

Cooperation and Non-Cooperation in Indonesian Criminal Case Processing: *Ego Sektoral* in Action

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Abstract

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In recent years, Indonesian reformers have called for greater cooperation among criminal justice actors when processing a case. Indonesia has a specific term to label the failure of criminal justice actors to cooperate, which is “*ego sektoral*,” literally translated as sectoral or institutional ego. Although legal commentators have frequently and ubiquitously used this term, there has been little attempt to deconstruct and examine its meaning.

Because of this, investigating the factors that lead to cooperative and uncooperative behavior among actors (police, prosecutor, judges, and defense lawyers) is a crucial aspect of research. This dissertation asks one fundamental question: What factors impede and induce cooperation among actors in Indonesian criminal case processing? In answering these questions, this dissertation derived its findings from interviews with 36 criminal justice actors from various ranks and the systematic analysis of relevant laws and internal regulations. Interview data have been collected, analyzed, and triangulated using a qualitative grounded theory approach. The interviews captured the interplay between the formal and informal workgroup rules that shape the actors’ incentive systems. After identifying the impeding and inducing factors, this dissertation examines and contrasts the two to understand the actual practices found in the system.

This dissertation divides its findings based on two main case processing levels: the pre-trial level relationship between the police and the prosecutor and the trial-level relationship between the judges and the prosecutors. At the pre-trial level, this dissertation suggests that the impeding factors come from the association between power competition, conflict, and distrust. As a result, it produces ego sektoral behavior that significantly affects the ability of the police and the prosecutor to work together. Meanwhile, this dissertation further indicates that the inducing factors designed to incentivize cooperation fail to negate the impeding factors. This problem can be categorized as a structural problem because it eliminates interdependencies between the two actors.

That structural problem also impacts the cooperation between judges and the prosecutor at the trial level. Because of such a problem, the Indonesian prosecutor cannot play their ideal role as prescribed by the formal rules. Consequently, this creates extra work pressure for the judges. However, this research indicates that the inducing factors are stronger than the impeding ones because of a shared need for efficiency in case processing.

Furthermore, defense lawyers can be categorized as creating both impeding and inducing factors depending on their litigation strategy and type of appointment. This research reveals that most Indonesian defense lawyers tend to cooperate with their counterparts because the system forces them to play a submissive role.

There are several important benefits of this research. The first is that it accurately maps the system of criminal case processing as it exists on the ground in Indonesia. Second, it detects problems and potentials associated with actors' cooperative and uncooperative behavior. Third, this dissertation goes beyond providing a detailed and rich description of the system by offering an in-depth insight into ego sektoral behavior and failed criminal justice reform by using its findings as an analytical tool. Finally, this research expands the growing literature that treats the criminal justice system as organizational activity.

Keywords: criminal justice administration; organizational analysis of criminal justice; criminal justice theories; socio-legal analysis of criminal justice; inter-agency relationship; ego sektoral; organizational ego; Indonesian criminal justice system; Indonesian case processing; Indonesian criminal procedure; politics of criminal justice.

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Chapter 1

Introduction

Background and overview

Since the *reformasi* in 1998¹, the Indonesian government has focused on incentivizing cooperation between criminal justice actors when processing a case. In fact, the need for cooperation is constantly voiced, formally and informally, as one of the primary missions of criminal justice reform.² Ironically, Indonesian criminal justice reform, which officially started in 2004, failed miserably in 2013 because the actors could not agree on a new structure for distributing criminal justice power in case processing. Several researchers have argued that the reforms did not happen because Indonesian criminal justice actors prioritized their own institutional interests and thus refused to cooperate toward common purposes as stated in the reform agenda.³ Indonesia has a specific term to label this phenomenon, called *ego sektoral*, literally translated as sectoral ego.⁴ This term has been used frequently and

¹ In Indonesian political history, *reformasi* is an event where pro-democracy factions ousted the authoritarian military regime in May 1998. Consequently, the era of transition to democracy began and thus triggered wholesale reforms in every aspect, including the criminal justice system.

² The opening paragraph of the latest draft (2013) of the Indonesian criminal procedure code says that there is an urgent need to build “harmony” among Indonesian criminal justice actors. See Drafter Team, “Draft of Indonesian Criminal Procedure Code” (2013), <https://icjrid.files.wordpress.com/2011/07/ruu-kuhap-des-2007.pdf>. The new government realizes that the *reformasi* created a new political situation after the collapse of the military regime because the old government left a vacant seat. Previously, the criminal justice system was controlled by the military. As a result, competition was triggered over resources among criminal justice actors. It is hard to deny that criminal justice power is a valuable resource, for good and for bad.

³ This is only the tip of the iceberg. Because of the failure to cooperate, there are at least 609,005 unresolved cases based on the Indonesian prosecutor’s office databases from 2005 to 2012. Because of it, the fate of the defendant is left hanging. See Jayson Lamchek, *Arresting a Due Process Revolution The Reform of Indonesia’s Code of Criminal Procedure and the Persistence of History*, ed. Pablo Ciochini and George Radics, Criminal Legalities in the Global South: Cultural Dynamics, Political Tensions, and Institutional Practices (Routledge, 2019); Fachrizal Afandi, “Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia” (Leiden, 2021).

⁴ Most of my informants (31 respondents) also mentioned *ego sektoral* when describing their own experiences. They used such a term to explain the biggest challenge in working together as a group when processing criminal cases.

ubiquitously in the Indonesian literature.⁵ To date, there has been no systematic attempt to demystify its meaning.

Because of these reasons, investigating the ability of criminal justice actors to cooperate and the underlying reasons behind ego sektoral behavior becomes a critical aspect of research. There is very little existing research on the issue of cooperation and non-cooperation, not just in Indonesian scholarship but also in the criminal justice literature in general. This dissertation is an attempt to fill that void using Indonesia as its case study. To gain a deep understanding of cooperation, non-cooperation, and ego sektoral in criminal case processing, this dissertation asks one fundamental question, what factors induce and impede cooperation among Indonesian criminal justice actors? By asking such a question, this dissertation aims to investigate the incentive system that drives the behavior of actors when working together to process a criminal case. For the purpose of this dissertation, I call the result of such an investigation as the “informal workgroup rules.”

In the global criminal justice literature, the approach to understanding the criminal justice system through informal workgroup rules has become a growing topic globally since the early 1970s during the period of law and society regime.⁶ This approach is known as the organizational analysis of the criminal justice system, and its framework is mainly borrowed from the field of sociology and political science.⁷

The fundamental concept of the organizational approach is based on the classical writings of three

⁵ If we google the term “ego sektoral”, it results in more than 650,000 findings. It is a loose term that depicts the defects in the Indonesian bureaucracy in general (not just criminal case processing). The search was performed on May 10, 2022, on Google Indonesia.

⁶ Burstein has written about the emerging trends in the use of organizational analysis in the criminal justice system in 1980. See Carolyn Burstein, *Criminal Case Processing from An Organizational Perspective: Current Research Trends*, 5 JUSTICE SYST. J. 258–273 (1980).

⁷ These are the name of scholars that pioneered the organizational analysis of criminal justice: Abraham S. Blumberg, *The Practice of Law as Confidence Game: Organizational Cooptation of a Profession*, 1 LAW SOC. REV. 15 (1967); George F Cole, *Criminal Justice As An Exchange System*, CAMDEN LAW J. 15 (1971); Malcolm M. Feeley, *Two Models of the Criminal Justice System: An Organizational Perspective*, 7 LAW SOC. REV. 407–425 (1973); Ralph A Rossum, *The Politics of the Criminal Justice System: An Organizations Analysis* (1978); Mirjan R. Damaska, *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process* (1991); James Eisenstein & Herbet Jacob, *Felony Justice: An Organizational Analysis of Criminal Courts* (Boston: Little, Brown, 1997).

renowned organizational-related social scientists in the 1950s, Max Weber, Talcott Parsons and Amitai Etzioni.⁸ From there, scholars have tried to apply their framework to place the criminal justice system in larger theoretical perspectives so that their analysis could be grounded in reality.⁹

As the name suggests, organizational analysis tries to understand the criminal justice system as an organizational or workgroup activity with actors as its members and, as a result, it treats the actors as a party lobbying for their interests in the system. When this framework emerged, it challenged the basic argument of the doctrinal scholar that the criminal justice rule operates in its own logic because they believe that the law has enough power to modify the behavior of its actors.¹⁰ It is not surprising since, during the 1960s to 1970s, the criminal justice system was heavily influenced by an obsession with the rule of law and human rights as its foundation after World War 2.¹¹ Nevertheless, reality shows that such an obsession does not naturally lead to stronger commitments by the actors to practice it.¹² That is

⁸ Max Weber, *Max Weber on Capitalism, Bureaucracy, and Religion: A Selection of Texts* (London; Boston: Allen & Unwin, 1983); Amitai Etzioni, "Two Approaches to Organizational Analysis: A Critique and A Suggestion," *Administrative Science Quarterly* 5 (September 1, 1960), <https://doi.org/10.2307/2390780>.

⁹ At that time, a group of scholars (mostly from a social-political science background) complained about the lack of theories in criminal justice. See John Hagan, "Why Is There so Little Criminal Justice Theory? Neglected Macro and Micro Level Links between Organization and Power," in *Criminal Justice Theory: Explaining the Nature and Behavior of Criminal Justice*, 1989, <http://site.ebrary.com/id/11021719>. Further discussion about the literature is provided in the next chapter.

¹⁰ Michael McConville et al., *Research Methods for Law*, Second edition. (Edinburgh: Edinburgh University Press, 2017), 2. In this writing, McConville depicted the position of law and society scholars: They put an emphasis not on the law as a formal rule, but the starting point is problems in society. Law itself might be a contributor to the social problem.

¹¹ Tom Bingham, *The Rule of Law*, Reprint edition (London: Penguin UK, 2011); Angus Nurse, *The Citizen and the State: Criminal Justice and Civil Liberties in Conflict* (Bingley: Emerald Publishing, 2020). After the war, the UN produced two important conventions in 1966 that also influenced criminal justice practice: International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).

¹² For instance, the opening paragraph of the current 1981 Indonesian Criminal Procedure Code (KUHP) says that the law is heavily influenced by ICCPR and therefore emphasizes individual rights. However, the violation of rights is still rampant because of the debate between "collective rights" and "individual rights." This debate has been happening across the globe, including in the U.S. American historian Sam Walker noted in 1980 that there was a visible tension between the arbitrary and capricious practices of criminal justice actors and the rule of law. See Samuel Walker, *Taming the System: The Control of Discretion in Criminal Justice, 1950-1990* (Oxford University Press, 1993).

why several scholars have used this framework because it can capture the working realities of the criminal justice system by systematically contrasting the “law in the book” and “law in action.”¹³

Although this topic has been the subject of casual conversation among Indonesian litigators, the area of this study is still under-explored. In Indonesian scholarship, one of the few pioneers of organizational analysis is Daniel Lev, an American political scientist who dedicated his work to exploring Indonesian legal and political culture since the 1960s.¹⁴ In his 1965 publication titled “The Politics of Judicial Development in Indonesia,” Lev highlighted the competition over power and prestige between police, prosecutors, and judges.¹⁵ Lev noted that in the 1950s, a few years after Indonesia gained independence from the Dutch, Indonesian legal actors were driven by their institutional political ambitions to pursue a powerful and prestigious position vacated by the colonial government.¹⁶ Although Lev’s work is influential and inspired many scholars, his framework is rarely used to understand the workgroup

¹³ These are examples of recent works that utilize the organizational framework: Christi Metcalfe, “The Role of Courtroom Workgroups in Felony Case Dispositions: An Analysis of Workgroup Familiarity and Similarity,” *Law & Society Review* 50, no. 3 (2016): 637–73; Ekaterina Moiseeva, “Plea Bargaining in Russia: The Role of Defence Attorneys and the Problem of Asymmetry,” *International Journal of Comparative and Applied Criminal Justice* 41, no. 3 (July 3, 2017): 163–84, <https://doi.org/10.1080/01924036.2016.1233441>; Samantha Fairclough, “Using Hawkins’s Surround, Field, and Frames Concepts to Understand the Complexities of Special Measures Decision Making in Crown Court Trials,” *Journal of Law and Society* 45, no. 3 (2018): 457–85, <https://doi.org/10.1111/jols.12100>; Jacqueline Hodgson and Yu Mou, “Empirical Approaches to Criminal Procedure,” in *The Oxford Handbook of Criminal Process*, by Jacqueline Hodgson and Yu Mou, ed. Darryl K. Brown, Jenia Iontcheva Turner, and Bettina Weissner (Oxford University Press, 2019), 42–66, <https://doi.org/10.1093/oxfordhb/9780190659837.013.3>; Zaiton Hamin, Mohd Bahrin Othman, and Ahmad Ridhwan Abd Rani, “When Law and Practice Collide: The Implementation of the Plea-Bargaining Process in Malaysia,” *Asian Journal of Criminology* 14, no. 3 (September 2019): 223–40, <https://doi.org/10.1007/s11417-019-09288-x>.

¹⁴ In 1970, Daniel Lev joined the faculty at the University of Washington school of political science until his retirement in 1999. Lev passed away on July 29, 2006, at the age of 72. This dissertation was also inspired by Lev’s collection of research notes from 1954 to 2005, which was archived by the University of Washington, University archives special collection at Allen library.

¹⁵ Daniel S. Lev, “The Politics of Judicial Development in Indonesia,” *Comparative Studies in Society and History* 7, no. 2 (1965): 173–99.

¹⁶ Lev, 175–80; George McTuman Kahin, *Nationalism and Revolution in Indonesia* (Cornell University Press, 2003), www.jstor.org/stable/10.7591/j.ctv3s8ndm. Lev’s work was based on the writings of George Kahin (originally published in 1952) about the period of “nationalism and revolution” in Indonesia (1945–1950) when the Dutch came back to Indonesia after the Japanese surrender at the end of World War 2. This period became critical for the formation of modern Indonesian history. During this period, Indonesian legal actors took part in fighting the Dutch.

interactions between actors when processing a case.¹⁷ This dissertation is motivated by Lev's approach, that one way (and it could be the best way) to explore the landscape of the criminal justice system is by seeing actors as a group of interests with goals to pursue. And it is hard to deny that there is a tendency to abandon formal and ideological goals to pursue their own institutional and personal goals.¹⁸

The type of question posed by this dissertation requires me to understand how the law works in its implementation. Since the discipline of law does not explicitly provide a specific methodology to evaluate the implementation of the law in society, this dissertation needs to borrow a qualitative grounded theory methodology that is fertile in the field of social science and humanities. As a method of exploration, from June 2020 to August 2021, I interviewed 36 Indonesian criminal justice actors to capture their experiences when working together as a group and their perceptions of how the system operates. Apart from the interview, I also conducted document analysis to strengthen my findings. In this context, grounded theory is used as a method for data collection and analysis. With its "open-mind" approach to data, grounded theory could provide a map to understand how the criminal justice system works in its implementation.¹⁹ An extensive explanation of the research methodology used in this research is discussed in Chapter 3.

¹⁷ This might be because Lev's 1965 publication was one of his first published works about Indonesia. After that, Lev's work concentrated on Indonesia's institutional and political culture. He did not pay specific attention to the inter-organizational relationship of criminal justice actors in processing criminal cases; instead, Lev focused on the inter-organizational relationship in terms of *realpolitik*.

¹⁸ Across jurisdictions, criminal justice actors tend to have higher claims that are rooted in pragmatic interests. For instance, in the U.S, such higher claims vary from state to state. But after all, the actors want to get their job done. That is why plea bargaining is massively practiced. See Eisenstein and Jacob, *Felony Justice*

¹⁹ Grounded theory was first developed by Glaser and Strauss in the 1960s. Although afterwards, both authors parted ways because methodological differences. The concept of "open mind" means that the researcher does not start her investigation with specific and rigid theoretical framework. That way, it could contaminate the researcher's perspective with preconceived ideas. See Barney G. Glaser and Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Transaction Publishers, 2009).

There are several important benefits of this research. First, it could provide a systematic assessment of how the criminal justice system works in Indonesia.²⁰ It can also be seen as an effort to provide accurate mapping and understanding of the day-to-day workings of the Indonesian criminal justice system. With this approach, this dissertation aims to identify problems and potentials that are associated with the cooperative and uncooperative behavior of actors. Second, this dissertation could go beyond providing a detailed description of how the system works. The answer to the research question can also be used as an analytical tool to answer larger questions such as why previous reforms failed. In the end, it aims to capture the phenomenon of *ego sektoral* behavior *in action*.

Theoretical framework

As discussed earlier, this dissertation will apply an organizational analysis as its theoretical framework to uncover the informal workgroup rules in the Indonesian criminal justice system. When treating the criminal justice system as an organizational activity, I do not position the actors as part of a single and unified system, just like any organization. With that approach, it can overly simplify complex problems. In fact, in the opening paragraph of this chapter, I already argued that reality is never that simple.²¹

This dissertation uses the organizational perspective for the exact opposite reason. It acknowledges that when actors work together, they come from different organizations that might hold on to different values and goals. Within their interactions, actors may bring their own institutional values that often

²⁰ Cynthia Alkon and Ena Dion, "Introducing Plea Bargaining into Post-Conflict Legal Systems," *International Network to Promote the Rule of Law (Texas A&M, 2014)*. Alkon specifically wrote about the introduction of plea bargaining in post-conflict countries. She mainly referred to post-Soviet countries. Although Indonesia is not a post-conflict country (unlike post-Soviet countries), it shares some elements of a country with a troubled criminal justice system, in which post-conflict countries also suffer. In her article, Alkon wrote that systematic assessment, an understanding of how criminal justice works, is essential before introducing any procedural instrument that could change how actors are doing their job.

²¹ Hagan, "Why Is There so Little Criminal Justice Theory? Neglected Macro and Micro Level Links between Organization and Power" (1989) Hagan wrote that treating the criminal justice as an organization is at the same time acknowledging the complexity that comes within the system. Criminal justice is not just like any other organization because it lacks integration among institutions. Moreover, there are also differences within institutions.

conflict with the system's overall goal. Literature suggests that, across jurisdictions and time, there is always a tendency to abandon formal goals to pursue higher claims that are rooted in pragmatic interests.²² Because of this reason, organizational scholars pay more attention to the behavior of the actors and their working environment. This approach would help this dissertation to avoid the problems with earlier efforts that focused solely on what happens inside criminal justice institutions.

I am fully aware that several organizational scholars argue that the criminal justice system can also be understood through conflict theory.²³ In short, the conflict theory scholars assert that the system is designed to create conflict among actors to create a checks and balances mechanism.²⁴ With that logic, conflict is needed because the checks and balances mechanism requires strict scrutiny to prevent abuse of power. This is because the use of criminal justice power is consequential and threatens the human rights and dignity of the accused. However, to ensure that the conflict is healthy and not damaging to the system, it still requires some degree of cooperation by allowing other actors to check the exercise of the power of each other.²⁵ As controversial as it might sound, there is a need to maintain some degree of cooperation while practicing conflict theory in managing criminal justice administration.²⁶ When it

²² Richard A. Posner, *Law, Pragmatism, and Democracy* (Harvard University Press, 2005). In his book, Posner argued that the legal system is driven by "everyday pragmatism" of its actors. They are primarily driven by it, and formal rules is only one variable that shapes the actors' behavior.

²³ Vincent O'Leary and Donald J. Newman, "Conflict Resolution in Criminal Justice," *Journal of Research in Crime and Delinquency* 7, no. 2 (July 1970): 99–119, <https://doi.org/10.1177/002242787000700201>; Hagan, "Why Is There so Little Criminal Justice Theory? Neglected Macro and Micro Level Links between Organization and Power"; Aaron Pycroft et al., *Multi-Agency Working in Criminal Justice: Theory, Policy and Practice*, Second edition (Bristol: Policy Press, 2019). These scholars categorized criminal justice theory based on either conflict theory or consensus.

²⁴ O'Leary and Newman, "Conflict Resolution in Criminal Justice"; Daniel Epps, "Checks and Balances in the Criminal Law," *Vanderbilt Law Review* 74 (2020): 85.

²⁵ The application of conflict theory in criminal justice and the discussion of healthy and damaging conflict will be further discussed in the literature review under the "cooperation in criminal justice" section.

²⁶ Since the criminal justice rule on the division of work tends to be ambiguous and overlapping, it makes checks and balances more difficult in practice. Although actors know that the rule of law theoretically serves as a framework, they might not share the same sentiments. Rossum has noted the tension between police, prosecutor, and correctional facilities in case processing in the American criminal justice literature. See Rossum, *The Politics of the Criminal Justice System*, 49.

comes to practice, those two concepts are associated with each other.²⁷ Further discussion about the importance of cooperation in criminal justice will be covered in the literature review chapter and Chapter 4 of this dissertation.

In the field of organizational sociology, there are two methods of incentivizing cooperation: First, through adaptations and social exchange, and second, through a power-dependence mechanism.²⁸ Literature suggests that these two methods can be combined in their implementation.²⁹ In the first model, the informal workgroup rules between the actors are mutually sought. It is a product of consensus because all actors accept the current distribution of power and the division of labor among them.³⁰ Through years of interactions, it creates an accepted pattern of behavior in their working relationship.

For instance, an empirical study from Hodgson in France and Montana in Italy showed that the police accept that they are functionally dependent on the prosecutor during the investigation stage.³¹ There is no dissatisfaction both from the police and prosecutor, at least collectively, in their working relationship.

²⁷ Cole, "Criminal Justice as an Exchange System," 22. Cole saw criminal justice as an exchange system. In this perspective, decisions are viewed both as an output and input for other agencies because they are interdependent. Cooperation is what glued their relationship together because it is a system based on a "trade of interests."

²⁸ Cole, "Criminal Justice as an Exchange System"; Bruce Williams and Virginia Gray, *The Organizational Politics of Criminal Justice : Policy in Context* (Lexington, Mass.: Lexington Books, 1980); Patrick V. Murphy, "Cooperation in the Criminal Justice System," *Crime & Delinquency* 18, no. 1 (January 1972): 42–48, <https://doi.org/10.1177/001112877201800108>; Linda D. Molm, "Affect and Social Exchange: Satisfaction in Power-Dependence Relations," *American Sociological Review* 56, no. 4 (1991): 475–93, <https://doi.org/10.2307/2096269>; Russell Cropanzano and Marie S. Mitchell, "Social Exchange Theory: An Interdisciplinary Review," *Journal of Management* 31, no. 6 (December 2005): 874–900, <https://doi.org/10.1177/0149206305279602>. These two perspectives are used to explain the formation of linkages in inter-organizational theory.

²⁹ Cropanzano and Mitchell, "Social Exchange Theory".

³⁰ Monika Henderson and Michael Argyle, "The Informal Rules of Working Relationships," *Journal of Organizational Behavior* 7, no. 4 (October 1986): 259–75, <https://doi.org/10.1002/job.4030070402>.

³¹ Jacqueline Hodgson and Andrew Roberts, *Criminal Process and Prosecution* (Oxford University Press, 2010), <https://doi.org/10.1093/oxfordhb/9780199542475.013.0004>; Riccardo Montana, "Procedural Tradition in the Italian Criminal Justice System: The Semi-Adversarial Reform in 1989 and the Inquisitorial Cultural Resistance to Adversarial Principles," *The International Journal of Evidence & Proof* 20, no. 4 (October 2016): 293, <https://doi.org/10.1177/1365712716655164>. In his interview with Italian prosecutors, Montana revealed that the police accepts the fact that the prosecutor is "their boss".

This means that both French and Italian police have internalized and accepted the fact that the prosecutor is their “boss”. Consequently, adaptation-based cooperation emerges. Hodgson noted that, although the prosecutor has the power to intervene in the process of investigation by the police, they rarely exercise that power to maintain workgroup cohesion.³² The studies from Hodgson and Montana on the relationship between police and prosecutor in France showed that adaptation-based cooperation could be formed when the actors realize they share the same values and goals.

Later on in this dissertation, readers will see that, through reform, Indonesian reformers are obsessed with the adaptation-based cooperation model. Almost all Indonesian high-ranking government officials, including the president and his ministers, constantly emphasize the need for cooperation among criminal justice actors, all wanting to create a system based on a cooperation platform and mandate it in every criminal justice regulation. This is because, under the adaptation model, the informal workgroup rules in their working relationship emerge naturally due to adaptation. This fact makes adaptation-based cooperation the ideal model for working relationships because such a relationship comes from within and therefore does not require any intervention from an external power. However, in reality, this model would not be easy to practice because it needs shared interests and goals so that the actors can forgo their ego sektoral when processing a case.

Meanwhile, in the power-dependence mechanism, the basic assumption is that institutions are expected to resist any dependent relationship because they have their own interests or ego sektoral.³³ Under this circumstance, there is little room for adaptation-based cooperation to prevail. That is why

³² Hodgson and Roberts, *Criminal Process and Prosecution*, 6. In her empirical study of criminal investigation and prosecution in France, Hodgson wrote that such an interventionist and surveillance-type model only exists in a minimalist sense. After all, trust among actors is the key element that glues the relationship together. The French police and prosecutor realize that they share many of the same crime-control and conviction-oriented values.

³³ Williams and Gray, *The Organizational Politics of Criminal Justice: Policy in Context*, 5. (Lexington, Mass.: Lexington Books, 1980)

the method of cooperation is coerced rather than consensually sought as in the adaptation model.³⁴ The workgroup rules that serve as a basis for cooperation are forced through a more powerful organization, externally and internally, that can modify the criminal justice working environment. As a result, it creates a dependent relationship and leaves the actors with no other options other than cooperating. Because the method of cooperation is coerced, it could affect the level of satisfaction of actors with their relations.³⁵ And such a level could also influence the actors' ability to cooperate and therefore produce resistance.³⁶

The best example to illustrate this model in the American organizational criminal justice literature is the relationship between the now-defunct Federal Law Enforcement Assistance Administration (LEAA) and state law enforcement agencies in the 1980s.³⁷ The LEAA was created as a coordinating institution for law enforcement and the criminal justice system between the federal and state government.³⁸ A research publication by Virginia Gray and Bruce Williams found the LEAA failed to establish a power-dependence strategy because of the resistance from local institutions. Local actors tend to pursue state-priority programs rather than programs mandated by the federal government.³⁹

Moreover, in Chapter 4 of this dissertation, readers will see that the Indonesian government also used the power-dependent strategy to incentivize cooperation between actors. During the military dictatorship regime from 1966 to 1998, the government created a military-style centralized institution for criminal justice actors called *Kopkamtib*, *Bakorstranas*, and *Mahkejapol*.⁴⁰ All these institutions have

³⁴ Williams and Gray, 5.

³⁵ Molm, "Affect and Social Exchange," *American Sociological Review* 477 (1991).

³⁶ Molm, 490–91.

³⁷ Williams and Gray, *The Organizational Politics of Criminal Justice: Policy in Context*.

³⁸ Williams and Gray. The LEAA did this by creating a budget allocation (block grant), law enforcement agendas and strategy for local institutions.

³⁹ Williams and Gray, 150–53.

⁴⁰ These are the acronyms for the command for security and order (Kopkamtib), The coordinating institution for national stability (Bakorstranas), and the coordination forum for police, prosecutor, and judges (Mahkejapol).

the power to control Indonesian criminal justice actors and ensure that they are on the “right track” when implementing the government’s policy on criminal justice enforcement. Those institutions also have the power to appoint the head of the prosecutor, police, and judges and influence the bar association election mechanism.⁴¹ The government wanted to make sure that there would be no conflict and tension that could disrupt the smooth functioning of the system. This strategy has proven successful for the military regime in achieving its main goal, maintaining order within the society, and eliminating the tension between actors. However, it comes with significant costs: violation of rights is rampant because criminal justice actors merely act as servants to the executive.⁴² In this model, the checks and balances mechanisms are non-existent. However, when this centralized institution collapsed after the reformasi, the power game among the actors was back at square one because the previous government left a vacant position, just like in the old colonial times. That is why investigating the actors’ ability to cooperate becomes the necessary topic of investigation.

Because the organizational framework is not purely born from the field of law, legal scholars criticized the fact that the criminal justice system cannot be considered to be an organization and is designed to avoid it because it could open the door to abuse of power through organized actions from the state.⁴³ This argument can easily be contained with the classic notion between the “law in the books” and the “law in action” approach. The law in the books assumes that justice and the rule of law should be the main drivers of the actors’ interactions, but it is more complex than that in practice. Justice and the rule of law are ambiguous concepts that are open to multiple interpretations. In reality, justice is constructed

⁴¹ Afandi, “Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia”; Dr Sutrisno, *Sosiologi Kepolisian: Relasi Kuasa Polisi dengan Organisasi Masyarakat Sipil Pasca Orde Baru [The sociology of the police: the relationship with civil society after new-order]* (Yayasan Pustaka Obor Indonesia, n.d.).

⁴² S. Pompe, *The Indonesian Supreme Court: A Study of Institutional Collapse* (SEAP Publications, 2005), 471.

⁴³ Feeley, “Two Models of the Criminal Justice System”; Pycroft et al., *Multi-Agency Working in Criminal Justice : Theory, Policy and Practice*, (2019). In his article, Feeley argued that his argument has been “attacked” by scholars saying that if criminal justice is an organization, then it could easily organize itself with no scrutiny. It would be against the very principle of democracy. Meanwhile, Pycroft also complained about the lack of criminal justice theories since there is only limited theoretical frameworks in understanding criminal justice.

through the organized interaction of its actors. Consequently, the “law in action” requires a group of institutionalized interacting actors, which in principle are expected to work together to process a case.

I developed this framework during the period of my field research and began to analyze my interview data.⁴⁴ This was the moment when I realized that a mechanical application of clear rules does not easily construct cases. In practice, it is hard to deny that justice is done as an output of the actors’ working interactions.⁴⁵ This realization then helped me to structure my research questions.

Research Question

In keeping with the aim of grounded research not being burdened by pre-conceived ideas, I developed the research question after the first several interviews with criminal justice actors.⁴⁶ The data revealed that to understand the actual practice of the system, it is necessary to investigate the factors that lead to the cooperative and non-cooperative behavior of actors in criminal case processing. In light of this on-the-ground reality, this dissertation poses one main question:

- What are the factors that impede and induce cooperation among actors in Indonesian criminal case processing?

The answer to this question is divided into two main case processing levels. The first is the pre-trial level relationship between the police and the prosecutor, and the second is the trial-level relationship

⁴⁴ Since I follow a grounded theory approach, it is important to underline that I found the right framework after I began collecting and analyzing my data. That way, I could make sure that the theoretical framework in this research emerged from the data (from the ground up so that I did not start the research with preconceived ideas, which violates the “open mind” principle in GT). See Donald Mitchell, “Advancing Grounded Theory: Using Theoretical Frameworks within Grounded Theory Studies,” *The Qualitative Report*, October 13, 2014, <https://doi.org/10.46743/2160-3715/2014.1014>.

⁴⁵ This is especially true in a country that suffers or has suffered the legacy of an authoritarian regime. For instance, see the landscape of the criminal justice system in China. McConville argued that cases are constructed through human-to-human interactions. See Michael McConville, *Criminal Justice in China: An Empirical Inquiry* (Cheltenham, UK: Cheltenham, UK, 2011).

⁴⁶ In fact, the initial topic of this dissertation was plea bargaining. After the first several interviews, I realized that the fundamental issue is not plea bargaining but the ability of the actors to work together in operating procedural instruments. See Chapter 3 about the methodology for a detailed explanation.

between the judges and prosecutors at the trial level. The reason for the division is that the criminal justice system is designed sequentially, and an output from the pre-trial level is an input for the trial level. An elaborate explanation about the term “system” and its relationship with case processing is provided in the “definition of key terms” section.

After identifying the factors that lead to cooperative and non-cooperative behavior among key criminal justice actors (police, prosecutor, judges, and defense lawyers), this dissertation attempts to understand how those factors influence the actors’ ability to process criminal cases in a workgroup setting. To achieve such a purpose, this dissertation will contrast the impeding factors with the inducing factors to reveal the actual practices of the system.⁴⁷ The findings and analysis are presented in Chapter 4 and Chapter 5.

As mentioned earlier, this dissertation follows the qualitative grounded theory approach as a data collection and method of analysis to answer all these questions. It chooses the grounded theory approach to discover the underlying social processes that shape the interactions between the actors and therefore create knowledge about the behavioral patterns of the Indonesian criminal justice workgroup.⁴⁸

The main dataset to answer this question was obtained through semi-structured interviews with 36 Indonesian criminal justice actors, from low to high ranking, including members of parliament and members of the Indonesian criminal justice reform team. I collected interview data during the period of

⁴⁷ The term “contrast” in qualitative research refers to “qualitative measurement.” Unlike quantitative research, the measurement of qualitative data relies heavily on the researcher’s judgment. That is why the researcher needs to develop theoretical sensitivity. In short, theoretical sensitivity is the ability to judge the data and generate abstraction. Further discussion is provided in the methodology chapter (Chapter 3).

⁴⁸ In short, Charmaz wrote that grounded theory is the right methodology to investigate the pattern of social interactions within a group. Basically, this dissertation treats criminal justice as a social process. And the outcome of such a process is largely determined by the interactions between its actors. See Kathy Charmaz, *Constructing Grounded Theory* (SAGE, 2014).

my field research in Jakarta, from June 2020 to September 2021.⁴⁹ The main subject of the discussion was the actors' actual lived experiences when interacting with their counterparts to process a criminal case. During the interviews with the actors, we also discussed the problems and their solutions arising from such interactions. I then interpreted the interview data by categorizing and connecting my findings. Following the interview data, documents and other relevant regulations were analyzed for data triangulation. Further discussion about my research methods is provided in Chapter 3.

Definition of Key Terms

As I investigate the distinctive nature of criminal justice organizations and their characteristics, there are several terms and concepts that require definition. Readers will find that I mention the term "criminal justice system" frequently throughout this dissertation. First, I define criminal justice as the organization and management of criminal justice actors to achieve its prescribed ends, which is case processing.⁵⁰ The organization itself consists of a series of procedures in processing a case. The main case processing can be divided into two levels: pre-trial and trial. The pre-trial relationship is a working relationship between the police and the prosecutor. A trial-level relationship is a working relationship between the judges and the prosecutor. Meanwhile, defense lawyers could operate on both levels. That is why the discussion on the defense lawyer in this dissertation focuses on how they navigate themselves amidst the dynamic interaction between the police, prosecutor, and judges.

The reason for such a division is because the criminal justice system is organized sequentially; the role of actors is tightly interconnected when processing a case.⁵¹ Output from one level relationship is input to

⁴⁹ When the author came back to Seattle, several interviews with actors were also held to further triangulate the data. The interviews were conducted through video call. See Chapter 3 for more details.

⁵⁰ I borrow this definition from Mirjan Damaska, one of the pioneer in the organizational study of criminal justice., See Damaska, *The Faces of Justice and State Authority*.

⁵¹ Thomas J. Bernard, Eugene A. Paoline, and Paul-Philippe Pare, "General Systems Theory and Criminal Justice," *Journal of Criminal Justice* 33, no. 3 (May 2005): 203–11, <https://doi.org/10.1016/j.jcrimjus.2005.02.001>. I borrow the definition of the system from these authors. In short, these authors applied the general system theory (GST) –

the next, which means that the output produced in the pre-trial level relationship is an input to the trial-level relationship.

Following such logic, I define the term “system” as a unit of social interaction between the actors. The term “system” itself refers to both formal (as regulated by the formal rules) and informal processes (as regulated by informal workgroup rules).⁵² Under the scope of this definition, there is a need for informal exchange relationships structured by informal workgroup rules to incentivize cooperation within this interaction.

In this dissertation, informal workgroup rules (also referred to as informal rules or informal norms) are the “rules of the game” or “folkways of doing things” that govern the actors’ working relationship when processing a case.⁵³ It is within the purpose of this research to uncover such rules by exploring the inducing and impeding factors for cooperation. Informal workgroup rules are closely associated with formal rules or the law. In the absence of formal rules, informal workgroup rules emerge. There is a huge room for subjective judgment in the criminal justice system, leading to the emergence of informal workgroup rules. This is because discretion is a constant feature in every criminal justice rule. And according to the organizational perspective, the exercise of such power is mostly determined by informal workgroup rules.⁵⁴

which is borrowed from behavioral and social sciences – to define criminal justice system. Further discussion will be covered in the literature review chapter.

⁵² Bernard, Paoline, and Pare, 204. I define the term “system” within the framework of General System Theory (GST) from the field of organizational sociology. The GST understands organizational activity by looking the interactions between components to provide a richer understanding on the work of organization. Further discussion is provided in the literature review chapter.

⁵³ Feeley, “Two Models of the Criminal Justice System.” I borrow the term “folkways of doing things” from Feeley. Feeley also argued that this approach can also be called as a functionalist approach, a term he borrowed from Etzioni.

⁵⁴ I acknowledge that other variables, such as personal adherence to religious teachings and other values, might also influence the exercise of power. However, the literature suggests that it is not as influential as workgroup rules. This is because the actors are not working alone. Their role is interdependent with their counterparts.

Moreover, informal workgroup rules play a significant role in shaping criminal justice institutions' occupational culture (or referred to as organizational culture). In this context, such rules govern what type of behavior should or should not be performed when actors work together as a group.⁵⁵ With this logic, cooperation can also be defined as a result of agreed informal workgroup rules arising from the working interactions.

Cooperation is the key concept of this dissertation. In this research, the term cooperation itself emerges from the data. During a series of interviews with actors, it was revealed that cooperation is a structural feature of the functioning of the criminal justice system. However, in the broad criminal justice scholarship, the concept of cooperation among actors lacks empirical research other than its association with plea bargaining in the U.S jurisdiction.⁵⁶ Other than that, the discussion in the literature is mostly about a meta-level discussion of cooperation. For the purpose of this study, I define cooperation as the process of working together for common and binding purposes. Although there might be competing goals between actors, criminal justice actors share broad allegiance to crime prevention and crime control. With this understanding, to achieve such a goal, the definition of cooperation would include the acceptance (from the actors) towards the current condition of their working environment. On some level, the acceptance itself might require the actors to surrender some part of their procedural power to achieve a common goal. An elaborate explanation of the term cooperation is provided in Chapter 4.

⁵⁵ I borrow the definition of informal rules in a workgroup setting from Henderson and Argyle, "The Informal Rules of Working Relationships" *Journal of Occupational Behaviour* (1986)

⁵⁶ The parent literature for cooperation is inter-organizational analysis, mostly from organizational sociology, management, public policy, or international relations. I only borrow the basic concept from those fields because criminal justice has its operational logic. In the American criminal justice literature, scholars mostly discuss the concept of cooperation between law enforcers and civil society, such as community policing and the neighborhood police team concept. It might be because of the adversarial nature of the system that naturally oppose the concept of cooperation. The concept of cooperation in the American literature is closely associated with the pervasive practice of plea bargaining. See the literature review for further discussion.

When reading this dissertation, especially in the data chapters (Chapters 4 and 5), the reader will also notice the term “ego sektoral” is frequently used. In fact, ego sektoral is the actual spoken words of my informants, known as “in-vivo coding” in qualitative research. That is why this dissertation will not translate the term into English. In short, ego sektoral is an eclectic term in the Indonesian literature, roughly translated as prioritizing their own institutional interest when there is a need to cooperate.⁵⁷ In reality, ego sektoral itself is a complex social concept. I found that most commentators (including academics, actors, and policymakers) used the term as a convenient way to oversimplify a complex social concept. Inevitably, this dissertation needs to demystify the term when answering its research question. To date, this is the first study to investigate the causes of such behavior in the Indonesian criminal justice system.⁵⁸ Furthermore, this dissertation argues that the term ego sektoral is best understood through the lens of the police-prosecutor relationship at the pre-trial level because the data revealed that it is the most critical stage of criminal case processing. The discussion about ego sektoral is covered in Chapter 4.

In the American criminal justice literature, ego sektoral might share similar meanings with the term “institutional intransigence.” In a 1985 publication written by Sykes, I discovered the author used the term “intransigence” to explain the police’s resistance to reform amidst the persistence of police brutality during the 1960s-1970s.⁵⁹ According to Sykes, the officers resisted because they felt that they

⁵⁷ If you google such a term, you will find at least 600,000 results, mainly written in the Indonesian language. The search was performed on May 10, 2022.

⁵⁸ There are few researchers before me that have also briefly discussed the term ego sektoral. See J. Arnscheidt, *“Debating” nature conservation: policy, law and practice in Indonesia: a discourse analysis of history and present*, MI (Leiden: Leiden University Press, 2009); Afandi, “Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia” (2021) However, neither Arnscheidt and Afandi did not deconstruct its meaning. Afandi studied the organizational culture of Indonesian prosecution service while Arnscheidt studied the Indonesian governmental actors involved in constructing nature conservation policy. They both recognized that actors frequently mention ego sektoral as a problem within their interactions with counterparts.

⁵⁹ Gary W. Sykes, “The Functional Nature of Police Reform: The ‘Myth’ of Controlling the Police,” *Justice Quarterly* 2, no. 1 (March 1, 1985): 2, <https://doi.org/10.1080/07418828500088381>.

knew best, better than anybody, how to do the “fieldwork.”⁶⁰ In the European literature, the term *ego sektoral* might also share similar meanings with the term “organizational ego.” In a publication written by Shiner (2010), the author labeled the England police as defending their organizational ego after being criticized by the public because of its racist policy implementation in the murder of Stephen Lawrence.⁶¹

Lastly, criminal justice actors in this study mainly refer to officials with decision-making authority in the criminal justice system, both on and off the field. Within this definition, politicians and members of supervisory bodies can also be understood as criminal justice actors because they could also influence criminal justice policy. In this dissertation, I focus on four key actors: judges, prosecutors, police, and defense lawyers.

Research Limitations

This research only focuses on four key players in the Indonesian criminal justice system: the police, prosecutor, defense lawyers, and judges in processing a general crime case until a conviction or acquittal from the first instance court (district court or *pengadilan negeri*).⁶² This research does not cover the appellate level because the level of interactions is minimal. At the appellate level, there is no trial because appellate judges only review documents from the previous court. Moreover, this dissertation does not discuss the role of correctional facilities because they do not play any part in case processing.

Since the key theme of this dissertation is the exercise of criminal justice power, I place more attention on the police, prosecutor, and judges because they are the official agents of the state (or, in this

⁶⁰ Sykes, 18.

⁶¹ Michael Shiner, “Post-Lawrence Policing in England and Wales: Guilt, Innocence and the Defence of Organizational Ego,” *The British Journal of Criminology* 50, no. 5 (September 1, 2010): 935–53, <https://doi.org/10.1093/bjc/azq027>. The case of Stephen Lawrence in the U.K. is similar to the case of George Floyd in the U.S.

⁶² It is important to note that I mostly focus on general crime cases (*tindak pidana umum*). In Indonesia, there are specific criminal cases that are handled by agencies other than the traditional structure of police, prosecutor, and judge – such as, among other agencies, Anti narcotic agency (BNN) for drug-related crimes. Similar to the U.S., they have a D.E.A. to handle crime related to narcotics.

dissertation, also referred to as state functionaries). I also found that the most intense relationship dynamics happens during the investigation stage, when the case is constructed through the working interactions between the police and the prosecutor. Later on, readers will see that the analysis mostly centered on the relationship between the police and the prosecutor.

The discussion about defense lawyers aims to understand how Indonesian defense lawyers navigate themselves amid the complex web of power dynamics among state functionaries. Data revealed that they are perceived as “outsiders” by their counterparts.⁶³ Across jurisdictions, arguably, defense lawyers only have limited power, and their primary role is to defend their client against an “offense” from the state. American scholars such as Eisenstein and Jacob labeled defense lawyers as “spectators with a front-row seat” in criminal case processing.⁶⁴ Other criminal justice actors in Indonesia, such as the Anti-Corruption Commission (KPK) and supervisory bodies of police (Kopolnas), the prosecutor (Komjak), and judges (KY), are discussed as long as they are relevant to the topic being discussed. However, this dissertation does not specifically discuss their role in the competition among Indonesian criminal justice actors because their work is limited to specific cases.

Another limitation related to the findings and applicability of this study is discussed in the conclusion chapter (Chapter 6). Since the nature of this study is exploratory, it might only detect the problem without providing practical recommendations on how to deal with it. Nevertheless, in the conclusion chapter, this dissertation provides a road map for dealing with problems found in the Indonesian criminal justice system. At the end of this dissertation, I suggest the topics that needs further research to advance criminal justice knowledge globally and in Indonesia.

⁶³ See the discussion about the role of defense lawyers and their litigation strategy in Chapter 4 and Chapter 5.

⁶⁴ Eisenstein and Jacob, *Felony Justice*.

The selection of Indonesia as a case study

This dissertation uses Indonesia as a case study for two reasons. First, I am an Indonesian who has been practicing and teaching law in Indonesia. I have been playing the role of “participant-observer” in the Indonesian criminal justice workgroup for ten years as a defense lawyer. These facts make me personally invested in this topic. Apart from personal reasons, this topic could also attract considerable interest for anyone who wants to understand how the transition from a country that had an authoritarian government for five decades and then transitioned to a more democratic government impacts its criminal justice system.⁶⁵ The dynamic of such a process would be interesting for those interested in the legal and political development of developing countries. In addition, considering a unique and long history of a power struggle between Indonesian criminal justice actors, it gives the topic of interagency dynamics a sense of urgency.

Research contribution

Because my study follows a grounded theory approach, its ultimate purpose is to develop a basic theory⁶⁶ that can explain the reality of the Indonesian criminal justice system. In this sense, developing a basic theory means making sense of the data (which are words derived from the interviews and document analysis) by putting codes and developing connections between the codes. In simple language, developing a theory is a process of categorizing information to produce abstractions from the

⁶⁵ To see how authoritarian regime influence the Indonesian criminal justice system see Daniel S. Lev, “Judicial Authority and the Struggle for an Indonesian Rechtsstaat,” *Law & Society Review* 13, no. 1 (1978): 37–71, <https://doi.org/10.2307/3053242>; Pompe, *The Indonesian Supreme Court*; Afandi, “Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia.”

⁶⁶ Basic theory means a proposition about “everyday life.” In this context, I refer to the day-to-day functioning of criminal case processing in Indonesia. This contrasts with the term “grand theory,” which was coined by an American sociologist, Wright Mills (1959). Grand theory refers to highly abstract theorizing in which the organization and arrangement of concepts prioritize understanding the social reality (and therefore, it is not about the day-to-day functioning of the society). Grounded theory challenges the prevalent assumption of “grand theory”. See C. Wright Mills, *The Sociological Imagination* (Oxford University Press, 2000); Roy Suddaby, “From the Editors: What Grounded Theory Is Not,” *Academy of Management Journal* 49, no. 4 (August 2006): 633–42, <https://doi.org/10.5465/amj.2006.22083020>; Charmaz, *Constructing Grounded Theory*.

data.⁶⁷ I developed this theory by exploring and then categorizing the impeding and inducing factors for cooperation within the Indonesian criminal justice workgroup. The theory that I have developed can be used as an analytical framework to answer bigger and more practical questions such as “why did the previous attempt for reforms fail?” and “what causes ego sektoral behavior?” Furthermore, future researchers can also test the validity of such a theory. Apart from that, it can also open a new line of research in criminal justice scholarship. The discussion about the suggestion for future research is covered in the conclusion chapter.

As I have previously mentioned, I am aware that this research topic (working relationships among Indonesian criminal justice actors) might not be entirely a new issue in Indonesia. It has been a topic of casual conversation among commentators. However, only a very few credible research projects have touched on such a topic, let alone attempted to understand the criminal justice process as organizational activity.⁶⁸ The doctrinal approach dominates the Indonesian criminal justice scholarship. Furthermore, most empirical research about Indonesian legal actors have focused on institutional culture and have not specifically focused on the institutionalized interactions between actors when processing a criminal case. This research can be seen as an attempt to fill this void.

⁶⁷ Charmaz, *Constructing Grounded Theory*, 68; John W. Creswell and John W. Creswell, *Qualitative Inquiry and Research Design: Choosing among Five Approaches*, 3rd ed (Los Angeles: SAGE Publications, 2013). According to Charmaz, grounded theory is a best tool to do exploration studies and creating a theory, both emergent and basic, as an analytical framework for further research. Meanwhile, Creswell differentiated between basic theory and substantive theory. In short, basic theory is a theoretical framework that presents a conceptualization, description and illustration of a contextual problem that is confined by and grounded within a particular setting and situation. Meanwhile, substantive theory is traditionally understood as a specific theory that offer a certain level of generalizability and abstraction.

⁶⁸ Several of the few that are worth mentioning are: Pompe, *The Indonesian Supreme Court*; Jacqueline Baker, “The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia” (London, London School of Economics and Political Science, 2012), <http://etheses.lse.ac.uk/3132/>; Dian Rositawati, “Judicial Governance in Indonesia (Ph.D Thesis)” (Netherlands, Tilburg Law School, 2019); Afandi, “Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia.” However, while it provides insightful information for my research, all of these publications specifically discuss the organizational culture of the institutions, not the interactions when they process a case.

Globally, the use of the organizational approach in criminal justice is still a growing body of literature and still leaves plenty of room for new contributors. Since organizational analysis has many branches of approaches, this dissertation contributes to understanding criminal justice as a system based on informal exchange and cooperation using Indonesia as a case study. In the criminal justice literature, this field is called the organizational-functionalist perspective because it investigates how the criminal justice system functions through the lens of its actors and their interaction. In this sense, formal rules are only one of the factors that shape the reality of justice. This research could also open new lines of research based on the organizational analysis framework, which I specifically mention in the concluding chapter of this dissertation. The detailed discussion about the positioning of this research in the literature will be further discussed in the literature review chapter.

To conclude, this research is basically trying to make sense of the gap between “theory” and “practice” in the Indonesian criminal justice system. From the practical side, exploring the factors that induce and impede cooperation could detect and identify any empirical problems in the system. It could help all readers, not just academics, to understand how the system really functions with an eye toward illuminating an informed path forward.

Structure of the dissertation

In this chapter, I have already explained the foundational information about this dissertation. In the next chapter, Chapter 2, I will discuss the literature review and the current state of knowledge directly related to my topics. The literature covered in the next chapter will include an overview of the study of criminal justice as an organization, the concept of cooperation and ego sektoral in the criminal justice system and its goals, and the positioning of this study in the literature. Furthermore, because this study follows the grounded theory approach that requires the researcher to enter the research without pre-conceived ideas, I also discuss the role of literature in anchoring this research.

Chapter 3 will discuss my research methodology, why I follow the qualitative grounded theory approach, and how I apply those methods to produce an answer to the research question. This chapter also discusses the association between legal research and qualitative research. In addition, the validity and credibility of my research and the background of the researcher are also discussed. This is important because, in qualitative research, the researcher is the one that interprets the findings.

The answers to my research questions will be covered in Chapters 4 and 5. In Chapter 4, this dissertation explains the impeding factors for cooperation in case processing. As mentioned earlier, the findings are divided into two main case processing levels, pre-trial and trial levels. The section on the pre-trial level relationship between the police and the prosecutor discusses how the ambiguity of the formal rules leads to a conflict of interpretation and creates distrust on personal and institutional levels. In addition, Chapter 4 explains how such conflict produces ego sektoral behavior. This chapter also discusses how the pre-trial level relationship impacts the working relationship between judges and prosecutors at the trial level. Moreover, the issue of how defense lawyers become the impeding factor for cooperation is explained through their litigation strategy.

Chapter 5 discusses the factors that are designed to induce cooperation among actors. Realizing that there is an issue of fragmented relationship, the Indonesian government has tried to reduce the conflict and ego sektoral behavior by creating shared norms, both formal and informal. In this chapter, I contrast the impeding factors with the inducing factors to understand the relationship between those two factors. Lastly, this chapter also explains why Indonesian defense lawyers tend to cooperate with their counterparts when processing criminal cases.

I conclude this dissertation in Chapter 6, which provides a “big picture” of the research process and a summary of its findings. Subsequently, it discusses the contribution of the research and provides topic

suggestions for future researchers. Finally, this chapter will explain further limitations of this research related to the applicability of its findings.

Chapter 2

Literature Review

Introduction

In the previous chapter, this dissertation provided foundational information for this research. This chapter will discuss the current literature that is directly relevant to my topic. Identifying the current discussion in the literature is an important step in research because, as a researcher, I must make sure I am not “reinventing the wheel.” In addition, I also need to make sure that my research fits and complements the existing literature.

I start this chapter by first explaining the role of literature in this dissertation. Subsequently, I will only cover discussion directly related to my research, namely, the study of the criminal justice system as an organizational activity; the goals of the criminal justice system; the concept of cooperation and ego sektoral, and the use of the organizational framework in Indonesian scholarship. These four areas of literature are key themes of this dissertation. The literature reviewed in this chapter encompasses multiple studies in different fields, such as legal, social, and political science, commonly found under the purview of criminal justice studies. After surveying the literature, I will explain how I situate my work and how it could enrich the ongoing scholarship about the organizational analysis of criminal justice.

The role of literature in grounded theory

As a result of following the grounded theory approach, the role of literature in this research must be clarified.⁶⁹ First, the role of the literature in this research is to develop foundational information about

⁶⁹ There is a common misconception about the role of literature in grounded theory. There are opinions that to avoid contamination of the data, we need to ignore the literature so that we do not start with pre-conceived ideas. However, this is not true. According to Glasser and Strauss, the researcher must not develop a concept or category from the literature. The concept and category that is used to answer the research question must come directly from the fieldwork. See Suddaby, “From the Editors”; Glaser and Strauss, *The Discovery of Grounded Theory*.

research problems and the framework to address these problems.⁷⁰ The literature in this dissertation is not used to build concepts and categories because, in grounded theory, concepts and categories should be emergent from field observation, not secondary data.⁷¹ Second, the literature in this dissertation is used as a tool to develop theoretical sensitivity for data triangulation. Theoretical sensitivity refers to the ability of the researcher to make sense of the data, which can be raised by developing awareness of the existing literature.⁷² This feature is important because the key tenet of grounded theory is the “constant comparative approach,”⁷³ which is conducted by allowing the conceptualization of theories as they emerge in the latter stages of research.⁷⁴ Further discussion about this process is provided in the methodology chapter.

The study of the criminal justice system as an organizational activity

The approach to understanding the criminal justice system as an organizational activity started to emerge in the late 1960s in the American literature.⁷⁵ Before 1960, criminal justice research focused mostly on the nature of crimes and reaction to such crimes. In other words, the discipline of criminal

⁷⁰ As I mentioned in the previous chapter, the process of developing the framework is an iterative process. First, I developed the framework through the literature, and then as I began collecting data, I was further convinced that the organizational framework is the “right” framework in analyzing my data. With this method, I am still entering the research with an “open mind,” which is the basic tenet of grounded theory.

⁷¹ Suddaby, “From the Editors,” 634. Because the basic concept of grounded theory is theory building from the “ground up”. Therefore, researcher must collect data from the “ground” not from the “up”. I surveyed the literature about ego sektoral because it is the most grounded data in my research. I only understood the importance of such a concept after collecting my data, not because I surveyed the literature. It also emerged from ‘in-vivo’ coding the actual spoken words of my informants. This is one of the key tenets from the grounded theory approach, where the codes must come from the fieldwork. See my methodology chapter for further explanation.

⁷² Barney G Glaser, *Theoretical Sensitivity* (Place of publication not identified: Mill Valley Socioloty Press, 1978). Apart from the previous reading of the literature, theoretical sensitivity also depends on the personal and professional experience of the researcher. Further discussion about this topic is covered in Chapter 3.

⁷³ Constant comparative method is an essential characteristic of qualitative grounded theory research. It allows a researcher to build her explanations by making comparisons between codes, concept and categories. See the methodology chapter for more discussion.

⁷⁴ Charmaz, *Constructing Grounded Theory*. This is what grounded theory scholars call conducting the research with an “open mind”. Data collection and theoretical saturation is an iterative process.

⁷⁵ Burstein, “Criminal Case Processing From An Organizational Perspective.” The parent literature for the organization of criminal justice is criminal justice management.

justice was seen narrowly as a mere outcome of crimes.⁷⁶ As a result, the theoretical framework for understanding the operation of the criminal justice system is very limited. Describing this situation, criminal justice theorists such as Duffee (1980), Hagan (1989), and Kraska (2006) have wrote that scholars could not even tell the differences between the theory of criminology and criminal justice.⁷⁷ They argued that this is because when the starting point of research is a crime, the analysis would only confine to models of criminal justice functioning based on crime theory and how to reduce it.⁷⁸ Criminal justice theorists then realized that such an approach tends to oversimplify complex problems because criminal justice is multifaceted. The crime-centered approach does not constitute the development of explanations targeting specifically the behavior of “criminal justice bureaucrats” and the difficulties facing them, which is equally important to get a comprehensive understanding of the reality of justice.⁷⁹

The European literature also suffers from a similar problem: a lack of theoretical framework for understanding the criminal justice operation. Richard Vogler, a British social scientist and criminal justice historian, wrote that before the era of “sociology of law (before the 1960s),” European criminal justice scholars, apart from studying crimes, were busy grouping and comparing criminal justice systems into family, racial, and national patterns, and general identity.⁸⁰ Within this period, European scholars emphasized the procedural differences between adversarial and inquisitorial traditions and procedural

⁷⁶ As a result, the discussion mostly centered on what causes crimes and how to reduce it. See Peter B. Kraska, John J. Brent, and W. Lawrence Neuman, *Criminal Justice and Criminology Research Methods*, Three Edition (New York; London: Routledge Taylor & Francis Group, 2021).

⁷⁷ Hagan, “Why Is There so Little Criminal Justice Theory? Neglected Macro and Micro Level Links between Organization and Power”; Peter B. Kraska, “Criminal Justice Theory: Toward Legitimacy and an Infrastructure,” *Justice Quarterly* 23, no. 2 (June 1, 2006): 167–85, <https://doi.org/10.1080/07418820600688735>; Edward R. Maguire and David Duffee, eds., *Criminal Justice Theory: Explaining the Nature and Behavior of Criminal Justice*, Second Edition, Criminology and Justice Studies Series (New York: Routledge, 2015). Both authors wrote that there is a “serious disciplinary deficiency” in the field of criminal justice.

⁷⁸ The discussion of criminal justice mostly centered on one fundamental problem: Why do we punish? From there, the argument about retributive theory and deterrence dominates the literature.

⁷⁹ Kraska, “Criminal Justice Theory,” 171.

⁸⁰ Richard Vogler, *A World View of Criminal Justice* (London, England, 2016).

transplantation between the two.⁸¹ In plain language, the pre-1960 scholars paid too much attention to “what should happen” instead of “what does happen”. They all believed that formal rules will always have enough power to modify the behavior of its subject. As a result, their focus was primarily on textual law rather than on the real practices of criminal justice.⁸²

The year after 1960 was marked as the era of the “law and society movement”.⁸³ Law and society movement is the scholarly enterprise that explains or describes legal phenomena in social terms.⁸⁴ This was the era when two disciplines, sociology, and law, were combined together to illuminate urgent social and legal issues. In simple language, scholars began to investigate the law within its social-political context. Without a doubt, this movement also influenced the discipline of criminal justice. A group of new scholars, led by social-political scientists, began to import their framework to understand criminal justice operations. They started to consider extra-legal factors that might influence the operation of the law.⁸⁵ This new perspective also paved the way for the birth of a group of criminal justice scholars that borrowed the organizational analysis framework, which was previously fertile in social and political science, with Max Weber⁸⁶, Talcott Parsons⁸⁷, and Amitai Etzioni⁸⁸ as its eloquent spokespersons. This

⁸¹ Markus D. Dubber, Tatjana Hörnle, and Máximo Langer, “The Long Shadow of the Adversarial and Inquisitorial Categories,” in *The Oxford Handbook of Criminal Law*, ed. Markus D. Dubber and Tatjana Hörnle (Oxford University Press, 2014), <https://doi.org/10.1093/oxfordhb/9780199673599.013.0039>.

⁸² Vogler, *A World View of Criminal Justice*, 10–11.

⁸³ David M. Trubek, “Back to the Future: The Short, Happy Life of the Law and Society Movement” 18 (1990): 57.

⁸⁴ Lawrence M. Friedman, “The Law and Society Movement,” *Stanford Law Review* 38, no. 3 (1986): 763–80, <https://doi.org/10.2307/1228563>.

⁸⁵ Because of this trend, criminal justice theoretical orientations began to expand. A new theory about criminal justice (separated from criminology) emerged, such as “crime control and due process,” “politics of criminal justice,” “social construction,” and “growth complex.” However, if we take a closer look, the organizational framework also encompasses these new sets of theoretical orientations. See McConville et al., *Research Methods for Law*; Kraska, Brent, and Neuman, *Criminal Justice and Criminology Research Methods*.

⁸⁶ Weber, *Max Weber on Capitalism, Bureaucracy, and Religion*.

⁸⁷ Talcott Parsons, *The Structure of Social Action: A Study in Social Theory with Special Reference to a Group of Recent European Writers* (Free Press, 1949). Talcott Parsons developed the functionalist approach in the field of sociology to understand how society really functions. Criminal justice scholars then borrowed Parsons’ framework by characterizing criminal justice as a single system despite the involvement of different agencies within the system with shared values.

⁸⁸ Etzioni, “Two Approaches to Organizational Analysis.”

group of scholars placed criminal justice in a larger theoretical perspective by understanding the system as organizational and workgroup activity. Unlike the pre-1960 scholars that focused on formal rules, the starting point for organizational analysis is the informal processes within the system, such as the behavior of actors and their working relationships when processing a case.⁸⁹ They all realized that criminal justice is a complex process, and the first step to understanding such complexities is paying more attention to “what does happen” through the lens of its actors and their working environment.

For the organizational criminal justice scholars, formal rules (statutorily enacted rules or laws) are only one variable, among other variables at play.⁹⁰ Moreover, the organizational scholars do not specifically focus on one specific institution; instead, they treat criminal justice as a system of organization.⁹¹ At that time, organizational analysis was seen as a “breakthrough development” because it brought a new perspective.⁹² Scholars saw it as an attempt to bridge the gap between the “is” and the “ought” in the field of criminal justice.⁹³

⁸⁹ These are the names, among other names, that pioneered the use of organizational analysis in criminal justice: Blumberg, “The Practice of Law as Confidence Game”; Feeley, “Two Models of the Criminal Justice System”; Rossum, *The Politics of the Criminal Justice System*; Williams and Gray, *The Organizational Politics of Criminal Justice: Policy in Context*.

⁹⁰ For instance, Hawkins and Hodgson investigated the informal processes in France and England. Meanwhile, McConville investigated the reality of the Chinese criminal justice system. See Keith Hawkins, *Law as Last Resort : Prosecution Decision-Making in a Regulatory Agency* (Oxford, 2002); Hodgson and Roberts, *Criminal Process and Prosecution*; McConville, *Criminal Justice in China: An Empirical Inquiry*; Hodgson and Mou, “Empirical Approaches to Criminal Procedure.”

⁹¹ Criminal justice as a system of organization means that there is a “system” greater than the sum of its parts. Scholars began to apply the theory of larger organization, called “general system theory.” See Thomas J. Bernard and Robin Shepard Engel, “Conceptualizing Criminal Justice Theory,” *Justice Quarterly* 18, no. 1 (March 1, 2001): 1–30, <https://doi.org/10.1080/07418820100094801>; Bernard, Paoline, and Pare, “General Systems Theory and Criminal Justice.”

⁹² Burstein, “Criminal Case Processing From An Organizational Perspective”; Eisenstein And Jacob, *Felony Justice*. For instance, in the opening paragraph of their work, Eisenstein and Jacob wrote that, “... everything we know about the operation in criminal justice is a lie”. Both authors claimed that because of the limited theoretical framework, the previous explanation about the operation is criminal justice is false.

⁹³ Hagan, “Why Is There so Little Criminal Justice Theory? Neglected Macro and Micro Level Links between Organization and Power.”

Of course, this new approach was not without critics. One notable American organizational criminal justice scholar, Malcolm Feeley (1973) wrote that some scholars attacked his argument.⁹⁴ The main argument for the opposition is that modern criminal justice rules (with their preoccupation towards individual rights) cannot be considered as an organization and are designed explicitly to avoid any “organizational” and “bureaucratic” processing of cases on a routine basis.⁹⁵ Moreover, the criminal justice system also lacks integration and bureaucracy, as depicted by Weber, because no strict hierarchy governs the working relationship between the actors.⁹⁶

In his defense, Feeley replied that it is hard to deny that there is always a group of institutionalized interacting roles that, in principle, are expected to work together in processing criminal cases.⁹⁷ In other words, regardless of the system, the criminal justice administration will always require organizational activity between key legal actors in processing a case.

Another attack towards the use of organizational analysis is that it tends to overemphasize the problem in the daily activities of criminal justice institutions without regard to the solution of legal problems.⁹⁸

The opponents of organizational analysis argue that when investigating the operation of justice, the social scientist is turning a blind eye towards the power of the law to modify the behavior of its subject.⁹⁹ Responding to this classical debate, several socio-legal scholars have always argued that influence does not travel in one direction. While it might be true that organizational research might fail to provide practical policy recommendations, investigating the reality of criminal justice operations is

⁹⁴ Feeley, *supra* note 21 at 420; Feeley did not mention a specific name. He just mentioned that “somebody” attacked his argument about organizational analysis of criminal justice. Twenty years after this publication, Feeley observed criminal case processing in New Haven, Connecticut. He argued that due process model is only one idea of justice. Malcolm M. Feeley & Joseph R. Gusfield, *The Process is the Punishment: Handling Cases in a Lower Criminal Court* (1st paperback ed. 1992).

⁹⁵ Feeley, “Two Models of the Criminal Justice System,” 423.

⁹⁶ Maguire and Duffee, *Criminal Justice Theory*, 77–80.

⁹⁷ Feeley, “Two Models of the Criminal Justice System,” 421.

⁹⁸ Blumberg, “The Practice of Law as Confidence Game,” 15–16.

⁹⁹ Malcolm M. Feeley, “Three Voices of Socio-Legal Studies,” *Israel Law Review* 35, no. 2–3 (2001): 175–204, <https://doi.org/10.1017/S0021223700012176>.

the best starting point in designing a policy reform. With this approach, it could detect problems related to the implementation of the law. Eisenstein and Jacob, two American organizational scholars, argued that there is little point in making a law that can never be implemented.¹⁰⁰ Because of these reasons, scholars believe that organizational analysis of criminal justice is an appropriate analytical tool to understand the functioning of the system.¹⁰¹ In their defense, organizational scholars argue that their perspective is a “timeless” analytical framework because of its underlying assumption that every actor might have their own interests when working together. It is hard to deny that this assumption is true in any model of social interactions. Therefore, it is the job of scholars to investigate what those interests are and how they affect the system’s functioning.¹⁰²

Carolyn Burstein (1980) captured the rapid expansion of organizational analysis.¹⁰³ In her paper, Burstein also wrote that social scientists are primarily responsible for this new trend because they are the ones that started to apply the conceptual framework of criminal justice based on a theory of large organizations. She also wrote that those organizational scholars are obsessed with informal rules that structure the relationships between criminal justice actors. Organizational scholars believe that, in practice, these “hidden rules” shape the outcome of the criminal justice process. She further argued that these sets of informal rules emerge because formal rules tend to be ambiguous. In the end, she

¹⁰⁰ Eisenstein and Jacob, *Felony Justice*. Eisenstein and Jacob conducted a mixed-methods study (qualitative-quantitative) to measure the tendency of American criminal justice actors to cooperate, which led to the massive practice of plea bargaining in Chicago, Detroit, and Baltimore. Their work challenges the common beliefs that it is formal rule that predominantly shapes the behavior of actors in criminal case processing.

¹⁰¹ Eisenstein and Jacob.

¹⁰² George F. Cole, “The Decision to Prosecute,” *Law & Society Review* 4, no. 3 (1970): 331–43, <https://doi.org/10.2307/3053090>; Feeley, “Two Models of the Criminal Justice System,” 415.

¹⁰³ Burstein, “Criminal Case Processing from an Organizational Perspective.”

concluded that researchers found that the discipline of criminal justice as a rich source of theory-building material because of this trend.¹⁰⁴

Organizational analysis is considered a broad framework and has been widely used to understand several criminal justice phenomena in various contexts and times. In the American literature, organizational analysis is commonly associated with the practice of plea bargaining. This is because, after the 1960s, plea bargaining began to dominate the American criminal justice system.¹⁰⁵ For this reason, criminal justice scholars have been endlessly fascinated with the question of how and why plea bargaining has become the main system of case processing. The first scholar that applied an organizational perspective in understanding criminal justice was Abraham Blumberg, a social scientist. In his 1967 publication “the practice of law as a confidence game,” he essentially argued that the system’s output is determined by the symbiotic professional relationship between prosecutor, judge, and defense lawyers, who tend to have other “higher claims” than the formal goal of the system.¹⁰⁶ He further argued that these higher claims, rooted in career priorities and bureaucratic needs, lead these “courtroom elites”¹⁰⁷ to prioritize plea bargaining as a case-ending mechanism. He labeled this phenomenon the “organizational cooptation of a profession.”¹⁰⁸ After Blumberg, the organizational perspective has been used to understand various research problems in criminal justice. For instance,

¹⁰⁴ Burstein, 258. She argued that to enrich the discussion of organizational analysis in criminal justice, the researcher must pay more attention to the incentives system, such as personal values, goals, and ambitions that differentiate individuals. In addition, the researcher also must be able to transform the concepts into quantifiable variables.

¹⁰⁵ Jack D. Douglas, “The Challenge of Crime in a Free Society: A Report by the President’s Commission on Law Enforcement and Administration of Justice,” *American Sociological Review* 32, no. 4 (August 1967): 664, <https://doi.org/10.2307/2091056>. Several researchers connected this phenomenon to the “law and order” campaign. Actors want to secure conviction as fast as possible because of community pressures. This publication was written by a committee formed by President Johnson in 1960. In the literature, it is commonly referred as the birth of criminal justice as an academic discipline.

¹⁰⁶ Blumberg, “The Practice of Law as Confidence Game,” 18–20.

¹⁰⁷ The term courtroom elites is a phrase coined by another renowned organizational scholar, Peter Nardulli. See Peter F. Nardulli, *The Courtroom Elite: An Organizational Perspective on Criminal Justice* (Cambridge, Mass: Ballinger Pub. Co, 1978).

¹⁰⁸ Blumberg, “The Practice of Law as Confidence Game.”

Packer (1968) investigated the two methods of criminal justice organization and its goal, due process, and crime control.¹⁰⁹ Meanwhile, Rossum (1978) analyzed conflict and tension between police, prosecutors, and correctional facilities because they have different values and goals in doing their job.¹¹⁰ In the same year, Eisenstein and Jacob also investigated the factors that led to the practice of plea bargaining in Detroit, Chicago, and Baltimore with a mixed-methods study (qualitative and quantitative).¹¹¹ They found that plea bargaining became massive because criminal justice actors have a stable relationship. Such stability depends on their shared interests and goals among them. Although actors might hold onto different values in doing their job, they have one common interest: to close the case, so it stays closed.¹¹²

In recent years, organizational analysis in criminal justice has become a growing literature and is not just used to explain the plea bargaining practice. The use of the organizational framework is contextually specific and varies across jurisdictions and time. In the previous chapter, I explained how an organizational perspective can be used to investigate the policy in context, i.e., the relationship between the now-defunct LEAA and state and local criminal justice actors in the United States.¹¹³ Across the world and over time, organizational analysis has been used to investigate the exercise of discretion in

¹⁰⁹ Herbert L Packer, "Two Models of the Criminal Process," *University of Pennsylvania Law Review*, 1968, 68. Packer essentially argued that these two models emerge from conflicting goals and values between actors. Crime control is produced because criminal justice actors have a strong tendency to cooperate because of shared goals, which is to control the crime by processing cases efficiently. Meanwhile, due process is the "ideal model" because the goal of such a system is rooted in individual rights as ideal values. In the Indonesian scholarship, this model is widely (and abusively) used to explain criminal justice phenomenon.

¹¹⁰ Rossum, *The Politics of the Criminal Justice System*. Rossum used what he calls a "compliance analysis" to understand the type of criminal justice power (hold by criminal justice actors) that can be imposed within the interaction between actors. In the end he argued that, within their working relationship, organizations emphasize one means of power over others.

¹¹¹ Eisenstein and Jacob, *Felony Justice*. They labeled their framework as "courtroom workgroups" which essentially examine the system as an organizational/workgroup activity.

¹¹² Eisenstein and Jacob.

¹¹³ Williams and Gray, *The Organizational Politics of Criminal Justice: Policy in Context*.

the criminal justice process¹¹⁴, the relationship between state ideology and the role of the criminal justice apparatus¹¹⁵, as a framework to design a reform policy¹¹⁶, and conflict of interest and goals between criminal justice actors.¹¹⁷

The goals of the criminal justice system

The use of organizational analysis in understanding criminal justice has always been related to the system's overall goal. This is because scholars believe that organization is designed to accomplish specific tasks and goals.¹¹⁸ That is why, if we survey the literature on the "goals of the criminal justice system," we can see that several discussions and debates surround the concept of goals. The discussion within the literature can be summarized into two topics: First, how goals are formed, and second, how to achieve such goals.

The first group of scholars who follow the rational bureaucracy concept from Max Weber argues that the criminal justice system's goal is statutorily defined.¹¹⁹ In this model, there are at least three inherent common rational goals of the system: effectiveness, fairness, and efficiency.¹²⁰ To achieve such goals,

¹¹⁴ Hawkins, *Law as Last Resort: Prosecution Decision-Making in a Regulatory Agency*; Hodgson and Roberts, *Criminal Process and Prosecution*; Fairclough, "Using Hawkins's Surround, Field, and Frames Concepts to Understand the Complexities of Special Measures Decision Making in Crown Court Trials"; Hodgson and Mou, "Empirical Approaches to Criminal Procedure."

¹¹⁵ Damaska, *The Faces of Justice and State Authority*; McConville, *Criminal Justice in China: An Empirical Inquiry*; Rasma. Karklins, *The System Made Me Do It: Corruption in Post-Communist Societies* (London: Routledge, 2015).

¹¹⁶ Williams and Gray, *The Organizational Politics of Criminal Justice: Policy in Context*.

¹¹⁷ O'Leary and Newman, "Conflict Resolution in Criminal Justice"; Kevin N. Wright, "The Desirability of Goal Conflict within the Criminal Justice System," *Journal of Criminal Justice* 9, no. 3 (January 1, 1981): 209–18, [https://doi.org/10.1016/0047-2352\(81\)90070-2](https://doi.org/10.1016/0047-2352(81)90070-2); Aaron Pycroft et al., *Multi-Agency Working in Criminal Justice: Theory, Policy and Practice*, Second edition (Bristol: Policy Press, 2019).

¹¹⁸ Kraska, "Criminal Justice Theory." Kraska summarized the debate on the theoretical orientations of criminal justice. This is called "goal oriented views".

¹¹⁹ Damaska, *The Faces of Justice and State Authority*; McConville, *Criminal Justice in China: An Empirical Inquiry*. Damaska and McConville believed that the criminal justice system is a reflection of state ideology. This is mostly because their investigation was based on a country that suffers from a dictatorship regime.

¹²⁰ Wright, "The Desirability of Goal Conflict within the Criminal Justice System." In fact, the formal goals of the Indonesian criminal justice system as stated by Judicial authority law 2009 also shares the same trait. It says that the system must be cepat (speedy), sederhana (simple) and biaya ringan (inexpensive). Above all else, the system must be fair.

the application of criminal justice power is governed more by publicized rules than by the predilections of the individual decision-maker.¹²¹ Following this logic, discretionary power must be minimized by specifying the roles of actors.¹²² As a result, this model assumes that there would be no overlapping roles because the formal rules precisely govern power distribution and labor division. With this method, its primary mission is to measure the gap between reality and the ideal in regard to the implementation of law in society. In the criminal justice literature, this school of thought is termed the “rational” or the “ideal” model of the criminal justice system.¹²³ However, other criminal justice scholars have criticized the fact that, in reality, this organizational model oversimplifies complex problems. This is because the rational goal model treats actors as no more than bureaucratic machines. George Cole (1980) called this model the “organizations without people approach.”¹²⁴

Following such criticisms, the second group of scholars adopts another perspective, called the “functionalist” approach, because their focus, as the name suggests, is to understand how the system functions. According to the functionalist, the goal of the criminal justice system is a dynamic concept. Moreover, the functionalist further understands the criminal justice system as a complex organization, not just a monolithic organization with statutory goals and common purposes depicted by the rational model. The actors, along with their institutions, also shape those goals through the process of working together.¹²⁵ For functionalist scholars, rational goals such as justice, fairness, and effectiveness are

¹²¹ Joshua B Fischman, “Reuniting ‘Is’ and ‘Ought’ in Empirical Legal Scholarship,” *University of Pennsylvania Law Review* 162 (2013): 52.

¹²² Feeley, “Two Models of the Criminal Justice System,” 411.

¹²³ George F. Cole & George F Cole, *Criminal Justice: Law and Politics* (3rd ed, 1980); Kraska, *supra* note 9. It is called “ideal” because rational scholars assume that everything could run smoothly by enacting “good rules”.

¹²⁴ Cole and Cole, *Criminal Justice: Law and Politics*. This is because they treat the organization by following the rational goal model developed by Max Weber. They see the actors within the organization as “robots” that can be easily programmed through formal rules.

¹²⁵ David J. Smith, “Case Construction And The Goals Of Criminal Process,” *The British Journal of Criminology* 37, no. 3 (1997): 319–46. The actors and their institutions could also modify their working environment, because they are seen as the “professionals”.

ambiguous concepts that leave room for multiple interpretations.¹²⁶ In reality, the goals and their achievement are determined by the day-to-day interactions of the actors.¹²⁷ The underlying assumption in this logic is that it is hard to deny that there is always room for subjective judgment in every criminal justice rule.¹²⁸ This is because criminal justice actors, especially those representing the state, are also part of institutions with their own cultures and bureaucratic structures. As a result, when actors are working together to process a case, functionalist scholars fully realize that there might be competing goals and values.¹²⁹ In practice, actors might hold onto their own institutional and personal goals, other than the formal goals of the system.¹³⁰ Even though they share a fundamental goal to dispose of a case, there might be differences in the method.¹³¹ Because of these complexities, some functionalist scholars such as Cole and Hagan see the criminal justice system as a network of social exchange. Cole also went as far as labeling the system an “economic market” because inputs and outputs, or resources and products, are exchanged among persons and systems.¹³²

These two approaches have dominated the theoretical orientation of organizational criminal justice since the late 1960s. The rational goal model is praised because it can provide practical policy recommendations on achieving statutory goals since the nature of its analysis is policy-driven.¹³³ The biggest weakness, of course, is that the rationalist tends to oversimplify the complex realities of criminal

¹²⁶ Feeley, “Two Models of the Criminal Justice System,” 415. Feeley said that formal rules are inherently ambiguous because simply, there are too many rules.

¹²⁷ This thinking follows the logic of legal pragmatism. In short, all legal actors are pragmatists because their behavior is based on the principle of “everyday pragmatism”. See Richard A Posner, “Legal Pragmatism Defended,” *The University of Chicago Law Review*, 2004, 9.

¹²⁸ Wright, “The Desirability of Goal Conflict within the Criminal Justice System.” According to Wright, the goals themselves tend to be ambiguous. “Justice”, “Fairness”, and “Efficiency” are ambiguous. Moreover, “discretion” is a constant feature in every criminal justice rule.

¹²⁹ Bernard, Paoline, and Pare, “General Systems Theory and Criminal Justice.”

¹³⁰ Blumberg, “The Practice of Law as Confidence Game.” Blumberg called these “higher claims”.

¹³¹ O’Leary and Newman, “Conflict Resolution in Criminal Justice.”

¹³² Cole, “Criminal Justice As An Exchange System,” 22.

¹³³ Kraska, “Criminal Justice Theory.”

justice operations because it treats the organization without paying specific attention to how the members of the organization could also influence the system's overall goal.

However, the functionalist approach is also criticized because of its tendency to overcomplicate problems. Scholars argue that they turn a blind eye to the fact that formal rules hold considerable power to influence actors' behavior to achieve goals.¹³⁴ In response to these debates, modern-day organizational theorists recommend that scholars not treat the dichotomy between rational-goal and functional models as "black and white" thinking.¹³⁵ Instead, they call scholars to return to the theory of large-scale organizations by applying the general system theory as a framework to understand the operation of criminal justice.¹³⁶ The theory of large-scale organizations would require a researcher to first identify the structural features of the system, such as a compliance-inducing mechanism, so that the goals of the system (whatever they might be) can be secured.¹³⁷ With such an approach, a researcher would need to investigate the interplay between formal rules and informal rules and their

¹³⁴ Feeley, "Two Models of the Criminal Justice System," 421. Feeley criticized the functionalist approach by saying that such an approach has gone a long way toward identifying causes and conditions accounting for the observed behavior and toward demonstrating that there is no particular reason to expect individuals' behavior to coincide with the behavior prescribed by the formal goals of the system.

¹³⁵ What I mean by modern-day scholars are criminal justice theorists (which specifically focus on the theoretical orientations of criminal justice studies) that still dedicate their work towards the development of criminal justice as a discipline until now. For instance, see Kraska, Brent, and Neuman, *Criminal Justice and Criminology Research Methods*.

¹³⁶ Bernard and Engel, "Conceptualizing Criminal Justice Theory"; Bernard, Paoline, and Pare, "General Systems Theory and Criminal Justice"; Maguire and Duffee, *Criminal Justice Theory*. Bernard et al called for the application of a "general system theory" that is fertile in social science. In short, general system theory treats criminal justice as a whole, as a system greater than the sum of its parts.

¹³⁷ Bernard, Paoline, and Pare, "General Systems Theory and Criminal Justice." This is what makes me investigate factors that induce cooperation, rather than just providing an in-depth description of behavioral problems within the system. Cooperation can also be seen as a compliance-induce mechanism because the basic concept is essentially the same. Cooperation is needed to achieve specific tasks and goals. In the literature, the term cooperation, collaboration, harmonization is interchangeably used. Regardless of semantic meaning, the most important thing is how we define such terms.

relationship with the overall organizational goal of the system. Therefore, treating the dichotomy between rationalists and functionalists in absolutes is no longer relevant.¹³⁸

Cooperation and Ego sektoral

As I have discussed earlier, Indonesian government officials, scholars, and litigators have always voiced the need for cooperation by reducing ego sektoral when they talk about improvement of the Indonesian criminal justice system.¹³⁹ Although it has become the “mainstream” knowledge in Indonesia, there is no attempt to demystify its meaning.¹⁴⁰ Previous scholars used the term as a convenient way to oversimplify a complex problem.

Cooperation is constantly promoted in Indonesia because the literature shows that, historically, the actors have the tendency to display power-seeking behavior. Lev (1965) wrote that, in the 1950s, several years after Indonesia formally gained independence from the Dutch in 1949, power competition between police, prosecutor, and judges occurred. The competition was primarily driven by the ambition to fill the prestigious and powerful position vacated by the colonial government. After the Dutch left, each actor that took part in fighting the Dutch wanted wider criminal justice power as a reward for their sacrifice.¹⁴¹

If we survey the literature, the concept of cooperation is commonly found under the purview of the inter-organizational literature, which is mostly used to explain the linkages between intergovernmental

¹³⁸ This logic inspires this dissertation. I argue that actors share a broad allegiance to crime control and crime prevention. That is why cooperation becomes the structural feature of the system.

¹³⁹ See Bagus Prihantoro Nugroho, “Jokowi: Jangan Lagi Ada Ego Sektoral, KPK-Kejagung-Polisi Harus Sinergi [Jokowi: No more ego sektoral, Prosecutor-Police-KPK must form synergy],” detiknews, accessed April 21, 2021, <https://news.detik.com/berita/d-3106175/jokowi-jangan-lagi-ada-ego-sektoral-kpk-kejagung-polisi-harus-sinergi>.

¹⁴⁰ If you google such a term, you will find at least 203,000 results, mainly written in the Indonesian language. Even the Indonesian president uses such a term when speaking before the police and the prosecutor. In his speech, the president was convinced that minimizing ego sektoral is crucial to better the Indonesian criminal justice system.

¹⁴¹ Lev, “The Politics of Judicial Development in Indonesia,” 1965. The intense competition was between the police and the prosecutor for investigative power. Meanwhile the fight between the judges and the prosecutor was about the salary structure.

relations.¹⁴² Cooperation is seen as a form of organizational behavior that arises within the working interactions between actors. The questions regarding “why” and “how” cooperation emerges within such interactions vary considerably across jurisdictions and time.

At a theoretical level, criminal justice scholars such as Feeley (1979), Wright (1980), Cole (1980), Hagan (1989), and Kraska (2006) have argued that investigating actors’ ability to work together is crucial to understanding how the system functions in relation to its goals. When they realized that there are competing values and goals between actors within the criminal justice system, they began to investigate the structural features of the system, particularly their ability to cooperate to achieve specific goals.¹⁴³ With such a method, a researcher could identify and address factors that could hinder the achievement of the system’s overall goals and begin to normalize the reality of conflict based on competing values and goals. Moreover, it would also require a researcher to investigate how the presupposed norms of conflict (as prescribed by the law) could be replaced with the norms of cooperation to accomplish specific goals.¹⁴⁴ They all essentially argued that because criminal justice actors’ roles and functions overlap, cooperation becomes the glue that holds their relationship together. Although they might share a common goal (to dispose of a case), their working methods might differ. Within this framework, cooperation is seen as a “state of equilibrium” between competing values, methods, and goals within the actors’ interaction.¹⁴⁵

¹⁴² Williams and Gray, *The Organizational Politics of Criminal Justice: Policy in Context*, 5. The parent literature of interorganizational theory started to emerge in the 1980s. Interorganizational theory is the sub-field of political science.

¹⁴³ Feeley, “Two Models of the Criminal Justice System,” 412.

¹⁴⁴ Cole, “The Decision to Prosecute.” For instance, Cole studied the decision to prosecute in King County, Seattle, in 1970. He interviewed 50 prosecutors. He noticed that a strong tendency toward cooperation between prosecutor and defense lawyers happened because of internal and external pressures such as community, professional relationships, court congestion, and organizational strains.

¹⁴⁵ Cole, “Criminal Justice as an Exchange System.”

For instance, in the American literature, the “state of equilibrium” for cooperation is understood through various contexts. Organizational plea bargaining scholars such as Eisenstein, Jacob, Padgett, Feeley, and Fisher found that cooperation¹⁴⁶ is formed when there is a stable relationship between the actors in processing a case. The stability is created because there are shared incentives, which are, among other things, to dispose of a case.¹⁴⁷ Such a relationship pattern is then practiced and internalized through years of interaction and, as a result, it naturally produces a convenient case-ending mechanism called plea bargaining.¹⁴⁸

There are possibilities that criminal justice actors could never achieve the “state of equilibrium” within their working relationship because of conflicting values and goals. Criminal justice scholars that have focused specifically on conflicts, such as Wright and Newmann, warned that in practice, work-related or ideological conflict might arise within the interactions.¹⁴⁹ In the organizational sociology literature, there are two approaches to creating this “state of equilibrium.” First, through adaptation, and second, through the power-dependence model. The emergence of plea bargaining can also be seen as a perfect example of how cooperation emerges naturally through adaptation because it serves the interest of all

¹⁴⁶ In their pieces, they defined cooperation as a meeting of incentives. They also used the terms cooperation, collaboration, and coordination interchangeably.

¹⁴⁷ Eisenstein and Jacob, *Felony Justice*, 110. Eisenstein and Jacob provided two types of goal, based on the function and the origin of goal. Among other things, disposing of case load and maintaining group cohesion became the most important goals based on their observation in Detroit, Chicago and Baltimore. There are sets of external pressures (caseloads, community pressure and bureaucratic needs) that “force” the actors to cooperate with each other.

¹⁴⁸ For instance, in the 18th century in Massachusetts, at first the judges did not want to cooperate with plea negotiation made by the prosecutor. The judges felt that it would reduce their sentencing power. However, because judges got busy because of caseload pressure amidst an industrial boom, they surrendered their sentencing powers to prosecutor by rubberstamping plea negotiations from the prosecutor. This situation is also defined as a “cooperation”. See John F. Padgett, “The Emergent Organization of Plea Bargaining,” *American Journal of Sociology* 90, no. 4 (January 1985): 753–800, <https://doi.org/10.1086/228144>; George Fisher, *Plea Bargaining's Triumph: A History of Plea Bargaining in America* (Stanford: Stanford University Press, 2003), <http://www.sup.org/books/title/?id=3346>.

¹⁴⁹ O’Leary and Newman, “Conflict Resolution in Criminal Justice”; Wright, “The Desirability of Goal Conflict within the Criminal Justice System.”

actors.¹⁵⁰ On the other hand, as I have discussed in the first chapter, in the American literature the relationship between the LEAA and local law enforcement agencies is the perfect example of how cooperation is coerced through the power-dependence model.¹⁵¹

In the American literature, an effort to improve cooperation between the police and the prosecutor was highlighted by McDonald (1982).¹⁵² In his empirical research that the U.S Department of Justice published, McDonald found that the issue of failed cooperation arises from insufficient training and incentives, lack of communication channels, and organizational arrangements related to case processing. McDonald then recommended that policymakers should design interagency training programs and improve the communication channels between the two sets of actors. However, Hodson (2018) warned that excessive cooperation between the police and the prosecutor runs the risk of undermining the checks and balances principle. She called that an “unholy alliance” between the two actors could lead to a conflict of interests in their working relationship.¹⁵³

¹⁵⁰ Cynthia Alkon and Andrea Kupfer Schneider, *Negotiating Crime: Plea Bargaining, Problem Solving, and Dispute Resolution in the Criminal Context* (Durham, North Carolina: Carolina Academic Press, 2019), 69–70. Alkon and Schneider explained historical factors leading plea bargaining to become the dominant process of resolving cases: caseload pressure, length of trials, actors’ professionalism, and key structural shifts. All of these factors benefit the actors. That is why plea bargaining “survived” and was massively practiced. Alkon wrote, “...plea bargaining works not just for the system, but for the individuals who make the system work”.

¹⁵¹ Williams and Gray, *supra* note 18. As I have discussed previously, the LEAA is seen as a failure because of the resistance from local law enforcement officers to comply with LEAA programs. The institution was dismissed in 1988. In the organizational sociology literature, it is generally understood that the power-dependence model is prone to resistance because it could create dissatisfaction within the relationship. In organizational theory, there is an underlying assumption that organizations always want autonomy in their work. See Linda D. Molm, *Affect and Social Exchange: Satisfaction in Power-Dependence Relations*, 56 AM. SOCIOL. REV. 475–493 (1991)

¹⁵² W McDonald, “Police-Prosecutor Relations in the United States,” 1982, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/police-prosecutor-relations-united-states-executive-summary>. McDonald conducted the study through semi-structured interviews with the police and prosecutors in three jurisdictions with a population of over 100,000. He did not name the jurisdiction.

¹⁵³ Alexandra Hodson, “The American Injustice System: The Inherent Conflict of Interest in Police-Prosecutor Relationships & How Immunity Lets Them Get Away with Murder,” *Idaho Law Review* 54, no. 3 (2018): 563–90.

To date, no one has attempted to define cooperation in criminal justice in the Indonesian literature, let alone conducted an empirical investigation on such issues.¹⁵⁴ One thing that we can be sure of is that the term cooperation is commonly used in tandem with *ego sektoral*. The typical narratives that the Indonesian governmental elites made are, “*ego sektoral* can be reduced with cooperation” or “building a harmony for the integration of criminal justice system through cooperation.”¹⁵⁵ For Indonesian governmental elites, it is clear that *ego sektoral* can be reduced if Indonesian criminal justice actors use cooperation as a platform for their working interactions. In the previous chapter, I discussed how the previous Indonesian government has also attempted to establish coordinating institutions such as the LEAA to ease the conflicts and tensions among criminal justice institutions. After the reformasi in 1998, when the old legal and political structure collapsed, the issue of cooperation became important again because each institution saw this as an opportunity to pursue their own ambitions to secure a comfortable seat in the new structure.¹⁵⁶ In fact, as I mentioned earlier, the latest draft of the Indonesian criminal procedure reform (RUU KUHAP) also stated that each criminal justice component must forgo its *ego sektoral* and develop a harmonious relationship through cooperation for the success of the reform.¹⁵⁷ This is why this research attempts to demystify and explain the concept of “cooperation” and “*ego sektoral*.”

¹⁵⁴ There is a meta-level study of communication problems between the police and prosecutors in Indonesia. See Topo Santoso and Choky Risda Ramadhan, *Prapenuntutan Dan Perkembangannya Di Indonesia [Preliminary Prosecution Process and Its Development in Indonesia]* (Depok: Rajawali Press, 2019). However, it is not based on empirical research, and this dissertation argues that the concept of cooperation can be fully understood through empirical research.

¹⁵⁵ “Hadiri Rakernis Bareskrim, Mahfud MD Bicara Penegakan Hukum Sebagai Pembangun Harmoni [Attending Police’s Detective Unit Meeting, Mahfud MD Underlines Cooperation in Law Enforcement],” accessed October 19, 2021, <https://www.inews.id/news/nasional/hadiri-rakernis-bareskrim-mahfud-md-bicara-penegakan-hukum-sebagai-pembangun-harmoni>.

¹⁵⁶ There are two publications that discuss the underlying tension between actors behind Indonesian criminal justice reform. See Baker, “The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia”; Lamchek, *Criminal Legalities in the Global South*.

¹⁵⁷ “Draft of Academic Bill Code of Indonesian Criminal Procedure” (Drafter Team, 2013), 12. The draft of the new law explicitly says that “....this system really requires the public prosecutor and the investigator to work in close cooperation”

In the Indonesian legal scholarship, few researchers before me have also mentioned ego sektoral, although they have not discussed it in specific detail. Arnscheidt (2009), a Dutch scholar who studied discourse analysis on the politics of nature conservation in Indonesia, is one of the few. In his Ph.D. dissertation at Leiden law school, he argued that ego sektoral is one of the most significant factors to hinder the policy negotiation of nature conservation among Indonesian governmental institutions. He found that each institution tends to disregard policies or regulations of other actors that may hamper them from achieving their economic goals.¹⁵⁸ Another scholar who also briefly mentioned ego sektoral is Afandi (2021) in his socio-legal doctoral dissertation (also in Leiden law school) about the Indonesia prosecution service's organizational culture (IPS).¹⁵⁹ In his work, Afandi also referred to the meaning of ego sektoral provided by Arnscheidt, with only slight modification. In his footnote, he wrote that ego sektoral means that each sector tends to realize its own interest only. He further explained that ego sektoral also serves as a problem in the working relationship between Indonesian criminal justice actors.¹⁶⁰ He also claimed such behavior also exists within the IPS. He found that the prosecutor is very protective of their power because of the strong militaristic culture within the institution. He then argued that ego sektoral shares common traits with silo mentality behavior.¹⁶¹ Silo mentality is a common term in the corporate management literature, which means a reluctance to share information with employees of different divisions in the same company.¹⁶² None of these explanations about ego sektoral

¹⁵⁸ Arnscheidt, *"Debating" nature conservation*, 7; 64; 241–48.

¹⁵⁹ This is unpublished work. Afandi defended his dissertation in early 2021, during the period of my field research. I also had personal communication with him, and he personally sent me his dissertation through one of his committees.

¹⁶⁰ Afandi, "Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia," 117. Chapter 4 of his dissertation has a sub-chapter (4.3) dedicated to discussing the prosecutor's relationship with other actors. He also described the working relationship between the prosecutor and other criminal justice actors (pp.117-155). But his focus was on the history of the relationship between the prosecutor and other actors, not the actual condition. Afandi, essentially, said that the tension in the relationship is because of the functional differentiation principle. See Chapter 3 for a more detailed description of the functional differentiation principle.

¹⁶¹ Afandi, 185.

¹⁶² David Clifford, *ISO/IEC 20000: An Introduction to the Global Standard for Service Management*, Second edition. (Cambridgeshire, United Kingdom: Cambridgeshire, United Kingdom : IT Governance Publishing, 2011).

are enough to deconstruct its real meaning because neither Arnscheidt nor Afandi defined the causes and consequences of such behavior. If we survey the American literature, we can also find that American criminal justice institutions displayed ego sektoral behavior. Apart from the refusal from the police's institutional intransigence during the police reform in the 1970s, Virginia Gray and Bruce Williams also came to a similar conclusion when investigating the relationship between the LEAA and local criminal justice institutions. They both argued that one of the factors contributing to the failure of the LEAA program was that local criminal justice institutions tend to resist any dependent relationship.¹⁶³ They see that any functional dependence relationship threatens their survival because they must surrender some part of their procedural power to another institution. In the end, research from Gray and Williams also showed that the American local law enforcement institutions also have the tendency to protect their power by refusing any federal attempt to change the way they are doing their job at a local level.¹⁶⁴ In other words, ego sektoral behavior is not just an issue specially reserved for Indonesia. One thing is for sure, however: the complexities of such issues are contextually specific.

The organizational framework in the Indonesian criminal justice scholarship

In general, up until today, the Indonesian criminal justice scholarship has paid too much attention to "what should happen," just like the situation in the American and European literature before the 1960s. Because of this, the literature suffers from a lack of empirical research in understanding the criminal justice system, let alone an effort to understand structural features of the system, such as factors that lead to cooperative and uncooperative behavior in processing criminal cases. The theoretical framework that dominates the Indonesian legal scholarship is the comparison between two criminal justice

¹⁶³ Williams and Gray, *The Organizational Politics of Criminal Justice: Policy in Context*, 5–7.

¹⁶⁴ Williams and Gray, *The Organizational Politics of Criminal Justice: Policy in Context*.

historical traditions, the adversarial and inquisitorial systems, and the transplantation between those two.¹⁶⁵

However, although none of the Indonesian scholars have applied the organizational framework in understanding the criminal justice system, the approach to treating criminal justice actors with a party of interest, which is the key component of the organizational framework, was started by Daniel Lev in the 1960s.¹⁶⁶ As discussed previously, Lev highlighted the competition over procedural power and prestige among Indonesian police, prosecutors, and judges after Indonesia gained its independence in 1949.¹⁶⁷ Lev's focus primarily dealt with the linkages between the legal and political culture within Indonesian legal institutions. He produced numerous influential writings about the interplay between law and politics in the Indonesian legal landscape during his lifetime.¹⁶⁸ Since Lev himself was a political scientist, he did not pay specific attention to how institutional culture affects the working relationship between criminal justice actors when processing a case.

Lev's work about the connection between law and politics in Indonesia has inspired several scholars to investigate the institutional culture of criminal justice sub-components, such as the study of the Indonesian Supreme Court by Pompe (2005)¹⁶⁹; The study of the Indonesian Administrative Court by

¹⁶⁵ This approach still dominates today because the term "adversarial" is depicted as the ideal model of the system because of its emphasis on human rights. Meanwhile, the "inquisitorial" tradition, derived from Continental Europe, is seen as the less-ideal system because of its historical origin connected to the practice of the European feudal lord. However, in modern days, this dichotomy is severely attacked because of its narrow perspective. Indonesia receives this influence because of the Dutch influence in its laws and scholarship. Apart from that, the "wave of adversarial reform" started by the United States in the 1980s (during and after the Cold War) is also responsible for this phenomenon. See Allegra M. McLeod, "Exporting U.S. Criminal Justice," *Yale Law & Policy Review* 29 (2011 2010): 83–164.

¹⁶⁶ Lev did not specifically mention that his work uses an organizational analysis framework. However, it is evident in his analysis because he treats the actors as a party lobbying for their interests. This is not surprising because Lev himself was a political scientist.

¹⁶⁷ Indonesia gained its formal independence in 1949 when the Dutch acknowledged it in a round table conference in Den Haag. However, factually, Indonesia declared its own independence in 1945, when the Japanese surrendered to the allies in World War 2. See Lev, "The Politics of Judicial Development in Indonesia," 1965.

¹⁶⁸ His collection of publications can be seen in Daniel S Lev, *Legal Evolution and Political Authority in Indonesia : Selected Essays* (The Hague, 2000). Lev passed away in 2006 at the age of 73.

¹⁶⁹ Pompe, *The Indonesian Supreme Court*.

Bedner (2010)¹⁷⁰; The evaluation of Indonesian Supreme Court reform by Rositawati (2019)¹⁷¹; The study of organizational culture within the Indonesian prosecutor services by Afandi (2021)¹⁷²; The organizational culture of Indonesian national police by Baker (2012)¹⁷³; the study of an Indonesian defense lawyer in its search for legitimacy from the government after the reformasi in 1998 (2001) by Indonesian NGO, PSHK¹⁷⁴, and the role of Indonesian defense lawyers in land conflict by Kouwagam (2020)¹⁷⁵. This type of study is classed under the umbrella “institutional studies” because they focus on one specific institution.¹⁷⁶

Other interesting work related to the Indonesian criminal justice as a larger system than its components has been conducted by Renoe (2002) and Sjarief (2020).¹⁷⁷ In his doctoral dissertation at Yale University, Renoe conducted ethnography work in the Kerinci regency in Jambi province, a remote area in Indonesia. His focus was on how local people interact with the criminal justice system and paid particular attention to the linguistic practices and ideologies surrounding language within the cultural context.¹⁷⁸ In the end, Renoe found that legal processes may perhaps most fruitfully be thought of as an

¹⁷⁰ Adriaan Bedner, “Shopping Forums: Indonesia’s Administrative Courts,” in *New Courts in Asia* (Routledge, Taylor & Francis Group, 2010).

¹⁷¹ Rositawati, “Judicial Governance in Indonesia (Ph.D. Thesis).”

¹⁷² Afandi, “Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia.”

¹⁷³ Baker, “The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia.”

¹⁷⁴ *Advokat Indonesia Mencari Legitimasi : Studi Tentang Tanggung Jawab Profesi Hukum Di Indonesia [Indonesian Advocates Searching for Legitimacy]*, Accessed from <https://nla.gov.au/nla.cat-vn3043572> (Jakarta: Pusat Studi Hukum & Kebijakan Indonesia: Asia Foundation, 2001).

¹⁷⁵ Santy Kouwagam, “Role of Lawyers in Land Conflict” (Leiden, Leiden, 2020), <https://scholarlypublications.universiteitleiden.nl/handle/1887/123059>.

¹⁷⁶ Adriaan Bedner, “Autonomy of Law in Indonesia,” *Recht Der Werkelijkheid* 37, no. 3 (November 2016): 10–36, <https://doi.org/10.5553/RdW/138064242016037003002>. Bedner, a Dutch scholar from Leiden, is also one of the renowned scholars in Indonesian institutional studies. He has supervised several Indonesian doctoral students such as Kouwagam (2020) and Afandi (2021).

¹⁷⁷ Curtis E. Renoe, “Legal Texts and Truths: The Interactive Production of Fact in Indonesian Criminal Trials” (Ph.D., United States- Connecticut, Yale University, 2002), <http://search.proquest.com/docview/305525224/abstract/8E5D3A18550B437APQ/26>; Rifqi Sjarief, “Criminal Sentencing in Indonesia: Disparity, Disproportionality and Biases” (Melbourne, Melbourne, 2020).

¹⁷⁸ Renoe, “Legal Texts and Truths,” 202.

exercise of translation.¹⁷⁹ Meanwhile, Sjarief, in his doctoral dissertation at the University of Melbourne, investigated extra-legal factors that influence judges when making a decision, such as the socio-economic bias and the need to ease caseload pressure.¹⁸⁰ In the end, Sjarief argued that these extra-legal factors significantly contribute to the disparity of criminal sentencing in Indonesia.

Although it can be argued that Renoe and Sjarief also investigated the informal processes of the Indonesian criminal justice system, none of them focused on the workgroup rules. Renoe's object of investigation was the interactive production of fact in Indonesian criminal trials through a critical examination of law, language, and culture. Meanwhile, although Sjarief touched on the judge's need to maintain workgroup cohesion with the prosecutor – by issuing judgments based on at least two-thirds of the sentencing proposal from the prosecutor – he did not discuss the complexity of the relationships among key criminal justice actors and how they could further impact the outcome of the decision. This is where my work could fill the void in the Indonesian legal scholarship.

Positioning of the Study and Contribution to the Existing Literature

In the literature, this study is situated under the purview of criminal justice studies. This area covers the issue of criminal justice administration, focusing on the behavior of criminal justice actors as a collective unit and their working relationships. Other works similar to this dissertation have often labeled their work as the “politics of criminal justice” or “socio-legal studies.” However, I called my own study “criminal justice studies.” This is because, from the literature, we have learned that one of the primary reasons for the lack of theoretical orientation in criminal justice is because scholars prefer to use more “fancy” terms such as “study of crime control,” “politics of criminal justice,” “socio-legal studies of

¹⁷⁹ Renoe, 266. Renoe examined the transcript dialogue between witnesses, suspects, judges, prosecutors, and defense lawyers in a criminal trial. He argued that the semiotic process of translating token-level events heavily depends on its cultural-legal types.

¹⁸⁰ Sjarief, “Criminal Sentencing in Indonesia: Disparity, Disproportionality and Biases.” Sjarief also described extra-legal factors, other than caseloads pressure, such as bias in class and status that contributes to the practice of sentencing disparity in Indonesia.

criminal justice” or “public administration studies of criminal justice.” I prefer to situate this work within the field of criminal justice studies. I argue that criminal justice studies do exist, and encompasses various disciplines such as law, sociology, and politics.¹⁸¹ Although some scholars might argue that the label is not important, I do not agree with it. A label is used to mark the “territory” of the field and, sometimes, such a label still holds some degree of relevancy, especially in academia.¹⁸² There could be a serious theoretical deficiency if criminal justice theories cannot be found when we search for them with simple keywords such as “criminal justice theories” or “criminal justice studies.” History has shown us that one of the primary factors of deficiency in criminal justice theoretical orientation is because researchers resist labeling their work as “criminal justice studies.”¹⁸³

With that being said, this dissertation can contribute to criminal justice studies by demystifying the concepts that have become the structural features of the system, such as “working relationship,” “informal workgroup rules,” “cooperation,” and “ego sektoral” within the organizational framework. These issues will always be relevant because the definitions of those concepts vary considerably across jurisdictions and times. Because of that reason, there is always room in the scholarly discussion for the application of an organizational framework using a specific jurisdiction as its case study. This dissertation will provide further insights on the application of the organizational framework using Indonesia as its case study. In Indonesian scholarship, as far as I know, this work is the first attempt to investigate the structural features of the Indonesian criminal justice system. This approach is very important because,

¹⁸¹ This view is similar to the argument of Hagan and Kraska. Hagan, “Why Is There so Little Criminal Justice Theory? Neglected Macro and Micro Level Links between Organization and Power”; Kraska, “Criminal Justice Theory.”

¹⁸² For instance, most Indonesian law schools combine criminal law departments and criminal justice departments. This reflects the confusion between the disciplines of criminal law and criminal justice. In Universitas Indonesia (where I teach) they only separated the two disciplines in 1970. The University of Washington also runs a major for criminal justice, separate from the law school.

¹⁸³ Kraska, “Criminal Justice Theory,” 172. Kraska examined the lack of a theoretical framework in criminal justice studies. One of the reasons, according to him, is that scholars would likely resist having their work identified as “criminal justice studies”.

as I mentioned earlier, the dominant approach in the broad criminal justice literature includes an image of actors and institutions linked together to pursue clear, harmonious, and common purposes. When we look through the lens of organizational analysis, the reality is never that simple.

Chapter 3

Research Methodology

Introduction

The main purpose of this chapter is to explain the steps that I have taken to answer the research questions proposed by this research. Moreover, this chapter will also explain why I concluded that such steps were the best way to investigate the issues in question.

This chapter is organized as follows: First, it will discuss the overall research approach by discussing the research philosophy and design and how it influenced the choice of methodology. Second, this chapter will explain how data were collected and analyzed using the qualitative grounded theory approach. This chapter will focus on how the grounded theory approach has been applied to answer the research question and why I think it is the “best” methodology for this research. In addition, this chapter will also explain the role of the researcher as an instrument of research and the ethical issues related to this research.

Research philosophy and design

This dissertation poses one main fundamental question: what are the factors that impede and induce cooperation among actors in Indonesian criminal case processing? In other words, the research seeks to investigate the working relationship between key criminal justice actors – police, prosecutor, judges, and defense lawyers. This type of research question requires me to understand the law through the lens of its actors. It seeks to evaluate formal rules and informal rules that guide the behavior of actors in an organizational setting.

I realize that the answer to such a question lies substantially in the perceived experience of the actors and their perceptions on how the system operates. In reality, it is hard to deny that justice is

constructed through the working interactions of the actors and not by a mechanical application of clear rules. For instance, in the next chapter, readers will see how this dissertation reveals that the power competition between the actors produces ambiguous rules that trigger a conflict of interpretation in defining the distribution of power between the police and the prosecutor within the formal rules. Moreover, such conflict creates both personal and institutional distrust. These facts show that there are problems in the police-prosecutor relationship as perceived by the police and the prosecutor.¹⁸⁴

This clearly shows that law and justice are not closed logical systems but are subject to interpretations, as the humans that operate them give meaning to the “reality of justice.”¹⁸⁵ In this sense, the researcher acts as a co-constructor of reality, along with the interviewees, in interpreting and making sense of the data. This epistemological position is called “constructivism” since this researcher considers that humans construct reality.¹⁸⁶ This position contrasts with “positivism,” which considers that the truth is “out there,” only waiting for the researcher to discover it.¹⁸⁷ In this context, positivism refers to the paradigm that assumes that reality is relatively independent of its context.¹⁸⁸ Because of this reason, a positivist orientation assumes that reality exists “out there” and that it is observable and

¹⁸⁴ See Chapter 4 on the pre-trial relationship between the police and the prosecutor.

¹⁸⁵ In a qualitative approach, this perspective is called symbolic interactionism. Glaser and Strauss, *The Discovery of Grounded Theory*; Charmaz, *Constructing Grounded Theory*.

¹⁸⁶ Charmaz, *Constructing Grounded Theory*; David Silverman, *Doing Qualitative Research* (SAGE, 2017).

¹⁸⁷ Charmaz, *Constructing Grounded Theory*. In this context, the term “positivism” does not specifically refer to legal positivism – the connection between morality and the law as described by Hart and Austin’s legal positivism. Instead, it refers to a research paradigm. Positivism is also mainly linked to quantitative research, which undertakes research from a positivist standpoint. In this paradigm, the researcher must not contaminate the data with their judgment. This is because the truth is already “out there” and there is no need for the researcher to construct the truth. However, this paradigm also shares similar traits with legal positivism (as well as Hart’s views) since it treats the law as an independent subject.

¹⁸⁸ Charmaz.

measurable.¹⁸⁹ This paradigm is also shared by the school of legal positivism, which treats the law as a system of rules and, therefore, its validity is “empirically verifiable.”¹⁹⁰

This philosophical position influenced the design of this research and the choice of its methodology. In order to experience the reality of Indonesian criminal case processing, fieldwork is the key. It is difficult to think of any area of law where fieldwork can be more valuable in understanding its core than criminal justice.¹⁹¹ That is why this research chooses to construct the reality by collecting data through interviews with actors, document analysis, observation, and recording thought-processes arising from the investigation through memos. All the processes that I have just described are part of “doing qualitative research.”¹⁹² In its most basic definition, qualitative research itself is an umbrella term to describe a process of research where the researcher uses words (not numbers) to capture reality. Fundamentally, qualitative researchers are interested in understanding the meanings people have constructed and how people make sense of their world through words.¹⁹³

Qualitative grounded theory methodology

Grounded theory methodology is a branch of methodology in qualitative research, and it is a well-known approach in the field of social sciences and humanities. It is helpful to understand the grounded theory approach by imagining how news reporters produce stories. Both grounded theory and news researchers enter the field of research with an open mind, without pre-conceived ideas. It does not start

¹⁸⁹ Sharan B. Merriam and Elizabeth J. Tisdell, *Qualitative Research: A Guide to Design and Implementation* (John Wiley & Sons, 2015), 5.

¹⁹⁰ Reza Banakar, *Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity*, 1st ed. 2015 (Cham: Springer International Publishing: Imprint: Springer, 2015), 23, <https://doi.org/10.1007/978-3-319-09650-6>. According to Banakar, the term “empirically verifiable” is analogous to the process of studying the scripture, and it has its version of empirical dimension, separated from the “real world.”

¹⁹¹ This logic is responsible for promoting the empirical approaches to criminal justice. One such empirical approach understands criminal case processing through organizational analysis. See Hodgson and Mou, “Empirical Approaches to Criminal Procedure.”

¹⁹² Silverman, *Doing Qualitative Research*.

¹⁹³ Silverman; Creswell and Creswell, *Qualitative Inquiry and Research Design*, 6.

with a hypothesis because the main principle is that the researcher will need to follow the data to generate a theory from the “ground up” – also known as the inductive approach. The main difference is that grounded theory provides systematic guidance on producing such stories – how to collect and analyze data through coding processes. This chapter discusses an elaborate explanation of the coding process in the “data analysis” section.

The founders of grounded theory, Barney Glaser and Anselm Strauss, discovered grounded theory when investigating awareness of dying in terminally-ill patients in 1965. At that time, both authors were dissatisfied with the limited approach of qualitative research, where the predominant approach was hypothesis testing.¹⁹⁴ When inventing a grounded theory, Glaser and Strauss were driven by the motivation to generate a theory from the fieldwork to explain the pattern of behavior in a specific social phenomenon. It is an exploratory methodology through which researchers may discover the concepts that motivate social actors in a specific context.¹⁹⁵

The type of research question posed by this dissertation requires me to study the law not only as a system of rules but also study them in its social, cultural, and historical context. In other words, to answer the research question, I need to evaluate how the law is operated by its actors. Since lawyers are not explicitly trained in any awareness of research methodologies concerning the connection between law and society, I need to borrow the grounded theory methodology from the field of social sciences and humanities.¹⁹⁶

¹⁹⁴ Glaser and Strauss, *The Discovery of Grounded Theory*. According to Glaser and Strauss, the qualitative approach suffered from what they called “extreme-positivism” or hypothesis testing rather than generating theory from the data.

¹⁹⁵ Glaser and Strauss.

¹⁹⁶ For the discussion about the unclear relationship between legal research and other research methods, see Lee Epstein and Gary King, “The Rules of Inference,” *The University of Chicago Law Review* 69, no. 1 (2002): 1, <https://doi.org/10.2307/1600349>; Lisa Webley, *Qualitative Approaches to Empirical Legal Research* (Oxford University Press, 2010), <https://doi.org/10.1093/oxfordhb/9780199542475.013.0039>; Ian Dobinson and Francis Johns, “Legal Research as Qualitative Research,” in *Research Methods for Law*, 2021, 31. Broadly speaking, these

Because of following grounded theory, the nature of this research is exploratory. It seeks to explore issues about how informal workgroup rules that structure cooperation and non-cooperation in Indonesian case processing are demonstrated. In the future, the qualitative analysis produced through grounded theory may lead to hypothesis testing once basic conceptual categories are fleshed out. This dissertation strongly recommends future researchers to test the validity the theory that is constructed by this dissertation.¹⁹⁷

Why Grounded Theory?

This dissertation follows the grounded theory approach (and not other qualitative research methods) for three primary reasons. The first is because cooperation between the actors is underexplored in the Indonesian literature and the global literature. Moreover, when investigating cooperation, this dissertation treats criminal justice as a system of organized interactions between its actors. It is, therefore, necessary to find the motivating factors that affect the operation of the criminal justice organization. In the Indonesian literature, this topic is still underexplored since there is little empirical information about the topic.¹⁹⁸ It is therefore important to start the research without pre-conceived ideas. Because of these reasons, grounded theory is the most suitable approach since it is designed to investigate underexplored issues. As a result, it makes the grounded theory a flexible methodology because it tries to collect information that is grounded in “reality.” The open-mind approach of grounded theory allows the researcher to broaden their understanding of the literature to areas that

authors agreed that many legal scholars and lawyers are unaware that they have employed qualitative and quantitative paradigms in their research. If we take a closer look, the legal researcher also immerses themselves in the details of cases, builds concepts and variables, and generates an understanding of the cases.

¹⁹⁷ See the conclusion chapter, in the section “suggestions for future research.”

¹⁹⁸ As mentioned earlier in the literature review chapter, although this topic has been the subject of casual conversation among commentators, no empirical study specifically investigates the interaction between actors. Most (if not all) publications discuss the topic with the “black letter” approach.

may seem unrelated at first. With this logic, the researcher must be able to anticipate the dynamics of the research.

For example, because of the grounded theory approach, I had to change my core research question and expand my analysis during the first months of my fieldwork. At first, the initial topic of this dissertation was about predicting the future implementation of plea bargaining and its resistance from key actors. However, after conducting several interviews, I realized that plea bargaining was not the problem. It was just a procedural instrument. The problem was that the introduction of plea bargaining would require cooperation between the actors who would operate such an instrument. I found that the troubled relationship between actors affects their ability to work together in processing criminal cases.

With this discovery, I realized that the grounded question was not plea bargaining but the actors' ability to operate a plea bargaining procedure. These facts forced me to change my research topic to cooperation between criminal justice actors. As a result of investigating cooperation, I found that ego sektoral is the main problem that impedes cooperation in case processing. This was the moment when I realized that plea bargaining is a "bridge too far" for Indonesia.

Subsequently, an investigation of ego sektoral behavior "forced" me to consult the literature about inter-organizational relationships and organizational ego that is fertile in organizational psychology and behavior.¹⁹⁹ At first, it never crossed my mind that, during the research process, I would need to consult the literature from those fields.

¹⁹⁹ For example, I needed to consult these literatures: Henderson and Argyle, "The Informal Rules of Working Relationships"; Morton Deutsch, "Cooperation, Competition, and Conflict," in *The Handbook of Conflict Resolution: Theory and Practice*, 3rd Ed (Hoboken, NJ, US: Jossey-Bass/Wiley, 2014), 3–28; Larry Katz, Lisa Finestone, and David M. Paskevich, "Competition When Cooperation Is the Means to Success: Understanding Context and Recognizing Mutually Beneficial Situations," ed. Giulia Prete, *Cogent Psychology* 8, no. 1 (December 31, 2021): 1878984, <https://doi.org/10.1080/23311908.2021.1878984>.

The second is because grounded theory provides a step-by-step guide for data collection and analysis. There are two core tenets of grounded theory that enabled this research to evaluate the ability of Indonesian criminal justice actors to cooperate. The first was deciding on the interview respondents and which documents needed to be examined. In grounded theory, this process is called theoretical sampling. In essence, theoretical sampling is a triangulation method that helps the researcher decide the analytical ground to be used to examine the research sample. For instance, when I decided to investigate cooperation, I found that laws are also a factor to blame for the uncooperative behavior of actors. This fact required me to investigate the political actors that were responsible for designing the laws.²⁰⁰

This iterative process produces an effective triangulation method called the constant comparative method.²⁰¹ As the name suggests, the constant comparative method mandates the researcher to always compare the data (with other data) to improve the credibility of the research. In addition, the grounded theory method also provides clear instruction to develop a pattern from the data that eventually results in a theory through the coding process. A detailed explanation of how the coding process has been applied to the research data is provided in the next section.

Third, using the grounded theory method goes beyond providing detailed descriptions. Through the coding process, it seeks to generate a theory that could serve as a basis to answer bigger and more practical questions. For instance, in the concluding chapter, readers will see how the findings of this research can be used to offer an argument for why previous reforms failed and the underlying reasons

²⁰⁰ The interviews were designed to understand the logic behind the law and the socio-political surroundings behind the formation of the law. For instance, in Chapter 5, I interviewed the ministry official responsible for designing the rules to induce cooperation. This dissertation investigates historical archives to understand the logic of the 1981 Indonesian criminal procedure code (KUHP).

²⁰¹ Glaser and Strauss, *The Discovery of Grounded Theory*. Constant Comparison was introduced by Glaser and Strauss (1967) and is therefore associated with grounded theory.

for ego sektoral behavior. The qualitative analysis provided through grounded theory may lead to hypothesis testing once fundamental theories developed by this research are fleshed out.

Data sources and collection method

The main data source for this dissertation is a semi-structured interview with 36 criminal justice actors that have direct knowledge of the issue being investigated. I interviewed them during the period of my field research in Indonesia, from July 2020 to September 2021. During the writing stage in Seattle, I also conducted virtual interviews to saturate my findings – when no new information was discovered in the data analysis.²⁰² The data saturation stage is a critical aspect of qualitative research (not just grounded theory). This is where the researcher needs to make a judgment on whether the results of his investigation are credible enough to represent the reality on the ground.²⁰³

The data collected from the interviews were triangulated through further interview data and through content analysis of documents related to the interviews. The documents examined were formal laws and regulations (including internal regulations) that guide the behavior of actors in organizational settings. This research also examined historical documents that influence the design and content of the law. For example, to trace the socio-political surroundings of the 1981 Indonesian criminal procedure code (KUHP), I examined parliamentary debates when the law was being discussed and biographies of the actors that participated in those debates.²⁰⁴ Moreover, this dissertation also examined news articles

²⁰² I interviewed Informants D74 and D75 (members of the task force). In addition, I conducted a second interview with Informant D66, a mid-ranking district court judge, in January-February 2022 during the writing process of this dissertation.

²⁰³ In grounded theory, this process is called theoretical sensitivity. It will be discussed in detail on the data analysis section. Glaser, *Theoretical Sensitivity*.

²⁰⁴ For instance, see *Sejarah Perkembangan Kepolisian Di Indonesia: Dari Zaman Kuno Sampai Sekarang / Awalloedin Djamin ... [et Al.]*, Accessed from <https://nla.gov.au/nla.cat-vn3962641> ([Jakarta]: Yayasan Brata Bhakti Polri, 2007); Memet Tanumidjaja, *Sedjarah perkembangan Angkatan Kepolisian [The history of Indonesian Police]* (Pusat Sedjarah ABRI, 1971); Oemar Seno Adji, *Hukum (Atjara) Pidana Dalam Prospekti [Criminal Procedure Code in Prospective]*, Accessed from <https://nla.gov.au/nla.cat-vn790123> (Djakarta: Erlangga, 1973). The biography about Awalloedin Djamin helped this dissertation to uncover the power competition between the police and the

from credible sources as long as they were relevant to the investigated issues. In the next section, I will discuss the sampling of the interviews, the interview technique, and how I gained access to my interviewees.

Interview Sampling

In grounded theory, sampling for the data is decided through a mechanism called theoretical sampling. This is a core feature in grounded theory analysis. In short, theoretical sampling is a process where the researcher is required to decide on the next sample based on the previous interview.²⁰⁵ The previously conducted interview serves as a vehicle to detect a “hole” in the existing interview data. To fill that hole, theoretical sampling requires the researcher to conduct more interviews so that it can generate findings that are grounded.²⁰⁶ Consequently, the theoretical sampling strategy does not mandate a minimum or a maximum number of interviewees to justify the findings. To make it clear, let me provide an example of how I performed theoretical sampling to decide whom to interview next.

Earlier, this dissertation explained how interviews with criminal justice actors led to further interviews with parliament members responsible for designing the laws. A series of interviews related to this topic helped me to develop power competition as a major category for this dissertation. My initial interviews with the prosecutors revealed they were not satisfied with their relationship with the police. During the interviews, the prosecutors claimed that lawmakers had the opportunity to address such problems through the revision of prosecutorial law in 2020. According to the prosecutors, the lawmakers also felt

prosecutor when the current code (1981 KUHP) was being discussed. At that time, in the late 1970s, Djamin was the head of the Indonesian national police. Meanwhile, a biography about Memet Tanumidjaja helped this research uncover the power competition after Indonesia gained formal independence in 1949. At that time, Tanumidjaja was the head of the Indonesian national police. The publication from Senoadji (the then Minister of Justice) in 1973 also helped this dissertation to see the prosecutor’s perspective during the power competition.

²⁰⁵ Geraldine Foley et al., “Interviewing as a Vehicle for Theoretical Sampling in Grounded Theory,” *International Journal of Qualitative Methods* 20 (January 1, 2021): 1609406920980957, <https://doi.org/10.1177/1609406920980957>.

²⁰⁶ Foley et al. According to Foley, emergent concepts in the data being generated are used to guide where to go to for more data, from whom more data should be collected, and for what purpose.

that the power of the police in processing a case is too powerful.²⁰⁷ This information required me to confirm this finding with the lawmakers and investigate their motives – this is the “hole” in the data.

To fill that hole, I interviewed two lawmakers to discuss the claims made by the prosecutor. It turned out that the initiative to reform the prosecutorial law did not come from the lawmakers. Although it is true that, formally, the proposal came from the parliament, it was revealed that to avoid public debates with the police, the prosecutors pushed the reform using the hand of several parliament members.²⁰⁸

After the interview, I found another hole in the data – Was it true that this new prosecutorial law would trigger public debate with the police? Why would the police disagree with the new law? These questions led me to interview a police official aware of this issue. After the interview with the police, it turned out that the police were closely monitoring this issue because the new law would diminish the police investigative function. This chain of interviews helped me to saturate the findings of power competition between the police and the prosecutors.²⁰⁹ These activities are also done by news reporters when doing their research.

I started my initial sampling with the prosecutors because my initial topic was plea bargaining. At that time, my idea was that plea bargaining would significantly impact the prosecutor’s role more than any criminal justice actors. It turned out that, as previously explained, plea bargaining is not the problem. The problem is the police and the prosecutors’ cooperation in operating plea bargaining. That is why, in the middle of my fieldwork, interview data forced me to change my research questions – what are the factors that impede and induce cooperation between them.

²⁰⁷ Interview with Informant D7 (forth interview, July 19, 2021).

²⁰⁸ Informant D32. Interview with author, November 18, 2021. My informant was involved in discussing the new prosecutorial law. The debate about this law is provided in the next chapter.

²⁰⁹ All these processes require the researcher to have theoretical sensitivity. In short, theoretical sensitivity is acknowledging the role of the researcher in the research process. See the section about the researcher as an instrument of research.

I am fortunate that most (30) of my samples were willing to do face-to-face interviews amidst the Covid-19 pandemic. It was easier for me to build a connection with my participants when conducting in-person interviews. The protocol of interviews during Covid is further discussed on ethical issues.

Below is the detail of the respondents interviewed in connection with this dissertation:

Table 1. Respondents of the study

Role	Number of respondents	Years of experience
High-ranking police official (leadership level; two-star generals and up)	6	more than thirty years
Mid-ranking police official (operator level; commissioner to senior commissioner)	2	more than fifteen years
Member of police's commission (Kopolnas)	1	Five years in office (appointed by the president every five years)
Total numbers of interviews with police officials	9	
High-ranking prosecutor (leadership level; equal to two-star generals and up)	4	More than thirty years
Mid-ranking prosecutor (operator level); Group interview	4	More than ten years
Mid-ranking prosecutor (individual interview)	1	More than ten years
Junior prosecutor	1	Less than five years
Member of prosecutor's commission (Kojak)	1	Five years in office (appointed by the president every five years)
Total numbers of interviews with prosecutors	11	
Supreme Court judges (leadership level)	1	More than thirty years
Senior District Court judges (leadership level)	4	More than twenty years
Mid-level District Court judges	1	More than ten years
Junior District Court judges	1	Less than five years

Total number of interviews with judges	7	
Senior defense lawyers (hold key leadership positions in bar association)	2	More than thirty years of experience
Mid-level defense lawyers	1	More than ten years of experience
Public defender	1	More than fifteen years of experience
Total numbers of interviews with defense lawyers	4	
Parliament members responsible for overseeing the system and law-making	3	Two members have been in office for more than ten years One member has been in office for three years
Criminal justice reform team	2	The drafter of the criminal procedure code reform team (KUHAP reform) in 2004-2013
Total number of interviews with external policymakers	5	
Total number of interviews	36	

From this table, we can see that the sample of my interviews covers criminal justice actors from various ranks, and I interviewed the actors who hold a leader (high rankings), manager (mid-rankings), and worker (low rankings) positions. With this strategy, I argue that the findings of this dissertation are credible enough to represent the reality on the ground. Several reasons support this statement. First, all my sources have first-hand knowledge about the research problem. Second, in the Indonesian system, where transfer and promotion are part of the career path, an interviewee currently holding a position dealing with a specific area of responsibility would also be knowledgeable on other issues. Because most of my samples are high-ranking actors, they have deep knowledge about how the system operates and have the ability to shape the system. Lastly, one must not forget that the bureaucracy in the Indonesian

criminal justice institution is highly centralized.²¹⁰ The leaders, high-ranking actors, hold considerable power to shape the professional mindset of their subordinates.

Interview technique

This study conducted a semi-structured interview because that approach would allow the researcher to ask open-ended questions within a predetermined thematic framework. This interview technique helped me to dig deep into interviewees' perceptions about their experiences²¹¹ while at the same time maintaining the focus of the interview. Moreover, the interview helped uncover the actor's role beyond what is prescribed by the formal rules pertaining to each person's status. This is important because investigating criminal justice as an organizational activity requires the researcher to understand the dynamics between formal rules and informal rules. In other words, it requires me to reveal the "hidden rules" within the actor's interaction in case processing.

Each interview was held in the Indonesian language (*Bahasa Indonesia*), and, with permission from my respondents, the interviews were recorded through a digital voice recorder. Because I conducted my fieldwork during the Covid pandemic, six respondents were interviewed through video call via the Zoom software application. Each virtual interview was also recorded with permission from the respondents. After the interview, I transcribed the interview and began the coding process to develop patterns.²¹² Moreover, I translated important parts of each interview into English. I provide the recorded interview with its verbatim transcript, photos, and relevant documents through the cloud database (Evernote app)

²¹⁰ In Indonesia, the organizational structure of Indonesian criminal justice institutions is highly centralized. The police are under the authority of the Indonesian National Police Office (Polri), The prosecutors are under the authority of Supreme Prosecutorial Services (Kejaksaan Agung), and the judges are under the purview of the Supreme Court (Mahkamah Agung). In contrast to the American jurisdiction that is "hyper-localized."

²¹¹ In this context, experience means the view about how the system operates, how they perceive their working relationship with each other and the law's normative role in guiding action and shaping relationships.

²¹² In grounded theory research, providing a verbatim transcript is a very important process. This is because a researcher might not develop a pattern initially, and the researcher might identify deeper meaning and patterns later through a constant comparative method.

to the Ph.D. committee. I also built an interface to access the databases through Google sheets.²¹³ I have attempted to be as transparent as possible with the data to improve my research credibility.

During each interview, I also tried to take as few notes as possible because I realized that note-taking during the interview could jeopardize the fluidity of the conversation. This could also affect the data production, making the data “unnatural.” That is why I only made a note when a respondent did not want to be recorded. I only realized these issues during the first several interviews. When I took notes, it created the ambiance that my informant was being investigated and created a barrier between my informant and myself. I could sense that my informant was being careful with their words.

I also had the chance to conduct group interviews. This happened twice during the interview stage with the prosecutor and police officials. Initially, I did not plan to conduct any group interviews. However, since most of my respondents were high-ranking officials, they usually invited their subordinates to the interviews. I was aware that it might be awkward for their subordinates to disagree with their superior’s arguments during the interview. That is why, usually, when I sensed that their opinions might differ, I contacted them individually, with permission from their boss.²¹⁴

Gaining access

Because this research utilizes interview data, gaining access was crucial. First, obtaining consent for the interview was one of the most demanding challenges considering that most of my informants are high-ranking officials. I utilized my status as an assistant professor at the University of Indonesia law school to get access to them. Fortunately, my law school network includes high-ranking actors who also serve as

²¹³ This is the link to the database interface:

<https://docs.google.com/spreadsheets/d/1cMoNJOH3c9Y74mNGI7mpUPKEH36ToRe0DULMzocPqBw/edit?usp=sharing>

²¹⁴ Group interviews with the prosecutor occurred on July 3, 2020, and September 11, 2020. I interviewed four low and mid-ranking prosecutors and their bosses (Informant D7) in Jakarta. A group interview with the police (Informant D67) also happened on July 19, 2020.

professors. Several of my informants also helped me to connect with other respondents. This informal strategy proved much more effective than requesting an interview through formal letters. In fact, at first, I submitted official requests, but many of them were ignored. I contacted my informants through text message, explaining who I was and what information I needed from them for my research. I explained the estimated duration of the interview (which is 90-120 minutes). In addition, I also experienced a moment when some of my respondents canceled the appointment shortly before the interview began. In this case, I tried to schedule another appointment with them. Many of them agreed, but some did not respond to my request.

After getting consent, the second challenge was to make them comfortable during the interview so that I could get as much useful information as possible. When I interviewed high-ranking officials, they were always cautious about their statements. Therefore, it was important to build rapport with them. One strategy to build rapport was by starting the interview with an open-ended question about themselves. I used the information gained from their publications or autobiography as a conversation starter before moving to the substance of the topic. I found that such a method was beneficial for encouraging them to talk freely and openly to me.

Data analysis method

After the data were collected, I began to analyze the data through the coding process. In essence, coding is an analytical process in qualitative research where the researcher makes sense of the data by assigning labels. The purpose of putting a label on the data is to produce conceptual abstraction by assigning general concepts in the form of codes.²¹⁵ The coding process is a strategy to let the data “speak” to the researcher by actively asking about the meaning of the data. Therefore, the researcher is part of the research instrument in qualitative research.

²¹⁵ Charmaz, *Constructing Grounded Theory*, 238–41.

The coding process requires the researcher to build theoretical sensitivity. In simple language, theoretical sensitivity is the researcher's ability to make sense of the data. It refers to the personal qualities of the researcher to make a decision about the data.²¹⁶ Without the theoretical sensitivity of the researcher, qualitative research will lose its credibility. Apart from personal qualities (such as professional and personal experience), theoretical sensitivity can be raised by recording thoughts and ideas through a memo. Theoretical sensitivity is also known as researcher reflexivity in qualitative research.²¹⁷ An elaborate explanation of the relationship between theoretical sensitivity and the researcher is discussed in the section about "researcher as an instrument of the research."

In the grounded theory literature, there are various ways to code. However, the difference between them is not a precise, easily distinguishable procedure.²¹⁸ The basic concept is still the same, which is investigating the connections between labels. This dissertation chooses to follow the Straussian coding method since it provides a step-by-step mechanism to move from initial coding to theoretical coding.²¹⁹ This process feels natural because it follows the logic of human inquiry because I allow the data to guide my investigation.

The Straussian coding method divides the coding process into three steps: open coding, axial coding, and selective coding.²²⁰ Open coding was my first approach to the data. It could be the actual spoken words of the informant during the interview (in-vivo coding). Axial coding or theoretical coding is the

²¹⁶ Glaser, *Theoretical Sensitivity*. In the literature, the active involvement of the researcher in qualitative research is criticized by the quantitative researcher. This is because the involvement itself makes the credibility and validity of the qualitative research questioned. However, one can argue that in order to create "good" research, one has identified what the variables that need to be measured first are, and this is where qualitative research can fill the gap. In addition, qualitative researchers argue that "reality" is dynamic.

²¹⁷ Merriam and Tisdell, *Qualitative Research*.

²¹⁸ Uwe Flick, *Doing Grounded Theory - Coding: Ways and Versions* (1 Oliver's Yard, 55 City Road London EC1Y 1SP: SAGE Publications Ltd, 2018), <https://doi.org/10.4135/9781529716658>. There are at least two ways of coding strategy developed by the founders of grounded theory Barney Glaser and Anselm Strauss. Glaser divided coding into two processes, selective coding and theoretical coding. Meanwhile, Strauss divided the coding process into three steps: Open, axial, and selective. This dissertation uses Strauss's coding method.

²¹⁹ Flick. Theoretical coding is a process where the researcher develops a connection between codes.

²²⁰ Glaser and Strauss, *The Discovery of Grounded Theory*.

process of finding a connection between the codes and categories that we develop in open coding. Meanwhile, selective coding is the process of making a connection into larger categories. To exercise this method, I needed to interact with the data and categories that I make by writing a theoretical memo – recording the steps that lead me to use such categories.²²¹ Put simply, I am making a note to myself so that I can always refine the codes after conducting more analysis.

Let me illustrate how the coding process was done in this dissertation to avoid confusion. In Chapters 4 and 5, this dissertation tries to deconstruct the term “ego sektoral” by contrasting the impeding factors with the inducing factors for cooperation. During the interviews with the police and the prosecutors, many informants said that the biggest problem in their working relationship is ego sektoral. When I analyzed the interviews, ego sektoral became my open coding. During the analytical process, I asked, what is ego sektoral? Is there any agreed definition of ego sektoral? What are the common traits of ego sektoral? This question allowed me to move to the next step, which is axial coding. In the axial coding process, I connected ego sektoral and other associated factors. It also forced me to conduct more investigations by doing more interviews or consulting the literature.²²² I found that ego sektoral is associated with the need to protect and increase criminal justice power (axial coding). This need is also associated with pragmatic interest and the design of the law (axial coding).²²³ As a result, it produces an anti-sharing and anti-cooperation behavior when police and prosecutors process a criminal case – which became my selective coding.

²²¹ Charmaz, *Constructing Grounded Theory*, 241. The memo is used as a tool for theoretical sensitivity.

²²² In grounded theory, this process is called constant comparative method.

²²³ Other codes that I developed that are associated with pragmatic interests are bureaucratic priorities, status, prestige and the tendency to monetize power.

This analytical process is done iteratively and ends when data is “saturated.” In this context, saturated means when there is no new information to emerge from the data analysis.²²⁴ This is another crucial decision that the researcher has to conclude. Since the nature of grounded theory is exploratory, limiting the scope of the research is very important. Otherwise, the investigation would never stop, and this dissertation would never have been finished. One of the benefits of using the grounded theory approach is that it could open up a new fresh research perspective. This dissertation also provides suggestions for future research in the concluding chapter since I could not investigate all the categories I developed.²²⁵

To perform the coding process, I used qualitative data management software, Atlas T.I. version 8.4. All the data and their codings and connections between categories are recorded on the Atlas T.I. database. I stored the database on a Google drive so that the committee could easily access it. To guarantee the privacy of my informants, all data will be deleted six months after the defense of this dissertation.

Researcher as an instrument of research

As previously explained, the researcher is an important instrument of research in qualitative research. The reason is that the researcher actively interacts with the data through the coding process. Since the researcher is acting as a co-constructor of the reality, theoretical sensitivity is required. This is because, in qualitative research, the researcher actively gives meaning to the data and makes an evaluation of the research process.

²²⁴ Khaldoun M Aldiabat, “Data Saturation: The Mysterious Step In Grounded Theory Method,” *The Qualitative Report* 23 (2018): 19. According to Aldiabat, saturation is reached when the researcher has “heard it all” and “understands it all”. This is a pragmatic decision from the researcher, but first the researcher must convince herself that she has already reached the data saturation stage.

²²⁵ In total, in my Atlas TI, I developed 200 codes, 11 code groups (category) and 4 network groups between code and category (theme). See my Atlas TI file that is uploaded on the cloud. See <https://drive.google.com/file/d/1ZTQj12YxNxlhko73pkf1lu8F5JT3R55H/view?usp=sharing>

Let me illustrate how theoretical sensitivity has been performed in this research. Since qualitative data is not measurable, when I am contrasting the data about the impeding and inducing factors for cooperation, it requires me to evaluate the relationship between the two. Are the inducing factors strong enough to negate the impeding factors in the pre-trial level relationship between police and prosecutor? I need to evaluate the data based on my own judgment to answer this question. I need to interpret and understand the meaning of the data. In this situation, my theoretical sensitivity is required. When investigating this question, I need to answer this question first: Can the ego sektoral behavior found in the police-prosecutor relationship be addressed by enacting a shared policy, interagency training, or creation of task forces? By constantly and actively comparing the data, I can offer an argument that the inducing factor is not strong enough to negate the impeding factors. Put crudely, it is only “treating the symptoms, not the disease.”

I also experienced a similar situation when I concluded that, in a trial-level relationship, the inducing factors are more substantial than the impeding factors. I must contrast and compare the impeding and inducing factors, conduct more interviews, and consult the literature until I am convinced that the judges and prosecutors can structure informal rules that incentivize cooperation based on the shared need for efficiency in case processing. These processes require me to be theoretically “sensitive” to the data. A full analysis of this topic is discussed in detail in Chapter 5.

Apart from the analytical process itself, theoretical sensitivity is formed through the professional and personal experience of the researcher.²²⁶ That is why I also need to provide a brief background about myself. I am also an actor in the Indonesian criminal justice process. First, I started my career in 2009 as an assistant public defender at the University of Indonesia. In 2013, I moved to commercial work,

²²⁶ Glaser, *Theoretical Sensitivity*.

working in a dispute resolution law firm in Jakarta. Apart from that, I have been an assistant professor at the University of Indonesia since 2012.

I am aware that although my background could serve as an added benefit to this research, it could also influence my research judgment. The benefit is that I could give an “insider” perspective to this research. I have been conducting the role of “participant-observer” in the Indonesian justice system for more than ten years. It could help me to sensitize information that I obtained from my informants. However, I also realize that I might develop a tendency for subjective judgment toward my counterparts – police, prosecutor, and judges. This is because I have been playing an adversary role to them in my entire career as a defense lawyer. To tackle this problem, I systematically followed grounded theory methodology to decontaminate my bias in analyzing the data.

Ethical issues

Before I did my fieldwork in Indonesia from July 2020 to September 2021, this research obtained ethical approval from the University of Washington Institutional Review Board in June 2020. This study received an exempt status. In this context, informed consent and choice of disclosure of confidentiality were critical to ensuring mutual trust between my informants and me. Considering that my respondents might share sensitive information, I always offered my interviewees the possibility to remain anonymous. In fact, most of my respondents wanted to be anonymous. In this dissertation, I assigned a code to all my informants to protect their privacy.²²⁷ However, for the sake of transparency, the committee can see the detail on my database – which I will delete six months after the completion of this dissertation.

²²⁷ In this dissertation, there are 1-2 names specifically mentioned. In this case, I have obtained their consent, and I also showed them how I present my communication with them in this dissertation.

Moreover, since I conducted my fieldwork during the Covid-19 pandemic, I also followed health protocols before and after the interviews. When I contacted my informants, I showed a negative PCR test to them, and I did a new Covid PCR test once per two weeks. During the interviews, I practiced social distancing and wore a mask.²²⁸

In addition, when making an appointment, I explained the details of my research and what I wanted to know from my informants. Apart from that, I also provided an estimated duration of the interview. I explained that the interview might take 90-120 minutes, and the interviewee could stop the interview if they felt uncomfortable and needed to do other things.

Luckily, no one stopped an interview, and I found several of my interviews were longer than I had estimated because my interviewees were willing to talk openly and freely.²²⁹ At the end of the interviews, considering the gift-giving culture in Indonesia, I gave my interviewees a souvenir that cost no more than \$7 (IDR 100,000). I received the budget for a souvenir (and the research) from my sponsor, the Endowment Fund of the Indonesian Ministry of Finance (LPDP) and the American Indonesian Cultural & Educational Foundation (AICEF).

Conclusion

The type of research question posed by this research requires the researcher to evaluate the implementation of the law in criminal case processing. Since the discipline of law fails to provide systematic guidance in investigating the relationship between law and society, this dissertation chooses to employ a qualitative grounded theory approach as its method of data collection and analysis. The main data source for this dissertation is a semi-structured interview with 36 criminal justice actors from

²²⁸ In some cases, I took off my mask because my interviewee recommended doing so, so that they could see my full face.

²²⁹ The shortest interview was 60 minutes, while the longest was 4 hours. See my interview database for more details.

various ranks – from high to low rankings. The interviews aimed to capture their experiences and their perceptions of how the system operates. In other words, they sought to understand the interplay between formal rules and informal workgroup rules in case processing. The interview data were constantly compared and triangulated with analysis of documents. Examples of examined documents are laws and statutes, internal regulations, historical documents, biographies, news articles, and archives of parliamentary debates surrounding the formation of the law.

Chapter 4

Factors that Impede Cooperation

Introduction

What are the impeding factors in the working relationship between criminal justice actors when processing a case? This chapter begins to address this question, beginning with an examination of why cooperation matters when processing a case and how it affects the system's functioning. This explanation provides the reader with the necessary context to situate the analysis of the interview data.

As mentioned previously, the findings and the analysis are organized by dividing the working relationship into two main case processing levels. The first is the pre-trial level relationship between the police and the prosecutor. The discussion in this chapter is centered on this level because the data reveal that this is the most critical stage of criminal case processing. Subsequently, the analysis examines the impeding factors in the working relationship between the prosecutor and the judges at the trial level. The discussion on the trial level focuses mainly on how the pre-trial level relationship affects the trial level's working relationship. The chapter concludes with a discussion of the role of a defense lawyer. As mentioned in the introduction chapter, the discussion of defense lawyers centers on how they navigate themselves amid the complex web of power dynamics among state functionaries – police, prosecutors, and judges.

Due to the large volume of interview data, interview extracts will be presented both in body text and footnotes for the reader's convenience. The interview extracts presented in the body text are directly and strongly related to the argument being made. Meanwhile, the extracts placed in a footnote are designed to provide additional information.

Why does cooperation matter?

Elaborating on the definition offered in the first chapter, cooperation is closely related to efficient case processing time in the organizational analysis framework.²³⁰ In fact, humans develop organizations (also sometimes called bureaucracy)²³¹ to perform specific tasks efficiently.²³² In this context, efficiency can only be achieved if there is no unhealthy conflict that could hinder smooth case processing.²³³ An unhealthy conflict resulting means a conflict that could have destructive consequences and make the system inefficient. Examples of destructive consequences are significant case backlogs at pre-trial and trial levels, unnecessary investigation delays, lengthy criminal justice processes, ineffective hearings, and unnecessary adjournments. In simple language, efficiency can be defined as the use of resources in a most productive fashion.

In order to reduce the symptoms of unhealthy conflict, cooperation becomes the fundamental ingredient for efficiency. In recent years, Indonesian criminal justice policymakers have always tried to increase efficiency by incentivizing cooperation.²³⁴ In fact, the stated formal goal of the Indonesian Court is speedy, simple, and low-cost justice.²³⁵

²³⁰ See chapter 1 page 12 on the section “definition of key terms.”

²³¹ In essence, according to Weber, bureaucracy is an organization of authority. Organization is invented so that it can rationally achieve its goal. Bureaucracy is about the division of labor. See the study of organization, bureaucracy and system in Weber, *Max Weber on Capitalism, Bureaucracy, and Religion*; Edgar H. Schein, *Organizational Culture and Leadership*, Fifth Edition (Hoboken: Wiley, 2017).

²³² Bernard, Paoline, and Pare, “General Systems Theory and Criminal Justice.”

²³³ In the first chapter, this dissertation has already discussed that to some degree, healthy conflict (that principally lies on the checks and balances principle) is required for the functioning of the system.

²³⁴ The Indonesian government is always campaigning on the rhetorical claims of “synergy and harmony among the actors” and an “integrated criminal justice system.” They also made several memorandums of understanding between police, prosecutors, and judges. In addition, the police and prosecutors also introduced a trial-waiver mechanism called “restorative justice.” The draft of criminal procedure reform tries to introduce plea bargaining. Efficiency has also become a priority for the Indonesian Supreme Court. In their blueprint, they stated efficiency as its primary mission. For more information, see literature review on the section covering cooperation and ego sektoral.

²³⁵ The original motto is *cepat, sederhana dan biaya ringan*. This principle is stated in the 1982 operational regulation of KUHAP and 2009 Judicial authority law (kekuasaan kehakiman).

From the doctrinal point of view, the term cooperation itself might carry negative connotations. Several scholars have argued that the obsession with an effective system (that might lead to bureaucratic processing of cases or “assembly line” justice) could undermine the defendant’s procedural rights.²³⁶ Even so, from the empirical standpoint, efficiency does not automatically lead to the violation of rights.²³⁷ In fact, efficiency could also contribute to fairness.²³⁸ For instance, Alkon argued that the plea bargaining system (arguably the product of cooperation between actors) could improve fairness because it could help the system adopt creative, non-custodial, and individualized sentences.²³⁹

The topic of efficiency versus fairness in the criminal justice system has proved to be an ongoing debate among scholars, which does not need solving here.²⁴⁰ This research does not take a specific position on such a debate, and it does not confirm or deny whether efficiency could result in a violation of rights or not. This dissertation also does not endorse the suppression of procedural fairness for efficiency reasons.

²³⁶ Yvon Dandurand, “Criminal Justice Reform and the System’s Efficiency,” *Criminal Law Forum* 25, no. 3–4 (December 2014): 383–440, <https://doi.org/10.1007/s10609-014-9235-y>.

²³⁷ In fact, efficiency has become a primary motivation for every criminal justice system around the globe. See Jacqueline Hodgson & Andrew Roberts, *Criminal Process and Prosecution* (2010), <http://oxfordhandbooks.com/view/10.1093/oxfordhb/9780199542475.001.0001/oxfordhb-9780199542475-e-4> (last visited Sep 30, 2020); For the benefit of plea bargaining, see Cynthia Alkon & Ena Dion, *Introducing Plea Bargaining into Post-Conflict Legal Systems* 35 (2014); Jacqueline Hodgson & Yu Mou, *Empirical Approaches to Criminal Procedure*, in *The Oxford Handbook of Criminal Process* (Darryl K. Brown, Jenia Iontcheva Turner, & Bettina Weisser eds., 2019), <http://oxfordhandbooks.com/view/10.1093/oxfordhb/9780190659837.001.0001/oxfordhb-9780190659837-e-3> (last visited May 6, 2021).

²³⁸ Malcolm Feeley, a renowned American organizational criminal justice scholar, argued that due process (or procedural justice) is only one idea of justice. Efficiency is also one *realistic* idea of justice that could also provide substantive justice, such as escaping the lengthy and torturous pre-trial process. He found his argument after observing trial courts in New Haven, Connecticut. See Feeley and Gusfield, *The Process Is the Punishment*.

²³⁹ Cynthia Alkon, “Plea Bargaining as a Legal Transplant: A Good Idea for Troubled Criminal Justice Systems,” *Texas A&M University Scholarship*, 2010, 405.

²⁴⁰ See for instance, the debate about efficiency in European criminal justice system in Hodgson and Mou, “Empirical Approaches to Criminal Procedure.”

Instead, this dissertation posits and accepts that efficiency is a necessary factor that must be accounted for in any criminal justice system. Caseload pressure and funding problems are real,²⁴¹ especially in a country with a huge population and rising crime rates, such as Indonesia and the U.S.²⁴²

The data collected as part of this study support the argument that the Indonesian justice system can be categorized as an inefficient system. Data show that significant case backlogs impact the functioning of the system on the ground. For instance, at the pre-trial level, the failure of the police and the prosecutor to cooperate has resulted in a widespread phenomenon called “case dossier back and forth” (*bolak balik berkas perkara*).²⁴³ In a public report, the prosecutor claimed that there are more than 600,000 case attritions at the pre-trial level.²⁴⁴ At the trial level, based on 2017 data from the Indonesian Supreme Court, it is shown that every criminal court in Indonesia suffered from massive case backlogs.²⁴⁵

Data collected as part of this study also support the argument that significant case backlogs at the trial level impact the system’s functioning. For instance, more than 300 criminal cases are left unresolved in one year in smaller cities such as Pekanbaru. In Jakarta, the capital city and the most crowded court,

²⁴¹ To see how caseload pressures and lack of funding influence the performance of Indonesian criminal justice actors, see Baker, “The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia”; Rositawati, “Judicial Governance in Indonesia (Ph.D. Thesis)”; Fachrizal Afandi, “The Justice System Postman: The Indonesian Prosecution Service at Work,” in *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*, ed. Melissa Crouch (Cambridge: Cambridge University Press, 2019), 86–106, <https://doi.org/10.1017/9781108636131.004>.

²⁴² Based on data from the Indonesian national statistical agency (BPS), there is rising crime rates through 2018–2020 (based on police report rate). Indonesia is the fourth most populous country in the world (around 270 million). Meanwhile, the U.S. sits third with 329 million.

²⁴³ This is a common phenomenon in the Indonesian criminal justice literature. Many Indonesian scholars use this term to explain why the Indonesian criminal justice process has become inefficient. However, to date, there has been no elaborate explanation as to why such a phenomenon occurs. Several notable Indonesian scholars such as Topo Santoso (2019) and Loebby Loeqman (2004) have called for researchers to investigate this phenomenon. By studying cooperation, this dissertation could also fill that void. See Santoso and Ramadhan, *Prapenuntutan Dan Perkembangannya Di Indonesia [Preliminary Prosecution Process and Its Development in Indonesia]*.

²⁴⁴ The report was presented in the hearing between the Indonesian prosecutor service and the parliament in 2013. This number also used to support prosecutor’s argument in the judicial review against the current criminal procedure code before the Constitutional Court. Case attrition means the failure of arrests to come to trial.

²⁴⁵ Indonesian Supreme Court, “Statistik Perkara Pidana 2016 [Criminal Case Statistic 2016],” accessed February 14, 2022, https://badilum.mahkamahagung.go.id/index.php?option=com_attachments&task=download&id=260. Efficiency has become a primary target of court reform in Indonesia in the past ten years.

1,803 criminal cases remain unresolved. Criminal justice actors report not having enough time to read and scrutinize their cases.²⁴⁶ In big cities, the waiting time for the hearing could take five hours for a hearing lasting less than thirty minutes. Sometimes, the hearing can also be canceled because of the busy schedule.²⁴⁷ These facts show that the Indonesian criminal justice system is not efficient, and the failure of actors to cooperate is a contributing factor to blame.

That is why studying what factors lead to cooperative and uncooperative behavior could help shed light on the actual operation of the system and its organizational effectiveness. As mentioned earlier in the first chapter, by investigating cooperation, this dissertation could demystify the term “ego sektoral,” which is used as an interchangeable term for all sorts of impeding factors for cooperation in the Indonesian literature. In addition, the findings in this chapter can also serve as analytical tools to explain why previous criminal justice reform failed.

The impeding factors at the pre-trial level relationship between police and prosecutor

The main purpose of this section is to present the findings and analysis related to the impeding factors in the relationship between the police and the prosecutor when constructing criminal cases.²⁴⁸ Data reveal that the impeding factors result from the association between power competition and conflict, which produces ego sektoral behavior. This phenomenon indicates that there are no agreed informal

²⁴⁶ Interview with Informant D38 (district court judge in a busy court outskirts of Jakarta), July 24, 2020, and Informant D60 (line-prosecutor in Jakarta), January 5, 2021. During the interviews, both admitted that because of caseload pressures, they do not read their dossier before the hearing. They only read documents during the hearing.

²⁴⁷ Interview with Informant D19 (defense lawyer in Jakarta), September 14, 2020. As a defense lawyer myself, I can confirm this statement. I often experienced this problem during my ten-year career as a defense lawyer in Jakarta. The court facilities are generally poor (no waiting room, dirty restrooms), which makes waiting a torturous process. In addition, frequent delays in the trial topped the list of complaints about the Indonesian court. See Ria, “Ada Keluhan Soal Pengadilan? Adukan Lewat Aplikasi Ini [Do you have complaints to the court? Submit from this application],” *hukumonline.com*, accessed May 7, 2022, <https://www.hukumonline.com/berita/a/ada-keluhan-soal-pengadilan-adukan-lewat-aplikasi-ini-lt571a07df192aa>.

²⁴⁸ I borrow the term “construction of cases” from British socio-legal scholar, McConville. See Michael McConville, Andrew Sanders, and Roger Leng, *Case for the Prosecution: Police Suspects and the Construction of Criminality*, 2020.

workgroup rules that structure cooperation when both actors process a criminal case. Furthermore, the absence of informal workgroup rules suggests that both actors have a different understanding of their roles and how the system operates. This is the fundamental reason why cooperation is harder to achieve at this level.

In explaining the arguments mentioned above, this section is organized as follows. First, this section will discuss the ambiguity within the formal rules that serve as a primary source of conflict. Subsequently, it will explain how such conflict triggers personal and institutional distrust in the police-prosecutor working relationship. Finally, this section will deconstruct the term *ego sektoral*, which has been widely (and abusively) used as an umbrella term to label all of the impeding factors for cooperation.

The ambiguity of the law

To understand why the law is ambiguous, it is necessary to look at the social-political surroundings behind its formation. The primary law for the Indonesian criminal justice system is the KUHAP – *Kitab Undang-Undang Hukum Acara Pidana* (henceforth also referred to as law or formal rules).²⁴⁹ The KUHAP was established in 1981 against the backdrop of the authoritarian military regime under Soeharto.²⁵⁰ During the drafting process of KUHAP in the 1970s, the police and prosecutor wanted to control investigative power, and as a result, there was a power competition between them.²⁵¹

²⁴⁹ KUHAP is the main code for the criminal justice system. There are other regulations, ranging from governmental regulation to internal institutional regulation sanctioned by criminal justice institutions. Any other regulations must be in line with the procedural logic set forth by KUHAP. I refer to all these written regulations as formal rules.

²⁵⁰ Soeharto was an Indonesian army officer who served as the second and longest-serving (32 years) president of Indonesia. Many credible commentators consider him a dictator. For instance, see Harold A. Crouch, *The Army and Politics in Indonesia*, Rev. ed, Politics and International Relations of Southeast Asia (Ithaca: Cornell University Press, 1988); Harold A. Crouch, *Political Reform in Indonesia After Soeharto* (Institute of Southeast Asian Studies, 2010).

²⁵¹ After Indonesia gained its formal independence in 1949, the police and the prosecutors who took part in fighting the Dutch colonial power wanted to claim their stake in the new republic. They both wanted the power to investigate criminal cases – as part of their wider mission of social control. See Daniel S. Lev, “The Politics of Judicial Development in Indonesia,” *Comparative Studies in Society and History* 7, no. 2 (1965): 173–99.

To deal with the competition, Soeharto's government showed a compromise by designing an ambiguous law to appease both sides.²⁵² As a result of this strategy, there is no specific precision of division of labor between the police and the prosecutor. The KUHAP further introduces the so-called *diferensiasi fungsional* doctrine (literally translated as functional differentiation). As the name suggests, the functional differentiation principle separates criminal justice actors into three different areas of power: investigation by the police, prosecution by the prosecutor, and trial by the judges. With this logic, the KUHAP also eliminates the interdependencies among actors when processing a case.

When there is a need to work together, the KUHAP uses ambiguous words such as “the police and prosecutor shall coordinate when investigating a case” and “the collaboration between the police and the prosecutor is vital for achieving justice” without providing a detailed operational framework for coordination and collaboration.²⁵³ Later in this section, readers will see how the design of KUHAP opened up huge room for multiple interpretations and, at the same time, triggered competing goals within the system.²⁵⁴ Moreover, this doctrine has become the main principle of working relationships between Indonesian criminal justice actors for more than four decades.²⁵⁵

²⁵² The political culture of conflict avoidance and appeasing both sides has had a deep root in Indonesian social and political culture. David Bouchier, *Illiberal Democracy in Indonesia the Ideology of the Family State* (London: Routledge, Taylor & Francis Group, 2016); Benedict R. O'G. Anderson, *Language and Power: Exploring Political Cultures in Indonesia* (Cornell University Press, 1990), <http://www.jstor.org/stable/10.7591/j.ctv3s8n2s>.

²⁵³ The 1982 operational regulation of KUHAP essentially says that each actor has their playing field. The regulation uses nebulous terms such as differentiation (*diferensiasi*) and compartmentalization (*kompartemenisasi*) to describe what it means to work together. Indonesian Minister of Justice, “1982 Keputusan Menteri Kehakiman Tentang Pedoman Pelaksanaan KUHAP [the Minister of Justice Decree on the Implementation of KUHAP,” Pub. L. No. M.01.PW.07.03, M.01.PW.07.03 (1982). The ambiguity will be discussed later in this section

²⁵⁴ In the next section, this dissertation will discuss how the Indonesian police translated this principle as an absolute separation of power. With this logic, there is no need for the police and the prosecutor to collaborate when processing criminal cases.

²⁵⁵ Based on my document research on the training materials for the police, prosecutors, and judges, I always found the discussion of functional differentiation doctrine. Training material files were obtained through personal communications — files on authors. In addition, the doctrine is also written in the widely used Indonesian criminal procedure code textbook: M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP [Commentary on the Indonesian Criminal Procedure Code]*, Ed. 2 (Jakarta: Sinar Grafika, 2000).

During the authoritarian regime of Soeharto, this design of law did not create many problems in its implementation since he could easily consolidate power by creating coordinating institutions. With Soeharto's strong political power, his government easily coerced cooperation through the power-dependence model.²⁵⁶ The power-dependence model coerces cooperation by centralizing power to coordinating institutions. With this model, the conflict of goals between agencies can easily be solved because every institution serves the same patron. During Soeharto's new order reign between 1966-1998, he established several coordinating institutions such as the Coordinating Ministry for Social, Legal, and Political Affairs (*Menkopolhukam*)²⁵⁷, The Command for Security and Order (*Kopkamtib*), and the coordinated forum for judges, prosecutors, and police (*Mahkejapol*). All key positions in these institutions (including the national police, the prosecution service, and the Supreme Court) were given to his military generals from the army division.²⁵⁸

In fact, the ambiguity served more good than harm to Soeharto's regime. Flexibility in interpreting the laws meant that his government could easily bend the law according to his needs. If he needed the police to control the stability, he could grant discretionary power to the police. However, if the police became a political burden to him, he could easily switch his hat to the prosecutor without the hassle of amending the law.²⁵⁹ Meanwhile, the judges only played a subservient role to the executive during

²⁵⁶ In the field of organizational sociology, there are two methods in incentivizing interagency cooperation, power dependence and adaptation-based. See Richard M. Emerson, "Power-Dependence Relations," *American Sociological Review* 27, no. 1 (1962): 31–41, <https://doi.org/10.2307/2089716>; Craig Redpony Wanner, "The Organizational Politics of Criminal Justice: Policy in Context. By Virginia Gray and Bruce Williams. (Lexington, Mass.: Lexington Books, 1980. Pp. Xiv + 175. \$17.50.)," *American Political Science Review* 75, no. 3 (September 1981): 769–70, <https://doi.org/10.2307/1961000>; Molm, "Affect and Social Exchange."

²⁵⁷ This office still exists today. However, the power is drastically reduced. The minister himself admitted this during an interview with Akbar Faizal in YouTube, See the interview video Akbar Faizal Uncensored, *Mahfud Md Buka-Bukaan Kabinet Jokowi [Mahfud MD Talks Bluntly about Jokowi's Cabinet]*, 2021, <https://www.youtube.com/watch?v=GXCqPnwQbY>.

²⁵⁸ In general, the army is the most powerful political unit in Indonesia (not just in the military), more than the Air forces and the Navy. To learn how the Indonesian army became the socio, legal and political force see Crouch, *The Army and Politics in Indonesia*.

²⁵⁹ This approach is also seen in the design of the criminal justice system in China. There is no clear division of role between the police and the prosecutor. This is because the government wanted to make sure that they could

Soeharto's regime. The Indonesian Supreme Court was positioned below the executive government, under the Ministry of Judicial Authority (*Departemen Kehakiman*). Not surprisingly, defense lawyers only played a (very) minor role in this power structure.

However, when Soeharto's regime collapsed due to a financial and political crisis that triggered reformasi in 1998, his old legal and political structure also fell. Consequently, the power game between the police and the prosecutor went back to square one because the military was pushed back to its barracks.²⁶⁰ Because of the reformasi, the military was no longer allowed to act as a socio-legal-political force in the nation. The ambiguity within the law started to become a serious problem because the military-style coordinating institutions no longer existed.²⁶¹ Multiple interpretations, driven by a pragmatic institutional goal, started to occur. In light of this situation, coercing cooperation was no longer an easy task because data reveals that each actor might have developed the tendency to view this situation as a moment to increase their institutional power.²⁶² Because of these reasons, this dissertation argues that investigating the ability of actors to cooperate is now more important than ever.

The ambiguous rules that led to a conflict of interpretations

The case processing system requires the police and the prosecutor to produce the same output in pre-trial processes. The result of their collaborative work is called the investigative case dossier (*berkas perkara penyidikan*). The case dossier is a written record of the investigation and all enforcement actions made by the police and the prosecutor. It records warrants, minutes of interrogation, and the

completely maintain social and political stability by any means possible. See McConville, *Criminal Justice in China : An Empirical Inquiry*.

²⁶⁰ See N. Ganesan, "The Collapse of Authoritarian Regimes in Indonesia and Thailand: Structural and Contextual Factors," *Asian Journal of Social Science* 32, no. 1 (2004): 1–18.

²⁶¹ The coordinating ministry for legal and political affairs still exist, but its power is greatly reduced. See Akbar Faizal Uncensored, *Mahfud Md Buka-Bukaan Kabinet Jokowi [Mahfud MD Talks Bluntly about Jokowi's Cabinet]*.

²⁶² See the section about power, conflict, and ego sektoral in this chapter. In this section, this dissertation explains how investigative power has become a crucial institutional asset.

opinion of the police (*resume berkas perkara*) about the case.²⁶³ The case dossier could be 100-500 pages long or even 12 inches thick on several occasions.²⁶⁴ A case dossier is seen as an impartial product, not just one version of the story provided by the accuser.²⁶⁵

Because of the extensive nature of the case dossier, judges reported that the trial process is seen as no more than a confirmation hearing of the dossier.²⁶⁶ Data reveal that the existence of the case dossier encourages the trial judge to accept the approach taken by the police and the prosecutor during the pre-trial stage. One judge further admitted to me that, because of the existence of the case dossier, it is hard not to think that “the defendant has lost the battle before it starts”.²⁶⁷

That is why it can be argued that the most significant criminal justice power lies at the pre-trial level.

This is because the decisions made at this stage have significant implications for the trial-level process.

To produce a case dossier, the police and the prosecutor must work together and come to an agreement on how the case should be constructed. A written explanation about the production of the case dossier is provided below.

²⁶³ According to regulations, the opinion of the police contains what charges should be filed (and the alternatives) and why the police believe that element of crimes has been met.

²⁶⁴ For instance, in a famous murder case in 2015 (Jessica’s case), the thickness reached almost 12 inch (11.8). This is not uncommon in Indonesia. Media Indonesia, “Tebal Berkas Perkara Jessica Capai 30 Sentimeter [The length of Jessica’s case dossier amount to 30cms (11.8 inch),” March 22, 2016, <https://mediaindonesia.com/megapolitan/35840/tebal-berkas-perkara-jessica-capai-30-sentimeter>.

²⁶⁵ This is the theoretical logic behind the inquisitorial tradition. The tradition places state actors in a higher position than a defense lawyers. In Italy and France, for instance, they have the examining pre-trial judge to confirm the impartiality of the story. Meanwhile, in the American adversarial system, the defense and prosecution are allowed to investigate their cases and produce their own story. See Damaska, *The Faces of Justice and State Authority*; Elisabetta Grande, “Italian Criminal Justice: Borrowing and Resistance,” *The American Journal of Comparative Law* 48, no. 2 (2000): 227, <https://doi.org/10.2307/840971>.

²⁶⁶ Informants D22, D38 and D66. To cite the words of Informant D22, “The first question that I would ask is whether the statement contained in the minutes of interrogation are true.” This phenomenon is not unique to Indonesia. In a country with inquisitorial traditions (such as Italy, France and the Netherlands) a trial is seen as a confirmation hearing for the case dossier constructed by the police and the prosecutor. See Jackie Hodgson, “The Role of the Criminal Defence Lawyer in Adversarial and Inquisitorial Procedure,” 2009, 13.

²⁶⁷ Informant D38 (senior district court judge in a busy court). Interview with author, July 24, 2021. In essence, he explained that his hands are tied because of the extensive nature of the case dossier. The opinion of the police about the charges, the evidence, and the weight of the evidence can also be found in the case dossier. In plain language, the judges’ hands are tied.

In the KUHAP, the working relationship between the police and the prosecutor is linked in two ways.

First, when the police open an investigation, they must formally inform the prosecutor, and the police must notify through an official letter (*Surat Pemberitahuan Dimulainya Penyidikan*) within seven days.²⁶⁸

Second, when the police have finished their investigative work, they must submit their case dossier to the prosecutor for review. This process is called the preliminary prosecution process (*pra-penuntutan*).

The output of the preliminary prosecution process is a prosecutor's indictment (*dakwaan*). Simply put, the prosecutor needs to convert the bulky case dossier into a comprehensive indictment and bring it to the criminal court. This research found a conflict of interpretation between actors regarding these processes.

The conflict at the first linkage occurred because the KUHAP did not provide a detailed regulatory framework on what should happen after the police notified the prosecutor. Does it mean that the prosecutor has the authority to follow and intervene in the investigation? Or should the prosecutor wait for the investigation to finish? As I mentioned earlier, these questions did not create a problem when cooperation could be forced through coordinating institutions. When such institutions no longer exist, the police and the prosecutor now have different answers to these questions. Their differences are well reflected in their internal regulations.

If we look at the internal police regulations on investigation management, the prosecutor does not play any role in the investigation process.²⁶⁹ For the police, the notification is *just* notification, and there is no

²⁶⁸ In the original text of KUHAP, the law does not set the time limit. However, the Constitutional Court in 2016 sanctioned the time limit. The next section will cover further discussion about the Constitutional Court decision.

²⁶⁹ Indonesia National Police Chief Regulation, "Criminal Investigation Management," Pub. L. No. 6 (2019). According to the regulation, the police do not have any obligation to answer to the prosecutor. They only need to report their work to their immediate superior within the division.

other purpose other than informing the prosecutor that the investigation has been started. In other words, the prosecutor has no right to intervene in the process unless the police ask them to.²⁷⁰

In contrast, the prosecutor understands that the notification is *not just* a notification. The prosecutor believes that they have the authority to monitor the investigation and intervene (if necessary) after the police formally open it.²⁷¹ According to their internal regulation, the prosecutor considers the investigation to be a part of the prosecution process. Chapter 5 of the regulation provides a step-by-step guide to monitoring the investigative work conducted by the police. For instance, in article 10, the regulation gives the prosecutor the authority to supervise the police's investigative work related to the selection of charges and "any other things related to the cases being investigated." In plain language, their internal regulation says that they are the "boss" in the pre-trial stage. An interview with a high-ranking prosecutor explained the logic behind this regulation. According to the prosecutor, when investigating criminal cases the police are functionally dependent on the prosecutor. This is because the prosecutor considers the investigation to be a part of the prosecution process.²⁷²

The second conflict occurs when their power is interconnected in the preliminary prosecution process (*pra-penuntutan*). Essentially, the preliminary prosecution process is a forum where the police and the prosecutor work through their differences and then agree on how the case should be presented to the judges. According to the KUHAP, after the police finish their investigative work, they must submit the

²⁷⁰ The police base his argument on the original understanding of the KUHAP. In the words of my informant (Informant D35 a recently retired high-ranking police official, November 20, 2020), he explained to me that, "we must come back to *marwah hukum* [the destiny of the law]. We all have our own job. The job of the police is to investigate criminal cases and the job of the prosecutor is to prosecute." When he said "the destiny of the law" my informant was referring to the functional differentiation principle as a basis for his argument.

²⁷¹ In their internal regulation, after the investigation has been opened, the head of the prosecutorial office must appoint someone to monitor the investigation by issuing a decree titled "P-16". P-16 is the code for the document.

²⁷² Interview with Informant D7 (high ranking prosecutor in Jakarta) July 3, 2020. He explained to me that it is impossible to separate an investigation from the prosecution process because the system is designed sequentially.

investigation result to the prosecutor for review. The law gives the prosecutor seven days to review it.²⁷³

If the prosecutor considers that the case dossier is incomplete, the police have 14 days to satisfy the review from the prosecutor. Meanwhile, If the prosecutor fails to provide instruction within fourteen days, the case dossier is considered complete automatically.²⁷⁴

Based on the reasons mentioned above, I found that both the police and the prosecutor do not share the same understanding of their own and their counterpart's roles—the differences center on the scope of the review. The critical question, such as what factors could determine the completeness of the dossier, is left unanswered. The police argue that, because of the limited time structure, the scope of the review is no more than the administrative completeness of the dossier. According to the police, administrative completeness means that the prosecutor could only check the formality of the dossier.²⁷⁵

An example of such formality is whether an official with competent authority has signed a warrant, or a witness has signed her minutes of interrogation, and the defendant has been informed of their rights (although very limited).

On the opposite side, the prosecutors believe that the scope of the review includes both formal and substantive case elements because it is the prosecutor that represents the state before a criminal trial.

In the words of my informant:

²⁷³ Article 138 (1). Preliminary prosecution process is sanctioned in different articles within the law. Apart from article 138, articles 110 and 111 also govern the process. I suspect that this is also by design because many people (especially the prosecutor) will not pay attention, and therefore the law can be passed without further conflict.

²⁷⁴ See article 110 para 4 of the KUHAP. Because of this article, the police believe that the prosecutor only plays a minimal role in the case construction phase. I revealed this information when interviewing Informant D35 (retired high-ranking police general) in Jakarta on November 20, 2020.

²⁷⁵ Interview with Informant D26 (retired high ranking police officer), July 19, 2020, and D48 (serving mid-ranking police officer), August 31, 2020. I interviewed them on separate occasions. Essentially, they argued that there is no way for the prosecutor to substantively review the dossier within seven days and the police to satisfy it within 14 days.

“...we play the role of *dominus litis* [literally, the dominant player in the litigation], and we are the one responsible for the case in the court of law.”²⁷⁶

The prosecutors further argued that the limited time structure does not hinder their ability to substantively review the dossier. In fact, my informants developed a strategy to “outsmart” the time limitations sanctioned by the law. If the prosecutor thinks they need more time to review, they formally accept the case dossier. Informally, they still instruct the police to collect more evidence.²⁷⁷

Apart from the ambiguity of the formal rules, the conflict between the two actors is further exacerbated by the fact that they attempt to enhance power differences between them. From the interview data, it can be said that what the police understood is that their institution fully controlled discretionary power at the pre-trial level.²⁷⁸ Meanwhile, the prosecutor demanded that the police surrender some part of their power because, according to them, their job requires them to be actively involved in the pre-trial investigation.

In the next section, this dissertation will show how their conflict has become destructive to the system because there is no mutual trust between them. This research shows that the police and the prosecutors share mutual suspicion and distrust against each other when working together at personal and institutional levels.²⁷⁹ The distrust between the two actors is happening at the micro and macro

²⁷⁶ Interview with Informant D7, a high ranking prosecutor, September 11, 2020.

²⁷⁷ Informants D7 and D29, a group interview with author September 11, 2020. They have equal ranks, and both have the authority to draft internal regulations. In their words, “We have to take *jalan tengah* [middle road strategy]. Formally I issue P-21 [a declaration that the prosecutor have accepted the police’s work]. But I also informally issue P-18 and P-19 [a declaration that there is more substantive work to be done by the police]. Sometimes the police can accept this, but sometimes not. But we have to show them the right way to process a case.”

²⁷⁸ During the interview with high-ranking police officials (Informants D10, D26 and D35) the police are convinced that their destiny (according to the law) is to be the single investigator of all crime cases. See the section about “institutional distrust” in this chapter.

²⁷⁹ In sociology literature, a conflict (including intergroup conflict), can be categorized as destructive when there is distrust against each other. The relationship between conflict and distrust is an obvious one. See Deutsch, “Cooperation, Competition, and Conflict.” Morton Deutsch is a famous American social scientist, dubbed “the father of conflict theory”.

levels. The micro level is related to the day-to-day working interactions on the ground, involving low and mid-ranking officials. Meanwhile, the macro level refers to interactions at the leadership level. The interactions at the leadership level are related to the prosecutors' attempt to change the existing power structure through law reform and the police's efforts to preserve the status quo.

Conflict in the relationship at the micro level leads to personal distrust

When investigating the distrust between the two actors, I interviewed two police officials and five prosecutors (four of them in a group interview and one in an individual interview).²⁸⁰ In an interview with the police in Jakarta, they told me of their bitter experiences when working together with the prosecutors.²⁸¹ In 2017, my informants investigated a document forgery in a land conflict case. They were investigating the possibility that someone had produced fake proof of land ownership issued in the 1980s. The investigation took almost a year until the police concluded their investigation. When the police submitted the dossier to the prosecutor, the prosecutor rejected the case and asked the police to interrogate an additional witness. The prosecutor told the police to interrogate the then chief of the village in 1980, where the land is located.²⁸² This instruction triggered my informant's suspicion against the prosecutor.²⁸³ It would be impossible for the police to follow such instructions, and it also touched upon the substantive element of the case. According to the police, the whereabouts of the chief of the village was unknown, and he might have passed away. Because of this unreasonable instruction, the police suspected that the prosecutor just wanted to find an excuse, masking it with legal reasons, to

²⁸⁰ The interview sampling and credibility of the sources are discussed in Chapter 3 on research methodology.

²⁸¹ Informants D67 and D68 (serving police mid-ranking and his subordinate in Jakarta), June 11, 2021.

²⁸² To check whether the signature is original or not. The police have collected other document (that contains the chief of the village's signature) to be used as a source of comparison.

²⁸³ In the words of my informant, "How come that the prosecutor instructed us to summon specific additional witness, when they are not doing the fieldwork. Something must be wrong."

stop the case. My informants then obtained information from a trusted source that the suspect had struck a corrupt deal with the prosecutor.²⁸⁴ In the end, the case was stalled.²⁸⁵

Another interview with the mid-ranking police official in Jakarta also revealed a similar problem.²⁸⁶ This time, my informant told me about his experience when handling a narcotic case involving a public figure in Jakarta. When my informant and his team were tipped off that there would be an underground house drug party in Jakarta, he arrested four people in a raid, including the public figure.²⁸⁷ After their investigation was completed, the police submitted the investigative dossier to the prosecutor. When the prosecutor reviewed the dossier, they rejected it because it lacked evidence. According to the prosecutor's interpretation, the drugs found in the raid were not illegal because they were mixed with other legal substances.²⁸⁸ The police were furious and strongly believed that the prosecutor might have been bribed. My informant claimed that he obtained "A1 information" that the prosecutor had been "bombed" with money by the defendant.²⁸⁹

Unfortunately, I could not interview the prosecutor who handled both cases since I needed to protect the anonymity of my sources,²⁹⁰ nevertheless, I did some interviews with the prosecutors in Jakarta, discussing how the police also have hidden motives when working together with the prosecutor. My

²⁸⁴ My informant (D67) told me that, "I have A1 information [information from trusted source, he refused to reveal his source] that the suspect actively lobbied the prosecutor. And in Indonesia, this type of lobbying involves bribery"

²⁸⁵ My informant (D67) told me that he reported the prosecutor to the prosecutor's ethical profession department. However, up until now, the fate of the report is unknown.

²⁸⁶ Informant D48, serving mid-ranking police officer in Jakarta. Interview conducted on August 31, 2020.

²⁸⁷ I did not mention when this incident occurred as it runs the risk of revealing the identity of my informant.

²⁸⁸ In Indonesian narcotic laws, there is a list of illegal substance. The drugs found in the raid were not 100% illegal because they were mixed with other legal substance. For ethical reasons, I cannot provide any more information than this.

²⁸⁹ In the words of my informant (D48), "I know their game [permainan mereka]. I received information, that their lawyer [mentioning the name of senior lawyer in Jakarta] *bombed* the prosecutor with money." He told me that he received "A1 information" (a code for information from a reliable source).

²⁹⁰ I tried to ask my police informant the name of the prosecutor that worked with them. But the police declined. It would also be unethical (for my police informant and for the prosecutor) to confirm the story with them as it would reveal the identity of my police informant.

informant told me a story when he worked together with the police in Jakarta investigating a defamation case in 2018. He was tasked to monitor the investigation by the police.²⁹¹ He explained that he was forced to approve the investigative dossier from the police, although he disagreed with the substance of the case. In his opinion, the case failed to meet the element of crimes in a defamation case. In Indonesia, a case of defamation is a grey area between criminal and civil law. The law gives leeway for the law enforcers to decide whether it falls under criminal or civil jurisdictions. Later, my informant found that there was a strong indication that the police promised the reporting party that the defendant would be arrested immediately in return for a bribe.²⁹²

During the interview, he vividly (and emotionally) described the police's strategy in forcing him to accept the case dossier. He explained that although he had voiced his opinion through informal communication, the police still forced him to accept the case dossier. At first, the police invited the prosecutor to a consultation meeting (*gelar perkara*). It turned out that, at the consultation meeting, he was forced to agree with all the police's findings²⁹³ and realized that such an invitation was just a

²⁹¹ He was appointed as "Jaksa P-16" [P-16 is the internal code for the prosecutor that is tasked to follow the investigation]

²⁹² My informant based his information from the testimony of a defendant. During the hearing, the defendant told the Court that the reporting party had told him that he had "bought" the police. That is why his case was quickly processed by the police. The fact that the police often seek an off-budget economy to fund their operation is no secret in Indonesia. In Indonesia, this phenomenon is famously known as "kasus pesanan" or a case that is ordered by someone (and that someone is paying a fee for the police's service). See Baker, "The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia"; Afandi, "Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia."

²⁹³ The term forced here does not specifically refer to physical force or a threat. The police forced my informant with "gentle force." Gentle force is associated with passive-aggressive behavior, such as saying, "we are working for the betterment of the nation, so do not let procedural justice overrule substantial justice." For my informant, this is the passive-aggressive behavior from the police to force them to accept the dossier as it is.

strategy to smooth the process.²⁹⁴ His presence in a consultation meeting is used as a bargaining chip to force the prosecutor (through his superior) to approve the dossier.²⁹⁵

Another interview with a mid-ranking prosecutor in Jakarta also told me about his bad experiences when he was forced to accept the case dossier. In 2015, my informant was handling a commercial dispute case. When he reviewed the case dossier, he believed that the case was not a criminal case (but a civil one). He rejected the dossier, and after the rejection the police threatened to ransack his office.²⁹⁶ In the end, he still dismissed the case dossier, and the threat never happened. Although the threat was never realized, it significantly changed his perspective toward the police.²⁹⁷

Based on what I have just described, this research found a mutual distrust when they are working together. When the prosecutor wants to involve themselves in the investigation, the police see it as an intervention. Because of this, the prosecutor suspects that the police might have hidden goals rooted in personal pragmatic interests – that they might have received a bribe. On the contrary, the prosecutor also suspects the police's motives (that the police have also received bribes) when they refuse to share their investigative power with the prosecutor.

Fundamentally, what happens is that they are playing the “blame game” against each other. The police and the prosecutor suspect that their counterpart might hold onto personal pragmatic goals when working together. And this pragmatic goal is closely related to corrupt behavior, such as receiving a

²⁹⁴ In 2019, because of rampant practice of this method, the then attorney general issued an instruction restricting the prosecutor from attending any consultative meetings with the police. This is because the presence of the prosecutor at the beginning of the investigation would be used to legitimize any action taken by the police.

²⁹⁵ With this strategy, if the prosecutor refused to accept the case dossier, the police could appeal to their superior and argue that the prosecutor already attended the consultation meeting. This is because his presence can be seen as a “stamp for approval.”

²⁹⁶ At that time, according to my informant, the police argued to him, “do not let the procedural justice overrule the substantial justice.”

²⁹⁷ My informant (D73) is now always suspicious of the police's motive. He realizes that there is a corrupt occupational culture within the police institution. The discussion will be covered on the next chapter, which discusses factors that induce cooperation.

bribe from the party that has an interest in the case. In this situation, cooperation is harder to achieve because of the existence of competing goals (that are rooted in pragmatic personal interests) when the police-prosecutor work together in processing criminal cases. When the actors fail to develop shared goals, cooperation would be difficult (if not impossible to achieve). Consequently, competitive behavior between the police and the prosecutors occurs because there are no agreed informal workgroup rules that incentivize them to cooperate.²⁹⁸

The troubled relationship that is presented in this dissertation is just the tip of the iceberg. There are many reported stories that depict a troubled relationship between the police and prosecutors.²⁹⁹ One famous story is about the investigation of the murder of businessman *Nyo Beng Seng* in 1994.³⁰⁰ When the police and prosecutor were working together to solve the case, they did not trust each other. Because of the distrust, the police ended up arresting their counterpart because the police suspected that the prosecutor had received a bribe in return for protecting the murderer.³⁰¹ In the next section, this dissertation will discuss how the conflict is also reflected in the higher-ranking bureaucracy – at the macro level.

Conflict in the relationship at the macro level leads to institutional distrust

Both institutions' leaders – the police and the prosecutors – are also involved in a conflict related to criminal justice reform in the higher-level bureaucracy. The first conflict occurred before the

²⁹⁸ In the field of organizational psychology, this phenomenon is called “negative-goal correlation,” whereby a goal can be achieved only if others do not achieve it. Put crudely, this situation leads to a “win-lose” situation. See Katz, Finestone, and Paskevich, “Competition When Cooperation Is the Means to Success.”

²⁹⁹ For instance, see Afandi, “Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia,” 142. In his dissertation, Afandi also reported the story of when police high officials threatened to shoot the prosecutor, forcing them to accept their investigation file. Apart from that, he also mentioned the story when the police challenged the public prosecutor to a duel for the same reason (forcing him to accept the case dossier).

³⁰⁰ “Police Reopen Beng Seng Murder Case,” Indonesian Business Updates, accessed May 7, 2022, <https://jawawa.id/newsitem/police-reopen-beng-seng-murder-case-1447893297>.

³⁰¹ Tim Redaksi, “Ditanya Pembunuhan Nyo Bengseng, Andhi Nirwanto Langsung Kabur [When Asked about the murder of Nyo Bengseng, Andhi Nirwanto ran away],” www.jpnn.com, accessed April 21, 2022, <https://www.jpnn.com/news/ditanya-pembunuhan-nyo-bengseng-andhi-nirwanto-langsung-kabur>.

Constitutional Court judges in 2007 and 2016. In 2007, a wife of a defendant (Nuraini) in a corruption case complained to the Court that an unclear working relationship between the police and the prosecutor violated her husband's constitutional right, the right to a procedural certainty before the law.³⁰² In 2005, the police had stopped her husband's investigation because it lacked evidence, and in 2006, the prosecutor reopened the investigation. Because of this situation, Nuraini filed a complaint to the Constitutional Court.³⁰³

She then asked the judges to declare that the prosecutor's move violated the Constitution. During the hearing, the police and prosecutor exchanged arguments about the interpretation of the formal rules. On the one hand, the police essentially argued that the government in 1981, through KUHAP, made a political decision to position the police as the single investigator (*penyidik tunggal*) of the case.³⁰⁴ Consequently, the claimant argued that the prosecutor did not have any authority to interfere with the investigative power of the police. On the other hand, the prosecutor was convinced that one could not separate investigation and prosecution. There will be no prosecution without investigation and vice versa. With this logic, the prosecutors have every right to open any investigation or intervene in the process if necessary. The prosecutors further argued that they are the ones trained as lawyers, and the police are not.

In their decision, the Constitutional Court judges rejected the motion based on formality. The Court opined that there was no constitutional rights violation because the rule on criminal justice power

³⁰² According to the Indonesian constitution, the legal system needs to permit those subject to the law to regulate their conduct with certainty and to protect those subject to the law from arbitrary use of state power.

³⁰³ Her complaint to the Constitutional Court unexpectedly became a legal battle between the police and the prosecutors. This was the first time the police and the prosecutors exchanged arguments in a public forum.

³⁰⁴ This argument holds partial truth. The KUHAP originally designed the military to be the dominant player in the system. During Soeharto's regime, the police were part of the military until the reformasi in 1998. After the reformasi, the army was forced to surrender their socio-political forces, including their status as law enforcers. This made the status of the police elevated because they retained the civilian position. During Soeharto's regime, the prosecutor was also controlled by the military. The attorney general always came from an army background. After the reformasi, the prosecutor was no longer controlled by the military.

distribution is an open legal policy.³⁰⁵ The Court issued a “safe decision” by declaring that it is beyond the authority of the Court to regulate the distribution of power between the police and the prosecutor. In other words, it is the job of the executive power, not the judiciary. Although the ending was anti-climactic, it shed light on the fragmentation within the Indonesian criminal justice system. This was the first time that the leaders of the police and the prosecutors engaged in a conflict in the public eye.

In 2016, the second public legal battle between the prosecutors and the police occurred. A group of non-governmental organizations lodged a constitutional review asking the Court to clarify the working relationship between the police and prosecutors.³⁰⁶ Their main argument was that criminal procedure power needed to be predictable because its exercise will violate individual human rights. The claimants supported their argument with data from the prosecutors that from 2005 to 2012, there were more than 600,000 cases left hanging in the pre-trial investigation stage.³⁰⁷ They claimed that this was because of the unclear relationship between the police and the prosecutors. Again, during the hearing, the police and prosecutors also engaged in a debate about the interpretation of the formal rules.

This time, the prosecutor argued that the police must be functionally dependent on the prosecutors. To support this argument, the prosecutor cited the doctrine of “prosecutor as *dominus litis*,” which means that the prosecutor should dominate the criminal litigation process.³⁰⁸ The prosecutor argued that,

³⁰⁵ According to the Court, open legal policy means that the executive government has full discretionary power on such issue.

³⁰⁶ This NGO is also supported by the prosecutor’s wing organization called Persatuan Jaksa Indonesia or translated as the United Indonesian Prosecutor. In Indonesia, it is not uncommon for criminal justice actors to have a wing organization to fight for their interests at the national level. It is similar to police unions in the United States.

³⁰⁷ These are the breakdown: 494,804 cases that were opened by the police were never processed. 55,783 cases that the prosecutor reviewed and provided instructions were never completed. 58,398 cases that were declared complete by the prosecutor were dismissed by the police.

³⁰⁸ This principle was also voiced by Informant D7 (high ranking prosecutor) during the interview. This principle has become the prosecutor’s main argument to justify that they should be the leader of the pre-trial process. In the literature, the term *dominus litis* is not specifically assigned to the prosecutor. The term *dominus litis* was first explained by renowned comparative criminal justice scholar, Mirjan Damaska. In short, Damaska argued that *dominus litis* is the essential characteristic of inquisitorial system. Damaska argued that in inquisitorial systems, state functionaries act as a “*dominus litis*” and their position is above the defense lawyer and defendant which is

comparatively, the prosecutor is the dominant player in the criminal justice system. The prosecutor also cited the trends of rising prosecutorial power around the world.³⁰⁹ On the contrary, the police based their argument on the classical legal transplantation issue: what is good for other countries is not automatically good for Indonesia.

In the end, while the Court recognized that there was a conflict of interpretation, it provided similar arguments used in the previous judicial review with elaboration. The nine judges of the Constitutional Court argued that solving the conflict would require them to amend the law. It was simply beyond the Court's jurisdiction to create a new law because it would require the Court to act as a legislator.

However, the Court partially granted the claimant's request by setting the timeline for the notification of investigation. Before, the KUHAP did not sanction a timeline for the police to notify the prosecutor when they opened an investigation, and the Court ruled that the police must notify the prosecutor within seven days.

Interviews with high-ranking police and prosecutors also revealed evidence that the conflict between them halted the attempt to reform KUHAP in 2013. One retired high-ranking police official stated that his institution suspected the prosecutors' hidden motives in actively endorsing criminal justice reform.³¹⁰ He further explained that his institution sees that the reform is no more than a political

not state functionaries. In short, the term "dominus litis" is not specifically reserved to the prosecutor. During the hearing, there was no debate about the origins of the term dominus litis and its theoretical meanings. Damaska, *The Faces of Justice and State Authority*.

³⁰⁹ One of the experts that was proposed by the prosecutor, Prof. Andi Hamzah, the head of the criminal justice reform team and former prosecutor, cited the 2010 publication from Luna and Wade titled prosecutor as judges. In short, Hamzah argued that prosecutors should play an active role in the pre-trial investigation. Informal interview with Andi Hamzah (D49), August 12, 2019 (before I obtained my IRB approval). Andi Hamzah has given me his consent to reveal his identity.

³¹⁰ Informant D35. Interview with author on November 20, 2020, in Jakarta. My informant holds the authority to speak about the reform process because of his rank.

strategy for the prosecutors to revive the old colonial code, where the police are subordinate to the prosecutor.³¹¹

According to my informant, the strongest indication for his suspicion is because the reform team was led by a former prosecutor turned law professor, Andi Hamzah.³¹² During the meeting with the reform team, the police were lectured that the new power structure was necessary for Indonesia, and the police were told to forgo their ego sektoral behavior.³¹³ In the words of my informant:

“...During the meeting we were told [by Andi Hamzah] that the police must be willing and able to form a synergy with the prosecutor ...forgo ego sektoral behavior because that is the biggest problem in our criminal justice system.”

According to the police, the argument about ego sektoral was used to mask the prosecutors’ original intention. On the contrary, the police argued that the prosecutors demonstrate the ego sektoral behavior because of their resistance to accept the current working conditions.³¹⁴ Because of this reason, the police admitted that they did not agree to the reform.³¹⁵ They filed a formal objection letter to the then Indonesian president, saying that Indonesia was not ready to implement such drastic reform.³¹⁶ The prosecutor lambasted the police’s move in rejecting the reform. For the prosecutors, this was proof

³¹¹ In the draft of the reform (article 8 and article 46), the police are functionally dependent upon the prosecutor. It gives the power of the prosecutor to intervene in the process and conduct additional investigations.

³¹² I also had the chance to interview Andi Hamzah in August 2019. He explained to me that the police’s ego sektoral behavior had become the main problem in the system, and there was no coordination between the two institutions. He wanted to establish a functional relationship, less dependent on paperwork. In his words, “The police and the prosecutor could just text or call each other if they are in a harmonious relationship.”

³¹³ Interview with Informant D35 (high-ranking police official), November 20, 2020.

³¹⁴ Informant D35. He argued that the problem was not the law, but the people who operate the law.

³¹⁵ In the next section, I will elaborate on how the police see the prosecutors’ moves as a “trojan horse” strategy. Moreover, I will also discuss why, to some extent, the rejection from the police makes sense.

³¹⁶ Interview with Informant D35. The police argued that it would be hard for the police to work together with prosecutors, especially in remote areas, because of logistical reasons. The police have more offices than the prosecutor. Apart from that, the police also complained about preliminary investigation judges (hakim pemeriksaan pendahuluan) who could supervise their work.

of institutional ego sektoral behavior.³¹⁷ The objection from the police ceased the prosecutors' move to establish themselves as the dominant player within the reform plan.

In August 2020, the prosecutors made another attempt to establish themselves as *dominus litis* through the new prosecutorial law.³¹⁸ The draft of the new law sanctioned the Indonesian attorney general as the nation's highest investigator, thus placing the police under his command in criminal case processing. The law also said that the prosecutor is part of the judiciary, just like the old colonial code.³¹⁹ As a consequence of this logic, the proposed law granted the prosecutors the authority to take over the investigation stage from the police.

Responding to the maneuver from the prosecutors, the police's wing organization (ISPI³²⁰ or the association of police scholars and professionals) voiced its objection to the public. The organization argued that the new prosecutorial law was a "backward step" because it tried to bring back the old colonial code. The police said that the new prosecutorial law was a threat to the police's power and authority.³²¹ As a result, the prosecutors were forced to eliminate rules that could change the existing

³¹⁷ According to my informant (D7, high ranking prosecutor), "they only care about their power, but not the nation. This country has become a police state. This is dangerous"

³¹⁸ Badan Legislasi DPR, "The Draft of the New Prosecutorial Law (June 2020)" (2020), <https://www.dpr.go.id/dokakd/dokumen/BALEG-RJ-20200904-083641-5251.pdf>. During the interview with Informants D7 and D29 on September 11, 2020, they told me that the parliament members proposed the draft. However, in interviews with parliament members (D31 and D32, on a separate occasion in November 2021), formally, it was true that the proposal came from the parliament. However, in reality, the prosecutors pushed the reform agenda to avoid direct conflict (*gaduh*) with the police.

³¹⁹ Ironically, the 1990 international prosecutor's convention (that has been used as a basis for Indonesian prosecutorial reform) stated that the prosecutor must strictly separate from the judicial function. See paragraph 10 of the convention.

³²⁰ ISPI is an acronym for Ikatan Sarjana dan Profesi Perpolisian Indonesia. The police commonly use the organization to support their agenda. The head of the organization is a retired police senior official.

³²¹ Abdu Faisal, "Pengamat Sebut RUU Kejaksaan Ancaman Tupoksi Dan Kewenangan Polri [Commentators Said That the New Prosecutorial Law Is a Threat to the Police's Power and Authority]," Antara News, September 8, 2020, <https://www.antaraneews.com/berita/1713998/pengamat-sebut-ruu-kejaksaan-ancaman-tupoksi-dan-kewenangan-polri>.

power structure.³²² In December 2021, the new prosecutorial law was passed without any changes to their working relationship with the police.³²³

The above-mentioned facts can be understood as symptoms of a structural problem caused by unhealthy conflicts between the police and the prosecutors. This problem can be categorized as a structural problem since it significantly affects the ability of the police and prosecutors to cooperate. Such problems interfere with the core principle of criminal justice as a system of organization, which is the interconnections and interdependencies between the actors when processing criminal cases.

In the next section, this dissertation will explain how the structural problems can be summarized with three keywords: power competition, conflict, and ego sektoral. Moreover, it will also discuss how the association between those variables can help this dissertation provide an in-depth analysis of the failure of KUHAP reform in 2013.

Structural problems as impeding factors for cooperation: Power competition, Conflict and Ego Sektoral

The findings on the impeding factors in this section can be summarized with three keywords: power competition, conflict, and ego sektoral. Power competition, that has been happening for a long time, produces destructive conflict between the two groups of actors. While the police want to preserve the status quo, the prosecutors are dissatisfied with current working conditions. The underlying conflict

³²² Interview with Informant D7 (high ranking prosecutor), July 19, 2021. He explained to me, “The police also lobbied the parliament. We were facing a difficult position and told not to *membuat gaduh* or create an additional uproar [apart from existing uproar because of the Covid pandemic.]” He further told me that. “... Indonesia is on the brink to become a police state because they have too much power, not just in criminal justice. They controlled almost all aspects of our lives.”

³²³ The changes are mostly about the prosecutors’ status and prestige. For example, under the new law, the prosecutor is given a special car license plate number, could be placed in other governmental institutions, and their security is guaranteed (according to the law, they now can carry a gun).

stems from the need to control discretionary power in pre-trial level investigations and is well manifested in their day-to-day working interactions.

The conflict between these actors produces ego sektoral behavior. In this context, ego sektoral behavior occurs because both groups of actors fail to develop an agreed informal workgroup rule that structures cooperation between them. It can be understood as a symptom of the underlying conflict between the police and the prosecutors. In this sense, the prosecutors blame the police for displaying ego sektoral behavior because of the police's unwillingness to share their investigative power.

From the police's perspective, the demand from the prosecutors is seen as a threat to their institutional power. According to the police, their *marwah* (destiny) is to be the gatekeeper of the system.³²⁴ As a result, the police employ a defense mechanism to ward off such threats. The prosecutors then label the police's defense mechanism as ego sektoral.³²⁵

Interview data reveal that both institutions displayed ego sektoral behavior because they have different understandings and ideas about their roles and powers. Consequently, it opens up huge possibility for competing goals within the system, other than their broad allegiance to crime control and prevention. In this sense, it is therefore important to understand why such differences occur in the first place.

This dissertation suggests that the differences occur because investigative power that comes prepackaged with enforcement mechanisms such as search, seizure, and arrest is critical for the police

³²⁴ See the previous section about the debate between the police and the prosecutors in the Constitutional Court.

³²⁵ This phenomenon, although with a different context, also happened in England and the U.S. In England, as written by Shiner, the police were blamed by the public because of racist policy implementation. The English police then fought back against those opinion. Scholars have labeled it as defending organizational ego. Meanwhile in the U.S, the institutional ego refers to police resistance in reforming their enforcement strategy. See Gary W. Sykes, *the functional nature of police reform: The 'myth' of controlling the police*, 2 JUSTICE Q. 51–65 (1985); Michael Shiner, *Post-Lawrence Policing in England and Wales: Guilt, Innocence and the Defence of Organizational Ego*, 50 BR. J. CRIMINOL. 935–953 (2010).

and prosecutors' institutional survival.³²⁶ Actors who control pre-trial investigative power would have free access (without strict scrutiny) to enforcement powers. The exercise of this power could seriously and easily affect any individual. Considering the importance of this power, the intensity of power competition at this level is high because the rewards themselves are also high. Therefore, it is necessary to understand what circumstances might affect the exercise of such power. With this approach, we could better understand the primary source of the police and prosecutors' "ego"— why both actors prioritize their interests when there is a need to cooperate. Drawing mainly from the interview data, this dissertation offers two analyses in understanding goals related to the exercise of investigative power. First and foremost, we must realize that the exercise of such power can be used as an instrument to achieve "good ends and bad ends."

Let me start with the "good ends" analysis first. During the interview with the senior parliament member (from the ruling party)³²⁷ who oversees the work of the police and the prosecutor, it was revealed that ego sektoral is not necessarily bad in and of itself. There is a possibility that when the police and the prosecutors demonstrate ego sektoral behavior, the reason is they want to boost the credibility of their institutions in the public eye. With investigative power, they could show the public that they are doing a good job in enforcing the laws. They could inform the public that they (the police and the prosecutors) have been performing valuable services in preventing and controlling crime.³²⁸

³²⁶ An interview with a senior parliament member (Informant D31, interview on November 16, 2021) revealed this fact. He told me that the fight between the police and the prosecutors is not an ideological conflict, it is a conflict about power [soal kekuasaan]. His colleague supported his statement (Informant D32, interview on November 18, 2021). Because of their status, my informants have the authority to oversee criminal justice institutions.

³²⁷ I need to mention this because there is a public allegation that the current government is endorsing the Indonesian police to act as socio-legal-political forces in the nation, replacing the military. Since my informant (D6) supports the current government, there might be some bias in his statement. See "Duduk Manis Jenderal Polisi Di Jabatan Sipil Era Jokowi [Comfortable Position for Police Generals in President Jokowi Era]," CNN Indonesia, accessed May 6, 2022, <https://www.cnnindonesia.com/nasional/20200630144023-12-519071/duduk-manis-jenderal-polisi-di-jabatan-sipil-era-jokowi/2>.

³²⁸ For instance, both actors could show their work to the public by staging a perp-walk and holding press conferences. With this strategy, they can show to the public that "justice is being done." See Aristo Pangaribuan,

When such motivation becomes the primary driver of power competition, the public, as a consumer of justice, will benefit from the “healthy” competition between the two groups of actors. Furthermore, when they have a good reputation, both the police and the prosecutor could use it as a bargaining chip to ask for higher budgets to support their organizational activities, including reforming themselves to be better institutions. In the words of my informant:

“...when discussing ego sektoral, I think we should also look at the positive side. It is natural that both the police and the prosecutor are craving for publicity stunts [pencitraan]. After all, that is their job [to protect society]. We should look at this phenomenon as a healthy competition between the two actors for good ends. You can imagine this phenomenon just like the perfect competition in the economic market. In the end, the consumer wins.”³²⁹

In the criminal justice literature, this argument can be found under the theory of the conflict model of criminal justice, which requires actors to work competitively (instead of cooperatively).³³⁰ Theoretically speaking, the results of their competition could also produce creative outcomes that could support the mission of crime prevention and crime control.³³¹

However, this dissertation also reveals the opposite argument – that investigative power is being utilized for bad ends. An interview with another senior parliament member (from the opposition party) suggested that the power competition between the police and the prosecutors is merely competition of power for power’s sake. In his exact words:

“INNOCENT UNTIL PRESENTED,” *Jurnal Hukum & Pembangunan* 50, no. 2 (September 28, 2020): 344, <https://doi.org/10.21143/jhp.vol50.no2.2582>.

³²⁹ Interview with parliament member with more than eight years’ experience (Informant D6). Interview was held via Zoom, September 28, 2021. In his exact words in Indonesia: “ketika penegak hukum berlomba-lomba untuk kebaikan, rakyatlah yang menang. Ini seperti pasar persaingan sempurna di market, kustomer yang diuntungkan.”

³³⁰ See literature review chapter on the section “the goal of organizational criminal justice” page 13. This model has also been voiced by Cole (1970). Furthermore, the discussion about this model can be found in O’Leary and Newman, “Conflict Resolution in Criminal Justice”; Stan Stojkovic, David B. Kalinich, and John Klofas, *Criminal Justice Organizations: Administration and Management*, Sixth edition (Stamford, CT, USA: Cengage Learning, 2015). All of this literature is covered in the literature review chapter.

³³¹ During the interview, my informant (D6) mentioned the example of such healthy competition: recovering state assets in corruption cases and announcing their performance to the public related to criminal law enforcements.

“....I do not think that the power competition between them is about ideal values in exercising power. It never crossed my mind, not even once. I think it is all about their *ladang hidup* [*ladang hidup* is an Indonesian term for describing a place where you generate income to live comfortably].”³³²

This dissertation posits that this explanation provides a more convincing argument than the previous one. This statement is based on several reasons. The first is that this dissertation has previously indicated that ego sektoral behavior mainly comes from pragmatic personal and institutional goals related to *ladang hidup*. This is because investigative power can be easily monetized since there is no strict scrutiny of its exercise. In addition, criminal justice power can also be used as an effective instrument of repression for social and political control, including realpolitik.³³³ For this reason, it is easy to sell these powers to the highest bidder.³³⁴ It is no secret that the Indonesian police and prosecutors suffer from extremely limited budgets to fund their institutions. In addition, their wages are also ridiculously low.³³⁵ Consequently, they tend to cover their institutional (and personal) expenses by

³³² Interview with senior parliament member with more than 15 years' experience (Informant D31) in his office in Jakarta, November 16, 2021. When he provided me this answer, I asked about what the police and the prosecutors were fighting for in his observation.

³³³ Realpolitik is a term used to describe a system of politics based on practical consideration rather than moral or ideological consideration. It comes from the desire to rule the country. During the interview with Informant D31, they also complained that several of his party candidates for regional leaders were criminalized shortly before the election. With this strategy, the credibility and electability of such candidates would greatly diminish. To protect the anonymity of my sources, I cannot provide more detail than this. However, the issue of how criminal justice power is used for political purposes can be found in many credible news sources. See for instance, antaranews.com, “Kejaksaan Diingatkan Tak Terjebak Politik Praktis [Prosecutor Is Warned Not to Be Trapped in Realpolitik],” Antara News, January 16, 2019, <https://www.antaranews.com/berita/787860/kejaksaan-diingatkan-tak-terjebak-politik-praktis>; Kompas Cyber Media, “Kepolisian Harus Terus Menjaga Jarak dari Godaan Politik [The police must distance themselves from realpolitik],” KOMPAS.com, July 1, 2020, <https://nasional.kompas.com/read/2020/07/02/05562171/kepolisian-harus-terus-menjaga-jarak-dari-godaan-politik>.

³³⁴ The current Coordinating Minister for Legal and Political Issues (Menkopolhukam) Mahfud MD admitted that there is a “market” for law enforcement activities. “Hadiri Rakernis Bareskrim, Mahfud MD Bicara Penegakan Hukum Sebagai Pembangun Harmoni [Attending Police's Detective Unit Meeting, Mahfud MD Underlines Cooperation in Law Enforcement].”

³³⁵ Interview with Informant D26 (retired high ranking police official), Informant D67 (serving mid-ranking police official) and Informant D5 (member of national police commission). They all admitted that the budget of handling a case is far from ideal. The police and the prosecutor have no more than IDR 5,000,000 (approximately USD 350) for their administrative budget to handle one case. The take-home pay for Indonesian police and prosecutors ranges

monetizing their power.³³⁶ These situations lead to the development of competing goals that impede cooperation in case processing. In addition, these findings could also shed light on why corruption in case processing is endemic in Indonesia.

Moreover, the literature shows that the exercise of power for *ladang hidup* has been practiced by criminal justice actors since the 1960s. In other words, it is a product of history. Lev (1965) wrote that to deal with funding problems, the Indonesian prosecutors were receiving “extremely high premiums” (sometimes more than 50%) from judgments against firms that they brought to the court.³³⁷ Others, including police, also received premiums in certain cases to fund their institution. These premiums were not illegal since it was regulated in their internal regulations. The corrupting influence of the premium system was also felt in the courts. Lev reported that Indonesian judges were willing to accept a prosecutor’s offer of a share of judgment in white-collar crimes.³³⁸ This style of governance was also adopted by Soeharto’s new order regime (1966-1998), where corruption was institutionalized, woven into governance and society’s everyday culture.³³⁹ A recent report from the transparency international

approximately from IDR 5,000,000 (USD 350) for the lowest-ranking to IDR 50,000,000 (USD 3,445) for the highest-ranking officer. Even in the Indonesian standard, where the minimum wage is IDR 4,500,000/month in Jakarta (USD 320), this does not make any sense. Other literature that have discussed the financial budget are Afandi, “The Justice System Postman: The Indonesian Prosecution Service at Work”; Baker, “The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia.”

³³⁶ In the previous section, we have seen how the distrust between the police and the prosecutors occurs because they both have hidden motives when working together to process cases. In addition, in interviews with Informant D29 (high ranking reform-minded prosecutor), D10, and D52 (retired reform-minded police generals), they all admitted that criminal justice power has become a *ladang hidup* [living field] for actors, and the monetization of power has become an occupational culture within the institutions. Apart from my interviews, three sociolegal research projects have supported this statement. See Pompe, *The Indonesian Supreme Court*; Baker, “The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia”; Afandi, “Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia.”

³³⁷ Lev, “The Politics of Judicial Development in Indonesia,” 1965, 197.

³³⁸ Lev, “The Politics of Judicial Development in Indonesia,” 1965.

³³⁹ For instance, the culture of patronage and gift-giving structures the society’s permissive, tolerant acceptance toward corruption. Moreover, in the next chapter, this dissertation will also reveal this on the discussion about defense lawyers. See Jessica Vincentia Marpaung, “The Culture of Corruption and the Corruption of Culture in Indonesia,” *GAB | The Global Anticorruption Blog* (blog), August 8, 2016, <https://globalanticorruptionblog.com/2016/08/08/the-culture-of-corruption-and-the-corruption-of-culture-in-indonesia/>.

corruption perception index indicates that this legacy of corrupt behavior still exists in the Indonesian judicial system.³⁴⁰ This could explain why the power competition for investigative power is intense.

This explanation is further corroborated by the existence of patronage bureaucracy in both institutions, which this research has also discovered. The money from selling power is used as a currency to maintain a patronage network between higher-ranking and lower-ranking actors.³⁴¹ Utilizing the regulations on career management, the patron (higher-ranking actor) places their client (lower-ranking actor) in a *basah*³⁴² (resourceful) area so that they could easily monetize their power. In return, the client must pay *setoran* (tribute) to the patron.³⁴³ In this type of bureaucracy, it is hard to distinguish between personal interest and institutional goals because the line between them has become blurry.

Several academic works have also confirmed the existence of patronage bureaucracy in the police, prosecutors, and judges and its relation to corrupt activities. The first is Baker (2012), who conducted ethnographic work on the Indonesian national police for her doctoral dissertation at the London School of Economics and Political Science. Baker labeled the Indonesian national police bureaucracy as an “anti-bureaucracy” bureaucracy.³⁴⁴ In short, Baker argued that the police heavily rely on off-budget

³⁴⁰ Transparency International’s 2021 Corruption Perception Index ranks the country 96th place out of 180 countries. See <https://www.transparency.org/en/countries/indonesia>

³⁴¹ In my interview with Informants D10 and D52 (retired two-star general police official) in Jakarta on July 9, 2020, they admitted that such practice was not a secret in their institution. There is a “brotherhood” concept called “abang asuh-adik asuh” [literally, foster brother]. In the prosecutor’s office, my interview with a young prosecutor (Informant D25) also revealed information about a “prosecutor as indivisible whole” doctrine. This doctrine originated from the Dutch term “een en ondelbaar” meaning that all prosecutors must stick to their colleague’s indictment. However, in practice, it is abused. It is used to instill the patronage system in the bureaucracy. In Court, my interview with senior district court judges (Informant D2) revealed the existence of the “unggah-ungguh” doctrine, which is respect to seniors. Unggah-Ungguh is a Javanese doctrine and is used to justify the patronage system in the Indonesian Court.

³⁴² Basah (literally translated as wet) is Indonesian slang for resourceful area, where the police could get ‘extra-income’ from businessmen. Examples of basah areas are the big cities such as Jakarta, Surabaya, and Medan, which are the centers of economic activities.

³⁴³ These statements have been supported by ethnography work in the Indonesian legal system. See Bedner, “Shopping Forums: Indonesia’s Administrative Courts”; Baker, “The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia”; Afandi, “Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia.”

³⁴⁴ Baker, “The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia.”

economies to fund their operations. The off-budget economies come from internal patrons and donations from the police's external patrons.³⁴⁵ Because the police have practiced and internalized this type of bureaucracy for so long, Baker argued that they have already lost track of how to properly govern their institution.³⁴⁶

Meanwhile, in his doctoral dissertation, Afandi (2021) also confirmed the existence of patronage bureaucracy within the Indonesian prosecution service, masking it with the doctrine of "the Indonesian prosecutor as an indivisible whole."³⁴⁷ On the Indonesian Supreme Court, doctoral dissertations from Pompe (2005) and Rositawati (2019) confirmed the existence of a patronage network.³⁴⁸ This dissertation complements these studies by showing how the patronage bureaucracy could be used as an analytical tool to provide an in-depth understanding of ego sektoral behavior.

Why did previous reform fail?

The structural problems revealed in the previous section can also be used as an analytical framework to answer the question above. Before moving into the analysis, it is necessary to provide a brief background of the reform. In 1998, when Indonesia was in the period of transition from an authoritarian regime to democracy, the KUHAP became one of the primary targets of reform. The reform started in 1999 when the then government established a drafting team for the new KUHAP (RUU KUHAP). The reform draft proposed a more specific precision division of labor between the police, prosecutors, and judges. In other words, the reform suggested changing the current structure of power in case processing.

³⁴⁵ Baker, 88. According to Baker, the internal patrons are high-ranking police officials. The external patrons are Chinese businessman.

³⁴⁶ Baker, 75–90.

³⁴⁷ Afandi, "Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia."

³⁴⁸ Pompe, *The Indonesian Supreme Court*; Rositawati, "Judicial Governance in Indonesia (Ph.D Thesis)."

According to the draft of the new law, the police were to become functionally dependent on the prosecutor when investigating criminal cases.³⁴⁹ Moreover, the draft also introduced the pre-trial examining judge (*hakim pemeriksa pendahuluan*), to oversee the investigation process by the police and the prosecutor.³⁵⁰ The drafter called this new power structure a move toward the adversarial criminal justice system – in contrast to the inquisitorial legacy of the Indonesian system. The team was able to finish the first draft in 2008, but in 2013 the Indonesian government halted the reform.

Several researchers before me have discussed the reasons why this reform failed. They all agree that it was the police that rejected the reform, but they offer different explanations for such rejection. The first explanation came from the police themselves through a publication written by Panggabean (2010) titled “Criminal Justice Reform from the Police’s Perspective.”³⁵¹ Panggabean himself was a mid-ranking police official involved in the drafting process representing the police. In essence, Panggabean echoed the explanation from my informant, that the police rejected the reform because it positioned them as being subordinate to the prosecutors. Throughout the paper, such argument (that the police should have

³⁴⁹ In article 8(1), article 46 and article 42 of the draft of the reform it gave authority for the prosecutor to lead the investigation process by obliging the police to actively seek a consultation with the prosecutor. The prosecutors were also given the authority to conduct additional investigation, if necessary. Moreover, the police’s investigation period was limited to 60 days (if the suspect was detained) and 90 days (if the suspect was not detained).

³⁵⁰ I had the opportunity to discuss the role of the pre-trial judge in the draft of the reform with a senior and influential Supreme Court judge (Informant D18, August 19, 2020). I asked his opinion about the position of the Supreme Court on the reform since the reform would also increase the power of his institution. Essentially, he explained that the Supreme Court would follow any decision from the government since the court was not in the business of lawmaking. However, he also indicated that his institution was not ready to actively supervise the exercise of investigative power. Moreover, he also said that the existence of hakim pemeriksa pendahuluan would add extra pressure on judges because there would be a need to maintain “workgroup cohesion”. For instance, there was a high possibility that the police and the prosecutor would pressure judges to declare the legality of their actions. That is why he argued that, in his opinion, his institution was not ready. Since he held an influential position in the Supreme Court, his statement might also represent the view of the institution. In other words, there is an indication that the judges also did not support the reform. The power of the pre-trial judge was governed through article 1(7), 29-34, 44 and 111 of the reform. According to the draft of the new law, the approval for search, seizure and the extension of pre-trial must come from the pre-trial judge.

³⁵¹ R M Panggabean, “Rancangan Undang-Undang Hukum Acara Pidana Dari Perspektif Polri Sebagai Penyidik [The draft of Indonesian criminal procedure code reform from the police’s perspective as an investigator],” *MMH Jurnal*, no. 3 (2010): 12.

independent authority) is repeated to justify the argument that there would be no need to reform the KUHAP.

The second explanation came from Lamchek (2019), who argued that the police rejected the reform because the authoritarian and colonial mentality of the police produces an anti-reform mindset, since the reform promoted increased procedural rights for the defendants. This means that the exercise of investigative power would be scrutinized by other actors (such as the prosecutor and the pre-trial judge). The publication from Lamchek served as an update to the previous publication by Strang (2008).³⁵² Strang was an OPDAT³⁵³ representative that helped the drafting team of KUHAP reform, acting as the drafting team's primary outside advisor. In his publication, Strang was optimistic that the reform would occur since Indonesia had ratified the International Covenant on Social and Political Rights in 2005.³⁵⁴

This dissertation shows that the reality is not that simple. Although it is true that evidence indicates that the police rejected the reform, when explaining the reasons behind the rejection, previous scholars tend to oversimplify complex problems. Previous researchers (Lamchek and Strang) have merely discussed how macro-political structures (such as the authoritarian mentality derived from the government and the ratification of the international covenant) shapes the organizational attitude of the actors towards

³⁵² Robert R Strang, "'More Adversarial, but Not Completely Adversarial': Reformasi of the Indonesian Criminal Procedure Code," *Fordham International Law Journal*, 2008, 46.

³⁵³ OPDAT is an acronym for the Office of Overseas Prosecutorial Development, Assistance and Training. It is a US-based institution that helped foreign countries (such as Indonesia) in reforming its criminal justice system. See "Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT)," March 25, 2015, <https://www.justice.gov/criminal-opdat>.

³⁵⁴ In January 2020, I also had the chance to communicate with Robert Strang through email during the research process. I asked about his opinion on the failed reform. He explained that at that time, he thought it was going to pass since the police participated in the drafting process. After he left Indonesia in 2011, he could not follow the reform process closely. Strang has agreed to be mentioned in this dissertation.

the reform. Meanwhile, Panggabean failed to provide a detailed explanation other than “the police are not prosecutors’ subordinate.”³⁵⁵

This dissertation clarifies such an explanation by arguing that one should not separate the relationship between macro-micro political structures in understanding criminal justice. In this context, micro-political structures are variables that affect their interactions when processing a case, which is studied in this dissertation. An example of a micro-political structure is the internal rules, informal rules, and their association that reflect group norms within the police-prosecutor relationships.

This dissertation previously indicated that there are no agreed informal workgroup rules that structure cooperation between the two groups of actors. Moreover, this dissertation found that there is power competition and conflict in their relationship. Because of this situation, the police viewed the reform as a “Trojan horse” political strategy from the prosecutors to increase their power. As mentioned earlier, the police saw the reform as a hidden and invidious threat to their existing power. Any changes to the status quo would be seen as a threat to their institution. The primary response to this perceived threat was one of self-protection or defense mechanism. This happened because investigative power in criminal justice is a crucial asset for their institutional survival.

Because of these reasons, Indonesian legal commentators have labeled this type of behavior as ego sektoral. Most commentators (including my informants) who referred to the resistance as an ego sektoral behavior used the term as a convenient way to oversimplify what is actually a complex social

³⁵⁵ Panggabean, “Rancangan Undang-Undang Hukum Acara Pidana Dari Perspektif Polri Sebagai Penyidik [The draft of Indonesian criminal procedure code reform from the police’s perspective as an investigator],” 274–77. This argument was clearly mentioned when he discussed the relationship between the police and the prosecutor. He stressed that the police is not obligated to consult investigative matters with the prosecutors because the police is not the prosecutors’ subordinates (...walaupun penyidik tidak harus minta petunjuk PU, sebab ia bukan subordinasi dari PU).

concept. They simplify this phenomenon by describing it as “prioritizing their own interest” without investigating the underlying reasons behind such behavior.

In reality, ego sektoral is merely a symptom of a structural problem that produces resistance to reform. Several commentators, including Lamchek and reform team members, have tended to blame the police for their resistance to reform. They quickly label the police’s resistance as ego sektoral behavior. However, to some extent, this research argues that the police’s resistance to reform is understandable in this web of power game. It is always difficult to leave the “comfort zone” especially when it is related to *ladang hidup*.³⁵⁶

One thing to keep in mind, this dissertation previously indicated that what is happening between the police and prosecutors is a competition of power for power’s sake, and this is not a competition between the “good” forces versus the “bad” forces. As discussed in the previous section about structural problems, the evidence suggests that the prosecutors are also a politically motivated institution.³⁵⁷ Interview data reveals that they also show the tendency to exercise their power for personal and institutional pragmatic goals.

The findings of this dissertation show that Lev’s publication on the competition over power between the police and the prosecutor more than fifty years ago is still relevant today.³⁵⁸ The tendency of power-seeking behavior still exists in a more complicated way because it involves the ego sektoral behavior.

³⁵⁶ This statement is also supported by the fact that after the reformasi in 1998, the status of the police escalated. Before, the police were merely seen as “junior” military members. During the reformasi period, the military was prohibited from acting as a social-political force in the nation. Meanwhile, because of the reformasi, the police were separated from the military. As a consequence, the police hold the status of a civilian. This is a blessing in disguise for the police. That is why the police are now in their comfort zone. For literature about the rise of Indonesian police after the reformasi, see Baker, “The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia.”

³⁵⁷ See for instance a news article discussing the involvement of both actors in realpolitik. antaranews.com, “Kejaksaan Diingatkan Tak Terjebak Politik Praktis [Prosecutor Is Warned Not to Be Trapped in Realpolitik]”; Media, “Kepolisian Harus Terus Menjaga Jarak dari Godaan Politik [The police must distance themselves from realpolitik].”

³⁵⁸ Lev, “The Politics of Judicial Development in Indonesia,” 1965.

With this logic, if the reform happens, there is a huge possibility that it is just an issue about a transfer of power. For the accused, it could be the case of getting “out of the frying pan and into the fire.”

The question now is, what can be done after knowing this situation? How do we design a reform that is possible to be implemented? Obviously, there is no quick fix for these structural problems.

Fundamentally, there is a need to change the formal and informal rules that govern actors’ behavior.

The next chapter will discuss the factors that are designed to eliminate these structural problems. A road map on how to deal with this situation is also discussed in the conclusion chapter. For the next section, this dissertation will discuss how the troubled relationship found in the pre-trial impacts trial-level processes.

The impeding factors at the trial-level relationship between judges and prosecutor

This dissertation found that the conflict between the police and the prosecutor at the pre-trial level directly affects the ability of the judges and prosecutor to cooperate when processing cases. Such conflict affects the ability of the prosecutor in three work areas. The first is that the prosecutor could not secure the attendance of witnesses since they are isolated from the investigation process. In addition, the prosecutor also has difficulties presenting physical evidence because, during the investigation, such evidence is stored and managed by the police. Second, the prosecutor also lacks the ability to pose critical questions to the witnesses being presented. Automatically, this delays the case processing time and puts extra caseload pressures on judges.

In explaining the above-mentioned findings, this section will start by explaining the nature of the relationship between the judges and the prosecutors. Following this, it will explain how the troubled relationship between the police and the prosecutors at the pre-trial level creates extra work for the judges and, at the same time, delays case processing time.

The nature of the relationships between judges and prosecutors

Unlike the relationship between police and the prosecutors, the nature of judges and prosecutors' relationships differ. This is mainly because judges and prosecutors do not need to produce the same outputs in their working interactions. Consequently, there is no need for a power-sharing mechanism between the two groups of actors. That is why the conflict in their relationship is not as intense as it is between the police and prosecutors. The conflict between the judges and prosecutors stems from the operational differences in doing their respective jobs.

According to the KUHAP, judges and prosecutors should operate in a norm of conflict. It means that the judge should always be skeptical of a prosecutor's argument. Moreover, Indonesian judges are supposed to play an active role in the hearing like any other inquisitorial judge.³⁵⁹ However, I found that they share a mutual goal which is speedy case processing.³⁶⁰ Because of this, Indonesian judges tend to process a case in a "business as usual" manner, and they believe that it is the prosecutor's job to convince them that the defendant is guilty beyond reasonable doubt.³⁶¹ Unlike the pre-trial level relationship, the performance of the judges and prosecutors at the trial level is measured by the number

³⁵⁹ According to Chapter 3 of the KUHAP, judges play an active role such as actively questioning witnesses. Theoretically, the judges are not passive recipients of the information in the inquisitorial system, and they play a more active role than their adversarial counterparts. For the discussion about role of inquisitorial judges See Abraham S. Goldstein & Martin Marcus, *The Myth of Judicial Supervision in Three "Inquisitorial" Systems: France, Italy, and Germany*, 87 YALE LAW J. 240 (1977); Hodgson, *supra* note 29; LUHUT M. P. PANGARIBUAN, *LAY JUDGES DAN HAKIM AD HOC: SUATU STUDI TEORITIS MENGENAI SISTEM PERADILAN PIDANA INDONESIA* (2009).

Abraham S. Goldstein and Martin Marcus, "The Myth of Judicial Supervision in Three 'Inquisitorial' Systems: France, Italy, and Germany," *The Yale Law Journal* 87, no. 2 (December 1977): 240, <https://doi.org/10.2307/795651>; Hodgson, "The Role of the Criminal Defence Lawyer in Adversarial and Inquisitorial Procedure"; Luhut M. P. Pangaribuan, *Lay judges dan hakim ad hoc: suatu studi teoritis mengenai sistem peradilan pidana Indonesia [Lay Judges and ad-hoc judges: A theoretical study about the Indonesian criminal justice system]* (Universitas Indonesia, Fakultas Hukum, Pascasarjana, 2009).

³⁶⁰ A discussion about how speedy case processing incentivize cooperation will be discussed in the next chapter.

³⁶¹ Interview with Informant D22 on July 24, 2020, and D38 on August 18, 2020 (District Court Judges). They told me they just want to be passive because they have a lot of work to do. In the words of Informant D38, "in general, we just need to follow the prosecutor, and I don't want to complicate things."

of cases they solve through convictions.³⁶² A detailed explanation of how judges and prosecutors structure informal workgroup rules that incentivize cooperation is provided in the next chapter.

Because of the above reasons, this dissertation found that the inducing factors for cooperation are stronger than the impeding factors. An elaborated explanation of this finding is covered in the next chapter. Meanwhile, when investigating the impeding factors, the interviews revealed that the impeding factors in the working relationship between judges and prosecutors are not as serious as the relationship between the police and the prosecutor. As mentioned earlier, there are impeding factors related to operational differences in doing their respective jobs.

During the hearings, the judges expect the prosecutor to play a more active role by presenting their evidence and witnesses and actively questioning them so that the judges just need to be passive.³⁶³ However, since the prosecutor is often isolated from the investigation from the reasons discussed previously, this directly affects their ability to perform such tasks.³⁶⁴ As a result, judges must do extra work by playing a more active role during the hearing, taking over the job that is supposed to be done by the prosecutor.

Extra work for the judges: Securing the attendance of witnesses

During the interviews with three district court judges, they told me that they often needed to do extra work to secure the attendance of the witnesses.³⁶⁵ According to the law, the prosecutor is responsible for securing the witness's attendance.³⁶⁶ However, the fact that the prosecutor never interacts with the

³⁶² The blue print of Indonesian court reform constantly voiced the need to have an efficient case processing. Meanwhile, the performance of the police and the prosecutors is not measured by convictions. This is because they have the power to stop the case. Further discussion will be covered in the next chapter.

³⁶³ Informant D22 (chief justice of district court), Interview on August 22, 2020. In her words, "To be frank, as a judge we want to be passive. Because we are not doing the fieldwork, we only read documents. It is the prosecutor's job to convince us."

³⁶⁴ Apart from the fact that the prosecutor is isolated from the investigation, I found that the management of personnel and the quality of the prosecutor also play a part.

³⁶⁵ During the interview, I asked, "what are the problems in the working relationship with the judges?"

³⁶⁶ See article 14 (f) and 227 (1) and (2) of KUHP.

witnesses makes it hard for them to secure their attendance. That is why it is not uncommon for trials to be adjourned because witnesses are not present.³⁶⁷

This happens because the Indonesian prosecutor often does not know of their own witnesses and experts until the day of the hearing. The prosecutor only reads the witness statements in the minutes of interrogation prepared by the police and usually never has any chance to get in touch with them directly. They also do not have the power to summon and interrogate witnesses or experts at the pre-trial stage.³⁶⁸

As a result, Indonesian prosecutors usually have difficulty contacting their own witnesses.³⁶⁹ Usually, the prosecutor summons the witnesses to the Court by contacting them via phone, and they only issue a summons letter when the witness fails to appear at the first hearing.³⁷⁰ Furthermore, the witnesses themselves often need confirmation from the police before obeying the summons from the prosecutor.³⁷¹ Two-line prosecutors that I interviewed admitted that they often experience technical difficulties, such as summoning witnesses and presenting physical evidence during the examination hearings.³⁷²

³⁶⁷ In the words of my informant (D66 district court judge in Sumatera province, interview via Zoom in February, 2021), “The prosecutor is so unprofessional. They just give us an extra burden when they did this. The fact is, they did this more often than not. As judges, we have lot of work to do. I need to handle 10 to 15 cases every day.”

³⁶⁸ Although the prosecutorial law says that they have the power to conduct additional investigation, but this is only a paper exercise. This is because the KUHAP does not grant them the authority to do so. In this context, the authority of KUHAP supersedes the prosecutorial law.

³⁶⁹ This situation does not apply to the defendant since most of them are already placed in pre-trial detention. Moreover, the defendant has also already interacted with the prosecutor when the police submitted the case dossier to the prosecutor (pelimpahan tahap dua).

³⁷⁰ In article 14 and 227 KUHAP, it says that in summoning the witness, the prosecutor has to issue an official letter of summons. However, an interview with a prosecutor (Informant D60) revealed that for efficiency reasons, they often contact the witness via phone.

³⁷¹ Informant D60, mid-ranking prosecutor interview via phone on July 20, 2020. She told me that in reality, especially in a remote area, the witnesses see that the prosecutor is subordinate and part of the police. That is why they only obey the police’s instructions. In her words, “... people [in a remote area] even could not differentiate the police and the prosecutor,”

³⁷² In the words of my informants, “They do not know us; they only know the police. Because of that, we need the help of the police to contact the witness and telling them in advance that they need to appear before the Court. In some cases, they [the witnesses] do not believe us until the police called them in advance.”

Because of these reasons, it is not uncommon for witnesses to be absent in the first summons unless the police have contacted them first. According to the prosecutors, the police are not always helpful.³⁷³

Judges often need to delay hearings when this situation occurs because the witnesses are not present.

After the prosecutor fails in a second or third attempt, the judges then take over the task of securing the attendance of the witness from the prosecutor.³⁷⁴ Through the court clerk (*panitera*), the judges will issue a subpoena for the witness. All in all, this process could take three to four weeks. Consequently, it delays the case processing time and creates extra caseload pressures for judges and prosecutors. This situation could be critical if it happens in overcrowded courts.

Extra work for the judges: Questioning witnesses

The impeding factors do not stop on the issue of securing the attendance of witnesses. Even after the attendance of the witness is secured, another problem emerges in the working relationship during the hearing: questioning the prosecutor's witnesses. Three judges I interviewed (on separate occasions) shared the same sentiment about the prosecutors' incompetency in questioning their own witnesses.

In my investigation, I found that this problem is associated with two reasons related to each other. The first is the prosecutor's limited involvement in investigating criminal cases. The fact that they only have little knowledge about the investigation phase and never interact with the witness significantly contributes to this problem. Related to this, the prosecutor often cannot pose the "right questions" to the witnesses as understood by the judge.³⁷⁵

³⁷³ According to my informant (D25, interview on August 13, 2020), "It is not always easy to communicate with the police. If we know them personally, it might be easy. But if it's not, sometimes, they are difficult to reach. They rarely pick up my calls and answer my texts. They only get back to me 2-3 days later. I feel that the police look down on us [*keperwiraannya didahulukan*]."

³⁷⁴ The judges take over this role by instructing the clerk to issue a subpoena for the witness directly.

³⁷⁵ According to my informants, three judges at the District Court (D38, D22 and D66), the prosecutors often only read the minutes of interrogation word by word. For the judges, the minutes of interrogation do not count as evidence. What does count as evidence is oral statements from the witness or defendant. Because of these reasons, the judges expect the prosecutor to dig deeper, such as into the mental condition and state of mind

Second, this problem is also related to the prosecutor's personnel management. Because of caseload pressures (especially in big cities), not every prosecutor within the same office has the same knowledge about the various cases. Their competencies also differ. An incompetent prosecutor may be forced to attend an examination hearing during the trial because of the busy schedule of a prosecutor with previous knowledge of the case.³⁷⁶

Whatever the reasons, the prosecutor's inability to ask the right questions impacts their ability to work smoothly with the judges. The result is that judges can often take over the prosecutor's role in actively questioning the witnesses. Automatically, this extends case processing time. For instance, one proper examination hearing involving three witnesses could take three to four hours. This factor could seriously impact the criminal court's functioning in an already busy court.³⁷⁷

Defense lawyer as an impeding factor for cooperation

Before moving further, it is important to remind the reader about the purpose of the discussion about the defense lawyer's role in this dissertation. The discussion of the defense lawyer aims to understand how Indonesian defense lawyers navigate themselves amid the complex web of power dynamics among state functionaries. The reason for this is because the defense lawyer is seen as an "outsider" of the system because they do not generate their power directly from the state. Instead, the power of the defense lawyer comes from the state's recognition of human rights (that are translated into criminal procedural rights).³⁷⁸ As a consequence of this logic, defense lawyers do not share the same fellowship

[kondisi mental dan apa yang dipikirkan] when the witness/defendant was interrogated. This is the meaning of posing "the right questions".

³⁷⁶ This is also because the Indonesian prosecutor has long internalized the doctrine "prosecutor as an indivisible whole". In this context, it is interpreted that every prosecutor has the same responsibility towards the cases.

³⁷⁷ Overburdened courts are located in big cities in Indonesia, such as Jakarta, Surabaya, Medan, Bali, Semarang, and Jogjakarta. Each judge usually handles 6-10 cases each day. The cases that they handle are not only criminal cases. Indonesian district court judges also handle civil cases, labor cases, bankruptcy cases, and family disputes.

³⁷⁸ This logic can be found in the 1966 International Covenant on Civil and Political Rights (ICCPR). For a discussion about the type of power given to the actors and its political linkage to the broader power structure, see Damaska, *The Faces of Justice and State Authority*.

of officialdom with their counterparts. In Indonesia, the right to be assisted by a defense lawyer is guaranteed by the KUHP when the accused faces a charge that carries a jail sentence of more than five years.³⁷⁹

This research suggests that defense lawyers could be categorized as both impeding and inducing factors, depending on their defense litigation strategy. There are two defense strategies at the purest level: the problem-solving and adversarial approach. Broadly speaking, adversarial defense lawyers tend to challenge every decision or argument their counterparts make. They will use any instrument (both legal and extra-legal) available to them to fight for their client's interests. In this strategy, defense lawyers position themselves in adversarial positions to the state functionaries such as police, prosecutor, and judges.

On its surface, this description sounds ideal. However, the data reveal that this strategy can backfire for clients. The defense lawyers that I interviewed reported that their client received a "penalty" because of the exercise of such rights.³⁸⁰ Meanwhile, the priority for a problem-solver lawyer is to incentivize cooperation by maintaining workgroup cohesion between the actors. This research reveals the tendency for Indonesian defense lawyers to adopt a problem solver strategy instead of an adversarial defense strategy because the system forces them to play a submissive role. The next chapter will discuss this issue further. However, amidst the limitations imposed on their profession, this research also reveals circumstances that "force" Indonesian defense lawyers to employ adversarial litigation strategies.

In explaining the arguments mentioned above, this dissertation will first discuss the adversarial instruments available to Indonesian defense lawyers. The interview findings indicate that most Indonesian defense lawyers treat the adversarial litigation strategy as a "nuclear option". In other

³⁷⁹ See article 56 KUHP. The state must provide legal assistance for an indigent defendant liable to imprisonment for five years. For a non-indigent defendant, the threshold is 15 years.

³⁸⁰ This topic about the "penalty" and "adversarial strategy" is discussed in the next section.

words, they choose to employ this strategy because the situation forces them to do so. After discussing adversarial litigation strategy as an impeding factor for cooperation, the discussion will move to the circumstances where Indonesian defense lawyers must resort to such a “nuclear option”.

Adversarial litigation strategy as an impeding factor for cooperation

The legacy of inquisitorial tradition combined with the authoritarian traits within the system does not give Indonesian defense lawyers a chance to stand on an equal footing with their counterparts.³⁸¹ On its surface, the KUHAP provides several avenues for the defense lawyer to act as a counterbalancing force to the police, prosecutor, and judges. However, in practice, such avenues are no more than “lip service.”³⁸² Consequently, the system does not provide a meaningful mechanism (at the pre-trial and trial level) for the defense lawyer to fight for their client’s interest. Strang (2008) described that in the Indonesian criminal justice system, “...rights are routinely violated, but there is no realistic avenue for redress.”³⁸³

For example, one of the defense lawyer’s basic adversarial strategies is the right to call witnesses and experts both at pre-trial and trial levels which are guaranteed by the KUHAP.³⁸⁴ With this approach, the defense lawyer could balance the content of the case dossier constructed by the police and the prosecutor at the pre-trial level.³⁸⁵ In reality, the exercise of this strategy is problematic in its

³⁸¹ In the KUHAP, adversarial instruments available for defense lawyers are pre-trial, the right to call their own witnesses (through the police in pre-trial and the judges in trial) and pre-trial motions to dismiss the case. However, this research found that such adversarial instruments are toothless – because of the design of the system. That is why Indonesian defense lawyers are forced to cooperate. This topic will be further elaborated in the next chapter.

³⁸² Further explanation on this issue is covered in Chapter 5, under the section “why most Indonesian defense lawyers choose to be a problem solver.”

³⁸³ Strang, “‘More Adversarial, but Not Completely Adversarial’: Reformasi of the Indonesian Criminal Procedure Code,” 197. Strang is a representative of OPDAT that helped the previous attempt at Indonesia’s criminal justice reform.

³⁸⁴ This is regulated under KUHAP article 65 and 160.

³⁸⁵ In this context, the purpose of balancing the case dossier is because there is a possibility that the judge, before the hearing, could be contaminated with the story made by the police and the prosecutor. This is a typical concern in inquisitorial criminal justice systems. In Italy, when they tried to reform the criminal procedure code, this also become one of the main concerns. See Grande, “Italian Criminal Justice.”

implementation. The problems occur because of two main reasons. The first is because the right to call their own witnesses both at the pre-trial and trial level must be exercised through the police, prosecutor or the judges. At the pre-trial level, the defense lawyer must submit a request to the police so that the police can interrogate the defense's witness and record it into the case dossier. It is not uncommon for the police to deny such requests because it would only complicate their work.³⁸⁶ Moreover, when assisting in the interrogation of their client, defense lawyers also do not play any role other than observing the process with a front-row seat. Indonesian defense lawyers are prohibited from advising their clients during the interrogation process since, according to the police's perspective, active participation from defense lawyers could "taint" the evidence.³⁸⁷ This is because the case dossier, according to the logic of KUHAP, is not seen as a partisan account of the accuser.³⁸⁸ Meanwhile, at the trial level, it is also not uncommon to see that judges could reject the witnesses proposed by the defense due to efficiency reasons.

Another example of an adversarial defense strategy is challenging the pre-trial enforcement process by lodging a pre-trial motion. Formally, a defense lawyer could challenge the legality of enforcement processes such as search, seizure, and arrest through this motion. When the KUHAP was first established, many commentators praised its existence. It was considered a "masterpiece" because the

³⁸⁶ Interview with Informant D70 on May 12, 2021 (Senior defense lawyer in Jakarta). He told me that, based on his litigation experience, the police (in rejecting the request to interrogate witness) told him that the defense lawyer could still request the judge interrogate their witness. There is also one famous case when the prosecutor rejected the request to examine a defense witnesses in 2010. In a corruption case involving former law minister, Yusril Ihza Mahendra, the Indonesian prosecutor rejected the request and made a public statement saying that there was no obligation to comply with the defense request. Because of this case, in 2011 the Constitutional Court declared that legal enforcers must comply with a request from the defense. In reality, the violation of this right is still rampant.

³⁸⁷ This is because the logic of treating the case dossier as an impartial account of investigation. The Indonesian bar association is now lodging judicial review because of this procedure. See Andi Saputra, "Ingin Bisa Dampingi Saksi dan Terperiksa, Peradi Jaksel Gugat KUHAP ke MK [Wanting to be able to represent witness and defendant, bar association lodged judicial review]," detiknews, accessed May 1, 2022, <https://news.detik.com/berita/d-6051517/ingin-bisa-dampingi-saksi-dan-terperiksa-peradi-jaksel-gugat-kuhap-ke-mk>.

³⁸⁸ This is in contrast with the "fight theory" used by the adversarial system, including the American adversarial system. As a result, investigative and prosecution files made by the prosecutor are seen as partisan accounts. See Damaska, *The Faces of Justice and State Authority*.

system allows the defendant to challenge the state's enforcement actions for the first time. However, because of the law's vagueness, pre-trial judges only have limited power to scrutinize arbitrary actions of the state.³⁸⁹ A detailed discussion on how the pre-trial motion can be seen as a useless exercise is provided in the next chapter, under the section "defense lawyer as an inducing factor."

The circumstances that lead to the adversarial litigation strategy

The data collected from the interviews show that the system forces defense lawyers to adopt an adversarial litigation strategy in two circumstances. The first circumstance comes when the case attracts public attention and is politically motivated. Under this situation, defense lawyers³⁹⁰ utilize legal instruments and extra-legal measures to fight for their clients' interests. Although their adversarial instruments are very limited, their ultimate mission is to win the case using public pressure. I revealed this strategy when I interviewed one senior defense lawyer in Jakarta, and he told me about his experience when handling a politically motivated case. According to my informant, he relies on public pressure to fight the state's power in a criminal trial because of their otherwise limited power. In his words:

"There is no way we could win the case using any legal instruments such as pre-trial motion [praperadilan]. If it is politically motivated, it means that the government already issued a decision before the trial begins ...the pre-trial, and the trial process is a mere formality. That is

³⁸⁹ There are two reasons that support this statement. First, if we look at article 77 that governs the pre-trial process, there is a lack of clarity on the role of the pre-trial judge. It is said that the pre-trial judge could verify the "legality" of enforcement actions. However, the law does not provide a regulatory framework on what constitutes the term "legality". In my interview with a district court judge in Jakarta (Informant D47, via phone, January 26, 2021) he told me that the pre-trial judge is "holding a gun without a bullet." As a defense lawyer, I can also confirm this statement. In 2016, when I was representing a famous case involving the chairman of the Indonesia football association, the pre-trial judge dismissed the case because of double jeopardy rules. However, the prosecutor did not follow such a decision because they believed that the judge had "crossed the line."

³⁹⁰ Usually a defense lawyer coming from an NGO (legal activist) or a defense lawyer that has an NGO background. Two of my informants have NGO backgrounds.

why we use extra-legal measures [adversarial strategy] such as conducting press conferences to gather public support.”³⁹¹

Another situation where defense lawyers resorted to adversarial strategy is when their client instructed them to do so. One mid-level defense lawyer told me about his experience when handling a foreign national working in an international company in Jakarta. His client, although reluctantly, instructed my informant to take an adversarial approach when dealing with employment cases.³⁹² Since his client was working in an international company and his case was related to his work, company regulations forbade him to lobby the police, prosecutor, or judges.³⁹³ Otherwise, he could be jailed in his country of origin because of bribery. As a result of using an adversarial strategy, during the process, the Indonesian police and prosecutor advised his client to replace my informant with a handpicked lawyer from them during the process.³⁹⁴

The police and the prosecutor advised his client to replace him because the consequences (of using an adversarial strategy) would complicate the investigation process. Using an adversarial strategy would cause extra work, especially for the police and the prosecutor at the pre-trial level and judges at the trial level. When a defense lawyer uses public pressure to win the case, police, prosecutors, and judges report not liking this because it creates an extra burden for them to process the case. In addition, when the case attracts public attention, they will be closely monitored by the public and, most importantly, by their supervisors.³⁹⁵

³⁹¹ Informant D70, Interview with author, May 12, 2021.

³⁹² According to the lawyer (Informant D72), “I know that you might have a good strategy in challenging every decision against me, but in Indonesia, money is above ideas. Your argument might not help me.”

³⁹³ Since his client worked in an American company, his client was bound by the Foreign Corrupt Practices Act (FCPA).

³⁹⁴ According to my informant (the defense lawyer), the police and the prosecutor told his client that the use of an adversarial approach would backfire. There was simply no change to fight against the state in criminal justice process.

³⁹⁵ Interviews with the judges, police and prosecutors revealed that when they handle cases under immense public pressure, their supervisors (at the provincial level) will usually demand frequent reports. For the lower-ranking actors at the district level, the feeling that they are being watched created extra burdens and pressure.

It is not uncommon to see that the defendant could receive a “penalty” during the investigation process because of exercising an adversarial litigation strategy.³⁹⁶ The current working environment forces Indonesian defense lawyers to play a submissive role. As a result, it creates a pre-established expectation from the police, prosecutors, or judges to demand cooperation from the defense lawyer. In the next chapter, this dissertation will cover the discussion about why Indonesian defense lawyers are cooperative in nature and how it could pose a serious problem to the system.

Conclusion

Reality shows that cooperation is necessary for the smooth functioning of the criminal justice system, and no working system can escape from this reality. This chapter has examined the factors that impede cooperation among Indonesian criminal justice actors. In the pre-trial level relationships, where the police and prosecutors need to work together to produce the same output (case dossier), this research has found that the association between conflict, power, and ego sektoral behavior significantly impedes their ability to work together in processing a case. Moreover, this structural problem is also responsible for the failure of criminal justice reform.

In the trial-level relationships, the impeding factor comes from the operational differences that hinder the ability of prosecutors and judges to process cases efficiently. The conflict at the pre-trial level impacts the prosecutors’ knowledge of the cases. As a result, judges must perform extra work by securing witness attendance and actively questioning them. This impeding factor does not pose a serious threat to the system’s functioning since both groups of actors share the same goal of efficiency.

³⁹⁶ Apart from the risk of being replaced by a handpicked defense lawyer, one defense lawyer (Informant D70, Interview with author on May 12, 2021) reported that, in 2013, his client was forced to answer all the questions from the prosecutor in handwriting while the prosecutor observed the event in front of them while smoking a cigarette. For my informant, this was a clear indication that his client was being penalized by the prosecutor.

The topic of how and why they develop informal workgroup rules based on shared goals is provided in the next chapter.

Meanwhile, defense lawyers could be categorized as an impeding and inducing factor depending on their litigation strategy. Although rarely exercised, defense lawyers could act as an impeding factor when they use an adversarial litigation strategy. When they position themselves as adversaries to state actors, it imposes an extra burden on the police, prosecutors, and judges. This dissertation also reveals the consequences of employing an adversarial litigation strategy – the defendant could receive some form of penalty from the law enforcers.

The next chapter will discuss the factors that are designed to negate the impeding factors found in this chapter. It will contrast the impeding factors with the inducing factors to provide accurate mapping and understanding of the day-to-day workings of the Indonesian criminal justice system.

Chapter 5

Factors that Induce Cooperation

Introduction

The previous chapter discussed the impeding factors for cooperation between Indonesian criminal justice actors. In this chapter, the discussion will focus on the factors that are designed to induce cooperation. It has two main purposes: the first is to identify the factors that induce cooperation among criminal justice actors when processing a criminal case. Subsequently, after identifying those factors, this chapter will contrast the inducing factors with impeding factors.³⁹⁷ This approach could help this research fulfill its main purpose, which is to provide an accurate mapping and understanding of the day-to-day workings of the Indonesian criminal justice system.

The structure of this chapter follows the logic of the previous chapter, in which the findings are divided into two main case processing levels, the pre-trial level (between the police and the prosecutor) and the trial level (between the prosecutor and the judges). The discussion of the defense lawyer's role as an inducing factor is explained through their litigation strategy and type of appointment. The presentation of the interview data will also follow the previous chapter's format, which can be found in the body text and footnotes. The interview data presented in the body text are directly related to the argument being presented. Meanwhile, the extracts placed in the footnotes are designed to strengthen the argument.

³⁹⁷ In this context, it will do so by contrasting the interview data. In a qualitative study, one way to make a comparison between categories is by asking those who have direct experience. The author interviewed actors who have direct experience working together to process a case in this study. See Chapter 3 on research methodology for an elaborate explanation.

Factors that are designed to induce cooperation in the pre-trial level relationship

The inducing factors in the pre-trial relationship are associated with the Indonesian government's attempts to induce cooperation by creating shared norms, both formal and informal. With this strategy, policymakers hoped that it could reduce conflict between the police and prosecutors so that cooperation between them could emerge.

Through an examination of the association between formal rules and informal rules (information that has been gathered from the interviews), this dissertation found that there are three main strategies to induce cooperation in the pre-trial relationship: (1) creating a shared policy between the police and prosecutors; (2) conducting interagency training; and (3) establishing a specialized criminal justice institution known as task force unit (*satuan tugas or satgas*).

This research suggests that the inducing factors are not strong enough to “negate” the impeding factors for cooperation.³⁹⁸ This is because the inducing factors only serve as ornamental solutions to the structural problems found through identifying the impeding factors. In supporting this claim, this chapter will first discuss how those strategies are supposed to induce cooperation and then offer an argument as to why it fails to reduce the structural problems found in the previous chapter.

The creation of shared policy

In the Indonesian justice system, creating shared policy (through a Memorandum of Understanding (MoU) or Joint Regulation) is frequently used as a panacea to induce cooperation in the criminal justice workgroup. Realizing that the system is fragmented, in 2010, the police, prosecutors, judges, and prison

³⁹⁸ What I mean by negate is looking for deviant cases in which the respondent's viewpoints contradict the inducing strategy established by the Indonesian government. This is important to validate the patterns emerging from the research.

officials established a shared policy called the “synchronization of criminal justice enforcement.”³⁹⁹ As the title suggests, this policy’s purpose was to synchronize the division of work between the actors to improve efficiency.⁴⁰⁰ The policy identified several key areas that are prone to conflict when there is an interconnection of roles between them. Moreover, the policy also proposed a recommendation to minimize the conflict of interpretation regarding the actors’ roles in investigating criminal cases.

In relation to such policy, this section will discuss the design of the policy and then present and interpret the interview findings related to the implementation of the policy.⁴⁰¹ In achieving this goal, this dissertation conducted content analysis on the policy and interviewed the actors who designed and enforced it. This research suggests that such a policy is ineffective in negating the impeding factors identified in the pre-trial relationship. This claim is based on two associated reasons: The first is related to the content of the MoU that fails to address structural problems (the distribution of power), and second, the failure to address such structural problems makes the policy impracticable. In other words, this policy only serves as a paper exercise.

The explanation of the first reason is related to the theoretical structure of the policy itself. If we look at the policy’s theoretical structure, it treats the criminal justice process as a single system of organization with one clear goal, named justice.⁴⁰² This assumption is dangerous because the reality of the criminal

³⁹⁹ “Peraturan Bersama Mahkamahpol [Joint Regulation between Police, Prosecutor and Judge]” (2010), <https://www.kejaksaan.go.id/upldoc/produkhum/PERATURAN%20BERSAMA%20MAHKUMJAKPOL%202010.pdf>.

⁴⁰⁰ Peraturan Bersama Mahkamahpol [Joint regulation between police, prosecutor and judge]. See paragraph c, d and e in the regulation. The policy emphasized that the formal goal of the Indonesian criminal justice system is a speedy, efficient and inexpensive process (cepat, sederhana dan biaya ringan).

⁴⁰¹ This does not mean that the author found the literature first and then conducted interviews based on the problems found in the literature. Such a procedure will violate the grounded theory approach, where the category must be developed from fieldwork, not literature. The author found this problem during the interviews with the prosecutors and the police first and then found the literature about the investigated issues.

⁴⁰² Peraturan Bersama Mahkamahpol [Joint regulation between police, prosecutor and judge]; David Duffee, *Explaining Criminal Justice: Community Theory and Criminal Justice Reform* (Cambridge, Mass: Oelgeschlager, Gunn & Hain, 1980), 108. This is reflected on the written goals of the MoU, which is to achieve the so-called “integrated criminal justice system.” The integrated criminal justice system itself is an outdated concept. This concept was voiced by criminal justice scholars in the 1970s-1980s because of the rise of organizational analysis on criminal

justice system is complex and multifaceted. In reality, the organization of criminal justice is full of competing interests between the actors. Furthermore, as we have seen in the previous chapter, those interests are driven by pragmatic motivations.⁴⁰³ As a result of this theoretical oversimplification, the policy fails to provide a concrete and practicable solution.

For instance, to resolve the conflict of understanding about the police and prosecutor's roles in the investigation process, the policy recommends that both actors establish a separate joint agreement to create shared understandings.⁴⁰⁴ Instead of solving the problem, this solution only reemphasizes the problem. Obviously, it would not be easy for the police and the prosecutor to agree on power distribution between them. If it were that easy for the police and prosecutor to agree on the power structure, their rivalry would have been solved long ago. In fact, the conflict between them has been happening for more than six decades.⁴⁰⁵ The typical recommendation from the government to deal with this conflict is no more than to advise to both institutions to "forgo ego sektoral behavior".⁴⁰⁶

As discussed in the previous section, this conflict is exacerbated by the fact that power itself has become a crucial asset for the actor's institutional survival.⁴⁰⁷ As a result of this conflict, it produces strong resistance whenever there is a change that will affect the power distribution. As previously discussed, the resistance to compromise is driven by the need to control discretionary power when investigating

justice. Duffee (1980) argued that the integrated criminal justice system is a dangerous concept because it oversimplifies the complex reality of criminal justice organizations.

⁴⁰³ In the previous chapter this dissertation discussed how Indonesian criminal justice actors display the behavior of power-seeking. See discussion on the "background on the current organizational design."

⁴⁰⁴ Peraturan Bersama Mahkumjapol [Joint regulation between police, prosecutor and judge]. See point 4 of the MoU.

⁴⁰⁵ The historical and ideological conflict between the police and prosecutor is explained in the previous chapter. In short, the conflict that stems from competition for discretionary power has happened since 1950s.

⁴⁰⁶ See the statement from Indonesian president and his minister when talking to Indonesian law enforcers. Nugroho, "Jokowi"; "Hadiri Rakernis Bareskrim, Mahfud MD Bicara Penegakan Hukum Sebagai Pembangun Harmoni [Attending Police's Detective Unit Meeting, Mahfud MD Underlines Cooperation in Law Enforcement]."

⁴⁰⁷ In the previous chapter (Chapter 4) on the section titled "power, conflict and ego sektoral," this dissertation discussed how the police and prosecutors suffered from a lack of funding. As a result, they tend to monetize their power to fund their operations.

criminal cases.⁴⁰⁸ Consequently, there is a tendency for both sets of actors to protect their institutional power.⁴⁰⁹ Under these circumstances, it is naïve to hope that this policy could induce cooperation between the actors. In fact, in 2011, a year after creating this policy, the police and the prosecutors established contradictory internal regulations about their roles at the pre-trial level.⁴¹⁰ Ten years later, there is still unhealthy conflict in their working relationship that seriously affects the system's functioning.⁴¹¹

Another problem that the policy tries to resolve is the scope of the review for the case dossier.⁴¹² In its problem statement, the policy acknowledged that there is confusion on the scope of the review. Such confusion resulted in the “case dossier back and forth (*bolak balik berkas perkara*)” phenomenon making the process inefficient.⁴¹³ As a solution, the policy recommended that the police and the prosecutor find a way to “optimize their communication.”

Not surprisingly, the policy failed to provide an operational framework for optimizing communication.

When one tries to operationalize the term, it would beg another fundamental question of who should

⁴⁰⁸ An example of discretionary power at the pre-trial level is the decision to select charges, arrest, search and seizure. These powers are understood as the most powerful criminal justice powers because they restrict the freedom and liberty of individual. For the actors, this power is an “asset” for good and the bad. See Chapter 4 for detailed discussion.

⁴⁰⁹ This is explained in the previous chapter, on the section “Power, Conflict and Ego Sektoral.” The discretionary power over pre-trial investigation is the most “precious asset.” This is because controlling the pre-trial level means controlling the overall outcome of the case. Combined with the pre-existing organizational culture and lack of funding, it opens the possibility of corruption. As a result, criminal justice power is seen as an “asset” to fund their institutional operation.

⁴¹⁰ In Chapter 4 this dissertation explains that the police and prosecutors established their own internal regulations that govern their roles in the investigation. In the police's regulation, there is no mention about the role of the prosecutor in the criminal investigation. Meanwhile in the prosecutor's regulation, they consider investigation to be part of the prosecution process.

⁴¹¹ In Chapter 4, this dissertation has shown how the impeding factors in their relationship resulted in heavy case backlogs at the pre-trial level.

⁴¹² In the previous chapter, the author discussed that the police and prosecutors also have different opinions on the case dossier's review scope. Because the police believe that they are the dominant player in the pre-trial level, what the police understand is that the scope of the review is only limited to administrative matters. This problem is specifically addressed in point 8 of the policy.

⁴¹³ Case dossier back and forth phenomenon or “*bolak balik berkas perkara*” is a famous term in the Indonesian criminal justice literature. It is used to show how the inefficient working relationships between the police and the prosecutors result from the vague language in the law. See Chapter 4 for a detailed explanation.

surrender some part of their power so that “communication can be optimized”. This solution would also lead to other serious questions: whose interpretation should prevail? Does the law determine the police to be the dominant player in the system? Is it true that the investigation is part of the prosecution process? Clearly, the policy does not have answers to these fundamental questions. This is because the policy itself lacks the authority to answer such questions without amending the KUHAP as the main procedural law of how the system operates.⁴¹⁴

In an interview with a ministry official who took part in designing the policy, he acknowledged that during the drafting process, both the police and the prosecutors could not agree on the structure of power. At that time, there was a heated debate between the representatives of the police and the prosecutors.⁴¹⁵ The police, whose status and power were escalated because of the reformasi, did not want to surrender their powers to the prosecutors.⁴¹⁶ Meanwhile, the prosecutors were adamant that they should be given leading roles in investigating criminal cases. Considering the seriousness of the conflict, the government had no other option other than producing a vague recommendation. In his defense, he argued that “it [the policy] is better than nothing.”⁴¹⁷

The second reason the shared policy fails to influence the impeding factors is because of its lack of binding authority. An interview with a high-ranking prosecutor revealed that the policy does not

⁴¹⁴ In the Indonesian law about the hierarchy of law, the KUHAP (which is the law or UU) has a higher authority than shared policy (*peraturan bersama*).

⁴¹⁵ Interview with Informant D15. In his words, “Both the police and the prosecutor showed no compromise during the discussion. During the first two meetings, the meeting was attended by high-ranking officials from both parties. They exchanged arguments on who should control the investigation process. In the last three meetings, when we were about to conclude, they [the police and the prosecutor] only sent their subordinates that did not have the authority to decide. I suspect that they did not want to engage in a debate, and they wanted to avoid conflict.”

⁴¹⁶ In Chapter 4, this dissertation explained that because of the reformasi, the police replaced the role of the military. As a result, they become a dominant socio-legal force in the nation.

⁴¹⁷ Interview with Informant D15 (a ministry official. He was neither the police nor the prosecutor). July 16, 2021. In his full words, “The president realized that there is a problem. That is why we initiated this policy through the minister of law. We wanted to create a unified perception. However, there was a serious debate because many interests were at stake during the drafting process. The police resisted, and the prosecutor wanted to have more power. It’s all about power [*kuat-kuatan*]. But I think, at least, it [the policy] is better than nothing.”

automatically bind their institutions.⁴¹⁸ For that policy to be enforceable, it must be integrated into internal regulations. In addition, when there is a leadership change, the policy could lose whatever binding authority it may have reached. The interview also revealed the tendency of new leadership in the prosecutor's office to create a new MoU to create some sense of accomplishment for the new leader.⁴¹⁹

Other well-known evidence of the failure of the shared policy to mediate existing rivalries is the conflict between the police and the Anti-Corruption Commission (KPK) as seen in 2009, 2012, and 2015. The conflict between the two institutions stems from the fight to control the investigation and prosecution of corruption cases. In the media, the fight between them has been dubbed the battle between "gecko and crocodile".⁴²⁰

Responding to the rivalry between the police and the KPK, the government created two shared policies in 2012 and 2017.⁴²¹ Those two policies were also full of rhetorical claims such as "improving synergy and collaboration"⁴²² and "improving effectiveness in combating corruption." In reality, such policies only serve as paper tigers because both institutions could not agree on the meaning of such claims. The

⁴¹⁸ Interview with Informant D7, July 19, 2021.

⁴¹⁹ Interview with Informant D7 (a high-ranking prosecutor). July 19, 2021. In his words, "There is always new MoU when leadership changes. It gives the leaders of the institutions sense of accomplishment because it gives the impression that they are united behind one goal, named justice. It only exists for ceremonial purposes. When the leaders changed, we created new MoU even though the previous MoU was never executed."

⁴²⁰ This series of conflicts is known as crocodile versus gecko. The crocodile refers to the police, while the gecko is the KPK. This metaphor illustrates that the national police (crocodile) is more powerful than the KPK (gecko). It is a characterization that reflected the modest bureaucratic standing of the KPK when compared with the police's immense manpower. This phrase was coined by a then high-ranking police official who was being investigated for a corruption case by the KPK. In 2009 the KPK tried to investigate Commissioner-General Susno Duadji. In 2012 the KPK conducted a probe against Inspector General Djoko Susilo. In 2015 KPK named General Budi Gunawan as a suspect. Budi Gunawan is the candidate for national police chief.

⁴²¹ In 2012, the MoU was titled "the optimization of the eradication of corruption" [Optimalisasi Pemberantasan Tindak Pidana Korupsi] and in 2017 titled "the cooperation in combating corruption" [Kerjasama dalam pemberantasan tindak pidana korupsi]. See "Nota Kesepahaman KPK, Polri Dan Kejaksaan [Shared Policy between KPK, Police and the Prosecutor]" (2017), https://zi.tipidkorpolti.info/wp-content/uploads/2019/07/Nota_Kesepahaman_Kejaksaan_Polri.pdf.

⁴²² See article 1 and 2 of the 2017 shared policy between the KPK, police and the prosecutor.

policies as written lack specifics on the logistical details that would be needed for meaningful impact on interagency dynamics.

Interagency training

Another strategy to induce cooperation devised by Indonesian criminal justice policymakers is conducting interagency training. This dissertation has examined five training materials for the police and prosecutors.⁴²³ In several of the training materials examined, the formal goal of the training is, apart from learning procedural technicalities, building harmony and synergy between the actors. In several training documents, the terms “harmony,” “synergy,” “integrated,” “collaboration,” and “cooperation” are used interchangeably.⁴²⁴

In interviews with two high-ranking prosecutors who designed the curriculum, the training program was argued to have been designed to induce cooperation among the actors, including the police and the prosecutors.⁴²⁵ There is a sharing session in the training curriculum, where the police and prosecutors are given a chance to discuss and exchange their perspectives on criminal case processing. In this event, the police and prosecutors are free to discuss their experiences within their working relationships. There is also a “getting to know each other (*acara ramah tamah*)” program in some training materials, where the actors could have informal discussions.⁴²⁶ The duration of the training varies, ranging between one

⁴²³ Materials for interagency training (diklat terpadu aparat penegak hukum) in 2016 about juvenile justice (Sistem Peradilan Anak; Materials for unified interpretation on combating corruption in 2009; Prosecutor’s regulation No 11/2011 on the interagency training (pelatihan gabungan); Interagency training for new prosecutor (Diklat PPPJ) in 2019; 2021 interagency training for the implementation of criminal justice process during Covid and 2016 interagency training in handling forestry crimes.

⁴²⁴ This dissertation has examined two recent training materials (in 2018 and 2019) held by the prosecutor and the judges. Files on author.

⁴²⁵ Interview with Informant D28, July 8, 2020, in his office in Jakarta (high ranking prosecutor that took part in designing the curriculum of the training). In his words, “...I believe that understanding other perspectives is a key to fix the troubled relationship.” My informant is the designer of the 2011 training program held in the prosecutor’s office.

⁴²⁶ Informant D28. In his words, “... In Indonesia, there is a saying *tak kenal maka tak sayang* [no love for strangers]. That is why, the “getting to know each other” program is important.”

to four weeks. The training organizer also varies, but it is usually conducted by the police, prosecutors, judges, or governmental ministries.

This dissertation acknowledges that training might be needed when there is a new procedural instrument.⁴²⁷ The training is required whenever a new criminal law requires a new procedural technicality.⁴²⁸ However, this dissertation argues that training is not an effective tool to influence or counter the impeding factors for cooperation. This claim is based on one fundamental reason: it would be hard for the training (which is held for a short period of time) to influence the actors' professional culture that has been internalized over such a long time period. To become a commissioned police officer, one must receive education in a police academy for four years – not including additional training after that.⁴²⁹ Meanwhile, to become a prosecutor, after obtaining a law degree, one needs to become a prosecutor's administrative assistant (*calon jaksa*) for two years before entering the military-style prosecutorial training for a month.⁴³⁰

When the impeding factors stem from the ideological institutional differences in understanding their professional roles and power, training will not change the incentive system that drives their professional

⁴²⁷ For instance, the interagency training for juvenile justice (Sistem Peradilan Pidana Anak or SPPA) because the new juvenile justice law was passed in 2016. Or interagency training for animal cruelty and preservation of endangered animals.

⁴²⁸ For instance when a 2016 juvenile law was passed, it introduced a new procedural instrument such as the prohibition for law enforcers to wear uniforms and it set out how hearings should proceed so that they would not result in trauma for youth.

⁴²⁹ For the detailed requirements to be a commissioned police officer (*perwira*) see National Police Chief Regulation 21/2010.

⁴³⁰ See attorney general regulation (Perja) no 004/A/JA/01/2011 on the training of the prosecutor. The training activities are explained in detail in Afandi, "Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia."

behavior.⁴³¹ Although the organizer has been conducting dozens of training sessions in recent years, evidence demonstrates that conflict continues to occur.⁴³²

Nevertheless, this dissertation found that the side-effects of the training, such as improvements in personal relationships, might induce cooperation. In an interview with a high-ranking police official who has attended several training sessions, the informant explained that the training could cement personal relationships with his counterparts. In his words:

“In Indonesia, what really gets the work done is not law but a personal relationship. During the training, I had a chance to build a personal relationship with my counterparts ...and I think that is the biggest benefit of the training ...I can always read the law, but you could not gain trust until you know someone better.”⁴³³

Based on his experience, he claimed that he could befriend his counterpart during the training. As a result, conflict could be avoided. This finding suggests that better social relations might induce cooperation better than formal rules. In this sense, social incentives are key to altering the working environment. It is hard not to agree that, when interpersonal relationships are highly valued, individuals prefer avoidance to confrontation. This is because confrontation might disrupt interpersonal harmony between the parties involved. During the interview, to emphasize his point, my informant cited the

⁴³¹ Interview with Informant D25 (a young prosecutor who just graduated from the training in 2019), Jakarta, August 13, 2020. During the interview, he revealed the “commando system” which means that military-style loyalty to their commander is one of the most important institutional cultures. This fact was also found by Afandi (2021) who discovered that the higher-ranking prosecutor uses the doctrine of “prosecutor as indivisible whole” to demand loyalty from their subordinates.

⁴³² For instance, in the previous chapter, this dissertation discussed the latest conflict in 2020 between the police and prosecutor regarding the new prosecutorial law that would change the status quo. In 2016, the police and the prosecutor engaged in a heated debate before Constitutional Court judges. This dissertation argued that this type of conflict is damaging to the system. I realize that it would be impossible to eliminate conflict fully, and that would also eliminate the checks and balances principle. The checks and balances mechanism is based on conflict theory.

⁴³³ Informant D55 (high ranking police official that had experience in organizing training), Interview with author October 16, 2020. To add additional information, during the interview, he explained that because of the training, he obtained personal information about his counterpart, such as which tribes they were from and his birthday. In the Indonesian context, information such as race is not sensitive information considering Indonesia has more than 1,000 tribes.

famous saying in Indonesia: *tak kenal maka tak sayang* (literally translated as no love for strangers).

With this logic, this dissertation posits that if these social incentives can be institutionalized as part of reform programs, there is a possibility of reducing unhealthy conflicts between the police and the prosecutors. That is why, later in the conclusion chapter, this dissertation also recommends that policymakers consider changing informal rules that structure actors' incentive systems before resorting to statutory reform. Change in the system is not likely to be achieved through a change in the formal rules, but will more likely result from altering the nature of the relationships among actors.

Moreover, this topic could also open up new perspectives of research in criminal justice. In the conclusion chapter, this dissertation also calls for future researchers to study how social incentives might influence the working criminal justice system. This understanding could be used as a basis to investigate how personal relationships (especially chief-to-chief relationships) could enhance cooperation between Indonesian criminal justice actors.⁴³⁴

However, it can be argued that if the problem is systemic, conflict could not be solved with an interpersonal approach as it would only be applicable on a case-by-case basis. Moreover, it must be considered that interpersonal approaches might only avoid conflict, not solve it.⁴³⁵ Literature suggests that the tendency to avoid conflict could also lead to a dysfunctional working environment.⁴³⁶ After all,

⁴³⁴ In Indonesia, many visual banners depict a close relationship between the national police chief and the attorney general to reduce conflict. See for instance "National Police Chief Visit Attorney General to Build Synergy and Harmony," *Adhyaksa Foto Indonesia* (blog), accessed March 24, 2022, <https://www.adhyaksafoto.com/2021/02/kunjungan-kapolri-ke-jaksa.html>.

⁴³⁵ To see the culture of conflict avoidance in Indonesia see Rizaladdin Su'udy, "Conflict Management Styles of Americans and Indonesians: Exploring the Effects of Gender and Collectivism/Individualism" (Master's thesis, University of Kansas, 2009), https://kuscholarworks.ku.edu/bitstream/handle/1808/5323/Suudy_ku_0099M_10358_DATA_1.pdf;sequence=1.

⁴³⁶ Zhi-Xue Zhang and Xin Wei, "Superficial Harmony and Conflict Avoidance Resulting from Negative Anticipation in the Workplace," *Management and Organization Review* 13, no. 4 (December 2017): 795–820, <https://doi.org/10.1017/mor.2017.48>.

the main purpose of modern organizational theory is to release the dependency from the traditional concept of an organization that heavily relies on personal leadership skills.⁴³⁷

The establishment of the task force

Another cure-all strategy to induce cooperation that the Indonesian government frequently uses is establishing a task force institution. The task force is an action-based institution designed to combat specific crimes, and its members comprise various criminal justice actors, including the police and the prosecutor.⁴³⁸

The government tries to induce cooperation by unifying the police and the prosecutors in the same institution by establishing a task force. With this logic, the government aims to create a new occupational culture that could structure cooperation in their working relationship.⁴³⁹ This is why the head of the task force is a neutral person – who does not have a police or prosecutor background.⁴⁴⁰

For instance, in 2010, when the Indonesian government created a task force to combat a judicial mafia (satgas pemberantasan mafia hukum), it was stated that its primary mission was to maximize coordination and collaboration between criminal justice enforcers in combating judicial corruption.⁴⁴¹

During the interviews with task force members, it was revealed that the then-president intended to create a new institution that was not part of the problem. Since there was an indication that some high-ranking police and prosecutors were also part of the “judicial mafia” the then Indonesian president felt the need to establish a “fresh institution” that was not “contaminated” by the so-called “judicial mafia.”

⁴³⁷ Weber, *Max Weber on Capitalism, Bureaucracy, and Religion*. Charismatic authority is a type of traditional bureaucracy in which authority derives from the charisma of the leader. This stands in contrast to legal authority, which is the underlying problem in the Indonesian criminal justice system.

⁴³⁸ The task force members are high ranking criminal justice actors that are appointed directly by the president.

⁴³⁹ In the field of sociology, occupational culture or organizational culture is a collection of values and practices that is shared by members of the same occupation. See Edgar H. Schein and Peter Schein, *Organizational Culture and Leadership*, 5th edition (Hoboken, New Jersey: Wiley, 2017).

⁴⁴⁰ For instance, the judicial mafia task force, fisheries crime task force, corruptor hunter task force were all headed by technocrats who happened to be high-ranking state officials.

⁴⁴¹ See presidential decree no 37/2009 on the establishment of the eradication of judicial mafia task force.

⁴⁴² In this context, judicial mafia refers to law enforcers accepting money or goods in return for improper exercise of their authority.

Considering this situation, the president appointed a government minister (a technocrat) to lead the institution. This strategy can be seen as a replication of the old authoritarian government approach, where it follows the power-dependence model.⁴⁴³ The government aimed to coerce cooperation with the task force as its main driver with this strategy. This strategy faced an easier time coercing cooperation when practiced within an authoritarian government because the military controlled every key position. Consolidating power was easier because every actor served the same patron. With this power structure, cooperation was guaranteed. To date, there are dozens of task forces acting as specialized criminal justice institutions.⁴⁴⁴

However, this research suggests that this strategy does not produce the same desired results when practiced under a non-authoritarian government. Instead of inducing cooperation, the interview data suggest the opposite. When the system loses its powerful patron, it is not easy to coerce cooperation because each institutional actor tends to develop their own pragmatic goal within the taskforce that may be inconsistent with the overall goal. As a result, it creates an “us-versus-them mentality” within

⁴⁴² Interview with Informant D74 and D75 on a separate occasion (August 4, 2021 and January 21, 2022). The type of Indonesian judicial mafia can be seen in Rachman (2016). See Taufik Rachman, “Can the Indonesian Criminal Justice System Be Enhanced by Replacing the Mandatory Prosecution System with a Discretionary One, like That Used in Australia?” (Australia, Victoria, 2016), <http://vuir.vu.edu.au/id/eprint/31832>. However, Rachman generated an abstraction of Indonesian judicial mafia from secondary sources (literature). He did not conduct fieldwork to see the judicial mafia “in action.” In this sense, this research complements Rachman’s research about Indonesian judicial mafia.

⁴⁴³ In the introduction, literature review and Chapter 4, this strategy is understood as “power-dependence”. With this model, cooperation is coerced because power is concentrated in one institution.

⁴⁴⁴ To name a few: In March 2021, the Indonesian government created the “corruptor hunter” task force (satgas pemburu koruptor) led by the coordinating minister for Politics, Legal and Security affairs. In 2014, the government created the 115 Satgas (for fisheries crime). It was disbanded in 2019, after the minister for fisheries was replaced. In 2014, the government also created the task force for election crimes (Gakkumdu) that is still operating up until now.

the task force. This type of mentality leads to anti-sharing and anti-cooperation behavior, which in the Indonesian literature is loosely labeled as “ego sektoral.”⁴⁴⁵

According to a task force member with experience in serving three criminal justice taskforces:

“It is a common secret [rahasia umum] that members of the task force have their own agenda. In my experience, that is the biggest problem for the task force ...many operations failed because of information leakage [referring to specific cases] ...they [referring to the police, prosecutor, and another member of the task force] distrust each other. I think this is a chronic problem in our system.”⁴⁴⁶

The interview indicated that instead of inducing cooperation and reducing conflict, the task force only sharpened the conflict between the police and the prosecutor, with each side becoming further entrenched in their views of the system and how it should operate. The occupational cultures shaped by their institutions was too strong to be replaced with a new identity. Moreover, because the lifetime of the task force is only temporary, it does not have the power to fire, hire and promote. When the national leadership changes, there is a high possibility that the task force will be disbanded.⁴⁴⁷ Because of this design, the actors’ loyalties do not lie with the task force but to their original institutions.⁴⁴⁸

In addition, resistance toward the task force also comes from the external environment. An interview with another task force member revealed that the task force also faced strong resistance from parliament members. My informant suspected that such resistance occurs because politicians have a vested interest in the operation of criminal justice. My informant revealed that before conducting a raid

⁴⁴⁵ See chapter 4 on the section discussing structural problems for elaborate explanation about ego sektoral behavior.

⁴⁴⁶ Informant D74, Interview on January 21, 2022. For ethical reasons, I could not provide the detail of the cases and the task force.

⁴⁴⁷ After the reformasi in 1998, the Indonesian government created several dozens of task forces as tools to induce cooperation. However, because of the political structure of the reformasi government, they could not create a strong task force that could centralize the power, just like the authoritarian military government.

⁴⁴⁸ The chief of task force lacks control over the police and the prosecutor because he does not have the ability to hire, fire and promote. The task force member is a representative of their institution.

on a coal mine in Indonesia for an alleged corruption case, he received numerous phone calls from politicians asking him to cancel the operation.⁴⁴⁹ In this sense, the inside knowledge about criminal justice investigation is “useful” to politicians. There is a possibility that parliament members could sell this information to parties with interests in the case.⁴⁵⁰ According to my informant, the main argument to mask their real intention is that the task force has become a “super institution” whose authority exceeds other criminal justice institutions.⁴⁵¹

The inducing factors in the trial level relationship

Unlike the pre-trial level, the findings on the trial relationship suggest the opposite conclusions.

Cooperation emerges naturally in the trial-level relationship between the prosecutor and the judges, mainly because both actors share the same interests in speedy case processing. Once the case reaches the trial level, both actors have an obligation to dispose of the case.⁴⁵² This interest is well-facilitated through the creation of formal rules that place a heavy emphasis on efficiency. Consequently, both actors develop informal rules that structure cooperation between them.

⁴⁴⁹ In the Indonesian system, it is common for politicians to have a “backing” or “insider” within criminal justice institutions. Furthermore, there is also an indication that politicians often groom a potential officer to lead the institution. They have a mutual relationship with each other. See Baker, “The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia”; Afandi, “The Justice System Postman: The Indonesian Prosecution Service at Work”; Rositawati, “Judicial Governance in Indonesia (Ph.D Thesis).”

⁴⁵⁰ The leakage of investigation information is rampant in Indonesia although the law says that criminal investigations are classified information. For another recent example, see “KPK’s Planned Operation Got Exposed, the Evidence Now Missing | IDNFinancials,” accessed May 3, 2022, <https://www.idnfinancials.com/cn/news/38770/kpks-planned-operation-exposed-evidence-missing>.

⁴⁵¹ Interview with Informant D75. Interview on August 4, 2021. During the interview, my informant revealed how he received numerous phone calls from politicians before conducting a raid on a coal mine in Indonesia. He suspected that someone within the task force leaked the operation in 2010. Because of ethical reason, I could not provide more detail than this. The formal argument to challenge the existence of the task force is, the task force is created through presidential decree (keppres). Meanwhile, “conventional” actors are sanctioned by statute (Undang-Undang). In Indonesian legal authority, statute is higher than presidential decree because statute is a product of the parliament and the president.

⁴⁵² In contrast, cases can be dismissed at the pre-trial level because of several legitimate reasons, such as lack of evidence and discretionary decisions from the police (and the prosecutor).

In explaining this argument, drawing from the interview data and document research, this section will first explain why and how the actor's institution emphasizes efficiency in case processing. Following this, the discussion will focus on how the laser-like focus on efficiency is facilitated by formal rules, resulting in the emergence of informal rules that induce cooperation.

Formal rules that induce cooperation

Theoretically, the Indonesian criminal procedure code (KUHP) mandates Indonesian judges to play an active role during hearings. Playing an active role means judges are expected to dig deep into the cases by cross-examining witnesses and defendants (and questioning prosecutors and defense lawyers), including critically weighing the evidence presented by the parties. The concept of "active role judges" traditionally comes from inquisitorial models of criminal justice, where judges play the role of an inquisitor.⁴⁵³ However, this research indicates that there is a discrepancy between reality and the ideal. In reality, Indonesian judges do not have enough time to perform this ideal depiction of a criminal trial.⁴⁵⁴ Indonesian judges are not alone, and literature shows that their colleagues in other inquisitorial countries such as Germany, France, and Italy are also unable to play an active role because of their heavy workloads.⁴⁵⁵

The law also expects the prosecutor to be the impartial agent whose main mission is to find the material truth, not to convict the defendant. The Indonesian justice system allows the prosecutor to recommend

⁴⁵³ Dubber, Hörnle, and Langer, "The Long Shadow of the Adversarial and Inquisitorial Categories."

⁴⁵⁴ Previously, in Chapter 4, this dissertation revealed how the existence of a case dossier creates the tendency for Indonesian judges to ratify all the decisions made in the pre-trial stage.

⁴⁵⁵ For instance, in countries that traditionally follow the inquisitorial system such as France, Italy and Germany, it shows that an "express trial" is conducted on an unofficial basis. Nowadays, they have plea bargaining because of caseloads reason. See Goldstein and Marcus, "The Myth of Judicial Supervision in Three 'Inquisitorial' Systems"; Máximo Langer, "Plea Bargaining, Conviction Without Trial, and the Global Administratization of Criminal Convictions," *Annual Review of Criminology* 4, no. 1 (2020): annurev-criminol-032317-092255, <https://doi.org/10.1146/annurev-criminol-032317-092255>.

the defendant to be acquitted with this logic.⁴⁵⁶ However, as previously explained in Chapter 4, the fact that the Indonesian prosecutor remains isolated from the investigation makes it hard for them to perform their ideal role as contemplated by the formal rules. Moreover, their institution also suffers from heavy caseloads and a lack of funding.⁴⁵⁷

Because of the above-mentioned reasons, efficiency has become a crucial shared goal for the prosecutors and judges. Since their inception, the Indonesian prosecution service and the Indonesian Court have suffered massive case backlogs because of growing crime rates and mandatory prosecution principles which mandate that all cases must go to trial.⁴⁵⁸ This problem is worsened because Indonesia does not have a trial avoidance mechanism. In practice, the administration of justice cannot cope with the development of society.

Because of these reasons, several regulations exist to reward efficiency in case processing. Most importantly, the annual number of finished cases becomes an important performance indicator (*indikator kinerja utama*) for district prosecutors and judges. For instance, in the prosecutor's institutional strategic plan 2019-2024, one of the performance indicators for career promotion is the conviction rate that they have secured annually.⁴⁵⁹ According to the regulation, prosecutors are rewarded and ranked by the number of cases and conviction rate that they have secured within a year. The supreme prosecutorial office (the highest office in the Indonesian prosecution service – *Kejaksaan*

⁴⁵⁶ Christopher Slobogin, *Lessons from Inquisitorialism*, SOUTH. CALIF. LAW REV. (2014), <https://ir.vanderbilt.edu/bitstream/handle/1803/9254/Lessons%20from%20Inquisitorialism.pdf?sequence=1&isAllowed=y> (last visited May 14, 2020); For instance, in 2021, the Indonesian prosecutor demanded a defendant to be released. See Jaksa Agung soal Akhirnya Tuntut Bebas Valencya: Kedepankan Nurani, <https://news.detik.com/berita/d-5823841/jaksa-agung-soal-akhirnya-tuntut-bebas-valencya-kedepankan-nurani> (last visited Mar 26, 2022).

⁴⁵⁷ The allocated budget to prosecute each case fell from Rp. 29.5 million (\$3,000) per case in 2011 to Rp. 5.8 million (\$600) per case in 2012. In 2013, the budget reduced again to Rp. 3.3 million (\$330).

⁴⁵⁸ According to the Indonesian system, all cases must be brought to the Court because the public has the right to witness justice. This thinking is heavily influenced by the inquisitorial logic.

⁴⁵⁹ Kejaksaan Agung Republik Indonesia, "Rencana Strategis Kejaksaan 2019-2024 [The Prosecutor Strategic Plan 2019-2024]," accessed March 16, 2022, <https://www.kejaksaan.go.id/pelayanan.php?id=16>.

Agung) also introduced a ranking system based on efficiency for the prosecutor's district office (lowest ranking office). To realize this ambition, the prosecutor's office also developed a case management app to monitor the day-to-day activities of the district prosecutor.⁴⁶⁰

The Indonesian Court is slightly ahead of its counterparts. The reformasi movement in 1998 brought the courts autonomy to organize themselves because they were no longer considered part of the executive government. After the reformasi, judicial organization reform in Indonesia has been driven by the ambition to improve efficiency and strengthen professionalism in response to growing caseloads and cases backlogs.⁴⁶¹ This ambition is also translated into their internal regulations. Similar to the prosecutors, the Indonesian Supreme Court also rewards efficiency and introduces a ranking system for district court judges (and their Court) as a basis for career promotion and transfer.⁴⁶² The Indonesian Supreme Court also created case management software (SIPP) to monitor the judges' day-to-day working activities. The performance of district court judges and their Court is ranked based on the number of cases they have received and closed.⁴⁶³

This design of formal rules creates pressure for the prosecutors and judges to finish their cases quickly. Under this situation, it is revealed that the norm of cooperation replaces the presupposed norm of conflict in the courtroom.⁴⁶⁴ In most cases, Indonesian judges can no longer play a skeptical role in the

⁴⁶⁰ Informant D12 (prosecutor that is responsible in managing IT department). Interview with author, August 27, 2020. During the interview with the prosecutor, it was revealed that the application itself is not yet fully developed. There are logistical problems, including building the skills needed to operate such an app.

⁴⁶¹ Interview with Supreme Court Judges (Informant D18). During the interview, he explained that the focus of the Supreme Court over the last few decades was on efficiency. He also said that the Court does not participate in the reform. The Court is passive.

⁴⁶² See Supreme Court regulation no 271/2018 about SIPP. Moreover, in 2020, the Supreme Court created a task force to evaluate SIPP through decree no 659/2020.

⁴⁶³ During the interview with Informant D2 (a senior district court judge that also handles court management), he showed how the app works. There is a feature in the app that could track the development of the case. Interview with author, September 17, 2020.

⁴⁶⁴ The norm of conflict in the courtroom means that the judge, prosecutor, and defense lawyer must play a skeptical role with each other. In the eyes of the law, this is an ideal depiction of criminal trials because, through conflict, justice can be produced. As explained in the previous chapter, ideally, courtroom actors are not expected to engage in a cooperation because there is no need to produce the same output within their interaction.

courtroom because of the bureaucratic pressures to improve efficiency.⁴⁶⁵ Furthermore, according to multiple judges interviewed, they do not see a need to play their inquisitorial role as written in the formal rules, describing most cases as being straightforward.

Informal rules that induce cooperation

The design of formal rules acts as the main driver for the informal rules that structure cooperation to emerge. Because of their shared need to improve efficiency, prosecutors and judges developed several rules that incentivized cooperation. The first rule is that Indonesian judges only want to play a passive role during hearings.⁴⁶⁶ Second, because of such expectations, judges tend to ratify all decisions made by the prosecutor to avoid additional work pressure.

Interview data suggest that judges only want to play a passive role for the sake of a speedier process. As a result, they often conduct a short trial on an unofficial basis. When this happens, a case dossier is not examined thoroughly, an indictment is not read before the public, witnesses and defendants are examined simultaneously in a group, and they are not properly cross-examined. The passivity of judges was apparent during an interview with a senior district court judge in Jakarta with more than 20 years of experience. In his words:

“...I often let the prosecutor and defense lawyer do their job. I only do the questioning when there is a discrepancy between what is stated [in the minutes] and live testimony. If there is no discrepancy, I do not see the need to ask more questions. Why should I prolong the proceedings when I have other important tasks to attend to?”⁴⁶⁷

⁴⁶⁵ Interviews with three district court judges (Informant D38, Informant D22 and Informant D2). Interview with Informant D38 on July 24, 2020. Interview with Informant D22 on August 18, 2020. Interview with informant D2 on September 17, 2020. During the interviews, I asked how judges manage themselves amidst busy schedules. In essence, they all argued that there was no need for the judges to be skeptical in most cases. Most cases are usually straightforward cases, and in this situation, the judges argued that there was no reason to complicate matters.

⁴⁶⁶ For the purposes of this discussion, “most cases” are defined as straightforward cases, general crime cases (tindak pidana umum) and cases that do not attract public attention.

⁴⁶⁷ Informant D47. Interview with author in Jakarta, January 26, 2021. During the interview, he explained that he needed to handle 10-15 cases every day, ranging from civil to criminal cases.

This interview also confirms the earlier findings presented in the previous chapter, where one judge reported that, in the trial process, it is hard not to be influenced by the case dossier.⁴⁶⁸ The interview data indicate that, in most cases, the trial only exists as a formality. This is mainly because when a trial is conducted properly (as prescribed in the law), it will consume a lot of time, and as a result it would create an additional burden to the already heavy workloads.

The second rule that this dissertation uncovers is the inclination for Indonesian judges to ratify decisions about the sentence made by the prosecutor. During the interviews with two district court judges with more than ten years of experience, they argued that there is little point in complicating the issue where it would only lead to additional work. To cite one of my informant's words:

“Why should I care about straightforward cases when there is no issue to litigate? I do not want to complicate things because, as a judge, I must try 15-20 cases daily.⁴⁶⁹ I must reserve my energy to concentrate on complex cases. The safest way to do is to follow the prosecutor's recommendation [for lesser crimes]”⁴⁷⁰

As a consequence of this logic, this research also found the tendency of Indonesian judges to follow the “two-thirds rule.” The two-thirds rule means that the judge will impose a sentence two-thirds from the prosecutor's recommendation. For instance, suppose the prosecutor recommends a sentence of nine years, the minimum sentence that the judges can impose is six years (two-thirds from the recommendation). The two-thirds rule is seen as the “safest” decision both for the prosecutor and the

⁴⁶⁸ See page 10 on Chapter 4, on the section about ambiguous rules that lead to a conflict of interpretation. In that section, the interview with Informant D38 also confirmed that it is hard not to be influenced by case dossier. The existence of case dossier encourages the trial judge to accept the approach taken in the pre-trial stage. In his words, “the defendant has lost the battle before it starts.”

⁴⁶⁹ This is the average number. The maximum number that he has handled per day is 40 cases, ranging from criminal, civil, commercial, and labor cases. This interview is further triangulated with explanation from Informant D2 (another senior district court judge).

⁴⁷⁰ Informant D38. Interview with author, July 24, 2021, in his office. His exact word in Indonesia is, “*kenapa mesti repot-repot kalau terdakwanya sudah ngaku dan mengatakan menyesal...?*”

judge. For the prosecutor, the failure to secure the two-thirds rule will ruin their credibility, and it means that they do not do their job well enough in the eyes of their superior.⁴⁷¹ Meanwhile, for the judges, a deviation from the usual two-third rules would create additional work and attract attention both from their superiors and the public.⁴⁷²

Furthermore, any departure from the two-thirds rule will automatically lead to an appeal from the prosecutor. For the judges, an appeal from the prosecutor is bad because of two reasons. The first is that the judge must spend more time preparing their decisions to make them presentable for everyone because of the appeal. The prosecutor and high court judges will carefully examine their decision when there is an appeal. On its surface, it seems “normal” for judges to prepare a carefully drafted decision. However, this could be an unnecessary burden in heavily overcrowded and understaffed courts. Most Indonesian Courts, albeit in their recent developments⁴⁷³, are poorly managed. It is not uncommon to see that the Court’s decision is only a “copy-paste” version of the prosecutor’s indictment.⁴⁷⁴

The impact of the prosecutors’ appeals also adds an additional burden to the judges – namely, unwanted and unfavorable attention from their superiors. Any departure from the usual norms can attract their superior’s attention. This is because when the prosecutor appeals a decision, in contrast to

⁴⁷¹ Informant D36 (group interview with four mid-ranking prosecutor). Interview with author, September 11, 2020. The two-thirds rule was also mentioned in the prosecutor’s internal regulation (Circular letter from attorney general) SE-003/A/JA/05/2002 about the prosecution in specialized cases (white collar crimes).

⁴⁷² Informant D22 (senior district court judge with more than 20 years’ experience). Interview with author, August 18, 2020. In her words, “...Like it or not, it [the two-thirds rule] has become an unwritten law. If I depart from such convention, I must prepare a good reason, and strong legal arguments ...and those arguments will be closely examined by high court judges [her immediate superior].”

⁴⁷³ In the past ten years, there have been concentrated efforts from the Supreme Court to improve efficiency in the system. For instance, in 2010, the Supreme Court introduced a specialized division (*sistem kamar*) for adjudicating cases (criminal cases division, civil cases division, religious affair division, administrative cases decision). Apart from that, they also introduced a template for a court decision.

⁴⁷⁴ Apart from my interview data, ethnographic literature suggests a similar thing. See Adriaan Bedner, “Indonesian Legal Scholarship and Jurisprudence as an Obstacle for Transplanting Legal Institutions,” *Hague Journal on the Rule of Law* 5, no. 02 (September 2013): 253–73, <https://doi.org/10.1017/S1876404512001145>; Bedner; Sjarief, “Criminal Sentencing in Indonesia: Disparity, Disproportionality and Biases”; Rositawati, “Judicial Governance in Indonesia (Ph.D Thesis).”

an appeal from the defense lawyer, there is an inclination to think that there must be something wrong with the case (that the judges might have received a bribe from the defendant in return for not granting the prosecutor's proposal). In the words of one judge that I interviewed:

"My supervisor sees that appeal from the defense lawyer and the prosecutor hold different values. When the prosecutor appeals, there is a tendency to think that something extraordinary must have happened. That is why we [referring to her colleagues] do not want to complicate things. We have a lot of important things to do."⁴⁷⁵

With this mentality, there is a tendency to think that the prosecutors and the judges are government employees, working for the same ends. In my informant's words, "we [the judges and the prosecutors] are working for the red and white [referring to the national flag of Indonesia]."⁴⁷⁶ Meanwhile, a defense lawyer is an "outsider" to the system. Their job is to obtain maximum benefit for their client, and that is why, when they appeal, it is seen as a normal course of events.

An interview with a district court judge revealed how an appeal from the prosecutor creates extra pressure on her. She explained that because she decided to dismiss the case on a formality, she was summoned to the High Court to explain her decision. During the interview, she explained that, although her supervisor was satisfied with the explanation, she did not like the feeling of being investigated by her supervisor. In her words, "as if they are suspecting me of receiving a bribe or something."⁴⁷⁷

⁴⁷⁵ Interview with district court judges (Informant D66), May 5, 2021.

⁴⁷⁶ Interview with Informant D66. In her words, "The judges and the prosecutor both working for the *merah putih* [literally translated as red-white, referring to the national flag of Indonesia]. This is because both prosecutor and judges hold the status as a civil servant. The reason for this classification is because when Indonesia was ruled by the new-order regime (1966-1998), the Supreme Court was positioned as a government ministry. Apart from that, the literature also shows that an Indonesian defense lawyer could not share in the fellowship of officialdom between the prosecutor, police and judge. See Lev, "Judicial Authority and the Struggle for an Indonesian Rechtsstaat," 270; Sjarief, "Criminal Sentencing in Indonesia: Disparity, Disproportionality and Biases"; Afandi, "Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia."

⁴⁷⁷ Interview with Informant D69, June 3, 2021. In her words, "I do not like it. There is a feeling of you being investigated, although the law says that you are independent. I have to explain my decision to my superior, and I have the feeling that they are suspecting me receiving a bribe or something."

These findings are in line with a recent doctoral dissertation from Sjarief (2020) on the reasons behind sentencing disparities in Indonesia.⁴⁷⁸ In his publication, he found that most Indonesian judges follow the two-thirds rule because they do not want the prosecutor to appeal their decision.⁴⁷⁹ In the American literature, many organizational scholars have also noted that the actual operation of criminal justice relies more heavily on informal rules rather than formal rules.⁴⁸⁰ The prosecutors, judges, and defense lawyers are the “courtroom elites” who invent their own cooperation methods when interests and goals are shared.⁴⁸¹

These findings could also shed light on the potential of effective cooperation in the courtroom. When there are no issues to litigate, it would be better to reduce case processing time. With this approach, judges could spend more time trying more serious and complicated cases.⁴⁸² In reality, the system could not promise to conduct a full-scale trial for every case.

However, although these informal rules contribute to efficiency, one thing is worth noting. As explained in the previous chapter, cooperation in the courtroom is not necessarily a good thing because it risks the effectiveness of the checks and balances principle and potentially violates the defendant’s procedural rights. A publication from Ramadhan (2014) indicated that “effective cooperation” in the courtroom might violate the procedural rights of the defendant. He showed that, in Indonesia, a criminal trial might

⁴⁷⁸ The author found Sjarief’s dissertation at Melbourne University Law School in March 2021 following an interview with one of the sources – this is to confirm that I did not develop categories from the literature. Sjarief also interviewed judges using mixed methods to measure the tendency to avoid appeal. See Sjarief, “Criminal Sentencing in Indonesia: Disparity, Disproportionality and Biases.”

⁴⁷⁹ Sjarief. Sjarief assessed 1,100 Indonesian criminal justice decisions on theft and embezzlement-related offenses and corruption in four district courts between 2011-2015, excluding 2013. He found that 80% of judges follow the two-thirds rule in corruption cases. In general crime cases, 90% of judges follow the two-thirds rule.

⁴⁸⁰ To name several publications (this literature is discussed in the literature review chapter): Blumberg, “The Practice of Law as Confidence Game”; Burstein, “Criminal Case Processing from an Organizational Perspective”; Eisenstein and Jacob, *Felony Justice*; Kraska, “Criminal Justice Theory.”

⁴⁸¹ For instance, American prosecutor (federal level) has a “template” to negotiate with the defendant because of the existence of sentencing guidelines. See Nardulli, *The Courtroom Elite*; Fisher, *Plea Bargaining’s Triumph: A History of Plea Bargaining in America*. The term “courtroom elites” was coined by Nardulli.

⁴⁸² This argument is also used in justifying the massive practice of American plea bargaining. See Alkon and Schneider, *Negotiating Crime*.

only proceed for 10 minutes from indictment to verdict, skipping the rights of the defendant to have adequate representation.⁴⁸³

The danger of “effective cooperation” has also been widely discussed in the American scholarship. Several works of the literature have suggested that plea bargaining, which is the product of cooperation, could also pose a severe problem to the defendant because the practice is inherently coercive.⁴⁸⁴ Moreover, the “unholy alliance” between the prosecutor and judges has also been highlighted by Flowers (2000), noting that the “team-member mentality” between the prosecutor and judges could undermine the adversarial principle of the American justice system.⁴⁸⁵

One thing that must be kept in mind is that cooperation is a neutral concept, and it is neither good nor bad in and of itself. The outcome that results from it can be positive or negative, which will depend entirely on the context. Investigating the ability to cooperate is a crucial aspect of this research because it begins to reveal the actual operation of the justice system. This research does not take a specific position on the debate between “good cooperation” and “bad cooperation.” As previously mentioned, this dissertation reports empirical findings and analysis from the research. Furthermore, as previously argued, these findings can be used to construct a theory to explain the actual practice of the Indonesian judicial system.⁴⁸⁶

⁴⁸³ Choky R Ramadhan, “Plead Guilty, Without Bargaining,” *Pacific Basin Law Journal* 32 (2014): 84–85. This will be discussed in the next section on the discussion of court-appointed defense lawyer.

⁴⁸⁴ Stephanos Bibas, “Plea Bargaining Outside the Shadow of Trial,” *Harvard Law Review*, 2004, 86; Cynthia Alkon, “The U.S. Supreme Court’s Failure to Fix Plea Bargaining: The Impact of Lafler and Frye,” *HASTINGS CONSTITUTIONAL LAW QUARTERLY* 41 (2014): 62. In the American system, plea bargaining is suspected since most of the cases (literature suggests from 90-95%) are resolved through plea bargaining. In the American scholarship, it is known as “the vanishing trial.”

⁴⁸⁵ Roberta K Flowers, “An Unholy Alliance: The Ex Parte Relationship Between the Judge and the Prosecutor,” *Nebraska Law Review* 79 (2000): 43.

⁴⁸⁶ Since this research follows a grounded theory approach, its main purpose is to provide a detailed description. It aims to generate a theory that can be used to answer bigger and more practical questions.

Defense lawyer as an inducing factor for cooperation

This research suggests that many Indonesian defense lawyers tend to cooperate with their counterparts. Although this dissertation did not conduct a large-scale survey, it generates such a conclusion based on a series of interviews with four defense lawyers. The interview data with defense lawyers were also triangulated with the interviews with the police, prosecutors, and judges.⁴⁸⁷ Moreover, to strengthen the analysis, relevant literature has also been consulted.

Three of the defense lawyers I interviewed were experienced defense lawyers with more than 30 years of criminal litigation experience. One of them has held a key position in a bar association for more than fifteen years. The other had more than 15 years of experience, including serving in a public defender's office.⁴⁸⁸ Their vast experience could help this research to provide a better understanding of the professional nature of Indonesian defense lawyers.

This research found that defense lawyers can be categorized as inducing factors based on their litigation strategy and when they are court-appointed. In explaining this argument, this section is organized as follows: First, drawing from interview data and document analysis, the author will explain the reasons why Indonesian defense lawyers choose to cooperate with their counterparts in solving their clients' problems. The second part of this section will discuss how a court-appointed lawyer can be categorized as an inducing factor.

The problem-solver approach defined

In contrast to the adversarial approach explained in the previous chapter, defense lawyers who choose to be a "problem-solver" tend to cooperate with their counterparts to secure maximum consideration

⁴⁸⁷ During the interview with the police, prosecutors, and judges, I also discussed their views on defense lawyers' role as their counterparts.

⁴⁸⁸ Apart from this, the author of this dissertation also has an experience both as a paid attorney and court-appointed attorney.

for their clients. Before moving further, it is necessary to provide a brief background on the term problem-solver and its association with cooperative behavior.

In the American literature, several scholars have discussed the typology of defense lawyers in the courtroom. In short, there are two types of defense lawyers found in the literature: adversarial and problem-solver. According to Schneider (2007), adversarial lawyers have assertive, headstrong, and argumentative characteristics, and they are inclined to utilize all adversarial instruments when representing their clients.⁴⁸⁹ Simply put, they tend to challenge every decision or argument made by the police and the prosecutor. Further discussion about adversarial defense lawyers has previously been covered in Chapter 4.

The problem-solver lawyer, in contrast, tends to have a flexible and realistic personality.⁴⁹⁰ Unlike the adversarial lawyer, they do not always exercise their procedural rights for their client because they know that performing an adversarial strategy could backfire for their clients. Consequently, the client could receive a “penalty” because of the exercise of such rights.⁴⁹¹ Because of the system’s design, the literature suggests that many American defense lawyers choose to be “realists” by adopting a problem-solving strategy in defending their clients.⁴⁹²

⁴⁸⁹ Schneider surveyed 1,000 attorneys in Milwaukee. She replicated a previous study conducted by Gerald Williams in 1977, where he studied the negotiation behavior of lawyers in Phoenix through 1,000 surveys. Literature suggests that adversarial defense lawyers are mostly inexperienced defense lawyers or “fresh graduates”. See Peter Nardulli, “Insider Justice: Defense Attorneys and the Handling of Felony Cases,” *Journal of Criminal Law and Criminology* 77, no. 2 (January 1, 1986): 379; Andrea Schneider, “Cooperating or Caving in: Are Defense Attorneys Shrewd or Exploited in Plea Bargaining Negotiations?,” *91 Marquette Law Review* 145 (2007), January 1, 2007, <https://scholarship.law.marquette.edu/facpub/65>.

⁴⁹⁰ Schneider, “Cooperating or Caving In,” 148.

⁴⁹¹ Schneider, “Cooperating or Caving In.” For instance, refusing to cooperate with the prosecutor in plea negotiation could result in harsher punishment in the American system. This phenomenon is widely called as “trial penalty.” In addition, in King County, the defendant is encouraged to plead guilty before the case is set for trial. Once a case is set for trial, the deputy prosecuting attorney will add higher charges. See information about the early plea unit in King County here <https://kingcounty.gov/depts/prosecutor/criminal-overview/early-plea.aspx>. In the previous chapter in the “adversarial defense lawyer” section, this dissertation revealed that there is also a “penalty” for a defendant who refuses to cooperate. Since Indonesia does not have plea bargaining, the penalty mentioned is receiving poor jail conditions and hostile treatment during the interrogation.

⁴⁹² Nardulli, “Insider Justice”; Schneider, “Cooperating or Caving In.”

In the Indonesian literature, only very few studies have discussed the typology of defense lawyers based on their litigation strategy. One of the few and most recent is Kouwagam (2020), in her ethnographic doctoral dissertation about the role of lawyers in a land conflict in Indonesia.⁴⁹³ Kouwagam unveiled that it is not uncommon to see Indonesian attorneys actively lobby their counterparts by playing golf and paying for their vacations.⁴⁹⁴ Moreover, Kouwagam also provided a typology of the Indonesian defense lawyer: problem solvers, fixers, and brokers. However, the typology provided by the author is based on limited data, around her personal experiences working in a mid-scale law firm in Jakarta. She did not conduct interviews with defense lawyers and other actors to strengthen her arguments. Consequently, she failed to provide detailed reasons why Indonesian defense lawyers could fall into those categories. Moreover, her focus was also on land-conflict litigation, not criminal litigation. In light of this situation, the findings in this section could complement Kouwagam's research and provide a better understanding of the typology of the Indonesian defense lawyer.

Why do defense lawyers choose to be problem solvers?

In answering this question, this dissertation found two main reasons associated with each other: The first is that the system's design does not provide meaningful instruments for Indonesian defense lawyers to fight for their clients' interests. Consequently, the system makes Indonesian defense lawyers submissive to their counterparts because it is the most effective way to obtain the best result for their clients. The discussion on this chapter must be seen as an elaborate explanation for the information provided in the previous chapter.

If we take a closer look at the design of the Indonesian criminal procedure code, the formal relationship places defense lawyers in a disadvantageous position. There are only a very few adversarial instruments

⁴⁹³ Kouwagam, "Role of Lawyers in Land Conflict."

⁴⁹⁴ Kouwagam, 65.

available for a defense lawyer.⁴⁹⁵ This is partly because the system traditionally follows inquisitorial procedural logic, which places far stronger power on state actors. The other part is because the current system was established during an authoritarian regime, where defense lawyers do not share the fellowship of officialdom between police, prosecutors, and judges.⁴⁹⁶ According to this logic, a defense lawyer is seen as a barrier to the system because its main mission is social control. According to one defense lawyer, “our profession is seen as an outsider of the system.”⁴⁹⁷

The perfect example to illustrate how a defense lawyer is in a disadvantageous position is to see how easily someone can be charged with a violation of criminal law. When the government wants to press a charge on individuals in the American system, the state must take several procedures acting as essential checks to prevent abuse of power.⁴⁹⁸ In America, half of the states (and federal government) recognizes the right for a grand jury to confirm the charges. In addition, other states allow a person to be charged through a preliminary hearing.⁴⁹⁹ Regardless of the procedure, there is at least some procedural protection for the defendant to prevent abuse of power from the state in the American system.

⁴⁹⁵ For instance, see publication from Robert Strang (US OPDAT official) who participated in designing criminal justice reform in Indonesia, 2007-2012. He said that one of the characteristics of the Indonesian system is, “violation of rights is rampant with no realistic avenue to redress.” See Strang, “‘More Adversarial, but Not Completely Adversarial’: Reformasi of the Indonesian Criminal Procedure Code.”

⁴⁹⁶ Previously, an interview with a judge (Informant D66) revealed that there is a team member mentality between the prosecutors and judges because they both work for the red-white [referring to national flag of Indonesia, working for the government. In contrast to the defense lawyer who work for their client].

⁴⁹⁷ Informant D70.

⁴⁹⁸ James Vorenberg, *Narrowing the Discretion of Criminal Justice Officials*, 1976 DUKE LAW J. 651 (1976); For charging individuals, see the operational standarts in King County in DAN SATTERBERG, *Filing and Disposition Standards in King County Prosecuting Attorney’s Office*, 253 (2021). The logic is because, the enforcement of criminal law poses a great risk to the individual freedom of individuals.

⁴⁹⁹ Anthony Castberg, *Effective Administration of Police and Prosecution in the United States* (United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders, 2003), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/effective-administration-police-and-prosecution-united-states>.

In contrast to the American system, it is very easy for the government to press charges against individuals in Indonesia since the checks and balances principle is non-existent.⁵⁰⁰ State actors such as the police and the prosecutors have wide discretion to apply the law.⁵⁰¹ For example, at the pre-trial level, the most significant instrument available for the defense lawyer to challenge the police and prosecutor's decision is only through a pre-trial motion (*pra-peradilan*). This procedure is a dormant instrument in which the defendant must file a motion to the Court to activate her rights. On its surface, the defense lawyer can question the evidence that led to arrest, search, seizure, and a suspect's status in the pre-trial.⁵⁰² However, because Indonesia does not acknowledge the exclusionary principle, this motion is seen as no more than a formality because there is always leeway for state actors. The absence of the exclusionary principle means that the evidence will come in at trial regardless of whether the defendant's rights were violated. As such, it begs the question of why a defense lawyer would even bother to bring such a motion when there is very little point to winning it.

Even if the Court declared that a case should be dismissed because of the illegality of enforcement actions, the police and the prosecutor could easily open a new investigation. In this context, the double-jeopardy principle cannot be applied.⁵⁰³ In addition, the pre-trial motion can easily be dismissed if the

⁵⁰⁰ This is because when the current criminal procedure code was designed in the parliament in the 1970s, individual rights in criminal justice were seen as western liberal values not suitable for Indonesia. See Zain Badjeber and Imron Rosjadi, *RUU Kitab Undang-Undang Hukum Acara Pidana [The Draft of Indonesian Criminal Procedure Code]* (Jakarta: Bumi Restu, 1979).

⁵⁰¹ Many argue that this is because Indonesia follows the inquisitorial tradition, which allocates far stronger power to state actors than the American adversarial system. However, I argue that it is more than this, and the criminal justice system reflects how power is managed at the macro-political level. In fact, many traditional inquisitorial countries have introduced adversarial features.

⁵⁰² See article 77 of the Indonesian criminal procedure code.

⁵⁰³ As a defense lawyer, I experienced this problem when representing my client (La Nyalla), where the pre-trial judge declared the investigation against my client was illegal. The prosecutor opened a new investigation, and this case attracted widespread public attention. See Novrizal Sikumbang, "Three Times La Nyalla Win Pretrial, Attitudes of Attorney Insists Questioned," *Aktual.com*, May 26, 2016, <https://aktual.com/three-times-la-nyalla-win-pretrial-attitudes-of-attorney-insists-questioned/>.

prosecutor decides to submit their dossier to the criminal court – in the middle of a pre-trial hearing.⁵⁰⁴

If this happens, the challenge lodged by the defendant is no longer relevant because the jurisdiction has shifted from the pre-trial to trial. One senior district court judge that I interviewed gave a good analogy in depicting the power of a pre-trial judge: “...it is like holding the gun without a bullet.”⁵⁰⁵

Another example to illustrate how the balance of power is heavily tilted towards state actors is by looking at how the arrest process is made. Unlike the American system, the Indonesian police or prosecutor has broad discretion to make a warrantless arrest.⁵⁰⁶ Even in the case of a warrantless arrest, there is also no obligation to bring the suspect to some type of arraignment process within 24 hours to determine the probable cause of the arrest. The suspect can only be brought before the judge if there is a request (through pre-trial motion) from the defendant.

Furthermore, there are only two avenues for the defense lawyer to challenge the arrest: lodging a pre-trial motion or appealing to the chief of police or the prosecutor who made an arrest. There is no checks and balances system since the police or the prosecutor themselves have the power to decide on the legality of the arrest and set bail for the defendant. In other words, defense lawyers are forced to beg

⁵⁰⁴ See, for instance, the case of Irman Gusman. The judge halted his pre-trial motion because the prosecutor had forwarded the dossier to the Court. See Dhani Irawan, “Praperadilan Irman Gusman Gugur [Irman Gusman’s pre-trial motion halted],” *detiknews*, accessed May 9, 2022, <https://news.detik.com/berita/d-3335752/praperadilan-irman-gusman-gugur-kpk-dari-awal-harusnya-sudah-tahu>.

⁵⁰⁵ I revealed this fact during the interview with Informant D47 (a senior district court judge with more than 20 years’ experience). Interview with author, January 26, 2021. In essence, he said that the power of pre-trial judge is like “holding the gun without a bullet” [dikasih pistol tapi gak ada pelurunya]. This understanding might have come from the fact that the Indonesian judges were positioned below the executive power for more than 50 years. Indonesian judges only play a subservient role to the executive power. That is why Pompe (2005) argued that the Indonesian Supreme Court suffered from institutional collapse. See S. Pompe, *The Indonesian Supreme Court: A Study of Institutional Collapse* (2005).

⁵⁰⁶ For instance, see Wash. Sup. Ct. Crim. R. 3.2.1 about the procedure following warrantless arrest in Washington state. After a warrantless arrest, there must be a judicial decision to determine the probable cause of arrest. Such determination must be held no later than 48 hours following the person’s arrest unless probable cause has been determined prior to such arrest.

their counterparts (in a literal sense) to get their clients out of pre-trial prison. As one defense lawyer explained to me:

“The biggest problem is we do not have leverage in every process. Often, I must beg since they [the police and the prosecutor] are the ones that holds enormous power. This reality annoys me.”⁵⁰⁷

During the trial, defense lawyers also face a difficult position because the prosecutor and judges have developed a stable informal workgroup rule that led to the bureaucratic processing of cases. In many cases, their written defense statement (which is the most important document produced by a defense lawyer) only serves as a “paper tiger.”⁵⁰⁸

This type of working environment provides no room for the defense lawyer to adopt an adversarial strategy by playing an antagonistic role in challenging their counterparts’ decisions. It is simply impossible to check their counterparts’ exercise of power. The structure of the system creates an occupational culture of defense lawyers that is submissive in nature. Since there are no meaningful instruments, they tend to use extra-legal measures to fight their way into the system, including developing an “insider network” so that they could obtain maximum benefit for their clients.

This strategy of utilizing informal relationships opens up huge room for corruption in the criminal justice system. The defense lawyer must make a functional adjustment because what matters is “who you know” and not “what you do.”⁵⁰⁹ This type of strategy often (if not always) requires defense lawyers to pay a bribe in return for the improper exercise of discretion, ranging from being released from pre-trial

⁵⁰⁷ Interview with Informant D72 (mid-level defense lawyer with 15 years’ experience). I asked about the obstacles in performing his duty as a defense lawyer.

⁵⁰⁸ Informant D70 (senior lawyer). Interview with author, May 12, 2021.

⁵⁰⁹ Interview with Informant D70. In his words, “In Indonesia, everything [referring to criminal litigation] is solved through *lobi-lobi* [lobbying] and *ngopi-ngopi* [having a coffee].” *Lobi-lobi* and *kopi-kopi* is a euphemism for paying a bribe to the law enforcers.” In Indonesia, there is also a famous saying: “If you know the law, you are a good lawyer. If you know the judge, you are the best lawyer.”

detention to selecting lesser charges.⁵¹⁰ In this situation, the purpose of being cooperative is to make sure that “everyone is happy” so that their client can receive lesser sentences. This type of relationship is rooted in the system and, therefore, creates a pre-established expectation that to win the case, one must display cooperative behavior.⁵¹¹

Interestingly, an interview with an experienced defense lawyer revealed the “right way” to engage in a cooperative relationship. In his words:

“Although money can indeed solve your client’s problem, you need to know the playbook on how to offer it ‘politely’. You cannot just knock on their office [police, prosecutor, and judges’ office] and deliver the money because it would violate their dignity [tersinggung]. That is why you must know the right way ...you must offer a logical argument to them and convince them that it would not attract any attention, and second, you must have the ability to self-assess the amount of money that you have to pay to secure such a decision.”⁵¹²

This “technique” might not apply to all cases, but at least it sheds light on how the system’s design contributes to corruption and low-quality defense lawyers.⁵¹³ Apart from that, it has become common

⁵¹⁰ This is a common secret in Indonesia. For more details see Pilar Domingo and Leopold Sudaryono, *Ekonomi politik dari penahanan pra-persidangan di Indonesia [Economic and politics behind pre-trial detention in Indonesia]* (Pasar Minggu, Jakarta: Institute for Criminal Justice Reform, Center for Detention Studies, dan Overseas Development Institute, 2015).

⁵¹¹ Literature suggests that this behavior is rooted in the actor’s institutional culture. For instance, if the bribe payment is given ‘sincerely’ [ikhlas], it is not deemed as corruption. See Baker, “The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia”; Afandi, “Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia.”

⁵¹² Interview with Informant D70.

⁵¹³ In this context, low-quality defense lawyer refers to the low quality of legal reasoning. Talented lawyers perceive that Indonesian criminal litigation requires them to do “dirty” work. In the American literature, in the 1930s to 1960s, Nardulli noted that criminal law is one of the least respected areas in the American legal profession. This is mainly because the system required them to pay a bribe and lobby their counterparts to “maintain workgroup cohesion.” See Nardulli, “Insider Justice.” In Indonesia, there is no literature that has specifically discussed the relationship between the working environment and how it produces a low-quality defense lawyer. This could be an opportunity for future researchers. This situation could also explain why there are so many ex-police, prosecutors, judges and military personnel involved in defense work. After they retired, they switched their profession to defense lawyer. Because the best way to “win the case” is through informal networks.

knowledge in Indonesia that the best way to win a criminal case is through informal networks.⁵¹⁴ In the end, this creates a demand for a problem-solver lawyer. These findings are in-line with the previous research conducted by Kadafi (2001) and Kouwagam (2020) on the role of the Indonesian defense lawyer. Both authors agreed that most Indonesian defense lawyers are willing to pay bribes to win their cases because most clients demand concrete results.⁵¹⁵

These findings further indicate that corruption has become the “everyday culture” of the system. When the problem has become deeply complex, ordinary solutions such as statutory reform will most likely not help. The solutions must be drastic, and Indonesian policymakers could learn from what happened in Cook County, Chicago, in the 1980s. In Cook County a similar situation happened from the 1930s to the 1980s. The mixture of corruption and patronage was deeply rooted in its criminal justice system (criminal court and traffic court) until the Federal Bureau of Investigation (FBI) conducted one of the biggest operations in American history, code-named “Operation Greylord,” in the early 1980s. This operation led to an overhaul of the entire system, three suicides and more than 70 indictments against corrupt judges, prosecutors, defense lawyers, and their bagmen.⁵¹⁶

Court-appointed lawyer as an inducing factor

In Indonesia, the law guarantees a right to legal representation for an indigent defendant who faces a punishment of more than five years in jail. Unlike the U.S, which has a federal public defender office,

⁵¹⁴ Interview with Informant D70 (senior defense lawyer who has vast experience both as a paid attorney and public defender. In his words, “There are two types of defense lawyers in Indonesia. First the activist who is full of idealism. We call this type of defense lawyer a *pejuang* [fighter]. Second, the *makelar* [broker]. Since our system is full of lip service, nowadays, *makelar* dominates the market. Because that’s how business is done. I consider myself a *pejuang* because that is my nature. I spent more than twenty years working as a public defender. However, I realize that sometimes my client needs other types of lawyers to solve problems. Often, they appointed second attorneys, in which her main mission was to pay a bribe. I provide a legal argument, and the second attorney has an obligation to ‘sell’ it to our counterparts.”

⁵¹⁵ *Advokat Indonesia Mencari Legitimasi : Studi Tentang Tanggung Jawab Profesi Hukum Di Indonesia [Indonesian Advocates Searching for Legitimacy]*, 225; Kouwagam, “Role of Lawyers in Land Conflict,” 110–20.

⁵¹⁶ Terrence Hake and Wayne Klatt, *Operation Greylord: The True Story of an Untrained Undercover Agent and America’s Biggest Corruption Bust* (Ankerwycke, 2015). Terrence Hake was part of the Operation Greylord, where he disguised as a corrupt prosecutor for three-and-a-half years.

there is no centralized and well-organized state-sponsored public defender's office in Indonesia. The public defender office occupies a very small office in the district court, and the Court also funds them with a very small compensation. The budget for one criminal case hearing is no more than \$350 (IDR 5,000,000) and it is disbursed on a reimbursement basis.⁵¹⁷ In other words, a court-appointed attorney needs to work first and then be paid later.

This dissertation revealed that most court-appointed lawyers tend to cooperate with their counterparts as a result of this organizational structure. They feel that their real client is the Court, not the defendant because they receive payment from the Court. When the court-appointed lawyer gets a job from the Court, there is already a pre-established expectation toward them: their presence is only needed for ritual purposes. The presence of a defense lawyer is important since it will give a sense of legitimization that the defendant's procedural rights have been fulfilled. As one court-appointed defense lawyer told me:

“...we could not avoid that feeling. The Court is the one that gave us a job, and usually, we get that job two hours before the proceeding. So, there is no time for us to examine the case. If we complicate the proceedings, they might not appoint us again. They need us because the KUHAP requires the defendant to be represented by the lawyer.”⁵¹⁸

Another interview with a district court judge also confirmed the view that defense lawyers are expected to cooperate in the courtroom.⁵¹⁹ Because of the limited budget, there is no incentive for a court-appointed attorney to adopt an adversarial approach because it would only prolong the process and provide little benefit.

⁵¹⁷ See Supreme Court regulation no 1/2014 on the legal assistance for indigent defendant and Minister of Law regulation no 63/2016 on the disbursement of legal aid budget.

⁵¹⁸ Informant D7 (public defender). Interview with author, September 14, 2020.

⁵¹⁹ Informant D38 (district court judge). Interview with author, July 24, 2020.

Side notes: External factors

This chapter has focused on the inducing factors that come from the internal environment, which means forces that could induce cooperation that arises within the interaction of criminal justice actors.

However, this research found that external factors might also play a role. In this context, external factors are forces that come from the external environment. Interviews suggest that an inducing factor for cooperation might come from public pressure (especially in the age of social media) and the influence of overseeing institutions.⁵²⁰ This topic will be examined when looking at suggestions for future research. Apart from that, the influences from the external environment are largely on a case-by-case basis and only applicable to cases that attract widespread public attention.

Conclusion

This chapter has presented the inducing factors that could influence the impeding factors for cooperation found in the previous chapter. At the pre-trial level, this chapter has mainly argued that the inducing factors (creating shared policy, conducting interagency professional training, and the creation of a task force) are not strong enough to negate the impeding factors in the police and prosecutors' professional relationships. This is because the impeding factors are based on the structural problem of competition over discretionary power, and those prescribed solutions only treat the symptoms, not the disease. They only provide marginal help in changing the incentive system that motivates actors' behavior.

However, at the trial level, my findings suggest the opposite. Cooperation between prosecutors and judges emerges voluntarily because they are obsessed with speedy case processing. The formal rules reward their performance based on the number of cases they have disposed of annually. As a result,

⁵²⁰ During my fieldwork, I interviewed other actors that might influence the criminal justice operation. For instance, I interviewed a member of prosecutor's commission (Informant D8) that has the authority to oversee the prosecutor (Komjak) and member of police's commission (Informant D5, Kompolnas).

they establish informal rules within their interactions that enable their common interests to be met more easily. This chapter also revealed that cooperation in the courtroom might lead to a violation of the defendants' procedural rights.

When investigating defense lawyers as an inducing factor, this research found that the design of the system "forces" defense lawyers to be cooperative when interacting with their counterparts. Because only a very limited adversarial instrument is available to them, they maximize informal relationships with their counterparts. In addition, this research revealed the tendency of court-appointed attorneys to think that their "real client" is the Court. Moreover, this research found that the tendency to engage in cooperative behavior contradicts a defense lawyer's ideal practice.

In the next chapter, the conclusion chapter, this dissertation will show how the findings in this chapter could generate a theory that can be used to gain a better understanding of the actual operation of the criminal justice system.

Chapter 6

Conclusion

Introduction

As the title suggests, this chapter will conclude the dissertation. The writing structure of this chapter is organized as follows. It will first explain the limitations related to the findings in this research. Second, this dissertation will provide the “big picture” of the research process and summarize the answer to the research question posed in the first chapter. Third, it will recommend steps that can be taken to address the problems identified in the findings. Lastly, this chapter then discusses the contributions of this research and provides topic suggestions for future researchers to complement the findings of this dissertation.

Limitations of this research

The limitations mentioned in this section should be seen as an explanation of the first chapter’s limitations. The first limitation is how this research generated conclusions when evaluating and contrasting the data from the impeding and inducing factors. Since this dissertation followed a “constructivist grounded theory approach,” evaluation is conducted through interpretive analysis. The use of the words “evaluate,” “negate,” “tendency,” “indicates,” and “suggests” are generated from the result of semi-structured interviews with actors with direct and relevant experience, along with the triangulation method provided in the methodology chapter. Since the interpretations are not based on quantifiable variables, there is always a possibility that this study could not be replicated using the same methods.

To further elaborate on the limitation mentioned in the previous chapter, this dissertation only studies the workgroup dynamics that influence the actors’ exercise of power. Although it has been argued

throughout this paper that workgroup rules are the most important factor, personal bias and motivations could also play a role. Examples of factors contributing to personal bias are religion, kinship, race, and similarity of education (for instance, a fellow alumnus from the same law school). A qualitative and quantitative study on this subject could also enrich the discussion about the reality of Indonesian criminal justice.

Finally, this dissertation specifically investigates the workgroup dynamics in two main interactions of case processing: pre-trial level and trial level. It focuses explicitly on how cases are processed. However, there is also another venue interaction, such as the extension of detention process at the pre-trial and trial level (*perpanjangan penahanan*). However, this research chose not to focus on such interactions because, in practice, it is a highly administrative process.

Summary of the research

This dissertation has argued that the best way to understand the reality of the Indonesian criminal justice system is to see it as a system of organized interactions between actors, not just as a system of rules. This is because the roles of criminal justice actors are tightly interconnected when processing a case. With this understanding, investigating cooperation and non-cooperation in case processing is critical to provide an accurate mapping of the system. Moreover, in recent years, greater cooperation among actors has become a desirable goal that Indonesian reformers have sought to achieve. However, in the broad criminal justice literature, only a few publications have attempted to understand criminal justice as an organizational activity that requires cooperation to function.

For those reasons, this dissertation aims to fill the void by investigating the ability of criminal justice actors to cooperate using Indonesia as its case study. To achieve this purpose, it asks one fundamental question: What factors impede and induce cooperation among criminal justice actors? Subsequently, this dissertation contrasts those two factors to see how they shape the actual practice of the system.

With this strategy, this dissertation aims to go beyond providing detailed descriptions of the system by utilizing its findings to answer questions related to ego sektoral behavior and the failure of the criminal justice reform.

In answering this question, I interviewed 36 Indonesian criminal justice actors from various ranks and used the qualitative grounded theory approach as a data collection and analysis method. The interviews were designed to capture the reality of the working relationship between the actors and their perception of how the system operates. It captured the interplay between the formal and informal workgroup rules that guide the behavior of actors in an organizational setting. Subsequently, this dissertation divides its findings based on two main case processing levels: the pre-trial level relationship between the police and the prosecutor and the trial-level relationship between judges and prosecutor. This section will summarize the findings and analysis presented in Chapter 4 (factors that impede cooperation) and Chapter 5 (factors that induce cooperation).

The findings of this dissertation suggest that, in the pre-trial level relationship, the impeding factors identified come from the association between the power competition and conflict. Such association is responsible for producing ego sektoral behavior. The power competition between the two groups of actors leads to ambiguous rules that create conflict and distrust in their interpretation and implementation. In the end, it creates an “us-versus-them” mentality when they are working together as a group.

These situations are further exacerbated because investigative power has become an asset for their institutional survival. Consequently, there are no agreed informal workgroup rules that structure cooperation effectively between the two actors. Moreover, these situations can be categorized as a structural problem because it significantly affects the ability of the police and prosecutors to cooperate when processing criminal cases.

Meanwhile, in Chapter 5, this dissertation successfully identified the factors that are designed to induce cooperation and reduce ego sektoral behavior. Those factors are: (1) creating a shared policy between the police and the prosecutor; (2) conducting interagency training, and (3) establishing a specialized criminal justice institution known as a task force unit (*satuan tugas or satgas*). This research suggests that the inducing factors are not strong enough to negate the impeding factors for cooperation. This dissertation argues that those solutions only “treat the symptoms, not the disease” since they only serve as ornamental solutions to the structural problems found in the impeding factors.

In the trial-level relationship between the judges and prosecutor, this dissertation found that the troubled relationship between the police and prosecutors also impacts the cooperation between judges and prosecutors. Because of such conflicts, Indonesian prosecutors cannot play the ideal role as prescribed by the law. Consequently, the judges must do extra work by playing a more active role during the hearings, taking over the job that is supposed to be done by the prosecutor. In this context, the impeding factors identified in this level are related to operational differences in doing their jobs, such as securing the attendance of witnesses and actively questioning them. However, this research suggests that the inducing factors found at the trial-level relationship are strong enough to outweigh the impeding factors. This research found that adaptation-based cooperation naturally emerges in the trial-level working relationship between the prosecutors and judges because there is a shared need for efficiency. As a result, both groups of actors develop informal rules that incentivize cooperation. Because of such a need, there is a tendency for Indonesian judges to ratify all decisions made by the police and prosecutors. Consequently, when exercising their roles, the prosecutors and judges replace the presupposed norm of conflict with a norm of cooperation. However, this dissertation also found that excessive cooperation at the trial level could also harm the system. This research indicates that when there is a strong tendency to cooperate, the checks and balances principle is at risk. In the end, it could impact the quality of justice that is produced.

The discussion of defense lawyers in this dissertation aims to understand how Indonesian defense lawyers navigate themselves amid the complex web of a power game between state functionaries – the police, prosecutors, and judges. With this logic, Indonesian defense lawyers can be categorized both as an inducing factor and impeding factor for cooperation, depending on their litigation strategy and type of appointment. This research suggests that most Indonesian defense lawyers tend to cooperate with their counterparts. This research reveals that the best way to secure maximum consideration for their client is by using informal networks since the system does not provide a meaningful procedural instrument to fight for their clients' interests. That is why Indonesian defense lawyers are inclined to adopt a "problem-solving strategy" whose main mission is to maintain workgroup cohesion using extra-legal skills such as lobbying and, in some cases, paying a bribe. In this strategy, what is important is "who you know" and not "what you do." In addition, this research found that court-appointed defense lawyer can be categorized as an inducing factor since there is a tendency to think that their "real" client is the Court. These findings also reveal the negative consequences of cooperation. Instead of playing an antagonistic role to their counterparts, the system forces Indonesian defense lawyer to play a submissive role. These facts could also explain why corruption is endemic in the Indonesian justice system.

Recommendations

This dissertation has detected two problems associated with cooperation and non-cooperation behavior. The first is that the structural problems found in the police-prosecutor relationship seriously affect their ability to cooperate. Second, this dissertation also found that the "excessive cooperation" displayed by prosecutors, judges, and defense lawyers at the trial stage could also harm the system. Furthermore, the strong tendency for defense lawyers to cooperate with their counterparts might also contribute to corruption in case processing.

On the contrary, cooperation in case processing itself could also provide a benefit to the system. It would be better to process cases administratively when there are no issues to litigate. In reality, the system would simply collapse if it needed to conduct a full-scale trial for every case. In this sense, there is a need to minimize the risk of excessive cooperation in the courtroom. The recommendations provided in this section must be understood within this context.

Considering the complexities of the problems, there is no formulaic recommendation to cure them. To address the first problem, in Chapter 5, we have seen that the Indonesian government's attempt to induce cooperation failed to negate the impeding factors for cooperation. However, this dissertation could at least provide a road map to address the problems. This road map should be understood as a long-term and multifaceted strategy that requires strong political commitment from policymakers. Without it, these recommendations would only serve as another "paper tiger" in the Indonesian legal discourse.

There are two obvious approaches to address the problem of police-prosecutor relationship dynamics. The first is a top-down approach through drastic statutory reform, specifying the precise division of labor between the actors to avoid conflict of interpretation. Moreover, the discretionary power in investigating criminal cases should be narrowed to reduce the intensity of power competition between the police and the prosecutor. The benefit of this approach is two-fold. Looking from a practical perspective, narrowing the discretionary power means that the value of such power is diminished. Automatically, it would also reduce the intensity of power competition because the reward for such competition is greatly reduced because actors will have a limited ability to act unilaterally.

Meanwhile, from the ideal perspective, narrowing discretionary power would also protect the defendants' procedural expectations and prevent abuse of power. This is where the defense lawyer could be given stronger powers to act as a counterbalancing force to state functionaries. After all, this is

the ideal core value that every criminal justice system should have since the exercise of criminal justice power impacts the liberty and well-being of the people.

I must admit that, regardless of how beautiful it might sound, this solution is also problematic.

Narrowing discretionary powers would mean that power distribution among actors must be regulated clearly. In an ideal world, I would suggest that a checks and balances mechanism must be introduced, and the police should permit the prosecutors, judges, and defense lawyers to check the exercise of the power of each other to reduce the risk of abuse of power. However, there is no guarantee that this solution would work considering the current working environment. On the contrary, it might worsen the problem. After all, what is the point of having many actors with equal power, but with rights violations still being pervasive in the system? In fact, it could do more harm to the defendant if they must face a lengthy torturous process. For the defendant, it could be the case of “out of the frying pan and into the fire.”

In relation to introducing the trial-avoidance mechanism, when there is a precise division of labor between the actors, plea bargaining could be legalized. With this strategy, efficiency in case processing could also be improved. However, considering that cooperation at the pre-trial level faces substantial impediments, such a mechanism would likely produce further power competition between the police and prosecutors. When a trial is missing, the decision at the pre-trial level will significantly determine the outcome of the case. In other words, this power will become another “battlefield” between the police and prosecutors. Recently, there has already been a strong indication that the police and prosecutors are now engaging in a battle to control the trial avoidance mechanism. In 2019, the police introduced a trial avoidance mechanism called “restorative justice” that gives them the power to dismiss the case unilaterally even after securing enough evidence. Meanwhile, in 2020, the prosecutors also introduced their version of restorative justice, giving them the authority to dispose of a case at the pre-trial level.

That is why this dissertation argues that any statutory reform must go hand-in-hand with an effort to alter the current working environment so that cooperation among actors can be achieved. Without such commitment, any procedural instruments mean little. First and foremost, the organizational culture of criminal justice institutions must be reformed. The policymaker needs to conduct a “bottom-up” approach by restructuring the formal and informal rules – the incentive system, recruitment system, funding, and human quality. Changing organizational culture is like changing a person’s personality and mindset. Without a strong commitment from the larger political power, the power competition between criminal justice actors will always occur.

In order to change the organizational culture of the system, Indonesian reformers might want to learn from their American counterparts in their radical efforts to clear the system from “unimaginable defects” that happened in Cook County, Chicago, in the early 1980s through “Operation Greylord.” As discussed in Chapter 5, Operation Greylord was a code-name for the most extensive FBI undercover operation to clear the judicial system in Cook County from the corrupt behavior of its actors. The operation led to an overhaul of the entire system, three suicides, and more than 70 indictments. If the Indonesian reformers want to achieve quick reform results, this revolutionary solution is worth contemplating. To reiterate my point, changes in the law must be exercised in tandem with reform in organizational culture. Obviously, this is a gigantic task that requires strong political will.

This dissertation has taken the first step toward this gigantic task by detecting the problems in the system – by investigating cooperation, non-cooperation, and ego sektoral *in action*. This dissertation calls for future researchers to continue detecting the problems by looking at the reality of justice on the ground. There is little point in designing reforms that could never be implemented. Change is not the problem – resistance to change *is* the problem.

Contribution

The contribution stated here should be seen as an elaborate explanation of the contribution discussed in the introduction and literature review chapters. This dissertation has made at least three contributions. The first is providing an accurate mapping of the day-to-day workings of the Indonesian criminal justice system. In itself, this “map” creates many benefits. First, this dissertation has used the map to deconstruct larger questions such as underlying reasons behind ego sektoral behavior in criminal case processing and why previous reforms failed (including the government’s previous attempt to incentivize cooperation between actors). Second, an accurate mapping will also be beneficial for legal practitioners or any person who might need to become involved in the criminal justice process in Indonesia, including donor countries.⁵²¹ As a practicing defense lawyer, I can attest that most of my clients (if not all, especially foreigners) constantly question the procedural expectations in the Indonesian criminal justice process. This fact is not surprising since Indonesia has gained a reputation that its system is highly unpredictable.⁵²² Prospective litigants will not “get lost” when they have this map. The map is also beneficial for scholars, students, and policymakers. Third, since this dissertation has generated a theory to explain the actual practice of Indonesian criminal case processing, the validity of such a theory can be tested and expanded by future researchers. In other words, this dissertation opens up new lines of research. The following section will discuss how this dissertation calls for future researchers to refresh the Indonesian criminal justice scholarship.

⁵²¹ Since the *reformasi*, Indonesia has received rule of law assistance from several donor countries and entities such as the U.S. and the World Bank. However, research suggests that there is a structural constraint to reform when donor countries tend to prioritize western ideas and players without fully understanding the local context. See Anna B. Bosch, “Local Actors in Donor-Funded Rule of Law Assistance in Indonesia: Owners, Partners, Agents?” (Ph.D. Dissertation), UW School of Law, 2016, <https://digital.lib.washington.edu:443/researchworks/handle/1773/36734>.

⁵²² See for instance the report from Australian government about Indonesian justice system. Marcus Cox, Emele Duituturaga & Nur Sholikin, *Evaluation Of Australian Law And Justice Assistance: Case Study of Indonesia*, 66 (2012).

Specifically, this is the first study that has tried to understand the Indonesian criminal justice system through an organizational lens. It is difficult not to think that the best way to understand the reality of the criminal justice system is to treat it as organizational activity. The reason is that the core of the criminal justice system is an inter-organizational linkage between actors. This dissertation has successfully captured the dynamics when actors work together to process a case with this framework. This is a valuable contribution to the organizational analysis of criminal justice scholarship, using Indonesia as a case study.

The second contribution is that by investigating the factors that lead to cooperative and non-cooperative behavior, this dissertation has also detected problems associated with such behavior. For instance, this dissertation has successfully deconstructed *ego sektoral* and how it is performed in the Indonesian criminal justice system. Before this dissertation, the term *ego sektoral* was loosely used by many Indonesian legal commentators (including the president and his ministers) to label all sorts of factors that impede cooperation.⁵²³ They simplify this phenomenon by describing it as “prioritizing their own interests” without investigating the underlying reasons behind such behavior. This dissertation has filled such a void.

Moreover, this dissertation also reveals how Indonesian defense lawyers replace the presupposed norm of conflict with cooperation. This fact could also lead to a bigger problem: the quality of defense lawyers produced by this type of system. Talented people who might have wanted to become criminal justice actors would have never considered careers in criminal litigation. That is why, in the next section, I call for further research to study this topic.

⁵²³ For instance, Google search result for “*ego sektoral*” in Google Indonesia produces 616,000 results (search performed on May 5, 2022).

In addition, the findings of this dissertation can be used as a framework for the next reform plan. When voicing the need for cooperation between actors, the reformers could consult this dissertation to see the motivating factors that could affect the operation of the criminal justice system. To reiterate my recommendation, reformers must consider bottom-up reform by changing the incentive structure and the nature of the relationship between actors. Without this strategy, any reform that would change the current power distribution would likely face strong resistance from the actors themselves

Suggestions for further research

Since the nature of this study is explorative, the findings of this research could open up new perspectives of research on the organizational analysis of criminal justice, as referenced in the literature review chapter. This is important because a law-in-the-books approach currently dominates the Indonesian legal scholarship. I call for future researchers to refresh their scholarship approach since the study of criminal justice requires an examination of how justice is practiced on the ground. Without empirical work, criminal justice researchers only distance themselves from reality.

This research has generated a theory related to the organizational activity of Indonesian case processing. Future researchers could use the theory provided through this research for hypothesis testing. In this context, the first topic that is worthy of investigation is the mixed-methods study (qualitative and quantitative) about the working relationship of Indonesian criminal justice actors. This dissertation has provided a better understanding of several variables that can be quantified and made propositions about the relationship between those variables. Such variables are distrust, interpersonal relationship, interdependencies between group goals, personal goals, and ego sektoral behavior. When one can quantify these variables and develop a formula to measure the tendency within the workgroup, it could greatly complement the findings of this dissertation.

Future researchers could also expand this research by conducting further studies on the occupational culture of Indonesian defense lawyers since there is still a void on this subject.⁵²⁴ Several aspects shape the occupational culture of defense lawyers that this dissertation has found but decided not to study further because of limitations. For instance, one could study the relationship between the micropolitics within the bar association and its impact on the quality of the defense lawyer. This is an important subject considering that Indonesian defense lawyers constantly face challenges when organizing themselves. Moreover, an ethnographic study on the police, prosecutors, and judges' perceptions of the role of defense lawyers would also be an interesting subject of study.

In Chapter 4, this research also found that the patronage bureaucracy within Indonesian criminal justice institutions significantly influences the exercise of criminal justice power. This could be an opportunity to conduct a socio-legal study on this subject since it has been part of "everyday culture" in Indonesian society. The patronage culture also has a long and deep history in the Indonesian bureaucracy, and it also serves as an important contributing factor for ego sektoral behavior. A study on this subject would further enrich the discussion of ego sektoral in the Indonesian criminal justice workgroup. In addition, as mentioned in Chapter 5, a study about how personal relationships (especially chief-to-chief relationships) could become the factors that induce cooperation is also worthy of investigation.

Another interesting qualitative study that could be investigated is examining the law school curriculum in response to the fact that informal workgroup rules define the operation of justice. Far too often, Indonesian law professors remind their students that there would be a discrepancy between the ideal and reality when they litigate in their real world. Law schools must not turn a blind eye to this reality

⁵²⁴ There are only few credible sources that discuss Indonesian defense lawyer. See *Advokat Indonesia Mencari Legitimasi : Studi Tentang Tanggung Jawab Profesi Hukum Di Indonesia [Indonesian Advocates Searching for Legitimacy]*; Daniel S. Lev, *No Concessions: The Life of Yap Thiam Hien, Indonesian Human Rights Lawyer* (University of Washington Press, 2011); Kouwagam, "Role of Lawyers in Land Conflict"; Luhut M P Pangaribuan, *Advokat : Organisasi Dan Kedudukannya Dalam Kekuasaan Kehakiman [Attorney: The Organization and Its Position in the Judicial Authority]* (Jakarta: Papas Sinar Sinanti, 2021).

and should better prepare their students to enter the “real world”. A study about how Indonesian law schools might conform to this reality is urgently needed. This can also be considered an attempt to alter the working environment in the Indonesian criminal justice system – as suggested by this study.

In Chapter 5, this dissertation also found that the external environment, such as public pressure, could also influence the criminal justice system’s operation, especially in the age of social media. Just recently, in late 2021, there was a public hashtag “no viral no justice” in Indonesia.⁵²⁵ This phenomenon reflects how often individuals can receive justice only through public pressure. This is also an interesting way to examine the working reality of the Indonesian criminal justice system. Moreover, the role of supervisory commissions such as KY, Kompolnas, and Komjak in reforming the organizational culture of Indonesian criminal justice institutions is also an essential aspect of socio-legal research. It is also interesting to examine the ego sektoral behavior in the relationship between criminal justice institutions and their supervisory commissions. In the broader criminal justice literature, the discussion of ego sektoral (and its equivalent) is also limited, and this is somewhat surprising since the reality of justice is defined through institutionalized human behavior.

In addition, considering the power-seeking nature of Indonesian criminal justice actors, investigating the power competition between them will continue to be a crucial aspect of research. This dissertation only investigates the power competition between the police and the prosecutors in investigating general crime cases (*tindak pidana umum*). To date, there are at least several dozen criminal justice actors that have the authority to perform an investigative function, such as Anti-Corruption Commission (KPK),

⁵²⁵ National Police Chief General Sigit’s Response to Hashtags On Social Media To The No Viral No Justice Phenomenon, VOI - WAKTUNYA MEREVOLUSI PEMBERITAAN, <https://voi.id/en/news/114937/national-police-chief-general-sigits-response-to-hashtags-on-social-media-to-the-no-viral-no-justice-phenomenon> (last visited May 3, 2022).

Indonesian Narcotics Agency (BNN), tax and customs (bea cukai). This research calls for socio-legal studies in investigating the power competition between them.

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