CAUSE LAWYERS IN INDONESIA: A HOUSE DIVIDED

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MELISSA CROUCH[1]

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The private legal profession in Indonesia is notable for a paradox. On one hand, for decades many of its members have shown a deep commitment to cause lawyering. Lawyers determined to use the legal system to achieve social justice have always been prominent and influential, often at the national level.[2] A few have even left their mark on modern Indonesian history as champions of the dramatic democratization that took place after President Soeharto resigned in 1998.[3] Many have worked with great intellectual vigor, courage, determination, and political nous, developing both significant forensic

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[2] For an account of such a lawyer, *see* DANIEL S. LEV, NO CONCESSIONS: THE LIFE OF YAP THIAM HIEN (2011).

[3] *See generally* SIMON BUTT & TIMOTHY LINDSEY, THE INDONESIAN CONSTITUTION: A CONTEXTUAL ANALYSIS 1 – 25 (2012) (detailing the constitutional reforms that delivered in Indonesia's post-Suharto democratization).

skill and sophisticated political rationales for their activism, all tied to the notion of *negara hukum*, or "rule of law."[4] This is particularly true of the large group of prominent cause lawyers associated with Indonesia's first legal aid non-government organization (NGO), Lembaga Bantuan Hukum or, as it is usually known, "LBH."

On the other hand, the private legal profession in Indonesia has also been notable for its internal divisions, vicious combativeness, intense factional rivalries, and disunity. In prosecuting struggles for power within their profession, Indonesian lawyers – including cause lawyers associated with LBH – have drawn on the same array of skills they use in their practice, often with devastating effect.[5] This has been particularly apparent in the repeated failure of efforts to establish a single, overarching professional organization for Indonesian lawyers. The result has been the development of a large, vigorous, and often deeply divided legal profession without a unifying bar. Its cause lawyers lack a common cause and their differences are heated, laden with ideology, and often become matters of national controversy.[6]

The deeply factionalized nature of the Indonesian legal profession has also led to repeated failure to develop national consensus among practitioners around issues of ethics and discipline. It has made it impossible for lawyers to reform their own profession to create uniform standards or even minimum expectations. This is a significant obstacle to the professionalism of lawyers in Indonesia. It also obstructs their ability to continue to influence the trajectory of the democratic *Reformasi* (reform) process that some of them helped usher in after Soeharto's authoritarian regime fell in 1998.[7] A decade and a half later, many cause lawyers fear that these reforms have failed to meet their high expectations, and may even be vulnerable to those who would prefer to see them rolled back. Some have become pessimistic about the future of

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[4] *Negara hukum* is a translation of the Dutch *rechtsstaat*, or 'law state'. Its meaning has often been contested but is now generally understood in Indonesia as loosely equivalent to 'rule of law', and as implying separation of powers, an independent judiciary and representative democracy. *See generally*, TIM LINDSEY, *Indonesia: Devaluing Asian Values, Rewriting Rule of Law*, *in* ASIAN DISCOURSES OF RULE OF LAW 286–323 (Randall Peerenboom ed., 2004).

[5] For examples of the skills involved in the 'routine' (case law) and 'non-routine' activities (such as public education seminars and campaigns) of LBH in its first five years of operation, *see* ADNAN BUYUNG NASUTION SH, LEGAL AID IN INDONESIA (FIVE YEARS OF THE LEMBAGA BANTUAN HUKUM) 15-25 (1976).

[6] Lev referred to this tension within the profession as the "battle of the lawyers", DANIEL S. LEV, LEGAL EVOLUTION AND POLITICAL AUTHORITY IN INDONESIA: SELECTED ESSAYS 319 (2000).

[7] *See generally* EDWARD ASPINALL, OPPOSING SUHARTO: COMPROMISE, RESISTANCE AND REGIME CHANGE 212 (2004).

the *negara hukum* they helped construct in the late 1990s, and a few have even turned their back on it, seeking other, entirely different, ways to realize their dreams of social justice.

This paper explores this paradox, the tension between the Indonesian legal profession's history of activism for social justice causes and its own incapacity to organize itself in a way that might better regulate and support the ideals underpinning the post-1998 reforms. We begin in Parts I and II with an overview of cause lawyering in Indonesia generally. In Part III we then consider developments after 1998, when cause lawyers turned their attention again to the long-standing and elusive objective of a united and disciplined bar. This part of the paper explores the failure of efforts to unite lawyers and remake them as a single profession. The remainder of the paper explores the fluid and dynamic nature of cause lawyering in Indonesia through a case study of religious freedom. It looks first, in Part IV, at how cause lawyers working for LBH deal with these issues. In Part V, we then describe how one prominent cause lawyer, Munarman,[8] rejected the values of the legal aid and human rights organizations he once led in favor of Islamist vigilante groups. The paper concludes in Part VII that the splintered profession as it now stands reflects broader fractures in the wider reform movement as cause lawyers confront reform fatigue and political disillusion.

I. LBH AND STRUCTURAL LEGAL AID IN INDONESIA

Sarat and Scheingold have described cause lawyers as "using their professional work to build the good society."[9] They are characterized as the opposite of the "hired gun" lawyer who works solely for remuneration,[10] although in reality there is often movement between these two extremes. Cause lawyers can, however, be distinguished from other lawyers by "a willingness to undertake controversial and politically charged activities and/or by a sense of commitment to particular ideals."[11] This definition of cause lawyering fuses law with political activism, allowing lawyers to engage in sensitive issues of public policy

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[8] Like many Indonesians, Munarman uses only one name.

[9] Austin Sarat & Stuart Scheingold, *Cause Lawyering and the Reproduction of Professional Authority*, *in* CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 3, 3 (Austin Sarat & Stuart Scheingold eds., 1998).

[10] *Id.*

[11] *Id.* at 7.

and politics. In this way, cause lawyers are able to "illuminate the instabilities in the boundaries between law and politics."[12] This has been echoed by Menkel-Meadow, who defines cause lawyering as "any activity that seeks to use law-related means or seeks to change laws or regulations to achieve greater social justice – both for particular individuals (drawing on individualistic 'helping' orientations) and for disadvantaged groups."[13]

In Indonesia, the term cause lawyer could be applied to a wide range of lawyers who work for political and social change. The term is, however, rarely used in that country. Instead, lawyers who might be described in the West as cause lawyers usually describe themselves in Indonesia as *aktivis* or *aktivis hukum* (activist or legal activist), and almost all work for a NGO — either as volunteers or, in many cases, on a relatively low salary.

Since the 1970s, LBH has been the leading NGO for *aktivis hukum* and its lawyers are the ones who most often initiate court action seeking judicial review of government decisions.[14] LBH was established in 1970 on the initiative of Professor Adnan Buyung Nasution,[15] a

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[12] *Id.* at 12.

[13] Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, *in* CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 31, 37 (Austin Sarat & Stuart Scheingold eds., 1998).

[14] For more on the history and role of LBH, *see generally* Dr. Iur Adnan Buyung Nasution, Professor, Melbourne Law School Centre for Indonesian Law, Islam and Society, Inaugural Professorial Lecture, Towards Constitutional Democracy in Indonesia (Oct. 10, 2010) (transcript available at http://www.law.unimelb.edu.au/files/dmfile/NasutionPaper111020_web2.pdf); Daniel S. Lev, *Legal Aid in Indonesia* (Ctr. of Se. Asian Studies, Working Paper No. 44, 1987); Crouch, *supra* note 1, at 63-86. For more on the aims, activities and cases handled by LBH Jakarta, see its annual reports: LBH Jakarta (2012) *Paradoks Negara Hukum: Laporan Hukum dan HAM.* Jakarta: LBH; LBH Jakarta (2011) *Catatan Akhir Tahun 2011.* Jakarta: LBH Jakarta; LBH Jakarta (2010) *Catatan Akhir Tahun 2010 Hukum dan HAM.* Jakarta: LBH Jakarta; LBH Jakarta (2009) *Catatan Akhir Tahun 2009 Hukum dan HAM.* Jakarta: LBH Jakarta; LBH Jakarta (2008) *Laporan Hukum dan HAM LBH Jakarta 2008: Penegakkan Hukum, Janji Politik yang Terabaikan.* Jakarta: LBH Jakarta; LBH Jakarta (2007) *Catatan Akhir Tahun 2007.* Jakarta: LBH Jakarta; LBH Jakarta (2006) *Laporan Hukum dan HAM LBH Jakarta 2006: Kembali ke Titik Nol.* Jakarta: LBH; LBH Jakarta (2005) *Catatan Akhir Tahun 2005: Ketika Negara Bersimpuh di Hadapan Kuasa Modal.* Jakarta: LBH Jakarta.

[15] Adnan Buyung Nasution, *Towards Constitutional Democracy in Indonesia*, PAPERS ON SOUTHEAST ASIAN CONSTITUTIONALISM, Oct. 2011, at 3, 10, *available at* http://www.law.unimelb.edu.au/files/dmfile/NasutionPaper111020_web2.pdf. Professor Dr. Iur Adnan Buyung Nasution is widely regarded as Indonesia's leading advocate and trial lawyer. He was a pioneer of legal aid and law reform, and is a leading figure in advocacy for human rights and constitutionalism in Indonesia. In 2010, he was appointed as Honorary Professorial Fellow of the Melbourne Law School, the University of Melbourne.

prominent human rights lawyer and activist in Indonesia.[16] Under Soeharto's authoritarian regime (1966-1998), law was largely meaningless as a weapon against a lawless state.[17] LBH was therefore based on Nasution's idea that cause lawyering should involve not just routine casework for the poor but should also extend to what he called "Structural Legal Aid" (*Bantuan Hukum Struktural*). This is a broad notion that includes public interest litigation as well as non-litigation activities such as legal and political criticism, research, publication, and community education.[18]

This approach ensured that LBH constantly challenged and criticized government policy and practice that infringed on legal rights. LBH, in fact, became an outspoken critic of Soeharto's New Order and the primary avenue of defense for the accused in subversion trials and other political cases.[19] With conviction inevitable, these trials usually became political theater, attracting huge public interest.[20] As a result of the many high profile political trials LBH litigated during the Suharto regime, it became a source of embarrassment for the government, both nationally and internationally. Even today it is still the case that one of the most effective weapons routinely wielded against corrupt officialdom by LBH is deployed outside the courtroom: media publicity and the threat of negative coverage.[21] Under Nasution's leadership, LBH's strategic use of "Structural Legal Aid" and courtroom theater helped keep alive the public memory of democratic ideals and the notion of rule of law during the New Order period. It was so effective, in fact, that these ideas quickly became the basis for sweeping reforms when Soeharto eventually fell.[22]

LBH remains the leading cause lawyer organization in Indonesia today, but the post-Soeharto removal of restrictions on political activity

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[16] Dan S. Lev, *Legal Aid in Indonesia*, 12-13 (Ctr. of Se. Asian Studies, Working Paper No. 44, 1987); *see generally* Nasution, *supra* note 15.

[17] Tim Lindsey, *From Soepomo to Prabowo: Law, Violence and Corruption in the Preman State, in* VIOLENT CONFLICTS IN INDONESIA: ANALYSIS, REPRESENTATION, RESOLUTION 19, 19–36 (Charles A. Coppel, ed., 2006).

[18] Nasution, *supra* note 15, at 9.

[19] DANIEL S. LEV, LEGAL EVOLUTION AND POLITICAL AUTHORITY IN INDONESIA: SELECTED ESSAYS at 292 (Kluwer Law International 2000).

[20] This is also partly a result of the way LBH effectively garnered support from the press, which ensured wide media coverage for its trials and campaigns, Lev, *supra* note 16, at 30-31.

[21] DANIEL S. LEV, NO CONCESSIONS: THE LIFE OF YAP THIAM HIEN, INDONESIAN HUMAN RIGHTS LAWYER, 322 (2011).

[22] Tim Lindsey, *Devaluing Asian values, rewriting rule of law, in* ASIAN DISCOURSES OF RULE OF LAW 286, 296-298 (Randall Peerenboom, ed., 2006).

led to the dramatic and continuing growth of anti-corruption activity, like "fungus in the rainy season" as the Indonesian saying has it. As early as 2000, for example, as many as 450 leading legally-oriented NGOs were identified, but the total numbers were probably in the thousands, although there is no way to determine this as there was no formal registration process that could produce reliable records. Some of the leading legal NGOs today include PSHKI (Pusat Studi Hukum dan Kebijakan Indonesia, Indonesian Centre for Law and Policy); ICW (Indonesia Corruption Watch); LeIP (Lembaga Kajian dan Advokasi Untuk Independensi Peradilan - Institute for Study and Advocacy of Independence of the Judiciary); MTI (Masyarakat Transparensi Indonesia - Indonesia Transparency Society); and KontraS (Komisi untuk Orang Hilang dan Korban Tindak Kekerasan - the Committee for the Disappeared and Victims of Violence). Cause lawyers working for these and thousands of other like-minded civil society organisations deal with an extremely wide range of issues including: land disputes; labour disputes; human rights; women's and children's rights; environmental disputes; religious freedom; and, of course, routine criminal defence cases.

In career terms, LBH has become something of a rite of passage for lawyers with a concern for social justice. It is common for law students and graduates to stay with the organisation for several years and then move on to another, more specialized, area of the legal NGO sector or legal profession.[23] Most NGOs other than LBH now tend to work in only a few areas, and there is also a growing distinction between those that only focus on legal research and community education and those that combine this with the provision of legal advice. Like LBH, the range of work done by lawyers in these legal NGOs is always very diverse. It ranges from representing the poor in routine litigation to developing and delivering community legal education, to the range of other activities that Nasution would call "Structural Legal Aid." In addition, NGO lawyers are also active in running public interest litigation - often initiated by them - in the Supreme Court (Mahkamah Agung), the State Administrative Courts (Pengadilan Tata Usaha Negara), and, since 2003, the Constitutional Court (Mahkamah Konstitusi) (depending on the type of law under challenge).

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[23] To give just one example, one of the former directors of LBH Jakarta, Abdul Hakim G Nusantara, was appointed to WALHI, the country's leading environmental protection non-government organization, in 1986, Lev, *supra* note 16, at 30–31.

Despite the increasing number of organizations in Indonesia's cause lawyering subsector, LBH remains a leader in both the provision of legal aid and political activism – particularly in cases concerning human rights abuse. It is now increasingly common for LBH to act as a facilitator for public interest litigation in cooperation with other human rights organizations.[24] In high-profile socio-political cases, LBH is typically the key legal representative and principal coordinator of court action. These patterns were established under the New Order, when LBH often seemed like the only active legal NGO in Indonesia.[25] They are unlikely to change any time soon, notwithstanding the recent introduction of a wide-ranging regulatory scheme for the delivery of legal aid that aims to establish both accreditation and state funding for all legal aid providers.

II. THE NEW LEGAL AID LAW

Before Law 16/2011 on Legal Aid, LBH and other legal aid and public interest law organizations operated without legislative or regulatory controls. There were directives issued from time to time by the Supreme Court on the provision of legal aid, but these were usually of limited effect.[26] Most legal NGOs operated independently, often led by, or acting in conjunction with, LBH. It is therefore not surprising that while this Law was being drafted, LBH proposed it should be appointed the sole official legal aid institute in Indonesia, with responsibility for setting standards and accrediting other legal aid organizations.[27] This was not accepted by the government, however. Instead the verification and accreditation process for legal aid organizations that seek government funding is now conducted by a committee within the Ministry of Law and Human Rights, although this is unlikely to diminish LBH's status among other NGOs or its role as a leading national provider of legal aid.

Legal aid is defined in the new Law as "legal assistance that is given by a legal aid provider free of charge to the recipient of legal aid."[28] A person who receives legal aid is defined as a "poor" person or

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[24] Crouch, *supra* note 1.

[25] Lev notes, for example, that LBH was not only "the most prominent source of social-legal criticism in the country", but that at times "there was no other", Lev, *supra* note 16, at 23.

[26] *E.g. Guidelines for the Provision of Legal Aid*, CIRCULAR OF THE SUPREME COURT NO. 10 (2010) (Indon.).

[27] Interview by Melissa Crouch with lawyers from LBH, Jakarta, Indon. (Feb. 19, 2012).

[28] Legal Aid Law, Art. 1(1) (Indon.).

group, and the provision of legal aid includes criminal, civil, and administrative matters, both litigious and non-litigious.[29] The delivery of legal aid and its funding is overseen by the Minister of Justice and Human Rights; and the Minister is required to establish a committee to oversee the administration and verification and accreditation process.[30] A legal aid provider must be accredited every three years by meeting certain requirements (for example, it must be a legal entity (*badan hukum*) and have an office). The obligations imposed on legal aid providers include reporting requirements and education of lawyers.[31] A person who receives legal aid has certain rights and obligations.[32] He or she must first, however, satisfy certain conditions in the Law, such as putting his or her complaint in writing and providing evidence of poverty from the *lurah*, the head of his or her village, or other local official.[33] A legal aid provider must respond to receipt of complaint from a qualified person within the very short period of just three days.[34] It is a criminal offence for a legal aid provider to receive money from the client or other party related to a case, and the maximum penalty is set at imprisonment for one year prison or a fifty million rupiah fine [USD $4,400].[35]

It is still too soon to say how the new Law on Legal Aid is working in practice, and whether it will, in fact, be effective and fully implemented. If it is, this will likely lead to greater government funding being made available for legal aid (although that would not include public interest litigation). This Law certainly has the potential to strengthen legal NGOs in Indonesia and thus cause lawyering more generally, depending on the amount of funding offered and how it is distributed and regulated. We now turn, however, to the regulation of the wider legal profession in Indonesia, which has so far proved much more problematic and resistant to regulatory reform.

III. A FRAGMENTED PROFESSION AND THE ADVOCATES LAW

Indonesia has never had a single bar association. Instead, its legal profession has been characterized by intense squabbling between

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[29] Legal Aid Law, Arts. 1(2), 4 (Indon.).
[30] Legal Aid Law, Arts 6, 7 (Indon.).
[31] Legal Aid Law, Art. 10 (Indon.).
[32] Legal Aid Law, Arts. 12–13 (Indon.).
[33] Legal Aid Law, Art. 14(1) (Indon.).
[34] Legal Aid Law, Art. 15 (Indon.).
[35] Legal Aid Law, Art. 21 (Indon.).

rival independent associations. To a great extent, this is the result of the Soeharto government's efforts in the 1980s to undermine the nearest thing Indonesia has ever had to a genuine bar.[36]

PERADIN (Persatuan Advokat Indonesia, Indonesian Advocates Association) was established in 1963 with the intention of unifying the Indonesian legal profession and it was marked from the outset by its commitment to law reform, constitutionalism, and professional independence.[37] It was also strongly influenced by prominent, courageous and outspoken cause lawyers including its founder, Yap Thiam Hien,[38] and Nasution. In 1970, Nasution's proposal to establish LBH was supported by many lawyers from PERADIN.[39] After 1978, when it declared itself a "struggle organization",[40] PERADIN became a target of the New Order administration, and in 1985 the regime established a rival puppet bar association, IKADIN (Ikatan Advokat Indonesia, Indonesian Advocates Society), with the clear intention of undermining PERADIN.[41]

IKADIN itself later split as factions broke away to form other independent associations, and the heated exchange of allegations of corruption, dishonesty, and other abuses between a series of fragmented and constantly fracturing lawyers' associations became standard. This rivalry and disunity was a pattern encouraged, and often covertly manipulated, by a government that benefited from a divided profession, the members of which had greatly differing levels of competence and integrity.[42] In this way, a culture was established of warring associations within a legal profession of inconsistent quality that lacked a single disciplinary body but shared a deep suspicion of state intervention. This culture has meant Indonesia has never had a single, representative body that could either speak for lawyers in their dealings with the government, the courts, the legislature or civil society or impose a common model of ethical conduct or standards of professional skill.

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36 LEV, *supra* note 6, at 315-317.

37 *Id.* at 286-287.

38 On the life and work of Yap Thiam Hien, see Dan S Lev (2011), *No Concessions: The Life of Yap Thiam Hien*.

39 LEV, *supra* note 6, at 290.

40 Crouch, *supra* note 1, at 70.

41 LEV, *supra* note 6, at 316.

42 Lev aptly explains the "disorder and disunity" that ensued as the government sought to destabilize the legal profession, and the 'unlawyerly' reactions of some lawyers, LEV, *supra* note 6, at 319.

Nasution, who is still one of Indonesia's leading lawyers, has witnessed the downward trajectory of the legal profession since he first entered it as a prosecutor in the 1950s.[43] In the period after the collapse of the New Order in 1998, he was among a group of senior legal figures who began to argue for another attempt to unify their profession and improve standards. As might be expected, many of the leaders of this group – Todung Mulya Lubis,[44] for example – had also been prominent LBH lawyers.

At first, it seemed they had been successful in creating a new unity among Indonesian lawyers. Overarching regulations for the legal profession are now contained in Law No. 18/2003 on Advocates, which came into effect on April 5, 2003.[45] Prior to the introduction of the 2003 Law, lawyers were divided into several categories, including advocates who acted as generalist lawyers, legal advisers who specialized in fields of commercial law, and legal consultants. Each of these professional groups issued their own regulations. Following the promulgation of the 2003 Advocates Law all qualified, practicing lawyers are now referred to as 'advocates'.[46] Advocates are defined as individuals in the profession of providing legal services, both within and outside court, who fulfill professional requirements set out in the Advocates Law.[47] The Law requires that all advocates must:

> Be admitted to the profession by a single Bar Association, which must issue a declaration of admission to the Supreme Court and the Ministry (art. 2(2));

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[43] *Cf.* Nasution, *supra* note 14, at 3–12.

[44] Dr Todung Mulya Lubis was the Director of LBH Jakarta from 1980 to 1983. He is a founder and Senior Partner of a leading private law firm, Lubis Santosa & Maulana. He has undertaken many high profile litigation cases relating to human rights, often on a pro bono basis, and is regarded as one of Indonesia's leading lawyers.

[45] Law No. 18/2003 on Advocates (Indon.).

[46] Notaries are separately regulated under Law no 30/2004 on Notaries, as well as a more detailed professional Code of Ethics specific to their profession. "Community advocates" also appear in the Advocates Law. They are defined in art. 1 as legal practitioners who lack formal legal training and are not admitted to the profession but frequently act as advisers or representatives for poor and disadvantaged clients. Their role is akin to that of the 'bare foot doctor' in the medical profession, Dan S. Lev, *Between state and society: Professional lawyers and reform in Indonesia*, *in* INDONESIA LAW AND SOCIETY 48, 49 (Timothy Lindsey ed., 2008). They rarely play a significant part in major public interest litigation but are crucial in handling day-to-day cases.

[47] Advocates Law, art 1(1) (Indon.).

Hold a law degree (arts. 2(1) and 3(1)(e));[48]

Participate in professional advocate special education (art. 2(1));

Have Indonesian citizenship (art. 3(1)(a));

Reside in Indonesia (art. 3(1)(b));

Not work as a civil servant or state official (art. 3(1)(c));

Be at least 25 years old (art. 3(1)(d));

Pass the Bar Association examination (art. 3(1)(f));

Have conducted an apprenticeship of at least two continuous years in an advocate's office (art. 3(1)(g));

Never have been convicted of a criminal offence (art. 3(1)(h)); and

Demonstrate good behavior, honesty, responsibility, fairness, and strong integrity (art. 3(1)(i)).[49]

The bar association mentioned in article 2 of the new Law was clearly intended to play a key role in the overall scheme of the Advocates Law. It is a single independent professional advocate's forum and is established with the specific aim of increasing the quality of the profession.[50] It is intended to be non-partisan and its leadership is prohibited from involvement in the leadership of political parties.[51] The bar association's principal responsibility is, as might be expected, to monitor the legal profession[52] to ensure compliance by its members with relevant regulations and its professional code of conduct.[53] This is primarily to be conducted by its Monitoring Commissions. It must also establish Honor (Professional Conduct) Committees to oversee professional conduct at both national and regional levels.[54] The regional Honor Committee is to hear cases of professional misconduct in the first

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[48] According to the *penjelasan* (explanatory memorandum) to the Law, a relevant law degree can be obtained from a faculty of law, a faculty of *Shari'a* (Islamic law), an academy of military law or the police academy.

[49] Advocates Law, Arts. 2(1)-(2), 3(1)(a)-(i) (Indon.).

[50] Advocates Law, Art. 28(1) (Indon.).

[51] Advocates Law, Art. 28(3) (Indon.).

[52] Advocates Law, Art. 12(1) (Indon.).

[53] Advocates Law, Art. 29(1) (Indon.) A Code of Ethics was promulgated in 2002 by the Indonesian Advocates Working Committee prior to the passing of the Advocates Law in the following year. For more details, *see* Crouch, *supra* note 1, at 74–75.

[54] Advocates Law, Art. 27(1) (Indon.).

instance, while the Central Honor Committee may hear appeals and issue final decisions.[55]

While the Advocates Law clearly envisages the establishment of a single bar association that Nasution and his colleagues hoped might finally fulfill the promise of PERADIN, this has sadly not been achieved. While the creation of a single regulatory body to monitor and represent lawyers, establish uniform standards, and monitor their conduct might seem self-evidently necessary - or at least very useful - the legacy of disunity and suspicion left by the New Order tactics of dividing lawyers to rule them has proved more powerful.

At present, a new organization –confusingly of the same name as its predecessor, but referred to by a slightly different acronym –PERADI (Persatuan Advokat Indonesia, Indonesian Advocates Association), claims to be the sole bar association in Indonesia, and had approximately 24,000 members as of September 2011.[56] It was formed on December 21, 2004 as a product of the amalgamation of the existing eight bar associations listed in Article 32(4) of the Advocates Law. This was a complex process led by an Indonesian Advocates Working Committee that included members of all these associations.[57] However, it was done somewhat hastily in order to meet the two-year deadline for its formation. It is now clear that this was insufficient time to build a clear consensus among the membership of the eight main bar organizations regarding the legitimacy of their new governing body. PERADI's claim to be the nation's sole bar association was, therefore, contested from the outset. In particular, "allegations of corruption emerged in relation to the newly-established PERADI."[58] These soon found support among a group of highly-regarded and influential lawyers, many of whom were previously senior figures at LBH. Some of them suspected– rightly or wrongly- that PERADI had somehow already been suborned by either the state or private interests.

As a result, many cause lawyers withdrew support from PERADI, and a number of applications were made to the Constitutional Court seeking partial revocation of the Advocates Law in order to

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[55] Advocates Law, Art. 27(2) (Indon.).

[56] AM. BAR ASS'N., ACCESS TO JUSTICE ASSESSMENT FOR INDONESIA SOUTH SULAWESI PROVINCE 27 (2012).

[57] *Sejarah,* PERADI, http://www.peradi.or.id/in/detail.viewer.php?catid=0ec779f0f61ecd748922b01af48e03ce&cgyid=c980253e8d2fdcd8e8601ae113fa151a (last visited Jan. 14, 2014).

[58] Crouch, *supra* note 1, at 18.

dissolve PERADI. In 2006, however, that court rejected a challenge to the constitutionality of the establishment of a single bar association[59] and in subsequent decisions refused to revisit the matter.[60] This did not resolve the issue at all, however, and in 2008 around three thousand lawyers surrendered their membership to PERADI to establish a rival bar association known as the Indonesia Advocates Congress (KAI, Kongres Advokat Indonesia).[61] They did so on the basis of claims that flaws in the process of its establishment meant PERADI was not validly formed and did not, in fact, legally exist.[62] KAI quickly assumed functions that, under the Advocates Law, were the prerogative of the official bar association. These included holding bar exams and issuing membership cards that it insisted had the same legitimacy as those issued by PERADI.[63]

The split resulted in fierce rivalry between the two organizations, marked by a series of legal battles, none of which proved conclusive. In 2009, the issue returned to the Constitutional Court, which this time stated that, "in its opinion, neither PERADI nor KAI has been accepted as the sole umbrella organization for legal professionals . . . and urged PERADI and KAI to form one united organization according to the Advocates Law."[64] The Court's opinion only added to the confusion and uncertainty. In frustration, Indonesia's other peak court, the Supreme Court, entered the fray. In 2010, an accord overseen by the Supreme Court acknowledged PERADI as the main bar association in Indonesia, but set out a process for PERADI and KAI to reconcile and work towards the establishment of a single bar association within two years.[65] A rival faction within KAI quickly emerged, however, which argued that the accord was not legitimate.[66]

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[59] *See Decision No. 014/PUU-IV/2006* (Constitutional Court of the Republic of Indonesia Nov. 27, 2006).

[60] Crouch, *supra* note 1, at 22.

[61] *Indra Sahnun Lubis Terpilih Jadi Presiden Kongres Advokat Indonesia,* TEMPO.CO (May 30, 2008), http://www.tempo.co/read/news/2008/05/30/055124025/Indra-Sahnun-Lubis-Terpilih-Jadi-Presiden-Kongres-Advokat-Indonesia.

[62] *Id.*

[63] *Syarat Keanggotaan*, Kongres Advokat Indonesia, http://www.kongres-advokat-indonesia.org/showdetail.php?mod=red&id=32 (last visited Feb. 28, 2014).

[64] Crouch, *supra* note 1, at 82.

[65] *See* Circular Letter No.089/KMA/VI/2010, June 25, 2010 (Indon.).

[66] Setya Adil, *Lawyers Vandalize Court Over Recognition of Rivals,* JAKARTA GLOBE (July 15, 2010), http://www.thejakartaglobe.com/archive/lawyers-vandalize-court-over-recognition-of-rivals/.

In any case, it appears that the Supreme Court, which initially supported PERADI as the principal bar association, is now willing to recognize KAI-certified lawyers, a move that somewhat defeats the purpose of the accord. In a 2011 "clarification" of its position, the Supreme Court stated that PERADI's principal recognition did not necessarily mean that members of other associations would not be eligible to take an oath and be sworn into practice,[67] although this seems to be clearly at odds with a plain reading of the Advocates Law. In any case, the courts have retained a high degree of discretion as to who can appear before them. Whatever the merits of the arguments concerning the two rival associations, it now seems clear that the bold attempt to establish a single professional bar association through the Advocacy Law has failed, for now at least.

In 2013, the Legislative Committee of the national legislature, the Dewan Perwakilan Rakyat (DPR), was working on amendment of the Advocacy Law and considering the deeply vexed issue of whether to re-examine the single bar association policy. PERADI has submitted that any revision should specifically identify it as the sole bar association,[68] but KAI has insisted that the requirement for a single association be removed and that both PERADI and KAI be listed as legitimate bar associations. Other commentators simply hope, somewhat optimistically, that the new bill will finally bring an end to the ongoing feud[69] and that a unified – and properly regulated profession – might be created for the first time in Indonesian history. If this does happen, it would certainly be a momentous reversal of well-established patterns of division and discord in which leading cause lawyers have played important parts on both sides of the argument.

The divisions in Indonesia's legal profession are not limited to matters of professional organization. They also extend to the ways in which litigation is handled and to relations with the government and the judiciary. As might be expected, many of the wider cleavages among Indonesia's diverse ethnic, religious, and political communities are also sometimes reflected among its lawyers. Moreover, the combination of the absence of a single professional association and the degree of discipline that it can provide, and the culture of conflict and factionalism

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[67] *See* Circular Letter No. 052/KMA/HK.01/III/2011 (Indon.).

[68] Lita P. Siregar & Novrieza Rami, *Masukan PERADI untuk Advokat'*, HUKUM ONLINE.

[69] Rofiq Hidayat & Abdul Rasak Asri, *Revisi UU Advokat Diharapkan Jadi Solusi Perpecahan*, HUKUM ONLINE.

that has been engrained since at least the 1980s, means these are often exacerbated.

This is certainly the case with regard to the right to religious freedom, an area that has been the subject of much controversy in public life in Indonesia in the last fifteen years.[70] In the balance of this paper we therefore seek to demonstrate another aspect of the many divisions among cause lawyers in Indonesia by examining, first, how LBH has dealt with religious freedom cases and, second, how one prominent cause lawyer at LBH came to completely reject the position on these issues of the organization he once led. We conclude with a brief consideration of what that might suggest about the future of the *Reformasi* movement in Indonesia and cause lawyering more generally.

IV. RELIGIOUS FREEDOM AND LBH

Since *Reformasi* began in 1998, LBH has been one of the key institutions representing religious communities and religious leaders in cases against government actions. It has long adhered to the view that religious minorities should be free to worship without harassment, and its lawyers regularly provide legal advice and representation for individuals accused of criminal offences against particular religions, primarily pursuant to Art 156a of the Criminal Code, the so-called "Blasphemy Law."[71] LBH usually does so without much hope of success, and, in fact, it has never won an acquittal in such a case. Even when charges of blasphemy against the accused are dropped (as has occurred in a handful of cases), the accused has been convicted of other, related, criminal offences. As with the political trials it unsuccessfully defended under the New Order, LBH has, however, routinely provoked widespread media attention and public debate on the issues involved in blasphemy cases by defending them vigorously, despite the virtual certainty of conviction.

In 2012, for example, LBH represented Alexander Aan, an atheist convicted under Law 11/2008 on Electronic Transactions and Information for a post on the "Minang Atheists" Facebook page that concerned the Prophet Muhammad and was seen as "blaspheming

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[70] *See generally* MELISSA CROUCH, LAW AND RELIGION IN INDONESIA: CONFLICT AND THE COURTS IN WEST JAVA (2013); TIM LINDSEY, ISLAM, LAW AND THE STATE IN SOUTHEAST ASIA: INDONESIA, 401-434 (2012).

[71] Presidential Decree No 1/PNPS/1965 on the Prevention of the Miuse/Insulting of a Religion, converted to statute by Law 5/1969. It is commonly referred to in Indonesia as 'UU Penodaan Agama', the 'Blasphemy Law'.

Islam."[72] In 2013, LBH also represented Tajul Muluk, a Shiite convicted for "blaspheming Islam" under Art 156a of the Criminal Code, simply for holding Shia beliefs,[73] which are increasingly held to be inherently "deviant" by mainstream Sunni organizations in Indonesia. Members of religious minorities facing other criminal charges have also been represented by LBH. These include Deden Darmawan Sudjana, a Security Advisor for Jemaat Ahmadiyah Indonesia, a group that many Muslims see as contravening orthodox Islamic doctrine (as is explained further below). Sudjana was charged with incitement and attempting to resist the police under the Criminal Code in relation to the February 2011 Cikeusik incident, when he unsuccessfully sought to fend off attacks by a large Sunni vigilante mob that killed three Ahmadis and burnt Ahmadi houses.[74]

In fact, in an era when trials for subversion no longer take place, the issue of religious freedom has taken their place, defining a large proportion of LBH's public interest litigation agenda since 1998.[75] In addition to defending members of religious minorities facing criminal charges, LBH has also brought cases for judicial review of legislation to the Constitutional Court, for example, the widely-debated, and ultimately unsuccessful, 2010 challenge to the Blasphemy Law.[76] Former members of LBH were likewise key to a second failed challenge to the Blasphemy

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[72] Aan was convicted under 28(2), which states that "A person who intentionally and without right spreads information that aims to cause hatred or hostility towards an individual and/or particular group that is based on ethnicity, religion, race or inter-group relations (SARA)." Under Art 45(2), this offence attracts a penalty of 6 months jail or a fine of up to Rp 1 million. *See* No. 45/PID.B/2012/PN/MR (Pengadilan Negeri Muaro Putusan, June 13, 2012) (Indon.).

[73] *See* No. 69/Pid.B/2012/PN.Spg (Pengadilan Negeri Sampang Putusan, July 11 2012) (Indon.).

[74] *See* Melissa Crouch, *Criminal (In)justice in Indonesia: The Cikeusik Trials*, 37 ALTERNATIVE L. J.at *54*, 54–6 (2012). Eleven members of the mob that killed the Ahmadis in Cikeusik eventually faced trial. They were not charged with murder, but inciting hatred under Art. 160 and battery under Art. 170 of the Criminal Code, which carry six and twelve-year maximum penalties respectively. They received sentences for breach of Article 170 that ranged from just three to six months imprisonment. Deden Sudjana received six months imprisonment.

[75] In its annual reports, LBH now often includes a section relating to cases and campaigns on freedom of religion and belief: see for example, LBH Jakarta (2012) *Paradox Negara Hukum: Laporan Hukum dan HAM 2012*. Jakarta: LBH.

[76] The challenge was to Presidential Decree 1 of 1965 on the Prevention of the Misuse and/or Disgracing a Religion, converted to statute by Law 5 of 1969, and commonly referred to in Indonesia as "UU Penodaan Agama", or the "Blasphemy Law". This Decree inserted art 156a in the Criminal Code. For an analysis of the Constitutional Court decision, *see* Melissa Crouch, *Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law*, 7 ASIAN J. COMP. L., at 1-46 (2012). For an analysis of the Constitutional Court decision, *see* Melissa Crouch, *Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law*, 7 ASIAN J. COMP. L. 1 (2012); *See also* LINDSEY, *supra* note 70, at ch. 12.

Law in 2012-2013.[77] LBH has also represented Ahmadiyah in challenges to decisions of local authorities that were heard in the Administrative Courts (2005) and the Supreme Court (2011, ongoing).[78]

These cases may have been doomed, but they are prime examples of "Structural Legal Aid", and are, in fact, a form of the highly managed political theater that LBH has – over many decades – refined to an effective art form. To return to Sarat and Sheingold's definition of cause lawyering,[79] LBH lawyers are undertaking "controversial and politically charged activities" by reason of "a sense of commitment to particular ideals;" they are "fusing law with political activism, to engage in sensitive issues of public policy and politics." The message they hope to convey by defending those charged with blasphemy and running public interest litigation in defense of religious freedom is unambiguous. As Nasution, himself a Muslim (like more than eighty percent of Indonesians), puts it:

> Indonesian democracy continues to be tested by serious problems. Religious fundamentalism has become one of the most dangerous of all . . . [Islamist vigilantes] persist in intimidating and even using violent means to attack minority faiths, and marginalized "little people" (*orang kecil*), as well as activists fighting for religious freedom . . . unfortunately the branches of state authority (executive, legislative, judicial) seem to have lost their grip, and are ineffectual in curbing fundamentalist aspiration . . . I am afraid that our politicians have now slipped into an erroneous understanding of democracy. It is as though . . . *vox populi vox dei* (the voice of the people is the voice of God) has become the official formula for democracy in Indonesia: If the majority want it, then let it be so. This is utterly wrong . . . Basing democracy on majoritarianism alone will inevitably give rise to serious problems . . . Democracy must be based on a principle of constitutionalism that is intended to limit the arbitrariness of power, including prevention of the tyranny of the majority.[80]

This message, however, sometimes seems not to be heard in the din created by the highly-charged politics associated with issues of religious freedom in Indonesia. The message even seemed entirely lost when a prominent LBH lawyer switched causes. Like Nasution,

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[77] *See generally* Melissa Crouch, *The Indonesian Constitutional Court and Religious Minorities,in* MINORITIES IN MUSLIM-MAJORITY CONTEXTS (Alyn Hine & Pei-Chien Wu, eds.) (forthcoming).

[78] *See* Melissa Crouch, *Judicial Review and Religious Freedom: The Case of Indonesian Ahmadis*, 34 SYDNEY L. REV. 545 (2012).

[79] SARAT & SCHEINGOLD, *supra* note 9.

[80] Nasution, *supra* note 14, at 36.

Munarman is a well-known figure in Indonesia. From his early involvement with LBH to his later role in "hard line" (*garis keras*) Islamist vigilant organizations, such the Islamic Defenders Front (Front Pembela Islam, FPI), he has attracted significant media attention. In the next part, we provide a brief account of his career as an illustration of the fault lines that weaken cause lawyering in Indonesia, and of the massive problems that still confront law reformers in that country.

V. FROM RADICAL CAUSE LAWYER TO RADICAL ISLAMIST: THE TRANSFORMATION OF MUNARMAN

Born in Palembang, Sumatra in 1968, Munarman graduated with a law degree from Palembang's Sriwijaya University, where he was known as a devout Sunni Muslim.[81] He then joined the local LBH branch, and in less than two years went from volunteering to heading operations in Palembang.[82] During this time, he was notable for his energy, intensity, and the uncompromising nature of his commitment to help the poor achieve justice in civil legal matters, which he saw as part of a wider social duty of egalitarianism and altruism.[83]

In 1996, these concerns also led Munarman to become involved with another prominent national cause lawyers' NGO, KontraS. KontraS was established in that year by a prominent human rights activist, Munir Said Thalib, in response to human rights abuses committed by Soeharto's New Order, then still firmly in power.[84] KontraS was particularly concerned with holding members of the military and political elite accountable for violence and abductions committed in remote regions as well as in Jakarta, where students and community organizations were targeted in the lead-up to the 1997 election.[85] Under Munir's guidance, Munarman went on to become the coordinator of KontraS. He eventually

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[81] A Gunawan, *Munarman: Aktivitas Kontras yang tak Kondang,* TEMPO, *available at* tempo.co.id/harian/profil/prof-munarman.html.

[82] *Id.*

[83] *See* Abanggeutanyo, *Munarman, Egaliter Nasionalis ke Otoritor Tiranis?,* KOMPASIANA, http://edukasi.kompasiana.com/2013/06/30/dari-egaliter-nasionalis-menjadi-sangar-dan-bengis-573150.html.

[84] KONTRAS was originally established in 1996 as KIP-HAM. It was renamed in 1998. E Mei Amelia R, *Munarman Diberi Waktu 6 Jam Jenguk Bayinya,* DETIKNEWS, http://news.detik.com/read/2008/09/12/102912/1004967/10/munarman-diberi-waktu-6-jam-jenguk-bayinya.

[85] *See KONTRAS Profile: Background,* KONTRAS, http://www.kontras.org/eng/index.php?hal=profile.

headed its Working Committee, and in 2000 relocated to the KontraS office in Jakarta.[86]

Together Munir and Munarman became well-known for uncovering human rights abuses by the military, including in the province of Aceh, where Munarman also lived for a while. The two were seemingly tireless advocates for human rights and an end to elite impunity. They were active, effective and outspoken in both the wider community and among policymakers, frequently to the embarrassment and annoyance of the latter.

Probably as a result of this, Munir was poisoned with arsenic on a flight to the Netherlands in 2004 by Pollycarpus Priyanto, a Garuda pilot who was also an agent of Indonesia's national intelligence agency (Badan Inteligen Negara, BIN) and eventually received twenty years for the killing.[87] Munir's death led to a public outcry, and investigations and reports into the assassination showed it was part of a wide conspiracy. The then Chief Executive of Garuda, Indra Setiawan, was convicted for his role in the murder and senior figures in BIN were also implicated, although none have ever been convicted.[88]

There can be little doubt that Munir's death had a profound effect on Munarman, and over the next few years he appears to have become disillusioned with the capacity of cause lawyers and the legal process to achieve the aspirations of social justice that had motivated him since his university days.

In 2002, Munarman had refocused his attention on YLBHI (Indonesian Legal Aid Institute Foundation (Yayasan Lembaga Bantuan Hukum Indonesia), the central umbrella in Jakarta for the regional LBH offices around Indonesia, and was soon elected its leader by a convincing margin.[89] His main pledge at the time was to unite and consolidate YLBHI members, saying that, "To build democracy, we should seek out

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[86] Gunawan, *supra* note 81.

[87] Putusan Mahkamah Agung No 109PK/Pid/2007, concerning the case of Pollycarpus Budihari Priyanto, January 25, 2008.

[88] *Denied Letter, Activists to Push to Reopen Munir Case*, JAKARTA POST (Jan. 5, 2012, 8:56 AM), http://www.thejakartapost.com/news/2012/01/05/denied-letter-activists-push-reopen-munir-case.html. The court decision convicting Indra Setiawan has not been made publicly available on the Supreme Court's website, KEPANITERAAN, http://kepaniteraan.mahkamahagung.go.id/perkara/perkara_detail.php?id=ccbe4780-90a6-10a6-b3cd-30393338 (last visited Feb. 28, 2014).

[89] T.Z. Simanjuntak, 'Munarman Elected YLBHI Top Executive, JAKARTA POST, *available at http://www.thejakartapost.com/news/2002/09/25/munarman-elected-ylbhi-top-executive.html.*

our foes, but make friends . . . The differences among us are part of our tradition. YLBHI will never be broken down because of differences."[90]

His views, however, changed dramatically over the next few years, moving from espousing pluralism, democracy, religious freedom, and the rule of law' ideas implicit in the Indonesian term *negara hukum* to openly advocating cultural and religious segregation and the application of a conservative and literalist interpretation of Islamic law that is highly intolerant of religious difference.[91]

This shift seems to have taken place in the wake of Munir's murder, when Munarman became increasingly involved with Hizbut Tahrir Indonesia (HTI), an Islamist organization that calls for the creation of a worldwide Islamic state and espouses conservative religious and moral values.[92] In 2006, a HTI poster appeared in Jakarta with Munarman's face and name on it[93] and soon after he gave an interview stating that "Indonesians must unite and close ranks in order to prepare for the threats of secular groups," such as United States-funded NGOs.[94] As Mas Achmad Santosa, a YLBHI board member and prominent cause lawyer has said, the "problems" with Munarman began "when he began to bring his (Hizbut Tahrir) teachings into the office," as "he did not reflect the LBH approach that we transcend ethnicity, religion, and race. There is no room [here] for sectarianism."[95]

Munarman's public statements and affiliation with HTI soon made his leadership of YLBHI untenable, and in 2006 he was ousted.[96] He was replaced by Patra M. Zen (Ferdianto, 2006), another energetic and committed young legal aid lawyer, but one more at ease with YLBHI's long-standing and essentially secular rule of law, legal aid and

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[90] *Id.*

[91] Magdalena, *Munarman SH Soal Pembubaran Ormas Isla: Saya Tahu Persis Siapa yang Menyuarakan Inii,* ERAMUSLIM: MEDIA ISLAM RUJUKAN, http://www2.eramuslim.com/berita/bincang/munarman-sh-soal-pembubaran-ormas-islam-saya-tahu-persis-siapa-yang-menyuarakan-ini.htm#.Uc1WNevDreI

[92] *Tentang Kami*, HIZBUT TAHRIR INDONESIA, http://hizbut-tahrir.or.id/tentang-kami/.

[93] M. R. Maslan, *Munarman Ancam Lawan Bila Dipecat dari YLBHI*, DITEK NEWS, http://news.detik.com/read/2006/04/06/213342/572258/10/munarman-ancam-lawan-bila-dipecat-dari-ylbhi?nd771104bcj.

[94] Magdalena, *supra* note 91.

[95] Stephen Fitzpatrick, *Rebel Indonesian Lawyer Munarman Turns Himself In*, THE AUSTRALIAN, June 11, 2008, *available at* http://www.theaustralian.com.au/news/rebel-lawyer-turns-himself-in/story-e6frg6t6-1111116594504.

[96] Tiarma Siboro, *Leading legal aid group head ousted over internal dispute*, JAKARTA POST (April 11, 2006, 9:52 AM), http://www.thejakartapost.com/news/2006/04/11/leading-legal-aid-group-head-ousted-over-internal-dispute.html.

human rights agenda, and its clear position in support of the rights of religious minorities.

Munarman's expulsion from YLBHI saw him become increasingly preoccupied not only with HTI's aims of legal Islamisation, but also with the eradication of unorthodox or "deviant" (*sesat*) Islamic beliefs, a common concern of conservative Sunni organizations in Indonesia.[97] Like many other members of such groups in Indonesia, Munarman was particularly determined to oppose the Ahmadiyah movement. Ahmadiyah was founded in the 1880s in what is now Pakistan by Mirza Ghulam Ahmad, a mystic, and has been active in Indonesia since the 1920s.[98] Ahmad is believed to have claimed to be a successor prophet to Muhammad – a claim Sunni Muslims find highly offensive. Ahmadiyah has therefore been deemed deviant by the Indonesia Ulama Council (Majelis Ualma Islam, MUI) and other leading Muslim organizations, and its members face opposition, and even persecution, in many parts of Indonesia.[99]

After leaving YLBHI, Munarman formed the An Nashr Institute, the main aim of which was to ban Ahmadiyah beliefs and practices, and in 2008 began to associate with the Islamic Defenders Front (Front Pembela Islam, FPI), a vigilante group that is often involved in violence directed at Ahmadis.[100] As a leader of a FPI subgroup, the Islamic Militia Command (Komando Laskar Islam, KLI),[101] Munarman was implicated in attacks on Ahmadi groups and their supporters. The most notorious of these was the National Monument attack in Jakarta on June 1, 2008, and it shows how far Munarman had now departed from the positions on religious freedom held by LBH.

On that day, members of the National Alliance for the Freedom of Faith and Religion (Aliansi Kebangsaan untuk Kebebasan Beragama dan Berkeyakinan, AKKBB), including their families, gathered at the

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[97] This concern is reflected in the fatwa (Islamic legal opinions) issued by some leading Islamic organizations, including the Indonesian Ulama Council, against so-called "deviant" groups, and the conviction of leaders of those groups for blasphemy and related religious offences. *See* Crouch, *supra* note 76; LINDSEY, *supra* note 70, at 147-153, 402-444.

[98] *See generally* SPENCER LAVAN, THE AHMADIYAH MOVEMENT: PAST AND PRESENT (1976).

[99] LINDSEY, *supra* note 70, at 147–153.

[100] Chaider S. Bamualim, *Islamic Militancy and Resentment against Hadhramis in Post-Suharto Indonesia: A Case Study of Habib Rizieq Syihab and His Islamic Defenders Front,* 31(No. 2) COMPARATIVE STUDIES OF SOUTH ASIA, AFRICA, AND THE MIDDLE EAST 231, at 267-281 (2011).

[101] Fatima Astuti, *Fallout From Jakarta's Mona Incident*, INT'L REL. AND SECURITY NETWORK (June 12, 2008), http://www.isn.ethz.ch/Digital-Library/Articles/Detail/?lng=en&id=88463.

monument in Jakarta to celebrate the sixty-third year of the Pancasila state ideology,[102] which emphasizes religious pluralism and freedom.[103] Munarman, along with members of the KLI, FPI and Hizbut Tahrir, attacked AKKBB members with bamboo poles and other weapons.[104] Up to thirty-four men, women, and children of a range of religious affiliations, including Muslims, were injured; also hurt were senior leaders of moderate Islamic groups.[105] Around a thousand police were in attendance, but did little to stop the violence. After the incident, Munarman publicly stated that the attack was a reaction to the Alliance's statement in several newspapers supporting religious pluralism and the rights of Ahmadiyah members.[106]

On the day after what became known as "The Monas Tragedy," President Susilo Bambang Yudhyono condemned the attack, stating that the perpetrators should be dealt with sternly and face the full force of the justice system. Munarman fled, but was arrested six days after the attack.[107] He was charged with the following offences under the Criminal Code: ambush; property damage; torture; and provocation.[108] On October 30, 2008, he received a prison sentence of one and a half years imprisonment.[109] The result sparked some protest for its perceived leniency, but to no avail.

Munarman, however, may well regard the attack as successful, in that it achieved his aim of securing very significant restrictions on the right of Ahmadis to worship. On June 9, 2008, a week after the attack, as Islamist protestors staged large demonstrations against Ahmadiyah in the center of Jakarta, the Joint Decision of the Minister of Religion, the Attorney General, and the Minister for Internal Affairs No. 3 of 2008, KEP-033/A/JA/6/2008 and No. 199 of 2008 respectively, was issued. Although the text of the Joint Decision is open to different

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[102] Melissa Crouch, *Indonesia, Militant Islam and Ahmadiyah: Origins and Implications*, *in* ARC FEDERATION FELLOWSHIP 'ISLAM, SHARIAH AND GOVERNANCE' BACKGROUND PAPER SERIES NO. 4 12 (2009).

[103] M. Syafi'I Anwar, *Islam, Pancasila and Atheism*, JAKARTA POST, *available at* http://www.thejakartapost.com/news/2012/06/26/islam-pancasila-and-atheism.html.

[104] *Hard-Liners Ambush Monas Rally*, JAKARTA POST (June 2, 2008), *available at* http://www.thejakartapost.com/news/2008/06/02/hardliners-ambush-monas-rally.html.

[105] LINDSEY, *supra* note 70, at 63–4.

[106] *Hard-Liners Ambush Monas Rally*, *supra* note 104.

[107] Fitzpatrick, *supra* note 95.

[108] Criminal Code, art 170(1), 406(1), 351(1), and 160 (Indon.); *See also* Crouch, *supra* note 102, at 13–14.

[109] CROUCH, *supra* note 102, at 13–15.

interpretations,[110] it has been widely seen as effectively prohibiting Ahmadis from publicly practicing their beliefs and has sparked a wave of similar regulations across Indonesia at the local level.[111] Munarman had thus carried out a form of public protest that could be characterised as a type of "Structural Legal Aid", albeit of a very different nature to that conducted by LBH. Despite public opposition, Munarman's attack resulted in a significant regulatory change that greatly disadvantaged the Ahmadis.

Since his release from prison, Munarman has maintained his open hostility to the values of the cause lawyer organizations he once led. He again achieved national notoriety for this in 2013, when he appeared on a TVOne talk show to discuss police bans on Islamist vigilante groups conducting so-called "sweeping" raids on bars, gaming houses, and brothels during Ramadan, the Muslim fasting month.[112] During the discussion, a sociologist from the University of Indonesia, Thamrin Amal Tamagola, mentioned President Yudhyono's promotion of pluralism and human rights as beneficial for protection of Indonesian citizens. Munarman responded angrily, throwing water over Tamgola.[113] Although Tamgola declined to report the matter to the police, Munarman steadfastly refused to apologize for his actions, which have been seen by many as reflecting FPI's "thug-like attributes, camouflaged by religion."[114]

VII. CONCLUSION: REFORM FATIGUE?

Munarman underwent a transformation from cause lawyer to Islamist vigilante, from being a supporter of pluralism and tolerance and a critic of violence and human rights abuse to becoming an outspoken opponent of pluralism and tolerance, a person openly dismissive of such

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[110] The key provision is Point 2, which states that 'the organisers of Jemaat Ahmadiyah Indonesia (JAI) for as long as they call themselves Muslims, must cease the spreading of interpretations and activities that deviate from the main teachings of Islam, that is spreading the belief that acknowledges a prophet, with a variety of teachings, after the Prophet Muhammad'; *See* LINDSEY, *supra* note 70, at 425–6.

[111] *See* Crouch, *supra* note 78. Ironically, one of the drafters of the Joint Decision was Nasution; he has told the authors that felt he had no choice but to support the repressive regulation given the atmosphere of political tension and looming mob violence in the city at the time, created by the groups of which Munarman was a leader.

[112] *See Activist Slams Water-Throwing Incident*, JAKARTA POST (June 29, 2013), *available at* http://www.thejakartapost.com/news/2013/06/29/activist-slams-water-throwing-incident.html.

[113] *Id.*

[114] *Id.*

rights and a willing user of violence. At first glance this seems to be a complete reversal. However, he may not see it like that.

If we assume that Munarman's motivations remain the same as they were when he began his career as cause lawyer in Palembang – that is, to achieve social justice – then he might argue that what has changed is his understanding of the nature of social justice and the best means to obtain it. It is not hard to imagine that the murder of his close colleague, Munir, and the failure to convict any senior BIN figure of the crime might have seemed stark evidence to Munarman that replacement of the authoritarian New Order system with a ramshackle democratic system had resulted in little real progress towards an end to corruption, elite impunity, and reform of his country's dysfunctional legal system.

That would not be so strange a view. These are, in fact, increasingly common views among cause lawyers and *Reformasi* activists throughout Indonesia. Disillusioned former cause lawyers who have now sought other careers in commercial practice, academia, business, politics, or elsewhere sometimes refer to Munir's murder as an example of why they have done so. They also point to high profile cases of elite corruption and misbehavior that fill the media every day as well as dissatisfaction with the state of the judiciary, the police, and the legal profession.[115] There is also a perception that the *Reformasi* has stagnated, and some even feel that democratisation may now be vulnerable to unravelling by a hostile post-Yudhoyono government.

If Munarman concluded that the *negara hukum* ideals of LBH to which he first committed himself in Palembang have failed to deliver social justice, then it is perhaps not surprising that he might return to an extreme form of the conservative Sunni values he had held all his life to redefine his notions of social justice, and seek a form of activism within that framework to which he might commit himself with the same intensity. Muslim groups – particularly mainstream moderate groups – were heavily involved in the *Reformasi* movement from the outset. Indeed, there has long been an influential tradition of modernist Islamic thinking among some cause lawyers who view governance from a deeply moral perspective. They are often motivated by a view that corruption is a wrong per se that the pious person has a duty to prevent. The post-Soeharto process of democratisation that changed the legal NGOs clustered around LBH from dissident opposition groups into public cause

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[115] *See* SIMON BUTT & TIM LINDSEY, *Judicial Mafia: Corruption and the Courts in Indonesia, in* THE STATE AND ILLEGALITY IN INDONESIA 189 (Douglas Greenburg et. al. eds., 2011).

lawyer organisations therefore also gave a voice to Muslim organizations and enabled them to participate openly in public life after three decades of systemic repression under Soeharto. In addition to the mainstream Muslim organizations in Indonesia that led democratization and strongly support religious tolerance, social diversity, and human rights there are, of course, a much smaller number of hard-line (*garis keras*) Islamist conservatives who use the freedoms won after Soeharto's fall to promote what is now a sophisticated legal Islamization agenda as well as a program of intimidation – and sometimes violence – directed at religious minorities. These – unlike the mainstream Muslim organizations that are often keen champions of human rights and representative democracy – are anathema to what LBH stands for.

This, of course, raises the broader question of the implications of the shortcomings of legal and political reform in Indonesia, and its slowing pace, for the future of the open, liberal society developed after Soeharto's fall in 1998. As mentioned, many cause lawyer NGO leaders with whom we have met are now increasingly cynical about current government attitudes to corruption and law reform in Indonesia. Many see most current national leaders as products of a mindset developed under Soeharto's rule, inheriting ideas about the role of the state and commerce that are inimical to good governance. Many NGO leaders have abandoned the optimism and enthusiasm of the first ten years post-Soeharto and believe that it will be extremely difficult for the national leadership to move completely away from New Order attitudes and practices like those attributed to BIN. Many now have much less faith or confidence in the state's ability to deliver what it promises, particularly with regard to human rights and religious tolerance. They also see the state as passive in the face of the challenges presented, for example, by extreme Islamist groups like those now associated with Munarman.

Cause lawyers linked to LBH in Indonesia have been, as Nasution has said, the "locomotive of Democracy" in Indonesia[116] or, as Lev put it, "the most fervent promoters of rule of law ideas . . . a highly sophisticated constitutionalist movement . . . at the cutting edge of political, social and even cultural reform."[117] If they now become disillusioned or even abandon and oppose the rule of law, as did

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[116] Nasution, *supra* note 14, at 12.

[117] DANIEL S. LEV, *Social Movements, Constitutionalism and Human Rights: Comments from the Malaysian and Indonesian Experience*, *in* CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD ORDER 139, at 146 (Douglas Greenberg et. al. eds., 1993).

Munarman, then Indonesia's post-Soeharto "democratic miracle"[118] may be significantly weakened.

[118] This term is in common parlance to describe post-Soeharto Indonesia. *See, e.g.,* Kishore Mahbubanni, *Indonesia's Democratic Miracle*, PROJECT SYNDICATE: A WORLD OF IDEAS (Sept.15, 2008), http://www.project-syndicate.org/commentary/indonesia-s-democratic-miracle.