td>state based on law, rule of law</td>
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<tr>
<td>reformasi</td>
<td>Reform, the reform era following the fall of Soeharto</td>
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<tr>
<td>Reformasi Dikorupsi</td>
<td>Reform Corrupted</td>
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<tr>
<td>Risalah Sidang</td>
<td>Summary of Court Proceedings</td>
</tr>
<tr>
<td>rumah demokrasi</td>
<td>home of democracy</td>
</tr>
<tr>
<td>Sidang Rakyat</td>
<td>People’s Forum, or People’s Hearing</td>
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<tr>
<td>somasi</td>
<td>summons</td>
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<tr>
<td>surat edaran</td>
<td>circular</td>
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<tr>
<td>surat keputusan</td>
<td>decision, sometimes translated as decree</td>
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<tr>
<td>ulama</td>
<td>Islamic scholar</td>
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<td>undang-undang</td>
<td>statutes</td>
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<td>yayasan</td>
<td>foundation</td>
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Part One

Cause lawyering and the birth of the legal aid movement in Indonesia
1 Introduction
Cause lawyering and democratic change

Reform Corrupted
In September 2019, Indonesia witnessed the largest student and civil society protests in the country since the fall of President Soeharto’s authoritarian New Order regime two decades earlier. The protests were sparked by the national legislature (Dewan Perwakilan Rakyat, DPR) rushing through reforms to the 2002 Law on the Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK) that were “disastrous for the KPK and Indonesia’s anti-corruption drive” (Butt 2019). Political elites had long sought to weaken the KPK (Mietzner 2021, 162). This time, they finally got what they wanted.

Seemingly buoyed by their efforts to destroy the KPK, legislators insisted they would pass a revised Criminal Code (Kitab Undang-Undang Hukum Pidana, KUHP) by the end of the month, a job that lawmakers have grappled with for decades (Maharani 2019; Butt and Lindsey 2018, 200). The draft revised criminal code, known as the RKUHP or RUU KUHP, would have dismantled key democratic reforms and was roundly criticised for introducing new and expanded criminal offences (Akbari 2019). Among its most controversial provisions, the draft code criminalised co-habitation of unmarried couples and all consensual sex outside marriage, and reintroduced offences for insulting the president and the government that had previously been struck down by the Constitutional Court (Ristianto 2019). In addition to the RKUHP, lawmakers also said that, before their terms expired on 30 September, they planned to pass a new land law and revisions to laws on mining, corrections and labour that were criticised for diluting environmental protections, threatening citizen rights and further weakening anti-corruption efforts (Putsanra 2019). At the same time, legislators infuriated activists by showing none of the same urgency for passing a long discussed bill on the eradication of sexual violence (Cahya 2019).

The constellation of these multiple threats culminated in these landmark protests, which were dubbed #ReformasiDikorupsi (#ReformCorrupted) to capture the anger over the weakening of the KPK, and the sense that the achievements of the reform era (known as reformasi, and considered to have

DOI: 10.4324/9781003486978-2
begun in 1998 when Soeharto fell) were slipping away. Student protests began outside the national legislative complex in Jakarta on 19 September, after the passage of the revised KPK Law. They continued over several days in multiple cities across Indonesia, with the largest protests on 24 September. Thousands of students in Jakarta blocked one of the city’s main roads, displaying creative and often humorous banners that were shared widely across social media. According to Tempo magazine, about 50,000 demonstrators protested across the country on 24 September (Dongoran 2019).

The police response to the protests was excessive and brutal. The atmosphere in Jakarta at the time was on a knife edge. I spoke to activist and journalist friends who spent hours hiding in a university building after being pursued by police. One night during the protests, the street I lived on was closed by police, as they fired tear gas at retreating students. By the time the demonstrations abated, at least five students had died, hundreds were injured, and more than 1,300 protesters had been arrested, with at least 380 named suspects by police (CNN Indonesia 2019b). Many were detained without access to legal counsel or their families.

Speaking to crowds outside the national legislative complex on 24 September was legal aid lawyer Asfinawati (Asfin), then director of the Indonesian Foundation of Legal Aid Institutes (Yayasan Lembaga Bantuan Hukum Indonesia, YLBHI). In a searing speech to students from the back of a truck, Asfin said:

“They refuse to pass laws that are needed by the people. They refuse to pass the bill on the eradication of sexual violence. They refuse to pass the bill on Indigenous Peoples. But in a short time, they will pass laws that benefit them, that benefit their cronies, that benefit the oligarchs. Are we going to stay silent, or are we going to fight, my friends? Fight!”

(Trisman 2021).

It might seem unusual for legal aid lawyers to be engaging in acts of open political dissent or aligning themselves with popular protests like this, but YLBHI and its affiliated regional Legal Aid Institutes (Lembaga Bantuan Hukum, LBH) have long had a deeply political understanding of their role. LBH pioneered legal aid and legal activism in Indonesia under Soeharto’s brutal New Order (1966–98), defending political detainees, bravely speaking out against abuses of state power, and advocating for democracy, human rights and the rule of law in profoundly challenging circumstances. Yet its more overtly political activities do not mean that LBH lawyers eschew legal action. When students were arrested, there was never any question about which organisation would be there to defend them. Throughout its history, LBH has worked tirelessly within Indonesia’s dysfunctional legal system to try to secure better outcomes for Indonesia’s poor and marginalised. It performs a vital and desperately needed service in an environment where the poor really “only have access to the legal system as criminals” (Meili 1998,
496). This sentiment is so widely held that it is common for Indonesians to say the law is like a knife, “blunt upwards and sharp downwards” (tumpul ke atas, tajam ke bawah).

LBH was established by lawyer Adnan Buyung Nasution in 1970 to provide legal aid to poor and marginalised Indonesians. Its early leaders were also initially motivated by a struggle to limit state power through a largely lawyerly concern for instatement (or reinstatement) of the rule of law (Aspinall 2005, 100). But LBH quickly realised that simply providing pro bono legal assistance under the authoritarian system of the New Order was “hopelessly beside the point” (Lev 1987, 20). LBH devised its own ideology of legal aid and activism, which it termed structural legal aid’ (Nasution 1985). This concept held that legal aid should be directed at addressing the structural causes of inequality that resulted in the legal problems faced by the poor. Litigation was combined with a variety of nonlitigation activities, including community legal education, community organising, research and media campaigns (Nasution 1985, 37).

LBH became involved in many of the monumental, path-breaking cases of the New Order period. To name just a handful, it defended families evicted for the creation of Beautiful Indonesia in Miniature Park (Taman Mini Indonesia Indah), a pet project of the wife of President Soeharto, Siti Hartinah; in 1973, it supported transgender woman Vivian Rubiyanti in changing her gender on official documents following sex reassignment surgery; it defended student council administrators in the wake of the Bandung Institute of Technology (Institut Teknologi Bandung, ITB) 1978 ‘White Book’ controversy (Nasution 2011, 10); it advocated for female students’ right to wear headscarfs at school, at a time when the New Order regime sought to suppress public expressions of Islam (LBH Jakarta 2015, 27); it played a key role in advocacy following the death of labour activist Marsinah; it represented communities evicted during the construction of the Kedung Ombo reservoir; and defended activists charged with subversion after they established the leftist Democratic People’s Party (Partai Rakyat Demokratik, PRD). In the most sensitive cases, hopes of victory in the courtroom were virtually nil. Yet these highly contentious cases often functioned as a form of “political theatre” (Lindsey and Crouch 2013, 624). They exposed abuses of power to broader public scrutiny and embarrassed the government on the domestic and international stages.

In the late New Order years, as calls for reformasi grew louder, LBH became even more political and confrontational. It developed into a key centre of civil society opposition to the Soeharto regime, and a meeting point for activists, students and other pro-democracy actors (Aspinall 2005, 108). At one point, it even labelled itself a “locomotive of democracy” (Nasution 2011, 12). While it would be overstating LBH’s influence to suggest civil society was responsible for the fall of Soeharto, a crucial contribution of civil society – and LBH as one of its leading actors – was that it “eroded the ideological foundations of authoritarian rule” (Aspinall 2004, 82).
After Soeharto finally fell in May 1998, Indonesia transformed itself from an authoritarian regime to a lively constitutional democracy, and one of the freest countries in Southeast Asia (Aspinall 2015). One might assume that the demise of the New Order and the establishment of new democratic institutions would provide the conditions for legal and human rights organisations like LBH to thrive. To an extent, such assumptions are correct. There were indeed more opportunities for Indonesian lawyers to mobilise the law to promote social change after Soeharto left office. However, the experience of LBH tells a more complicated – and more interesting – story.

This book explores how democratic change affects lawyers and the strategies they use to promote social change, through a detailed case study of LBH, Indonesia’s most prominent and influential legal and human rights organisation. How have lawyers adapted to the new legal opportunities and more open political structure available since the fall of the New Order in 1998? How have they adjusted their views about the state, the legal system, their causes and their roles as lawyers with democratic transition and, more recently, with democratic regression? Has LBH been more or less effective in its efforts to advance social justice reforms since 1998? What do LBH lawyers see as the most appropriate strategies to respond to recent declines in democratic quality in Indonesia? These are the core concerns of this book.

This book contributes to the body of scholarship on cause lawyering, a term that refers broadly to the use of law to advance or resist societal transformation (Marshall and Hale 2014, 303). In probing the questions above, the book aims to complicate the relationship between cause lawyering and democratic change. By tracing the trajectory of LBH from the New Order period through to the current day, I find that there is a clear relationship between the quality of democracy and the form of cause lawyering practiced. However, this relationship is not what one might expect. LBH struggled following the democratic transition, and it is thriving again now that Indonesian democracy is unravelling.

**Cause lawyering**

Cause lawyering is a concept that was introduced by Austin Sarat and Stuart A. Scheingold in 1998, and explored further through a book and series of edited volumes (Sarat and Scheingold 1998b; 2001a; 2005; 2006a; 2008; Scheingold and Sarat 2004). Most definitions of cause lawyering seek to capture the activist nature of the concept. Cause lawyers are said to differ from “conventional” lawyers in that they consciously use their legal skills in pursuit of moral or political causes in which they believe (Hajjar 2001, 68). In fact, moral or political commitment is said to be “an essential and distinguishing feature” of cause lawyering (Scheingold and Sarat 2004, 4).

Cause lawyering is often directed toward the politically and socially marginalised (Munger, Cummings, and Trubek 2013, 365), and this is especially the case in Indonesia. Yet it entails more than the simple provision of legal
assistance to underrepresented individuals, such as with pro bono activities or conventional legal aid. Cause lawyers see their role as extending beyond client service to the advancement of certain causes (Scheingold and Sarat 2004, 3). This does not mean that cause lawyers do not take their duty toward clients seriously, but rather that they see client representation “as a means to their moral and political ends” (Scheingold and Sarat 2004, 7). The clients of cause lawyers are diverse, and may include poor and marginalised individuals facing direct legal threats, politically disempowered communities that have yet to develop a shared awareness about their rights, and even large, well organised social movement groups (Marshall and Hale 2014, 306–07). Sometimes, the cause being defended or advanced may be broad, and affect many groups in society, such as cause lawyering to defend the principle of freedom of expression. Cause lawyering does not preclude the representation of individual clients, but in taking on these cases, cause lawyers tend not to see their clients as atomised individuals. When legal efforts are directed toward correcting underrepresentation of individuals, such cases are viewed as having deeper political implications beyond the individual case. This also means that, inevitably, tensions occasionally arise when cause lawyers prioritise the affirmation of certain legal or political principles over their clients’ immediate, sometimes more pragmatic, concerns (Marshall and Hale 2014, 311; Scheingold and Sarat 2004, 17; Luban 1988, 319).

In addition to the essential element of moral or political commitment, cause lawyering is further contrasted against conventional legal practice in that it is “frequently directed at altering some aspect of the social, economic, and political status quo” (Sarat and Scheingold 1998a, 4). Or, to use Boukalas’s pithy description, cause lawyers are “essentially political actors – albeit ones whose work involves doing law” (Boukalas 2013, 396). For the purposes of this book, “cause lawyering” refers to “the set of social, professional, political and cultural practices engaged in by lawyers and other social actors to mobilise the law to promote or resist social change” (Marshall and Hale 2014, 303). This broad definition recognises that there are activities conducted by non-lawyers (such as paralegals or researchers) that also fall under the rubric of cause lawyering. Litigation is just one of many strategies associated with law that may be deployed in service of the cause.

Lawyers are involved in the administration of the law and are therefore sometimes considered part of the state justice system while also comprising an element of civil society (Liu and Halliday 2016, 4). The cause lawyers that are the focus of this book consider themselves to be firmly placed within civil society,14 independent of – and often in opposition to – the state. Non-profit civil society organisations (CSOs) have historically been the main site for cause lawyering on behalf of poor and marginalised groups (Weisbrod, Handler, and Komesar 1978; Nielsen and Alibston 2006, 1596), and they are the dominant site for cause lawyering in Indonesia. However, it is worth noting that cause lawyering can be conducted from a variety of practice sites, including pro bono work in private firms, and within government structures